

REAUTHORIZATION OF THE HATE CRIMES STATISTICS ACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

S. 1624

A BILL TO REAUTHORIZE THE HATE CRIME STATISTICS ACT, AND FOR
OTHER PURPOSES

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REAUTHORIZATION OF THE HATE CRIMES STATISTICS ACT

TUESDAY, MARCH 19, 1996

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

The committee met, pursuant to notice, at 10:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators DeWine, Kennedy, and Simon.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Today, the Judiciary Committee considers legislation permanently reauthorizing the Hate Crimes Statistics Act. The people of Utah and of all of our States have a stake in this legislation because all of our citizens can fall prey to hate crimes. Members of my own faith have endured violence and persecution. We were the only church in the history of this country that had an extermination order against it by one of the governors of our State. So we understand persecution and violence.

Under the Act, which has expired, the Attorney General must collect data, "about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity * * *" The collection of this data can help inform communities and their law enforcement agencies about any pattern of hate crimes in their neighborhoods. It can help spur educational efforts aimed at enhancing goodwill in our communities. This bill creates no rights or causes of action. It is a data collection bill only.

Every crime, of course, is a terrible event, but the hate crime is of a particularly insidious nature. We Americans cherish our individualism, as we should. We are proud to be a society of individualists and of individual rights, but individual human beings flourish best as members of family, neighborhood, community, and nation. What the hate crime does is atomize the individual. The hate crime splits the individual apart from his or her neighbors and community. It isolates the victim because of who he or she is.

The hate crime emphasizes differences not as the strengths they are in this diverse country, but as a means of dividing one American from another American. It submerges the common humanity of all peoples. All real Americans condemn these vile crimes without hesitation or reservation. It is wrong to deface a building with graffiti of any sort. It is even worse to scrawl a racial, ethnic, religious, or antigay epithet.

A physical assault upon one's person is horrible enough, but when the attack is made because of religion, race, ethnicity, disability, or sexual orientation of the person, an additional unease on the part of that individual and all those who are members of the same group is inevitable. For persons who are members of minority groups with a history of persecution or mistreatment, hate crimes cause an anxiety and concern for their safety others may take for granted. Such crimes bespeak a blind hatred which tears at the fabric of our society. So we believe that this legislation and the collection of this data can help us address this problem in our society which we must continue our efforts to conquer.

I am very pleased to be working again with my friend and distinguished colleagues, Senator Simon, Senator Kennedy, and others. Without Senator Simon's tireless efforts, there would have been no Hate Crimes Statistics Act of 1990 and there will be no reauthorization of the Act this year. I am counting on my good friend, Senator Kennedy, and others to help get this done.

I might add that when Senator Simon was chairman of the Subcommittee on the Constitution, he held oversight hearings and kept attention focused on this issue, and I commend him for it. We have over 30 cosponsors, including over half of the members of this committee, so I am optimistic.

I also have an announcement on a related subject. This committee will hold a hearing later this year concerning the rash of arson attacks on predominantly black churches. Some of you have heard about them in news accounts. Over 20 such attacks have occurred. That is abominable. Each one of those attacks is an attack on religious liberty. Many of them appear to have had a racial motivation. I want to know what law enforcement authorities are doing about it and I want the parishioners of those churches to know that people of all faiths and of all colors, races, and ethnic backgrounds stand with them and condemn these attacks.

I will enter into the record a letter of support for the hate crimes reauthorization from Attorney General Reno.

[The letter referred to follows:]

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, March 19, 1996.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I write to express my strong support for your bill that would permanently authorize the Hate Crime Statistics Act. I commend you and Senator Simon for introducing this important measure.

The enactment of the Hate Crime Statistics Act in 1990 was a critical first step in our nation's efforts to combat hate crimes based on race, religion, disability, sexual orientation, or ethnicity. In addition to creating a mechanism for the collection of hate crime statistics, passage of the Act has heightened the awareness and sensitivity of law enforcement officials toward the problem of hate-motivated violence. It has also led to the training of numerous law enforcement agencies on the need to collect statistics, and the methods of doing so. The reporting of hate crime statistics by the FBI has increased the nation's awareness of this serious issue.

There is still much more work to be done. While the FBI has greatly increased the number of jurisdictions reporting hate crimes, the quality of the reporting needs to be improved to provide a more accurate indication of the level of hate crime activity. Training of additional law enforcement agencies and evaluation of methods to improve the reporting system need to continue. The continuing pervasive nature of hate crimes, reflected in part by the data collected under the Act, demonstrates the need to continue collection for all of the categories contained in the Act. A perma-

ment authorization for the Hate Crime Statistics Act will provide the necessary framework to have this occur, now and in the future.

I look forward to working with you and Senator Simon to make the Act permanent and pledge the Department's assistance and support for this important measure.

Sincerely,

JANET RENO.

The CHAIRMAN. At this point, we will turn to Senator Kennedy.

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Well, thank you very much, Mr. Chairman. As you have pointed out, this Act was originally passed in 1990 with strong bipartisan support, a vote in the Senate of 92 to 4. The overwhelming support was really a tribute in large part to your leadership, Mr. Chairman, and Senator Simon. The two of you have really provided very, very important leadership in this area, and I hope the bill will have the same degree of bipartisan support as in 1990.

Few crimes tear at the fabric of our society more than hate crimes. Time and again, we learn of hate crimes that expose troubling fault lines in our society and have widespread repercussions. Hate crimes injure the immediate victims and they can affect the entire community, and sometimes the entire Nation.

Last December, the entire Nation was shocked by the senseless murders of an African-American couple in North Carolina by three neo-Nazi skinheads who were serving in the U.S. Army at Fort Bragg. The victims were taking an evening walk when the defendants, who had been out cruising the streets looking for African-Americans to harass, approached them and attacked them. A Nazi flag, white supremacist literature, and pamphlets on Adolf Hitler were found in one of the defendant's apartments.

A few weeks later, in Houston, two neo-Nazis who had recently come from Montana attacked and killed Fred Mangione outside a restaurant. Mr. Mangione, who was gay, had lived in Houston for years and was widely respected in the community. He was stabbed 35 times. A police officer said afterwards, "It's very clear it was a hate crime."

These murders have focused new national attention on the problem and they teach us two important lessons. Clearly, we need to continue to document the hate crimes that occur throughout the Nation. The data collected under the Act, along with data gathered by private organizations, demonstrates the magnitude of the problem.

These crimes also expose clear gaps in Federal law. It appears that neither the shootings in North Carolina nor the stabbing in Houston are Federal crimes. The current hate crimes law is limited in its scope. In fact, many of the most flagrant acts of racial and religious violence are not Federal crimes due to the limitations of the current law.

Gay-bashing has been increasing at an alarming rate throughout the Nation. It is not a Federal crime to murder or injure someone on account of that person's sexual orientation. So I commend you, Mr. Chairman, for your opposition to violence against gays and lesbians. I wholeheartedly agree with your statement that violence

based on sexual orientation is just as repugnant and immoral as hate based on religion, race, or some other form of bigotry.

We must reauthorize this legislation and at some time in the future we have to consider that we not only are going to collect this information, but what we are going to do about it. That is an issue that I think has to be considered at some time by this committee and also by the Senate, but in the meantime we should move forward to collect this information.

America will never be America until it frees itself from the pain of discrimination in whatever form or shape that it might come in. We have legislated in some important areas, but we still have to meet our responsibilities to free ourselves and free victims from that kind of violence and hatred, but also free the society generally from that viewpoint in terms of the individuals in our communities. This is an important step, albeit a small one, but an important step in helping our Nation address this issue.

I thank the Chair.

The CHAIRMAN. Thank you, Senator Kennedy.

Senator DeWine, we will turn to you.

Senator DEWINE. I have no opening statement, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, sir.

Senator Simon, who deserves a great deal of credit on this issue, as I have said in my opening remarks.

STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. I thank you, Mr. Chairman. I thank you for holding the hearing and I am pleased to be cosponsoring the legislation to permanently authorize the collection of this data.

The incidents that Senator Kennedy talked about tragically are part of the national scene, and what the hate crimes statistics are doing is giving us something of a feel, other than on an anecdotal basis, about whether the poisons are rising or diminishing in our society. One of the problems that we do have, and it will be discussed in the hearing today, is we still do have 6 States that do not have a state program to coordinate the collection of data on this. Within some States, there are still jurisdictions that are not collecting data.

My strong belief is that if we understand what is happening—for example, on the basis of the data that we have, crimes of violence against people because of sexual orientation is a rising phenomenon—when we see it rising, then we can deal with it. Then we can deal with the poison, but first we have to analyze and find out what kind of poison we have in our society. Unfortunately, like any society, there is discrimination and there is prejudice and sometimes violence and other forms of lawlessness as a result of that prejudice.

So I thank you, Senator Hatch, for being the chief sponsor of this legislation and for holding this hearing, both of which are important.

Senator KENNEDY. Would the Senator yield?

Senator SIMON. Yes.

Senator KENNEDY. I want to state that my State of Massachusetts was one of those that didn't collect them last year. They have a change of mind this year, so I am delighted that Governor Weld has recognized the importance of doing it and we have his attention this year in doing it. But I must say it was a mistake and I regret very much that Massachusetts, whose citizens care so much about these issues, was not one of the States around the country that collected the information.

The CHAIRMAN. I hope that wasn't as a result of a lack of push by the Senators there in Massachusetts. [Laughter.] I just couldn't resist, that is all.

We have a statement from Senator Feinstein which we will insert into the record at this point.

[The prepared statement of Senator Feinstein follows:]

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA

INTRODUCTION

Mr. Chairman, I am pleased that you have convened this hearing today on the legislation you have authored with Senator Simon to provide a permanent mandate for the collection of hate crime statistics.

I want to thank both of my colleagues for their efforts in this regard because while all of us have been saddened by reports of recent acts of terrorism abroad, much less attention is focused on an almost silent form of terrorism here at home: crimes against individuals or groups motivated by the prejudice or intolerance of the perpetrator.

HATE CRIMES SENTENCING ENHANCEMENT ACT

In response to escalating incidents of hate crimes, I sponsored the Hate Crimes Sentencing Enhancement Act, which eventually passed as an amendment to the 1994 Crime Bill. This Act, now law, defines a hate crime as any crime in which the defendant intentionally selects a victim or property as the object of a crime because of an individual's actual or perceived race, color, religion, national origin, ethnicity, gender or sexual orientation. The Act also toughened penalties for those convicted of committing these vile and violent crimes.

According to the most recent statistics available from the F.B.I., 5,852 hate crime incidents were reported across the nation in 1994, including 354 in my own state of California.

Mr. Chairman, we cannot lose sight of the fact that hidden within all of these statistics are individuals who lost their lives for no other reason than someone else's prejudice or hatred, or victims who survived but whose lives will never be the same as a result of the crime committed against them.

I would like to briefly cite one example. Just ten days ago the Los Angeles Times reported that a man accused of viciously murdering a former UCLA student leader named Thien Minh Ly last January on a darkened tennis court at Tustin High School in Tustin, California bragged of stabbing the young man in a letter to a friend.

Police say the February 23rd letter—filled with ungrammatical spelling and drawings of gang symbols and smiley faces—recounts the murder. It reads, "Oh, I killed a jap a while ago I stabbed him to Death at Tustin High school I walked up to him Dominic [a friend of the accused killer] was with me and I seen this guy roller blading and I had a knife * * * I walked right up to him and he was scared I looked at him and said, 'Oh, I thought I knew you' and he got happy that he wasn't gona get jumped, then I hit him."

The letter then describes the vicious murder of this innocent young man: The accused killer wrote of stabbing Ly 7 or 8 times in the side, 18 or 19 times in his back, slitting his throat and lastly, stabbing him in the heart about 20 times after his friend had urged him on, "Kill him Do it again."

Police later found white supremacist documents in the apartment shared by the two men, including a poster celebrating Rev. Martin Luther King's assassination. This case is currently proceeding and the Deputy District Attorney in charge of the case has not ruled out seeking hate crime charges for this vicious, unwarranted attack.

HATE CRIMES STATISTICS ACT

Mr. Chairman, passage of the legislation we are considering today will serve as a catalyst to both law enforcement to continue to acquire and share information on hate crimes, and to the perpetrators of these reprehensible crimes that hate crime offenses will not be tolerated by this society.

If we allow the Hate Crimes Statistics Act to lapse, we will be denying law enforcement an invaluable tool in the fight against any crime: information. The Hate Crimes Statistics Act makes it possible for law enforcement to determine whether a particular crime was an isolated incident, or part of a continuing series against a particular group. This information makes it possible for law enforcement to focus resources where they are needed to stop hate crimes.

Mr. Chairman, I could not agree more with you and Senator Simon that it is vitally important that the Department of Justice collect data on crimes that show evidence of prejudice based on race, religion, ethnicity, or sexual orientation. It is an invaluable tool in the fight against hate crimes and I am pleased to have joined you in cosponsoring this legislation.

CONCLUSION

Finally, Mr. Chairman, American society is ethnically and culturally diverse; that, I believe, is one of our greatest strengths as a nation. Crimes against individuals because of hate and intolerance have no place in our society. Someone who selects a victim of a crime based on that person's actual or perceived race, color, religion, national origin, ethnicity, gender or sexual orientation must be subject to the stiffest of penalties. As I just said, we have laws on the books to do just that. We cannot weaken the strength of that law, nor allow the slow undoing of one of our nation's greatest strengths, by denying law enforcement a valuable tool in the fight against hate crimes. I hope all of my colleagues, both here in the Judiciary Committee and in the Senate, will support the reauthorization of the Hate Crimes Statistics Act.

Thank you, Mr. Chairman.

The CHAIRMAN. As our first witness, we will hear from Mr. Charles W. Archer, Assistant Director of the Federal Bureau of Investigation's Criminal Justice Information Services Division.

When the Hate Crimes Statistics Act was enacted in 1990, the Attorney General assigned to the FBI the task of developing and implementing a program for the collection of data on bias-related crimes. Assistant Director Archer has been with the Bureau for over 25 years and has both field and supervisory experience, so we are really happy to have him here.

So we will turn the podium over to you, Mr. Archer, and look forward to hearing your testimony. Now, we would like you to summarize, if you can, because of the pressures around here. So we are allowing for 5 minutes, but if you have to take a little bit more, we will certainly make an exception in your case.

STATEMENT OF CHARLES W. ARCHER, ASSISTANT DIRECTOR, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC, ACCOMPANIED BY JAMES NOLAN, NATIONAL COORDINATOR, HATE CRIMES PROGRAM, FEDERAL BUREAU OF INVESTIGATION

Mr. ARCHER. Thank you, Senator. With me today is Jim Nolan, who is the national FBI coordinator of the hate crimes program.

The CHAIRMAN. We are happy to have you here, Mr. Nolan.

Mr. ARCHER. Good morning, Senator Hatch and members of the committee. I appreciate the opportunity to offer testimony regarding the implementation process of the Hate Crimes Statistics Act. In particular, I will focus on law enforcement's participation in the National Hate Crime Data Collection Program, a component of the

FBI's Uniform Crime Reporting Program which is managed by the FBI's Criminal Justice Information Services Division.

The Attorney General delegated, as you said, the development of the Hate Crime Data Collection Program and implementation of the Act to the FBI, which incorporated it into the UCR program which includes more than 16,000 voluntary law enforcement agency participants. Expenditures for the National Hate Crime Data Collection Program were reallocated from the FBI's existing budget. Participation in the National Hate Crime Data Collection Program by law enforcement was and still is completely voluntary.

As you know, the current Act expired on December 31, 1994. However, Director Freeh recognized the importance of this vital program and directed that the collection of hate crime data should remain an integral part of the UCR program. The FBI, in 1990, consolidated the National Hate Crime Data Collection Program within the existing UCR summary and National Incident-Based Reporting System. Uniform standards and procedures have been developed which define and help identify criminal offenses that are motivated by the offender's bias against the victim's race, religion, disability, ethnicity, or sexual orientation, providing for the first time in our country's history a national law enforcement process designed to measure incidents of reported hate crime.

I think it is important to note that hate crimes are not defined as separate, distinct offenses. Instead, they are traditional crimes that are motivated by the offender's racial, religious, disability, ethnic, or sexual orientation bias. The FBI has made the education and training of law enforcement officers in the investigation, identification, reporting and appropriate handling of hate crime a priority.

Training has assisted the Nation's law enforcement community in recognizing the significance of the national data collection project. Training is designed to explain the devastating effects of hate crimes upon individual victims, targeted groups and the community at large. The training strongly advocates that need for extending empathy to the victims. Preventive and proactive measures are also discussed during training as a means to curtail hate crime.

The FBI has conducted 61 hate crime training conferences across the United States. A total of 3,676 personnel from 1,199 local, State and Federal law enforcement agencies have been trained. In addition, 25 overviews have been conducted for chief law enforcement executives. The FBI has recently begun working with diverse community-based groups on the topic of hate crime and hate crime reporting.

During these 1- to 2-day sessions, the FBI training staff describes hate crime as defined by the Hate Crime Statistics Act, solicits real-life examples from particular jurisdictions, then facilitates discussion between the diverse participants, including law enforcement officials, community members, victims advocacy groups and others as they work to find better ways to deal with hate crime and hate crime reporting in their own communities.

Participation by the law enforcement community has been favorable. However, given the relatively large number of jurisdictions reporting no hate crime, and that is a majority of jurisdictions, we will continue to work to assure the quality of our data.

During 1991, the first full year of the National Hate Crime Data Collection Program, a total of 2,771 agencies in 32 States submitted data. In 1994, hate crime data were supplied by about 7,400 law enforcement agencies from 43 States and the District of Columbia, representing about 58 percent of the U.S. population. Some of the more salient findings from the 1994 data are as follows.

Nearly 6,000 hate crime incidents were reported. Seven thousand three hundred offenses against 7,500 victims occurred by 6,300 offenders. About 72 percent of the hate crime offenses reported were against persons. Thirteen persons were murdered in reported hate crime in 6 States. Intimidation was the most frequently reported hate crime, accounting for 39 percent of the total. Damage, destruction, and vandalism of property accounted for 24 percent, simple assault 18 percent, and aggravated assault 14 percent.

Sixty percent of the incidents were motivated by racial bias. Religious bias accounted for 18 percent of the reports. Sexual orientation bias constituted 12 percent. Ethnicity and national origin bias accounted for 11 percent. We have not yet begun to collect disability bias crime reports. We have been developing the mechanisms to collect this information and we expect to be in collecting before the end of the year.

In spite of all of the progress we have made to date, less than half of the 16,000 law enforcement agencies that currently participate in the UCR program have contributed hate crime data. We must continue to encourage those not participating to join in this effort. We in the FBI believe the participation in hate crime reporting will increase as States convert to the National Incident-Based Reporting System, NIBRS. There are now 10 State-level UCR programs that have converted from summary reporting to NIBRS. Another 21 State agencies have submitted test data. Twelve other State agencies are in various stages of planning and development.

In the coming year, the FBI plans to continue encouraging participation in the Hate Crime Data Collection Program in the following ways. We intend to step up our training effort, to have an aggressive promotion of the National Incident-Based Reporting System, and to do diagnostic research on hate crime programming. Pending the acquisition of grant funding from the Department of Justice, the FBI plans to join with the Center for Criminal Justice Policy Research at Northeastern University in Boston in conducting research aimed at identifying the root causes of the differences in reporting rates among law enforcement agencies.

We in the FBI commend this committee, all participating law enforcement agencies, and all individuals, agencies, and groups who are involved in taking a stand against hate crime. The FBI takes great pride in the fact that it is part of this effort and will continue to work diligently to regain and maintain the momentum achieved thus far in collecting national hate crime data, with the goal of full participation by all UCR agencies.

Thank you for the opportunity to appear before your committee. I would be happy to answer any questions.

The CHAIRMAN. Thank you, Mr. Archer. I personally am pleased with the FBI's efforts in this area, and yours in particular, but let me just ask you to explain further two things.

First, please tell us more about the creation and operation of the National Incident-Based Reporting System, the NIBRS, and how it differs from the summary reporting system.

Mr. ARCHER. A brief explanation. In about 1930, the International Association of Chiefs of Police began the effort of collecting crime statistics. In 1930, this was formalized and the FBI, as the agency delegated to this task, collected crime statistics in 8 specific areas. This has gone on since 1930, until about the early 1970's when a review of the UCR program took place and it was realized that we should be more effectively collecting information in a greater number of areas.

A program was undertaken and in the late 1980's a new format was devised. This new format allows the FBI now to collect data on 22 offense categories made up of 46 specific offenses. For each of these offenses, up to 53 facts about the crime will be collected. These facts include such things as age, sex, race, ethnicity of victims, relationship between the victim and the offender, location of the incident, and so on.

This is a rather dramatic change in the way we will be collecting information because it is about 10 times more than the information we were collecting heretofore, but it will give law enforcement, community leaders and mayors the opportunity to review the information that we have collected to make managerial decisions about direction.

The CHAIRMAN. Well, thank you. I think that is good. Second, let's take an obvious case of a hate crime. A swastika is painted on the side of a synagogue in a jurisdiction which participates in the hate crime data collection program. Walk us through how this incident gets reported.

Mr. ARCHER. There is a two-tiered decisionmaking process that takes place. In the first tier, the officer responds to the scene and he must determine if there is any indication that the offender was motivated by bias. He needs to ensure the sensitivity of the victim and he needs not only to understand through training the elements of a bias crime, but he must measure those elements against what he sees at the scene.

There are a number of factors that he has to judge when he arrives at the scene. Is the motivation of the offender known? Does the victim perceive the action of the offender to have been motivated by bias? Is there no clear other reason for the crime other than bias? Did the incident occur on a significant holiday, such as a religious holiday? What do the demographics tell you and what were the offensive symbols—in this case of your example, a swastika?

The second-level review takes place in a smaller department by the desk sergeant in the police department. In a larger department, there are hate crime units, bias investigative units which will go through the same elements of the offense and they will take a look at it. Only then will they determine from their review that a hate crime has occurred. Once that determination has been made, the information is sent either to the State reporting system for forwarding to the FBI or in many cases the department forwards their findings directly to the FBI.

The CHAIRMAN. Tell us some of the problems that you have faced in implementing the legislation since 1990?

Mr. ARCHER. Well, I would say the greatest problem is one of it is a voluntary system. We go to the police departments. Through our training, through our speeches and our conferences, we try to tell them what the benefits will be if they can collect this information, how we will give it back to them, how it will help, but it is still voluntary. They don't have specific budgets.

If there were a way that funding could be made available for these departments so they are not having to shift from one element to another, it would be easier for them. I say easier because there is a fair amount of computerization and data entry involved in all of this.

The CHAIRMAN. And it has worked even so with the voluntary system in most of the States?

Mr. ARCHER. Yes.

The CHAIRMAN. But if we did provide some seed money to help pay for the costs, it would be even better, is what you are saying.

Mr. ARCHER. I think you would see a tremendous difference. That is the singular, No. 1 reason why departments tell us they can't respond. They have had to redirect money into other areas.

The CHAIRMAN. They all want to respond. It is just a matter of—

Mr. ARCHER. Yes, yes.

The CHAIRMAN. You wouldn't recommend, then, that we make this mandatory?

Mr. ARCHER. I don't think that there is a need, personally, to make it mandatory.

The CHAIRMAN. They want to do it. It is just a matter of being able to.

Mr. ARCHER. Yes, yes.

The CHAIRMAN. Mr. Arent's testimony on behalf of the Anti-Defamation League makes a couple of observations I would just like you to comment on. Although the number of participating law enforcement agencies increased from 1993 to 1994, the number of hate crimes reported declined by nearly one-quarter. Mr. Arent notes that some of this decrease may reflect the national trend of receding crime rates after years of increase.

He goes on to say, "There is also good reason to believe, however, that the dramatic decrease in reported hate crime is also attributable to police and sheriff's departments that fail to report hate crimes or provide an incomplete reporting, along with a disturbing fall-off in reporting by agencies that had reported hate crimes data to the FBI in the past." Now, he noted that the FBI's summary 1994 data shows no reports from Massachusetts. Yet, the Governor's Task Force on Hate Crimes reports 489 hate crimes from 226 agencies.

Could you comment on Mr. Arent's remarks and the Massachusetts anomaly or any other State you care to?

Mr. ARCHER. Particularly with respect to Massachusetts, and I think it is rather typical, Massachusetts had been reporting hate crime. They did report 400-and-some the year before. In 1994, they switched from the old UCR summary to the NIBRS, the National Incident-Based Reporting. It was a big programming change for

them. They collected the hate crime information, but they had to redirect their system to come on line with NIBRS. So they have the information. They just haven't reported it to the FBI, and I think that is a little bit typical of the switch that has to take place in the police departments in the programming areas from the old UCR summary reporting, fairly simple, to the much more complicated incident-based reporting.

I would also say, too, and I should add that we are not making comparisons at this point of hate crime from one year to the other, and it is because there is a bit of ebb and flow in the numbers of departments. Massachusetts was a good example. They reported one year, didn't report the next year, and have assured us they are going to report next year. As this transition occurs, we are getting about 58 percent of the population reporting, but the mix and match of the cities is going through development.

The CHAIRMAN. I need to just ask one other thing. Has the FBI found that victims are more likely to report a hate crime if they know that a reporting system is in place?

Mr. ARCHER. Yes. These are not research studies, but the FBI is aware of agencies and organizations who have conducted some studies in this regard. So while there is no empirical data from the FBI, we are aware that exactly what you are suggesting and saying is true. People are much more likely to report, and in that is the sensitivity training that the officers receive in order to be able to fill out the form. There is a better relationship between the officer and the victim.

The CHAIRMAN. OK, thank you.

Senator DeWine, we will turn to you. Excuse me. What am I talking about? Senator Simon, excuse me.

Senator SIMON. That is all right.

The CHAIRMAN. I am sorry, Senator DeWine. You can tell I am tired today.

Go ahead.

Senator SIMON. First of all, after I originally introduced the bill and it became law, one of the unexpected benefits was, frankly, these training conferences that you have. I got letters from police who said, you know, I didn't realize the extent of the problem that we have in our society, and I think that, in and of itself, has been a very helpful thing.

You mentioned you have had 61 training conferences. Now, do you have information about conferences in 1995 compared to 1994, or 1996 compared to 1995? Are you continuing pretty much at the same level or are you tapering off, or where are we on this?

Mr. ARCHER. I am going to refer to Mr. Nolan, whom I introduced earlier as the national coordinator of the hate crime collection effort.

Mr. NOLAN. Senator, the 61 training conferences were combined over the past 4 years, so it is not just a single year's number. There was a training blitz when the program began, and I believe there were perhaps 45 or 50 conferences over a short period of time. Since that time, we have incorporated our training into our uniform crime reporting training and we are picking agencies along the way with that program.

Senator SIMON. And you think that is adequate without having a special training as you did initially?

Mr. ARCHER. Let me say that initially I am given to understand that out of its base level funding the FBI used \$500,000 in that first year's training blitz. That is not possible to do, of course, each and every year, but there is no question that if the FBI designated more funds for the training program, we could have more on the staff, such as Jim Nolan, and we would cover more of the agencies that we haven't been to, and it is probably time to go back to some of the agencies that were contacted earlier.

Senator SIMON. I really think that is a desirable thing because, frankly, there are changes of personnel and, you know, the chief of police of San Jose is off somewhere else, in Salt Lake City or some place else. So I would hope you would take a look at that possibility.

The NIBRS system, as I understand it, is a voluntary system. Is that correct?

Mr. ARCHER. Yes.

Senator SIMON. Now, to what extent are the States coming in and coming aboard on that system?

Mr. ARCHER. I think virtually all of the States, to the best of their ability, are coming on board as quickly as they can. We have 10 States that are certified now and quite a number of States that are under testing. It looks like almost the balance of the States plan to begin testing their system in 1996 and the remaining few States are working with our people to develop the programs for it.

It is coming along. It is coming along a little bit slowly because it is a complicated system that requires a great deal of training not only with the computer programmers, the computer operations people, but with the officers who need to fill out these rather lengthy forms. But it is the only way we are going to collect every bit of the data necessary to make informed judgments.

Senator SIMON. And you think 3 years from now, 5 years from now, 50 States will be aboard?

Mr. NOLAN. I would say that I don't believe we could put a year, an anticipated deadline date.

Senator SIMON. I am not asking you for a deadline, but I am just trying to get a feel for whether this thing is moving.

Mr. NOLAN. Yes, it is moving along. Definitely, it is moving along. We have the majority of the States in testing now and within the next several years, that majority of States should be certified.

Senator SIMON. Well, a majority of States is not 50 States. Do you think in 5 years we will have all 50 States or won't we?

Mr. NOLAN. I don't believe so, Senator. I don't believe we will in 5 years.

Senator SIMON. I don't know how we can encourage it and I know it is a voluntary thing, but it does seem to me that we ought to be encouraging that, and obviously that has a relationship to getting adequate data on hate crimes.

Mr. ARCHER. I can offer a personal suggestion as to encouragement. Various crime bills, particularly the big crime bill, have money for the States and there is money out there in grant programs that the cities and the States apply for. If, in the grant ap-

plication process as a small part of that process, it could be designated specifically that a percentage of that money be used for the collection of hate crime statistics as a condition of giving that money to the States and the cities, there is one way of locking it in and giving them a little bit more money to pursue the program.

Senator SIMON. Good suggestion. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman. Mr. Chairman and Senator Simon, I want to congratulate both of you for your work in this field. This was a bill that we worked on when I was in the House and I was proud to support this bill at that time and am proud to be a cosponsor of the bill today.

Mr. Archer, let me kind of follow up on a line of questioning from Senator Simon in regard to NIBRS to kind of clarify this. You can correct me if I am wrong, but I have had some experience in this when I was lieutenant governor in Ohio and NIBRS is a very effective, or should be a very effective tool not just to compile national statistics, but to give local law enforcement a really great tool to determine where crime is occurring in a city. It enables a police chief to sit down and not just know that there were 80 homicides last year, but know where they occurred, why they occurred, and get some real patterns. It is an unbelievable tool if it is used correctly. Is that correct?

Mr. ARCHER. I completely agree, and I would say further that I believe city managers, city councils, mayors, as well as the governors' offices can use this information for the same purposes as the directors of law enforcement agencies.

Senator DEWINE. It is great public policy information for a police chief to decide, if we have got a problem here and that these crimes are occurring between such-and-such hours and it is occurring under these circumstances. You can then take the finite resources that you have and apply them directly to deal with that problem.

Mr. ARCHER. Absolutely.

Senator DEWINE. And you take it up to each level above that. A mayor can make policy decisions, a governor can make policy decisions. Even Congress will be able to make policy decisions on such things as, let's say, the Congress wanting to continue a COPS program. You can at least have a legitimate debate about where those officers ought to be placed or what jurisdictions really have a need for them. So it is a tremendous public policy tool.

What I think the difficulty is in trying to say what States are going to be on line in a certain time is that each State is at a different level of progress. For example, Ohio wasn't 1 of your 10 that you listed, but I know we have NIBRS in place in some jurisdictions and we are frantically working as hard as we can to get the funding to expand that.

One of the benefits, as you have pointed out, of NIBRS is that we are going to really encourage police officers and jurisdictions to give us this information on the hate crime because it is built right into the system. So they go through the system and fill it out and there it is. It is not something they have to decide to do or not do.

If they do NIBRS and they do it completely, they are going to do that.

So I think it is important that we continue to expand NIBRS, and I guess this gets back to something that members of this committee are going to get sick of me talking about, and that is the need for us in Congress when we pass crime bills to designate a certain amount of money to be used for technology, and under technology I call anything of criminal recordkeeping, DNA, automated fingerprints, ballistics comparisons, and things such as NIBRS which, for a relatively small amount of money, gives a local police officer and the policymakers great tools.

I put an amendment in the antiterrorism bill that we passed out of the Senate that had additional funds absolutely earmarked for technology. We are working on the appropriations bill now that we have to try to get some money in there for technology. But I would just again say to my colleagues on the committee that this is some of the best money that we can spend. It is a small fraction of the money that we are putting—even from the Federal Government, a small fraction of the money that we are putting into the anti-crime effort, but if we could target it for programs such as NIBRS, we would see the fringe benefits that we have.

We are going to get the statistics on hate crime, and we are going to have the other benefit of having law enforcement officers—which I think is the real benefit of this bill—and, Senator Simon, you have articulated it very well earlier. When you are tasked to collect data and focus on something, the collection of that data drives your attitude to some extent, and it drives what you are looking for.

If we can get police officers more sensitive to the fact that many of these crimes that we used to think are just random crimes or we used to think are just crimes are really driven by other motivations, I think the police officer is going to do a better job every single day that they are out on the street. I think they are going to be more sensitive to problems and I think they are going to be a better officer, a more compassionate officer, and more professional.

So I think that really is the great fringe benefit of this bill. Not only does it give us statistics nationally to focus on where the problems are and understand the problems, but every officer who is collecting that data or who is tasked to be looking for that has got that in the back of his mind or her mind. So I think it is a very commendable thing to do.

I just think that the fastest way to increase the number of jurisdictions that are reporting is to push NIBRS out just as fast as we can. If we can put some funding in to encourage that and leave enough flexibility so that the jurisdictions can use it for NIBRS and so they can use it for other data collection, I think it is the right thing to do.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I would like to thank both of you for being here. I think your testimony has been very helpful to the committee and we will see what we can do to keep this going in a good manner. Thank you very much. Thanks for the work you do.

Mr. ARCHER. Thank you.

[The prepared statement of Mr. Archer follows:]

PREPARED STATEMENT OF CHARLES W. ARCHER

Good morning Senator Hatch and members of the Committee. I appreciate the opportunity to offer testimony regarding the implementation progress of the Hate Crime Statistics Act. In particular, I will focus on law enforcement's participation in the national Hate Crime Data Collection Program, a component of the FBI's Uniform Crime Reporting (UCR) Program which is managed by the FBI's Criminal Justice Information Services Division (CJIS).

As you know, the Hate Crime Statistics Act was signed into law on April 23, 1990. Briefly, the Act (as amended by the Violent Crime and Law Enforcement Act of 1994) required the Attorney General to establish reporting guidelines for the collection of data regarding crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity. The Act stipulated that the data be acquired for calendar year 1990 and each of the succeeding four calendar years. In addition, the Act mandated the Attorney General to publish an annual summary of the acquired data.

The Attorney General delegated the development of the Hate Crime Data Collection Program and implementation of the Act to the FBI, which incorporated it into the UCR Program which includes more than 16,000 voluntary law enforcement agency participants. In view of the fact that no additional funding was provided, all expenditures for the national Hate Crime Data Collection Program were reallocated from the FBI's existing budget. Participation in the national Hate Crime Data Collection Program by law enforcement entities was, and still is, completely voluntary.

In light of these circumstances, the FBI has made and continues to make a concerted effort to explain the purpose of the Hate Crime Statistics Act and to promote law enforcement's voluntary participation. As you know the current Act expired on December 31, 1994; however, Director Freeh recognized the importance of this vital program and directed that the collection of hate crime data should remain an integral part of the UCR Program.

In an effort to lessen the reporting burdens placed upon the law enforcement community, the FBI, in 1990, consolidated the national Hate Crime Data Collection Program within the existing UCR Summary and National Incident-Based Reporting Systems. Uniform standards and procedures have been developed which define and help identify criminal offenses that are motivated by the offenders' bias against the victims' race, religion, disability, ethnicity, or sexual orientation, providing for the first time in our country's history a national law enforcement process designed to measure incidents of reported hate crime.

I think it is important to note that hate crimes are not defined as separate, distinct offenses. Instead, they are traditional crimes that are motivated by the offenders' racial, religious, disability, ethnic, or sexual orientation bias. Hate crime reporting is thus complicated to the extent that there is difficulty in determining offender motivation. That is to say, hate crime is reported only if the law enforcement investigation determines sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias.

To help agencies develop methods by which to identify hate crimes accurately, the FBI has made the education and training of law enforcement officers in the investigation, identification, reporting, and appropriate handling of hate crime a priority. Training has assisted the Nation's law enforcement community in recognizing the significance of the national data collection project. Training is designed to explain the devastating effects of hate crime upon individual victims, targeted groups, and the community at large. The training strongly advocates the need for extending empathy to the victims. Similarly, maintaining close ties with targeted groups has generated good will and improved trust between law enforcement and the people most affected by this type of crime. Preventive and proactive measures are also discussed during training as a means to curtail hate crime.

To date the FBI has conducted 61 hate crime training conferences across the United States. A total of 3,676 personnel from 1,199 local, state, and federal law enforcement agencies have been trained. In addition, 25 executive overviews have been conducted for chief law enforcement executives. The FBI has recently begun working with diverse community-based groups, such as the Montgomery County, Maryland Human Relations Council, on the topic of hate crime and hate crime reporting. During these one- to two-day sessions, the FBI training staff describes hate crime as defined by the Hate Crime Statistics Act, solicits real-life examples from the particular jurisdictions, then facilitates discussion between the diverse participants, including law enforcement officials, community members, victim advocacy

groups, local government leaders, educators, and others as they work to find ways to better deal with hate crime and hate crime reporting in their own communities.

In general, participation by the law enforcement community has been favorable. However, given the relatively large number of jurisdictions reporting no hate crimes—a majority of jurisdictions—we will continue to work to assure the quality of our data.

During 1991, the first full year of the national Hate Crime Data Collection Program, a total of 2,771 agencies in 32 states submitted data.

In 1992, 6,181 law enforcement agencies in 41 states and the District of Columbia participated in the program (an increase of 3,410 agencies). These agencies represented more than 51 percent of the United States population.

In 1993, 6,865 law enforcement agencies from 46 states and the District of Columbia participated (an increase of 684 agencies). These agencies represent nearly 58 percent of the United States population.

In 1994 hate crime data were supplied by about 7,400 law enforcement agencies from 43 states and the District of Columbia, again representing 58 percent of the United States population.

Some of the more salient findings from the 1994 data are as follows:

- Nearly 6,000 hate crime incidents were reported. These incidents involved nearly 17,300 offenses against 7,500 victims by 6,300 offenders.

- Seventy-two percent of the hate crime offenses reported were "Crimes Against Persons" (murder, forcible rape, aggravated assault, simple assault, and intimidation).

- Thirteen persons were murdered in reported hate incidents in six states.

- Intimidation was the most frequently reported hate crime, accounting for 39 percent of the total. Following were damage/destruction/vandalism of property, 24 percent; simple assault, 18 percent; and aggravated assault, 14 percent.

- Sixty percent of the incidents were motivated by racial bias.

- Religious bias accounted for 18 percent of the reported incidents.

- Sexual-orientation bias constituted 12 percent of the reported incidents.

- Ethnicity/national origin bias accounted for 11 percent of the reported incidents.

We have not yet begun to collect disability bias crime. We have been developing the mechanisms (i.e., definitions, procedures, forms, training, etc.) for collecting data on these crimes. We expect to begin collecting data later this year.

The goal of the Hate Crime Data Collection Program is to collect and report nation-wide data on hate crime that is meaningful and can reflect trends in these types of crimes. Without the full participation of all law enforcement agencies this goal cannot be realized. In spite of all the progress we have made to date, less than half of the 16,000 law enforcement agencies that currently participate in the Uniform Crime Reporting Program contribute hate crime data. We must continue to encourage those not participating to join in this effort. As more states and law enforcement agencies join the national Hate Crime Data Collection Program, there should be an increased awareness and understanding of the nature and extent of hate crime in America.

We in the FBI believe that participation in hate crime reporting will increase as states convert to the National Incident-Based Reporting System (or NIBRS). Hate bias as a motivation for a crime is a built-in data element that was designed to be a permanent part of NIBRS. There are now ten state-level UCR Programs (Virginia, Michigan, Colorado, Idaho, Iowa, Massachusetts, North Dakota, South Carolina, Utah, and Vermont) that have converted from Summary Reporting to NIBRS. Another 21 state agencies and three federal agencies (the Departments of Commerce and Defense—Air Force and the FBI) have submitted test data. Twelve other state agencies, the District of Columbia, and Guam are in various stages of planning and development.

In the coming year the FBI plans to continue encouraging participation in the Hate Crime Data Collection Program in the following ways.

1. *A Stepped-Up Training Effort.* The Education and Training Services Unit of the CJIS Division has been re-organized by geographic region, enabling the staff to offer more training services proactively. We expect that this reorganization will greatly increase our ability to offer more hate crime training throughout the country now and in the future.

2. *Aggressive Promotion of the National Incident-Based Reporting System.* As I mentioned previously, hate crime data collection is part of the NIBRS system. As more agencies convert their data collection from traditional Summary reporting to NIBRS, participation will increase.

3. *Diagnostic Research on Hate Crime Reporting.* Pending the acquisition of grant funding from a Department of Justice component, the FBI plans to join with the Center for Criminal Justice Policy Research at Northeastern University in Boston

in conducting research aimed at identifying the root causes of the differences in reporting rates among law enforcement agencies. We believe this research will provide valuable insight and suggest strategies for improving hate crime reporting.

In closing I would like to say that we in the FBI understand that the work we are doing is but a small part of a much larger system-wide effort to deal with this national problem. The information obtained as a result of our training and data collection efforts helps to heighten awareness of hate crime and provides a foundation for action against it. We commend this committee; all participating law enforcement agencies; and all individuals, agencies, and groups who are involved in taking a stand against hate crime. The FBI takes great pride in the fact that it is part of this effort and will continue to work diligently to regain and maintain the momentum achieved thus far in collecting national hate crime data, with a goal of full participation by UCR agencies.

Thank you for the opportunity to appear before the Committee to discuss this important issue. I will be happy to answer any questions.

The CHAIRMAN. Our second panel consists of the following individuals: the Hon. Emanuel Cleaver II, mayor of Kansas City, MO; Mr. Bobby Moody, chief of police of Covington, GA; Mr. Stephen Arent of the Anti-Defamation League of B'Nai B'rith; and Ms. Karen Lawson of the Leadership Conference Education Fund.

Mayor Cleaver is chairman of the Civil Rights Subcommittee of the U.S. Conference of Mayors. Under his leadership, Kansas City has worked to implement a number of programs designed to reduce prejudice and increase cultural awareness.

Chief Moody, a law enforcement officer for over 25 years, is second vice president of the International Association of Chiefs of Police, on whose behalf he appears here today.

Mr. Arent is a member of the National Commission of the Anti-Defamation League of B'Nai B'Rith, and vice chairman of its National Civil Rights Committee. The Anti-Defamation League has long been a leader in the fight not only against anti-semitism, but against all forms of prejudice and discrimination directed at any American.

Ms. Lawson is the executive director of the Leadership Conference Education Fund, a non-profit organization whose activities include an educational campaign run in cooperation with the Advertising Council designed to promote racial understanding and combat bigotry, particularly among young people.

So we welcome all four of you here today. We look forward to your testimony. We will begin with you, Mayor, and we will go across the table, Mr. Moody next, Mr. Arent, and then Ms. Lawson.

PANEL CONSISTING OF EMANUEL CLEAVER II, MAYOR, KANSAS CITY, MO, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; BOBBY MOODY, CHIEF OF POLICE, COVINGTON, GA, ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; STEPHEN ARENT, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, NEW YORK, NY; AND KAREN MCGILL LAWSON, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE EDUCATION FUND, WASHINGTON, DC

STATEMENT OF EMANUEL CLEAVER II

Mayor CLEAVER. Chairman Hatch and members of the committee, I am Emanuel Cleaver, the mayor of Kansas City, MO, and I am pleased to have the opportunity to appear before you this morning on behalf of the U.S. Conference of Mayors to discuss the im-

plementation of the Hate Crimes Statistics Act in cities and some important issues which relate to it.

I also see this as an opportunity to discuss how we can bring about a drop in hate crime statistics. I want to discuss briefly the prejudice reduction efforts underway in my city and in other cities around the country. Obviously, one of the most important things we as elected officials have to do is maximize tolerance and minimize tensions among our constituents. We should feel an obligation to do everything possible through our statements and our actions to foster community attitudes which reject prejudice and resist where prejudice can lead, which is hate crimes. We know that regardless of whether they are crimes against property or crimes against people, hate crimes are always crimes against community, crimes against humanity.

First, let me state that the Conference of Mayors supports the permanent reauthorization of the Hate Crimes Statistics Act. Shortly after it was first enacted, we encouraged cities to participate in it and we have continued to do that. It is important that we have the ability to monitor hate crimes in our Nation, just as we would want to be able to monitor a deadly and contagious disease.

Although the number of hate crimes we know about is relatively small, at least in comparison with other serious crimes in this country, I think we all agree that one hate crime is one too many. I would also like to pause to express appreciation to the FBI for its role in encouraging law enforcement agencies all over the country to report hate crimes.

In 1995, the Anti-Defamation League and the Conference of Mayors conducted a joint survey on the implementation of the Crime Statistics Act in our cities. Today at this hearing, we are releasing the results of that survey. Today, we can report that cities throughout the Nation, the great majority of those in the survey, are, in fact, participating in the Act and are taking other actions to prepare police officers to recognize and handle bias-motivated crimes.

For the 172 cities in our survey, we found that 85 percent are now reporting data on hate crimes to the Federal Bureau of Investigation. Well over half of the cities, 56 percent, now have written police department policies, procedures, or directives on the handling of bias-motivated violence. Twenty-nine percent have special police units to handle bias-motivated criminal activity. Training in cultural diversity is now provided by departments in 96 percent of the cities, training in prejudice awareness and discrimination in 95 percent, and training in how to respond to hate crimes in 84 percent. In 97 percent of the cities, all new officers receive this training. In 95 percent, there are in-service training opportunities for officers already on the force.

Since 1993, 15 percent of the cities have experienced an increase in the number of incidents of hate crimes reported to the police, and 61 percent of the cities say the number of incidents has remained the same. Nearly a quarter of the cities say reports of hate crimes are down. Nearly half of the cities surveyed view hate crimes as a minor part of their overall crime problem. The other half is evenly divided between those who say it is an average in terms of magnitude and those who say it is not a problem at all.

Some officials commented, however, that while numbers of hate crimes may not be large, the impact of these crimes on the community can be significant, especially where violence is involved. The ADL and the Conference conducted a similar survey in 1992 and we reported the results of that survey to this committee about 2 years ago. The changes that have occurred and the progress that has been made since 1992 are noteworthy.

Between 1992 and 1995, in the cities we surveyed, cities reporting hate crimes to the FBI increased from 71 percent to 85 percent. Police departments with training in cultural diversity increased from 76 percent to 96 percent. Police departments with training in prejudice awareness increased from 71 percent to 95 percent. Police departments with training in identifying hate crimes increased from 64 percent to 84 percent. Cities with written policies on procedures on bias-motivated violence increased from 47 percent to 56 percent. Cities reporting increases in hate crime incidents dropped from 36 percent to 15 percent, and cities reporting decreases in hate crime incidents grew from 6 percent to 24 percent.

Through our survey, we also sought to identify local prejudice reduction programs which city governments sponsor or in which they participate. We found that 42 percent of the survey cities have such programs. For example, in Boston the police department's Community Disorders Unit participates in a program with Boston public and parochial schools through which two professionally produced videos are shown to students. These video presentations are followed by question-and-answer periods. The program has been responsible for teaching prejudice reduction to thousands of students each year. In addition, members of the Community Disorders Unit speak to numerous community and school groups in an effort to reduce prejudice.

The Spokane Human Rights Commission is engaged in a hate crime awareness reduction program. A public service announcement which educates citizens about the ties between subtle bigotry and hate crimes has been airing on most local television channels in response to this issue.

Now, I could go on and deal with a number of other cities. Let me just conclude with my own city, Kansas City, MO. In 1989, I initiated a program called Harmony in a World of Difference. Channel 9, the local ABC affiliate, donated \$1 million in air time to programming aimed at prejudice reduction. We think that we have made an impact. It is always difficult to measure whether or not or how you changed a person's mind, but we believe that we have, in fact, made a difference.

About 4 months ago, I appointed the mayor's race relations task force. On April 4, the anniversary of Martin Luther King's assassination, Kansas City, MO, will receive its report card. We will know exactly where we stand on the issue. It has been almost a quarter of the century, Senators, since this Nation has had a serious and candid discussion on bigotry, on race, and I think that the time has come for us to do it. Many of the cities around the Nation and the mayors of those cities believe the same, and so we are seriously attempting to create awareness and to begin that dialogue on what I believe is the most toxic issue domestically facing us.

While there were many efforts underway in our cities to address racial and ethnic tensions and combat hate crimes prior to enactment of the Hate Crimes Statistics Act, clearly they have increased substantially since its passage. We have made great progress and we need to continue to build on what has been accomplished. Permanent reauthorization of the Act should be our foundation. Permanent reauthorization will signal that hate crimes are a special problem deserving special national attention.

Missouri unfortunately is one of the hot beds of the militia and we have been able to document their activity. We have documented the activity of the KKK and the common law courts. I will leave these with the committee. All of the black spots are counties in the State of Missouri where the special unit of the highway patrol has identified Klan activity and militia activity.

That brings to mind what I think should be eventually considered, and that is an expansion of the definition of hate crime. When you look at what happened in Oklahoma City, it clearly was a hate crime. It was a crime against people who worked for the Government. They hate the people who work for the Government and law enforcement agencies. I think the same thing could be said as true about attacks against abortion clinics, but even those are not included at this present time, I believe that the permanent reauthorization is, in fact, necessary for the civility of our Nation.

Thank you.

The CHAIRMAN. Thank you, Mr. Cleaver.

Chief Moody, we will turn to you.

STATEMENT OF BOBBY MOODY

Mr. MOODY. Thank you, Mr. Chairman. Chairman Hatch and Senator Simon, my name is Bob Moody. I am chief of police in Covington, GA. I have served in law enforcement for over 20 years. It is my distinct honor and privilege to bring testimony before this committee today on behalf of over 14,500 members of the International Association of Chiefs of Police.

For those of you who may not know, the IACP is the world's largest and oldest executive law enforcement association and is comprised of criminal justice professionals to include Federal, State, tribal, specialty, and local city and county municipal-level police chiefs, sheriffs, superintendents, and managers from across the United States and from 84 countries around the world.

Today, I am here to convey to you in the strongest possible terms the IACP's leadership's and membership's overwhelming support for the proposed Hatch-Simon bill to make permanent the Federal collection of hate crime statistics by the FBI.

Having said that, I know that it will come as no surprise to many of you to hear that State and local law enforcement has not always been an enthusiastic supporter of Hate Crimes Statistics Act provisions, nor have we in the field always been enthralled with the FBI's efforts in collecting the statistics through local and State agencies without training and compensation.

While some will tell you that the cost associated with collecting hate crime statistics is minimal, as a chief I can tell you that the cost associated with training one or more persons within a department on anything, to include statistics collection, and then to take

the time for that officer to train the rest of the force, can indeed be a daunting task.

It is, in fact, many times cost-prohibitive when put into the mix with other competing priorities that State and local departments face where compliance is required in the form of unfunded mandates. I can tell you today that many other departments in Georgia and around the country, other than Atlanta and other major cities, did not participate in the 1994 HCSA collection efforts because, in part, of the additional training and administrative costs associated with this endeavor.

The IACP is both encouraged by and supportive of the FBI's efforts to step up training opportunities for State and local law enforcement. I hope that this committee will work with the Appropriations Committee to find positive ways to assist the FBI in providing HCSA training for State and local police.

As there was no additional funding allocated for the hate crimes data collection program, the IACP would discourage any efforts to boost participation either by sanctioning Federal grants supporting law enforcement or by mandating participation without some form of compensation. Instead, the creation of incentive funding which compensates departments for their costs would bring about a higher voluntary agency participation.

As the second vice president for the International Association of Chiefs of Police, I have had the opportunity to see firsthand the positive effects and influence which HCSA has had on police executives, rank-and-file, and police agencies across the country at every level of government. While the Atlanta Police Department's HCSA statistics do not transfer well for comparative purposes to Covington, statistics available from participating departments from other demographically similar localities in Florida or Virginia can be invaluable to agencies such as Covington.

HCSA numbers have educated the rest of us on the pervasiveness of the problem of hate-motivated crime, have raised awareness in the field and the general public, and sensitized us as a profession and as a society to guard against this type of crime within our own communities.

If I may digress for a moment, I would like to put this issue into a larger context of the police understanding their role in enforcing our Nation's civil rights law. One of my responsibilities, Mr. Chairman, as second vice president of the International Association of Chiefs of Police is to oversee the work of our Civil Rights Committee and, Senators, I can tell you that there is no set of issues more important to law enforcement and criminal justice than those of civil rights, from combatting crimes showing prejudice related to one's religion, sexual orientation, ethnicity, disability or gender, to building coalitions with community activists and leaders to prevent all types of crimes through community policing.

But for police to effectively combat hate-biased violence and crime, we must police ourselves through better recruiting, training, and purging out the bad cops. It must be profoundly clear that such bias has no place in law enforcement. Recent media coverage of police misconduct in Philadelphia, Pittsburgh, Atlanta, and Detroit reminds us of the damage that can be done to an entire de-

partment's police-community relations by a very few unethical rogue officers.

For many in and outside of law enforcement, the memories of the O.J. Simpson trial and the Rodney King incident weigh heavy in everything that we do. Indeed, current IACP president David Walchak has made the improvement of the image and ethics of police a primary objective during his tenure. The IACP is reaching out to leaders of affected communities to include the National Urban league to foster greater understanding and sensitivity to the different perspectives and realities in which we all must work and live.

The IACP hopes to come before this committee again in the very near future in support of legislation, S. 484 offered by Senator Bob Graham, to ensure that bad cops are identified, weeded out, and never rehired again in law enforcement. There can be no higher priority than keeping those who have proven themselves unworthy of the public's trust from ever wearing the badge again.

The Hate Crimes Statistics Act as passed by the 102d Congress in 1990 has brought about a greater understanding and sensitivity to other people's views, in reality, by bringing forth the stark numbers of bias-related crime and victimization. By collecting this information and reporting it out, the American public has seen that hate- and bias-related crime and victimization is not a thing of the past, but happens in communities, both small and large, every day in our country.

The IACP recognizes this simple truth and its members know that the HCSA assists our Nation's law enforcement planners by providing information upon which to base future strategy and allocation of resources. That is why the IACP membership voted on and passed a resolution in October 1995 at the 102d annual conference in Miami recommending that the FBI permanently add hate crime reporting to the Uniform Crime Reporting Program and encouraged its members to participate in the collection of the process. Senators, I look forward to the day when every law enforcement agency in this country will enthusiastically support and participate in the HCSA program.

Thank you, sir.

The CHAIRMAN. Thank you, Chief.

Mr. Arent, we will turn to you.

STATEMENT OF STEPHEN ARENT

Mr. ARENT. Mr. Chairman and Senator Simon, my name is Stephen Arent and I am a member of the Anti-Defamation League's [ADL] National Commission, a vice chairman of its National Civil Rights Committee, and the immediate past chair of ADL's Mountain States Region Board of Directors. I am accompanied by Michael Lieberman, the League's Washington counsel. You have received the full text of my testimony, which I request be placed in the record, and I will summarize here.

Over the past 80 years, ADL has been a leader in the development of innovative materials, programs and services that build bridges of communication, understanding and respect among diverse racial, religious, and ethnic groups. ADL has been a national

leader in tracking the problem of hate violence nationwide and in crafting legal and legislative responses to the problem.

We believe that the readiness of the criminal justice system to address hate violence has significantly improved over the 5-year history of the HCSA. It is our belief that providing a permanent mandate for the Act will help institutionalize these changes and expand upon the improvements.

ADL is pleased to testify today on the status of implementation of the Hate Crimes Statistics Act and on the need to provide a permanent mandate for the Act. We commend the original cosponsors of the Act, Chairman Hatch and Senator Simon, for your continuing leadership in effort to improve the Federal Government's response to hate violence.

All Americans have a stake in effective response to violent bigotry. These crimes demand a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. By making members of minority communities fearful, angry, and suspicious of other groups and of the power structure that is supposed to protect them, these incidents can damage the fabric of our society and fragment communities.

Police officials have come to understand that effective response to hate violence is a tangible demonstration of the priority that they assign to preventing and responding to hate violence. Tracking hate crimes can help police officials craft preventive strategies. Moreover, by compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction.

Since the enactment of HCSA in April of 1990, ADL, along with our Hate Crime Coalition partners, has served as a principal resource for the FBI in designing materials for education and outreach on the HCSA. Our testimony today highlights a number of national and congressional hate violence response initiatives which have been developed since the passage of HCSA in 1990. We believe the Act has helped increase public awareness of the problem of hate violence and promoted significant improvements in the readiness of the criminal justice system to address hate violence.

For example, as previously mentioned, the two United States Conference of Mayors-ADL joint surveys on municipal response to hate violence indicate broad recognition of the importance of effective response to hate violence by civic leaders. In addition, dozens of law enforcement agencies across the country have promulgated new policies and procedures for addressing hate violence since 1990. Where police departments have implemented the HCSA in partnership with community-based groups, the effort has enhanced police-community relations.

Federal hate crime response initiatives have been developed for juveniles, victim service professionals, and Federal and State law

enforcement officials. A number of States have enacted hate crime penalty enhancement statutes, as well as State hate crime data collection and training mandates. It is our belief that providing a permanent mandate for the Act will help institutionalize these changes and expand upon the improvements.

The FBI's 1994 HCSA data continued a welcome trend of a growing number of agencies participating in the HCSA data collection efforts. The Bureau's 1994 report also included disturbing evidence that some police and sheriff's departments have not yet begun reporting HCSA statistics or are providing incomplete reports. At this point, less than half of the 16,000 agencies that regularly report other crime data to the FBI are reporting hate crime data.

In order to maximize the utility of the data collected under the Act, Congress and the Administration should provide additional incentives for comprehensive HCSA implementation, including national recognition, matching grants for training, and a policy that mandates that only those agencies that participate in the HCSA would be eligible to receive discretionary funds for law enforcement services from the Justice Department's Office of Community-Oriented Policing Services, known as COPS, and the Office of Justice Programs. ADL also believes the time is right for a broad-based analysis on how to develop strategies for increasing and sustaining reporting participation by State and local law enforcement officials.

The fundamental cause for hate violence in the United States is the persistence of racism, bigotry, and anti-Semitism. Unfortunately, there is no quick, complete solution to these problems, legislative or otherwise. The long-term impact of the Hate Crimes Statistics Act will be determined at the local level and it will be measured not just by the aggregate numbers compiled by the FBI each year, but also by the improved response of law enforcement officials to each and every criminal act motivated by prejudice in communities across America. These numbers do not speak for themselves because behind each of these figures are real people who have suffered physical and emotional trauma.

ADL stands ready to continue to work with Congress and the Administration, the FBI, educators, and law enforcement throughout the country to tailor our response and craft new initiatives to effectively confront prejudice and hate violence in the years to come. Providing a permanent mandate for the HCSA is an important step forward toward institutionalizing an effective response to this national problem.

I appreciate this opportunity. Thank you.

The CHAIRMAN. Thank you, Mr. Arent.

[The prepared statement of Mr. Arent follows:]

PREPARED STATEMENT OF STEPHEN ARENT ON BEHALF OF THE
ANTI-DEFAMATION LEAGUE

My name is Steve Arent and I am a member of the Anti-Defamation League's National Commission and Vice Chairman of the National Civil Rights Committee. I am accompanied by Michael Lieberman, the League's Washington Counsel.

The Anti-Defamation League is pleased to testify today on the status of implementation of the Hate Crime Statistics Act (HCSA) and on need to provide a permanent mandate for the Act. Since the enactment of the HCSA in April, 1990, ADL, along with our principal hate crime coalition partners, People For the American Way, the National Association for the Advancement of Colored People, the American Jewish Committee, the National Gay and Lesbian Task Force, the Asian Pacific

American Legal Consortium, the Human Rights Campaign, the Japanese American Citizens League, the American Jewish Congress, the Organization of Chinese Americans, the Union of American Hebrew Congregations, and the United States Conference of Mayors, have served as resources for the FBI in designing materials for education and outreach on the HCSA. We commend the original cosponsors of the Act, Chairman Hatch and Senator Simon, for your continuing leadership in efforts to improve the federal government's response to hate crimes.

THE ANTI-DEFAMATION LEAGUE

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike." Dedicated to combatting anti-Semitism, prejudice, and bigotry of all kinds, defending democratic ideals and promoting civil rights, ADL has evolved into a leader in the development of innovative materials, programs, and services that to build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

The attempt to eliminate prejudice requires that people develop respect and acceptance of cultural differences and begin to establish dialogue across ethnic, cultural, and religious boundaries. Education and exposure are the cornerstones of a longterm solution to prejudice, discrimination, bigotry, and anti-Semitism. Effective response to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes.

THE HATE CRIME STATISTICS ACT (HCSA): PROGRESS AND SIGNIFICANT PROMISE

The Hate Crime Statistics Act (HCSA), enacted in 1990, requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" and to publish an annual summary of the findings. In the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability." The HCSA has proved to be a powerful mechanism to confront violent bigotry against individuals on the basis of their race, religion, sexual orientation, or ethnicity—and a spark for increased public awareness of the problem.

ADL has been a national leader in tracking the problem of hate violence nationwide—and in crafting legal and legislative responses to the problem. We believe that the readiness of the criminal justice system to address hate violence has significantly improved over the five year history of the HCSA. It is our belief that providing a permanent mandate for the Act will help institutionalize these changes and expand upon the improvements.

RESPONDING TO HATE VIOLENCE

All Americans have a stake in effective response to violent bigotry. These crimes demand a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. By making members of minority communities fearful, angry, and suspicious of other groups—and of the power structure that is supposed to protect them—these incidents can damage the fabric of our society and fragment communities.

Police officials have come to understand that effective response to hate violence is a tangible demonstration of the priority that they assign to preventing and responding to hate violence. Tracking hate crimes can help police officials craft preventative strategies. Moreover, by compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction.

Law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims. When police departments implement the HCSA in partnership with community-based groups, the effort should enhance police-community relations.

FOUR YEARS OF HCSA DATA: A FOUNDATION ON WHICH TO BUILD

In January, 1993, the Bureau released its first report on hate crime data collected by law enforcement agencies around the country. The FBI report documented a total of 4,588 hate crimes in 1991, reported from almost 2,800 police departments in 32 states. The Bureau's 1992 data, released in March, 1994, documented 7,442 hate

crime incidents reported from more than twice as many agencies, 6,181—representing 41 states and the District of Columbia. For 1993, the FBI reported 7,587 hate crimes from 6,865 agencies in 46 states and the District of Columbia. The FBI's 1994 statistics, released in November, 1995, documented 5,852 hate crimes, reported by 7,298 law enforcement agencies across the country.

THE FBI'S 1994 HCSA DATA AT A GLANCE: AN INCOMPLETE PICTURE

The welcome trend of a growing number of agencies participating in the HCSA data collection efforts continued in 1994. While the almost 7,300 agencies participating in 1994 is an increase over the number of 1993 reporting agencies, it still represents less than half of the 16,000 agencies that regularly report other crime data to the FBI under the Bureau's Uniform Crime Reporting Program.

Notwithstanding the increase in the number of participating agencies, the number of hate crimes reported to the FBI diminished by 24% in 1994—the first time any reduction has occurred over four years of HCSA data collection. Some of this decrease may well reflect the national trend of receding crime rates after years of increases. ADL itself reported a 11% decrease in the number of anti-Semitic incidents reported to ADL Regional Offices across the country in our annual Audit of Anti-Semitic Incidents for 1995. There is also good reason to believe, however, that the dramatic decrease in reporting hate crime is also attributable to police and Sheriffs departments that failed to report hate crime or provided incomplete reporting along with a disturbing fall off in reporting by agencies that had reported HCSA data to the FBI in the past.

While we will know much more about the validity of the FBI's 1994 data when the Bureau releases its annual jurisdiction-by-jurisdiction breakdown in the next few months, the summary data released in November highlights several obvious deficiencies. For example, in 1993, 224 law enforcement agencies in Illinois, which has a state hate crime reporting statute, reported 724 hate crimes. In 1994, only 19 agencies in Illinois participated, reporting only 239 hate crimes to the FBI. In addition, the FBI report does not include any HCSA reports from Massachusetts—from which 135 agencies reported 343 hate crimes in 1993. Massachusetts has been a model for hate crime data collection and response. The Commonwealth has a state hate crime data collection requirement. In fact, a report published by the Governor's Task Force on Hate Crime documents 489 hate crimes reported by 226 agencies in Massachusetts. We do not understand why this data was not included in the FBI report.

However, as these two examples indicate, substantial hate crime data was not captured by the FBI in its 1994 report. Whether these and other examples represent aberrations in an otherwise increasingly-established reporting system remains to be seen. It is clear to us, however, that providing a permanent mandate for the HCSA will increase the incentive for state and local law enforcement agencies to participate and to ensure compatible reporting modalities.

Other Highlights of the FBI's 1994 HCSA Report

- As in years past, the vast majority of participating agencies reported zero hate crimes. Of the 7,298 departments participating in the 1994 HCSA data collection effort, only 1,150 (16%) reported even one hate crime—all the others affirmatively reported that no hate crimes were committed in their jurisdictions.
- Of the reported crime, the FBI report indicated that about 60% of the reported hate crimes were race-based, with 18% committed against individuals on the basis of their religion, 11% on the basis of ethnicity, and 12% against Gays and Lesbians.
- The 908 crimes against Jews and Jewish institutions comprised almost 16% of the total—and 86% of the reported hate crimes based on religion. Approximately 37% of the reported crimes were anti-Black, 17% of the crimes were anti-White, 4% of the crimes were anti-Asian, and 6% anti-Hispanic.

A RIPPLE EFFECT THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

Along with human rights groups like the Anti-Defamation League and our principal hate crime coalition partners, the law enforcement community has actively supported hate crime data collection initiatives and penalty-enhancement legislation. Comprehensive implementation of the HCSA should have a significant impact on treatment of hate violence throughout the criminal justice system. We have seen substantial evidence of this "trickle up" impact over the past five years. The "trickle up" ripple effect:

- Begins with the responding officer to the crime. The first officer on the scene sets the tone for the incident and how that officer responds is critically important. He or she must be able to identify a hate crime, respond to it appropriately, and

report it accurately. The internal police procedures continue with an investigator's verification of the incident and the department's follow up with the victims.

- Prosecutors, especially in states with enhanced penalty provisions for hate crimes, should be expected to press hard for convictions in these frequently well-publicized cases. Human rights groups are increasingly recognizing that they can play an important role in encouraging victims to report hate crimes and then assist in the investigation and prosecution of the crime.

- Judges should then be under scrutiny to provide substantial sentences after convictions.

As efforts to implement the HCSA continue and expand, we will learn more about the perpetrators of these especially hurtful crimes—and how to prevent them. Victims are more likely to report a hate crime if they know a special reporting system is in place. Every law enforcement agency should train its officials in how to identify, report, and respond to hate violence.

RESPONDING TO HATE VIOLENCE: A DETERRENCE AND RESPONSE ACTION AGENDA FOR CONGRESS AND THE ADMINISTRATION

Over the five-year history of the HCSA, there have been a number of noteworthy developments in efforts to craft preventative strategies and effective responses to hate violence:

- Dozens of law enforcement agencies across the country have promulgated new policies and procedures for addressing hate violence. Building on model policies, drafted, by, among others, the International Association of Chiefs of Police and the National Organization of Black Law Enforcement Executives, departments have complemented their participation in the HCSA data collection mandate with the development of protocols for their officers on how to identify, report, and respond to hate violence.

A number of important new initiatives have also been approved by Congress:

- In 1992, Congress approved several new hate crime and prejudice-reduction initiatives as part of the four-year Juvenile Justice and Delinquency Prevention Act reauthorization. The Act included a requirement that each state's juvenile delinquency prevention plan include a component designed to combat hate crimes and a requirement that the Justice Department's office of Juvenile Justice Delinquency Program (OJJDP) conduct a national assessment of youths who commit hate crimes, their motives, their victims, and the penalties received for the crimes.

- In 1993, the Justice Department's Office of Juvenile Justice Delinquency Prevention (OJJDP) allocated \$100,000 for a Hate Crime Study to identify the characteristics of juveniles who commit hate crime, the characteristics of hate crimes committed by juveniles, and the characteristics of victims of juvenile hate crimes. In addition, OJJDP also provided a \$50,000 grant for the development of a wide-ranging curriculum—appropriate for educational, institutional, and other settings—to address prevention and treatment of hate crimes committed by juveniles.

On the local level, ADL has been involved in a number of innovative youth intervention and hate crime education programs. For example, in the face of increasing numbers of civil rights violations by youthful offenders, professionals from the Boston ADL Regional Office and the League's A World of Difference Institute, in conjunction with the Massachusetts Attorney General's office, developed a Youth Diversion Project in which non-violent offenders are sentenced to alternatives to incarceration, such as education programs and community service.

We look forward to working with Senator Thompson and members of his Subcommittee to address what some crime analysts have called the "ticking time bomb" of increasing juvenile crime coupled with population trends that set the stage for what may be unprecedented challenges to the criminal justice system. As Congress and the administration again take up reauthorization of the Act again this year, we will have an opportunity to gauge the progress of both state authorities and the OJJDP in addressing the issue of hate violence.

- Hate crime response experts from around the country—including ADL representatives—are helping to develop a model curriculum for use by the Federal Law Enforcement Training Centers (FLETC) for federal, state, and local police officials. We urge Congress to provide full funding for the Treasury Department to promote and implement this worthwhile initiative and to provide funding for delivery of this program to federal, state, and local law enforcement officials through the structure of FLETC's National Center for State and Local Law Enforcement Training.

- In 1993, the Justice Department's Office for Victims of Crime (OVC) funded a \$150,000 training curriculum to improve the response of law enforcement and victim assistance professionals to victims of hate crimes.

- The Violence Against Women Act (VAWA), enacted as Title IV of the Violent Crime and Law Enforcement Act of 1994, declares that "All persons within the United States shall have the right to be free from crimes of violence motivated by gender." Importantly, this new law provides authority for victims of gender-based crimes to bring a civil suit, in either federal or state court, for money damages or injunctive relief. According to the NOW Legal Defense and Education Fund, for many victims of gender-based crimes, VAWA may be their only avenue for redress.

- Congress also enacted the federal complement to state hate crime penalty-enhancement statutes in this 1994 crime bill. This provision, the Hate Crimes Sentencing Enhancement Act, required the United States Sentencing Commission to increase the penalties for crimes where the victim was selected "because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."

Working with other human rights groups and law enforcement organizations, the Anti-Defamation League continues to promote the passage of state hate crime penalty-enhancement laws and data collection initiatives. The U.S. Supreme Court's unanimous decision in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), on June 11, 1993 upholding the constitutionality of the Wisconsin hate crime penalty-enhancement statute—based on an ADL model now law in over thirty states—removed any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his/her race, religion, sexual orientation, gender, or ethnicity.

The intent of penalty-enhancement hate crime laws is not only to reassure targeted groups by imposing serious punishment on perpetrators of hate crimes, but also to deter these crimes by demonstrating that they will be dealt with in a serious manner. Under these laws, no one is punished merely for bigoted thoughts, ideology, or speech. But when prejudice prompts an individual to act on these beliefs and engage in criminal conduct, a prosecutor may seek a more severe sentence, but must prove, beyond reasonable doubt, that the victim was intentionally selected because of his/her personal characteristics.

Every state should enact a penalty-enhancement hate crime statute. While bigotry cannot be outlawed, hate crime statutes demonstrate an important commitment to confront criminal activity motivated by prejudice. In conjunction with comprehensive implementation of the HCSA, stiff penalties for hate crime perpetrators sends the clear message that hate violence is a law enforcement priority and that each hate crime—and each hate crime victim—is important.

TOWARD THE FUTURE: PROMOTING COMPREHENSIVE IMPLEMENTATION OF THE HCSA

Because the HCSA, like all FBI crime data collection, is a voluntary program, the credibility of the national numbers is determined by the level of participation by state and local law enforcement agencies. According to the FBI, law enforcement authorities covering more than 40% of the American population did not participate in the HCSA in 1994.

Over the past four years, using the FBI's jurisdiction-by-jurisdiction HCSA report, ADL and its principal hate crime coalition partners have jointly done outreach to departments that failed to report—or reported data that was obviously not credible based on cities of similar size and demographics elsewhere.

Clearly, steps must be taken to provide additional incentives for comprehensive HCSA implementation, including national recognition, matching grants for training, a network to promote replication of successful programs, and awards for exemplary departments. We believe the Justice Department should also make participation in the HCSA program a prerequisite for receiving money through either the Office of Community Oriented Policing Services (COPS) or its Office of Justice Programs.

- Congress should provide a permanent mandate for the HCSA to underline the importance of the effective response to hate violence and to ensure that hate crime data collection remains a permanent part of the FBI Uniform Crime Reporting program.

- The FBI has been receptive to requests for HCSA training for state and local law enforcement officials. To date, FBI officials have trained almost 3,700 personnel from almost 1,200 state, local, and federal agencies. The Administration and Congress should take steps to ensure that the FBI receives sufficient funding to continue to respond to requests for hate crime training from law enforcement agencies across the country—and to expand outreach on its availability. The Bureau should also continue its own training and education outreach efforts for both new agents and in-service training for field agents at its own Quantico training academy.

- A number of state and local authorities have promoted also initiatives designed to promote expanded HCSA reporting. In North Carolina, for example, the state De-

partment of Justice has adopted a new strategy to promote HCSA participation. Under this new program, Division of Criminal Information (DCI) field representatives invite individual departments to sign a Memorandum of Understanding that the agency will report HCSA data in return for training by the North Carolina Justice Academy and DCI technical assistance. The North Carolina Justice Department reports significant gains in reporting for 1995 over 1994 reporting.

- An essential partner in many of the FBI HCSA training initiatives has been the Justice Department's Community Relations Service (CRS). CRS, created in the 1964 Civil Rights Act, is the only Federal agency that exists primarily to assist communities in addressing intergroup disputes. CRS professionals have participated in HCSA training sessions for hundreds of law enforcement officials from dozens of police agencies across the country. Congress should ensure full funding for the mediation and conciliation services of CRS to ensure the continuation of the agency's unique violence prevention role.

- We believe a significant inducement for agencies to participate in the HCSA data collection effort could be found in making only those agencies that participate in the HCSA eligible for receiving funds from the Justice Department's Community Oriented Policing Services (COPS). Hate violence can be addressed effectively through a combination of presence, prevention, and outreach to the community that is the hallmark of community policing. Congress and the administration should insist that new officers hired and trained under the COPS initiative begin to receive training in how to identify, report, and respond to hate violence.

- Congress and the administration should provide another inducement to improve HCSA reporting by requiring that Department of Justice Office of Justice Programs (OJP) technical assistance grants be dependent on participation in the HCSA data collection effort.

- With a four-year baseline in HCSA data, a too-small increase in reporting agencies, and an unprecedented decline in the number of hate crime reports, ADL believes the time is right for a broad-based analysis to determine why some agencies have begun to report HCSA data, while others have stopped. We support the research proposed by the FBI and the Northeastern University Center for Criminal Justice Policy Research which would seek to develop strategies for increasing and sustaining reporting participation by state and local law enforcement officials.

- In several large states, including Florida and California, collection of HCSA data has been hindered in the past by a lack of compatibility in federal-state hate crime identification and reporting requirements. While these problems seem now to have been addressed, the problem of conversion of existing state data into information compatible with the HCSA should be aided by Congressional determination that the HCSA is a permanent mandate for the FBI.

CONCLUSION

The fundamental cause of hate violence in the United States is the persistence of racism, bigotry, and anti-Semitism. Unfortunately, there is no quick, complete solution to these problems—legislative or otherwise.

Excellent resources now exist to help municipalities establish hate crime response procedures. ADL has developed a number of hate crime training resources which are available to communities and law enforcement officials, including a new comprehensive guide to hate crime laws, a seventeen-minute hate crime training video on the impact of hate crime and appropriate responses (produced in cooperation with the New Jersey Department of Law and Public Safety), and a handbook of existing hate crime policies and procedures at both large and small police departments. ADL's prejudice reduction initiatives, coordinated through our A World of Difference Institute, are most often used as proactive measures to help educators, employers, and civic leaders develop the skills, sensitivity, and knowledge to combat bigotry and encourage understanding and respect among diverse groups in the classroom and in the workplace.

Before enactment of the HCSA, the FBI and some law enforcement agencies had doubts about the feasibility and utility of hate crime data collection. The Act's five-year record, however, has demonstrated great promise—and has clearly justified a permanent mandate for the Act.

The long-term impact of the Hate Crime Statistics Act will be determined at the local level, and it will be measured not just by the aggregate numbers compiled by the FBI each year, but also by the improved response of law enforcement officials to each and every criminal act motivated by prejudice in communities across America. These numbers do not speak for themselves—because behind each of these figures are real people who have suffered physical and emotional trauma.

ADL stands ready to continue to work with Congress and the administration, the FBI, educators, and the law enforcement community to tailor our response and craft new initiatives to effectively confront prejudice and hate violence in the years to come. Providing a permanent mandate for the HCSA is an important step forward towards institutionalizing an effective response to this national problem.

The CHAIRMAN. Ms. Lawson.

STATEMENT OF KAREN MCGILL LAWSON

Ms. LAWSON. Mr. Chairman and Senator Simon, on behalf of the staff and board of the Leadership Conference Education Fund, I would like to express our appreciation for the opportunity to testify before you today about the work the Leadership Conference Education Fund is doing to promote tolerance, reduce prejudice, and hopefully help prevent hate crimes. With me today, I will mention, is Arnold Aronson, who is president of Leadership Conference Education Fund, and, along with Roy Wilkins and A. Phillip Randolph, co-founded the Leadership Conference on Civil Rights.

The Leadership Conference Education Fund is a nonprofit, tax-exempt organization that conducts research and educational activities related to civil rights. We enjoy a close relationship with the Leadership Conference on Civil Rights, the oldest, largest and most broadly based civil rights coalition in the country. I would like to note that the Leadership Conference on Civil Rights has submitted a letter to the committee expressing its strong support for a permanent mandate for the Hate Crimes Statistics Act.

In 1992, the Leadership Conference Education Fund undertook a long-term informational campaign in partnership with the Advertising Council to promote interracial understanding and to address bigotry of all kinds. Our first public service announcement for television aired on June 3, 1992, 4 weeks after the Rodney King verdict in California and the riots that ensued. It carried the theme "Life Is Too Short, Stop the Hate."

We also produced a series of radio spots that addressed discrimination and bigotry with humor and were very popular with radio stations across the country, especially stations on college campuses. Print ads for newspapers, magazines, taxi tops, and billboards were also developed. A total of \$27.8 million in free advertising space and time was donated to the "Life Is Too Short, Stop the Hate" campaign. The overall response has been very positive.

One of our biggest supporters, Edwin Artzt, former chair and chief executive officer of Procter and Gamble, saw the PSA right after the city of Cincinnati, his city, experienced the display of a Ku Klux Klan cross in the city square at Christmas time. The Procter and Gamble Fund made a major contribution to the Leadership Conference Education Fund to work on programs of tolerance and understanding targeted to children.

In announcing the grant, Mr. Artzt said if we can change the hearts of today's children, we will influence the minds of tomorrow's adults. Research indicates that children as young as 3 years of age are aware of differences among people, including race, physical ability, and gender, and they are becoming aware of the biases and stereotypes that exist in our society, but have not yet crystallized their own beliefs and attitudes.

With the Ad Council and the creative talents of Griffin Bacal, a volunteer advertising agency, we developed the "Don't Be Afraid,

Be a Friend" campaign to encourage children to make friends across racial, ethnic, and disability lines, and not to respond to the differences among people with fear and hate. The goal is to help raise children who will value the differences among all of us and not be fearful of those differences.

We produced 30-, 25-, and 20-second public service announcements for television in English and Spanish, print ads for children's magazines, T-shirts, stickers, book covers, posters. The campaign received almost \$20 million of free television air time and it is still running. We are currently working on a public service announcement targeted at children 3 to 7 years of age, thus including pre-schoolers in our audience for the first time. We plan to develop lesson plans and other educational materials as part of this component.

In addition to our partnership with the Ad Council, in 1992 we also began working with Nickelodeon, the children's cable television station, to produce vignettes on diversity and tolerance. The spots, which Nickelodeon calls "Orange A Peels," began running in 1993 and they are still on the air. They feature children of varied racial and ethnic backgrounds and a child in a wheelchair talking about diversity, about getting to know one another and how they would like to be perceived.

We have also developed a brochure for parents and other caretakers of children on why it is important to talk to our children about racism, prejudice, and diversity. It offers some guidelines for discussion about these difficult issues. It includes some concrete examples of children's questions and concerns and, as a starting part, some suggestions for answering them.

We have also worked with Family Communications, Inc., which is a nonprofit production company founded by Fred Rogers, and Dr. Susan Linn of the Media Center on their curriculum unit, "Different and the Same," a 9-video series designed to help teachers and their students talk about, understand, and prevent prejudice. We served as an advisor to the project and have assisted with community outreach.

The ninth video in this series is entitled "Words on the Wall" and it is about hate crimes and explores the feelings of a child whose family is the target of a hate crime and the impact on her friends and school community. The children, with the assistance of their teacher, explore ways in which they can deal with this problem in their community.

In conclusion, the Leadership Conference Education Fund applauds your interest in this area and welcomes the opportunity to explore ways in which we can work together to instill the values of tolerance and understanding in our children and prevent hate crimes.

If I may, with the assistance of Brian Komar on our staff, we would like to take a minute to show you some of the work. The first is the public service announcement, "Don't Be Afraid, Be a Friend," and the second will be just a very small part of the "Words on the Wall" curriculum unit.

[Videotape shown.]

Ms. LAWSON. Thank you.

[The prepared statement of Ms. Lawson follows:]

PREPARED STATEMENT OF KAREN MCGILL LAWSON

Mr. Chairman and Members of the Committee, on behalf of the staff and board of the Leadership Conference Education Fund (LCEF), I would like to express our appreciation for the opportunity to testify before you today about the work LCEF is doing to promote tolerance, reduce prejudice, and hopefully help prevent hate crimes.

The Leadership Conference Education Fund is a non-profit, tax-exempt organization that conducts research and educational activities related to civil rights. Our goal is to strengthen the Nation's commitment to civil rights and equality of opportunity for all. Our work combines a review of the progress made in civil rights during the last half century, a focus on present civil rights abuses, and a vision for addressing remaining civil rights challenges. Specifically, we monitor the federal government's enforcement of civil rights and report on the activities in our quarterly, *Civil Rights Monitor*; sponsor conferences and symposia; serve as a clearinghouse on a multitude of civil rights-related issues; and seek opportunities to talk with the American people about our diversity and to promote tolerance and understanding. LCEF enjoys a close relationship with the Leadership Conference on Civil Rights (LCCR), the oldest, largest and most broadly based civil rights coalition in the country seeking to achieve equality in a free, plural, democratic society.

In keeping with LCEF's mission, in 1992, we undertook a long-term informational campaign in partnership with the Advertising Council to promote interracial understanding, combat bigotry of all kinds, and to help build a new national consensus to work toward the elimination of discrimination. Our first public service announcement (PSA) with the Ad Council aired on June 3, 1992—four weeks after the Rodney King verdict in California and the riots that ensued. It carried the theme: *Life's too short. Stop the Hate.*

This first commercial developed by the Mingo Group, a black-owned and managed advertising agency, was produced in 30 and 20 second spots in English and Spanish. The PSA opens in a hospital nursery with babies of various races in cribs side by side. Then it races through a montage of harsh scenes of violence and prejudice milestones in life, from childhood to old age, closing on a hillside graveyard. The narrator reports as the babies sleep: "Here's one time it doesn't matter who your neighbor is." And when the cemetery is seen, "Here's the other." The message: *Life's too short. Stop the Hate.* The Ad won the 1993 Telly award and the 1993 Richard T. O'Reilly award.

The *Life's too short. Stop the Hate* campaign also produced a series of radio spots developed by Dick Orkin's Radio Ranch that addressed discrimination and bigotry with humor and were very popular with radio stations across the country, especially stations on college campuses (a transcript of the radio spots is attached). Print ads for newspapers, magazines, taxi tops and bill boards were also developed. A total of \$27.8 million dollars in free advertising space and time was donated to this campaign including \$15.6 million in television and \$11.6 million in radio. The overall response to the campaign has been very positive. One of our biggest supporter's Edwin Artzt, former Chair and Chief Executive Officer of Procter & Gamble saw the PSA right after the city of Cincinnati experienced the display of a Ku Klux Klan cross in the city square at Christmas time. At the time Mr. Artzt said: "I come from Cincinnati—a good town, with good people—a good place for everyone to work and live—but we've just had our noses rubbed in the brutal reality of racism in the 1990s. I'm humiliated. I'm angry. I'm fed up with it—and more important, I want to do something about it." In referring to the *Life's too short. Stop the Hate* spot, he said "That spot got my attention. It affected me, and I knew that the idea behind it could have a lasting effect on children."

The Procter & Gamble Fund made a major contribution to the Leadership Conference Education Fund to work on programs of tolerance and understanding targeted to children. In announcing the grant, Mr. Artzt said: "If we can change the hearts of today's children, we'll influence the minds of tomorrow's adults." This component of our campaign seeks to educate children about our diversity, positively affect their developing racial attitudes and play a part in reducing the incidence of hate crimes.

As part of the children's campaign, we reviewed the literature and conducted research about when children develop attitudes about race and the differences they notice in people. Our review disclosed that children as young as three years of age are aware of differences among people including race, physical ability and gender, and they are becoming aware of the biases and stereotypes that exist in society but have not yet crystallized their own beliefs and attitudes. Our research confirmed that children think about the differences they observe and show a real interest, in some cases excitement, when asked how they feel about these issues. They volun-

teered observations, and even asked questions of the interviewers. The literature suggests that "early to middle childhood is fertile ground for effecting positive change in racial attitudes because children's predispositions are less organized and less stable than adults."

With the Ad Council and the creative talents of Griffin Bacal, the volunteer advertising agency, we developed the Don't Be Afraid, Be A Friend campaign to encourage children to make friends across racial, ethnic and disability lines and not to respond to the differences among people with fear and hate. The goal is to help raise children who will value the differences among all of us and not be fearful of those differences.

The Don't be Afraid, Be A Friend campaign addresses boys and girls, five to eight years of age. In the spot, a Hispanic boy speaks to the camera while playing in a pick-up soccer game. He acknowledges that there are prejudices against children who are "different," but sees the experience of playing with them as good fun and good sense. The narration is as follows:

Carlos: I've had the same friends since I was a little kid. But, this year, some of them started playing with these other kids. I guess there's nothing wrong with that. I mean, it's cool making new friends and all, but they weren't like us. They were, you know, different. And I heard my big brother saying some pretty bad stuff about people like them. But they seem pretty cool. And we had a pretty good time. So, well, maybe my brother doesn't know everything.

Girl: Hey, Carlos, come on; we need you.

Carlos: Don't be afraid.

Chorus: Be a friend.

We produced 30, 25, and 20 second public service announcements for television in English and Spanish, print ads for children's magazines, T-shirts, stickers, book covers and posters. Our inauguration of the campaign included the participation of students from two District of Columbia schools—John Quincy Adams and Bernard T. Janney Elementary Schools which reflect the diversity of America and are giving their students a multicultural experience that will serve them well in life.

The Don't Be Afraid; Be A Friend campaign has received almost \$20 million of free television air time. Toys 'R Us, a children's toy store, selected the PSA to air during its 1994 and 1995 Thanksgiving holiday television specials that aired in 175 markets covering 95 percent of the country. The Don't be Afraid, Be a Friend posters and book covers were distributed through Toys 'R Us stores located in major markets. The Magazine Ad will run in the June 1996 issue of Disney Adventures which has a monthly readership of 5.9 million children. The Ad Council's distribution sources include 1,800 television stations, 8,000 radio stations, 8,145 weekly and daily newspapers, and 1,200 consumer magazines.

In keeping with our children's theme, we are currently working on a public service announcement targeted at children 3-7 years of age, that will include pre-schoolers in our audience for the first time. Griffin Bacal is again lending their creative talents to the project and Random House Entertainment has donated the use of a poem written by its President Shane DeRolf, "The Crayon Box That Talked," and will cover the production costs of the PSA. We plan to develop lesson plans and other educational materials to carry the theme of the poem and increase its impact on children.

In addition to our partnership with the Ad Council, in 1992, we worked with Nickelodeon, the children's cable television station, to produce vignettes on diversity and tolerance (transcript attached). The spots which Nickelodeon calls "Orange A Peels" feature children of varied racial and ethnic backgrounds and a child in a wheelchair talking about diversity, about getting to know one another, and how they would like to be perceived. The script for one of the spots reads:

"I want to be seen as a nice person * * * who's a little weird
 I wanna be seen as a good joke teller
 I want people to see me as someone they can bring their problems to
 Not just as a color, but as a human
 I want people to see me as a good singer
 As a really good math student
 As a good friend
 Prejudice is when you judge someone before you know them.
 Try to see people for who they are."

The Orange A Peels on diversity began running in January 1993 and are still on the air.

We have also developed a brochure for parents and other caretakers on why it is important to talk to children about racism, prejudice and diversity. The booklet is intended to help parents and children talk about diversity, as well as racism and other kinds of bigotry. It offers some guidelines for discussion about these difficult issues. It includes some concrete examples of children's questions and concerns and, as a starting point, some suggestions for answering them. It is targeted to parents whose children are between five and eight years old, but it should be useful for anyone concerned about helping children become open-minded adults. As the brochure states: "In the 21st century, the ability to communicate and work with people from different racial and ethnic groups will be as essential as computer skills * * * By speaking openly about similarities and differences between people, we can raise children whose lives are not constricted by fear. By joining with them to recognize and talk about discrimination, we will help our children become adults who work to end it. By encouraging our children to reach across racial and ethnic lines, we will enable them to lead richer, fuller lives and to recognize the humanity of all people." The brochure has been distributed by civil rights and children's organizations. It will be marketed through an Ad Council promotion in Reader's Digest and we will broaden the distribution through a 1-800 number at the end of one of our parent targeted public service announcements with the Ad Council.

I would also like to mention other individuals and organizations that are doing wonderful work in this area: Louise Derman-Sparks a faculty member at the Pacific Oaks College in California is a pioneer in this area and the author of the Anti-Bias Curriculum, Tools for Empowering Young Children, published by the National Association for the Education of Young Children; the Children's Foundation in Washington, D.C. has produced a professional handbook for family day care centers entitled Helping Children Love Themselves and Others; the Southern Poverty Law Center's Teaching Tolerance project; the Anti-Defamation League's A World of Difference Project; the National Conference's Actions Speak Louder curriculum unit; and Facing History and Ourselves which provides a course of study for middle and high school students that "illuminates themes of racism, antisemitism, and violence, and the difference that each of us can make when we take a stand for what is right."

The Leadership Conference Education Fund has also worked with Family Communications Inc., a non-profit production company, founded by Fred Rogers, and Dr. Susan Linn of the Media Center, on their curriculum unit, Different and the Same, a nine video series designed to help teachers, and their students talk about, understand and prevent prejudice. LCEF served as an advisor to the project and assisted with community outreach and distribution. The curriculum is based on four principles—fairness, awareness, inclusion, and respect—which are some of the basic ingredients of a society which respects all peoples, their unique history and their common humanity. The ninth video lesson, "Words on the Wall," is about hate crimes and explores the feelings of a child whose family is the target of a hate crime and the impact on her friends and school community. The children with the assistance of their teacher explore ways in which they can deal with this problem in their community.

The Leadership Conference Education Fund applauds your interest in this area and welcomes the opportunity to explore ways in which we can work together to instill the values of tolerance and understanding in our children and prevent hate crimes. We all want this for our country. A survey by the National Conference found that 92 percent of the American people think that it is important or very important that people from different groups learn to understand and appreciate the life styles, tastes, and contributions of each other group and 88 percent said it was desirable that students be taught about the racial, ethnic and cultural groups that make up America today.

The United States is already one of the most diverse societies in the world. Our children will inherit an even more diverse society. We need to help them learn to live and work closely with people whose race, religion, or culture may be different from their own.

The CHAIRMAN. Thank you. We appreciate that very much.

Let me just ask all of you, and let me start with you, Mayor, how does the collection of hate crime statistics help combat prejudice?

Mayor Cleaver. Well, I think the awareness that hate crimes do exist. We have, unfortunately, a great deal of denial. There are some communities we found in the survey, which we hope you will place as a part of the permanent record of this committee—many communities would deny that hate crimes exist, that they simply

don't occur. I think when we compile the data, it makes a loud and rather bold statement that hate crimes not only exist in one community, but they exist along the length and breadth of this Nation. Once we acknowledge that, or acknowledge anything, we can then begin the process of arresting it and immunizing our communities against such crimes.

The CHAIRMAN. Chief.

Mr. MOODY. I think without the data being a clear indication of what is actually happening, without collecting that data and having it forwarded to police chiefs so that we can prepare an adequate response, I think right now we don't have a real clear indication of the perspective of the problem. I think it is real critical, and that is why we at the IACP support this bill so strongly, is that we must collect this data so that we can analyze it and then prepare the proper law enforcement response to it.

I don't think it is anything that any community anywhere wants to tolerate, but I think that it takes time to change the education, training, and technology, the technical ability to be able to get a full, clear, precise view of the problem. Rather than just saying it is a problem, we need to be more specific in the identity of the problem so that we can deal with it more appropriately.

The CHAIRMAN. Thank you.

Mr. Arent.

Mr. ARENT. Just to echo that, I think the data focuses law enforcement and the community in general's attention to the fact that these crimes are out there and that they exist. I think it is somewhat alarming, if not quizzical, that a number of communities that reported under the Act, or a number of police departments reported that there were no hate crimes that took place in their communities. So I think that that also underscores the fact that there needs to be better training with respect to how to identify hate crimes because it strikes me as incomprehensible that there could be that many communities that feel that there are not hate crimes being committed within their jurisdictions.

The CHAIRMAN. Ms. Lawson.

Ms. LAWSON. I would say also that the awareness that it creates about the extent of these crimes helps to break through people's denial and get the public support to try and address this through educational programs and other means, and having a Federal Hate Crimes Statistics Act, I think, sends a real message that our Government is concerned about this and sees this as a problem and wants to do something about it.

The CHAIRMAN. Well, thank you. Mr. Arent, what problems have you seen with regard to the implementation of the Act since we put it into effect in 1990?

Mr. ARENT. Well, I actually think the trend is positive in that we are getting more and more jurisdictions reporting each time a new report comes out. The problem I see, and it is the one I indicated before, is I am just not convinced that the training is broad enough or widespread enough so that there is recognition, acknowledgement among various police agencies that a particular crime that has been committed is, in fact, a hate crime.

So I think while we are encouraged, because this is a voluntary measure, that the number of agencies reporting has increased, we

are somewhat disturbed by whether or not they are properly evaluating the nature of all of the crimes on a widespread basis.

The CHAIRMAN. OK, that is good to know. Chief Moody, I want to congratulate you and tell you that I appreciate the IACP's support of this legislation. Let me assure you that we have no intention to penalize any community for not participating in the hate crimes data collection program and it will remain a voluntary program under the bill that Senator Simon and I will introduce today. So this is not an unfunded mandate. I hope more and more local jurisdictions will view this as worthwhile, and the costs of it as worthwhile. Between 1991 and 1994, the number of law enforcement agencies' participation in the Hate Crime Data Collection Program increased from 2,771 agencies in 32 States to about 7,400 agencies in 43 States and the District of Columbia, and we hope that that trend continues.

With respect to the level of local participation in the data collection program, do you believe there is any reluctance on the part of law enforcement agencies, particularly in these smaller communities that you have mentioned, to participate in the program due either to a desire to avoid potential embarrassment to the community or an unwillingness to admit that criminal conduct may be motivated by bias?

Mr. MOODY. I think what we have to keep in perspective, Mr. Chairman, is that in the 1930's we started the UNC reporting requirements and it has taken us some number of years to get law enforcement agencies, because you are talking about around this country many, many law enforcement agencies that comprise just 3- and 4-man, less than 10-man departments—so I think it is going to take a period of time for training the police chiefs, the officers, and being able to recognize these types of crimes.

I applaud what the FBI has done since 1990 in having the 61 training sessions, but in order to train the 16,000 law enforcement agencies across this country, we are going to have to increase that endeavor. We are committed from the IACP to doing what we can do to see that that training is conveyed across the country, police chiefs are trained in the first place and in the second place that their trainers are trained to train the trainees.

I think there are a lot of things that are going on across the country. In our particular department, we have a community outreach unit that reaches out to the community to try to identify potential type crimes. We do town hall meetings within our community, calling the citizens together to make sure we are on top of the things that they perceive to be criminal acts so that we address those from a local perspective.

We do a lot of diversity training, and I think there are a lot of those things that are already in place that are not reflected in the number of departments that don't participate or have not participated, for cost or other reasons, in the reporting of those crimes. I think they have taken some proactive measures, but we are not basically reporting the others simply because maybe they are not trained or adequate technology available. The technology isn't there.

The CHAIRMAN. Thank you.
Senator Simon.

Senator SIMON. Thank you, and I thank all four of you for your excellent statements. First, Ms. Lawson, in terms of reaching people at the earliest stage, I just think it is marvelous and I applaud such efforts. Our attitudes can change. A lot of people just don't believe that, but I remember—and I wish I had the statistics here, but a Gallup poll taken about 40 years ago asked do you believe that people should have the opportunity for jobs regardless of race, religious background, et cetera and everything—47 percent said yes. The most recent poll was 90-some percent. Things can change.

One of my granddaughters—I visited her kindergarten class in Carbondale, IL, and it was marvelous. It was a mixture of African-American, Latino, Asian. It was great, but most young people don't have that opportunity, unfortunately. We are residentially segregated to a great degree and that means our schools reflect that. That is why what you are doing is so important.

Attitudes can change and we can change and improve as a society. If I may pick on two of you right here, to have an African-American Mayor of Kansas City here together with the chief of police of Covington, GA, both singing out of the same hymn book, saying the same thing—you know, 40 years ago when I first was involved in the civil rights movement, that just wouldn't have happened in either Kansas City or Covington, GA. We have improved.

The Anti-Defamation League played a key role in getting this legislation passed and for many years you collected the only reliable data in this whole field. But all of you have mentioned in different language that we have to address—and I don't even remember which one of you said this—failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. You are all saying that.

As I go over the FBI statistics on who is reporting, one thing is fairly clear, and if I can use Missouri and Georgia as examples because it is fairly typical, unfortunately, of my State, too, Atlanta reports, Macon, Savannah—these are cities over 100,000. What is the population of Covington?

Mr. MOODY. A population of 15,000.

Senator SIMON. All right. Macon, Savannah, and Columbus, the other cities over 100,000, are not reporting. In Missouri, Kansas City, St. Louis and Springfield are reporting. The only other city over 100,000, Independence, is not reporting. The trend is clear that the bigger units are tending to be more sensitive in terms of reporting. I am not saying more sensitive in terms of handling matters.

How can we get more of the Macon, Georgias and Independence, Missouris and Covingtons—how can we get more of the smaller population units to report?

Mayor CLEAVER. Well, unless we make hatred an issue today, it will still be an issue tomorrow. I believe that we must make this one of the most serious issues in the Nation and I think it merits that kind of attention. In a sense, hate crimes are about the most obscene kind of crime because they are crimes by us on us.

Unfortunately, it is like sexual assault. Many of those crimes go unreported because of the shame that is attached to it and many of the smaller communities simply don't want to be looked upon as some kind of hot bed for bigotry. There are 113 counties in Mis-

souri. The highway patrol has identified 40 counties where Klan or militia activity occurs, and yet only 23 agencies in 1994 reported. I am convinced that it is a direct result of those communities fearing being designated, identified or portrayed as cities of bigotry. I think we have got to flip that over so that they are seen as cities of enlightenment, cities creating hope for all communities. We have got to make it positive instead of negative.

Senator SIMON. Mr. Moody.

Mr. MOODY. I can't speak for other States other than Georgia in this perspective, but I can tell you that I think it needs to be profoundly clear that hate crime in any shape, form or fashion does not need to be tolerated by any law enforcement agency anywhere in this country. I don't believe that there is any tolerance to hate crimes in Georgia, but I would submit to you, Senator, that we have a need in our State for training in regard to the definition and we need community involvement. We need more community-type policing efforts.

There are high demands today in our society on police services and not the same corresponding financial support. So we have high demand, small resources. In my own department, which we abhor—we do not tolerate in any shape, form or fashion. We have a good working relationship with our community because of the town hall meetings that we have, but we have not been involved in this program, one, for lack of training and the resources. If we get some financial resources backed up by the training that is being offered either at a State level or through the FBI, then we will certainly participate.

I, being a past president of the Georgia Association of Chiefs of Police, will go back and raise the banner as to the need for reporting accurate data. I don't think that there is a chief anywhere—I would like to think that there is not a chief anywhere that would not want to collect the data because of what it might show. That is to have your head in the sand, but I believe the only way we can do it is to have good, accurate data collection so that it can be analyzed and the most effective, efficient, professional response given to that particular problem.

Senator SIMON. You were here when the FBI testified when I asked a question about this. A suggestion was made that maybe we ought to earmark a little bit of the FBI money for this training. Does that make sense to you?

Mr. MOODY. Yes, sir. I would suggest to you, sir, that they probably need some increased funding in that area, but I think going to the States, going to the homes—when I say States, not necessarily here, but going out to each State and offering that training through the appropriate State agency, be a chief's association or whatever, or through the FBI offices in the various States—that might be the appropriate vehicle.

Senator SIMON. Let me just commend you for the statement you made in behalf of the International Association of Chiefs of Police, also, in terms of not tolerating officers who have the wrong attitudes. I really appreciate that. In a strange way, what happened to Rodney King and the testimony of one officer in the O.J. Simpson trial may be a good thing for us. It will force us to take a look at where we are and how we have to improve.

Mr. MOODY. Absolutely.

Senator SIMON. I know my time is up here, but, Mr. Arent, I saw you nodding when I asked about the smaller jurisdictions. Do you have any—

Mr. ARENT. We have the 16,000 police agencies throughout the country that currently do report a number of crime statistics to the FBI, and I guess what we are seeking here is for them to take one more component and include that as a separate item but as part of the data that they routinely report to the FBI.

I was nodding because Chief Moody basically has put his finger on it. With a smaller jurisdiction, there are less funds to engage a person, to train a person to be able to handle that part of the reporting process. What we have recommended is that we look for ways to make it an incentive-based program where there could be matching funds or the only way to participate, say, in the COPS program would be to include in your reporting data hate crime incidents. So I think that there is a mechanism. It will cost some additional money, perhaps, but maybe there are ways to find that within existing allocations to get the job done.

Senator SIMON. All right. Again, Ms. Lawson, I commend you for what you and the Leadership Council are doing. I thank all of you for your testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Well, I want to thank you as well. I think this has been a good hearing and we are going to do everything we can to continue this bill. It is hard to get any money around here anymore, but we will certainly look and see what can be done. I want to thank my colleague, Senator Simon, for his great efforts in this regard, and I want to thank each of you for being here. We will put in the record the testimony of Elizabeth Birch, executive director of the Human Rights Campaign, entitled "Reauthorization of the Hate Crimes Statistics Act." We will put that in the record.

[The prepared statement of Ms. Birch follows:]

PREPARED STATEMENT OF ELIZABETH BIRCH

My name is Elizabeth Birch, and I am the Executive Director of the Human Rights Campaign (HRC), the nation's largest lesbian and gay political organization.

On behalf of our over 150,000 members nationwide, I would like to thank both Chairman Hatch and Senator Simon for sponsoring the reauthorization of this vital legislation. I also would like to praise the 30 original cosponsors of the bill for their leadership and concern about this atrocity that continues to plague our nation. To that end, I pledge the full force of HRC's resources to moving this legislation quickly through Congress.

I want to thank the Department of Justice and the FBI for continuing to collect statistics after the Hate Crimes Statistics Act (HCSA) formally expired. Although the law does not provide for the direct combat of hate crimes, the information collected provides a valuable tool allowing the FBI to better understand and strategize ways to end these heinous crimes. As you know, the act does not mandate local or state law enforcement to collect data on hate crimes. Nevertheless, voluntary participation by law enforcement agencies has increased with every year. It is also important to note that the FBI began trainings for state and local law enforcement officials under the auspices of the act. This has increased the sensitivity of law enforcement in regards to hate crimes, which has numerous benefits. Among those is a more informed police force better able to discern when a crime is actually a hate crime.

As I understand the current proposed legislation, there is only one change to be made to the current law, and that is the elimination of the expiration date, or "sunset" provision. The Human Rights Campaign wholeheartedly supports this change. I pray for the day that hate crimes, against all persons and groups, come to an end.

But until that day, we must continue to trace these abominable crimes as effectively as possible.

Hate crimes, in every form, affect more than just the person or property directly attacked. A rock through somebody's window as an act of wanton vandalism is troubling enough. But a rock through a window with an epithet tied to it alters the whole character of the offense. The bigotry and hate of such a crime attacks an entire community, creating apprehension and fear for all.

Tragically, crimes that are motivated by hate and prejudice still occur in our country, and lesbians and gays are too often targets for people who convert their hateful thoughts into violent actions. The New York City Gay & Lesbian Anti-Violence Project (NYC-AVP) is a leading organization collecting statistics on crimes perpetrated against lesbian and gay Americans. NYC-AVP's nationwide project, the National Coalition of Anti-Violence Programs (NCAVP), annually compiles statistics from eleven metropolitan areas across the country. According to NCAVP's 1995 report, 2,212 anti-gay incidents were reported in 1995.

It is important to remember that this number represents only reported, not actual, crimes in only eleven metropolitan areas in the country. Clearly, the number of actual hate crimes is much greater. The NCAVP's 1995 numbers show a 8% decrease in reported crimes from 1994. However, while the number of reported occurrences decreased, the crimes were more violent in nature. For example, hate crimes classified as an "assault with a weapon" increased 51% over the 1994 numbers.

Under-reporting of crimes is a phenomena that is nationwide, but under-reporting in the lesbian and gay community is especially acute, making statistics only show "the tip of the iceberg." Many lesbians and gay men are not open about their sexual orientation at their jobs, churches, even to close friends and family. They fear that if they report a hate crime committed against them they will identify themselves as gay and potentially face even more anti-gay bias.

Many times and for many reasons, perpetrators think of lesbian and gay Americans as less than human. Last year in Medford, Oregon, a lesbian couple who were publicly active in the 1993 defeat of a statewide anti-gay ballot initiative were bound, gagged, kidnapped, and then murdered execution-style. When the suspect, who confessed, was questioned about the incident, he stated off-handedly, "It was easier to kill them because they were lesbians."

A year ago this month, a popular talk show produced a segment on people who held secret "crushes" on others. Scott Amedure had a "crush" on Jonathan Schmitz, both of Detroit, Michigan. During the taped segment, Scott told Jonathan about his attraction. Jonathan told Scott that he was heterosexual, and therefore not interested. Three days later, Jonathan bought a 12 gauge shotgun and ammunition, and went to Scott's house. In front of Scott's house, he assembled the gun, went to the door, and killed Scott with two blasts to the chest. Scott had done nothing more than verbally express his feelings.

As I said, the Human Rights Campaign is and will continue to actively work for the reauthorization of this bill. However, there are certain elements of this bill that are troubling. During original consideration of the HCSA in 1990, Senator Jesse Helms offered a vociferously anti-gay amendment to the bill. To counter the Helms amendment, less heinous language (Section 2(b)) was offered as an alternative amendment, which passed. However, this language is offensive to the lesbian and gay community, and is simply superfluous. Should there be an opportunity to amend the bill, we will work towards striking the un-needed language.

I would also like to point out there is another group of Americans who are targeted for hate crimes. It is HRC's position that they should also be covered under the Hate Crimes Statistics Act. Transgendered Americans, who either live their lives as the opposite gender, or actually go through medical procedures to change their gender, are not specifically covered by the Hate Crimes Statistics Act. Like lesbian and gay Americans, transgendered persons are often singled out to be harassed, often with violent circumstances. In 1991, Brandon Teena, who was a woman living her life as a man in Palls City, Nebraska, was brutally raped by two men. Two suspects were identified, but the Sheriff refused to investigate on the grounds that since Brandon had "lied" about his gender, his statement could not be trusted. Brandon was savagely murdered several days later. Obviously, Brandon was a victim of hate crimes of the worst kind. I strongly urge this Congress to consider covering transgendered persons under the reauthorized Hate Crimes Statistics Act.

In conclusion, I want to make very clear how forcefully the Human Rights Campaign will work towards reauthorizing the Hate Crimes Statistics Act. This country was founded on freedom. This country's citizens, by matter of law and principle, should be taught that freedom for all means tolerating differences among our diverse population. To this end, every American should have the right to live their life safely, without hiding and without fear. In 1996, this is still not yet possible,

a fact that should trouble and anger us all. Crimes motivated by hate cut to the very core of what this democracy is about, and I do not say that lightly. Until these crimes can be stopped, the Hate Crimes Statistics Act will be needed. The Act has worked, and it needs to be reauthorized.

The CHAIRMAN. The National Gay and Lesbian Task Force has submitted a statement for the record and we will include that in the record as well.

[The statement referred to follows:]

PREPARED STATEMENT OF THE NATIONAL GAY AND LESBIAN TASK FORCE ¹

Mr. Chairman, the National Gay and Lesbian Task Force (NGLTF), the oldest, national gay and lesbian civil rights organization, strongly supports the leadership demonstrated by you and Senator Paul Simon, as lead sponsors of the legislation to reauthorize the Hate Crimes Statistics Act of 1990. We offer this testimony in memory of the thousands of persons victimized by hatred and intolerance since passage of the Hate Crime Statistics Act and ask that it be made a part of the official record for this hearing.

Enactment of the Hate Crime Statistics Act (HCSA) in 1990 was an important first step forward by Congress in the fight against bigoted violence. The significance of this legislation has been tragically underscored by the thousands of violent crimes rooted in prejudice and bigotry that occur each year. Clearly, if nothing else, these crimes have demonstrated that it is time to transform what was a tentative first step into an enduring stride. Permanent authorization of HCSA, though not a panacea in the efforts to eradicate hate crimes, is nonetheless a necessary foundation for these efforts.

The passage of HCSA was the result of an intensive three-year educational effort by NGLTF and a wide array of religious, professional, law enforcement and civil rights organizations. Although the bill passed the U.S. House of Representatives by overwhelming margins in both 1988 and 1989, it languished in the Senate because of threats and delaying tactics by Senator Jesse Helms (R-NC). Senate supporters of the bill, led by both you, Mr. Chairman, and Senator Simon, overcame Senator Helms' opposition and passed the measure on February 8, 1990 by an overwhelming vote of 92-4.

Since HCSA passage, the FBI has documented a total of 25,439 hate motivated crimes. These incidents reflect only a fraction of the actual number of incidents. For example, for those same years, 1991-1994, lesbian and gay anti-violence projects in five cities alone, Boston, Chicago, Minneapolis/St. Paul, New York, San Francisco, reported a total of 6,861 anti-gay incidents. Though FBI figures are merely the tip of the iceberg, continued documentation by the federal government remains essential in the fight against hate violence, while at the same time sending a message that this is an issue of national importance and concern.

Since 1991, the number of participating law enforcement agencies has increased every year, from 2,800 in 1991 to 7,200 in 1994 (though only a portion of those 7,200 agencies documented any bias-related incidents). Though more than half of the 16,000 law enforcement agencies still do not participate, clearly progress has been made. The FBI has distributed hate crime data collection information and educational materials to each of the 16,000 law enforcement agencies. In addition, the FBI has trained over 3,000 law enforcement officials from over 900 agencies.² To eliminate this historic law now would halt the progress that has been made by the federal government in educating and training local law enforcement.

The circumstances that motivated Congress, and President Bush, to originally pass, and sign into law, HCSA in 1990 remain in 1996. Whole communities continue to be intimidated and threatened by heinous acts of violence against individual members. Just last week, the National Coalition of Anti-Violence Programs reported that over 2,200 anti-gay/lesbian incidents were documented in 1995 in 11 cities across the country.³ A significant number of states still offer no deterrent to these crimes in the form of state laws providing for mandatory data collection and enhanced penalties. Twelve states do not have hate crime laws, 20 have hate crime laws which do not include sexual orientation, while 18 states and the District of Columbia do include sexual orientation in their hate crime laws (see attached map).

¹ This statement was prepared by Tracey Conety, field organizer, with assistance from Helen Gonzales, Public Policy Director, NGLTF.

² See "Hate Crimes Laws: A Comprehensive Guide," Anti-Defamation League at p. 25 (1994).

³ See "Anti-Gay/Lesbian Violence in 1995, National Coalition of Anti-Violence Programs: Local & National Trends, Analysis and Incident Summaries," March 12, 1996.

Nowhere has this reality been more painful than in Texas where attempts to pass a tougher hate crimes law have been blocked by forces perpetuating the same intolerance and hatred that have resulted in numerous anti-gay killings. Ironically, one of these killings occurred on May 20, 1995. On that day, Joe Isassi was murdered in Corpus Christi simply because he was gay, and the Texas House again voted down this tougher hate crimes bill.

NGLTF has been a longtime advocate in the battle against hate crimes, and anti-gay and anti-lesbian violence specifically. NGLTF initiated an anti-violence project in 1982 to promote an appropriate official response to anti-gay violence, improve the treatment of lesbians and gay men by the criminal justice system, and assist local communities in organizing against prejudice and violence. In 1984, NGLTF conducted the first national study focusing exclusively on anti-gay violence. NGLTF produced reports on the incidence of anti-gay violence in major U.S. cities for the years (1984-1993). In 1994 and 1995, a coalition of anti-violence programs expanded on the foundation laid by NGLTF, and became responsible for production of this annual report. NGLTF continues to be an active national advocate and voice in the fight against hate crimes and continues to work with local activists and organizations in responding to such incidents and providing technical assistance and training to local activists on issues related to violence against our communities.

There has been much rhetoric from our elected officials on the need and commitment to be "tough on crime." This reauthorization presents an opportunity to transform that rhetoric into action. NGLTF respectfully and strongly urges a permanent mandate for the Hate Crime Statistics Act. In addition, we urge that Federal efforts to document and eliminate hate violence not end there. Funding is essential to transforming this law from good intentions to measurable changes, specifically to ensure training of all law enforcement personnel on the identification and documentation of bias crimes. The Federal Bureau of Investigation has made a vigorous and good-faith effort to implement the Hate Crime Statistics Act. If the data are to be collected in a competent and consistent manner, Congress must continue to make adequate resources available to train local and state law enforcement personnel.

At the signing of the Hate Crime Statistics Act, President Bush announced the opening of a national toll-free hotline to report episodes of hate-motivated crime. Operated by the Community Relations Service of the Department of Justice, the hotline initially did not document calls from victims of anti-gay violence. The Department of Justice eventually reversed this decision and agreed to receive calls about crimes based on sexual orientation and to track such incidents in hotline reports. In 1995, funding was terminated and the hotline eliminated. NGLTF recommends the re-establishment of this hotline in conjunction with comprehensive training for all its operators on hate crime, including crimes based on sexual orientation, and a vigorous publicity and public education campaign promoting use of this resource.

NGLTF also calls on our Congressional leaders to advocate for the passage of state hate crime laws that provide for documentation of hate crimes, including sexual orientation. Lastly, NGLTF urges our Congressional leaders to speak out against anti-gay violence and prejudice by their political peers as well as leaders in religion, education, business and the media.

In closing, we remember the words of President Bush on April 23, 1990 as he signed the Hate Crime Statistics Act into law, "The faster we can find out about these hideous crimes the faster we can track down the bigots who commit them * * * Enacting this law today, helps us move toward our dream, a society blind to prejudice, a society open to all."



Hate Crime Laws that Include Crimes Based on Sexual Orientation

December 1995

Provisions

	Statistics Collections	Criminal Penalties	Civil Penalties	Injunctive Relief
Federal	1990	--	--	--
State				
Arizona	1991	--	--	--
California ^f	--	--	--	--
Connecticut	1989	1991	1991	1987
Dist. of Columbia	1990	1990	1990	1990
Florida	1991	1991	1991	--
Illinois	1990	1990	--	--
Iowa	1990	1990	1990	1990
Maine		1995		
Maryland	1991	--	--	--
Minnesota	1988	1989	--	--
Nevada	--	1989	1989	1989
New Hampshire	--	1990	--	--
New Jersey	--	1990	--	1993
Oregon	1989	1989	--	--
Texas	1991	1993*	--	--
Utah	1993	--	--	--
Vermont	--	1990	1990	--
Washington	1993	1993	--	--
Wisconsin	--	1988	1988	--

* Texas law addresses hate crimes in general terms, understood to include crimes based on sexual orientation and other characteristics, but do not name any specific characteristics.

^f California data collection law not in force because it is not funded.

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The CHAIRMAN. We will keep the record open for the rest of the day for anybody else who wants to add to the record.

We are very appreciative for all of you being here and the testimony you have given, and we will do our very best to get this reauthorized and then go on from there. Thanks so much.

We will recess until further notice.

[Whereupon, at 11:46 a.m., the committee was adjourned.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, March 15, 1996.

Hon. ORRIN G. HATCH,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.*

DEAR SENATOR HATCH: The Leadership Conference on Civil Rights, the nation's oldest most broadly based coalition consisting of 180 civil rights organizations representing minorities, women, persons with disabilities, older Americans, labor, gays and lesbians, religious groups, and minority businesses and professions, would like to express its support for legislation that gives a permanent mandate to the Hate Crimes Statistics Act. As you know, the original bill had strong bipartisan support, with a vote of 92-4 in the Senate and 368-47 in the House, and was signed into law by President Bush.

LCCR supported the Hate Crimes Statistics Act of 1990, which requires the Justice Department to collect data on crimes that "manifest prejudice based on race, religion, sexual orientation, or ethnicity" and disability as amended by the 1994 Crime bill and to publish an annual summary of the findings. A permanent mandate of the Hate Crimes Statistics Act is essential to continuing the progress that has been made in collecting information regarding the perpetrators of hate crimes and developing strategies to prevent such crimes. Additionally, studies show that victims are more likely to report such crimes when a reporting system exists. The Leadership Conference believes that a permanent mandate for the Hate Crimes Statistics Act will help focus the country's attention on this problem and send the message that the Federal Government is concerned about this national problem.

Along with our strong support for this legislation, we must also note the exclusion of gender from the measure. While we are aware of the opposition to include gender being expressed by the law enforcement community, we hope that you and your committee not only explore these concerns, but also address the issue of gender-based hate crimes in another vehicle, and promote better education throughout the criminal justice system.

Accordingly, we applaud your and Senator Paul Simon's efforts to secure legislation which would require a permanent mandate for the Hate Crimes Statistics Act and are pleased to express support for this legislation.

Sincerely,

RICHARD WOMACK,
Acting Executive Director.

DOROTHY HEIGHT,
Chairperson.

PREPARED STATEMENT OF IVAN K. FONG, REGIONAL GOVERNOR, SOUTHEAST REGION,
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

Thank you for permitting me to testify in support of the reauthorization of the Hate Crime Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. §534 note). Please place a copy of this testimony and the enclosed report in the record.

My name is Ivan K. Fong. I am currently the Regional Governor, Southeast Region, for the National Asian Pacific American Bar Association ("NAPABA"). NAPABA is a non-profit, non-partisan professional organization that represents the interests of many thousands of Asian Pacific American attorneys across the country. By virtue of my position on NAPABA's board, I also serve *ex officio* on the board of the Asian Pacific American Bar Association of the Greater Washington, D.C. Area ("APABA").

Both NAPABA and APABA have a long-standing interest in the prevention and deterrence of hate crimes. In 1993 and 1994, during my tenure as president of APABA, the District of Columbia was hit by a wave of violent crimes against Asian Pacific American merchants. In response to those crimes, APABA commissioned a study by the law firm of Covington & Burling to review the D.C. Bias-Related Crime Act of 1989, D.C. Code §22-4001 *et seq.* A copy of the Covington & Burling report, entitled "The D.C. Bias-Related Crime Act: An Unused Weapon in the Fight Against Violent Crime," is enclosed for your reference.

The study concluded that, although the D.C. statute had been on the books for several years, it apparently had been rarely, if ever, applied. The report stimulated a dialogue among community leaders and law enforcement officials on the issue of the prosecution of hate crimes in the District. As the report itself and the ensuing discussion made clear, the collection of accurate and reliable statistics on the occurrence and prosecution of hate crimes is essential. Without such statistics, it is simply impossible to monitor, on a local or a national level, enforcement of hate-crime statutes.

For these reasons, both NAPABA and APABA strongly support reauthorization of the Hate Crime Statistics Act. Thank you.

Good afternoon. My name is Ivan Fong. I am the president of the Asian Pacific American Bar Association.

I'm very pleased to have the opportunity today to release a special report prepared for the Asian Pacific American Bar Association by the law firm of Covington & Burling.

We commissioned this report after our members became involved in assisting a number of D.C. merchants who were the unfortunate victims of a well-publicized series of homicides and robberies last year. We wanted to know whether such crimes might be prosecuted as so-called "Hate Crimes" under the D.C. Bias-Related Crime Act, which imposes stiffer penalties for crimes motivated by prejudice.

After a detailed examination of the D.C. statute, we found that, although the law was enacted almost four years ago, it appears to have been rarely applied, if at all. More important, the report concludes that the D.C. Bias-Related Crime Act increases the penalty not only for crimes motivated by hatred, but also for crimes motivated by any form of bias. For instance, if a robber deliberately selects a victim of a certain race because he or she thinks members of that race are "easy targets," or for whatever reason, we believe that such crimes may be prosecuted as bias-related crimes.

These findings have significant implications. Perhaps most important, the findings apply equally to all members of our community—African-Americans, Latinos, Asian-Americans, the elderly, Jews, and lesbians and gay men. The D.C. statute simply reflects our society's collective moral judgment that, although crime itself is bad enough, those who single out their victims on the basis of characteristics such as race, religion, or ethnicity deserve to be—and must be—punished especially harshly.

The report's conclusions also suggest at least three areas where we hope to begin a constructive dialogue.

First, it suggests that law enforcement personnel may need special training to help identify potential bias-related crimes. Police and investigators, for example, may be in a better position than the victims themselves to determine whether a particular defendant's crimes show a pattern of victim selection. We may also be able to use training materials that have been prepared by the U.S. Department of Justice and by other states with similar laws.

Second, the report's findings suggest that a greater commitment of resources may be needed to identify and prosecute bias-related crimes. We have been working, for example, with Lieutenant Mike Brooks of the Hate Crimes Unit, and we know he is doing a great job. But he simply cannot do it alone. We also know that this city faces severe fiscal constraints. But we believe that effective enforcement of D.C.'s Bias-Related Crime Act is essential if we are to rise above the divisions of race, religion, and ethnicity that threaten to divide us every day.

Finally, vigorous enforcement of the D.C. Bias-Related Crime Act sends important messages to our communities: not only that such crimes are treated with the seri-

ousness that they deserve, but also that the perpetrators of such crimes will be punished swiftly and surely. If we as a community of diverse people can have even a hope of coming together, we must begin by acting on the basic truth of the D.C. Bias-Related Crime Act—that no member of our community should be viewed as an “easy target” simply on the basis of the group to which he or she belongs.

One final point in closing: this report does not point fingers. Rather, it is forward-looking, and we hope it will be a catalyst for further discussion. We are therefore looking forward to working constructively with the appropriate law enforcement agencies and with all the communities in our city to realize the full potential of this important law. We cannot afford, in these troubled times, to do anything less.

Thank you. I'll be happy to answer any questions you may have.

PREPARED STATEMENT OF BRIAN LEVIN, SOUTHERN POVERTY LAW CENTER

My name is Brian Levin. I am the Associate Director for Legal Affairs of the Southern Poverty Law Center's Klanwatch Project. I have collected and analyzed data on hate crime since 1986 and my research on the topic was used by the House Judiciary Committee during their deliberations on the Hate Crime Statistics Act (HCSA).

The Southern Poverty Law Center is located in Montgomery, Alabama. It was founded 25 years ago to protect the rights of victims of injustice. For the past 17 years, the Center's Klanwatch Project has monitored extremist groups, tracked hate crimes and sued on behalf of the victims of hate violence. Klanwatch was one of the first organizations in the United States to collect and maintain national hate crime data. Last year we counted 270 active hate groups throughout the United States and numerous hate motivated murders, assaults, arsons, and bombings.

In 1994 the FBI counted 5,852 hate crimes in the United States. We believe that when underreporting by victims and police is considered, the actual number of hate crime for 1994 was at least 20,000.

Because data collection is instrumental to the continuing battle against hate crime, the Center urges Congress to enact a permanent mandate for the HCSA. As Senator Campbell recently stated, “If one needs a reminder as to why we must make the Hate Crime Statistics Act permanent, one need look no further than today's headlines.” We at Klanwatch are all too familiar with the cases recounted in recent headlines. Many of these incidents bear a frightening resemblance to the brutal violence perpetrated against innocent persons during the civil rights era. For example, we have tracked 29 instances of arson at black churches in eight southern states since 1989. In the last two months, we have seen 13 black churches torched, 5 alone in my home state of Alabama. In February, an alleged Ku Klux Klansman was implicated in the brutal stabbing of a Native American in California, while another Klansman was charged in an illegal cross burning. In South Carolina, two adults face trial for the attempted lynching of a young black child. Clearly, hate crimes are neither a relic of the past, nor a problem confined to only one particular region.

Since its initial enactment in April 1990, the HCSA has enhanced our understanding of and our response to hate crime. It has provided researchers and government officials with vital data relating to the nature and the scope of the hate crime problem. This information is crucial towards formulating an overall response. We now have a clearer picture of offenders, victims, crime locations and offense severity.

The data collection effort brought about as a result of the HCSA has proven beneficial for other reasons as well. Data collection is a gateway for other response mechanisms crucial to an effective effort against hate crime. When police departments initiate data collection efforts, it is frequently accompanied by new policies and investigative guidelines, training, support mechanisms for victims and enhanced inter-agency coordination. State and local officials who only a few years ago were unaware of their hate crime problem now have systems to not only identify cases, but respond effectively to them. Obviously, data collection is a linchpin in any effective response.

This system of national data collection has also established hate crime as a priority for law enforcement. Official recognition of these offenses by the FBI has prompted police agencies throughout the nation to confront the problem of hate crime in their communities. As a direct result of the HCSA federal authorities have made comprehensive training materials and seminars available to law enforcement officers throughout the country.

The symbolic significance of this statute has had a ripple effect well beyond the law enforcement community. State legislatures, armed with hard data relating to hate crime levels in their states, have enacted new legislation. The number of local

prosecutors assigned hate crime cases has grown substantially since the HCSA's initial enactment. After the problem of hate crime was exposed by the data, many community groups and victim service organizations were established to serve as a bridge between police and victims. In short, the HCSA has been a catalyst for the formation of a broad response by a network of public and private agencies.

While important reforms have been implemented as a result of this legislation, much more has to be accomplished. Many states fail to actively participate in the FBI's voluntary data collection effort. In 1994 fifteen states either reported under ten hate crimes or did not participate in the program at all. Of the 16,000 police agencies in the United States, only 7,298 participated in the hate crime data collection program. Out of those, only 1,150 actually submitted incidents to the FBI.

The most important and immediate thing Congress must do is to give a permanent mandate to the HCSA. A permanent mandate will give stability to the program and will encourage continuing compliance from police. Indeed, the lack of a permanent mandate sends a signal to police that they need not participate in this important program.

In addition Congress should take other steps to guarantee the meaningful collection of hate crime data in the United States. The minimal funding for the highly effective, but small federal training programs on hate crime established for state and local law enforcement by the FBI and the Federal Law Enforcement Training Center should be increased. Training for line officers is essential, and there is compelling evidence that most officers are vastly undertrained to respond appropriately. A Northeastern University study by Prof. Jack McDevitt, an FBI consultant, indicated that up to 95 percent of hate crime cases are misidentified by responding police officers. Funding should also be made available for a study to examine why compliance among police departments varies so greatly. After completion of this study, Congress should consider making participation in the collection of hate crime data mandatory for state and local agencies.

Congress also should fund a comprehensive victimization survey on hate crime. Victimization surveys complement standard police reporting programs because they enumerate many crimes not reported to police. These phone surveys typically ask a specially selected set of respondents to describe the circumstances of any criminal victimization they have encountered during a given period of time.

Because victimization surveys encompass both reported and unreported incidents, they are particularly useful in assessing the overall prevalence of crimes with low reporting rates such as hate crime. Research indicates that the majority of hate crime cases are not reported to police by victims. For example, a multi-site study published in *Hate Crimes: Confronting Violence Against Gay Men and Lesbians* indicates that underreporting of hate crime by victims in the gay community is between 66 and 92 percent. The Bureau of Justice Statistics conducts a comprehensive annual survey of 60,000 households called the National Crime Victimization Survey (NCVS), but it does not inquire about hate crime. Because hate crimes are less common than the other types of crime encompassed in the NCVS, a victimization survey relating to hate crime would require a larger sample than the one currently used. Therefore, Congress should fund a separate larger victimization survey that specifically targets hate crime.

Congress should require hate crime data collection for America's armed forces as well. There are currently about 1,500,000 Americans under military authority in the armed services, and Klanwatch has tracked numerous bias motivated murders and assaults involving active duty military personnel. Congress should amend the Uniform Code of Military Justice to institute a hate crime reporting program that covers those crimes involving bias relating to race, religion, national origin, sexual orientation, and disability.

Lastly, Congress should ensure that information relating to a person's undocumented, sexual orientation or disability status received by authorities through the reporting of a hate crime is barred from introduction against that individual in deportation proceedings or military court martial or discharge proceedings. We include disability status here because among other reasons, it would cover those with AIDS who currently face discharge from military service. The reporting of hate crime by victims should be encouraged by government authorities, not punished by them.

Demographic changes, economic uncertainty, a sharp increase in youth violence, and the continuing prevalence of hateful stereotypes will result in large numbers of hate crimes in the United States for the foreseeable future. If we are going to respond to this threat effectively, we must have accurate information on the scope of the problem. The enactment of a permanent mandate for the HCSA and the implementation of the other steps outlined in this testimony will not completely eradicate hate violence from our society, but they will help us understand and respond to the problem.

FBI Reports Decline In Hate Crime In 1994

■ The number of hate crimes in the United States declined drastically in 1994 according to preliminary FBI figures released in October. Experts caution, however, that because of poor cooperation from many law enforcement agencies and victim underreporting the actual number of cases far exceed those reported to the FBI.



In Arkansas, for example, 189 agencies participated in the FBI's program, but only six agencies actually reported hate crime incidents. Police reported only nine incidents in the entire state in 1994. By contrast, New York State's 911 incidents reflect a reporting rate 14 times higher than Arkansas when adjusted for population differences.

According to the FBI's preliminary report the total number of hate crimes reported by police declined from 7,587 in 1993 to 5,852 in 1994. Agencies participating in the hate crime reporting program covered only 58 percent of the U.S. population compared to 97 percent for the overall crime reporting system.

Incomplete Compliance From Police

"While the FBI has made a substantial effort to compile bias crime data, the lack of cooperation from individual police agencies results in significant underreporting of these incidents," said Klanwatch Associate Director Brian Levin. Out of the 16,000 law enforcement agencies in the United States, only 7,300 participate in the hate crime reporting program and only 1,150 actually identified incidents in their jurisdiction. "Over half of the departments do not participate at all, and many that do participate merely send in a form stating no incidents took place," Levin said.

Victim Underreporting

Victim underreporting also contributes to an undercount of hate crime incidents. A Prejudice Institute study revealed that most hate crime victims did not notify authorities until they had been victimized several times. Recent comprehensive studies revealed that between 66 to 92 percent of gay hate crime victims failed to report incidents to police. The most common reasons for victim underreporting are fear of retaliation, embarrassment, privacy concerns, and distrust of authorities.

While there was a small decrease in the number of police agencies submitting incidents to the FBI, other factors probably contributed to last year's overall decline in hate crime. These factors include: a decrease in crime generally; heightened enforcement of hate crime laws; a decrease in the proportion of young people who, as a group, are most likely to commit hate crimes; an improved economy; and the absence of a major trigger incident like the Rodney King beating verdict.

Bias motivated homicides declined from 16 in 1993 to 13 last year. Bias aggravated assaults were down from 1452 in 1993 to 998. The decrease in hate crime comes at a time when the overall violent crime rate is in decline as well. For example, for the first six months of 1994 murders were down by 5 percent, while aggravated assaults were down by 2 percent.

The breakdown of hate crime reported to the FBI in 1994 by type of bias was:

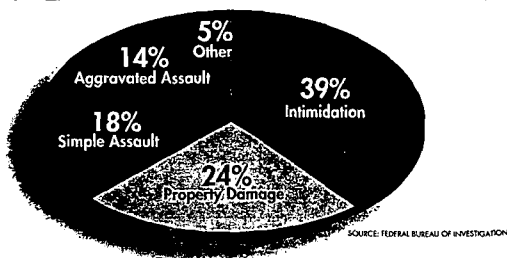
RACIAL	60%
RELIGIOUS	18%
ETHNICITY	11%
SEXUAL ORIENTATION	12%

Report Yields Important Results

Although agency participation could be better, the reporting program has yielded important results, Levin said. First, many departments implemented new hate crime policies as a direct result of the FBI's program. Second, the data provide important information to police and policy makers about hate crime victims and offenders and the circumstances under which these crimes take place. Third, through the FBI's efforts thousands of agencies have received training and guidance in identifying and responding to hate crime.

The FBI has compiled hate crime statistics pursuant to the 1990 Hate Crime Statistics Act. Although the Act required the Attorney General to collect data on hate crime only through 1995, the FBI has made hate crime data collection a permanent part of its crime reporting system. •

1994 Bias Incidents by Type of Offense



Resources

Other sources of information on hate crime data collection are:

- Hate Crime Statistics, 1990: A Resource Book, FBI (1992)
- Hate Crime Data Collection Guidelines/Training Guide, FBI (1991)
- Hate Crime Summary 1993, FBI (1995)
- Fernandez, J., Bringing Hate Crime Into Focus-The Hate Crime Statistics Act of 1990, Harvard Civil-Rights-Civil Liberties Law Review, Vol. 26, #1, p.261.

PREPARED STATEMENT OF KAREN K. NARASAKI, EXECUTIVE DIRECTOR, NATIONAL
ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

The National Asian Pacific American Legal Consortium is a nonprofit, non-partisan organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans across the country. The Consortium is submitting this testimony, for the record, on the reauthorization of the Hate Crime Statistics Act of 1990.

First, the Consortium commends the Chairperson, and the 30 cosponsors of this legislation for their leadership and genuine concern about an issue that threatens the wellbeing of all Americans.

The proposed legislation, as we understand it, would effectively reauthorize the Hate Crime Statistics Act of 1990 by striking the expiration date or "sunset" provision in the law. The Consortium absolutely supports this legislation which gives a permanent mandate to the Hate Crime Statistics Act. The continued collection of hate crime statistics is invaluable to law enforcement agencies and public policy makers for the development of effective methods to combat and deter hate crimes.

Although the Hate Crimes Statistics Act creates no rights or causes of action, the data collection that it authorizes is vital. More importantly, the Act provides incentive for law enforcement agencies to become trained to identify and address such crimes.

Addressing hate crimes is a priority for the Consortium. We produce an Annual Audit of Violence Against Asian Pacific Americans. The first Audit, issued in 1994, showed that almost one hate incident per day was perpetrated against Asian Pacific Americans in 1993. The second Audit, issued in 1995, showed a 35 percent increase in the number of reported incidents (from 335, in 1993, to 452 in 1994). Furthermore, there was an increase in the number of anti-Asian violence where racial motivation was proven. In 1994, almost 90 percent of the incidents were proven to be racially motivated as compared to 1993 where less than half of the incidents were proven to be motivated by race. This increase, the Consortium concluded, was due in large part to increased reporting by law enforcement agencies in 1994.

It is important to note that the number of incidents in the annual Audits represent only those that are reported, and not the actual number of hate crimes that occur. Undoubtedly the actual number of incidents is greater. Therefore, efforts must also be made to provide incentives for law enforcement agencies to participate in identifying and reporting hate crimes.

There is considerable evidence that with minimal incentives such as Federal training, matching funds or seed grants, local law enforcement agencies will be more likely to participate in the reporting program. The Consortium has always advocated that the Hate Crimes Statistics Act be reauthorized, fully implemented, and fully funded. The Act is a catalyst in encouraging local law enforcement to monitor hate bias incidents and to train police and judicial officials in identifying and responding appropriately when they occur, but without federal financial assistance in most instances, that work will not take place.

Furthermore, the Consortium, in its 1994 Audit, identified anti-immigrant sentiment as a motivation in a significant number of the reported hate incidents. For example:

- An Asian American man was stabbed by a white man in Sacramento, California. The attacker explained that he was acting "to defend our country."
- A White man attacked an Asian American man with a bat while yelling, "You're in my country—Get out!" "Go back to your country, this is America."
- An Indian American student in Pennsylvania was assaulted by a group of white youths who were yelling "Go home, f***ing Iranian, you f***ing Asian sh*t, go home foreigner."

Accordingly, the Consortium also recommends that the definition of a hate crime be expanded to include "immigrant status." This amendment will make both the public and public officials more aware of the consequences of irresponsible statements and policies targeted at the immigration status of persons.

In conclusion, Mr. Chairperson, the Consortium fully supports your efforts to reauthorizing the Hate Crime Statistics Act. There is no room in America for crime motivated by prejudice and bias. The Hate Crimes Statistics Act is still necessary as one tool to assist us in addressing this terrible problem.

Thank you.

COVINGTON & BURLING

**THE D.C. BIAS-RELATED CRIME ACT:
AN UNUSED WEAPON IN THE FIGHT AGAINST VIOLENT CRIME**

A report prepared for the

Asian Pacific American Bar Association
of the Greater Washington, D.C. Area

by

COVINGTON & BURLING
Washington, D.C.

February 10, 1994

**THE D.C. BIAS-RELATED CRIME ACT:
AN UNUSED WEAPON IN THE FIGHT AGAINST VIOLENT CRIME**

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February 10, 1994

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Dear Ivan:

Attached is Covington & Burling's report on the D.C. Bias-Related Crime Act, D.C. Code § 22-4001 et seq., which increases by a factor of 1½ the maximum penalty for the commission of a "bias-related" criminal act -- defined to be a criminal act that "demonstrates an accused's prejudice." Although the statute became effective almost four years ago, prosecutions under the statute appear to be quite infrequent. As a consequence, the Asian Pacific American Bar Association has requested that Covington & Burling study the statute's appropriate implementation. This report responds to that request.

As is set forth in greater detail in the report, no legal barriers exist to implementation of the D.C. statute. That statute enhances the penalty for criminal acts motivated, in whole or in part, by bias. The increased punishment of bias-motivated crimes is clearly constitutional, and similar statutes directed against such crimes have been enacted by numerous jurisdictions, which statutes provide substantial guidance regarding the appropriate implementation of the D.C. statute. From the above, we have reached the following conclusions:

- The D.C. statute enhances the penalty for criminal acts that are motivated, in whole or in part, by prejudice. The relevant element to render a crime "bias-related"

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is whether the victim was selected on account of his or her specified characteristic (such as race, color, religion, national origin or sex), not whether the defendant expressed bigotry during the commission of the act.

- A criminal act need not be committed solely as a result of prejudice against the victim in order to be "bias-related." Instead, all that is required is that a victim's race or other specified characteristic be a substantial factor in his or her selection. This may be shown, for example, by introducing evidence of the defendant's pattern of selecting victims of a particular race or other characteristic.
- Justifications proffered by a defendant for selecting crime victims on the basis of race or other characteristic provide the defendant with no defense to prosecution under the statute; there are no legitimate reasons for targeting members of a particular group as crime victims. Thus, for example, whether the defendant commits crimes against a particular group because he or she hates that group or because he or she simply believes that members of that group constituted "easy targets," the defendant's crimes are bias-related.

In the light of the foregoing, it is clear that crimes deliberately targeted against Asian Pacific American merchants are bias-related. A defendant who repeatedly commits robberies against such merchants may be prosecuted under the D.C. statute even though the defendant is motivated by greed and selects Asian Pacific American merchants as crime victims simply because he or she believes that language or other barriers may hamper law enforcement response. Evidence of hatred is not necessary; ethnic or other targeting is sufficient to support bias-related penalty enhancement.

Finally, it is worth noting that it is law enforcement officials, and not the individual victims, who are in the best position to determine, from the pattern of a defendant's crimes, when the victims were selected on account

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of their race or other characteristic. For this reason, increased attention by law enforcement officials may be necessary to implement the D.C. Bias-Related Crime Act. Nevertheless, this increased attention is warranted if the promise of that Act -- that no member of our community is to be viewed as an "easy target" because of his or her race or other characteristic -- is to be made real.

Sincerely yours,



Christopher Sipes

**THE D.C. BIAS-RELATED CRIME ACT:
AN UNUSED WEAPON IN THE FIGHT AGAINST VIOLENT CRIME**

Executive Summary

The D.C. Bias-Related Crime Act of 1989, D.C. Code § 22-4001 et seq., increases the penalty for criminal acts that demonstrate an accused's prejudice based on the victim's race or other specified characteristic. Although the Act was enacted almost four years ago, it has apparently never been applied.

This report concludes that there are no significant legal barriers that impede implementation of the Act. The Act should be used to enhance the penalty for criminal acts in which the race (or other specified characteristic) of the victim is a substantial factor that motivated the accused's selection of his or her victim. Thus, for example, the Act's penalty enhancement provisions should apply to crimes in which a defendant targets his or her victim in substantial part because the victim is an Asian Pacific American.

I. INTRODUCTION

The D.C. Bias-Related Crime Act of 1989 ("Act" or "D.C. Act") provides that any person found guilty of a "bias-related crime" shall be subject to an enhanced penalty of up to 1½ times the maximum penalty authorized for the underlying crime. See D.C. Code § 22-4003.

The Act in turn defines a "bias-related crime" as a "designated act" that "demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibility, physical handicap, matriculation, or political affiliation of a victim of [the designated act]." D.C. Code § 22-4001(1) (emphasis

added).^{1/} The full text of the Act, as codified, is attached to this report at tab A.

Although the Act has been in effect since May 8, 1990, there have been no reported court decisions involving the statute, and it appears that few defendants have been prosecuted for committing a bias-related crime. In light of recent violent crimes committed against Asian Pacific American merchants in the District of Columbia and elsewhere,^{2/} the Asian Pacific American Bar Association of the Greater Washington, D.C. Area commissioned this report to review the D.C. Bias-Related Crime Act and to assess whether and to what extent the Act might be used to combat such incidents of violent crime.

This report concludes that there are no significant legal barriers to implementation of the D.C. Bias-Related Crime Act. Although the D.C. courts have not yet construed the Act, the Act's text and legislative history make clear that its provisions apply to crimes in which a defendant deliberately selects his or her victim at least in substantial

^{1/} The Act defines a "designated act" to mean "a criminal act," including the crimes of arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit any of the above crimes. See D.C. Code § 22-4001(2).

^{2/} See, e.g., Korean Student Dies of Gunshot Wound, Wash. Post, Oct. 30, 1993; Investigation is Sought in Shooting, Wash. Post, Oct. 28, 1993, at C6. See generally An Increasing Sense of Vulnerability, N.Y. Times, Dec. 3, 1993, at B1.

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part because of the victim's race or other specified characteristic. So construed, there are no constitutional barriers to prosecution under the statute.

The lack of interpretative caselaw for the Act should not hamper the selection of cases for prosecution or otherwise impair full and effective implementation of the statute. The U.S. Department of Justice has issued guidelines for the identification of bias-crimes under a similarly-worded data collection statute. These guidelines (discussed below and attached to this report at tab B) should be used to identify bias-related crimes under the Act. In addition, the Act is similar to, and derived from, a model statute enacted in more than half the States. Accordingly, judicial decisions that construe those statutes should provide substantial guidance in applying the Act in the District.

Finally, this report concludes that the D.C. Bias-Related Crime Act is applicable to crimes in which Asian Pacific American merchants have been targeted. Although such crimes may be committed in part for monetary gain, the Act's enhanced penalty provisions may be imposed if the victim of the crime was deliberately selected at least in substantial part because he or she was Asian Pacific American. Because identification of crimes targeting Asian Pacific American merchants may require review of the pattern of a particular defendant's prior crimes, prosecution of such crimes as bias-

related crimes will require a greater commitment of police and prosecutorial resources to the investigation of such crimes.

II. DISCUSSION

A. Interpreting D.C.'s Bias-Related Crime Act

As noted above, the Act does not independently make criminal any particular course of conduct. Instead, the statute enhances the penalty for the commission of criminal acts if the act "demonstrates an accused's prejudice" based on the victim's race or other specified characteristic. See D.C. Code §22-4001(1); see also D.C. Code § 22-4003 (providing that the maximum penalty for the commission of a bias-related crime is 1½ times the maximum penalty for the underlying criminal act). The central issue in interpreting the Act is therefore whether a particular act "demonstrates an accused's prejudice" based on the victim's race or other specified characteristic.

The most natural reading of this phrase, as the text and legislative history of Act indicate and as authoritative interpretations of similarly worded statutes suggest, is that an act "demonstrates an accused's prejudice" if it is motivat-
ed (at least in substantial part) by an accused's prejudice. In other words, a crime is "bias-related" when it is committed because of the victim's actual or perceived race or other specified characteristic. As discussed below, this construction is not only the most appropriate interpretation of the statutory language, it is also most in accord with the legis-

lative history of the Act and with constructions of similarly worded statutes in other jurisdictions.

1. Statutory Language

The statutory language of the D.C. Act requires that the criminal act itself "demonstrate" the accused's prejudice; it is neither necessary nor sufficient that the accused "demonstrate" (verbally or otherwise) prejudice during the commission of the crime.^{1/} This distinction is significant, because a person's conduct demonstrates that person's mental state when the conduct is caused by that mental state. See, e.g., Note, Hate Is Not Speech: A Constitutional Defense of Penalty Enhancement for Hate Crimes, 106 Harv. L. Rev. 1314, 1327 (1993) (arguing that, for a defendant's beliefs to be relevant to his crime, "the culpable thought must be causally linked to the crime"). Thus, the statutory requirement that the criminal act, rather than the defendant, demonstrate the defendant's prejudice is most naturally construed to require that the criminal act be caused by the defendant's prejudice.

^{1/} See Woolfork v. State, 623 So. 2d 823, 824 (Fla. Dist. Ct. App. 1993) (drawing such a distinction with regard to a Florida statute enhancing the penalty for criminal acts "evidenc[ing] prejudice" and reversing a conviction where the charging document and verdict form requested the jury to find the defendant "guilty of . . . evidencing prejudice based upon race of the victim"); Dobbing v. State, 605 So. 2d 922, 923 (Fla. Dist. Ct. App. 1992) (construing the same Florida statute to require that "the commission of the crime . . . must evidence the prejudice; the fact that racial prejudice may be exhibited during the commission of the crime is itself insufficient"), review granted, 613 So. 2d 3 (Fla. 1992).

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Another possible construction -- that an act "demonstrates the accused's prejudice" if the act expresses the defendant's prejudice -- is not an appropriate construction of the statutory language. Acts that demonstrate prejudice are distinct from acts that express prejudice. For example, the consistent targeting of African-American victims by a white burglar might, if motivated by prejudice, demonstrate the burglar's prejudice, even though the underlying acts are non-expressive. By contrast, a writer who publishes racist tracts solely from mercenary motives expresses prejudice even if the writer herself is not prejudiced. Because of this distinction, interpreting the Act to enhance the penalty for acts that merely express prejudice (without being motivated by prejudice) is not faithful to the plain language of the statute. See Dobbins v. State, 605 So. 2d 922, 923 (Fla. Dist. Ct. App. 1992).^{4/}

^{4/} In addition, construing the Act to apply to crimes that express prejudice raises First Amendment concerns. See generally R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992). The government is ordinarily forbidden from targeting the expressive component of conduct that it may otherwise regulate. See, e.g., Texas v. Johnson, 491 U.S. 397, 406-07 (1989) (holding that, although burning a flag in violation of an ordinance against outdoor fires could be punished under the First Amendment, burning a flag in violation of an ordinance against dishonoring the flag could not); see also United States v. O'Brien, 391 U.S. 367, 376-77 (1968). In light of the general rule of statutory construction favoring interpretations that avoid constitutional difficulties, see, e.g., Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975), the D.C. Bias-Related Crime Act should not be construed to enhance the penalties against criminal acts that express prejudice, but are not motivated by prejudice.

2. Legislative History

Interpreting the D.C. Bias-Related Crime Act to require a causal relationship between the accused's prejudice and the criminal act is also in accord with the legislative history of the Act. In support of the Act's enactment, the Mayor's Office stated that "[i]t is our understanding that the intent of [the criminal provisions] of this Bill is to enhance the criminal penalties for a crime when the crime is committed because of prejudice based upon the victim's race [or other specified characteristic]." Report to the Council of the District of Columbia on Bill 8-168 from the Committee on the Judiciary, Attachment III (testimony of Inspector David W. Bostrom of the D.C. Metropolitan Police Department on behalf of the Executive Branch) (emphasis added).

Similarly, the Judiciary Committee, in its report to the City Council, stated that the need for the statute arose from "an alarming increase in crimes motivated by bigotry and prejudice in the District." Id. at 2 (emphasis added). These statements strongly suggest that the D.C. Council in drafting and enacting the Act intended to enhance the penalties for crimes committed because of prejudice or motivated by prejudice.

3. Interpretations of Similar Statutes

In addition, interpreting the D.C. Act to cover acts that are motivated by prejudice is most consistent with the constructions given similarly worded statutes elsewhere. For

example, the Federal Hate Crimes Statistics Act ("FHCSA") requires the U.S. Department of Justice ("DOJ") to collect statistics on the incidence of "crimes that manifest evidence of prejudice." Pub. L. No. 101-275 § b(1), 104 Stat. 140 (codified at 28 U.S.C. § 534 note). The legislative history of the FHCSA suggests that this language was intended to target crimes caused by prejudice, see, e.g., 134 Cong. Rec. 11,398 (1988) (statement of Rep. Kennelly) (stating that the FHCSA "requires the Justice Department to collect data on the incidence of crimes motivated by prejudice"), and it has been so construed by the DOJ, see U.S. Department of Justice, Hate Crime Data Collection Guidelines 4 (defining a bias crime under the FHCSA to be a "criminal offense . . . which is motivated, in whole or in part, by the offender's bias") (hereinafter "DOJ Data Collection Guidelines") (attached at tab B). In light of the similarity in statutory language between the D.C. Act and the FHCSA, this construction of the federal act is strong support for a similar construction of the D.C. Act. See In re R.F.H., 354 A.2d 844, 847 (D.C. 1976) (relying on construction of similar statutes in other jurisdictions in construing D.C. enactment).

Support may also be found in the Florida courts' construction of that State's bias-crime statute, which enhances the penalty for certain crimes "if the commission of such [crime] evidences prejudice," Fla. Stat. § 775.085(1). In Dobbins, the Florida District Court of Appeals rejected an

interpretation of this statute that permitted conviction for crimes during which the defendant expressed prejudice, adopting instead an interpretation that required a causal link between the defendant's prejudice and the crime's commission. See 605 So. 2d at 923. The court noted that the latter construction was most consistent with the statute's requirement that the commission of the crime itself evidence the prejudice. See id. In addition, the court noted the parallel to federal anti-discrimination laws. Such laws, stated the court, do not target the expression of bigotry, but rather the "act of discrimination." Id. at 925. The court concluded that the bias-crime statute had a similar purpose -- "to discourage through greater penalties the discrimination against someone (by making such person the victim of a crime) because of race, color, or religion." Id. Such reasoning is equally applicable to the D.C. statute.

B. Constitutional Issues

1. First Amendment

Construed to target bias-motivated crimes, the D.C. Bias-Related Crime Act does not violate the First Amendment. In a recent case, the U.S. Supreme Court unanimously rejected a First Amendment challenge to the imposition of an enhanced penalty for a crime in which the victim was intentionally selected on the basis of race. See Wisconsin v. Mitchell, 113 S. Ct. 2194, 2196 (1993). The Court noted at the outset that the statute in question did not target expression, because

only criminal actions motivated by racial or other animus were regulated, and because such actions do not constitute expressive conduct. See id. at 2199, 2201. Instead, the Court reasoned that whatever First Amendment problems presented by the statute arose from the fact that the penalty enhancement was triggered solely by a defendant's motive for acting, thereby implicating thoughts and beliefs protected by the First Amendment. See id. at 2200-01.

Although the Court recognized the potential for intrusion on First Amendment concerns by statutes targeting thought, it held that the penalty enhancement at issue did not rise to the level of a constitutional violation. The Court observed that a defendant's motive for committing a criminal act is traditionally considered in sentencing, see id. at 2199, and concluded that it was constitutionally permissible for the defendant's thoughts to form the basis for an enhancement of his punishment if those thoughts were relevant to a legitimate sentencing concern, see id. at 2200. It then held that bias motivation was relevant to a legitimate sentencing concern, both because of the state and federal policy condemning discrimination and because a State could reasonably conclude that bias-motivated crimes inflict greater individual and societal harm than other crimes. See id. at 2200-01.

If the D.C. Act is construed to enhance the penalty for crimes motivated by prejudice based on the race or other specified characteristic of the victim, then it is not materi-

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ally distinguishable from the statute upheld in Mitchell. The Act, so construed, does not target expression, and consideration of bias-motivation is an accepted and relevant sentencing factor, for "bias-inspired conduct . . . is thought to inflict greater individual and societal harm" as a result of the fact that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest." Id. at 2201. Indeed, in the aftermath of Mitchell, bias-crime penalty enhancement statutes have been upheld in numerous States. See e.g., In re M.S., 22 Cal. Rptr. 2d 560, 568 (Cal. Ct. App.), review granted, 24 Cal. Rptr. 2d 560 (1993); People v. Richards, No. 138994, 1993 Mich. App. LEXIS 425, at *2 (Mich. Ct. App. Nov. 2, 1993); State v. Ladue, 631 A.2d 236 (Vt. 1993); State v. Talley, 858 P.2d 217, 224 n.2 (Wash. 1993). The D.C. statute is equally constitutional.

2. Vagueness

A criminal statute may violate due process if it "fail[s] to provide fair warning of what is prohibited and invit[es] capricious and arbitrary enforcement by public officials." Leiss v. United States, 364 A.2d 803, 806 (D.C. 1976), cert. denied, 430 U.S. 970 (1977). A statute that enhances a criminal penalty when a defendant targets her victim based on race or other specified characteristic, however, does not violate these precepts and thus is not unconstitutionally vague. See, e.g., People v. Superior Court

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(Aishman), 22 Cal. Rptr. 2d 311, 319-20 & n.14 (Cal. Ct. App.), review granted, 24 Cal. Rptr. 2d 663 (1993); Dobbins, 605 So. 2d at 923.

For this reason, the D.C. statute is not impermissibly vague, despite its arguably ambiguous application to criminal acts that "demonstrate an accused's prejudice." D.C. Code § 22-4001(1). As described above, the statutory language and legislative history make clear that this phrase should be construed to apply to criminal acts motivated by prejudice against the victim's characteristics. So interpreted, the Act is not vague. See Matter of A.B., 395 A.2d 59, 62 (D.C. 1978) (rejecting vagueness challenge because "the statutory language and history, taken together, provide potential defendants with sufficient notice and police and courts with adequate standards concerning what conduct is proscribed"); cf. Walton v. Arizona, 497 U.S. 639, 654 (1990) (holding that the vagueness of a sentencing enhancement should be judged as construed by the state courts rather than as written); Wainwright v. Stone, 414 U.S. 21, 22-23 (1973) (per curiam) ("For the purpose of determining whether a state statute is too vague and indefinite to constitute valid legislation 'we must take the statute as though it read precisely as the highest court of the State has interpreted it'") (citation omitted).^{5/}

^{5/} Although one Florida court has limited Florida's similarly worded bias-crime statute to apply to crimes moti-
(continued...)

C. Guidelines for Implementing the Act

1. Sources of Guidance

Although the D.C. Bias-Related Crime Act has apparently never been construed by the D.C. courts, this interpretive void does not prevent identification of cases suitable for prosecution under the Act or otherwise hinder implementation of the Act. The problem of bias-related crimes is nationwide, and there are numerous statutes in other jurisdictions that target similar such crimes. The experiences of these other jurisdictions provide highly relevant guidance for effective implementation of the D.C. Act.

Most helpful in this regard is the Federal Hate Crimes Statistics Act ("FHCSA"), Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534 note). The FHCSA requires the DOJ to collect data on the incidence of crimes "that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Pub. L. No. 101-275

^{5/}(...continued)

vated by prejudice, see Dobbins, 605 So. 2d at 923, another Florida court declined to adopt such a limiting construction and struck down the statute as unconstitutionally vague. See Richards v. State, 608 So. 2d 917, 921-22 (Fla. Dist. Ct. App. 1992). That decision, however, provides no basis for challenging the D.C. statute. The Richards court reasoned that so construing the statute would invade the province of the legislature. See 608 So. 2d at 922. That reasoning is inapplicable to the D.C. statute, because both the statutory language and the legislative history of the Act strongly support such a motivation-based construction. It is accordingly well within a court's power to so construe the Act. Cf. In re W.L., 603 A.2d 839, 842 (D.C. 1991) (stating that when the language of a statute is ambiguous or unclear, courts may construe the statute in accordance with the legislative history).

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§ b(1). Moreover, the DOJ is also charged by the statute with establishing guidelines for identifying when criminal acts "manifest prejudice." Pub. L. No. 101-275 § b(2) (providing that "[t]he Attorney General shall establish guidelines for the collection of such data [regarding the incidence of bias crimes] including the necessary evidence and criteria that must be present for a finding of manifest prejudice"); see DOJ Data Collection Guidelines, supra (attached at tab B).

The federal guidelines provide appropriate and readily available direction for identifying bias-related crimes under the D.C. Act.^{6/} The FHCSA requirement that a crime "manifest evidence of prejudice" is not meaningfully different from the D.C. Act's requirement that the crime "demonstrate prejudice." As discussed above, both statutes target criminal offenses motivated by an accused's prejudice. Moreover, the same agency that is responsible for administering the FHCSA and that promulgated the FHCSA guidelines (namely, the DOJ) is also responsible for bringing prosecutions under the D.C. Act. In light of these commonalities, the DOJ guidelines, which set forth the "necessary evidence and criteria" for identifying bias-crimes under the FHCSA, should be used (aside from the necessary modifications to

^{6/} Although the D.C. Act's provisions are triggered by a wider range of bias-related characteristics than those under the FHCSA, that difference should not impair reliance on the DOJ's data collection guidelines under the FHCSA.

account for the higher, criminal burden of proof) to identify bias-related crimes under the D.C. Act.

Also helpful in implementing the D.C. Act is the fact that that statute is similar in purpose, structure, and origin to the bias-crime statutes of numerous states. Most bias-crime statutes, including the D.C. Act, prescribe heightened penalties when certain crimes, independently punishable under other penal code provisions, are committed because of the victim's race, color, religion, ethnicity, or other characteristic. See Note, Hate Is Not Speech: A Constitutional Defense of Penalty Enhancement for Hate Crimes, 106 Harv. L. Rev. 1314, 1315 (1993).^{2/} As a result of this common focus on causality, implementation of the D.C. Act should be guided in substantial part by the prior interpretation of other, similar state statutes. Cf. In re R.F.H., 354 A.2d 844, 845 (D.C. 1976) (noting usefulness of relying on similar statutes of other jurisdictions).

2. Identification Of Bias-Related Crimes

Two primary issues arise in identifying bias-related crimes suitable for prosecution under the D.C. Act. The first issue is the degree to which prejudice must cause the commis-

^{2/} This similarity reflects in part the degree to which these statutes have been based on the model Bias-Motivated Violence and Intimidation Statute proposed by the Anti-Defamation League of B'Nai B'rith ("ADL") in 1988. See Mueller, Comment, Can Motive Matter? A Constitutional and Criminal Law Analysis of Motive in Hate Crime Legislation, 61 UMKC L. Rev. 619, 620 (1993); ADL Legal Affairs Department, Hate Crimes Statutes: A 1991 Status Report 4 (1991) (providing text of model statute).

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sion of the crime. The second relates to the sort of evidence relevant to an inquiry into whether a crime is bias-motivated. Both these issues may be readily resolved, and neither should hamper implementation of the D.C. Act.

a. Degree of bias-motivation

As discussed above, the D.C. Act enhances the penalty for the commission of certain crimes if the crime is committed because of the race or other specified characteristic of the victim. Crimes, however, are seldom committed for a single, pure motive; rather, they ordinarily originate from a mix of motives, only one of which may be prejudice against the victim. Accordingly, the question arises whether, if the defendant's prejudice is only a partial cause, the crime may be prosecuted as bias-related.

The interpretation most consistent with the purpose and legislative history of the Act, and most in accord with judicial interpretations of similar statutes in other jurisdictions, is that a crime is "bias-related" as long as it is motivated at least in substantial part by the race or other specified characteristic of the victim.

At the outset, the Act should not be interpreted to require that prejudice be the sole cause of the crime, for such a narrow interpretation would effectively nullify the Act. That interpretation would place on the government the nearly impossible task of demonstrating that the defendant had no other motive of any kind. Indeed, it is for this reason

that courts have generally disfavored sole-cause requirements. See, e.g., United States v. Vest, 639 F. Supp. 899, 904 (D. Mass.) (rejecting a "sole purpose" construction of the federal wire-tapping statute), aff'd, 813 F.2d 477 (1st Cir. 1986).

Moreover, a requirement that prejudice be the "sole" or even a "primary" cause of the crime should be rejected as contrary to the anti-discrimination origins of bias-crime statutes and as inconsistent with the construction of other, similar statutes and with the history of the D.C. Act. Numerous courts have noted that bias-crime statutes parallel federal and state laws condemning discrimination. See, e.g., Mitchell, 113 S. Ct. at 2200 (stating that "motive plays the same role under the Wisconsin [bias-crime] statute as it does under federal and state antidiscrimination laws"); Dobbins, 605 So. 2d at 925 (drawing an analogy between the state bias-crime statute and Title VII). This common anti-discrimination principle is not confined merely to condemning those actions based primarily upon race or other suspect characteristic but rather declares that such characteristics are irrelevant and should not be considered at all. See Price Waterhouse v. Hopkins, 490 U.S. 228, 239-41 (1989) (plurality opinion). Applying the D.C. Act to only those crimes primarily motivated by prejudice would unjustifiably restrict its underlying anti-discrimination purpose.

Moreover, imposition of a primary motive requirement on bias crime statutes has been uniformly rejected by those

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courts and law enforcement bodies that have considered the issue. The D.C. Metropolitan Police Department, for example, reports a crime as "bias-related" under the D.C. Act if "sufficient objective facts [are] present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias." Metropolitan Police Department, Special Order 92.5: Reporting and Investigating Offenses Relative to the "Bias-Related Crime Act of 1989" 2 (May 11, 1992) (emphasis in original) (attached at tab C). The DOJ construes the FHCSA identically. See DOJ Data Collection Guidelines, supra, at 2 ("sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias"). And California courts have refused to limit the application of California's bias-crime statute to instances where there is "a clearly overriding motive," holding instead that "the prosecution's burden is met if the state produces evidence from which it may be reasonably inferred that the victim's status was a substantial factor in the actor's selection of him or her." People v. Superior Court (Aishman), 22 Cal. Rptr. 2d 311, 319 (Cal. Ct. App.) (emphasis added), review granted, 24 Cal. Rptr. 2d 663 (1993).

Limiting the D.C. Act to crimes "solely" or "primarily" caused by prejudice would also be contrary to the legislative history of the Act. The Committee Print of the Bias-Related Crime Bill, when the bill was returned to the City

Council from the Judiciary Committee, defined a "bias-related crime" as "a separate element of a [criminal] act that is proven and found to be based primarily upon race [or other specified characteristic]." Report to the Council, supra, Attachment II, at 1-2 (emphasis added); see also id. at 2 (reporting that the bill defines "bias-related crime" as "a criminal act which is based primarily upon race [etc.]"). Prior to the statute's enactment, however, the requirement that the crime be primarily based on prejudice was deleted, and instead the statute merely requires that the crime "demonstrate prejudice." D.C. Code § 22-4001(1). Interpreting the D.C. Act to reinsert a primary cause requirement would be contrary to this history. See Price Waterhouse, 490 U.S. at 241 & n.7 (adopting a partial cause construction of Title VII's prohibition on employment decisions made "because of" sex, in part because "Congress specifically rejected an amendment that would have placed the word 'solely' in front of the words 'because of'"). Accordingly, the D.C. statute should be construed to require only that prejudice be a partial cause of the crime.

This conclusion does not completely resolve the mixed motive issue. A distinction still may need to be made between "but for" causes and "substantial" factors. See generally LaFave & Scott, Criminal Law § 3.12(b), 279-81 (2d ed. 1986). Although these two concepts will frequently prove identical, there may be occasions -- namely, when two causes,

each alone sufficient to bring about the result, operate together to cause it -- in which a "cause" may be a "substantial factor" in producing a result, even though the result would have occurred without the cause, thereby rendering it not a "but for" cause. See id. The law typically adopts the "substantial factor" test, at least in part to avoid an analysis in which a given result is determined to have no cause at all. See Price Waterhouse, 490 U.S. at 241. This is true both in the general criminal law, see LaFave & Scott, supra, § 3.12(b), at 280, and in civil rights law, see, e.g., Price Waterhouse, 490 U.S. at 240-41 (Title VII); Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977) (First Amendment). It has also been adopted in the bias-crime context. See Aishman, 22 Cal. Rptr. 2d at 319. For these reasons, the "substantial factor" test is the most appropriate one for the D.C. Act.

b. Relevant evidence

The type of evidence necessary to demonstrate that a crime is motivated by bias has also been widely discussed by courts and law enforcement officials addressing bias-crime statutes. Although typical bias-crime prosecutions rely on evidence of the defendant's expressions of prejudice to demonstrate bias-motivation, courts have emphasized the utility and sufficiency of non-expressive evidence to demonstrate motive. See, e.g., People v. Grupe, 532 N.Y.S.2d 815, 818 (N.Y. Crim. Ct. 1988) (stating that "[o]ne could violate

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this [bias crime] statute while remaining entirely mute"); State v. Plowman, 838 P.2d 558, 564 (Or. 1992) ("[w]hen the assailant has committed the act with the necessary intent, the assailant has committed the crime, whether or not the assailant spoke"), cert. denied, 113 S. Ct. 2967 (1993). This emphasis on non-expressive evidence, while not constitutionally required, see Mitchell, 113 S. Ct. at 2201-02, is significant because it reaffirms that motive, and not expression, constitutes the touchstone of the crime.^{8/}

Perhaps the most important type of non-expressive evidence discussed by the courts is pattern evidence. The Supreme Court of Oregon, for example, has emphasized that a defendant may be proven guilty of a bias crime on the basis of repeated selection of victims with the same suspect characteristic even if there is no other evidence of bias motivation. See Plowman, 838 P.2d at 564 (stating that "if the state showed that every Saturday night for two months the defendants traveled to an area with a large Hispanic population and assaulted a Hispanic person, the trier of fact could infer that the defendants intended to cause physical injury to the present victim because he is perceived to be Hispanic"). A number of other state courts, following Plowman, have endorsed

^{8/} Compare Gellman, Sticks and Stones Can Put You in Jail, But Can Words Increase Your Sentence? Constitutional and Policy Dilemmas of Ethnic Intimidation Laws, 39 UCLA L. Rev. 333, 359-60, 392-93 (1991) (describing constitutional and public policy challenge to the use of expressive evidence in bias-crime prosecutions) with Note, Hate is Not Speech, supra, 106 Harv. L. Rev. at 1318-19 (responding to Gellman).

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the use of such pattern evidence. See, e.g., In re Joshua H., 17 Cal. Rptr. 2d 291, 302 (Cal. Ct. App. 1993) (endorsing Flowman); State v. Talley, 858 P.2d 217, 228 (Wash. 1993) ("It is true that utterances by the defendant may offer circumstantial evidence of discrimination, but as with employment discrimination, victim selection can be shown by a pattern of conduct absent any speech"). The use of pattern evidence to demonstrate the bias-relatedness of a crime is also endorsed by both the DOJ and the D.C. Metropolitan Police Department. See DOJ Data Collection Guidelines, supra, at 3 (providing that, among the factors supporting a finding of bias are that "[s]everal incidents have occurred in the same locality, at or about the same time, and the victims are all of the same racial, religious, ethnic/national origin, or sexual orientation" and that "the offender was previously involved in a similar hate crime"); Special Order 92.5, supra, at 2 (factor supporting bias-relatedness is that "offender was previously involved in a similar hate crime").

D. Applying the Act to Combat Crimes Targeting Asian Pacific American Merchants

Recent violence in the District of Columbia has focussed attention on the targeting of Asian Pacific American merchants as the victims of robberies and other violent crimes. These merchants may be targeted for a variety of reasons, including a belief that they make easier targets as a result of language and cultural barriers that are perceived to hamper their ability to obtain the assistance of law enforce-

ment officials.^{2/} Whatever the reason for the targeting of Asian Pacific American merchants, however, criminal acts arising from such targeting may be punished under the D.C. Bias-Related Crime Act.

There is, of course, no "legitimate" basis on which to justify the deliberate selection of crime victims on the basis of race or other specified characteristic. Our Nation's commitment to eliminating discrimination is premised on the belief that characteristics such as race are irrelevant, see Price Waterhouse, 490 U.S. at 239, and that society is harmed whenever individuals are treated differently on such a basis, see, e.g., Karst, Why Equality Matters, 17 Ga. L. Rev. 245, 248 (1983) (arguing that the principle of equal citizenship is "presumptively violated when the organized society treats someone as an inferior, as part of a dependent caste, or as a nonparticipant"). The focus is on the unequal treatment and not the reasons therefor. See L. Tribe, American Constitutional Law § 16-21, at 1516 (2d ed. 1988) (the "goal of the equal protection clause is not to stamp out impure thoughts, but to guarantee a full measure of human dignity for all"). As a Florida appellate court has noted, "[i]t does not matter why a woman is treated differently than a man, a black differ-

^{2/} See, e.g., Korean Student Dies of Gunshot Wound, Wash. Post, Oct. 30, 1993; Investigation is Sought in Shooting, Wash. Post, Oct. 28, 1993 at C6. See generally An Increasing Sense of Vulnerability, N.Y. Times, Dec. 3, 1993 at B1.

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ently than a white, a Catholic differently than a Jew; it matters only that they are." Dobbins, 605 So. 2d at 925.

This analysis applies with equal force to bias-crime statutes. As with other anti-discrimination statutes, bias-crime statutes punish unequal treatment (namely, the selection of crime victims by specified characteristic) and not the reasons therefor. See id. at 925 ("[i]t doesn't matter that Dobbins hated Jewish people or why he hated them; it only mattered that he discriminated against Daly by beating him because he was Jewish"); see also Note, Hate is not Speech, supra, at 1322 (arguing that bias-crime statutes "do not target the 'thought' of bigotry; instead, they punish the 'purpose' -- the intermediate end -- of choosing a victim based on his or her race, religion, or other group characteristic").

Thus, the reason that a particular defendant selected Asian Pacific American merchants as victims is irrelevant to a bias-related crime prosecution. Even if the defendant selected his victim merely because he thought that Asian Pacific Americans are less likely to report crimes and thus make "easy targets," and even if the defendant does not "hate" Asian Pacific Americans, the fact that race or national origin was a substantial factor in the selection of his victim is sufficient to render the crime "bias-related."^{19/} As a re-

^{19/} Indeed, such a conclusion is implicit in the legislature's selection of the term "bias-related crime" (continued...)

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sult, such crimes -- which "demonstrate[] an accused's prejudice" based on the victim's race -- may and should be prosecuted under the D.C. Bias-Related Crime Act.^{11/}

In contrast to pure hate-crimes, however, crimes targeting Asian Pacific American merchants for reasons other than hate may be more difficult to identify. In the former case, the defendant is likely to utter bigoted epithets or otherwise manifest his or her motivation. At the very least, a pure hate-crime that lacks other motivation may be identified by the absence of other motivation. The same, however, is not likely to be true when the victim is selected because the group he or she belongs to is perceived to be an "easier target." The presence of the underlying motive for the crime may mask the additional discriminatory motive, and the defendant is not as likely to express bigotry. Instead, such crimes may be identifiable only through pattern evidence and the like. Because such evidence will ordinarily be beyond the knowledge of the individual victim, identification of these crimes may require greater commitment of law enforcement resources to the identification of bias-related crimes.

^{10/} (...continued)

rather than "hate crime" in the statute. Unequal treatment constitutes "bias" regardless of whether hatred is involved.

^{11/} Note that, as discussed above, the defendant cannot defend against such a prosecution by arguing that greed, and not bias, was his primary motivation. So long as his victim's race or national origin was a substantial factor in his or her selection, the crime is bias-related.

Of course, a corresponding benefit is that the incidence of such crimes should readily be reduced by such a commitment of law enforcement resources. By demonstrating society's willingness to respond vigorously to the targeting of any particular group, this commitment should go far to remove any perception that any group in society is an "easy target." In a world where bias-related crimes are effectively and vigorously prosecuted, there are no "easy targets."

III. CONCLUSION

The D.C. Bias-Related Crime Act stands as a potent, if as yet unused, weapon against crimes in which victims are targeted because of their race or other specified characteristic. Effective prosecution under the D.C. Act does not run contrary to any constitutional commands, and substantial guidance exists for identifying those crimes suitable for prosecution. It is clear, for instance, that so long as a victim's race or other characteristic is a substantial factor in the commission of the crime, the crime is bias-related, even if the defendant had other motives for committing the crime.

Thus, crimes in which Asian Pacific American victims are targeted may be prosecuted under the D.C. Act regardless of the reasons that the defendant had for targeting his or her victims. Whether the defendant was motivated by hatred for Asian Pacific Americans or simply thought that they made easier targets, the mere fact that the defendant deliberately

selected Asian Pacific Americans to be victims is sufficient for the Act's penalty enhancement provisions to apply. To be sure, greater investigative and prosecutorial resources may be required to identify crimes or a pattern of crimes in which victims are targeted because of their race or other characteristic. But no less than such a commitment is necessary to fulfill the promise of the D.C. Act: to ensure that no member of our community is an "easy target" because of the group to which he or she belongs.

A

CHAPTER 40. BIAS-RELATED CRIME.

Sec.	Sec.
22-4001. Definitions.	22-4003. Bias-related crime.
22-4002. Collection and publication of data.	22-4004. Civil action.

§ 22-4001. Definitions.

For the purposes of this chapter, the term:

(1) "Bias-related crime" means a designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibility, physical handicap, matriculation, or political affiliation of a victim of the subject designated act.

(2) "Designated act" means a criminal act, including arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry. (May 8, 1990, D.C. Law 8-121, § 2, 37 DCR 27.)

§ 22-4002

CRIMINAL OFFENSES

Legislative history of Law 8-121. — Law 8-121 was introduced in Council and assigned Bill No. 8-168, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively.

Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-130 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 8-121 provided: "That this act may be cited as the 'Bias-Related Crime Act of 1989'."

§ 22-4002. Collection and publication of data.

(a) The Metropolitan Police force shall afford each crime victim the opportunity to submit with the complaint a written statement that contains information to support a claim that the designated act constitutes a bias-related crime.

(b) The Mayor shall collect and compile data on the incidence of bias-related crime.

(c) Data collected under subsection (b) of this section shall be used for research or statistical purposes and may not contain information that may reveal the identity of an individual crime victim.

(d) The Mayor shall publish an annual summary of the data collected under subsection (b) of this section and transmit the summary and recommendations based on the summary to the Council. (May 8, 1990, D.C. Law 8-121, § 3, 37 DCR 27.)

Legislative history of Law 8-121. — See note to § 22-4001.

Short title. — See note to § 22-4001.

§ 22-4003. Bias-related crime.

A person charged with and found guilty of a bias-related crime shall be fined not more than 1½ times the maximum fine authorized for the designated act and imprisoned for not more than 1½ times the maximum term authorized for the designated act. (May 8, 1990, D.C. Law 8-121, § 4, 37 DCR 27.)

Legislative history of Law 8-121. — See note to § 22-4001.

Short title. — See note to § 22-4001.

§ 22-4004. Civil action.

(a) Irrespective of any criminal prosecution or the result of a criminal prosecution, any person who incurs injury to his or her person or property as a result of an intentional act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation of a victim of the subject designated act shall have a civil cause of action in a court of competent jurisdiction for appropriate relief, which includes:

- (1) An injunction;

(2) Actual or nominal damages for economic or non-economic loss, including damages for emotional distress;

(3) Punitive damages in an amount to be determined by a jury or a court sitting without a jury; or

(4) Reasonable attorneys' fees and costs.

(b) In a civil action pursuant to subsection (a) of this section, whether an intentional act has occurred that demonstrates an accused's prejudice based on the actual or perceived color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation of a victim of the subject designated act shall be determined by reliable, probative, and substantial evidence.

(c) The parent of a minor shall be liable for any damages that a minor is required to pay under subsection (a) of this section, if any action or omission of the parent or legal guardian contributed to the actions of the minor. (May 8, 1990, D.C. Law 8-121, § 5, 37 DCR 27.)

Legislative history of Law 8-121. — See note to § 22-4001.

Short title. — See note to § 22-4001.

U.S. Department of Justice
Federal Bureau of Investigation



Summary Reporting System

National Incident-Based Reporting System

Hate Crime

Data Collection

Guidelines

Uniform Crime Reporting

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HATE CRIME DATA COLLECTION GUIDELINES

Legislative Mandate to Report Hate Crimes

In response to a growing concern about hate crimes, Congress, on April 23, 1990, enacted the "Hate Crime Statistics Act of 1990" (hereafter "Act"). The Act requires the Attorney General to establish guidelines and collect, as part of the UCR Program, data "about crimes that manifest evidence of prejudice based on race, religion, 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." The Attorney General is required to begin acquiring hate crime data in calendar year 1990. The Attorney General has delegated his responsibilities under the Act to the Director of the FBI. The FBI's Uniform Crime Reports (UCR) Section has been assigned the task of developing the procedures for, and managing the implementation of, the collection of hate crime data.

Developing a Collection Approach

The primary emphasis in developing an approach for collecting national hate crime statistics was to avoid placing major new reporting burdens on contributing law enforcement agencies. To accomplish this goal the following decisions were made:

1. **The hate crime collection will be an adjunct to the UCR collection.**— Hate crimes are not separate, distinct crimes, but rather traditional offenses motivated by the offender's bias. For example, an offender may commit arson because of his/her racial bias. It is, therefore, unnecessary to create a whole new crime category. To the contrary, hate crime data can be collected by merely capturing additional information about offenses being reported to UCR.

2. **The types of bias motivation to be reported are limited.**— There are, of course, many kinds of bias. Some of the more common kinds are those against race, religion, ethnicity/national origin, or sexual orientation. But, there are also biases against rich people, poor people, men who wear long hair and/or beards, people who dress oddly, smokers, drinkers, people with diseases such as AIDS, motorcycle gangs, "rock" musicians, etc. The types of bias to be reported to the FBI's UCR Section are limited to those mandated by the enabling Act, i.e., bias based on "race, religion, sexual orientation, or ethnicity." Because, in the UCR Program, "ethnicity" has been limited to whether a person is or is not Hispanic, the term "Ethnicity/National Origin" was adopted to denote a broader meaning (see the definition on Page 5).

Although there are no comprehensive statistics on the incidence of hate crimes, the limited statistics being gathered in existing state and local hate crime programs indicate that the number of hate crimes reported annually throughout the United States should not constitute a major reporting burden. Hate crime reporting should not, therefore, require large new commitments of personnel and other resources by Federal, state, and local UCR data contributors.

Bias Motivation

The object of the collection is to indicate whether the offender was motivated to commit the offense because of his/her bias against a racial, religious, ethnic/national origin, or sexual orientation group. Because of the difficulty of ascertaining the offender's subjective motivation, bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. The specific types of bias to be reported are:

Racial Bias:

Anti-White
Anti-Black
Anti-American Indian/Alaskan Native
Anti-Asian/Pacific Islander
Anti-Multi-Racial Group

Religious Bias:

Anti-Jewish
Anti-Catholic
Anti-Protestant
Anti-Islamic (Moslem)
Anti-Other Religion (Buddhism,
Hinduism, Shintoism, etc.)
Anti-Multi-Religious Group
Anti-Atheist/Agnostic/Etc.

Ethnicity/National Origin Bias:

Anti-Arab
Anti-Hispanic
Anti-Other Ethnicity/National Origin

Sexual Orientation Bias:

Anti-Male Homosexual (Gay)
Anti-Female Homosexual (Lesbian)
Anti-Homosexual (Gays and Lesbians)
Anti-Heterosexual
Anti-Bisexual

Objective Evidence that the Crime Was Motivated by Bias

An important distinction must be made. The mere fact that the offender is biased against the victim's racial, religious, ethnic/national origin, and/or sexual orientation group does not mean that a hate crime was involved. Rather, the offender's criminal act must have been motivated, in whole or in part, by his/her bias.

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. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

(a) The offender and the victim were of different racial, religious, ethnic/national origin, or sexual orientation groups. For example, the victim was black and the offenders were white.

(b) Bias-related oral comments, written statements, or gestures were made by the offender which indicate his/her bias. For example, the offender shouted a racial epithet at the victim.

(c) Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.

(d) Certain objects, items, or things which indicate bias were used (e.g., the offenders wore white sheets with hoods covering their faces) or left behind by the offender(s) (e.g., a burning cross was left in front of the victim's residence).

(e) The victim is a member of a racial, religious, ethnic/national origin, or sexual orientation group which is overwhelmingly outnumbered by members of another group in the neighborhood where the victim lives and the incident took place. This factor loses significance with the passage of time, i.e., it is most significant when the victim first moved into the neighborhood and becomes less and less significant as time passes without incident.

(f) The victim was visiting a neighborhood where previous hate crimes had been committed against other members of his/her racial, religious, ethnic/national origin, or sexual orientation group and where tensions remain high against his/her group.

(g) Several incidents have occurred in the same locality, at or about the same time, and the victims are all of the same racial, religious, ethnic/national origin, or sexual orientation group. D.A. F.N.

(h) A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.

(i) The victim was engaged in activities promoting his/her racial, religious, ethnic/national origin, or sexual orientation group. For example, the victim is a member of the NAACP, participated in gay rights demonstrations, etc.

(j) The incident coincided with a holiday relating to, or a date of particular significance to, a racial, religious, or ethnic/national origin group (e.g., Martin Luther King Day, Rosh Hashanah, etc.).

(k) The offender was previously involved in a similar hate crime or is a member of a hate group.

(l) There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active in the neighborhood.

(m) A historically established animosity exists between the victim's group and the offender's group.

(n) The victim, although not a member of the targeted racial, religious, ethnic/national origin, or sexual orientation group, is a member of an advocacy group supporting the precepts of the victim group.

Cautions

1. **Need for Case-by-Case Assessment of the Facts** – The aforementioned factors are not all-inclusive of the types of objective facts which evidence biased motivation. Therefore, reporting agencies must examine each case for facts which clearly evidence that the offender's bias motivated him/her to commit the crime.

2. **Misleading Facts** – Agencies must be alert to misleading facts. For example, the offender used an epithet to refer to the victim's race, but the offender and victim were of the same race.

3. **Feigned Facts** – Agencies must be alert to evidence left by the offenders which is meant to give the false impression that the incident was motivated by bias. For example, students of a religious school vandalize their own school, leaving anti-religious statements and symbols on its walls, in the hope that they will be excused from attending class.

4. **Offender's Mistaken Perception** – Even if the offender was mistaken in his/her belief that the victim was a member of a racial, religious, ethnic/national origin, or sexual orientation group, the offense is still a hate crime as long as the offender was motivated by bias against that group. For example, a middle-aged, non-gay man walking by a bar frequented by gays was attacked by six teenagers who mistakenly believed the victim had left the bar and was gay. Although the offenders were wrong on both counts, the offense is a hate crime because it was motivated by the offenders' anti-gay bias.

5. **Changes in Findings of Bias** – If, after an initial incident report was submitted, a contrary finding regarding bias occurs, the national file must be updated with the new finding. For example, if an initial finding of no bias was later changed to racial bias or a finding of racial bias was later changed to religious bias, the change should be reported to the FBI's UCR Section.

Definitions

To ensure uniformity in reporting nationwide, the following definitions have been adopted for use in hate crime reporting:

Bias - A preformed negative opinion or attitude toward a group of persons based on their race, religion, ethnicity/national origin, or sexual orientation.

Bias Crime - A criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias against a race, religion, ethnic/national origin group, or sexual orientation group. Also known as "Hate Crime."

[Note: Even if the offender was mistaken in his/her perception that the victim was a member of the group he or she was acting against, the offense is still a bias crime because the offender was motivated by bias against the group.]

Bisexual - [adjective] Of or relating to persons who experience sexual attraction toward, and responsiveness to, both males and females; [noun] a bisexual person.

Ethnicity/National Origin Bias - A preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs, and traditions (e.g., Arabs, Hispanics, etc.).

Gay - [adjective] Of or relating to males who experience a sexual attraction toward, and responsiveness to, other males; [noun] a homosexual male.

Hate Crime - Same as "Bias Crime."

Hate Group - An organization whose primary purpose is to promote animosity, hostility, and malice against persons belonging to a racial, religious, ethnic/national origin, or sexual orientation group which differs from that of the members of the organization (e.g., the Ku Klux Klan, American Nazi Party, etc.).

Heterosexual - [adjective] Of or relating to persons who experience a sexual attraction toward, and responsiveness to, members of the opposite sex; [noun] a heterosexual person.

Homosexual - [adjective] Of or relating to persons who experience a sexual attraction toward, and responsiveness to, members of their own sex; [noun] a homosexual person.

Lesbian - [adjective] Of or relating to females who experience a sexual attraction toward, and responsiveness to, other females; [noun] a homosexual female.

National Incident-Based Reporting System (NIBRS) - The new unit-record reporting system which is being implemented to replace the traditional UCR Summary Reporting System (SRS). NIBRS provides for expanded collection and reporting of offenses, arrests, and their circumstances.

Racial Bias - A preformed negative opinion or attitude toward a group of persons who possess common physical characteristics (e.g., color of skin, eyes and/or hair; facial features; etc.) genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind (e.g., Asians, blacks, whites, etc.).

Religious Bias - A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, atheists, etc.).

Sexual Orientation Bias - A preformed negative opinion or attitude toward a group of persons based on their sexual attraction toward, and responsiveness to, members of their own sex or members of the opposite sex (e.g., gays, lesbians, heterosexuals, etc.).

Summary Reporting System (SRS) - The traditional tally system which has been used since 1930 to collect UCR data.

Examples of Reporting Hate Crime Incidents

Example (1): While driving through a predominantly Mexican-American neighborhood, a black male stopped his car to repair a flat tire. A group of Mexican-Americans leaving a bar across the street accosted the driver and then attacked him with bottles and clubs. During the attack, the offenders called the victim by a well known and recognized epithet used against blacks and told him that blacks were not welcome in the neighborhood. This incident would be reported as Anti-Black because the victim and offenders are of different races, the offenders used a racial epithet, and the facts reveal no other reason for the attack than the stated one, i.e., to keep blacks out of the neighborhood.

Example (2): A white juvenile male snatched a Jewish woman's purse, and in doing so, knocked her down and called her by a well known and recognized epithet used against Jews. The offender's identity is not known. Although the offender used an epithet for Jews, it is not known whether he belongs to another religious group or whether his motive was anything more than robbery. Because the facts are ambiguous, agencies should not report this incident as bias motivated.

Example (3): Overnight, unknown persons broke into a synagogue and destroyed several religious objects. The perpetrators left a large swastika drawn on the door and wrote "Death to Jews" on a wall. Although valuable items were present, none was stolen. Report this incident as Anti-Jewish because the offenders destroyed religious objects, left anti-Semitic words and graffiti behind, and theft did not appear to be the motive for the burglary.

Example (4): A 29-year-old Chinese-American male was attacked by a 51-year-old white male wielding a tire iron. The victim 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 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 offense 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.

Example (5): An adult white male was approached by four white teenagers who requested money for the bus. When he refused, one of the youths said to the others, "Let's teach this [epithet for a gay person] a lesson." The victim was punched in the face, knocked to the ground, kicked several times, and robbed of his wristwatch, ring, and wallet. When he reported the crime, the victim advised he did not know the offenders and that he was not gay. The facts are ambiguous. Although an epithet for a gay person was used by one of the offenders, the victim was not gay, such epithets are sometimes used as general insults regardless of the target person's sexual orientation, and in this case the offenders' motivation appeared to be limited to obtaining money from the victim. Therefore, the incident would not be designated bias motivated.

Example (6): A small neighborhood bar frequented by gays burned down after being closed for the night. Investigation revealed that the fire was deliberately set, but there were no witnesses or suspects. Although the fire was deliberately set, the fact that the bar was frequented by gays may have

been coincidental. Therefore, the incident is not reported as bias motivated. Two weeks later, three white adult males were arrested on a tip from an informant. They admitted burning down the bar, saying they did it to keep gays out of the neighborhood. As a result, this incident should now be reported as a bias crime.

Example (7): Six black men assaulted and seriously injured a white man and his Asian male friend as they were walking through a residential neighborhood. Witnesses said that the victims were attacked because they were trespassing in a "black" neighborhood. An Anti-Multi-Racial Group bias incident should be reported because the victims and offenders were of different races and witnesses reported that the victims were attacked because they were not black.

Example (8): Overnight, an auditorium, which was being used by representatives of several religious denominations to hold an ecumenical conference, was vandalized by unknown subjects. Extensive damage was caused and statements, such as "There is but one true religion" and "Down with the nonbelievers," were spray painted onto the walls. An Anti-Multi-Religious Group incident should be reported because the offenders clearly evidenced their hostility against a group representing more than one religion.

Procedures for Submitting Hate Crime Data to the FBI's UCR Section

The enabling Act requires the Attorney General to begin collecting hate crime data in calendar year 1990. Therefore, it is necessary to implement the reporting system as soon as possible. Accordingly, there will be two (2) formats for reporting hate crime data to the FBI's UCR Section -- one is by the Quarterly Hate Crime Report and the other is by the addition of a data element for NIBRS participants.

QUARTERLY HATE CRIME REPORT

1. Who will submit Quarterly Hate Crime Reports? – (a) Agencies participating in the SRS; and (b) Agencies participating in NIBRS which are not ready to include the new data element in their submissions.

2. How will the data be transmitted? – (a) Agencies may submit hardcopy forms; (b) State UCR Programs which transmit agencies' data may obtain magnetic tape specifications from the UCR Program in order to include Hate Crime data as part of their regular submissions, either summary or NIBRS, if the new data element has not yet been incorporated; or (c) Individual agencies or state UCR Programs using personal computers for the collection and storage of hate crime data may obtain floppy disk specifications from the FBI's UCR Section for the purpose of submitting data.

3. What does the Quarterly Report look like? – A sample of the form entitled "Quarterly Hate Crime Report" is attached as the "Appendix." It consists of a quarterly summary and an incident report for each bias incident.

4. Supplemental nature of Hate Crime collection – The new Quarterly Report is to be submitted in addition to other UCR Program requirements, i.e., the offenses which are reported using the form must also be reported in accordance with the requirements of the SRS or NIBRS, depending on which system is applicable.

5. What offenses are to be reported? – The form is to be used to report the following offense categories:

- Murder and Nonnegligent Manslaughter
- Forcible Rape
- Robbery
- Aggravated Assault
- Simple Assault
- Intimidation
- Burglary
- Larceny-Theft
- Motor Vehicle Theft
- Arson
- Damage, Destruction, or Vandalism of Property

6. Additional Instructions – The following additional instructions are applicable to agencies submitting Quarterly Reports:

a. "Simple Assault" and "Intimidation" – In the SRS, "Simple Assault" and "Intimidation" are not reported separately. Both are reported on the "Return A - Monthly Return of Offenses Known to the Police" form as "Other Assaults-Simple, Not Aggravated." For the purpose of

hate crime reporting, SRS agencies should report "Simple Assault" and "Intimidation" separately using the following definitions:

Simple Assault - An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation - To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

b. "Destruction, Damage, or Vandalism of Property" - In the SRS, "Destruction, Damage, and Vandalism of Property" are reported only when arrests occur. They are then reported on "Age, Sex, and Race of Persons Arrested" forms for persons "Under 18 Years of Age" and "18 Years of Age and Over." "Vandalism" is reported on the forms as "Vandalism," but "Destruction of Property" and "Damage to Property" may be reported as either "Vandalism" or "All Other Offenses," depending on the facts of the case. However, all three are to be reported on the new hate crime reporting form as "Destruction/Damage/Vandalism of Property" regardless of whether arrests have taken place. The offense is defined as follows:

Destruction/Damage/Vandalism of Property - To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

[Note: This offense does not include destruction or damage to property caused by the crime of Arson.]

c. Nonapplicability of the Hierarchy Rule - In the SRS, under the Hierarchy Rule, only the most serious Part I offense in a multiple-offense incident is to be reported. However, for hate crime reporting purposes, all of the offenses listed above which were identified as bias motivated and occurred during the incident are to be reported on the new form.

d. Multiple Page Submission - Should it become necessary to submit multiple pages for one incident in order to list more than six (6) different offenses, the FBI's UCR Section will relate the pages by the common incident number and "Page of " designation.

e. UCR Offense and Code Segment - List the number of victims involved in each offense code where bias/hate motivation has been determined.

In the event of multiple offense codes and victims, list only those where bias/hate motivation exists. Do not list an offense code and its victims when the motivation is clearly not bias motivated or when the motivation is unknown.

For example, suppose a robbery occurs at a bar and its patrons were robbed by two offenders. During the robbery a female Asian patron was raped by one of the offenders. Subsequent investigation reveals that, while the motive for the robbery did not involve bias, the rape was bias motivated. Therefore, only the rape would be reported as a hate crime.

f. **Updating** – For updating purposes, a copy of the report should be retained by the agency. Corrections/updates should be accomplished by submitting a photocopy of the original form with changes shown and "adjustment" marked at the top or by sending a corrected Incident Report on either the disk or tape submission. Incidents can be deleted by simply identifying them on the Quarterly Summary Page.

NIBRS HATE CRIME REPORTING

1. **Who will submit hate crime data in the NIBRS format?** – Agencies participating in NIBRS which are able to include the new data element in their magnetic tape submissions.

2. **How will the data be transmitted?** – On magnetic tape as an integral part of the NIBRS submission. A new data element addressing "Bias Motivation" will be incorporated with the other NIBRS data. Quarterly Reports will not be necessary for NIBRS participants.

3. **What is the new data element's number?** – Data Element 8A

4. **Where should the new data element be located on the magnetic tapes?** – It should be entered at the end of the Offense Segment (Level 2).

5. **To which offenses will the new hate crime data element apply?** – Data Element 8A will apply to all Group "A" Offenses. They are listed below. [Note: The numbers in parentheses are UCR Offense Codes.]

Arson (200)

Assault Offenses:

Aggravated Assault (13A)

Simple Assault (13B)

Intimidation (13C)

Bribery (510)

Burglary/Breaking and Entering (220)

Counterfeiting/Forgery (250)

Destruction/Damage/Vandalism of Property (290)

Drug/Narcotic Offenses:

- Drug/Narcotic Violations (35A)
- Drug/Narcotic Equipment Violations (35B)

Embezzlement (270)

Extortion/Blackmail (210)

Fraud Offenses:

- False Pretenses/Swindle/Confidence Game (26A)
- Credit Card/Automated Teller Machine Fraud (26B)
- Impersonation (26C)
- Welfare Fraud (26D)
- Wire Fraud (26E)

Gambling Offenses:

- Betting/Wagering (39A)
- Operating/Promoting/Assisting Gambling (39B)
- Gambling Equipment Violations (39C)
- Sports Tampering (39D)

Homicide Offenses:

- Murder and Nonnegligent Manslaughter (09A)
- Negligent Manslaughter (09B)
- Justifiable Homicide (09C)

Kidnaping/Abduction (100)

Larceny/Theft Offenses:

- Pocket-picking (23A)
- Purse-snatching (23B)
- Shoplifting (23C)
- Theft From Building (23D)
- Theft From Coin-Operated Machine or Device (23E)
- Theft From Motor Vehicle (23F)
- Theft of Motor Vehicle Parts or Accessories (23G)
- All Other Larceny (23H)

Motor Vehicle Theft (240)

Pornography/Obscene Material (370)

Prostitution Offenses:

- Prostitution (40A)
- Assisting or Promoting Prostitution (40B)

Robbery (120)**Sex Offenses, Forcible:**

- Forcible Rape (11A)
- Forcible Sodomy (11B)
- Sexual Assault With An Object (11C)
- Forcible Fondling (11D)

Sex Offenses, Nonforcible:

- Incest (36A)
- Statutory Rape (36B)

Stolen Property Offenses (280)**Weapon Law Violations (520)**

The following "Mandatory" is to be added for each of the above-listed offenses in Section IV, "Mandatories," Volume 2: Data Submission Specifications:

8A = Bias Motivation

Data Element for "Bias Motivation"

The following data element is to be used to flag offenses which were motivated by the offender's bias. It is designated in NIBRS as "Data Element 8A."

Bias Motivation - 2 Characters (A): This data element is to be used to indicate whether the offender was motivated to commit the offense because of his/her bias against a racial, religious, ethnic/national origin, or sexual orientation group. Because of the difficulty of ascertaining the offender's subjective motivation, bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. The most appropriate of the following codes is to be entered into the data element:

Allowed entries: (enter only one)

Racial Bias

- 11 = Anti-White
- 12 = Anti-Black
- 13 = Anti-American Indian/Alaskan Native
- 14 = Anti-Asian/Pacific Islander
- 15 = Anti-Multi-Racial Group

Religious Bias

- 21 = Anti-Jewish
- 22 = Anti-Catholic
- 23 = Anti-Protestant
- 24 = Anti-Islamic (Moslem)
- 25 = Anti-Other Religion (Buddhism, Hinduism, Shintoism, etc.)
- 26 = Anti-Multi-Religious Group
- 27 = Anti-Atheist/Agnostic/Etc.

Ethnicity/National Origin Bias

- 31 = Anti-Arab
- 32 = Anti-Hispanic
- 33 = Anti-Other Ethnicity/National Origin

Sexual Orientation Bias

- 41 = Anti-Male Homosexual (Gay)
- 42 = Anti-Female Homosexual (Lesbian)
- 43 = Anti-Homosexual (Gays and Lesbians)
- 44 = Anti-Heterosexual
- 45 = Anti-Bisexual

None/Unknown [NIBRS Magnetic Tape Submissions Only]

- 88 = None (no bias)
- 99 = Unknown (offender's motivation not known)

[Note: In NIBRS, incidents which do not involve any facts indicating biased motivation on the part of the offender are to be coded in NIBRS as "88" = None, while incidents involving ambiguous facts (i.e., where some facts are present but are not conclusive) are to be coded "99" = Unknown. Agencies which do not report through NIBRS should not submit hardcopy reports for either type of incident.]

APPENDIX

QUARTERLY HATE CRIME REPORT
Offenses Known to Law Enforcement

Summary Page

Form Approved
OMB No. 1110-0015
Approved through 4/30/93

This report is authorized by Title 28, Section 534, U.S. Code, and the Hate Crime Statistics Act of 1990. Your cooperation in using this form to report hate crimes known to your department will assist the FBI in compiling comprehensive and accurate data regarding incidence and prevalence of Hate Crime throughout the Nation. Please submit this report on a quarterly basis, by the 15th day after the close of the quarter, to Uniform Crime Reports, FBI, Washington, D.C. 20535.

City _____ County _____ State _____

Name of Agency _____ Agency Identifier (ORI) _____

Name of Preparer _____ Title _____

Quarter and Year of Report: January - March April - June
 July - September October - December

Year _____

Total number of incidents reported in this quarter _____

If there were no hate crimes in this quarter, check this box.

Deletion of incident(s) previously reported [Applicable only for deletion of entire incident(s)].

Incident Number	Date of the Incident
<input type="text"/>	Month / Day / Year
<input type="text"/>	Month / Day / Year
<input type="text"/>	Month / Day / Year
<input type="text"/>	Month / Day / Year
<input type="text"/>	Month / Day / Year

NOTE: Public reporting for this collection of information is estimated to average .17 hours per response, including the time for reviewing. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to Uniform Crime Reporting Program, Federal Bureau of Investigation, Washington, D.C. 20535; and to the Office of Information and Regulatory Affairs, OMB Number 1110-xxxx, Office of Management and Budget, Washington, D. C. 20503.

INSTRUCTIONS FOR PREPARING QUARTERLY HATE CRIME AND HATE CRIME INCIDENT REPORT

GENERAL

This report is separate from and in addition to the routine Summary UCR submission and the Hierarchy Rule does not apply. Also, in the Summary UCR system, the offenses of Intimidation and Destruction/Damage/Vandalism of Property are reported only when arrests occur. On this form, all are to be reported when they have been determined to have occurred and are bias-motivated, regardless of whether arrests have taken place. Refer to the Hate Crime Reporting Guidelines for additional information, clarification, and explanation.

SUMMARY PAGE

1. At the end of each calendar quarter, a single Summary Page, along with an individual Incident Report for each hate-motivated incident identified during the quarter (if any), should be jointly submitted. If none occurred, submit only the Summary Page.
2. The Summary Page should be used to identify your agency, to state the number of hate-related incidents being reported for the calendar quarter, and to delete any incidents previously reported which were determined during the reporting period not to be hate related.

INCIDENT REPORTS

3. The Incident Report should be used to report initially a hate-related incident or to adjust information in a previously reported incident.
4. Provide an identifying incident number which preferably will be your "case" or "file" number.
5. Provide codes for all offenses within the incident determined to be hate related and the number of victims for each such offense. In multiple offense incidents, report only those offenses determined to be hate related. Should more than six offenses be involved in one incident, use additional Incident Reports and make appropriate entries in the "page of " portion of the form.
6. Provide the most appropriate location for each hate-related offense.
7. Provide the nature of the hate/bias motivation for each hate-related offense.
8. Provide the victim type for each offense identified within the hate-related incident.
9. Where the victim type is an "individual," indicate the total number of individual victims (persons) involved in the incident irrespective of the number of offenses in which they were involved.
10. Provide the number of offenders, if known, or report that such is unknown.
11. Provide the suspected offender's race, if known. If there was more than one offender, provide the race of the group as a whole.
12. Include on separate paper any additional comments/information you feel will add clarity to the report. (optional)

C

Metropolitan Police Department □ Washington, D.C.



SPECIAL ORDER



subject: Reporting and Investigating Offenses Relative to the "Bias-Related Crime Act of 1989"	Series	Number	Distribution
	92	6	A
	Effective Date		
	May 11, 1992		
Expiration Date			*

Bias-related/hate crimes are not separate, distinct crimes, but rather designated criminal offenses motivated by the offender's bias. Bias-related/hate crimes demean the civil liberties inherent to each citizen and erode the ties that bind our society together. The impact of these offenses typically goes beyond the individual victim to adversely affect a larger population of people possessing similar characteristics or traits. Perpetrators of these crimes demonstrate reckless disregard for their victims and thrive on the ability to intimidate, injure, and instill fear on the basis of bias or hate.

A. DEFINITIONS

The Bias-Related Crime Act of 1989, which was enacted into law in the District of Columbia on May 8, 1990, establishes certain definitions relating to bias-related/hate crimes.

A Bias-Related Crime is defined as "a designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibility, physical handicap, matriculation, or political affiliation of a victim of the subject designated act." (D.C. Code Section 22-4001)

A Designated Act is defined as "a criminal act, including arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry." (D.C. Code Section 22-4001)

The Enhanced Penalty associated with bias-related crime provides that "a person charged with and found guilty of a bias-related crime shall be fined not more than 1 and 1/2 times the maximum fine authorized for the designated act and imprisoned for not more than 1 and 1/2 times the maximum term authorized for the designated act." (DC Code Section 22-4003)

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B. REPORTING PROCEDURES

Before an offense, as defined in Section A, can be reported as a suspected bias-related/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. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

1. The offender and the victim were of different racial, color, religious, ethnic/national origin, age, or sexual orientation groups.
2. The offender's actions were motivated by the victim's marital status, personal appearance, sex, family responsibility, physical handicap, matriculation, or political affiliation.
3. Bias-related oral comments, written statements, or gestures were made by the offender which indicated his/her bias.
4. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene.
5. Certain objects, items, or things which indicate bias were used (e.g., the offenders wore white sheets with hoods covering their faces).
6. A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.
7. The offender was previously involved in a similar hate crime or is a member of a hate group.

The reporting officer assigned to investigate an offense, as defined in Section A, shall determine whether there is an indication that the offense was motivated by bias. If there is, he/she shall indicate the type of bias on the PD Form 251 (Event Report) and fully describe the circumstances in the narrative section of the report. Members shall provide PD Form 245 (Hate Crime Victim Services) to every victim of a suspected bias-related/hate crime.

Offenses identified as bias-related/hate crimes shall be forwarded to the appropriate unit for the follow-up investigation in accordance with the guidelines established in General Order 304.1 (Operation and Management of Criminal Investigations).

Although the reporting officer is responsible for conducting the preliminary investigation of a suspected bias-related/hate crime and the matter is forwarded to the appropriate unit for the follow-up investigation, the report shall also be reviewed by an Investigator

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possessing expertise in bias-related/hate crime matters and whose focus is directed to the motivating bias. A Hate Crimes Coordinator shall be designated within the Intelligence Division to provide this specialized review.

Situations may be encountered where complainants perceive themselves to be the victims of an offense motivated by bias, but cannot articulate facts in support of such a determination, or the preliminary investigation does not generate sufficient facts to designate the offense as a suspected bias-related/hate crime.

In these cases, members shall not dispute the issue with the complainant. Instead, the reporting officer shall prepare the offense report and request that the victim contact the Hate Crimes Coordinator on (202) 727-4312. Members shall advise the victim that a final determination as to whether the offense qualifies as a bias-related/hate crime will be made by the coordinator.

C. VICTIM STATEMENTS

Members shall advise victims of bias-related/hate crimes that, in compliance with D.C. Code Section 22-4002, the Metropolitan Police Department affords each crime victim the opportunity to submit with his/her complaint a written statement that contains information to support a claim that the designated act constitutes a bias-related crime. When a complainant requests the opportunity to make a statement at the time the original report is prepared, the reporting officer shall follow the guidelines established in General Order 304.1 and request the assistance of the appropriate investigator to prepare the statement.

Complainants who do not wish to make a statement at the time the offense occurs shall be instructed to mail a written statement, including the Central Complaint Number, to the Hate Crimes Coordinator, Intelligence Division, 300 Indiana Ave., N.W., Room 5069, Washington, D.C. 20001. After review, the Hate Crimes Coordinator shall forward all statements received by mail to the appropriate investigative unit for inclusion in the case jacket.

D. DIRECTOR, INTELLIGENCE DIVISION

The Director, Intelligence Division, shall designate a Hate Crimes Coordinator responsible for the following procedures:

1. Upon receipt of reports identifying suspected bias-related/hate crimes, the coordinator shall conduct an inquiry focused on the bias motivating factor. This inquiry shall be coordinated with the investigator assigned to conduct the follow-up investigation of the criminal offense.
2. Based on the facts gathered during the investigation, the coordinator shall make a final determination as to whether the offense constitutes a bias-related/hate crime. The coordinator shall prepare a PD Form 252 (Supple-

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ment Report) indicating the facts supporting the conclusion that the offense is a confirmed bias-related/hate crime. The narrative shall include a notation that the investigator assigned to the case has been notified of the determination.

3. The coordinator shall be responsible for periodic dissemination of intelligence to the force concerning persons or groups that perpetrate bias-related/hate crimes.

E. WATCH COMMANDERS

District/division watch commanders shall notify the Director, Intelligence Division, whenever a bias-related/hate situation exists or an offense occurs that requires the immediate attention and/or presence of the Hate Crimes Coordinator (e.g., events causing media attention, events impacting department resources, etc.). During non-business hours the Director shall be contacted through the Communications Division.

F. DIRECTOR, DATA PROCESSING DIVISION

The Director, Data Processing Division, shall ensure that one copy of each bias-related/hate incident or offense report be forwarded by the Information Processing Section to the following units on a daily basis:

1. The Intelligence Division, to the attention of the Hate Crimes Coordinator.
2. The Crime Research and Statistics Section, Planning and Research Division.

Questions concerning bias-related/hate crime may be directed to the Hate Crimes Coordinator, Intelligence Division, on extension (72) 74312.

PD Form 245 (dated 03/92) is in stock and available through normal supply channels.

*This special order shall remain in effect until revised, rescinded or incorporated into the appropriate general order. Special Order 90-5 (Reporting Incidents and Offenses Motivated by Race, Religion, Ethnicity, or Sexual Orientation) dated February 28, 1990, is hereby rescinded.

Isaac Fulwood, Jr.
Isaac Fulwood, Jr.
Chief of Police

IF:WRP:wrp

PD 245 04/92

BIAS/HATE CRIME VICTIM SERVICES

Victims of hate crimes can suffer serious and long lasting traumatic stress that can seriously alter their lives. The Metropolitan Police Department wants to assist by putting you in touch with services in the District of Columbia that are available to help. Listed on the back of this card are names and telephone numbers of organizations which offer counselling, referral assistance and other kinds of help.

The Bias-Related Crime Act of 1989, (D.C. Code, Section 22-4002(a)), "affords each crime victim the opportunity to submit a written statement with the complaint that contains information to support a claim that the designated act constitutes a bias-related crime. Statements should be mailed to the Bias/Hate Crimes Coordinator, Intelligence Division, 300 Indiana Avenue NW, Room 5067, Washington, DC 20001. Your statement should include the Central Complaint Number on reverse side of this card.

Central Complaint Number

National Organization for Victim Assistance (24-hr Hot Line)	393-6682
D.C. Latino Civil Rights Task Force Discrimination Hot-Line	682-1518
Anti-Defamation League of B'Nai B'Rith	452-8310
D.C. Hotline, Inc. (24-hr Hot Line)	223-0020
Gay Men and Lesbians Opposing Violence (24-hr Hot Line)	452-7448
D. C. Crime Victims Assistance Center	842-8407
Organization of Chinese Americans, Anti-Asian Violence Task Force	223-5500

Attachment to
Special Order 92.5