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Hate Crimes: Beyond Virtual Reality

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return to full navigation
Summary:
"Hate crimes" against homosexuals are consistently overreported by private advocacy groups. Meanwhile, crimes committed for anti-religious reasons are underreported. This Insight explains why the concept of hate crimes is inherently murky, dangerous, and prone to abuse.
keywords: homosexuality, hate crimes, crime

EXECUTIVE SUMMARY

The author examines the discrepancies between incidences of hate crimes[1] as reported by law enforcement, advocacy groups, and the media, and finds law enforcement to be more credible despite some oddities in reporting methods. She observes that:

- Hate crimes reached an eight-year low in the last reporting period (2002);
- numerous factors contribute to an inaccurate impression of the prevalence of hate crimes against homosexuals; and
- hate crimes against religious people are underreported.

Finally, the author, a civil rights attorney, advises Congress to reject proposed federal hate crimes legislation.

Methodology

We studied the annual Hate Crime Statistics kept by the FBI and the U.S. Department of Justice since 1991, as well as local agencies' own reports in some places. Because it usually takes about 20 months for the government to release the statistics for each year, we also identified trends by interviewing law enforcement and advocacy groups in 25 cities. We have also followed case law and the press on this subject.

Not all states prohibit the same activity or cover the same victim categories. But the federal Hate Crimes Statistics Reporting Act of 1990 asks that incidents motivated by bias against race, religion, ethnicity/national origin, "sexual orientation," or (as of 1997) disability be reported even if those victim categories do not exist in certain jurisdictions. It should be noted that these are not the same protected categories as covered in federal employment law. For instance, the reporting form does not have a category that asks for the gender or the age of the victim.

HATE CRIMES: BEYOND VIRTUAL REALITY *Leah Farish*

Introduction

There is an odd spectacle at some shopping malls and amusement parks. A person is standing on a platform, wearing a helmet that covers his eyes. He wears a vacant look or silly grin as he gropes through the air. He is wearing a virtual reality helmet, playing a virtual reality game. The false information fed to him will cause him to make lots of empty gestures, and maybe even some dangerous ones.

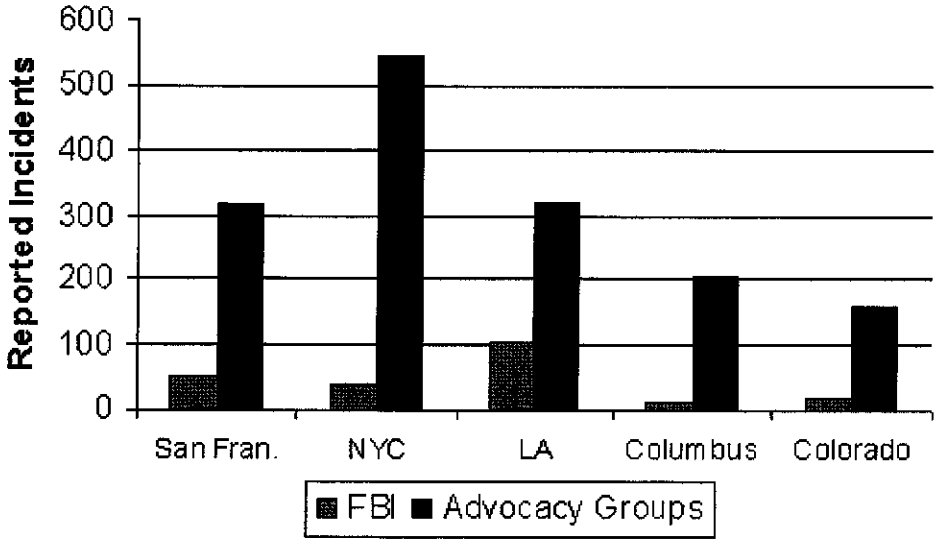
Many well-intentioned people these days are wearing virtual reality helmets, believing false impressions and acting on them. With regard to hate crimes, the virtual reality helmet worn by policymakers consists of inaccurate information from advocacy groups, misleading data from law enforcement, and misguided policy thinking.

Inaccurate Information from Advocacy Groups

Advocacy groups consistently report from three to 20 times the amount of hate crime that is reported by law enforcement.[2] The press seems only too happy to report hate crime as growing, often using statistics from private groups, which are not held accountable for their reports.[3]

For example, the National Institute Against Prejudice and Violence has estimated that "the number of college students victimized by ethnoviolence [admittedly a broad term] is in the range of 800,000 to one million students annually."[4] However, FBI statistics on bias incidents on school campuses show 555 in 1992 and 799 in 1996.[5] Moreover, the Anti-Violence Project claims that in 2001, there were 158 anti-homosexual incidents in Colorado, 205 in Columbus, Ohio, 319 in Los Angeles, 547 in New York City, and 317 in San Francisco.[6] The FBI says that there were 17 in Colorado, 12 in Columbus, 103 in Los Angeles, 38 in New York City and 50 in San Francisco. (Figure 1)[7] Let us be clear--even one is too many. But this is such a large discrepancy that policymakers first should address the discrepancy rather than accepting one or the other source of figures.

Figure 1
2001 Reported Incidence of Hate Crime by Source



Advocacy groups reluctantly admit that their numbers do not match those of law enforcement, but they cite two or three reasons why.[8] First, they claim that law enforcement agencies do not sensitize their officers to cultural diversity or to recognize hate crime. This would certainly explain the discrepancy. According to law professor Frederick Lawrence, "Some localities underreport, sometimes for nefarious reasons like not caring about bias crime or sometimes because their people are undertrained--they don't know what to look for."[9] Says Dianne Hardy-Garcia, executive director of the Lesbian/Gay Rights Lobby of Texas, "I suspect the statistics on hate crimes are very low because...police officers...don't exactly know what hate crimes are."[10] However, every force asked said that their officers do get such training, and many forces either allow openly homosexual officers or have a don't ask/don't tell policy. Many say they meet regularly with advocacy organizations such as homosexual activist groups and the Anti-Defamation League, the latter of which has consistently done significant work in this area. In some places, these groups

END NOTES

1. The Final Report of the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence issued in April, 1986, defined hate violence to be:

> Any act of intimidation, harassment, physical force, or threat of physical force directed against any person, or family, or their property, or advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution or the laws of the United State of California whether or not performed under color of law.
>
> "When hate violence is punishable under a criminal statute it is a hate crime. It should be noted that civil statutes (as opposed to criminal statutes) may provide relief for some types of hate violence." (from California Association of Human Relations Organizations) *http://www.cahro.org/html/definition.html.*

2. "Anti-Lesbian, Gay, Bisexual, and Transgendered Violence in 1996," New York: The New York City Gay and Lesbian Anti-Violence Project, 1997, hereinafter referred to as Anti-LGBT 1996; cf. "United States Department of Justice/Federal Bureau of Investigation Hate Crime Statistics," 1996, hereinafter referred to as DOJ 1996 (or other reporting year).

3. Charlotte Reynolds, "All Things Considered," National Public Radio, February 9, 1998, reporting that hate crime against gays has been "low" in Maine but is "on the rise." Actually, in 1994 with five agencies reporting there were seven anti-gay incidents reported to the FBI (DOJ 1994). In 1996, with over 100 agencies reporting, there were also seven. And see "Reno asks Congress to expand hate-crimes definition," AP, *Dallas Morning News*, January 9, 1998, 5A; interviews by author with officials in Boston and St. Louis. See also Maria Newman, "Officials Pledge Drive to Counter Bias Attack," *New York Times*, January 8, 1992, B3. See also DOJ 1992, cf. DOJ 1997.

4. James Jacobs and Kimberly Potter, *Hate Crimes:Criminal Law and Identity Politics* (New York: Oxford University Press), 1998, 48.

5. DOJ 1992, 26; DOJ 1996, 27.

6. The National Coalition of Anti-Violence Projects, *www.AVP.org*, October 25, 2003.

7. DOJ, 2001.

8. "Reno asks" at note 2 above.

9. Jean Hellwege, "Hate in the crosshairs," *Trial* magazine, January 2001, 17.

10. Denise Gamino, "Hate crime reports lopsided in Texas cities," *Austin American Statesman*, July 5, 1994.

11. Author's interviews with officials in Seattle, Baltimore, Anchorage and Charleston, South Carolina; and Paula L. Brown, "As I See It," *The Gayly Oklahoman*, April 1, 1996, 3 ("[d]ozens of people from the [gay] community are in contact with the police, so the department is very aware of our interest and concern" about anti-gay crime.) Also, Department of Justice and the Federal Bureau of Investigation Training Guide for Hate Crime Data Collection, 1997, 25ff.

12. Publicity brochure of the Simon Wiesenthal Center Museum of Tolerance and interviews with staff, February 6, 2001.

13. Author interviews with officials in St. Louis, Santa Barbara, Seattle and Pittsburgh.

14. DOJ 1996, p. 2; DOJ 1993, 2.

15. Interview by author with Wayne Koka, FBI, May 19, 1994.

16. Author Interview with officers in Fort Myers, Florida.

17. Author interviews with officers in Albuquerque, New York, Santa Barbara, Dallas, Charleston, Cleveland, and Nashville.

18. *U.S. News and World Reports*, cited in "That's Outrageous!" *Reader's Digest*, April, 1998, 34. And see "Crying Wolf?" *World*, August 1, 1998, 8, and L. Chiu, "Hate Crime Report a Hoax," azcentral, October 2, 2001.

19. Author interviews in Santa Barbara, Salt Lake City, and Houston.

20. "Reno asks," note 2 above.

21. Author interviews in Cleveland and Passaic County New Jersey.

22. DOJ 1996, 8; New York, Cleveland Boston, Tulsa, Nashville, and Passaic County, New Jersey. Officials in Maine, San Diego, and Albuquerque gave contradictory views. In such jurisdictions as Charleston, South Carolina, where solicitation for sodomy was a crime, the soliciting party might have feared prosecution although he was a victim of an attack.

23. Maine (Source also asserts that in the attorney general's office they see provocation rarely.)

24. Brown, note 10 above. Speaking of an alleged beating of a homosexual man at an Oklahoma hotel, she says, "The thing that concerns me most is our decision-making skills....The man invited two strangers to his room [and]...he had been hospitalized once prior to this incident for the same reason....So, who has to take responsibility here."

25. Anti-LGBT Violence 1996, "New York City Police Information," unpaged.

26. Anti-LGBT Violence 1996, "Lesbian/Gay/Bisexual/Transgendered-Related Murder Summaries 1996."

27. Ibid.

28. H.G. Bissinger, *Vanity Fair*, February 1995, 85; Boston (motive in some may be robbery); Anti-LGBT Violence 1996, "Lesbian/Gay/Bisexual/Transgendered-Related Incident Summaries: 1996, noting incidents of robberies connected with hate crimes in Chicago, Santa Barbara, and Detroit, unpaged.

29. Author interviews in Salt Lake City, Santa Barbara and Baltimore.

30. C.M. Rennison "Intimate Partner Violence 1993-1998," Bureau of Justice Statistics, May 2000, Figure 8, and "Domestic Violence," Arizona Coalition against Domestic Violence, *azcadv.org*, October 2002.

31. New York City Gay and Lesbian Anti-Violence Project, *AVP.org*, October 24, 2003.

32. "AVP's Domestic Violence Program: Breaking New Ground Every Day," *Protection: The Newsletter of the New York City Gay and Lesbian Anti-Violence Project*, Volume 2, Issue 1, Spring 1999, 1. Also Baltimore, Passaic County, New Jersey, and Salt Lake City.

33. Author interview in Houston.

34. Author interview in Salt Lake City.

35. "Crying Wolf?" *World*, August 1, 1999, 8; and see Lisa Chiu, "Hate Crime Report a Hoax," *azcentral.com*, October 2, 2001.

36. John Leo, "Faking the Hate," *U.S. News and World Report*, June 5, 2000: 22.

37. Charlotte Reynolds, *All Things Considered*, National Public Radio, February 9, 1998; Tulsa, Oklahoma, Human Rights Commission and Tulsa Human Rights Department *Report on Public Forums on Hate Crimes and Gangs*, March 1993, 4.

38. See, e.g., Charisse Jones, "Race Killing in Texas fuels fear and anger," *USA Today*, June 11, 1998: 1A, and Anti-LGBT 1996, 1. According to CNN.com, after 9/11, the Council on American Islamic Relations reported 330 complaints of harassment and abuse in two days, about half of what it received all the previous year.

39. DOJ, 2001.

40. Ibid.

41. Department of Justice/FBI Hate Crime Data Collection Guidelines, 1998, 9.

42. Interview with Nancy Carnes, FBI, February 13, 1998.

43. DOJ, 1996, p. 6. "In most cases where religious bias was the motivating factor, the offenses were crimes against property for which clearance rates are historically lower," DOJ 1993, 8.

44. See note 39.

45. Interview with author, Fort Worth, Texas, November 12, 1999.

46. Nicole Marshall, "Vandals Hit School, Church," *Tulsa World*, August 4, 1996: A11.

47. Cleveland.

48. "Attacks span ethnic, denominational spectrum," *The Christian American*, September/October 1996, 27; cf. Fred Boyles, AP, "Racial Link Not Seen in Church Fires," *Tulsa World*, July 5, 1996: 1A.

49. New York.

50. Department of Justice/Federal Bureau of Investigation Uniform Crime Reporting, National Incident-Based Reporting System, Volume 1, *Data Collection Guidelines*, Sept. 1996, 13 and 22.

51. E.g., New York Times News Service, "Christian network threatens suit over gay support group's ad," *Dallas Morning News*, November 12, 1995: 13A.

52. Passaic County, [Dallas], Boston, contra [Nashville].

53. Boston, Maine, New York, Passaic County, Santa Barbara, [Tulsa].

54. Cleveland, St. Louis, Dallas [Chan], Tulsa.

55. San Francisco.

56. Tulsa, Salt Lake City.

57. Houston, Tulsa. And see James Jacobs and Kimberly Potter, "Hate crimes law isn't needed," *Tulsa World*, Aug. 2, 1998, G2: "The vast majority of persons arrested for violating state hate-crime laws are confused and anti-social juveniles acting on their own or in a peer group, not hard-core neo-Nazi ideologues."

58. *Lee v. Weisman*, 112 S. Ct. 2649, 2666 (1992), n. 10.

59. "Fact Sheet: Hate Crime Laws" July 2000, National Gay and Lesbian Task Force

60. DOJ 1996, 62.

61. DOJ 1996, 10; 1992.

62. DOJ 1999, 18; Pedro Ponce, "Some Question Use of Hate-Crime Laws by Victimized Whites," The *San Diego Union Tribune*, May 5, 1994, A36, cited in Jacobs, supra, 17, and see Comment, *The New Yorker*, June 21, 1993.

63. David Rosenberg, Anti-Defamation League: *Hate Crimes Laws, 1998*, 18.

64. Fact Sheet, note 56 above.

65. Martin H. Belsky, "Hate Crimes Symposium on Racism and Bigotry," Poughkeepsie Jewish Community Center, October 18, 1994, provided to author by Belsky on April 17, 1996.

66. Actual term "re-education" used by Eunice Gibson, City Attorney, Madison, Wisconsin, in interview with author, May 10, 1994.

67. Interview with author.

68. *Apprendi v. New Jersey,* U.S. Supreme Court (99-478) 530 U.S. (2000) 159. N.J. 7, 731A.2nd 485, reversed and remanded.

69. Department of Justice/ Federal Bureau of Investigation, *Training Guide for Hate Crime Data Collection*, 1998, 1 and 17.

70. Dr. Robert L. Spitzer, "Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation," *Archives of Sexual Behavior*, Vol. 32, No. 5, October 2003, 403-417.

71. Author interviews in San Diego, Maine, and Dallas.

72. Interview with Attorney Colleen Pinyan, Chicago, February 16, 1995.

73. James B. Jacobs and Kimberly Potter, *Hate Crimes, Criminal Law, and Identity Politics*, New York: Oxford University Press, 1998, 128.

74. Hellwege, supra, 84.

75. DOJ 1992 and 1996.

76. [Seattle]; *R.A.V. v. St. Paul*, 112 S. Ct. 2538, note 1, listing 3 state non-bias-oriented statutes that could have been used against an offender who ultimately escaped prosecution under the applicable hate crimes ordinance.

77. Charisse Jones, "Race killing in Texas fuels fear and anger," *USA Today*, June 11, 1998: 1A.

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have input into police training.[11] Members of the Los Angeles Police Department are required to be certified by the Museum of Tolerance in Los Angeles, run by a private organization called the Simon Wiesenthal Center. Over 36,000 California law enforcement personnel have completed its "Tools for Tolerance for Law Enforcement Program."[12]

Nationwide, several officers said they feel pressure from the media to report more hate crime and have to explain that they can report only what they see. An officer in Santa Barbara, California, says, "You're going to see that disparity, but it's not because the police are not doing their job."[13]

It would not appear that police lack training in hate crimes enforcement. Agencies from all 50 states and representing four-fifths of the U.S population have attended at least one of dozens of conferences on investigating and reporting hate crimes.[14] FBI instructor Wayne Koka has trained well over 1,000 agencies in recognizing and working bias crimes. He postulated in 1994 that lack of training might have caused underreporting at that time, but he noted that two other phenomena might explain the discrepancy--either victims themselves were not reporting, or "human interest groups" were "counting non-criminal incidents."[15]

It is certainly the prerogative of advocacy groups to receive complaints from anyone they want, and to define and tally offenses any way they choose. We affirm their freedom to do this as an important alternative to police being our only information gatherers. A good example of the phenomenon of non-reporting is that of Guatemalan immigrants in Fort Myers, Florida. According to law enforcement officers there, thugs rob Guatemalan immigrants routinely on payday because the victims fear talking to police--about anything. In their native country, they believe, if you talk to the local police, you may well disappear. [16]

But we are being asked to believe that homosexuals are being assaulted by the hundreds and thousands and are cowering in fear of reporting. If this were true, homosexuals would not report minor offenses. The fact is that they usually do report minor offenses, vigilantly. [17] Some hate crimes have even been faked in order to provoke sympathy for political causes. *U.S. News and World Report* reports that one security analyst has documented approximately 100 fraudulent claims of hate crimes.[18] Often, police receive multiple calls from homosexual neighborhoods on the same incident.[19] If homosexuals are willing to pay the social cost entailed in minor incidents, it is not clear why they would not report major ones.

Hate-inspired incidents must be taken seriously, and we condemn any violence against homosexuals. Perhaps we should take off our virtual reality helmets for a moment and ask: "Do advocacy groups do a service to homosexuals when they encourage them to feel hated and live in fear when there is little basis for such feelings?" Such methods do not help those the organization purports to represent, especially when the group's credibility comes into question. Advocacy groups are not the only ones doing fuzzy thinking and reporting. Former U.S. Attorney General Janet Reno may have worn virtual reality glasses, too. In presenting the latest numbers in January 1998, she said, "These statistics show what we long believed is true: Hate crimes have long gone underreported."[20] In reality, figures of reported crimes by definition don't reveal anything about unreported crimes.

Factoring in 'Risky Behavior'

Another consideration is what law enforcement officers call provocation, which is behavior on the part of a victim that might trigger an attack. This absolutely does not mean that it should be open season on anyone who provokes a crime. All perpetrators of attacks and harassment should be punished. But provocation by victims may be one reason why victims do not report.[21] For example, numerous officers report that much anti-homosexual crime occurs around bars, at restrooms, or in streets or parks where, according to police, homosexual men may make sexual overtures that go awry.[22] This muddies the waters for prosecutors. As one member of a state attorney general's office said when asked if provocation is an issue, "Not on the ones we go to court on."[23] Even a homosexual

newspaper warned its readers that risky behavior makes homosexuals vulnerable to attack.[24] Moreover, a homosexual organization that tracks offenses against gays notes that in 1996, the victim was arrested in 44 out of 575 incidents.[25] In San Francisco, a homosexual man who grabbed the handle of a truck as it passed and was pulled under the wheels is cited as a hate murder victim in one homosexual report.[26] One account about a "male to female transgendered person" named Paige concluded, "The perpetrator is believed to be a person Paige invited to her apartment who may have reacted violently to finding that Paige had male genitalia." In fact, nine out of 22 such murder anecdotes in this summary described a violent reaction to a sexual advance made by the victim. Only three involved a stranger to the victim. Of these three, two took place in cruising areas, according to the report, and the other involved a robbery at gunpoint.[27]

There are sometimes attacks on victims who are in a protected category but who are victimized for some reason other than bias toward people in the category. For instance, more than one source indicates that homosexuals frequently are targets of attacks because they are thought by hoodlums to carry a lot of cash.[28] Criminal minds pick their prey for a number of reasons, and often the reasons are not philosophical ones.

And then, there is the issue of "gay-on-gay" crime, which is usually categorized as domestic violence.[29] But in New Jersey, for example, domestic violence is sometimes listed as a hate crime, so hate crimes against homosexuals may be rising--at the hands of other homosexuals. Domestic violence occurs in 25 to 30 percent of homosexual households, which is about the same rate of violence between separated or divorced heterosexual spouses, and about 10 times higher than married, heterosexual couples.[30]

About 30 percent of hate crimes against homosexuals are committed by "acquaintances, friends, lovers, ex-lovers, relatives, co-workers" and others who knew the victim.[31]

This sort of crime is another type that may be underreported to police but is reported in some form to advocacy groups. Overall, domestic violence is rising, and most officers said "gay-on-gay" crime is counted as domestic violence.[32]

Some so-called hate crimes are misreported or fabricated:

- In Houston, a homosexual mugging victim was left for dead in a traditionally "straight" section of town. The press initially covered it as a hate crime, but investigators found that the man had been assaulted elsewhere and transported there, "to make it look like a hate crime."[33]
- In Salt Lake City, a homosexual teacher at first thought bias offenders had put signs in her yard to intimidate her, but some of her own homosexual students later confessed to doing it.[34]
- In South Carolina, a lesbian was charged with giving false information to a police officer for saying that she was beaten; police contend she hired a man to beat her and then she reported it as a hate crime.[35]

U. S. News and World Report's John Leo says that faking hate crimes appears to be a trend. He describes numerous such incidents, such as that of the homosexual man at the University of Georgia who reported that he had been victimized in nine hate crimes, including three arsons. Under questioning, he admitted to setting the fires. Leo also discusses the lesbian at a Minnesota university who slashed her own face and then claimed that that two men had shouted anti-homosexual remarks and attacked her. Later, the woman confessed to the lie.[36]

Coverage of hate crimes intensifies when "gay rights" bills are being debated. In an interview by National Public Radio's Charlotte Reynolds on the eve of a vote on a local "sexual orientation" non-discrimination ordinance, one activist said that the state had to pass this employment ordinance or it would "send a signal" that violence against homosexuals was acceptable.[37] Pro-homosexual legislators who have failed to muster enough public support to pass the federal civil Employment Non-Discrimination Act (such as

SB 2056 [104th Congress] and HR 404 [105th Congress] and their progeny) are hoping to have more success in criminal law. This politicizing of criminal law and statistics to influence or replace civil law is virtually unprecedented. Honest legislators can thwart this unsavory tactic by pointing out that criminal and civil law are different, and that Congress is limited when it comes to enacting criminal law. Congressmen should also contend vigorously over who would enforce such a criminal law, at a time when federal resources are strained to deal with war, terrorism, school violence, Social Security, and Medicare funding. States traditionally enforce criminal law, and the public may have second thoughts before approving an even more intrusive Big Brother role for the federal government.

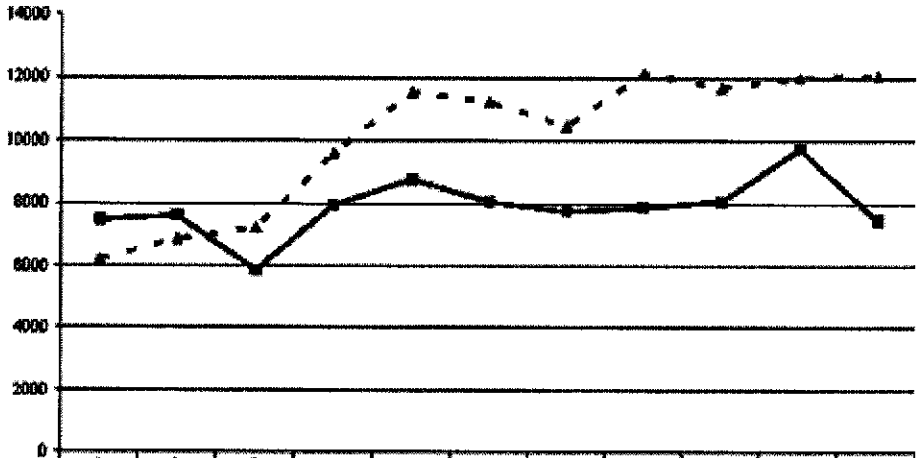
Furthermore, the notion of sending a message to criminals is specious. Potential perpetrators know that their state laws already punish arson, murder, and other mayhem. It will be easy to convince voters that perpetrators who are not dissuaded by state laws and tougher sentences will not be deterred by federal ones either.

Misleading Information from Law Enforcement

Not only is inaccurate information from advocacy groups a part of our "virtual reality," but the reporting system has a high potential to mislead the public in relation to hate crimes against religious people. This is probably not intentional, but it is a reality nevertheless. One misleading factor is very simple to explain. Reporters commonly say that hate crime is growing,**[38]** but that is false. Any increase in most years has tracked with an increase in the number of reporting agencies. (Figure 2)**[39]**. According to the FBI, the 2001 increase is "presumably due to the heinous" 9/11 attacks.**[40]** With even more agencies added to the system, the numbers for 2002 are the lowest reported since 1994.

Figure 2

Hate Crime Incidents and Reporting Agencies



	1	2	3	4	5	6	7	8	9	10	11
Year	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Incidents	7466	7587	5852	7947	8759	8049	7755	7876	8063	9730	7462
Agencies	6200	6850	7200	9600	11530	11211	10461	12122	11680	11987	12073

Law enforcement agencies report hate crimes under two programs. The older one, around since the 1930s, is called the Summary system, and it tallies crimes monthly. This system covers 90 percent of the population. It does not count destruction of property unless an arrest is made.**[41]** According to the FBI, "If there was destruction of property and no arrest was made, under this system, we wouldn't know about it."**[42]** The vast majority of crime against religious people is property-related and only a fraction of offenders are arrested.**[43]** (Crimes against property include graffiti, vandalism, and arson.) Thus, crime against religious people is currently underreported.

A new system, called the National Incident-Based Reporting System (NIBRS), collects records from approximately 18 states so far. NIBRS reports incidents without regard to whether an arrest is made.[44] This should help a few more of us take off the virtual reality helmet.

Three other factors may be at work in the underreporting of hate crimes against religious people. One is the concept intrinsic to some religions, particularly Christianity, of non-retaliation and attempting to live in peace. Several months after the heinous murder of Fort Worth church members during a service, Wedgewood Baptist Church deacon Austin Robinson was asked whether he considered the attack a hate crime, since the killer made several anti-religious statements as he fired the fatal shots. The deacon answered that he preferred to call it an attack by Satan. "He's our only real enemy," he said.[45]

Second, since most crimes of anti-religious bias are vandalism, and since it is so difficult to apprehend vandals, many religious victims, like other victims of vandalism, sometimes believe it is futile to report the crimes, according to several police officers interviewed by this author. The third factor is harder to explain. It seems that some law enforcement people find it difficult to acknowledge hate crime against religious people. An incident occurred in Tulsa, Oklahoma, in which someone defaced a well-established Catholic elementary school in a wealthy neighborhood. The perpetrator(s) painted the words "kill" and "death" on the walls, along with messages referring to devils and to sex with Christian girls. Pentagrams and the number 666 appeared as well. But the police said, "It is really not a hate crime per se. In order for it to be a hate crime, it has to be an act of malicious intimidation, and there is no evidence of that....This is stuff that anyone with a little knowledge of Satanism could have done."[46]

In another city, shots were fired at a synagogue on three or four occasions, but these were not reported as hate crimes either.[47] Numerous churches in 35 states have been burned, but these incidents are usually categorized as racial incidents. This is despite the fact that, of the 208 arsons since 1990, half were at predominantly white or all-white churches.[48] If a racist wanted to hurt blacks or punish those who oppose racism at an organizational level, he would more likely attack Urban League or NAACP offices. Thankfully, this is not happening. Churches and religious organizations are much more subject to attack. But apparently, a church in ashes or a synagogue with bullet holes in it is fraught with ambiguity. Our New York source spoke of some disruptions of Muslim prayer services, but was quick to point out that there can be an "ethnic overlay" to such incidents.[49]

Finally, when a crime against church property occurs, the property is counted as one victim.[50] But when a place of worship is attacked, the intended victims are all the congregants (sometimes numbering in the thousands), including children. Yet this is counted the same as someone getting shoved in a bar. And we recall that for purposes of counting victims, most of the crime against religious people is crime against property. Even with all these limitations, as noted in Figure 3, hate crime against religious people is still a larger proportion of total hate crime than is crime against homosexuals.

It is imperative to resist abuse of any citizens, and to do so effectively we must remove our virtual reality paraphernalia. The helmet some have been wearing shows an image of people in churches being exposed to ranting against homosexuals and then going out on vendettas to attack them.[51] But the reality is quite different. The majority of offenders against homosexuals consist of males ages 15-25.[52] Officers interviewed said they had not observed religious motives in those committing hate crimes against homosexuals. The Office of the Attorney General in Maine said, "We're not finding that this is a religious motivation."[53] Many officers noted that offenses against homosexuals occur around bars, and some added that substance abuse was involved in up to three fourths of the incidents.[54] When asked if the offenders were churchgoers, an officer in San Francisco offered this typical comment: "H---, no."[55] The demographic of religious people who believe that homosexuality is immoral is not that of 15-25-year-old males, arguably the demographic least likely to attend church or temple each week. On the contrary, young males often do not appear to be receiving the restraining moral influence that most churches provide.[56] In fact, though they usually operate alone or in pairs, they tend to fit the profile of gang members and in some cases are.[57] Hate and hate crimes, especially against homosexuals,

are unjustly being laid at the feet of people of faith, who do not fit the profile of a perpetrator of such crimes.

Here is one example of hate attributed to religious groups. The U.S. Supreme Court case *Lee v. Weisman* addressed the issue of whether a rabbi could offer a general prayer at a graduation ceremony. The Court held he could not. In a telling footnote, the majority quoted Sigmund Freud, repeating these shocking words: "[A] religion, even if it calls itself the religion of love, must be hard and unloving to those who do not belong to it."**[58]** The Court then said that prayer, which since before America's founding had been invoked to unify and solemnize community events, must now be seen as "divisive." Thus a deceased Austrian doctor was invoked to tell us how Americans are affected by religion. His statement expresses bigotry, and should form no part of public policy.

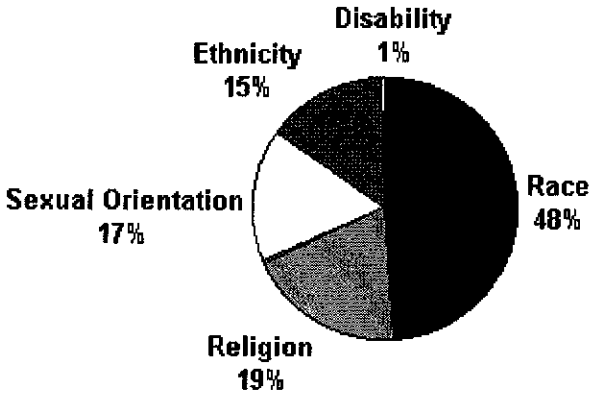
Wrongheaded Policymaking

Well-intentioned but ill-advised political thought has contributed to the distortion of the truth regarding hate crimes. The National Gay and Lesbian Task Force opens its 2000 "Fact Sheet" by asserting, "Violence against individuals based on their race, religion, sexual orientation, ethnicity, disability, sex, and transgender status is a pervasive problem in America....According to the Leadership Council on Civil Rights, 'Hate crimes are a national emergency requiring national attention.'"**[59]** We might all wish to legislate hate out of existence; however, the effort to do so has resulted in several undesirable consequences. Many of these spring from the victim categories that these laws create.

First, race dwarfs all other categories (Figure 3). In Philadelphia in 1996, there were 59 racial hate crimes, 28 anti-religious hate crimes, and zero against sexual orientation.**[60]** The focus on a factor such as sexual orientation almost trivializes the grim situation of racial violence that continues to plague this nation. Not only is race an immutable and visible characteristic, making racial hate crime a more intractable problem, but racial hate crimes tend to be more violent and involve murder more than any other type.**[61]**

Figure 3

Hate Crimes, by Category, 2002



Source: 2002 FBI Uniform Crime Report, Hate Crimes Statistics, Table 1.
http://www.fbi.gov/ucr/hatecrime2002.pdf

Second, minorities may be disproportionately prosecuted under hate crime statutes. Of known offenders, in 1999, almost a third were minorities. One legal services director, Jill Tregor, has complained that white crime victims are using hate crime laws to enhance penalties against minorities.**[62]**

Third, having Congress decree to all state and local agencies what crimes they will report, under what victim categories, is a creation of "virtual law," or what constitutional lawyers might call "common law crime," which is an oxymoron. For example, only about 25 states plus the District of Columbia have statutes that include sexual orientation, yet all are being asked to comply with reporting for that category.**[63]** While it is useful to know the information, the effect is to create an aura of special legal protection around these victim categories that does not exist. It is important to protect homosexuals and bisexuals from criminal attack, but no more important than to protect older people, environmentalists, orphans and foster children, abortion clinic workers, pro-life activists, veterans, homeless people, or any other conceivable category of people. The logic of hate crime laws becomes especially murky when we realize that a given victim could fit into two or three categories at the same time--should the penalty for the crime be doubly or triply enhanced? All crime involves either real malice and hatred or reckless disregard of another's personhood. Whether a frail older lady is stabbed at the teller machine for $50 or a homosexual is beaten for his mannerisms, both offend justice. All crime is hate crime, and all crime should be punished.

The logical problems multiply as we consider adding federal criminal law to the various state laws on hate crime. Would double jeopardy attach in many situations? Since many perpetrators are juveniles, would the unique juvenile laws for each state be discarded because the offender committed a hate crime? Would a federal bill outlawing crimes committed "because of" bias be ruled unconstitutional on account of its vagueness? Would its language be reconcilable to the FBI training materials for the reporting of hate crimes, which require only that the crime has been motivated in whole or in part by bias?

Advocates of hate crimes legislation including "sexual orientation" warn, "Failure to address this critical problem sends a dangerous message to law enforcement and the public....[L]aws countering bias crime send a clear, unequivocal message" that hate crimes will not be tolerated.**[64]** One law school dean intones, "Government has an obligation to lead and send clear messages."**[65]** But in reality it is questionable whether government's job is to send citizens messages. The First Amendment to the Constitution is designed to protect citizens from a government's "messages." Indeed, the government may not dictate to us in the realms of speech, opinion, religion, conscience, and association. We have witnessed countries where everyone was required to call each other comrade, and it is not a pretty sight.

Civil rights attorneys are also disturbed by punishments meted out to bias offenders. In Wisconsin, the offender or discriminator may be forced to undergo "re-education."**[66]** In Maine, restraining orders can be issued against the accused such that he (or she) must avoid any contact with any minority, or to stay 500 feet from that victim or victim type. Maine Attorney General Steve Wessler described with apparent pride a case where such an order was obtained within six hours, and the perpetrator lived in the same building as the accuser, so the perpetrator was "summarily evicted."**[67]** Evidently a perpetrator in Maine can become a homeless person--or a jobless or childless person--with a minimal amount of due process afforded.

In 2001, the Supreme Court identified another due process violation in hate crimes law. A New Jersey man had been sentenced under a showing of bias by a preponderance of the evidence. The Court said that hate was an element of the crime, and all elements of a crime must be proven beyond a reasonable doubt.**[68]**

Furthermore, a fair amount of propaganda is passed on in the guise of merely training police to better detect and combat hate crime. Consider this statement which appears twice in the U.S. Department of Justice's *Training Guide for Hate Crime Data Collection*: "It is most unsettling to the victims of hate crime because there is nothing they can do to alter the situation, nor is there anything that they should be expected to change."**[69]** In the case of sex, race, or ethnicity, this makes sense. But with regard to homosexuality, there exists no proof that it is an immutable condition that the individual cannot change or has no control over.**[70]** And in cases involving provocation, the statement is simply false. In nearly all jurisdictions, despite the Supreme Court's decision in *Lawrence v. Texas* (2003) that struck down sodomy laws, homosexual acts in public are still against the law, and thus there

certainly is "something that they should be expected to change."

At least as alarming is the new emphasis from law enforcement and advocacy groups alike on identifying younger and younger "offenders," and in identifying schools as hotbeds of hate crime.[71] While it is disturbingly true that youths are disproportionately committing hate crimes, there is apparently no lower limit on the age at which a child can be prosecuted for this. Third and fourth graders are now potential criminals for using a word they may well have learned from TV, a parent, or even a teacher. School officials should deal vigorously with name-calling and other disrespect of classmates, but it should be done as a matter of school decorum. Until a First Amendment lawyer intervened, one Illinois school district banned all religious materials as violating its "slanderous speech" policy, because the district contended that to speak favorably of one religion is to denigrate all others.[72] This policy would lead to a chilling of free speech and thought that would truly cripple children's ability to discuss abstractions. Children should be taught to debate each other's ideas on whether those ideas are internally consistent and likely to be true, rather than in terms of personal attacks.

Scholars are beginning to question where free speech and thought fit into hate crime law. In their book published by Oxford University Press, James Jacobs and Kimberly Potter conclude, "It would appear that the only additional purpose [for enhanced punishment of bias crimes] is to provide extra punishment based on the offender's politically incorrect opinions and viewpoints."[73] Some advocates of hate crime legislation baldly state their agendas in terms that seem to disregard constitutional requirements. David Goldman, executive director of the nonprofit Hate-Watch.org, urges Congress to "make it a crime to threaten a target without the requirement that it be a specific threat."[74]

No Proof of Deterrence

Admitting for a moment that hate crimes statutes where used are chilling free speech, and creating "common law crime," is it not still important to have these laws on the books for the sake of justice and deterrence?

Unfortunately, there is no correlation between a drop in hate crime and having a hate crime law on the books. Georgia, Arkansas, and Louisiana have no such statute, yet in those states incidents are down dramatically. In Delaware, hate crime climbed after a statute was enacted. California has thorough hate crime laws, but incidents shot from 75 to 2,052 in four years. Michigan has most standard hate crime provisions, but its hate incidents went from 165 to 486 in four years, with about the same number of agencies reporting. Kentucky has virtually no hate crime legislation, and incidents went from five to 109 in four years. But perhaps that's because participating agencies increased from two to 527.[75]

District attorneys in jurisdictions with no hate crimes statutes express satisfaction with the convictions they are getting without them. Some D.A.s have lost convictions trying to use hate crime laws.[76] And hate crime statutes force victims to come forward to stand for their victim category when that may be distasteful to them. This is particularly true for homosexuals--a person should not have to "come out" to get justice. The full extent of the justice system should be available to all victims. This is equal protection of the law.

In 1998, some white men viciously murdered a black man in Texas by dragging him to death behind a pickup truck. *USA Today* ran this front-page headline: "Race killing in Texas fuels fear and anger."[77] Yet the long article, which lists four contributing reporters, documents no one saying he is afraid or angry, no one hurling invectives, and no violence ensuing. Interviewees express only grief and a desire for healing. In contrast to the blaring headline, a sign was displayed in the town where the crime was committed: "Jasper, Texas, is mourning, hurting, crying. America please pray for us."

Praying and working for healing are better responses to any crime than hysteria and overzealous legislating. Rather than believing the headlines that give us virtual reality, we should read the hand-lettered signs in the communities in which we live.