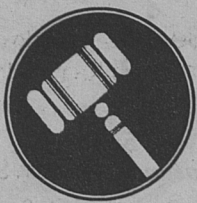


LEGAL



BRIEFS

BY BETH ROBINSON

No law can bring back Matthew Shepard. The United States Congress can, however, honor his life, and protest his senseless, brutal murder, by enacting more potent hate crimes legislation.

What does current federal law say about hate crimes?

Presently, federal officials may prosecute certain hate crimes only if they can demonstrate (1) intentional interference by force or threat with certain federal rights (such as voting or going to school), and (2) that the victim was chosen on the basis of either racial bias or religious bias.

In addition, a person convicted of a federal crime (most crimes are state crimes) may be subjected to enhanced criminal penalties if he or she intentionally selected a victim because of the victim's actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation.

What are the proposed changes to federal law?

The Hate Crimes Prevention Act of 1998 would amend pre-

sent federal law in two important ways. First, it would add crimes motivated by disability, gender, and sexual orientation bias to the list of crimes subject to federal prosecution. Second, it would allow the federal government to prosecute even if the victim wasn't exercising any specific federal right (such as voting). By removing this overly-restrictive obstacle, and by expanding the types of invidious bias that are prohibited, the proposed law would greatly enhance the federal government's ability to prosecute hate crimes. (The Senate bill is S. 1529, and the House bill is H.R. 3081, in case you want to write, call, fax, or e-mail your Senators and Representative.)

Why can't states prosecute hate crimes?

Most states can and do prosecute hate crimes. However, existing state laws are inadequate in scope. Only 20 states include sexual orientation-based crimes in their hate crimes statutes; 18 include gender-based crimes, and twenty cover disability-based crimes. Plus, state laws are often woefully under enforced. The federal law would enable the United States Department

of Justice to take a hard line against hate crimes in the face of recalcitrant local law enforcement officials.

burning of a cross or religious symbol with the intention of terrorizing or harassing a particular person.

Some civil libertarians argue that hate crimes laws punish the expression of beliefs which, however repulsive, are constitutionally protected.

Does Vermont have a hate crimes law?

Vermont's hate crimes law, enacted in 1990, provides for enhanced criminal penalties for those convicted of crimes "maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the armed...handicap...or sexual orientation." The law also allows individuals subjected to hate-motivated crimes to sue the perpetrators civilly, and to claim compensatory and punitive damages. Finally, Vermont's hate crimes law specifically prohibits the

Are hate crimes laws constitutional?

Some civil libertarians argue that hate crimes laws punish the expression of beliefs which, however repulsive, are constitutionally protected. On that basis, the United States Supreme Court has struck down a hate crimes law which sought to punish expressive acts designed to harass, such as cross burning, raising some questions about the constitutionality of the cross-burning portion of Vermont's statute. However, although the debate continues, both the Vermont Supreme Court and the United States

Supreme Court have upheld sentencing-enhancement provisions on the ground that such laws punish conduct, not beliefs.

We will never know whether an effective hate crimes law would have made any difference in Matthew Shephard's case. Effective education of our youth, and education of society at large, is a more effective preventative measure than simply enacting a criminal law to punish hate-motivated conduct after it happens. Nonetheless, especially when it is actually enforced, the hate crimes law can send a powerful message that selective violence against women, gbtqs, racial minorities, religious minorities and the disabled is not acceptable in a civil society. ▼

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.

VICTORY OFFICIAL THREATENED

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for now, saying she was waiting for the state police to complete the investigation first and determine whether a case can be established independently.

Paul said she was hopeful that the state police probe would come up with suspects that she could prosecute, although she refuses at this point to speculate on what the charge she might bring would be.

"We find in a significant number of cases that perpetrators brag about their action somewhere down the road," she said.

Complicating this case are the small-town politics of Victory, where only about 50 people live year-round. There have been ugly incidents in the past, but never anything as hateful as the one against Kanoff. She is frustrated that nothing has been turned up since the investigation began.

"What's equally amazing is that relatively few people were outraged enough by the hate crime to do anything," she wrote in *The Caledonian-Record*. "Yes, the state police are investigating. They told me it would take several months for the lab in Montpelier to try and get fingerprints off the photograph."

"But let's face it: Victory is a tiny town, the smallest in Vermont. Someone knows who did this. Yet a wall of silence has permeated throughout."

That is until a report on the crime went statewide and appeared in Sunday newspapers late last month. Then the support began pouring out to Kanoff from people appalled by the gravity of the crime.

She's gotten calls of support and offers of help from all over Vermont and as far as Boston, where the story also appeared in *The Boston Globe*.

"I have gotten calls from people who are upset about what has happened here," she said in an interview. "People have offered me attorneys' names and offered to do things for me. People have asked me if I needed places to stay."

And prosecutor Paul also is making clear that she believes a crime has been committed. She says that's perfectly obvious just from looking at the picture.

"Someone took the time to cut that picture out of the newspaper. Someone took time to draw on that picture," Paul said. "It took time to write 'Death To Queers' on that picture. It shows a great deal of premeditation." ▼



photo: Scot Applegate

CROW COHEN is taking a well-deserved break this month, but her column "Crow's Caws" will return in December. She is pictured here with Anne Moore, NGLTF (National Gay and Lesbian Task Force) intern and Middlebury College Alum. Moore was one of the participants in Cohen's conference workshop.

OITM is always looking for volunteers to help with distribution, stuffing, and other tasks. Please contact Barbara Dozetos at 434-OITM or oitm@together.net to find out how you can help your community newspaper.