

Patty Caya February 08, 2006

New Bedford gay bar attack spotlights hate crimes

Jason Robida, the man who died after an alleged attack at the New Bedford, Mass., gay bar Puzzles, the killing of an Arkansas officer and the slaying of a mother of three was expected to have been charged under hate crime laws, had he lived.

So-called "hate crimes" are considered indefensible acts of violence perpetrated against an individual, but are intended to target or "send a message" to an entire group or class of individuals. Thus, many people say these crimes should be prosecuted differently - more severely - under the law.

Hate crime statutes passed at both the state and Federal level have resulted in contentious debates about the merit of such penalties. These debates usually center around one question: should these crimes be prosecuted based on the motivation behind the acts or should they be prosecuted simply on the grounds of the actions themselves?

Whether a hate crime is an act of arson on an African-American church, vandalism in a Jewish cemetery or assault on a gay, lesbian, bisexual or transgender person, these crimes are illegal and have criminal repercussions on their own, without the additional penalties imposed by the provisions of the hate crime laws.

New Hampshire's 2005 brush with repealing hate crime laws

Critics of these laws argue that a crime is a crime. Why punish certain crimes based on the motivation behind them?

The New Hampshire state legislature took up this issue in 2005 when House Bill 136-FN was introduced in an effort to remove the increased penalties for crimes "substantially motivated by hostility toward the victim's religion, race, creed, sexual orientation, national origin, or sex." The Bill was overturned by a vote of 298 to 48 in the N.H. House of Representatives, but the issues raised about hate crime protections were not unique to New Hampshire.

N.H. state Rep. Elbert Bicknell (R-District 1) introduced the legislation. He says, "Hate is hate and what we are doing with the hate crimes when we increase the penalties is we are trying to punish what the person thinks and that gets a little too Orwellian for me."

There are many conservative religious groups that speak out against hate crime legislation for extending protections to homosexuals or transgender individuals, so it is easy to get lost in the idea that the only people against hate crime legislation are extremists, racists or bigots. But many thoughtful people, including some openly gay pundits say that singling out certain classes of individuals for special treatment is wrong,

Bicknell says, "I don't think we should be making gays any different than straights, blacks any different than whites or any one religion different than another."

Reasons for having hate crime laws

Clarence Patton is the Executive Director of the National Coalition of Anti-Violence Programs (NCAVP), a coalition of over 20 lesbian, gay, bisexual, and transgender victim advocacy and documentation programs located throughout the United States. As such, he is a staunch supporter of hate crime protections. He asks, "Doesn't society or the federal government have a responsibility to indicate that certain [acts] are more egregious than others? Are these things more detrimental to society than others | other crimes or even the same crimes

with other motivations?"

For supporters of hate crime laws, the answer is a resounding yes.

He says, "Hate crimes are more egregious forms of violence and should be singled out for attention and scrutiny."

He believes that hate crime legislation sends a message also: "The message being that they [these types of crimes] will not be tolerated in our society."

He points out that this kind of judgment has been made in other cases in the law. He says, "For example, we as a society have decided that killing a law enforcement officer is more egregious than murdering other people." He points to the stiffer penalties that result from this kind of crime.

In New Hampshire, that law extends to imposing the Death Penalty in crimes where a judge, police officer or pregnant woman is killed.

Bicknell, who was the prime sponsor of the legislation to repeal the hate crime penalty in N.H., says he wouldn't have voted for this law either. "I was a cop for 20 years," he says. "What makes their life more valuable than my wife or my daughter or anyone else? We are all supposed to be equal on this planet, but we keep making these people, one better than the other. This is wrong."

Another reason why many supporters believe hate crimes should receive special treatment is because hate crimes are individual acts meant to send a message to a larger community and thus have a more detrimental impact on a societal level.

"If you burn a cross on someone's lawn," says Patton, "It is not just to get them out of the neighborhood, but to send a message so that others know that this neighborhood is off limits to people of that persuasion."

Emily Pitt, Coordinator of the Violence Recovery Program at the Fenway

Community Health Center works directly with victims of hate crimes and has seen first hand the broad damage this type of violence can cause in the community.

"It is an attack on a person's identity," says Pitt. "It goes to the heart of the community. Other people are strongly affected and can be vicariously traumatized because they feel 'it could have been me.'"

Not all hate crimes make headlines like the horrific attacks on Matthew Shepard or James Byrd, Jr. or the recent events in the New Bedford bar. But when they do these high profile cases often result in cries for stronger legislation. Supporters say that certain classes or groups require special protections under the law.

Do hate crimes actually help protect groups?

What is also often debated is whether hate crime laws effectively serve the purpose of protecting those groups.

Kyle Sipples, in his role as Deputy State's Attorney for the State of Vermont has been prosecuting state cases for nine years. He says, "Hate crime laws recognize that certain members of certain classes are more likely to be a victim of a crime. It is important to try to reduce the amount of crime against that class unfortunately, by the time it gets prosecuted the crime has already been committed.

In 1992 the U.S. Congress defined a hate crime as a crime in which the "the defendant's conduct was motivated by hatred, bias, or prejudice, based on the actual or perceived race, color, religion, national origin, ethnicity, gender, sexual orientation or gender identity of another individual or group of individuals." Disabilities were added to that list in 1994 under the Violent Crime Control and Law Enforcement Act.

All six New England states have hate crime laws

In addition to Federal Legislation, all but four (see map on page A7) states have some form of hate crime laws which vary according to the kinds of protections provided and which groups are singled out for protection. This includes all six New England states, all of which include crimes based on sexual orientation. Vermont and Connecticut add penalties for crimes based on gender identity.

With all this legislation in place, it would seem that these laws have an effect on the incidence of these types of crimes. On the contrary, many supporters admit that there is no evidence to this effect. This is partly due to the low reporting rate of hate crimes, partly due to the difficulty in prosecuting them and partly because they are not a deterrent on their own.

Patton and Pitt both agree that hate crime laws only go so far in addressing the underlying issues. "If we had our druthers we would prefer to see not just enhanced penalties but a better model," he says.

"A model more along the lines of the Violence Against Women Act which really provides resources, training and a mandate and education: intervention, services that begin to not just deal with the punitive [aspect of the] law. A model that assists those impacted by the issue."

"Hate crimes only protect people against the worst case scenario," says Sipples. "What they don't do and can't do is protect people against the more subtle forms of hate."

Hate crimes can be difficult to prosecute.

Sipples says, "The biggest problem is that they [crimes] don't happen in a vacuum. It's like peeling an onion. At what point are you able to get deeper into the motivation when there are many other levels to peel through?"

Often in those cases prosecutors rely on circumstantial evidence to make their case. According to published reports on the New Bedford bar incident, Robida, had he lived, would have likely been tried under the Massachusetts hate crime laws in addition to the other criminal charges.

This case is one where the hate crime laws may be more easily applied.

But even with that inevitability, it begs the question: would these acts of violence have been any less repugnant if they had been carried out in a bar, which served a clientele of bikers or college students? Would those classes of victims have made the crime less abhorrent?

What seems clear from both sides of the issue is that hate crimes are reprehensible and should be recognized as such by our society, in some fundamental way.

What is not clear, despite widespread support for hate crime legislation, is whether these laws are the most appropriate or effective method of addressing the underlying problem or if society would be better served by a different approach altogether. •