



PHILADELPHIA BAR ASSOCIATION

TESTIMONY OF
SUSAN ST. ANTOINE, ESQUIRE,
ON BEHALF OF THE PHILADELPHIA BAR ASSOCIATION
IN SUPPORT OF HOUSE BILL 1353

HEARING OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE,
THE HONORABLE THOMAS R. CALTAGIRONE, CHAIR

Wednesday, April 22, 1992
10:00 a.m.
140 Main Capitol Building
Harrisburg, Pennsylvania

Good morning. My name is Susan St. Antoine and I am an associate with Morgan, Lewis & Bockius in Philadelphia.

I am here today on behalf of the more than 12,000 members of the Philadelphia Bar Association to express the very strong support of the Philadelphia Bar Association for House Bill 1353. As you know, that bill will, if passed, amend our Ethnic Intimidation Act to enhance penalties for certain criminal offenses directed against individuals based on their actual or perceived sexual orientation.

As lawyers and as representatives of the Philadelphia Bar Association, furtherance of the cause of justice is a fundamental issue for us. The amendments to our Ethnic Intimidation Act proposed in House Bill 1353 further the cause of justice in several important ways which make enactment of that bill particularly appropriate now.

Both the Ethnic Intimidation Act, as it currently exists, and the amendments proposed under House Bill 1353 are directed toward what are commonly known as "hate crimes." In May, 1991, Pennsylvania Attorney General Ernie Preate reported that hate crimes in Pennsylvania rose 30% in the preceding two years.

Since that time, the increase of crimes which are motivated by hatred for the victim's different race, ethnic background, color, religion, or other differences has prompted Philadelphia District Attorney Lynne Abraham to target hate crimes for special attention by her office through the assignment of an assistant district attorney to serve as a liaison on bias- and hate-related crimes, as well as the implementation of new procedures for tracking these crimes.

On the federal level, the problem has increased to the point that Congress in 1990 enacted the Hate Crimes Statistics Act, 28 U.S.C. §534, which for the first time requires the federal government to collect statistics on crimes motivated by prejudice based on race, ethnic background, religion or sexual orientation.

Also, there is evidence that the AIDS epidemic may have triggered a rise in fear of gays and lesbians and a corresponding increase in anti-gay violence. Statistically, there is no doubt that the prevalence of hate crimes presents a very real issue calling for a comprehensive response from the criminal justice system utilizing tools provided by the legislature.

Our present Ethnic Intimidation Act is such a tool. It enhances penalties against criminal offenders whose acts are motivated by a malicious intention toward the race, color, religion or national origin of the victim.

As such, the current bill serves as a deterrent against some categories of hate crimes and is a valuable law-enforcement weapon in the fight to preserve the safety and well-being of all Pennsylvanians. The bill also sends a potent message to "skinheads," "neo-Nazis," and others for whom violence is a trademark.

Yet, Pennsylvania's existing legislation does not deal with a category of hate crime which occurs in Pennsylvania with an unacceptable level of frequency. Attorney General Preate's May, 1991 report stated that "there is disturbing evidence that gay men and women are at risk of physical violence, harm and threats to a much greater extent than the population at large." A study published by the Philadelphia Lesbian and Gay Task Force in June, 1988, found that gay men in Pennsylvania experience eight times the national rate of violence against men in the general population, and gay women in Pennsylvania are seven times more likely to suffer from bias-related offenses than women nationwide.

Lesbians and gay men are probably the most frequent victims of bias-motivated crime.¹ As disturbing as the statistics are, they certainly indicate only a small portion of a much larger problem. For every hate-motivated crime against a lesbian or gay man which is reported as such to law enforcement authorities, there are many more which are not reported by victims who wish to keep their sexual orientation secret.

The 1988 comments of a Texas judge in sentencing an 18-year-old murderer whose victims were gay suggest that there is some justification for keeping silent; the New York Times quoted the judge as stating, "I put prostitutes and gays at the same level and I'd be hard put to give somebody life for killing a prostitute."² More recently, the Philadelphia Inquirer reported that,

¹ According to "The Response of the Criminal Justice System to Bias Crime: An Exploratory Review," by Peter Finn and Taylor McNeil, October 7, 1987, p. 2, a report prepared by Abt Associates, Inc. for the U.S. Department of Justice, "Homosexuals are probably the most frequent victims [of hate violence]."

² New York Times, December 17, 1988, p. 8.

according to a report issued by a police advisory group, "An irrational fear of AIDS, hostility towards gays and a virtual absence of supervision caused some Philadelphia police officers to beat and mistreat protesters during President Bush's September 12 visit" to Philadelphia in September, 1991.³

Without clearly articulated direction from the legislature, it is likely that criminals motivated by bias against lesbians and gay men will not receive the serious attention their violent behavior warrants from the judicial system.

We recognize that particularly with respect to sexual orientation, there is a perception that passage of legislation such as House Bill 1353 condones homosexuality. If one accepts that premise at face value, the choice facing the legislature then becomes a choice between condoning homosexuality and condemning violent crime. In that case, the easy choice should be against any violence which threatens the citizens of Pennsylvania. The continued exclusion of bias-motivated violence against lesbians and gay men from the scope of our hate crimes legislation in fact sends a message that the victimization of lesbians and gay men is less reprehensible than similar violence against others. That, we believe, is unacceptable.

The unstated message of our current legislation is not lost on lesbians and gay men throughout Pennsylvania. According to one study, gay teenagers are three times as likely to commit suicide as their heterosexual counterparts. Another study showed that 48% of gay men are afraid to walk across the bucolic green lawns of Penn State's main campus in State College.

A related argument against H.B. 1353 specifically, and legislation such as our Ethnic Intimidation Act generally, is that it is wrong to single out particular groups for "special" protection. This argument ignores the unique nature of the problem here. Where the criminal actor selects his or her victim based on certain immutable characteristics of the victim, that bias-related motivation must be addressed in defining the criminal act.

For these reasons, we urge the General Assembly to pass House Bill 1353 promptly. As those who have testified previously have already stated, a serious problem exists which you can address by passing House Bill 1353.

We also respectfully submit that the concept of justice, recently celebrated with much fanfare during the bicentennial of the Bill of Rights, requires the inclusion of lesbians and gay men in our present law. Whether we are gay, straight, black, white, Christian, Jewish - we all deserve equal protection under the law.

The status quo in Pennsylvania conspicuously excludes individuals who are victims of hate crimes because they are or are perceived to be lesbians and gay men. In that respect, existing Pennsylvania law is unfair and unjust.

³ Philadelphia Inquirer, March 19, 1992, p. 1.

You have the power to remedy that injustice by favorably reporting House Bill 1353 out of the Judiciary Committee, by voting in its favor when put to a vote on the House floor and by encouraging your colleagues to do the same. On behalf of the Philadelphia Bar Association, I urge you to do so.