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PENNSYLVANIA HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

HATE CRIME: ANALYSIS OF THE PROBLEM AND
SUGGESTIONS FOR REFORM

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My name is Brian Levin and I am an associate professor of Criminal Justice at The Richard Stockton College of New Jersey where I also serve as director of Stockton College's Center on Hate and Extremism. Before coming to Richard Stockton College I served as the Associate Director for Legal Affairs at the Southern Poverty Law Center's Klanwatch and Militia Task Force.

I will address the Judiciary Committee today on the characteristics of hate and extremism and offer some suggestions on how the Commonwealth can better address these issues.

A "hate crime" is a criminal offense where a person or a target is intentionally selected on the basis of a status characteristic such as race, religion, national origin or sexual orientation. While the FBI's data collection guidelines include sexual orientation, Pennsylvania's Ethnic Intimidation Statute does not. This is a glaring deficiency which must be corrected.

Hate offenses are a criminologically distinct and severe type of offense. In relation to other offenses, hate crimes are more likely to involve attacks against persons, assaults, injury, serial victimizations, as well as unknown and multiple assailants.

Hate crimes are also associated with heightened psychological trauma for victims and an increased risk of civil disorder for communities. Victims feel especially vulnerable because they are at a heightened risk for unprovoked random attacks due to their identity. The psychological trauma to victims is intense because there is little (if anything) one can do to decrease the risk of further victimization. There is also heightened psychological trauma because these attacks are targeted towards characteristics that are central to a person's identity.

Current research provides some interesting insights for policymakers. Nationally, approximately 50% of hate offenders are 21 or under and Pennsylvania authorities report an even

higher percentage of youthful offenders. In addition, about 95% of hate crimes nationally are not committed by members of organized hate groups or hard core hatemongers. In fact a Northeastern University study found that most hate crimes were motivated by a desire for excitement or to avenge a perceived transgression committed by an outsider.

In addition there is massive underreporting by hate crime victims. Professor Greg Herek found that underreporting by gay hate crime victims is between 66 and 92%. Police often compound the problem by failing to record and respond to those hate crimes that are reported. A Northeastern University Study found that responding officers correctly categorized only 19 out of 452 reported hate crimes.

Pennsylvania is fortunate to have talented and committed officials responding to the hate crime problem, but the Commonwealth must do more to support their efforts. Here are some suggestions I have for the legislature.

Prioritize Police Training and Data Collection

Make hate crime training and data collection mandatory for every police department. It appears that in many parts of the state, particularly in some rural areas authorities are not documenting and responding to hate crime in an appropriate manner. While Pennsylvania ranks fifth in the nation in population, it is only ninth in the number of reported hate crimes. In 1995 the city of Boston with a population of about 544,000 reported approximately 200 hate crimes to the FBI, while Pennsylvania with a population nearly twenty times as great reported only 282 hate crimes. Many jurisdictions in the Commonwealth do not report any hate crimes at all.

Strengthen the Ethnic Intimidation Law

The coverage of the Commonwealth's hate crime law should be expanded to include sexual orientation, disability and gender. Hate crimes against gays, for example, are among the most violent and least reported of all hate crime, yet Pennsylvania's law does not protect these victims. Indeed hate violence against gays are a serious problem nationwide. Homophobic homicides now outpace racially motivated homicides as the leading category of bias homicide. The Federal Hate Crime Sentencing Enhancement Act, the FBI's data collection program and over 20 states explicitly recognize sexual orientation as a protected category.

Expand the Jurisdiction of the Attorney General

Based on the brevity of hate crime reports and prosecutions from certain areas of the Commonwealth it is apparent that some officials are not adequately responding the hate crime problem in their communities. Therefore, it is crucial that concurrent jurisdiction over the prosecution of hate crime cases be extended to the State Attorney General.

Protect Undocumented Immigrants

The legislature should enact a statute that prevents the disclosure of evidence collected during the investigation of a hate crime from being disclosed to federal immigration authorities. Without such a provision undocumented hate crime victims would be placed in the untenable position of having to choose between deportation or the adjudication of their assailants. A civilized society has an obligation to protect its most vulnerable residents from discriminatory violence.

Fund Diversity Education

Early educational efforts that involve meaningful interactions with diverse people reduce the harmful negative stereotypes that are a prerequisite to bigoted violence.

In *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), the Court recognized that the opportunity of a state education must be available to all on equal terms. The Court stated:

To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

Tragically, however, schools and colleges are becoming increasingly identified by new research as one of the most common areas where bias crimes occur, thus threatening, de facto, the protections afforded by *Brown* (and also stigmatizing those groups not embraced by the *Brown* decision). A nationwide 1990 Harris poll of high school students found over half the respondents said they witnessed racial incidents at least once in a while, and some "very often." Almost half said they either approve such attacks or would participate in one. In a further disturbing survey by the State of New York of almost three thousand junior and senior high school students, 43% have witnessed acts of bias violence at school, 16% have been victims and 8% have been injured. A 1989 Los Angeles County school survey of 956 responding institutions revealed that in addition to many non-criminal bias incidents, 1,237 acts of reported physical violence, graffiti and property damage took place in a single school year. A 1987 study by the National Institute Against Prejudice and Violence of the University of Maryland-Baltimore

County revealed that in a single school year, over 5% of the students were harassed, threatened, physically attacked, or experienced property destruction motivated by racial, religious or ethnic animus. According to the National Institute, 20% of minority college students are either assaulted or harassed and these acts are increasing significantly.

At Stockton College, our annual CHEER Conference for young people has been hailed as a national model. You all are invited to Stockton this spring to see our CHEER Conference and our Holocaust Research Center. School based prejudice reduction programs such as these represent an effective common sense proactive response to hate violence.

Strengthen Laws Dealing With Extremists

Pennsylvania is home to 98 hate groups, anti-government organizations, and militias. The Commonwealth is home to over 20 militia groups yet, there is no anti-militia statute, only a law that prohibits paramilitary training. The Supreme Court and numerous lower federal courts have upheld the right of states to ban military organizing, not just paramilitary training. My former employer, the Southern Poverty Law Center used these laws to put the Ku Klux Klan's paramilitary units out of business in Texas and North Carolina - and the federal courts upheld these laws. These laws provide a proactive tool for authorities to intervene against this intimidating and proscribable conduct before it rises to violence.

The Commonwealth should also enact laws criminalizing renegade "common law courts" that threaten and intimidate government officials and private citizens.

Lastly, the Commonwealth should criminalize the possession of mass toxins and biological pathogens, such as ricin and sarin gas, which are becoming increasingly popular with anti-government extremists.

CONCLUSION

Demographic changes, economic shifts, changes in residential housing patterns, international events, and strained intergroup bonds make the threat of hate crime a significant one for the nation in general and for the Commonwealth in particular.

Thank you for the opportunity to testify here today. I will answer any questions that members of the Committee might have.

WHAT IS A HATE CRIME?

An act of:

- Intimidation
- Harassment
- Physical force or threat of physical force

WHO IS IT COMMITTED AGAINST?

Against:

- Person
- Family
- Property
- Supporter

WHY DOES IT OCCUR?

Motivated in whole or in part by hostility based on:

- Race/Color
- Nationality
- Religion
- Gender
- Ethnicity
- Ancestry
- Sexual Orientation
- Disability

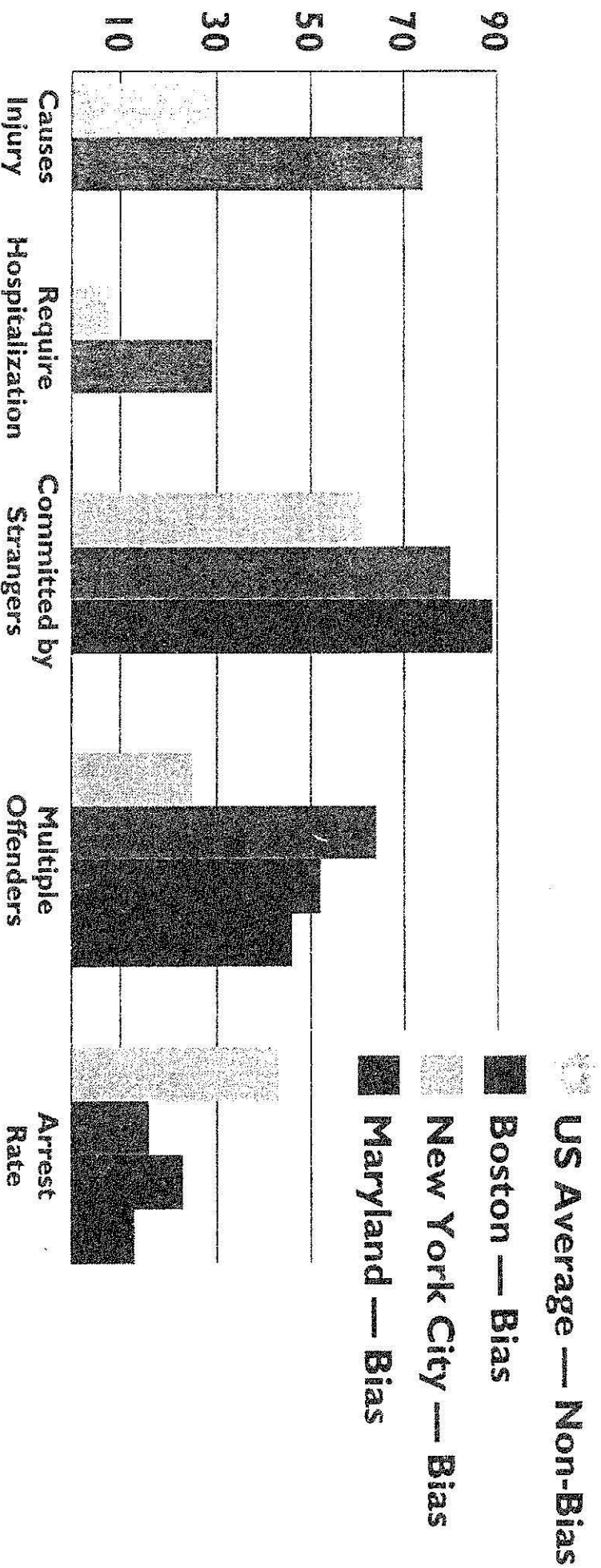
Hate Groups in the United States in 1995



△ KLAN
卐 NEO-NAZI
○ SKINHEAD
□ OTHER

COURTESY: KLANWATCH

Comparison of Bias and Non-Bias Crimes



Source: B. Levin, Bias Crimes: A Theoretical & Practical Overview

Appendix B

Model Statutes to Prohibit Militia Organizing

This statute:

1. Outlaws private military organizations.
2. Enhances penalties for crimes committed under the auspices of private military organizations.
3. Exempts the National Guard, the Armed Forces of the United States, and other government-sanctioned entities.
4. Permits civil actions by prosecutors or private citizens.

TEXT:

A) It shall be unlawful for any person to assemble, associate, train, congregate or parade with other persons as a military organization in this State without the prior approval of the Governor.

B) Any individual violating this section shall be deemed guilty of a Class ___ misdemeanor.

C) Any individual violating this section who also is convicted of another state criminal offense while acting as a member of an unauthorized military organization shall have his or her sentence increased by one offense level for that offense in addition to any penalties accrued under subdivision B of this statute.

D) This statute shall not apply to persons engaged in the official activities of:

- (1) the state National Guard;
- (2) other state mandated military bodies;

B) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his or her official duties.

C) The Attorney General, or any district attorney, or city attorney may also bring a civil action for injunctive and other appropriate relief in the name of the people of the State of _____, to cease the prohibited activities set forth in this statute.

D) Anyone injured by conduct prohibited in this statute may institute a civil action against the offending party(ies) for injunctive or other appropriate relief, including compensatory and punitive damages, as well as attorneys fees and costs.

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Note: Bomb Recipe Censored for Public Safety

FERTILIZER EXPLOSIVE

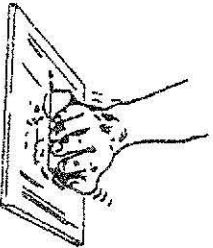
An explosive munition can be made from [REDACTED] and either [REDACTED] or a mixture of equal parts of [REDACTED] and [REDACTED]. When properly prepared, this explosive munition can be detonated with a [REDACTED].

MATERIAL REQUIRED:

[REDACTED]
Two flat boards. (At least one of these should be comfortably held in the hand, i.e. 2 x 4 and 36 x 36.)
Bucket or other container for mixing ingredients
Iron or steel pipe or bottle, tin can or heavy-walled cardboard tube
Blasting cap
Wooden rod - 1/4 in. diameter
Spoon or similar measuring container

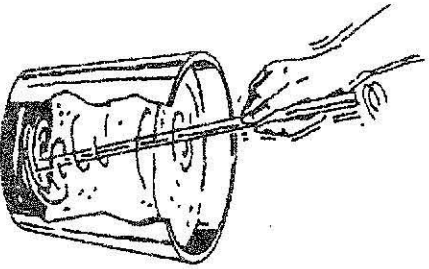
PROCEDURE:

1. Spread [REDACTED] on the large flat board and rub vigorously with the other board until [REDACTED]

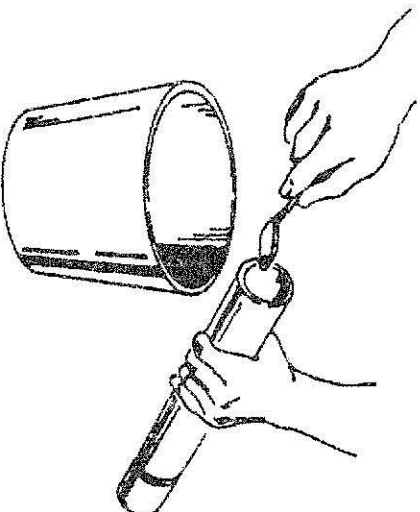


NOTE: Proceed with Step 2 as soon as possible since the powder may take moisture from the air and become spoiled.

2. Mix one measure (cup, table-spoon, etc.) of [REDACTED] with [REDACTED]. In a dry bucket or other suitable container and stir with the wooden rod. If [REDACTED] is not available, use one half measure of [REDACTED] and one half measure of [REDACTED]. Store in a waterproof container until ready to use.

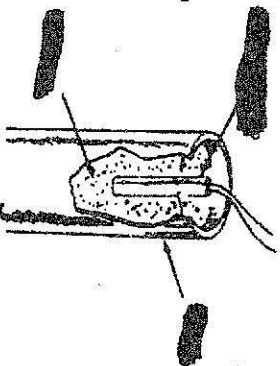


3. Spoon this mixture into an iron or steel pipe which has an end cap threaded on one end. If a pipe is not available, you may use a dry tin can, a glass jar or a heavy-walled cardboard tube.



NOTE:

4. Insert [REDACTED] just beneath the surface of the explosive mix.



NOTE: [REDACTED] will add to the effectiveness of the explosive.