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SHOULD “BUM-BASHING” BE A HATE CRIME?

by JEFF McDONALD

As far as authorities can tell, August Felix’s only crime was living on the streets.¹

Felix, a homeless man, was severely beaten with no apparent motive other than amusement.² His plight is representative of a larger trend of unprovoked violence against the homeless.³

In response, legislators have been gathering support for adding the homeless as a protected class to state and federal hate crime laws.⁴ However, calls for protection have also encountered resistance.⁵

PASSING LEGISLATION

On April 6, 2006, Maine became the first state to offer stiffer penalties for attacks against homeless people.⁶ The state law empowers judges to issue harsher sentences at their discretion for crimes against victims selected because they were homeless.⁷

Not long after, Maryland went a step further.⁸ On May 7, 2009, it became the first state to incorporate non-discretionary protection for the homeless into its hate crime statute.⁹ Like Maine, Maryland added homelessness to race, religious belief, national origin, disability, gender and sexual orientation on its list of protected classes.¹⁰ The new law went into effect on Oct. 1, 2009.¹¹

Since 2009, California, Florida, Ohio, South Carolina, Alaska, Texas and the District of Colombia have considered enacting special protection laws for the homeless class.¹² The bills in Texas and Ohio were defeated, but legislation in California, South Carolina, Alaska, Florida and D.C. is still pending.¹³

Many other states have considered measures to protect the homeless in recent years.¹⁴ Nevada's 2007 proposal would not only have added homeless individuals to the protected ranks of hate crime classes but would have allowed the victim to collect actual and punitive damages, as well as attorney's fees.¹⁵

While special legislative consideration for the homeless is gaining traction in several states, homelessness is not currently a protected class under federal hate crime statutes.¹⁶ Specifically, the Violent Crime Control and Law Enforcement Act of 1994, which addresses major categories of violent crime, does not include homeless people as a protected class.¹⁷ The Act defines a hate crime as one "in which the defendant intentionally selects a victim . . . because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person."¹⁸

Impelled by the persistent attacks on the homeless in recent years, members of Congress have introduced two pending proposals to provide extra services to homeless crime victims.¹⁹ One proposal would amend the Hate Crimes Statistics Act, a law tasking the FBI with collecting information on crimes motivated by race, religion, sexual orientation, disability or ethnicity.²⁰ This change would require tracking crimes against the homeless.²¹ The other proposal au-

thorizes special housing benefits for victims even if they were previously homeless.²²

VICTIMS OF HOMELESS VIOLENCE

The push for legislation has been spurred by several shocking high-profile instances of violence.²³ On March 26, 2006, police discovered August Felix, 54, one of Orlando's homeless residents, crumpled on the driveway of a condominium building with severe blunt force head injuries.²⁴

Felix could not identify his attackers before dying in the hospital.²⁵ He only knew that they were youths.²⁶ Six local teens were eventually charged with the beating.²⁷

The violence in Orlando followed closely on the heels of similar attacks in Fort Lauderdale.²⁸ On the night of Jan. 12, 2006, a group of teens beat three unrelated homeless men in a random spree of violence.²⁹ The victims were slashed, pounded with baseball bats and shot with paintball guns.³⁰ Jacques Pierre, 60, and Raymond Perez, 52, were hospitalized with life-threatening injuries, but survived.³¹

Forty-five-year-old Norris Gaynor was not so lucky.³² He was bludgeoned to death while sleeping on a park bench.³³ The spree gained worldwide notoriety when security camera footage of Perez's beating was broadcast on national television networks and the Internet.³⁴

"A NATIONWIDE PROBLEM"

According to the National Coalition for the Homeless (NCH), Florida leads the nation in violence against the homeless, with 30 separate incidents reported in 2008.³⁵ California follows with 22.³⁶



Homeless individuals often fail to report acts of violence against them out of fear of authorities.

Attacks are most common in urban areas, with the highest incidences of violence occurring in warm weather states.³⁷ Here, the homeless population spends more time outdoors and stands out conspicuously against crowds of tourists.³⁸ They are more visible and more accessible to anyone who wishes them harm.³⁹

But attacks are by no means limited to those sunny places.⁴⁰ “It’s a nationwide problem,” said Neil Donovan, Executive Director of NCH.⁴¹ He believes that increased instances of violence in Florida and California only reflect higher rates of reporting.⁴² “If there was capacity to collect this information, as there is in Florida or California, then the numbers would be much greater than one would suspect.”⁴³

Over the 10 years the NCH has been keeping track, acts of violence against the homeless have been reported in 46 states, Washington, D.C. and Puerto Rico.⁴⁴ In those incidents, 244 homeless individuals were killed.⁴⁵

“The information that we gather and have been gathering over the past 10 years shows that the number of incidents from last year to this year has re-

mained relatively the same," Donovan said.⁴⁶ "However, the severity has increased. The resulting death from injuries has increased."⁴⁷

Homeless people often clash amongst themselves over turf or resources.⁴⁸ In most reported cases, however, it is a domiciled outsider who attacks.⁴⁹ In incidents compiled by the NCH, attackers are often intoxicated and acting impulsively.⁵⁰ Homeless attackers also tend to be young.⁵¹ Over the past 10 years, 78 percent of those accused or convicted were 25 or younger.⁵² Over half were younger than 19.⁵³

Those arrested for gratuitous violence against the homeless often claim inspiration from *Bumfights*, a series of videos distributed on DVD and the Internet.⁵⁴ In the four *Bumfights* videos, producers induce homeless men to fight each other and perform dangerous stunts in exchange for money and alcohol.⁵⁵ Their popularity has spawned copycats like *The Bum Hunter*, a Steve Irwin parody video in which the narrator pounces on unsuspecting homeless people as though he is wrangling animals.⁵⁶

These bum-bashing movies capitalize on a perception of homeless people as inhuman and expendable.⁵⁷ Regardless of whether the videos are a cause or a symptom of negative attitudes towards the homeless, their popularity is undeniable.⁵⁸ A search in March 2010 for "bum fight" on Youtube.com returned over 9,500 videos.⁵⁹

Another factor that turns the public violent is the virtual criminalization of homelessness in many communities.⁶⁰ Cities such as Los Angeles and Atlanta, have passed strongly enforced ordinances against panhandling, loitering or sleeping outside.⁶¹ Homeless advocates, like the NCH, fear that they give residents the attitude that the homeless should be pushed out of town.⁶²

As a class, homeless individuals may be the most poorly equipped people to defend against targeted violence.⁶³ They often lack refuge from the public, suffer from mental and physical handicaps and avoid law enforcement authorities out of fear.⁶⁴

DEFINING HOMELESSNESS AS A HATE CRIME

Hate crime legislation has its roots in the civil rights movement.⁶⁵ In the late 1960s, Congress passed civil rights laws that specified punishments for depriving anyone of basic civil rights on account of color, race or national origin.⁶⁶ The first hate crime legislation at the state level was passed in California in September 1987.⁶⁷

As the laws developed, states began departing from the federal model.⁶⁸ They focused on the group classification of the victim and relaxed requirements on the type of act committed.⁶⁹ In 1993, the U.S. Supreme Court unanimously affirmed the constitutionality of enhanced penalties for hate crimes.⁷⁰

In advocating for stronger legislation, the NCH argues that homelessness shares features with many other recognized hate crime categories.⁷¹ “Hate crimes are truly common in that the person is acting on a bias,” said Donovan.⁷² “It is a bias that is determined within their own mind that they believe they have justification to act upon.”⁷³

“I think that’s where the similarities lie. Whether it be because of race or religion, whether it be about somebody’s sexual preference or their economic situation, these are all conditions that people are judged upon.”⁷⁴

According to the NCH, class-based prejudice and violence are not stigmatized in some circles.⁷⁵ Because homeless people have less power and social influence than the general population,⁷⁶ they have an invisible status in society. Advocates fear that crimes against them are not taken as seriously as crimes against other citizens.⁷⁷

Nevertheless, some question the value of hate crime protection for the homeless.⁷⁸ Opponents, such as the Anti-Defamation League (ADL), maintain that such legal protection should be reserved for so-called “immutable” categories.⁷⁹ These are characteristics people are unable to change about themselves, such as race and gender.⁸⁰ The ADL argues that homelessness should not be considered with protected categories like disability or race because it is a fluctuating condition, making it more difficult to define and identify.⁸¹

The authors of NCH's report, *Hate, Violence, and Death on Main Street USA 2008*, respond that other protected categories are at least as mutable as homelessness.⁸² Forty states and the District of Columbia include religion as a protected classification.⁸³ A Muslim can choose to stop practicing Islam, but a homeless man cannot usually choose to move into a home. Thus, these proponents argue that while homelessness is not immutable in the most restrictive sense, mutability should not be the determining factor.⁸⁴

Still, critics of hate crimes in general, such as the conservative Traditional Values Coalition, doubt their fairness and effectiveness at all.⁸⁵ Hate crime prosecutions often hinge on whether the accused uttered a trigger word, such as an ethnic slur, during the crime.⁸⁶ These triggers are frequently the only way to prove that the victim's protected classification motivated the attack.⁸⁷ Opponents like the Coalition argue that this is an arbitrary distinction in sentencing that makes a hate crime a crime of thought.⁸⁸

Even if hate crime protections for the homeless become commonplace in the United States, special sentencing ultimately fails to address the underlying problem that the victims have no homes.⁸⁹ No law can entirely remove the dangers of sleeping on the street.⁹⁰

Whitney Gent, spokesperson for the National Law Center on Homelessness and Poverty, acknowledges that a hate crime law initially may not be enough to offer much protection.⁹¹ "We're not sure how likely it is that hate crime protection will stem violence against homeless people, as the people committing these violent acts would not necessarily be reading the laws protecting homeless people," she said.⁹²

However, recognition of homelessness as a protected class sends a message that society is concerned about the homeless and acknowledges the problem.⁹³ Gent considers the legislation in terms of public perception.⁹⁴ "[W]e understand these protections as being an important part of public education and outreach, which are more likely to result in decreased violence."⁹⁵

In the meantime, homeless individuals remain vulnerable. And advocates will continue to campaign for more widespread protection as they search for ways to curb the brutality.

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