

### The Lack of Equal Representation: The Hate Crimes Prevention Act

by Mair McCafferty\*

On October 12, 1998, millions of people worldwide reacted with shock, sadness, and anger to the death of a young man from Wyoming. Matthew Shepard, a 21 year-old college freshman in Laramie, Wyoming was abducted, pistol-whipped, tied to a fence, and left to die after his sexual orientation became known to two strangers in a local bar.

Over 100 vigils were held in the United States to mourn this hideous crime. Perhaps you watched one of the many news reports that detailed the hours of Matthew's torture, and felt a sense of relief that, at the very least, the responsible individual(s) would be prosecuted to the fullest extent in Wyoming. The outcry of the American people reflected the support for strong punishments for those that commit hate crimes based on sexual orientation. The majority of states, however, do not consider crimes like the murder of Matthew Shepard a hate crime as defined by state law.

Twenty-one states and the District of Columbia have hate crime laws that include "sexual orientation" in the list of protected categories. Eighteen states have hate crime laws that do not include sexual orientation, and eight states do not have hate crime statutes at all.

The need for stronger laws to protect gays, lesbians, and bisexuals is not limited to the lack of uniformity in hate crime definitions. Unfortunately, what happened to Matthew Shepard is not uncommon. In fact, crimes based on sexual orientation are up from 8.9% in 1991 to 11.6% according to the 1995 FBI Uniform Crime Reports.

Two federal hate crime laws do exist that include "sexual orientation" as a protected group. The Hate Crimes Statistic Act (P.L. 101-275) came into force

in 1990 and requires the Federal Bureau of Investigation (FBI) to collect statistics on the basis of race, religion, ethnicity, sexual orientation, and disability. Under this law, the federal government is required to examine statistics from local and state authorities, but local and state agencies are not required to provide these statistics to the federal government. The Hate Crimes Sentencing Enhancement Act (P.L. 103-322), which was included in the Violent Crime Control and Law Enforcement Act of 1994, provides for sentencing enhancements of at least three offense levels for sexual orientation hate crimes. This law is limited, however, to crimes committed on federal property.

This October, the same month Matthew Shepard was buried, Congress failed to address the lack of legal protections for gays, lesbians, and bisexuals prior to the *sine die* adjournment of the second session of the 105th Congress by neglecting to pass the Hate Crimes Prevention Act (S. 1529/H.R. 3081).

The Hate Crimes Prevention Act, sponsored by Senators Kennedy (D-MA) and Specter (R-PA) and Representatives Schumer (D-NY) and McCollum (R-FL), would amend 18 U.S.C. § 245. 18 U.S.C. § 245 is one of the primary statutes used to combat violence based on race or religious preferences. This statute currently prohibits intentional interference, by force or threat of force, of the enjoyment of a federal right or benefit, such as education or employment, on the basis of race, religion, national origin, or color. The Hate Crimes Prevention Act would allow the federal government to investigate crimes when the crime causes death or bodily injury because of prejudice against the victim's sexual orienta-

tion and there is an element of interstate commerce affected. The Act would not require that the violent act occur while the victim was engaged in a federally protected activity. This would make federal hate crime investigations available in those states that do not include sexual orientation as a hate crime under state law. In addition, federal law enforcement could assist local and state investigators with sexual orientation hate crimes.

Despite the growing need for greater protection against violence based on sexual orientation, public support for such laws, and heightened global awareness of these problems, the Hate Crimes Protection Act still was not enacted into law. The ability of Congress to avoid passing this bill for yet one more session proves that gays, lesbians, and bisexuals are a class that do not receive equal treatment within our society and are in need of greater protections under our current system of laws. Agreement within the community that these crimes need to be addressed is not enough. For there to be true equal protection from violence under the law, *de jure* and *de facto* protections already granted to other distinct groups need to be extended to gays, lesbians, and bisexuals. ☺

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could induce more people to reveal greater amounts of information in shorter time, satisfying the people's desire for closure.

These critiques and suggestions come at a pivotal time in the history of international law. On July 17, 1998, the Rome Diplomatic Conference adopted an international treaty to create a permanent International Criminal Court. The international community has given attention to war crimes throughout modern history, as evidenced by the

current *ad hoc* tribunals in the former Yugoslavia and Rwanda and their 1945 Nuremberg and Tokyo predecessors. The Rome Conference, however, established a permanent International Criminal Court, which will eliminate the need for future *ad hoc* tribunals and hopefully deter future war crimes. As this possibility moves closer to reality, it is imperative that those who are responsible for establishing the rules of the permanent tribunal keep the rights of all participants, including defendants, firmly in mind. ☺

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