

**Public Forum on New York State Hate Crimes Law  
Testimony of ADL  
June 14, 2013**

Good morning. My name is Gregg Mashburg and I am the incoming Chair of the Board of the New York Regional Office of the Anti-Defamation League (ADL). Our counsel, Seth Marnin, who is the Assistant Director of Legal Affairs in our national office, joins me. We thank you, Senator Hoylman, for your leadership on this important issue and appreciate the opportunity to testify.

With our national headquarters located in New York City and 27 Regional Offices, including New York, ADL is one of America's preeminent civil rights and human relations organizations. It fights anti-Semitism and all forms of bigotry here and abroad, probes the roots of hatred, comes to the aid of victims of bigotry, develops educational programs, and serves as a public resource for government, media, law enforcement and the public, all toward the goals of countering and reducing bigotry, racism and hatred.

As a civil rights organization, the ADL is somewhat unique. We have been a national leader in crafting innovative programs, policies, and laws to confront bigotry and when that bigotry manifests itself in violent acts. We work closely and extensively with law enforcement to prevent bias-motivated crimes and apprehend extremists and others who commit these crimes. ADL trains more than 10,000 law enforcement officers each year on extremism and bias crimes. Since 2003, more than 850 law enforcement executives and commanders have participated in ADL's Advanced Training School (ATS) on extremist and terrorist threats, representing more than 230 different law enforcement agencies from around the country. More than 80,000 law enforcement professionals have participated in Law Enforcement and Society,

run in partnership with the United States Holocaust Memorial Museum, since the training was first launched in 1999 and more than 160 law enforcement executives have participated in ADL's National Counter-Terrorism Seminars in Israel.

For over 30 years, the ADL has been a leading, national advocate for bias-crime laws. In 1981, the ADL drafted a model penalty enhancement statute for bias-motivated crimes. This model statute has served as the basis for many of the bias crime laws adopted by 45 states and the District of Columbia, including Wisconsin. In *Wisconsin v. Mitchell*,<sup>1</sup> the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty enhancement statute, effectively removing any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his or her race, religion, color, gender, gender identity, disability, sexual orientation, national origin or ancestry. ADL's amicus brief to the U.S. Supreme Court was cited in the *Mitchell* decision.<sup>2</sup> Furthermore, for over a decade, the ADL was a lead advocate for a federal bias crimes law, now known as the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009.<sup>3</sup>

ADL firmly believes that comprehensive hate crime laws serve to increase public awareness of these crimes, encourage victims to report these crimes, and create an essential opportunity to expand existing engagement and relationships between law enforcement authorities and affected communities. The best of these laws have proven to be a powerful

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<sup>1</sup> 508 U.S. 476 (1993).

<sup>2</sup> [http://archive.adl.org/civil\\_rights/ab/Website%20Amicus%20Brief%20-%20State%20of%20Wisconsin%20v.%20Mitchell.pdf](http://archive.adl.org/civil_rights/ab/Website%20Amicus%20Brief%20-%20State%20of%20Wisconsin%20v.%20Mitchell.pdf)

<sup>3</sup> 18 U.S.C. § 249

mechanism to confront violent bigotry against individuals on the basis of their personal characteristics. Importantly, the most comprehensive laws have also increased public awareness of the problem and sparked improvements in the local response of the criminal justice system to hate violence.

## **OVERVIEW**

This morning our testimony will address three primary areas in which ADL believes the New York State Hate Crimes law can and should be improved:

1. Law Enforcement Training;
2. Community Education; and
3. Systematic Review

ADL also strongly urges the Senate to pass the Gender Nondiscrimination Act (GENDA), pending before the State Senate. ADL believes that the need to protect people from violence and discrimination on the basis of gender identity or expression is great, as transgender people are disproportionately the victims of non-random, targeted violence.

We hope our testimony this morning will lead you toward working to amend the current law to mandate comprehensive law enforcement training, community education, and the systematic review of the hate crimes law and its implementation.

### **I. Law Enforcement Training**

ADL believes that training every patrol officer to recognize a hate crime, to understand and support a department's policies on hate crimes, and know how to respond when a hate crime occurs is critical and therefore should be mandatory. ADL therefore urges support for legislation to mandate training.

At last count, fourteen states, or nearly 30 percent of the states, have statutory provisions addressing training of law enforcement personnel on at least some aspect of hate or bias motivated crime.<sup>4</sup> Typically, the statutes require training for law enforcement officers in investigating, identifying, and reporting hate crime. In addition to these, some states have provisions assigning responsibility for providing training and creating standards and materials to existing law enforcement agencies or organizations, while others mandate the creation of new departments or organizations to design and deliver training.

Training requirements contribute to the professionalization and elevation of the proficiency of law enforcement by requiring training of officers. Training provisions require that law enforcement officers and prosecutors keep informed about statutory changes to hate crime law and case law affecting how the statutes are interpreted and put into practice in the field. They necessitate the investigation and identification of hate crime and promote more rigorous data collection and reporting practices. These investigative, legal, and data collection skills are not limited to hate crimes -- they increase law enforcement's proficiency at addressing all crime, benefiting law enforcement agencies and the communities they serve.

Essential components of law enforcement training requirements should include:

- (1) educating law enforcement officers and prosecutors about hate crime laws and legislative changes, as well as case law affecting how the statutes are interpreted and put into practice in the field;
- (2) training officers on the investigation and identification of hate crimes;

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<sup>4</sup> Anti-Defamation League State Hate Crime Statutory Provisions,  
[http://www.adl.org/assets/pdf/combating-hate/state\\_hate\\_crime\\_laws\\_march\\_2013.pdf](http://www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws_march_2013.pdf)

- (3) data collection and reporting requirements; and
- (4) ensuring that law enforcement understands the vital purpose underlying hate crime laws.

The last component, data collection and reporting requirements, deserves particular attention. The FBI has been collecting hate crime data and releasing annual reports since the enactment of the Federal Hate Crimes Statistics Act (HCSA) in 1990. The annual HCSA report has become an important measure of accountability about how cities and towns and their law enforcement agencies address hate violence. But not all of the approximately 18,000 law enforcement agencies in the United States participated in the 2011 data collection effort – and only 1,944 of these participating agencies (13 percent) – reported even a single hate crime to the FBI. The remaining 86.7 percent of participating agencies participating reported that no hate crimes occurred in their jurisdictions. At least 79 of cities over 100,000 in population either did not participate in the HCSA program at all, or affirmatively reported to the Bureau that they had zero (0) hate crimes.<sup>5</sup>

The HCSA does not require, but rather *encourages*, states to report hate crime data to the FBI. Therefore, some of the most important statutory provisions in state hate crime laws are those that mandate the collection of data and statistical reporting on hate crime. While more than half of the states in the U.S. have statutes requiring data collection and reporting,<sup>6</sup> more emphasis must be placed on training law enforcement to report the data to the FBI.

This training should be mandatory. The good news is that there is already a valuable and comprehensive resource developed by the FBI. The Bureau's *Hate Crime Data Collection*

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<sup>5</sup> The FBI report is available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011>

<sup>6</sup> Anti-Defamation League State Hate Crime Statutory Provisions, *supra*.

*Guidelines and Training Manual* is intended to aid law enforcement agencies in collecting and submitting hate crime data to the FBI, in addition to creating or updating appropriate hate crime training programs for their personnel. The manual includes suggested model reporting procedures and training tools for capturing the newly added bias motivations identified in the Matthew Shepard and James Byrd Jr., Hate Crimes Prevention Act and is written to raise law enforcement officers' awareness of the hate crime problem.<sup>7</sup> In general, community-based groups should be involved creation and delivery of the newly-mandated training. And, finally, law enforcement departments should be held accountable for failing to fulfill requirements of the amended law.

ADL therefore strongly urges New York State to amend its hate crime law to mandate training for law enforcement. The required training should address understanding the hate crime law itself and its purpose, investigation and identification of hate crimes, and data collection and reporting.

## **II. Community Education**

Even with reporting requirements and a thoroughly trained police force, law enforcement cannot do this work alone. These crimes cannot be investigated or prosecuted unless they are first reported to law enforcement agencies. Effective enforcement of hate crime laws requires a public that understands that a crime occurred and believes that they can report the crime.

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<sup>7</sup> The manual is available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/data-collection-manual>

It is essential to educate the public regarding existing hate crimes laws. Community education work should also include the nature and extent of hate crimes and bias incidents that have occurred in the state, and the importance of reporting hate crimes and bias incidents to law enforcement. The benefits of such education include not only strengthening hate crime awareness, but also community empowerment and increased reporting at the community level.<sup>8</sup>

Therefore, ADL urges changes to New York State's hate crime law to include a community education mandate.

### **III. Systematic Review**

Finally, in order to evaluate the effectiveness of the law, particularly to assess the efficacy of any training and reporting requirements implemented, there must be periodic reviews. The law should require a designee to engage in a recurring evaluation that engages law enforcement, community organizations, including victim advocacy groups, and other stakeholders. This review should seek to measure the impact of hate crime legislation on deterrence, punishment, enforcement, training, and reporting.

Any comprehensive review should be sufficiently sophisticated to recognize that the increase or reduction in the number of hate crimes in a defined period of time and/or place is but one factor. Other relevant areas for assessment could include changes in attitudes of children or community members who participate in hate crime prevention training, increased victim satisfaction, enhanced perceptions of safety and well-being, reduced recidivism rates, and positive changes in the behavior or attitudes of offenders. Moreover, an appropriate

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<sup>8</sup> See, e.g., TEX ED. CODE ANN. § 29.905

research tool should be able to grasp that where there are communities with growing populations or shifting demographics, the number of hate crime incidents may increase over time even though prevention and response efforts may be contributing to an overall reduction in the rate of hate crimes. Similarly, jurisdictions where the rate of hate crime reporting has been low (or nonexistent), a desirable short-term or interim outcome may well be to increase the rate of reported hate incidents or crimes. Analyzing differences in trends across jurisdictions and settings may also yield insights about the influence of contextual factors on outcomes.

One mechanism to address both community education and developing a systematic review of the law is the creation of a statewide task force or commission. Any such task force or commission should be comprised of all stakeholders, including law enforcement, community members, and educators.

ADL therefore urges New York State to amend the state's hate crime law to include a systematic review to evaluate the effectiveness of the law.

## **Conclusion**

To sum up, comprehensive state hate crime statutes contribute to the understanding of hate crimes, which is crucial to effectively combating them. Having explicit criminal offense codes and civil liability for bias motivated crime, coupled with data collection and reporting requirements, and training of law enforcement personnel and community education makes it possible to collect accurate information about these crimes. Accurate information is crucial for government and non-governmental organizations to effectively plan and program criminal

justice responses and prevention activities to combat hatred. ADL therefore strongly urges you to consider the recommendations outlined here to amend the state's hate crime law.

Thank you for your time today.



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**WRITTEN STATEMENT OF: THE COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS, NEW YORK CHAPTER (CAIR-NY)**

**ON: ASSESSMENT OF NEW YORK STATE'S HATE  
CRIME LAW (Chapter 107, Laws of 2000)**

**SUBMITTED TO: NY STATE SENATOR BRAD HOYLMAN  
RANKING MEMBER, SENATE COMMITTEE ON  
INVESTIGATIONS & GOVERNMENT  
OPERATIONS**

**AT: PUBLIC FORUM ON HATE CRIME LAWS  
FRIDAY JUNE 14, 2013**

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The New York Chapter of the Council on American-Islamic Relations (CAIR-NY) welcomes the opportunity to testify and submit this written testimony on the status of NY State Hate Crime Laws and their impact on American Muslims to Senator Brad Hoylman at the Public Forum on Hate Crime Laws.

CAIR-NY is a chapter of the nation's largest Muslim civil liberties and advocacy organization.<sup>1</sup> Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

Members of the American Muslim community often call on CAIR-NY when incidents of anti-Muslim violence occur in the state of New York. Despite persistent under-reporting of these incidents for various reasons, we have received an increase in reported incidents in the last nine months. Consistent with the national trend and statistics, anti-Muslim hate crimes have increased in the state of New York, suggesting that these incidents are no longer isolated events.

As a result of these incidents, CAIR-NY has issued safety advisories and provided a safety toolkit for Islamic Centers urging members of the American Muslim community to be vigilant in promoting safety and building stronger relationships with their neighboring communities.<sup>2</sup> Despite these efforts, American Muslims have sensed a cloud of uncertainty and panic in regards to major events in the news, the engagement of Islam through political discourse, and major holidays in the Islamic calendar.

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<sup>1</sup> Council on American-Islamic Relations, New York Chapter, [www.cair-ny.org](http://www.cair-ny.org).

<sup>2</sup> CAIR Muslim Community Safety Guide: <http://www.cair.com/american-muslims/67-cair-muslim-community-safety-kit.html>.

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With the holy month of Ramadan approaching—a month which saw a sharp spike in anti-Muslim violence across the nation in 2012<sup>3</sup>—we hope that this hearing will offer insight and guidance to improving our state’s ability to respond to hate crimes, and implement a process to prevent them from occurring in the future.

### **A SNAPSHOT OF THE SCOPE OF HATE TARGETING MUSLIM COMMUNITIES**

Bashir Ahmed is a New Yorker. He is a father, a grandfather, and a food vendor who works daily at a halal food cart on East 77<sup>th</sup> and Madison Avenue in Manhattan. He is also a dedicated member of his faith community.

Every day, Bashir wakes up before dawn and walks to his local house of worship where he opens the doors for the first of five daily prayers. This particular house of worship is similar to many of the over 5,000 houses of worship across New York City, but unique to the Flushing neighborhood it belongs to. The congregants at this house of worship are very diverse, and hail from various ethnic and cultural backgrounds—a true sample of New York. However, thirteen years ago local prostitutes and drug addicts used the same building to engage in illegal activities. The community Bashir belonged to decided to purchase and renovate the building to create a safe place for their families to congregate and worship. Today the center provides prayer space and includes classes and recreational space for men, women, and children.

Despite this inspiring transformation, a recent incident jeopardized the sense of security and safety Bashir’s community has dedicated over a decade to create.

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<sup>3</sup> Eight Attacks, 11 Days, Uzma Kolsy, Salon.com, August 14, 2012. Last accessed on June 9, 2013:

[http://www.salon.com/2012/08/14/eight\\_attacks\\_11\\_days/](http://www.salon.com/2012/08/14/eight_attacks_11_days/).

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On the morning of November 18, 2012, as Bashir was opening the door to the Flushing house of worship, as he does every morning, he felt a sharp jab to his lower back and he heard a man yelling “F-----ing Muslim, I will kill you.” The attacker repeatedly stabbed Bashir in the back, and as Bashir wrestled to turn around he was slashed across his body and bit in the face.<sup>4</sup>

The attacker ran away leaving Bashir bleeding outside of the door where other worshippers found him surrounded by bloodstains and in need of immediate medical attention.

His community was shocked and paralyzed for the days following the incident. The attacker did not stop with his failed attempted murder. For a week he would call the house of worship and leave menacing voicemails threatening to kill all Muslims. A police officer was stationed just outside the mosque doors, and community members altered usual schedules as they became uneasy with having their children attend the regular classes at the center while the attacker was still free.

The week of uncertainty turned into months. To this day, the police have not apprehended a suspect despite the voicemails, despite DNA evidence, and despite a description of the alleged attacker from community members.

Thirteen years of dedication to create a safe space for the men, women, and children of a faith community was reversed in an attack that lasted nearly thirteen seconds.

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<sup>4</sup> The New York Daily News, Nov 19, 2012. Last accessed on Jun 13, 2013 at: <http://www.nydailynews.com/new-york/hate-crime-victim-recovering-home-article-1.1204467>.

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## **UNSOLVED HATE CRIMES IN THE LAST TEN MONTHS**

Unfortunately, the story of Bashir Ahmad is not unique to New York Muslims. Within a month of Ahmad's attack, another elder in the Muslim community was brutally beaten. On November 24, 2012 a seventy-year old resident of Corona Queens was severely beaten after being asked whether he was Hindu or Muslim.<sup>5</sup>

Similar to the Flushing hate crime, this incident has yet to be completely solved by law enforcement.

The most recent physical attack on a member of the American Muslim community occurred in April 2013, when a Muslim man was severely beaten outside of a Bronx restaurant. Multiple men attacked a 30 year-old Muslim resident of the Bronx while yelling anti-Muslim and anti-Arab slurs.<sup>6</sup> Again, the police have yet to prosecute the attackers responsible for the hate crime.

Aside from the multiple hate crimes including physical assaults that have impacted the Muslim community, we have seen a sharp rise in reported acts of vandalism intended to intimidate New York Muslims.

During the holy month of Ramadan in 2012, two houses of worship reported acts of vandalism to the police. In one incident on Staten Island, a prayer sight was desecrated with raw bacon—pork is prohibited in Islam—the night before a holiday prayer service for

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<sup>5</sup> The New York Daily News, Nov 30, 2012. Last accessed on Jun 12, 2013 at:

<http://www.nydailynews.com/news/crime/queens-man-70-beaten-apparent-hate-attack-article-1.1210944>.

<sup>6</sup> DNA Info New York, Apr 18, 2013. Last accessed on Jun 12, 2013 at: <http://www.dnainfo.com/new-york/20130418/melrose/man-beaten-anti-muslim-attack-outside-bronx-applebees-nypd-says>.

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the families of the community.<sup>7</sup> In Long Island, within the same month, a house of worship was vandalized with spray paint meant to intimidate worshippers.<sup>8</sup> The message suggested war with Muslims was imminent. The religious leader of the targeted house of worship had his home vandalized within the same week as well.<sup>9</sup>

Worshipper Mohammad Laiqat told a local news agency “I feel scared they might hurt my brothers.”

No arrests were made in either incident.

While the incidents mentioned above received media attention, other hate crimes occurred with less limelight. In Westchester, a Muslim house of worship was vandalized in April with destruction to property. In Brooklyn a Muslim woman wearing a headscarf was verbally and physically assaulted while walking down the street with her children.

These incidents offer a small glimpse into a national trend of anti-Muslim hate crimes. In 2011, the most recent year for which the Federal Bureau of Investigations (FBI) has released statistics, over 150 anti-Muslim hate crimes were reported.<sup>10</sup>

While the 2012 statistics have yet to be released, a sharp rise in reports of anti-Muslim bias were reported last year following major developments in international and national news regarding Islam and Muslims. In the holy month of Ramadan during 2012—which started

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<sup>7</sup> The New York Daily News, Aug 20, 2012. Last accessed on Jun 10, 2013 at:

<http://www.nydailynews.com/news/crime/police-investigate-hate-crime-bacon-found-staten-island-park-event-marking-ramadan-article-1.1140315>.

<sup>8</sup> CBS New York, Sep 22, 2012. Last accessed on Jun 10, 2013 at: <http://newyork.cbslocal.com/2012/09/22/police-on-long-island-say-mosque-vandalism-is-hate-crime/>.

<sup>9</sup> See Footnote 8.

<sup>10</sup> Salon.com, December 22, 2012. Last Accessed on Jun 10, 2013 at: [http://www.cair-ny.org/blog/fbi\\_antimuslim\\_hate\\_crimes\\_still\\_up.html](http://www.cair-ny.org/blog/fbi_antimuslim_hate_crimes_still_up.html).

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on July 20 and ended on August 18—the nation saw one of the worst spikes in anti-Muslim incidents in over a decade. In just days following the shocking murders of Sikh worshippers in Wisconsin, Muslim houses of worship across America were targeted including incidents where an acid bomb was thrown at a Muslim school for children and rifle shots were directed at a Muslim prayer space in Illinois.<sup>11</sup>

### **UNREPORTED HATE CRIMES & LACK OF TRUST IN LAW ENFORCEMENT**

One of the recognized problems with combatting bias-motivated crimes is the persistent lack of reporting to law enforcement. According to the Justice Department's Bureau of Justice Statistics nearly 2/3 of hate crimes go unreported.<sup>12</sup> According to a press release by the Department of Justice, there was an increase in the percentage of victims of violent hate crimes who didn't report the crime because they believed the police could not or would not help—from 14 percent in 2003-06 to 24 percent in 2007-11.<sup>13</sup>

From our experience, members of the community have avoided reporting hate crimes because the sense of indifference by law enforcement (in four of the incidents mentioned in this report, local law enforcement did not file a hate crime report until after the community insisted on it), or the lack of trust in motives for law enforcement engagement.

In the Muslim community, we cannot talk about hate crime legislation and reporting hate crimes to law enforcement without discussing the diluted and broken trust between New

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<sup>11</sup> Written Testimony of the Council on American-Islamic Relations Submitted to the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Sep 19, 2012. Last accessed on Jun 8, 2013 at:

<http://cair.com/press-center/press-releases/11650-cair-submits-written-testimony-for-senate-hate-crime-hearing.html>.

<sup>12</sup> Salon.com, Mar 22, 2013. Last accessed on Jun 10, 2013 at:

[http://www.salon.com/2013/03/22/study\\_nearly\\_2\\_in\\_3\\_hate\\_crimes\\_go\\_unreported\\_ap/](http://www.salon.com/2013/03/22/study_nearly_2_in_3_hate_crimes_go_unreported_ap/)

<sup>13</sup> Think Progress, Sep 26, 2012. Last accessed on Jun 12, 2013 at:

<http://thinkprogress.org/justice/2012/09/26/916141/islamophobic-incidents-hit-ten-year-high/>

## York Muslims and the NYPD.

In 2011, the Associated Press (AP) released documents proving an extensive attempt by the NYPD to spy on all New York Muslims without warrants and without reasonable cause or suspicion of wrongdoing.<sup>14</sup> Among the many attempts by the community to change these unconstitutional policies, two bills are currently before the New York State Assembly and Senate intended to re-establish a sense of trust between law enforcement and the American Muslim community.

Senate Bill 711, introduced by Senator PARKER (Same as Assembly Bill 4211) addresses the necessity of independent oversight of the New York Police Department. The bill's stated justification is:

"In recent years a growing pattern of behavior has emerged from the New York police Department that inhibits public accountability and transparency. We are witness to an increase in abuses whether by individual officers or in broader policies such as stop and frisk, the treatment of the Occupy Wall Street protesters, and the wholesale surveillance of the Muslim community in New York City and other jurisdictions. On numerous occasions the public has been given misinformation or misled by the police department.

The bill seeks to restore public confidence in the New York Police Department. The people and the police department will be better served by a department that is more transparent and accountable. This legislation establishes an independent inspector general for the New York Police Department to achieve that goal."

In a recent report issued by the City University of New York Center for Law Enforcement Accountability and Responsibility (CUNY CLEAR) titled Mapping Muslims, legal experts and

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<sup>14</sup> Associated Press Probe Into NYPD Intelligence Operations. Last accessed on Jun 10, 2013 at:

<http://www.ap.org/Index/AP-In-The-News/NYPD>.

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community members examine the impact mass surveillance has had on community relations, and on damaging trust between community members and law enforcement.<sup>15</sup>

In addition to the complications to cooperation and reporting that these discriminatory policies create, the New York Chapter of the Council on American-Islamic Relations would also like to emphasize that elected officials and members of law enforcement cannot distinguish policies targeting Muslims from hateful sentiments targeting Muslims. We believe it is a contradiction for the NYPD and elected officials to support policies that assume Muslims should be subject to special scrutiny by our government, while at the same time argue that Muslim should not be subject to scrutiny by private citizens. Anti-Muslim policies go hand-in-hand with anti-Muslim public sentiment.

### **RISE IN ANTI-MUSLIM HATE GROUPS**

According to the Southern Poverty Law Center, New York State is home to thirty-eight hate groups, nine of which strictly identify themselves as being anti-Muslim.<sup>16</sup> Four key reports examining the anti-Muslim movement were published in 2011, after the Islamophobia movement's ability to insert its messaging into mainstream public discourse was glaringly on display during the 2010 controversy over a proposed Islamic community center in lower Manhattan.<sup>17</sup>

That controversy was led by New York-based hate groups and activists including the American Freedom Defense Initiative (AFDI), Stop the Islamization of America (SIOA), and

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<sup>15</sup> CUNY CLEAR, Mapping Muslims. Last accessed on Jun 10, 2013 at:

<http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>16</sup> Southern Poverty Law Center, Mapping Hate. Last accessed on Jun 11, 2013 at: <http://www.splcenter.org/get-informed/hate-map#s=NY>.

<sup>17</sup> See Footnote 11.

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Stop Islamization of Nations (SION)—which make up three of the nine anti-Muslim hate groups in New York. SIOA is also responsible for multiple ad campaigns across MTA buses and subways demonizing Muslims.<sup>18</sup>

The mosque in lower Manhattan was not an isolated incident. Anti-Muslim hate groups also supported movements against the construction of a mosque in Sheepshead Bay and a mosque Staten Island. In the height of the Sheepshead Bay mosque protests, then State Senator David Storobin and U.S. Representative Bob Turner teamed up with these anti-Muslim hate groups and spoke out against the construction of the mosque.<sup>19</sup>

In February of this year, the Queens Village Republican Club hosted its annual Lincoln Dinner where it awarded the “American Patriot of the Year” award a well-known anti-Muslim internet blogger and leader of the three New York-based anti-Muslim hate groups mentioned above, Pamela Geller. In attendance to honor Geller as the “American Patriot of the Year” included Craig Caruana, 30<sup>th</sup> District city council candidate, and mayoral candidates Joe Lhota, John Catismatidis, and George McDonald.<sup>20</sup>

In 2010, PayPal severed relations with Geller’s blog saying that according to the service’s Acceptable Use Policy, “...PayPal may not be used to send or receive payments for items that promote hate, violence, racial intolerance.” The United States Patent and Trademark Office refused to grant SIOA a trademark because: “The applied-for mark refers to Muslims

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<sup>18</sup> The Christian Post, Sep 25, 2012. Last accessed on Jun 12, 2013 at: <http://www.christianpost.com/news/jewish-muslim-groups-denounce-controversial-anti-jihad-ads-in-nyc-subway-82187/>

<sup>19</sup> Salon.com, Jul 26, 2012. Last accessed on Jun 10, 2013 at:  
[http://www.salon.com/2012/07/26/new\\_yorks\\_new\\_mosque\\_fight/](http://www.salon.com/2012/07/26/new_yorks_new_mosque_fight/)

<sup>20</sup> The Queens Village Republican Club, Feb 25, 2013. Last accessed on Jun 12, 2013 at: <http://qvgop.org/the-rockaway-republicans-shared-with-some-200-queens-republicans-at-the-lincoln-dinner/>

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in a disparaging manner because by definition it implies that conversion or conformity to Islam is something that needs to be stopped or caused to cease."<sup>21</sup>

The New York Chapter of the Council on American-Islamic Relations believes while these anti-Muslim hate groups have a constitutional right to express their bigoted and racist views, government officials should express an ethical stand not to associate with them, or promote their hatred by amplifying their voices of and honoring them with awards.

## **RECOMMENDATIONS**

### **Improve Hate Crime Data Collection & Reporting**

In preparation for this testimony, CAIR-NY ran into numerous roadblocks of administrative bureaucracy to inquire into the status of hate crime investigations and reporting by the NYPD. While the NY State Hate Crime Law mandates reporting to private and public agencies, we believe it could be a major improvement to have annual reports that are presented to the public along with analysis by lawmakers, law enforcement, community groups, and victims of hate crimes. Public hearings should not be limited to unusual increases in bias-motivated crimes; instead we recommend they become a regular part of the process to decrease hate crimes.

### **Challenge the Culture of Politically Exploiting Hate Against Muslims**

CAIR-NY recommends that the New York State Assembly and Senate ensure that all state law enforcement agencies have taken all the steps necessary to encourage or compel reform of counter terrorism training programs to remove anti-Muslim trainers and educational materials. CAIR-NY believes that the use of such anti-Muslim trainers and

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<sup>21</sup> See Footnote 11.

CAIR-NY is a chapter of America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

materials publicly reinforces anti-Muslim stereotypes and prejudices and has contributed to the recent rise in number of anti-Muslim hate groups and violence against actual or perceived Muslims.

In January, 2012, it was revealed that NYPD Commissioner Raymond Kelly had cooperated with the makers of a radical anti-Muslim movie titled “The Third Jihad” that was used to train cadets in the police force.<sup>22</sup>

The issue of using anti-Muslim training materials gained national attention in September 2011, when Wired Magazine revealed that a FBI instructor was teaching counterterrorism agents that “main stream” [sic] American Muslims are likely to be terrorist sympathizers; that the Prophet Mohammed was a “cult leader”; and that the Islamic practice of giving charity is no more than a “funding mechanism for combat.” Moreover, in March 2012, Wired Magazine revealed that an instructor at the Joint Forces Staff College in Norfolk, VA was teaching fellow officers that only a “total war” on Islam would protect America that they should use “Hiroshima” tactics, target civilian populations, and abandon the Geneva Conventions.<sup>23</sup>

Aside from media revelations exposing New York state agencies, there have been no concrete efforts by lawmakers to share a transparent vetting process for training members of our law enforcement agencies who engage in counterterrorism efforts in New York.

## **Challenge Anti-Muslim Policies & Training by State Law Enforcement**

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<sup>22</sup> The Huffington Post, Jan 25, 2012. Last accessed on Jun 12, 2013 at:  
[http://www.huffingtonpost.com/2012/01/25/ny-kelly-the-third-jihad\\_n\\_1230801.html](http://www.huffingtonpost.com/2012/01/25/ny-kelly-the-third-jihad_n_1230801.html).

<sup>23</sup> See Footnote 11.

CAIR-NY is a chapter of America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

As mentioned above, CAIR-NY believes it is contradictory for lawmakers and members of law enforcement to allege concern for anti-Muslim bias in the community, while at the same time promoting anti-Muslim bias in discriminatory policies. The revelation of the NYPD program to engage in warrantless and unconstitutional wholesale spying on American Muslims without reasonable cause or suspicion of wrongdoing is counterproductive to efforts to end anti-Muslim hate crimes. Many times the justification for anti-Muslim sentiments by individual citizens and hate groups mirrors the justification for the mass surveillance of Muslims—because you are Muslim, you must be prone to wrongdoing.

These policies, like hate crimes, run against our principles as a nation, and as New Yorkers. We urge lawmakers who want to end anti-Muslim violence in our community, work to end anti-Muslim policies in the NYPD.

Bryan J. Ellicott

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Testimony of the Public Forum on Hate Crimes Laws

IN SUPPORT OF THE REVIEW OF THE EFFICACY OF NEW YORK HATE CRIMES LAW ON HOW THE STATE AND LOCAL GOVERNMENT AGENCIES ARE IMPLEMENTING AND ENFORCING THE LAW AND WHETHER AMENDMENTS SHOULD BE CONSIDERED TO EXPAND THE DATA COLLECTION STATISTICAL REPORTING, LAW ENFORCEMENT TRAINING REQUIREMENTS AND/ OR OTHERWISE FURTHER THE LAWS'S GOAL

Before Senator Brad Hoylman and Senate Committee on Investigations and Government Operations

June 14,2013

My name is Bryan John Ellicott and I'm a New York City resident living at 57 Pitt Street on the Lower East Side. More importantly I am the survivor of a hate crime. I identify as a transgender bisexual man who is involved in the activism and change that the LGBT community over the past 4 years.

Last year on July 13<sup>th</sup> I was walking home from a political event that I had attended at the Stonewall Inn for a candidate for New York State Assembly from Staten Island it was around 10pm inside of a fast food restaurant. I was by myself and no I was not intoxicated. The reason I feel the need to say that part is because the NYPD seemed to want to focus on that for a long period of time before they got the picture.

The injuries from my attack were being bad, mild concussion, my left eye was bruised and I was unable to see out of it for a week also a cut just above the eyebrow, my shin was also bruised. I spent till around 3am in the emergency room of Beth Israel.

The attack itself was maybe less than 5 minutes, but the trauma from that experience I deal with everyday. The way that things are handled here in New York City when a hate crime is reported may have a lot to do with why many of these attacks go unreported, and why I am even now afraid of the people who took an oath to protect us from the people who attack the Lesbian, Gay, Bisexual, Transgender, Queer and HIV positive in my community.

The NYPD still I'm opinion has not been trained on how to talk to the LGBT community, doesn't help the situation. Yes I am open about being transgender, and I

explained that the name you see on the identification is my legal name I go by, and yes I had a gender marker change. They asked questions like "did you have surgery yet" and "so this wasn't a hate crime this was a guy hitting a shorter guy". There needs to be like a NYPD provided social worker or counselor on hand for people who don't have support for the amount of times they call you to come into to One Police Plaza to go through photos, repeat your story, sit there. They make you feel like a criminal.

When you are in a One Police Plaza and you are treated this way it makes you wonder if reporting was the right thing to do, because you wonder if they are actually helping you or just trying to see if you will just walk out and give up.

I support the expansion of the collection of data for statistical reporting, I would like too see law enforcement training requirements actually being done and not just talked about, and a social worker or counsel on call to support victims who don't have the support needed to catch the people who commit these crimes.

Thank you for the ability to speak before you and I am willing to help and discuss this more here or after this forum.



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## TESTIMONY OF TONY BRUCE, EXECUTIVE DIRECTOR OF THE MICHAEL SANDY FOUNDATION

My name is Tony Bruce and I'm a proud board member and the Executive Director of the Michael Sandy Foundation. Our Mission is to identify and support programs for tolerance education and awareness in communities of underserved youth, and to provide assistance to families and victims of hate crimes.

The Michael Sandy Foundation was established in 2007 in memory of Michael J. Sandy who was killed in a gay biased attack. I'll take a minute to remind everyone of the circumstances around his attack. On the evening of October 8<sup>th</sup> 2006, Michael was chatting on the internet with his now convicted assailant Anthony Fornauato. Anthony and Michael had been chatting on the web for at least a few days prior, and on this Sunday they planned on meeting in person. Anthony told Michael to meet him at a public rest area in Sheepshead Bay off the Belt Parkway and to bring enough money for a hotel room. That evening Michael drove from his home in the Williamsburg section of Brooklyn to this rest area. Once there, Anthony entered Michael's car and they initially engaged in a friendly conversation. But things turned suspect when Anthony asked to see the money. Now, I knew Michael very well... he's not the type to carry enough cash on him for a hotel room. Michael resisted getting out his wallet and wanted to just hang out in the car. Anthony then physically assaults Michael, forcing him to exit the vehicle. Anthony also gets out of the car while calling upon his friends who were hiding 30 feet away to assist him in the robbery. John Fox, Ilya Shurov and Gary Timmons stormed the scene. One of them promptly hits Mike in the face, knocking him to the ground. Mike scurried away, running directly onto the Belt Parkway and was hit by an oncoming vehicle.



The driver who hit Mike never stopped. Mike's body is dragged to the side of the road, and one of his attackers rifle through his pockets, take his wallet and leave the scene.

At the time I was Mike's Roommate, and his best friend. I came home that Sunday night to find 2 detectives in my house, explaining that Michael has been hit by a car and he was in a hospital in outer Brooklyn.

Mike never regained consciousness, and after 5 agonizing days his parents took him off life support. Within the next few months, 4 friends and I formed the Michael Sandy Foundation.

I'm going to fast forward to the trial of Mike's assailants. Anthony Fortunato's defense lawyer come up with what he deemed a "brilliant" idea: Explain to the court that you're gay, so that you couldn't be seen as someone capable of hating someone that was also gay. His lawyer proceeded to call upon witnesses who have had sexual relations with Anthony in the past, testifying about his "gentile" character.

This confused the jury, leaving them sympathetic to the person that lured my best friend to a remote location, got his friends to help rob him, and to leave him there to die on the side of a road.

Try and imagine how it felt, holding the hand of Michael's parents while we sat through testimony about Anthony's "good natured" character.

In the end the prosecutors prevailed, and the Judge let the hate crime charges stand against Anthony Fortunato.

Anthony Fortunato had what is called internalized homophobia. Anthony was gay, but he grew up in a family where worshipping machismo and using hate driven slurs are the norm.



Think of the internal conflict that he had to deal with... leading itself to a situation where he wants to show off to his friends that he was the real "gangster Fortunato" that his friends and family expect him to be.

Here's an easy and obvious target... gay men on websites. They functioned in two ways for him, first by fulfilling his internal desire to connect with other gay men, and secondly to fulfill his cultural desire to be a gangster and rob them.

Prevention is key. The work we do at the Michael Sandy Foundation is focused on educating underserved youth. Youth in New York and all over the world are being raised with a machismo "locker room mentality", to apply hate those who don't fulfill the same role as them sexually, one that links heterosexuality to masculinity. This breeds hatred in our children like the Anthony Fortunatos of the world and it must stop.

We need to strengthen hate crime laws. An amendment that can shield a jury from hearing testimony that likens the victim to his attacker weather it be sexual orientation or race, or otherwise should not be admissible evidence. A hate crime is a hate crime, and in the case Michael Sandy, and too many others, it led him to his death.

## **Statement of Amardeep Singh, Director of Programs, The Sikh Coalition**

**Before the**

### **New York State Senate Committee on Investigations and Government Operations**

**June 14, 2013**

I am thankful for the opportunity to appear before you today. I applaud this Committee and its Chair and Ranking Member for holding this critical hearing on assessing the effectiveness of our state's hate crimes law thirteen years after their enactment.

My name is Amardeep Singh. I am the Co-Founder and Director of Programs of the Sikh Coalition, the nation's largest Sikh civil rights organization, based right here in New York City.

Some of you may be aware that the Sikh Coalition was born in the aftermath of violence and discrimination against the New York City's Sikh American population following the terrorist attacks of 9/11. We began as a volunteer effort that night when an elderly Sikh and two teenagers were violently attacked in Richmond Hill, Queens in "reprisal" attacks by fellow Americans.

The group that became the Sikh Coalition issued a press release the next day under the organizational title "Coalition of Sikh Organizations of New York." We condemned the terrorist attacks and called on the police to better protect our neighborhoods. We started a website the next day that allowed members of our community to report hate crimes and acts of hate. In three months, over 300 such acts were reported to our website.

We have seen dozens of hate crimes big and small across the country perpetrated against Sikh Americans in the last eleven years. According to Sikh Coalition

surveys in New York City<sup>1</sup> and the San Francisco Bay Area,<sup>2</sup> approximately 10 percent of Sikh adults claim they have experienced physical violence or property damage because of their religion. This suggests that Sikhs may be hundreds of times more likely than their fellow Americans to experience hate crimes.

These hate crimes include last year's tragic murder of six Sikh worshipers at a Gurdwara or Sikh house of worship in Oak Creek, Wisconsin by a man with white supremacist ties. This was the worst hate attack on a house of worship in the United States since the 1963 bombing of the 16 Street Baptist Church in Birmingham, Alabama.

I say all this only to convey that our community is painfully aware of the devastating impact of hate crimes. We are also aware of where and when the law can be helpful and sometimes fall short of our collective goal of ending hate crimes.

With this experience in mind, I would like to discuss three concrete and impactful ways to improve New York's current hate crimes law.

First, the state's law absolutely needs a data collection provision. At present, local police jurisdictions are not required to collect data on hate crimes in their jurisdiction. To the extent such data is collected, it is collected *voluntarily*, often in cooperation with federal authorities, who request police jurisdictions to provide them such data on a *voluntary* basis pursuant to the federal Hate Crime Statistics Act.

Put simply, how do you address a problem you are not measuring? How do you spot state or regional trends without such data? Police jurisdictions readily have data available to them on the crimes in their jurisdictions. It would not impose even minimal extra cost on them to simply send that data annually to Albany so that it can be compiled and utilized to understand and better deploy limited police resources.

In addition to recommending that hate crime data be collected, we also recommend that it be published annually and that it match the data collected by the federal government so that our state and national hate crime data is consistent. We also

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<sup>1</sup> Sikh Coalition, *Making Our Voices Heard: A Civil Rights Agenda for New York City's Sikhs* 6 (2008), available at <http://www.sikhcoalition.org/documents/pdf/RaisingOurVoicesReport.pdf>.

<sup>2</sup> Sikh Coalition, *Sikh Coalition Bay Area Civil Rights Report 2012* 4 (2010), available at [http://www.sikhcoalition.org/documents/pdf/Bay\\_Area\\_Civil\\_Rights\\_Agenda.pdf](http://www.sikhcoalition.org/documents/pdf/Bay_Area_Civil_Rights_Agenda.pdf).

believe that such data collection should include a training provision that requires police jurisdictions to receive training on the hate crimes law, communities often impacted by hate crimes, and data collection best practices.

Our second recommendation is that New York state enact a robust civil action provision for victims of hate crime. We make this recommendation as a result of the bitter and hard experience of working with a New York state hate crime victim, Rajinder Singh Khalsa.

In July 2004, Mr. Khalsa was the victim of a racist and vicious hate crime beating by five men who yelled epithets as they beat him in Richmond Hill, Queens. Mr. Khalsa was hospitalized as a result of the beating.<sup>3</sup> He suffered a fractured orbital bone among other injuries. To this day he has recurring headaches and trouble with his vision. As you can imagine, this pain and trouble with his vision made his job as a black car service driver nearly impossible for long periods of time. Without income, he ran into a plethora of financial hardships and troubles.

Most of Mr. Khalsa's attackers were successfully prosecuted and convicted specifically of hate crimes by the Queens County District Attorney's office in December 2005.<sup>4</sup> However, it took nearly 7 years of civil litigation and pro bono representation from one of the nation's top law firms for Mr. Khalsa to see any remuneration from his attackers for his years and years of financial stress and worry as a result of the attack.

This dynamic cannot stand. Many victims of hate crimes, like Mr. Khalsa, are immigrants who do not have the savvy, understanding, or financial wherewithal to simply absorb years upon years of civil litigation to receive remuneration for lost wages and hospital bills. While they often are grateful that their attackers are convicted of hate crimes, most would be even happier if their attackers were more readily made responsible for the financial devastation that their attacks can cause.

Our final recommendation is that in sentencing victims, judges specifically be instructed to simply *consider* restorative justice options in sentencing.

Since our founding as an organization, we have worked with half a dozen hate crime perpetrators after their hate crimes to give them a better understanding of our

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<sup>3</sup> See <http://www.nytimes.com/2004/07/27/nyregion/metro-briefing-new-york-queens-3-more-arrests-in-attack-on-sikh-man.html>

<sup>4</sup> See [http://www.qchron.com/editions/south/men-convicted-in-beating-of-sikh-man-in-richmond-hill/article\\_627094ba-b7bc-5e0b-b7e9-7494211e89a9.html](http://www.qchron.com/editions/south/men-convicted-in-beating-of-sikh-man-in-richmond-hill/article_627094ba-b7bc-5e0b-b7e9-7494211e89a9.html)

community and the impact of hate crimes on our community. We have worked with these perpetrators to make amends for the devastating impact of hate crimes in our communities by persuading them to collect hate crime surveys of Sikh community members and even come to our houses of worship to express regret for their crimes. When it has worked, we find this model of justice much better for the victim, the community impacted, and the victim, compared to simple and crude punishment, particularly where a hate crime is relatively non-violent.

It is therefore our recommendation that any revision of hate crime sentencing provisions require judges to at least consider such restorative justice measures.

I thank the Committee, Chair, and Ranking Member for their consideration of my testimony.



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**Testimony of Sharon Stapel, Executive Director,  
New York City Gay and Lesbian Anti-Violence Project  
to the  
New York State Senate  
New York State Senator Brad Hoylman  
Public Forum on New York State's Hate Crimes Law  
June 14, 2013**

Good afternoon. My name is Sharon Stapel and I am the Executive Director at the New York City Gay and Lesbian Anti-Violence Project (AVP). I am here to testify about the efficiency of New York State's Hate Crimes law (Chapter 107, Laws of 200), its implementation, enforcement, data collection, report and other recommendations to further the law's goals.

AVP empowers lesbian, gay, bisexual, transgender, queer (LGBTQ), and HIV-affected communities and allies to end all forms of violence through organizing and education, and support survivors through counseling and advocacy. We envision a world in which all LGBTQ and HIV-affected people are safe, respected, and live free from violence.

I thank the New York State Senate for the opportunity to speak with you today and offer this testimony. I also thank you for considering the effectiveness of the New York State Hate Crimes Law. We acknowledge and appreciate the testimony of our colleagues in this work, the Anti-Defamation League, on the Hate Crimes Law procedure. To supplement that testimony we will focus on the need for community education and awareness, training for all officers, and alternatives to the Hate Crimes Law to respond to hate violence.

**THE PROBLEM OF HATE VIOLENCE IN NEW YORK CITY**

As New York City has seen in the past six weeks, hate violence against LGBTQ people is a pervasive problem that continues to happen far too often. Nearly every LGBTQ person has faced some sort of harassment or violence because of their sexual orientation or gender identity, or at the very least a fear of being open about their identity in public. Over the past six weeks we have seen the real violence that LGBTQ people face on a daily basis, including the death of Mark Carson in an anti-LGBTQ homicide.

AVP annually reports on hate violence experienced by LGBTQ and HIV-affected people. In our latest report, released June 4, 2013, we found, across the nation, that 73.1% of all anti-LGBTQ homicide victims in 2012 were people of color and 53.8% of anti-LGBTQ homicide victims in 2012 were transgender women. In New York City, in 2012, reports of hate violence increased 4% for LGBTQ and HIV-affected New Yorkers, continuing a three-year trend (including a 13% increase from 2010 to 2011 and an 11% increase from 2009 to 2010), despite a national decrease in violence. We also found that: reports of hate violence motivated by anti-immigrant bias increased substantially; nearly 40% of survivors who engaged with the police reported misconduct in 2012; and survivor reports of hostile attitudes from police doubled in 2012.

We know this means that those most vulnerable people, often transgender and gender non-conforming people, people of color, and immigrants (and some who hold intersecting identities), are the least likely to engage with law enforcement or the criminal legal system. AVP is keenly aware that certain groups – especially poor people, transgender people, African-American and other men of color – are far more likely to be arrested and prosecuted for violent crimes (including hate crimes) than are white non-transgender men or non-transgender women of any race. These traditionally marginalized communities are among those most targeted by hate violence in the first place. In this respect, the hate crimes laws are not decreasing violence against those who might need protection from hate violence the most. We must therefore propose solutions that address not just homophobia and transphobia, but also racism, poverty and anti-immigrant sentiment and get to the root of the problem of anti-LGBTQ bias, discrimination and violence.

In addition, we still live in a country which legal discriminates against LGBTQ people, which implicitly and explicitly sanctions hatred of LGBTQ people. To truly get to the root of hate violence, we must change laws and attitudes in the United States and in New York State. This includes ending the root causes of anti-LGBTQ and HIV-affected violence through addressing anti-LGBTQ and HIV-affected institutional, cultural, and interpersonal discrimination, including passing the Gender Expression Non-Discrimination Act (GENDA) to prohibit discrimination based on gender identity and expression in housing, employment and schools. Policymakers and public figures should promote safety for LGBTQ and HIV-affected people by denouncing homophobic, biphobic, and transphobic statements, laws, and programs, particularly when other high profile community and religious leaders make these remarks.

### **LGBTQ COMMUNITIES AND POLICE VIOLENCE**

Particularly in light of this week's allegations of police violence in the 79<sup>th</sup> Precinct in Bed Stuy Brooklyn, where the police are accused of attacking three gay men, one of them a person of color, AVP believes we must first look at the law enforcement system that is enforcing the Hate Crimes Law. For this Hate Crimes Law to have an effect in ending anti-LGBTQ violence, we must first end law enforcement violence against LGBTQ and HIV-affected people.

#### **The Community Safety Act, Condoms as Evidence and LGBTQ Communities**

Many LGBTQ community members, including transgender people, people of color, and youth, report that they are regularly profiled, stopped and frisked and arrested because they have condoms on them. New York State should enact policies that prohibit police profiling, such as the Community Safety Act, that include prohibitions on profiling by the NYPD based on sexual orientation, gender identity, gender expression and race. As well, policymakers should ensure that police officers are investigated and held accountable for homophobic, biphobic, and transphobic harassment and violence.

Where LGBTQ people are stopped and frisked, any condoms they have should not be used as "evidence" of prostitution or trafficking in criminal cases as current NYPD policy allows. This causes a serious and deadly chilling effect on the carrying and use of condoms in safer sex practices. We work with many LGBTQ people, particularly young people, report to AVP that they no longer carry condoms for fear of being arrested, which means that HIV transmission is much more likely to occur through unprotected sex. To prevent the stop, frisk and arrest of LGBTQ people, particularly transgender people of color, the New York State legislature should pass the No Condoms of Evidence legislation prohibiting the District Attorney's or NYPD's reliance on the use of condoms as evidence of prostitution or trafficking law violations. As well, state and local law enforcement agencies should immediately enact policies that prohibit the

use of condoms as evidence of prostitution and trafficking law violations. This will not only end an illogical policy of using condoms as evidence, but also improve the public safety and public health of LGBTQ and HIV-affected people.

#### LGBTQ Immigrants and Law Enforcement

AVP receives many reports of immigrants being profiled by the police or being too afraid of deportation to call the police when they experience hate violence. To provide safety to immigrants, New York State should enact humane, LGBTQ-inclusive immigration reform policies which create a pathway to citizenship for undocumented immigrants and end “enforcement-only” policies such as the Secure Communities program. This will reduce the fear of reporting that many immigrants experiencing hate violence have of the police and law enforcement generally.

### **HATE CRIMES LEGISLATION**

Turning to how the current Hate Crimes Law can be improved, we have seen several issues in the implementation of the current Hate Crimes Law. This includes improper training on how to identify an LGBTQ bias-related issue, the use of “gay panic” and “trans panic” defenses, and a lack of attention to alternative to incarceration, community accountability and/or restorative justice initiatives, and prevention initiatives.

#### Increased need for training

The New York State Hate Crime law should mandate trainings for all first responders to increase their knowledge and competency on serving LGBTQ and HIV-affected survivors of violence. Understanding the language, culture and needs of the LGBTQ communities requires a specific understanding of those communities and of sexual orientation, gender identity and expression (including the distinction therein), homophobia, biphobia, transphobia and the violence that LGBTQ people face that is specific to their sexual orientation and/or gender identities and expressions. Few organizations provide this expert training and mainstream anti-violence and victim services organizations often do not have the expertise to provide LGBTQ-specific training. To assure that the training police departments receive is the most effective and expert training available, competent organizations should be identified and contact information about those organizations should be made available to local police department throughout the state. A state agency could be appointed to collect and disseminate this information to police departments. Doing so would assure that the training police departments receive is provided by expert trainers with experience and knowledge that is specific to the LGBTQ communities.

#### Disqualify “gay and transgender panic defenses”

New York State law should prohibit offenders of anti-LGBTQ and HIV-affected hate violence from using “gay and transgender panic” defenses. To do so, New York State should enact legislation which disqualifies the so-called “gay panic defense” and the “trans panic defense”, put forth by attackers to attempt to explain their violence as a response to learning the victim was gay or transgender, as legal resorts for those accused of committing hate-motivated acts against LGBTQ people. In the alternative, the burden of proof in such cases should be shifted onto defendants, similar to that required in many temporary insanity cases.

Consider alternatives to the legal system when looking to reduce violence

The Hate Crimes Law could and should provide funding for community-based prevention and education initiatives to reduce anti-LGBTQ hate violence. In the years since the New York State Hate Crimes law has been passed, incidents of violence have not decreased, and reports of violence to AVP have increased. Legal prohibition of this violent behavior alone is not a sufficient deterrent or prevention strategy. There are many programs, including the Audre Lorde Project's Safe OUTside the System Collective, that address hate violence in communities without engaging with law enforcement systems. These programs should be considered to be legitimate and valued alternatives to prosecution and incarceration.

Consider alternatives to incarceration to reduce the impact of racism in incarceration

Excessive incarceration, particularly where statistics show that those most likely to be incarcerated are also from marginalized communities, will not prevent or end hate violence. New York State, through its Hate Crimes law, can provide enhanced rehabilitation, education, and intervention for offenders to reduce recidivism and interrupt escalating cycles of abuse rather than simply providing for enhanced penalties and sentences under hate crimes law, which may unduly impact already marginalized communities of LGBTQ and low-income people as well as people of color and perpetuate disproportionate rates of incarceration among the communities such laws are purported to protect. As an organization dedicated to eliminating anti-LGBTQ violence, AVP recognizes that increased penalties are part of legislative and criminal legal strategies to combat hate violence and believes that penalty enhancement ought not be the primary or sole method of addressing such violence. AVP recommends that rather than viewing hate violence as a criminal justice problem with social implications, hate violence must be viewed as a social and public health issue with criminal justice implications. This highlights the need for prevention, education and rehabilitation programs.

Restorative justice models, which work in partnership with criminal courts and community-based organizations, work to hold offenders accountable by engaging with survivors to find sentences that will restore their sense of justice and safety. Such programs may include substantial community service, training, counseling and other measures aimed at ensuring that the offender understands the impact of their actions, demonstrates responsibility for those actions, and meets the terms determined in partnership with the survivor, appropriate community groups, and the court. Additionally, New York State should fund research and pilot programs for youthful offenders involving cooperative work between court systems and local LGBTQ anti-violence programs. Youth are reflected in statistics on anti-LGBTQ hate violence as both a growing target and as the largest age category of offenders. Youthful offender programs that are funded to educate these youth through highly monitored community service have promising potential to reduce the likelihood of the youth re-offending. Measures such as these may decrease recidivism and minimize the harmful impacts of incarceration on the offender while helping the survivor or victim to heal and access justice.

### Preventing Hate Violence

Finally, attempting to reduce and prevent hate violence by responding to violence after it has occurred can only go so far in changing the culture which supports violence against LGBTQ people. New York State should also support LGBTQ visibility and public awareness campaigns, such as the transgender visibility campaign in Washington, DC, to normalize LGBTQ people and put an end to the public's negative opinion of LGBTQ people. New York State should also support hate violence prevention programs for youth and young adults, who are a large percentage of hate violence offenders, like the city-funded hate violence prevention program in Los Angeles, California, as a strategy to prevent hate violence before it happens.

Thank you for your time and for your consideration of this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sharon Stapel", followed by a vertical line.

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