**Testimony of Prof. Brian H Levin**

*Crimes Against America's Homeless:*
*Is the Violence Growing?*

**United States Senate: Committee on the Judiciary**
**Subcommittee on Crime and Drugs**

**Center for the Study of Hate and Extremism**
**Department of Criminal Justice**
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My name is Prof. Brian Levin, and I am director of the nonpartisan Center for the Study of Hate and Extremism at California State University, San Bernardino where I teach in the Department of Criminal Justice. While I am here in that capacity, I would also like to note that I serve as an unpaid independent advisor to the National Coalition for the Homeless. I want to personally thank Chairman Benjamin L. Cardin, Ranking Member Lindsey Graham, Chairman Arlen Specter and the other members of the committee for the privilege of testifying on the scourge of violence directed against homeless Americans. I have analyzed hate crime for almost 25 years, written extensively on the topic, compiled national hate crime statistical surveys, testified before Congress, authored Supreme Court briefs, and have advised policymakers throughout North America and Europe.

The National Coalition for the Homeless (NCH) has worked tirelessly for the past twenty-eight years to not only end homelessness but to ensure the protection of homeless individuals. Since 1999 the NCH has monitored and recorded acts of violence against our country's homeless.

My testimony today in support of SB 1765, the "Hate Crimes Against the Homeless Statistics Act" will address issues relating to the inclusion of homeless status as a category in hate crime statutes as well as its specific inclusion in federal data collection undertaken pursuant to the Hate Crime Statistics Act (HCSA). Access to this type of objective official data is crucial for a society to assess the scope of criminality, implement policies, allocate resources, and craft legislation. From the onset it is important to consider that over the last two decades both penalty enhancement laws and data collection statutes have been expanded to cover additional group categories as new information arose to support such inclusion. It is my hope, that the outline I provide today regarding the characteristics and prevalence of anti-homeless hate violence will correct a glaring error in current federal efforts.

The homeless face a rate of victimization that far exceeds that of other groups. The more reliable hate crime statistics arising from homicide data and victimization studies indicate that the homeless are among the nation's most vulnerable populations, not only for crime in general, but for hate violence as well.

Two key questions need to be addressed regarding the issue of discriminatory violence against the homeless. First, does the actual level of bias violence against the homeless justify a statutory change? Second, does

the category of homelessness fit the traditional framework of hate crime legislation and share material similarities with currently covered categories?

**Violence Against America's Homeless: A National Scourge**

Emma Lazarus' poem *The New Colossus* is inscribed on our Statue of Liberty:

*Give me your tired, your poor, your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door!*

Despite the promise of Lazarus' prose the reality is that homeless Americans face a grossly disproportionate risk of violent attacks. Notwithstanding various limitations, studies from the United States and Canada show a disturbing consistency regarding the prevalence of these brutal victimizations. The studies and surveys repeatedly indicate an annual risk of criminal victimization as high as 66% to 82%, about the highest for any subgroup in the industrialized world.  For instance, one study of homeless females in Los Angeles found that they experience as much crime in one year as domiciled women do, over their entire lifespan. By contrast, the latest 2008 Bureau of Justice Statistics (BJS) data, which exclude the homeless, indicate a violent crime victimization rate of 19.3/1,000 persons and a property crime rate of 135/1,000 households. While we believe homeless victimization levels continue to be quite high, the available data is simply too limited to determine a conclusive trend from year to year.

Some of the victimizations against homeless people relate to spatial vulnerabilities - the actual physical lack of protection provided by shelter, and their frequent location in either higher crime areas or in isolated places where access to telephones or immediate assistance is limited. Another vulnerability relates to the disproportionate number of disabled people among the homeless population, perhaps as much as 40%, who have a degraded ability to defend themselves. Exposure to the elements and lack of resources puts even those without permanent disabilities in a physically disadvantageous position to guard against opportunistic attacks. Lastly, addictions, engagement by some in dangerous survival or impulsive behaviors, and ill chosen personal associations are also contributory risk factors.

**Homicides: A Key Indicator of Hate Violence Against the Homeless**

Over the last decade a clear and disturbing pattern has emerged that show the homeless population face an additional risk of extreme violence from discriminatory "hate" attacks. I define hate crimes in a manner substantially similar to that found in the recently enacted Shepard-Byrd Hate Crime Prevention Act, 18 USC 249 (Shepard-Byrd Act). The Act, which excludes the homeless, focuses on *criminal acts that are discriminatorily committed because of the actual or perceived group status of another*. Discrimination refers to the unequal treatment of people without a sufficient basis due to their membership in a group. The term "hate crime" itself is somewhat of a misnomer, because in the United States, abstract non-threatening expressions of bigotry are not, nor should be, criminally punishable.

Unprovoked targeted "hate" attacks by predominantly domiciled young male assailants that are not primarily motivated by robbery, personal disputes, or drug dealing have claimed the lives of over 240 men and women nationally over the past decade. The data shows a disturbing prevalence of severe overkill. Methods include blunt force trauma, shootings, maiming, drowning, stabbings, and the burning of victims alive.

Our Center in conjunction with the NCH has found that there were well over twice as many homeless people killed in apparent bias related attacks than the combined total number of deaths for every other "official" hate crime category reported by the Federal Bureau of Investigation (FBI) in the last decade. From 1999-2008 (the last year with available FBI data) 245 homeless people were killed in apparent hate homicides versus 103 for all the hate crime homicides for race, religion, sexual orientation, national origin and disability combined. Note, that irrespective of which available estimate one uses, the homeless population at less than one percent of the population, is relatively small compared to other covered groups currently listed in hate crime data collection legislation, When this fact is considered, the numbers are even more staggering.

More homeless people were killed in hate attacks than there were civilian deaths in large commercial aircraft accidents over the last five years as enumerated by the National Transportation Safety Board.  More homeless Americans were killed in domestic hate attacks last year, than all American civilians killed in terrorist attacks here and abroad. In 2009 alone in the

United States, at least 43 homeless people were killed in hate attacks—the highest since 2001, when 43 people were also killed. 2009 was the fourth increase in five years. This increase, while based on admittedly small numbers, nonetheless comes at a time when overall violent crime and homicide are on a multi-year decline, with criminal homicide down a full 9% from 2005.

This anti-homeless "hate" homicide data actually exclude some of the other deadly violence that homeless people routinely experience. These include attacks involving drugs, personal disputes, robbery, insurance fraud and homeless-on-homeless violence, which we do not generally tabulate as hate crime.

While there have been many more non-homicide anti-homeless hate attacks, including rapes and aggravated assaults, the homicide data, which also represent a probable undercount, are considered the most reliable of all offense data. The homeless appear to have a higher rate of non-reporting for non-fatal crime, probably due to such factors as fear of police, fear of retaliation, disability, and more limited access to tools like cars and telephones that aid reporting. Still, the non-fatal offenses in the NCH reports are valuable nonetheless as a limited representative national sampling that document a wide range of victimizations. This broad, though incomplete, range of non-fatal cases still provide important information about locations, weapons, and victim/offender characteristics. However, the paucity of cases coupled with the incomplete nature of secondary and indirect reporting methods and sources limits the utility of the data, particularly in the area of annual trend analysis.

Because homicides come to the attention of police, media and advocacy groups there tends to be more public information available when reporting does take place. Furthermore, our available homicide data, while still quite limited is of somewhat greater utility for trend analysis, if for no other reason than the fact that they are significantly more likely to be reported. As researcher Harvey Wallace observed, "Homicide is of interest to researchers not only because of its severity but also because many professionals believe it is a fairly accurate indicator of violent crime in general." Cal State San Bernardino criminologist Dr. Steven Tibbetts elaborated:

*Murder (or criminal homicide) is the most accurately measured crime*

*because it is nearly always reported when it occurs. On the other hand, virtually all other serious crimes, such as robbery, rape, aggravated assault, burglary, etc., have a very high "dark figure," which means that most of the time these offenses occur, the victims do not report them to the police, for a variety of reasons…. Therefore, murder is by far the most valid and reliable measure of violent crime in the sense that it is the only violent offense that is typically reported when in happens.*

While our anti-homeless "hate" homicide data has significant limitations that include unofficial sources, a low base of cases, and a high beta, its message like that of a smoke alarm should not be ignored. Of particular note are the brutal methods of death, overkill if you will, as well as a probable sustained increase in attacks that come in the face of an overall multi-year decline in both violent crime and homicide rates.

## Anti-Homeless Prejudice: A Factor in Hate Crime Designation

The key criminological criteria for coverage in hate-crime law and data collection apply seamlessly to homeless status:

1. a significant additional risk of violent victimization;

2. discriminatory selection;

3. established prejudice against a socially identifiable class;

4. identical offenders such as bigoted skinheads, neighborhood defenders protecting their turf,  as well as young male thrill offenders who share identifiable characteristics and motivations;

5. identical methods of attack that revolve around personal or imprecise weapons that cause substantial suffering.

As with other hate crime offenders, these attackers are typically young male "thrill offenders" seeking excitement and peer validation using feet and fists, as well as imprecise weapons of opportunity. Over the last 11 years 78% of offenders were under 25 years old and last year half were under 20. These thrill offenders, like the more hardened racist skinhead perpetrators, view attacking the homeless as nothing more than a fun communal way of simply cleaning the streets of filth, an activity to be respected rather than reviled.

Clearly, of all those who are targeted for prejudice, homeless members of society are among the most vulnerable of all. In our highly competitive and increasingly coarse society, negative stereotypes about difference, appearance, and the worth of the poor label the homeless as disposable people. The August 2009 issue of *Maxim*, a youth-oriented magazine targeted at college-aged males, joked about the National Hobo Convention in Britt, Iowa, in a blurb titled "Hunt the Homeless." The journal quipped "Kill one for fun. We're 87 percent sure it's legal."

In numerous violent attacks assailants have referenced degrading and violent depictions in popular culture such as "Bumfights" either during their crimes or in subsequent interviews with authorities, with some even filming their crimes. "Bumfights" is a popular violent video series that sold hundreds of thousands of tapes and DVDs before going viral on the Internet. The film series sets a new low in American popular culture. It features fights between homeless men plied by the producers with alcohol, as well as sadistic assaults where terrified sleeping homeless people are startled awake and bound with duct tape. Samuel Bowhay of Grinnell College found almost 86,000 videos on YouTube last year with "bum" in the title, thousands more than videos with other derogatory prejudiced epithets. Even some computer games aimed at youth, like "Bumrise," mock injuring and degrading the homeless.

## Mutability and Other Arguments

Arguments against including the homeless in hate crime laws and data collection are recycled ones that were initially used unsuccessfully against other groups, like gays and lesbians. Too many additional groups dilute the data or the laws, some argue. Others look to problematic definitional issues. However, defining homelessness has been done quite well in Senate Bill 1765, and as a practical matter will be no more difficult than defining religion, sexual orientation or disability.

Perhaps the least impressive argument relates to the mutability of homeless status. The argument states that homelessness, unlike race, is a changeable condition that most people would not want, so why offer to count it or protect on the basis of that condition. While race is indeed an immutable characteristic, and racial discrimination was an initial harm that civil rights law continues to address, mutability itself has never been a preclusive factor against the inclusion of a group in data collection or civil

rights laws. Constitutional scholar John Hart Ely pointed out that the drafters of the Fourteenth Amendment, a significant and more rigid precursor of modern civil rights statutes, was itself left open ended, and not merely limited to race. As civil rights and later, hate crime protections evolved it has become clear that people are targeted for discrimination and violence based on various mutable characteristics as well. Even in the related and more stringent area of constitutional protection, the direction of analysis has broadened to include whether discreet and insular minorities that face stereotyping and discrimination are covered. Whatever the eventual outcome of the more narrow textual constitutional debate, the judicial and legislative record is quite clear that states and the federal government have wide authority to enact civil rights protections beyond merely immutable characteristics. Hate crime categories like religion, nationality, gender, age or disability are either mutable or potentially so. The fact that one's religion can be altered does not make it less worthy of statutory recognition, and for that reason it is covered in both federal law and by virtually every state statute. Furthermore, the fact that a particular status characteristic, like disability, is one that many would not choose has not precluded its inclusion in many statutes either.

As a practical matter mutability is a diversion from proper analysis of whether a group characteristic should be covered in hate crime laws, because many currently covered categories are in fact mutable. The main reasons for coverage are an increased risk of victimization and discriminatory victim selection. With most other types of non-hate crimes, financial gain or personal motive form the basis of victimization—thus allowing for a better opportunity at prevention, or at the very least, compliance to prevent escalation. However, when one is attacked because of an identity characteristic the risk of attack is enhanced because victims are not only attacked for what they do, but because of who they are—and for the homeless where they are as well.

As discussed earlier the homeless are particularly vulnerable for a variety of reasons. Some have suggested that this vulnerability make the homeless better suited for inclusion in vulnerable victim statutes. Vulnerability is a common characteristic of many hate victim groups, because they are often targeted by multiple assailants or for surprise attacks. Like attacks against Orthodox Jews on the way to services or homophobic street violence, however, anti-homeless violence must also be punished and recognized for the underlying discriminatory motive, which labels victims as

appropriate targets for attack in the first place.

**U.S. Hate Crime Law & Data Collection: A Trend Toward Expansion**

Concomitant with the development of hate crime law and data collection has been recognition that, as emerging victimizations become apparent, statutes and policies will evolve to address them. Several years after its initial introduction under different labels, the HCSA was enacted by Congress on April 23, 1990 and signed into law by President George Bush. Upon signing the legislation, the President declared:

*One of the greatest obligations of this administration and of the Department of Justice is the guarantee of civil rights for all Americans. As I said in my State of the Union Address, every one of us must confront and condemn racism, anti-Semitism, bigotry, and hate not next week, not tomorrow, but right now -- every single one of us. For hate crimes cannot be tolerated in a free society.*

Prior to the enactment of the HCSA Boston, New York City, Los Angeles County, Chicago, San Francisco, Massachusetts, New Jersey and Maryland were among the first jurisdictions to compile statistics for what we now call hate crime, although nearly all initially excluded sexual orientation, disability and gender. Indeed, the passage of the HCSA was delayed for years because of opposition to the inclusion of sexual orientation.

A variety of non-governmental civil rights groups have collected data on both hate crime and hate incidents against various victim groups, starting with the Anti-Defamation League's Audit of Anti-Semitic Incidents in 1981. Eventually these surveys led to inclusion of various categories in legislation. The HCSA originally required the United States Attorney General to collect data and implement guidelines relating to certain criminal offenses "that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity…."

The Attorney General in turn tasked the FBI, which maintains the Uniform Crime Reporting (UCR) program, with the assignment of hate crime data collection under the HCSA. In 1993 the UCR published an 11 state survey of hate crime data entitled *Hate Crime Statistics, 1990: A Resource Guide*. The UCR's first statistical compilation of national, though incomplete, data began with the reporting year 1992 and continues to this

day. In 1994 federal data collection under the HCSA was expanded to include the category of physical and mental disability with the enactment of the Violent Crime Control and Law Enforcement Act, and the FBI began collecting data on this category in 1997. Hate crime data collection became a permanent fixture of the UCR program through the passage of the Church Arson Prevention Act, which overrode a five year sunset provision. That law was signed by President Bill Clinton in July 1996. On October 28, 2009 President Barack Obama signed the Shepard-Byrd Act, 18 USC 249, which among other things, further expands data collection for future reports under the HCSA to include "gender and gender identity" as well as data on crimes involving juveniles who commit a disproportionate number of hate crimes.

The Shepard-Byrd Act also expanded federal hate crime law to punish attacks based on categories such as gender, sexual orientation, gender identity, and disability. At the state level nearly all states have criminal statutes that punish hate crime based on race, religion, and ethnicity.  Only about half the states, however, protect on the basis of gender or disability. The number of states protecting these categories doubled between 1988 and 1998. About thirty states protect on the basis of sexual orientation, and coverage on that basis increased fivefold during that same ten year period. Far fewer states protect on the basis of other characteristics such as age, political affiliation, and homeless status. Five states and DC either allow greater punishment for attacks on the homeless or report such crime as a hate crime. The United States Supreme Court has consistently upheld these types of state and federal criminal civil rights laws. See, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) (Court 9-0 upholds state hate crime penalty enhancement law); *United States v. Price*, 383 U.S. 787 (1966) (Court affirms broad application of criminal civil rights conspiracy law); *Screws v. United States*, 325 U.S. 91 (1945) (Court affirms conviction of policeman under 18 U.S.C. 242 for killing an African-American).

**Crime Data Collection in the United States**

The UCR is a voluntary "nationwide, cooperative statistical effort" of over 17,000 law enforcement agencies that began in 1930. The UCR is best known for its annual compilation entitled *Crime in the United States*, which traditionally tracked figures for eight types of violent and property offenses reported to law enforcement. A more detailed computer-reporting system that covers many more offenses and offense characteristics, called the National Incident Based Reporting System (NIBRS) is also being

implemented through the UCR. NIBRS constitutes 26% of the annual crime data collected by the FBI and 44% of agencies used the system in 2009 to submit their data. In 2009 the FBI reported 1,318,398 violent crimes in the United States, reflecting a 5.3% decline from the previous year, and a 7.5% decline from 2000. There were 9,320,971 reported property crimes in the United States in 2009 reflecting 4.6% decline from the previous year and an 8.4% decline from 2005. A complimentary annual victimization survey of almost 80,000 households compiled by the BJS called the *National Crime Victimization Survey* attempts to capture all crime, including unreported crime and its effects on victims.

Since 2000 hate crime reported to the FBI ranged from a high of 9,730 in 2001 and a low of 7,163 in 2004. Only one federal victimization survey was ever completed, released in November 2005 by the BJS, which estimated 191,000 hate crimes in the United States annually. In 2008, the latest available year, the FBI reported 7,783 hate crime incidents. These figures represented an increase of 159 incidents or 2.1% from the 7624 reported in 2007. Overall, non-hate crime declined less than 2% for that period. However, it is not known if the reported increase in hate crime is the result of an actual increase in cases, or instead a result of a 3.4% rise in the number of agencies participating in the program from 2007, or by reporting improvements in states with minimal previous reporting. The reporting rate for the nation was 3.46/100,000 population covered, but rates vary widely. New Jersey reported 8.5 hate crimes per100,000 hate crimes population while neighboring Pennsylvania reported a rate about ten times less. Hate crime homicides decreased by 2 from 9 to 7.

| Incident Breakdown | 2008 | 2007 |
|---|---|---|
| Racial | 51.3% | 50.8% |
| Religious | 19.5% | 18.4% |
| Sexual Orientation | 16.7% | 16.6% |
| Ethnic/Nat. Origin | 11.5% | 13.2% |
| Disability | 1% | 1% |

**Conclusion**

As President Obama said upon signing hate crime legislation last year, "At root, this isn't just about our laws; this is about who we are as a people. This is about whether we value one another." From a purely criminological perspective physical attacks against the homeless, are indistinguishable from other hate crime-with one major exception–a higher homicide victimization rate. One of the hallmarks of our civilized society is our national commitment to the transparent collection and analysis of official data that impact the public's health, safety and welfare. With advancements in computer aided crime data collection, a checked box on a crime form now will significantly enhance our knowledge to combat a terrible evil scourge that is killing and maiming some of the most vulnerable souls in our society.

I can only marvel at how proud my departed refugee Russian grandmother and World War II era POW father would be to see the country they loved so very much working to extend the promise of Emma Lazarus' prose to embrace yet a new generation of Americans, who like them, need protection from unrestrained prejudice.

Thank you. I am honored to answer any questions that you may have.

Appendix

Hate Crime Statistics Act
Summaries of Victimization Studies of Homeless/General Population
Map: Homeless Hate Crime Legislation By State
Tables:
Comparison of Hate Motivated Homicides Against Homeless and Other Groups
Homeless Hate Victims and Offenders By Age

# Hate Crime Statistics Act, **As Amended, 28 USC § 534**

§ "[Sec. 1.] (a) This Act may be cited as the 'Hate Crime Statistics Act'.

"(b)

(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act [5 USCS §§ 551 et seq. or 28 USCS § 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"Sec. 2. (a) Congress finds that—

"(1) the American family life is the foundation of American Society,

"(2) Federal policy should encourage the well-being, financial security, and health of the American family,

"(3) schools should not de-emphasize the critical value of American family life.

"(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality."

### *U.S. Overall Crime Data*

**United States Crime General Population (Age 12 and above)**
**76.5% Property Crime –23% Violent Crime**
**Annual / Per 1,000 Population or Households**
**0.8 rape/sexual assault     3.3 injurious assault     2.2 robberies**
**Source: Bureau of Justice Statistics, Criminal Victimization, 2008, Criminal Victimization in the United States, 2007.**

### *Violence Against the Homeless Characteristics*

**Homeless Youth  (Age 15-24-Canada)  Homeless Youth Victimization Rates**
**81.9% Criminally Victimized/Year   79.4% Multiple Criminal Victimization/Yr**
**62.3% Report Assault/Yr , 31.9% Sexual Assault/Yr.**

**General Population Victimization –Canada (Age 15-24)**
**39.7% Criminally Victimized/Year   18% Multiple Criminal Victimization/Yr.**
**12% Report Assault/Yr., 3.8% Sexual Assault/Yr.**
**Source: S. Gaetz (2004) Safe Streets for Whom? Homeless Youth , Social Exclusion and Criminal Victimization, Canadian Journal of Criminology and Criminal Justice**

**California Senate Resolution 18 Study**
**66% of Homeless Surveyed Criminally Victimized in 2001**
**72% of victims faced multiple episodes with 31% facing more than five.**
**75% of victims assaulted, 74% robbed (with most facing more than 1 episode), 23% raped**
**Source: State of California**

**Los Angeles Homeless Females**
**23% Report Physical, Sexual, or Psychological Violence in Previous 6 Months**
**Source: S.L. Wenzel et al. (2006). Toward a More Comprehensive Understanding of Violence Against Impoverished Women. J. Interpersonal Violence. 21(4), 820-839**

**San Francisco Homeless and Marginally Housed Persons**
**32.3% of Females and 27.1% of Males Report Physical or Sexual Assault in Previous Year**
**Source:  M. Kushel, MD. Et al. (2003) No Door To Lock: Victimization Among Homeless and Marginally Housed Persons,  Archives of Internal Medicine; 163:24920-2499**

**Los Angeles Homeless Females**
**34% Experienced Major Violence in Previous Year—-Same As *Lifetime* Risk for Average Domiciled American Female**
**Source: S.L. Wenzel et al. (2001) Risk Factors for Major Violence Among Homeless Women, J. Interpersonal Violence 16:8 (August), 739-752**

**Los Angeles Homeless Females**

**13% of Homeless Los Angeles females report being raped in the pervious year**

Source: S. L. Wenzel et al. (2000) Health of Homeless Women With Recent Experience of Rape. J. Gen. Intern. Med. April 15 (4): 265-268