discussion paper

RECONSIDERING HATE

Policy and Politics at the Intersection

A Political Research Associates Discussion Paper

By Kay Whitlock

2012

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Acknowledgements

This discussion paper has its genesis in the belief that movements for civil and human rights are made stronger by encouraging critical dialogue and constructive debate about the political frames we utilize, and the policy proposals and strategies we are considering.

For more than a dozen years, a growing number of progressive activists and organizations have been raising important questions and concerns about the limitations of the "hate frame" in addressing violence directed against marginalized communities, and the unintended consequences of heavy reliance on increased policing and harsher punishments to create safe and just communities. But engagement with these issues in many mainstream social advocacy organizations has been limited. When Political Research Associates (PRA) said this was an important moment in which to re-examine the hate frame and asked if I would write this discussion paper, I accepted, because today, those questions and concerns have new urgency.

This paper assumes that all of us care deeply about the creation of communities that are not only safe, but also just and compassionate. But what do safety and justice mean for those who bear the heaviest brunt of both hate violence and widespread, systemic violence?

Community brokenness, characterized by violence and shattered social and economic relationships, cannot be accurately described or repaired through a diagnosis of hate. If we are serious about transforming the unjust social and economic conditions that lie at the heart of entire structures of violence, exclusion, and inequality, we must find new ways to work creatively and boldly across issues, constituencies, and movements. We must craft new political frames that are imaginative and expansive enough to help us re-energize our efforts for the long haul.

While I am solely responsible for the views in this discussion paper, I must acknowledge the work of some remarkable organizations and individuals whose visions and organizing efforts have inspired me over many years. They include Critical Resistance, INCITE! Women of Color Against Violence, Audre Lorde Project, Queers for Economic Justice, Southerners on New Ground, Creative Interventions, Sylvia Rivera Law Project, FIERCE, Community United Against Violence, and Committee on Women, Population, and the Environment. I want to give special acknowledgment to the work of Mimi Kim, Andrea Smith, Cathy J. Cohen, Angela Y. Davis, Pat Clark, Suzanne Pharr, Chip Berlet, Mariame Kaba, Nancy A. Heitzeg, Seeta Persaud, Victoria Law, Dean Spade— and to my Queer (In)Justice co-authors Joey L. Mogul and Andrea J. Ritchie.

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Finally, I want to acknowledge the many community-based and national advocacy organizations that labor with grit and grace, day after day, to end multiple forms of violence and oppression.

—Kay Whitlock, June 2012

Introduction

For Political Research Associates' 30th anniversary year, we are presenting occasional discussion papers to spark thoughtful—and even controversial—conversations among social justice advocates about our movements' achievements and challenges. Each of these discussions will focus on a specific set of concerns and ask: are we on the right track to make the changes we all agree are so vital? How can we use constructive, critical dialog across constituencies and movements to share and debate analysis of issues, policy proposals, and organizing strategies?

We invited longtime LGBTQ activist Kay Whitlock to inaugurate the series with this paper on framing "hate crimes." Kay was the National Representative for LGBTQ Issues with the American Friends Service Committee (AFSC) and an AFSC regional director. For almost 40 years, she has worked to build bridges between LGBTQ struggles and the movements fighting for racial, gender, economic, and environmental justice. She is coauthor, with Joey Mogul and Andrea J. Ritchie, of *Queer (In)Justice* (Beacon Press) which has drawn wide critical acclaim for its call for a multi-issue social justice agenda and was honored with a 2011 PASS (Prevention for a Safer Society) Award from the National Council on Crime and Delinquency. We asked Kay to build on thinking and writing from her time at the AFSC, challenging the appropriateness and efficacy of hate crime laws as a progressive response to violence against marginalized communities.

We then invited leading social change activists to add their voices to this discussion.

Rinku Sen, President and Executive Director of the Applied Research Center (ARC) and Publisher of *Colorlines,* is the author of *The Accidental American: Immigration and Citizenship in the Age of Globalization* and *Stir It Up: Lessons in Community Organizing.* She is the Chair of the Media Consortium, an association of progressive independent media outlets, and the recipient of numerous fellowships and awards for activists and journalists.

Patricia Clark, an emeritus member of the Southern Poverty Law Center (SPLC) board and former director of the SPLC's Klanwatch program, is the former Executive Director of the Fellowship of Reconciliation and over her career has focused on such issues as prison reform, the death penalty, juvenile justice, and restorative justice.

Rahsaan D. Hall, a former Public Defender in Dade County, Florida, and a former Assistant District Attorney for Suffolk County, Massachusetts is Deputy Director of The Lawyers' Committee for Civil Rights and Economic Justice, where he engages in both legislative advocacy and community outreach. His litigation practice focuses on police misconduct, and public accommodations. He also serves as the director of the Lawyers' Committee Voting Rights Project, protecting voting rights for racial and ethnic minorities, and other historically disenfranchised groups.

Political Research Associates is grateful for their participation, and we welcome further thoughtful comments on this crucial topic.

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Consider the following tragedies.

On November 8, 2008, just days after Barack Obama had been elected President of the United States, a group of teenage boys in suburban Suffolk County, New York tossed down some beers, smoked some weed, and decided to go "Beaner-hopping"—that is, hunt for Latino immigrants in order to verbally harass, rob, beat them, and shoot them with BB guns.[1] Residents and political leaders in this predominantly White county had responded to a growing influx of immigrants of color with rising xenophobia and restrictive laws that accelerated the criminalization of unauthorized immigrant workers—measures advocated by the Federation for American Immigration Reform (FAIR)[2], whose founder has openly expressed the belief that the a majority White population is essential to the well being of the United States. That day, the teenagers found Marcelo Lucero, an Ecuadorian immigrant and longtime resident, and stabbed him to death—or as Jeffrey Conroy, a much-heralded, local high school athlete put it, "We snuffed a Mexican..." In a report prepared for the Center for New Community, journalist Bob Moser notes that when Conroy was taken into police custody, he wondered aloud whether the killing would interfere with wrestling season.

What are the limitations of the "hate frame"?

. . .

That same year, Duanna Johnson, a poor, African-American transgender woman, was taken into custody by police officers in Memphis, Tennessee, a city where Black people had long protested racially charged police misconduct and abuse. Her story is told in *Queer (In)Justice: The Criminalization of LGBT People in the United States*.[3] There was no evidence to support the prostitution charge leveled against her: "no alleged client, no exchange of money for sex." But it is commonplace for law enforcement officials to profile and arrest transgender women, particularly women of color, as sex workers. When Johnson challenged homophobic and transphobic slurs being directed at her in the station, she was severely beaten and then pepper-sprayed by one of the officers while being restrained by another. The entire incident was captured by the station video camera. No one who witnessed the assault on Johnson intervened.

Local authorities attempted to resolve the matter without charging either officer with any offense,[4]

although federal charges were eventually filed against the officer who administered the beating. Johnson later announced she was filing a civil law suit against police. Nine months after the jailhouse beating, unknown assailants shot her to death with a single bullet to the head. Memphis police located no suspects and said they could determine no clear motive.[5] This was the third murder of a Black transgender woman in Memphis in a little more than two years. Many LGBT activists framed her death primarily as a matter of transphobia, often sidestepping or downplaying the issue of racism. Black leaders were largely silent on the matter. When at last reached by a well-known Black newspaper reporter, the head of a noted civil rights organization publicly deplored the murder, while also noting that in no way was he condoning homosexuality or "transgender."[6]

Examination of the official responses to the incidents in New York and Tennessee raises not only the issue of whether the police and political powers of the state are plausible agents of structural change, but also discomfiting questions of broader community responsibility for (often unintentionally or inadvertently) the continued existence of structural forms of injustice and violence.

In the wake of Lucero's murder, county executive Steve Levy, a fiscally conservative Democrat long opposed to Latino immigration and with strong ties to FAIR and other racist anti-immigration groups, blamed the killing on nameless "White supremacists." After Jeffrey Conroy's buddies reached plea agreements to lesser offenses and testified against him, Conroy was convicted of first-degree manslaughter as a hate crime (though acquitted of murder as a hate crime), and two other charges. He was sentenced to 25 years in prison. A local hate crime task force, established following the murder of Lucero, ran into controversy early on.[7] Beyond a handful of progressive advocacy groups and faith communities, few really cared to look too deeply into why the larger community had stood by silently for the past decade as local anti-immigrant fervor escalated.[8] Some politicians began to distance themselves from Levy, perhaps in order to avoid the painful question of collective responsibility.

In Memphis, where local officials failed to charge Officer Bridges McRae with the brutal beating of Du-

anna Johnson, federal prosecutors obtained an indictment on a charge of depriving Johnson of her constitutional rights through use of unreasonable force. The jury in the first trial deadlocked: eleven jurors found him guilty while one disagreed, and a mistrial was declared. Later, pleading guilty to the constitutional rights/excessive force violation, and to an unrelated charge of federal tax evasion, McRae was sentenced to two years in prison. Lesbian, gay, bisexual, and transgender (LGBT) organizations and activists initially responded to the beating and murder of Duanna Johnson by calling for hate crime legislation. While they noted that Johnson was African-American, LGBT groups did not generally challenge what many in the larger Black community felt to be systemic police abuse of people of color. Instead, LGBT leaders accepted sensitivity training for police.[9]

What these violent incidents share in common—despite differences in the victims and status of those who committed the most obvious violence—is that both were discussed and dealt with by the media, social justice advocates, and the public as "hate crimes." In both cases, the frame of "hate" was employed to classify the violence directed at Lucero on the basis of race and Johnson on the basis of race and gender identity/expression.

Frames, according to sociologist Eduardo Bonilla-Silva, define a "set path for interpreting information"[10] and offer conceptual channels to help guide our thinking about particular events, ideas, and realities.[11] This discussion paper considers the significance and value of "hate frames" for social justice advocates and organizations. How we think about a problem directs what we believe society should to do about it and helps to determine our strategic choices. A frame is, in a word, *consequential*.

Is hate an effective frame for social justice advocates to utilize in interpreting and trying to uproot the kinds of intimidation and violence just described here? What are its benefits and what are its limits? This is a sensitive and complex topic because there are compelling reasons why, over the past 30 years, so many advocacy organizations and activists have been drawn to hate frames as a way to think about violence against certain groups of people—including people of color, LGBT people, Jews, Muslims, women, and people with disabilities—who have suffered various kinds of discrimination and oppression. Nonetheless, it is important to identify and understand the shortcomings of the hate frame. Each of the

three critical shortcomings identified in this discussion paper I will argue, critically *limits* the ability of social justice advocates to make strategic choices that help to name and address systemic forms of threat and violence as well as the considerable harm inflicted by bigoted individuals and groups.

Specifically, I argue the following:

• While the hate frame may be powerful in terms of increasing awareness of and mobilizing opposition to the threatening, violent actions of individuals and small groups directed against targeted communities, it also, paradoxically, obscures the relationship of such violence to its systemic underpinnings. That is to say, despite the good intentions of its many supporters, the hate frame focus on individuals and groups considered to be "extreme" in their political views and actions actually draws attention away from structural inequalities, exclusions, and violence that are foundational to the ordinary workings of so-called "respectable" public and private institutions. However inadvertent, the result is that the punishment of individuals in highly publicized cases of hate violence often allows communities to avoid addressing state-sanctioned, institutional injustice and violence, and provides political cover for many. It's so much easier to place the blame for violence directed against entire groups on criminal misfits, loners, and crackpots than to challenge the unspoken public consensus that permits broader cultures and structures of violence to exist.

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To help make the distinction between the violence of individuals and that which is perpetrated and sustained by whole systems of power and belief, the phrase "structural violence" is helpful. The late political philosopher Iris Marion Young underscored that oppression is not always the product of identifiable bigots and tyrants. She wrote,

In this extended structural sense, oppression refers to the vast and deep injustices some groups suffer as a consequence of often unconscious assumptions and reactions of well-meaning people in ordinary interactions, media and cultural stereotypes, and structural features of bureaucratic hierarchies and mar-

ket mechanisms—in short, the normal processes of everyday life. We cannot eliminate this structural oppression by getting rid of the rulers or making some new laws, because oppressions are systematically reproduced in major economic, political, and cultural institutions.[12]

The harm and injustices summed up as "structural violence" are experienced psychologically, physically, economically, and socially. Their impacts are cumulative over time. They cannot simply be policed, prosecuted, and punished away.

- The hate frame expands, rather than narrows, perceived differences between "extreme" and "mainstream" behaviors. This occurs at a time in U.S. history when those differences have narrowed considerably in particular political arenas within both major parties, but most notably within the Republican Right. This makes it much more difficult to effectively challenge normative (generally accepted) institutional practices that systemically privilege some communities while severely devaluing and depriving others of rights, recognition, and benefits.

Hatred is popularly regarded as an extreme and irrational prejudice manifested by individuals and fringe groups — an intense and socially unacceptable expressions of bigotry.

While the hate frame has produced some significant accomplishments, it has also has produced unintended harmful consequences. A large number of them are related to the criminal legal system, which historically has embraced racism and economic bias, and has always punished gender and sexual nonconformity both independently and as a function of race-based law enforcement. These consequences are seldom recognized, much less discussed, by the organizational supporters of hate crime laws, policy makers, or the media. These shortcomings hamper our ability to mount strong, coherent, and effective responses to exclusion, injustice, and violence.

Understanding the Hate Frame

Since the early 1980s, an increasing number of social justice advocacy groups representing a variety of constituencies—people of color, including indigenous peoples and immigrants; lesbian, gay, bisexual, transgender and queer (LGBTQ) people; women; Jews; Muslims; and people with disabilities—have increasingly adopted the frame of hate for analyzing, describing, and responding to violence, oppression, and discrimination. Campaigns to deny rights and recognition to particular groups as well as acts of violence and toxic, demonizing rhetoric directed against them are characterized by these advocates as motivated by and engendering hatred.

Hatred, in this sense, is popularly regarded as extreme and irrational prejudice manifested by individuals and fringe groups as intense and socially unacceptable expressions of bigotry. Under this rubric, a despised "other" is actively targeted for harassment, exclusion, and violence; these harms are seldom regarded as coldly rational choices made by those in mainstream political, economic, social, and religious institutions who seek to maintain traditional hierarchies of power.

No one familiar with the history of lynching and other legal and extralegal means of enforcing racial segregation and asserting White supremacy in the United States could reasonably argue that such actions are not motivated by racial hatreds. Or that anti-immigrant vigilantes who take it into their hands to "patrol" the U.S./Mexico border are not motivated by hatred; that vile, anti-LGBTQ sentiments expressed in the heat of queer bashings and anti-gay political campaigns aren't hateful; that hatreds don't drive the desecration, bombing, or burning of Black churches, synagogues, and mosques; or that hatred is not involved when women's health care centers are torched and abortion providers murdered.

But it's important to acknowledge that these kinds of hatreds aren't merely about personal prejudice or "bad attitudes." Rather, they are supremacist in nature, touting the alleged superiority of Whites over people of color; heterosexuals over queers; men over women; a certain variety of Christianity over other denominations and faiths; and similar beliefs. Such hatreds, openly expressed and used as a focal point for organizing, intend to retain and reinforce traditional (and unjust) hierarchies of racial, gender, and economic power. As political analyst Chip Berlet notes in an article for the *Journal of Hate Studies,* "Organized supremacist groups utilize and amplify the same elements of prejudice, supremacy, demonization, and scapegoating that already exist in mainstream society. [Their] ideologies, styles, frames, and narratives... . are drawn from pre-existing systems of oppression buried in mainstream society."[13]

Despite these complicating realties, the liberal ver-

sion of the hate frame focuses primarily on public, intentional expressions of bias and bigotry. It asserts that people who engage in bullying, threat, intimidation, and violence stand outside the circle of normalcy and mainstream standards of civic morality. "Haters" are identified as "extremists" who act or resort to measures outside of generally accepted norms, and many of us seek to place primary responsibility for the control of such virulent expression of bigotry within the criminal legal system—through increased policing, prosecution, and punishment of hate.

Unquestionably, the hate frame is a powerful tool for educating people who may not have thought much, or at all, about the reality of threat and violence targeting entire communities. It is compelling and appealing precisely because it delineates "us," the non-haters, from "them," the haters, permitting "us" to deplore, denounce, and distance ourselves from virulent and open expression of big-

Hate violence can be read as an effort to enforce "appropriate" boundaries for victim and victimizer.

otry. Few people want to be labeled "haters" or "supporters of hate." Most of us prefer to think of ourselves as decent people who support that which is fair, good, and moral over violent forces that seek to intimidate and do harm to others. We are seldom encouraged to recognize that conscious hatred and bigotry are not required in order for structures of oppression to inflict violence on marginalized communities. Moreover, while the hate frame often embraces educational efforts to combat destructive and demonizing consequences of prejudice and bigotry, such efforts do not usually focus on how to recognize, challenge, and uproot the destructive, demonizing impacts of structural forms of violence and inequality within mainstream institutions.

A number of indicators speak to the enthusiastic and broad embrace of the hate frame, including its integration into public policy, its expanding presence in academia, and its use as a tool for organizing and advocacy. For example:

- Federal and state hate crime laws have proliferated from the 1980s to the present. Today, almost every state has enacted some form of hate crime statute, although the focus, wording, and identification of "protected" status categories differ widely.[14] There are several federal hate crime laws.[15] One of the earliest includes a penalty enhancement (stiffer sentence) provision, as do most state laws.
- Since the 1980s, there has been a robust, sometimes fiery, debate in social justice arenas over

the desirability, efficacy, and possible consequences of "hate speech" law as a response to violent and dehumanizing rhetoric directed against particular groups. An increasing number of colleges and universities have adopted policies prohibiting certain forms of speech, with the stated intention of protecting pluralism and ensuring equal educational opportunities for all.[16]

- A few prominent advocacy organizations, including the Southern Poverty Law Center (SPLC),[17] the Anti-Defamation League (ADL),[18] and Center for New Community,[19] regularly monitor and report on "hate" and "extremist" groups (defined according to their own criteria). "Stop Hate" initiatives abound.[20] SPLC offers an array of "teaching tolerance," diversity awareness, and prejudice reduction educational resources for teachers and students, aimed at blunting bigotry. Not in Our Town[21] is a national organization that highlights community initiatives to resist, respond to, and prevent hate violence.

- The Gonzaga University Institute for Hate Studies was created to help advance an interdisciplinary field of Hate Studies and disseminate new theories, models, and discoveries about hate. It began publishing the *Journal of Hate Studies* in 2001. The Institute has hosted two international Hate Studies conferences, and efforts are underway to expand university course offerings in and institutionalize the academic field of Hate Studies.[22]

The hate frame has taken deep root in the civic imagination and in public policy, especially in criminal law, as well as in the justice visions of many advocacy organizations. Yet even social justice advocates don't always agree on what it means, or who should be labeled a "hater," and who should not, and why.

What is Hate?

For those of us committed to social and economic justice, the evidence of hatred is widespread. We see its terrible expression not only in murder, assault, and harassment directed against members of targeted groups, but also in threats that are rhetorical and symbolic. Right-wing websites utilize toxic rhetoric to evoke dehumanizing images of immigrants of color, LGBTQ people, and other targeted groups. Antisemitic and other

hatreds, given expression by both the Right and the Left, animate numerous demonizing conspiracy theories. Islamophobia saturates public discourse and, increasingly, the mindset of law enforcement.[23] But beyond a sense that we know hate when we feel it, we don't know a great deal.

Is hate an emotion? A belief? A behavior? A process? An outcome? Is it innate? Learned? A mental disorder? Is it an individual phenomenon? Is it the same thing when it appears in systemic form, in the context of the routine actions of respected public and private institutions, or even a nation-state? What is its relationship to hierarchies of power, if any? Is it intrinsically violent? Is it a fixed part of "human nature" or is it mutable? Can it be corrected or healed?

Ken Stern, specialist on antisemitism and extremism for the American Jewish Committee (AJC), suggests that one working definition of hate might be "the human capacity to define, and then dehumanize or demonize, an 'other,' and the processes which inform and give expression to ... that capacity."[24] At first glance, that seems clear and useful. But the waters of clarity are instantly muddied when we try to utilize a single frame—hate—for interpreting and responding to the actions of individual actors motivated by obvious bigotry; independent groups and networks pushing openly oppressive agendas; and the histories and systemic operation of respectable public and private institutions or even entire nation-states.

Hate violence punishes boundary transgressions when someone from a particular group is perceived to be "out of place."

Until the 1920s, most studies of prejudice in the United States focused on racial differences and identifying prejudice as a "natural response" to the shortcomings of "backward" or inferior peoples; these studies openly supported White supremacy. By the mid-20th century, academic thought tended to frame prejudice more broadly, but largely as a psychological phenomenon with sociological implications and occasionally as one related to "ignorance" of people from different origins or communities. Social scientists did not always agree on causal factors.[25]

In many respects, these ideas persist. Responding to the question, "Why do hate crimes occur?" Partners Against Hate, an initiative funded by the Office of Juvenile Delinquency Prevention within the U.S. Department of Justice to address hate crimes committed by young people, replies that they "often occur as a result of prejudice and ignorance. A lack of understanding about differences among people and their traditions con-

tributes to fear and intolerance."[26] Appreciation for diversity—albeit a representational form of diversity that often "adds and stirs" non-threatening dabs of "difference" into arenas dominated by White, well-to-do, heterosexual males—increasingly has replaced calls for wholesale assimilation into the dominant culture as the preferred strategy for transforming prejudice and ignorance into acceptance. Yet this diversity model is static; it does not challenge unjust power relationships or the inequitable distribution of social and economic vulnerability that accrue to them.

Even when the focus is on interaction among groups, says sociologist Kathleen Blee, "[t]he role of hate in practices of intergroup conflict and tension is generally regarded, at least implicitly, as a matter of individual psychology."[27] She emphasizes the importance of also understanding hate "as a social, in addition, to an individual phenomenon . . . hate as *relational;* hate as *socially constructed;* hate as *accomplished;* and hate as *organized.*"[28] Others add such factors as social identity into the mix. In any case, Blee notes universalized group demands can often contradict individual experience. This allows for the possibility that we may know and like certain individuals in a demonized group, but continue to condemn the group as a whole. In a study on women in contemporary Ku Klux Klan and neo-Nazi movements, Blee found that almost one-third of her respondents "volunteered information on mixed-race or homosexual family members with whom they were on friendly terms."[29] For example, one young neo-Nazi leader reported that her best friend was married to an African-American man and that their children played together.

Blee is one among a number of social scientists and legal scholars writing about hate who recognize that violent acts motivated by bias or hatreds are not always the product of individual emotional states, but "can reflect broader social institutions and cultural norms."[30] Barbara Perry, a social scientist and well-known hate crime scholar, challenges the view of hate as pathological, irrational, and extreme. Racist or gendered violence, she notes, "is not aberrant." To the contrary, Perry says, it is normative in Western culture, and these norms are reflected in the language and epithets we use; in media images; and in systems of belief that privilege some identities over others.[31]

At the heart of many inquiries about hate posed by scholars and activists, is an urgent concern about hate's

power to solidify a sense of boundaries and separateness and to create clearly recognized categories of—and identifiable places for—victims and victors. The geography of hate and "spaces of hate" is an emerging theme in sociological studies of racial and other violence.[32] Barbara Perry and Randy Blazak, for instance, examine the "geological imagination of the white supremacist movement" in the United States, arguing that "race becomes place," and that hate violence has a "spatial dimension" and is "situationally located." Drawing on ways in which White supremacists "map" the United States in terms of "places for races" and utilize cyberspace to expand White supremacist territory, Perry and Blazak emphasize that hate violence can be read as effort to enforce "appropriate" boundaries for victim and victimizer by punishing boundary transgressions when someone from a particular group is perceived to be "out of place."[33]

Hate as an Academic Field

Until fairly recently, hate scholarship has been scattered widely across fields of study. In the mid-1990s, Bill Wassmuth, Director of the Northwest Coalition for Malicious Harassment, Ken Stern of AJC, and others decided that it was important to create mechanisms to support the sharing of information and "cross-pollination" of research and ideas across academic disciplines. Toward that end, Gonzaga University's Institute for Action Against Hate (later renamed the Institute for Hate Studies) was created. The Institute, in turn, created the *Journal of Hate Studies*.[34] Efforts to develop this interdisciplinary field are still in their infancy; only a few courses are currently being taught at Gonzaga University and other colleges and universities. But Stern envisions the development of academic capacity to both analyze the evolution of hate, and identify ways to counter it—including providing governments with analysis, information, and insight.

Curious to learn more about this work, I attended the Second International Hate Studies Conference in the spring of 2011, experiencing it as a mixture of thoughtful, scholarly presentations, panels, and discussions about hate studies curricula and prejudice reduction teaching methodologies. Few presentations focused on grassroots community organizing to counter violence and hate, but the one most clearly identified with this focus centered on resistance to the Aryan Nations and Rev. Fred Phelps' Westboro Baptist Church.

Based on the sessions and plenaries I attended, what was most striking to me was a general—though not universal—tendency to frame hate as prejudice and "extremism." Apart from consideration of genocides of the

past and their ongoing legacies, there was a relative paucity of engagement with the question of state-sponsored, institutionalized violence. The notable exceptions focused on the increasing criminalization of Latino immigrants in the United States. While the idea that "we all have hate in us" seemed to be generally accepted, and there was recognition by some that even people and groups who work to stop hate may share complicity for upholding various forms of state-sponsored violence—knowingly, unwittingly, or simply through failure to name, challenge, and resist them—there was no substantive engagement with this challenge.

Will the field of Hate Studies address such questions in more depth over time? Perhaps. A recent issue of the *Journal of Hate Studies* featured William Arrocha's examination of the state and civil society impacts of Arizona's Senate Bill 1070[35] by means of legalizing racial profiling as a key tool for regulating migration and "generating discourses of and practices of discrimination and hate."[36]

Certainly activist-scholars beyond the field of Hate Studies have long been examining and documenting the interrelationships and impacts of multiple forms of violence—perpetrated by individuals, groups, societal institutions, and the state—on groups often targeted for violence. While there are far too many such works to cite here, among them are Andrea Smith's *Conquest: Sexual Violence and American Indian Genocide;* Luanna Ross' *Inventing the Savage: The Social Construction of Native American Criminality,* and Dean Spade's *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law.* For such analysis, I suggest, the frame of hate is far too confining. It may even distort areas of inquiry because it concerns itself with the normalization of forms of oppression supported by public consensus. This is the kind of structural violence many social justice advocates are unaware of—or if they are, often don't want to confront for a variety of reasons, some of which are briefly touched on later in this discussion paper.

Regardless of how these works are classified, the more pressing task for social justice advocates is to assess whether a frame of hate or "opposing hate" accurately describes what we're working towards as well as pointing towards what we're really up against. Does calling something hate speech or a hate crime clarify or distort the nature of our struggles? Does it provide potential openings for building strong and trustworthy community relationships across issues and constituencies, especially with those who may not already share our views or justice commitments? Is it strong enough to articulate a more compelling vision of community wholeness

and well being, rooted in social and economic justice? And does the frame lead to unintended consequences that we must address? To be fair, I note that similar questions might usefully be asked of many reformist frames and strategies, but I do not seek to make a case against all reform efforts. Rather, I ask questions that focus squarely on the political utility, diagnostic accuracy, and potential of the hate frame for helping us address root causes of the violence it intends to reduce and prevent.

Before we can answer those questions, we should briefly examine the hate frame in relation to centrist-extremist theory, as well as the various historical and political factors and dynamics that surround it.

Double-Edged Sword

The shadow influence of centrist-extremist theory extends over every aspect of the hate frame, making it far more difficult to address structural forms of violence and oppression perpetrated by respectable policy makers, public servants, and public/private institutions. First advanced in the mid-1950s, centrist-extremist theory posits the "image of a democratic elite guarding the vital center against irrational populists" and criminal extremists. Not only are the individuals who commit acts of hate violence considered part of an "irrational, lunatic fringe," but so are those who insist on naming and addressing structural violence.[37] There is an almost seamless conflation of those who confront systemic forms of brutality, past and present, with those who support them. The policies and actions of the so-called "vital center," which also may support oppression, inequality, and systemic forms of exclusion and violence, are not to be questioned; those who point to the state-sponsored violence of mass incarceration and the harsh policing of immigrant communities, for example, are pre-emptively considered "extreme," and outside the norm of respectable public discourse.

It is also the case, as I have already indicated, that the hate frame is not a concept with a single, unambiguous meaning. This frame has been used by conservative and right-wing political interest groups to further their repressive agendas while simultaneously casting *themselves* as the victims of hate groups. When a White Virginia gentleman negatively assessed Black people in 1883, implicitly justifying their continued oppression, he summed up his views by saying "[I]n their hearts, they *hate all White people* [Emphasis added.]."[38] Well over 100

It's not only the individuals who commit acts of hate violence what are considered part of the "irrational, lunatic fringe"—so are those who insist on naming and addressing structural violence.

years later, right-wing Fox Network television personality Glenn Beck (who lost his daily show on Fox News when advertisers abandoned him under consumer pressure, only to reinvent himself on radio with an even larger audience) accused President Barack Obama of having "exposed himself" as a man with "a deep-seated hatred for White people, or the White culture."[39]

The media, in fact, thrive on false equivalencies. They repeat competitive charges of hate from conservatives and liberals, from the Left and Right alike. They consistently foster the idea that hate is purely psychological in nature, carries no historical weight, and, in Bonilla-Silva's phrase, is "power-evasive."

In 2011, for example, the website of right-wing blogger, author, and Fox media pundit Michelle Malkin[40] featured "The Progressive 'Climate of Hate:' An Illustrated Primer, 2000–2010." The categories of purported "progressive hate" included such categories as "Anti-Traditional Marriage Hate," "Left-Wing Mob Hate," "Open-Borders Hate," "Anti-Military Hate," and "Hate Crimes."[41]

Fraudulent frames such as "reverse racism" "welfare queens and cheats," "the homosexual agenda," "invasion of illegals," and similar claims reinforce the idea that "we" (from groups holding primary power and who are some combination of White, Christian, heterosexual, U.S. born or naturalized citizens) are under perpetual hostile assault by a hateful "them." Not coincidentally, these are all frames that overtly pathologize and criminalize the groups they target, primarily on the bases of racism and sexual and gender nonconformity. The actual messages may overtly or covertly appeal to people's fears and bigotry, but the frames always broadcast alarm regarding the purported presence of subversive threats to "our" safety and security. They are deployed by the Right to manipulate public opinion and fuel wedge politics while obscuring systemic injustice.

For example, the public leak of confidential, internal documents of the National Organization for Marriage (NOM), a key opponent of same-sex marriage equality, confirmed what some LGBT organizers had known and warned about for more than a decade: that the group's strategic goals included driving "a wedge between gays and blacks—two key Democratic constituencies" and convincing Latino voters that LGBT equality will force them to "abandon traditional family values."[42] Unfortunately, that effort has had some success.[43]

We need, then, to consider how toxic rhetoric, demonizing, scapegoating, and violent actions directed against others serve to pit various groups and classes of people against one another. Who benefits, and how? Does the hate frame help or hinder us as we work to build greater social justice unity across particular movements? Part of the answer lies in examination of a centerpiece of public policy that arises within the hate frame.

Hate Crime Laws Reconsidered

Laws embody the values of our nation, and through the enactment of this hate crimes law, our country has—once and for all—sent a clear and unequivocal message that it rejects and condemns all forms of hate violence, including crimes motivated by hatred of lesbian, gay, bisexual and transgender people.

–Rea Carey, **Executive Director of the National Gay and Lesbian Task Force**, October 28, 2009, after President Barack Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act into law [44]

Rea Carey's hopeful but overly optimistic 2009 statement lays out the essential message of the hate crime frame: With the passage of federal and state hate crime laws, law enforcement, historically a persecutor of people of color, queers, and other targeted groups, will at last protect those marginalized communities.

Unfortunately, while we might wish otherwise, no such message has been sent or received. To understand why, some background information is necessary.

Hate crimes are generally understood to be acts of harassment, vandalism, threat, malicious intimidation, or violence motivated by bias related to the targeted person's or institution's actual or perceived race, color, religion, ethnicity, national origin, sexual orientation, gender, gender identity or expression, or physical/mental disability. Hate crime laws add provisions such as enhanced penalties, law enforcement reporting requirements, mandated training for law enforcement personnel, and civil legal remedies (permitting victims to sue for damages) to violations *already subject to criminal penalties*. These provisions may appear alone or in some combination. The additional provisions, particularly penalty enhancements, are justified on the basis that these acts of intimidation and violence are meant to

We need to consider how toxic rhetoric, demonizing, scapegoating, and violent actions directed against others serve to pit various groups and classes of people against one another. Who benefits, and how?

harm not only individuals, but to terrorize entire groups of people and convince them to "stay in their [subordinate] place." Organizational supporters promise us that the laws serve three essential purposes: *punishment* (often enhanced), *deterrence,* and *active protection*. But do they deliver on the promise?

After Abolition of Slavery

In the post-Civil War era, three amendments to the U.S. Constitution were ratified: the Thirteenth (abolishing slavery in 1865), Fourteenth (guaranteeing citizenship rights for all persons born and naturalized in the United States, passed in 1868), and the Fifteenth (prohibiting the federal and all state governments from limiting voting rights on account of race, color, or previous condition of servitude in 1870). During Reconstruction, additional laws were enacted to secure and protect the rights of Black people and blunt massive White resistance—which included the founding of the Ku Klux Klan in 1865—to the abolition of slavery. Brian Levin, Director of the Center for the Study of Hate and Extremism at California State University in San Bernadino, notes that among these laws were provisions that sought to hold both individuals and government officials accountable.[45] The Civil Rights Act of 1866, for instance, enacted prior to the Fourteenth Amendment, granted citizenship and equal civil rights to Black men, establishing criminal penalties for individuals who obstructed enforcement of the law. At the same time, it set criminal penalties for government officials who failed to enforce the law. Portions of the Enforcement Act of 1870 held state officials accountable for interfering with the voting rights of Black people, and the 1871 Ku Klux Klan Act, Levin notes, "criminally punished government officials and private conspiracies when they operated to deprive citizens of equal protection or interfered with federal protection of civil rights."[46]

Unfortunately, these statutes were eviscerated by a series of U.S. Supreme Court decisions that not only upheld states' rights over federal authority, but laid waste to federal efforts to hold public officials in the various states accountable for wholesale violations of the civil rights of Black citizens.

What does this have to do with the later evolution of hate crime law? Where future laws in a variety of jurisdictions attempted to confront the violence of the Klan by banning its materials or prohibiting the wearing of

masks in public, those laws essentially ignored the complicity of many officials—including law enforcement authorities, some governors, and more than a few officeholders—in Klan violence and intimidation. The states themselves—including those heavily invested in upholding White supremacy and looking the other way when racist nightriders and lynch mobs took action to violently enforce the subjugation of people of color—were largely left to determine whether the law had been violated. Over time, the notion increasingly took hold that such actions of violence and intimidation were perpetrated by rogue actors; by criminal extremists, not by respectable people in leadership positions in public and private institutions, and certainly not by the state itself.[47] The political and conceptual groundwork for many of the limitations of hate crime laws of the 20th century was now in place.

The Contemporary "Hate Crime" Frame

Social scientists and hate crime advocates locate the emergence of hate crime as a modern political and legal frame in the wake of the Civil Rights Movement of the 1950s and 1960s, characterizing it as a direct descendant of anti-lynching and other racial justice activism and legislation.[48]

The most widely-used template for hate crime laws was developed by the Anti-Defamation League (ADL) in 1981 to address continuing harassment, intimidation, and violence motivated by the actual or perceived race, religion, or national origin of the victims. In time, sexual orientation and gender were added to the ADL template and to some hate crime laws. Other status categories such as actual or perceived disability, gender identity or expression, ethnicity, ancestry, political affiliation, and marital status could also fit neatly into the model. State laws vary widely with regard to included status categories.[49]

National civil rights and advocacy groups—including the NAACP, the National Gay & Lesbian Task Force (NGLTF), the Mexican American Legal Defense and Education Fund (MALDEF), the National Coalition Against Domestic Violence (NCADV), the American-Arab Anti-Discrimination Committee, and others—enthusiastically embraced the hate crime framework. Legal scholar Terry A. Maroney, criminologist Valerie Jenness, and sociologist Ryken Grattet have described the emergence, rise, and policy accomplishments of a modern social movement against hate crimes, even as they emphasize that

In 1998, two gruesome killings humanized abstract notions of hate violence and helped to break through public denial that such violence was a significant problem.

the violence that now falls under the frame of hate has existed for centuries.[50] Maroney, for instance, bluntly notes at the outset of her discussion, "Hate crime, far from being an anomaly, has been a means of maintaining dominant power relationships throughout United States history."[51] Jenness and Grattet agree, suggesting that while this kind of intimidating violence directed against marginalized groups is not new, the social movement advancing hate crimes legislation did so by socially constructing it as an epidemic requiring urgent and immediate attention.[52]

But decades after legal equality for people of color was achieved, violence directed against people of color was still widespread. LGBT communities were also struggling to make a largely indifferent nation care about brutal queer-bashings. Many organizations addressing violence against women sought new criminal legal tools to try to stem domestic violence, rape, and sexual assault. Hate crime laws, major advocacy organizations said, would help deter and prevent hate violence. They would make our communities safer.

In 1998, two gruesome killings instantly humanized abstract notions of hate violence, created indelible images of the viciousness of that violence, attracted widespread media coverage in the United States and internationally, and helped to break through much public denial that such violence was really a significant problem. Three White men murdered an African-American man, James W. Bryd, Jr. in Jasper, Texas. They wrapped heavy logging chains around his ankles and dragged him for approximately two miles along an asphalt road. He was still alive when his body hit a culvert, severing his head and one arm. His killers left his headless torso at the local African-American cemetery.

Some months later, two men met 21-year-old Matthew Shepard, a White, gay student at the University of Wyoming, in a bar in Laramie, gave him a ride, then repeatedly pistol-whipped him and left him tied to a fence alongside a road outside of town. Shepard died from traumatic head injuries several days later.

It is impossible to overestimate the emotional impact of these two murders. Race was already a so-called "protected" status category in almost all existing hate crime laws, but now efforts to add "sexual orientation" to existing statutes and proposed new laws accelerated. In 2009, a new federal hate crime bill, the Matthew

Shepard and James Byrd, Jr. Hate Crimes Prevention Act was passed and signed into law.[53]

Despite this body of U.S. law, violence against people of color, queers, and others targeted for harassment and violence remains widespread—and some in targeted communities are now *more* likely to experience harassment and abuse.[54] How is that possible? The answer has to do, in significant measure, with political, legal, and cultural processes of criminalization that have existed and evolved in this country from colonial contact, the institutionalization of chattel slavery, and establishment of heterosexual patriarchy to present day. "Criminalizing processes" refer to cultural institutionalization of the *presumption* of the criminal or criminal-like nature of particular groups, including people of color, poor people, and those targeted for sexual and gender nonconformity—regardless of whether they have actually violated a law or done anything harmful to anyone else. Put another way, processes of criminalization, which include racial, gender, and sexual profiling, permanently classify people from targeted communities as "suspicious" and "dangerous others." These complex processes of criminalization follow us doggedly into enforcement of the neutrally worded, ahistorical framing of hate crime laws in ways that still have yet to be fully grasped.

Glimpses and discussion of criminalizing processes at the intersections of race, class, gender, and immigration status are found in *Queer (In)Justice: The Criminalization of LGBT People in the United States,* which offers a detailed (raced, classed, and gendered) queer assessment of many varieties of engagement with the policing, punishment ,and prosecution of sexual and gender nonconformity—including the enforcement of hate crime laws.[55] Drawing on a variety of sources, including Amnesty International's landmark report *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.*[56] and reports from the National Coalition of Anti-Violence Programs (NCAVP),[57] a network of more than 40 organizations serving LGBTQ and HIV-affected communities, *Queer (In)Justice* documents these overarching problems:

There is no evidence that hate crime laws deter acts of violence.

- Hate crime laws provide no pro-active protection. Highly selective enforcement of these laws typically takes place (sometimes) only after an incident is reported.
- There is no evidence that hate crime laws deter acts of violence. For example, NCAVP annual reports do not show any consistent reductions in reports of violent crime. But they do show recent increases, especially in the category of murder.[58] "More than two decades after the first LGBT embrace of hate crime laws, as NCAVP figures illustrate, violence directed against queers remains a serious problem."[59] (By any measure, whether based on federal or community-based reports, people of color continue to be at highest risk for bias-motivated violence, including in LGBT communities.)

- Based on reported incidents, transgender people and people of color are disproportionately targeted for hate violence; transgender people, particularly, are at risk for murder. People of color who are also transgender face especially heightened risk for being targets of violence.

- The neutral wording of hate crime and related laws is "power-evasive" and the laws themselves, intended to be instruments of racial, gender, and sexual justice can, through selective law enforcement, readily morph into instruments of the kind of injustice they seek to remedy. For example, a South Carolina anti-lynching statute intended to protect African Americans against White mob violence transformed over time into a legal tool used disproportionately against young Black men—a simple enough task given the law's race-neutral definition of "mob" as two or more persons who are not authorized but intend to commit violence, and wording broad enough (lynching in the second degree) to embrace even minor forms of violence, such as fistfights. The disproportionate charging of Black youth occurred "even in cases less serious or comparable to those involving [W]hites."[60]

- Police treat many LGBTQ and HIV-affected people who attempt to report hate violence as offenders rather than as people who have suffered violence. Such "re-victimization" is especially likely if the person reporting is a person of color, transgender or gender nonconforming, poor, or presumed to be a sex worker or immigrant. In some cases, LGBTQ people who have suffered harassment and violence are charged as offenders. Thus, in too many cases, laws intended to protect become a portal for additional forms of abuse.

- Police often profile young queers of color who are in gentrifying or predominantly White neighborhoods (including affluent "gayborhoods") as potential perpetrators, rather than targets, of hate violence.
- Police officers consistently constitute a major hate violence offender group, according to NCAVP, while Amnesty International has documented widespread, systemic police misconduct and abuse against LGBTQ people, particularly queers of color.
- Much anti-LGBT violence, like other forms of violence against targeted groups of people, goes unreported to law enforcement authorities for a variety of reasons. NCAVP has documented police refusal to take hate crime reports. Reports may not be accurately classified as hate crimes under legal criteria. Additionally, many who are targets of hate crimes do not wish to report to police for fear of not being believed, fear of additional abuse at the hands of police, fear of being reported to immigration authorities, fear of unwanted and negative publicity, and fear of reprisals.

Importantly, this analysis does not rely solely on reports made to law enforcement agencies, but incorporates complaints to community-based, anti-violence agencies that act as advocates for the constituents being threatened or harmed. These numbers and types of incidents reported are greater than those reported by law enforcement agencies, and are also analyzed differently. NCAVP and Amnesty International's analyses confirm that it may be motivated by multiple, intersecting factors, some combination of actual or perceived race, ethnicity, gender, sexual identity, class, citizenship status, or religion.

By contrast, most discussion of hate violence in the United States cites annual reports from the Federal Bureau of Investigation, widely considered the single most authoritative source on the incidence, types, and targets of hate crimes. However, such reports suffer from these shortcomings:

- There is no way to ensure that evaluation and classification of reported incidents are consistent from jurisdiction to jurisdiction.
- State and local law enforcement agency participation in the FBI's hate crime reporting pro-

gram is voluntary. In 2009, for example, of the 14,422 agencies formally participating in the effort, only 2,034 actually submitted incident reports.[61]

- Most law enforcement agencies within a state jurisdiction do not report any incidents. In 2009, only 67 out of 413 agencies in Virginia, 5 out of 487 Georgia agencies reported incidents. Less than half the participating agencies in California reported incidents.
- The FBI does not report clearly, if at all, on violence or other hate crime offenses committed by law enforcement authorities.
- As recently as 2005, the Bureau of Justice Statistics (BJS) recognized that the actual incidence of hate violence was vastly understated in the FBI annual reports. BJS agrees with community-based, anti-violence groups that the gap between the actual incidence of hate crimes and the reporting of them occurs, in part, because law enforcement officials too often fail to accurately record some incidents as hate crimes.[62]

A small but growing number of community-based LGBTQ organizations no longer support hate crime laws.

The indicators cited in *Queer (In)Justice* confirm that selective, race, class, and gender-based policing of "hate" places people of color, immigrants, youth, homeless queers, and sex workers at increased risk of police abuse. For these and other reasons, NCAVP no longer supports penalty enhancements as an element of hate crime law, and a small but growing number of community-based LGBTQ[63] organizations, most serving constituencies that are predominantly or substantially people of color, no longer support or have never supported hate crime laws.[64]

Queer (In)Justice notes another severe limitation of hate crime laws:

Hate or bias-related violence is portrayed as individualized, ignorant, and aberrant, a criminal departure by individuals and extremist groups from the norms of society, necessitating intensified policing to produce safety. The fact is many of the individuals who engage in such violence are encouraged to do so by mainstream society through promotion of laws, practices, generally accepted prejudices, and religious views. In other words, behavior that is racist, homophobic, transphobic, anti-Se-

mitic, anti-Muslim, and anti-immigrant...does not occur in a political vacuum. And it is not always possible to police the factors that encourage and facilitate it.[65]

If hate is a social problem, and not just a matter of individual psychology, then the intensified policing/enhanced punishment strategy being used here cannot produce the results we want in terms of reducing violence and creating safe and just communities. To accomplish that, we must turn to community-based strategies that seek to address structures of violence as well as individual acts.

Does that mean every concept in hate crime law is worthless? Not at all, Most of us would probably agree, for instance, that, documentation, reporting, and analysis of violence directed against targeted groups are essential. But it is clear that community-based reports, while also incomplete, are far more accurate and helpful than the much more limited information compiled and made available by law enforcement agencies. To that end, we

We must increase the capacity of community-based, anti-violence organizations and coalitions committed to collecting, analyzing, and reporting anti-violence data.

might better focus our efforts on increasing the capacity of (underfunded and overstressed) community-based, anti-violence organizations and coalitions committed to collecting, analyzing, and reporting anti-violence data that include law enforcement as an offender category.

If we believe federal authority is critical to holding individuals, groups, and state actors accountable for violence and violations of civil and human rights when local authorities fail to do so, such authority can exist without tying it to a "get tough" endorsement of enhanced penalties.

Selective enforcement is also a problem, perhaps more in some administrations than others. (One such cautionary tale can be found in efforts undertaken by the administration of George W. Bush to stack the U.S. Commission on Civil Rights with people opposed to the Commission's historic pro-civil rights agenda. The Bush commissioners began to focus on allegations of "reverse racism."[66]) At the very least, we cannot rely solely on the federal government to step in when local police will not respond. Rather, we must mount creative and sustained forms of community response for ensuring accountability.

We also should ask how federal hate crime commitments to respond to violence against "protected" groups square with other federal programs, such as "Secure Communities" (S-Comm). Launched in 2008, S-Comm automatically compares fingerprints submitted by local law enforcement agencies against Immigration and Customs Enforcement Agency (ICE) databases—a program ICE intends to make mandatory throughout the United States by 2013. While marketed as a program designed to locate and deport criminal immigrants, in practice S-Comm is deployed against immigrants regardless of criminal background.[67]

The federal government's "suspicious activities reporting" programs also may collide with the anti-oppression intentions of many hate crime law supporters. Here, the FBI, the Department of Homeland Security, and other agencies invite the kind of open-ended reporting of "possible terrorism" or other criminal activity that may well reflect a kind of popular racial profiling and the presumptive criminalization of people of color, Muslims, and Arabs.[68] More contradictions abound in the area of federal support for law enforcement training. For example, federal funds have been spent to support blatantly anti-Muslim presentations to various military and law enforcement gatherings and institutions.[69]

Hate Crime Law Comes of Age

Presuming that the limitations and flaws identified in this report exist, and could have been predicted by activists experienced in dealing with the criminal legal system, how is it that social justice advocates so readily embraced the hate crime frame?

Hate crime laws came of age in the same era that saw the rise of the so-called "War on Drugs," and the "crime victim" and "get tough on crime" frames—frames that would propel the explosive rise of the phenomenon we now call "mass incarceration."

The "get tough" frame utilized fear, resentment, and threat in order to institutionalize new forms of social control over people of color, particularly Black and Latino immigrant communities; give birth to a for-profit industry in prison construction, management, and services, in which human rights abuses are widespread; conflate the concepts of "safety," "policing," and "imprisonment" in the public imagination; and intensify the brutal treatment of incarcerated people.[70] It has done this in ways that are largely out of sight and out of mind even for many people concerned with social justice.

Victims of Crime

In supporting hate crime laws as a key policy response to community-based violence against vulnerable groups, advocates have actively embraced the frame of so-called "crime victims." This marked a distinct shift from the progressive mass movement organizing that lasted from the 1950s into the early 1970s that typically cast peoples struggling for justice and liberation as civic actors and change agents fighting for rights, recognition, and economic stability.

This shift in liberal thinking, from exchanging a vision of change agents simultaneously resisting individual and systemic forms of violence with one where victims turn to police, prosecutors, judges, and prisons for their safety occurred in the period when "a potent new movement on behalf of crime victims" was coming to the fore."[71] As researcher Nikhil Aziz and editor Palak Shah explained in their Political Research Associates Activist Resource Kit, Defending Justice:

> The success of social movements very often depends upon their ability to capitalize on opportunities created by shifting political and social structures. The Victims' Rights (VR) movement has achieved enormous levels of success and stability because of its ability to take advantage of the social and political forces in the late 1960s and 1970s that helped create the war on crime. As a result, there has been a symbolic and rhetorical shift in the debate on crime—one that inevitably contributes to and justifies the State's law and order approach.
>
> The VR movement's emphasis on individuals affected by violent crime shifted the State's burden from attacking the social causes of crime to simply responding to individual acts of crime…
>
> The role that the VR movement played in justifying harsher punishment was particularly ironic. Many victims had indeed been mistreated by the criminal justice system, including rape victims, domestic violence victims, and children abused by their parents… But… the mantle of VR was never extended to victims of police brutality or to those whose clothes, demeanor, or skin color earned them

In supporting hate crime laws as a key response to community-based violence against vulnerable groups, advocates have actively embraced the so-called "crime victims" frame.

harassment or arrest from a habitual police practice of racial profiling. The profile of a victim…became a White woman or man, victimized by a person of color who was associated with drugs—a highly selective slice of the wide range of victim of crime.[72]

From its beginnings, the Victims' Rights movement was overwhelmingly White and essentially conservative in its relentless push for more severe sentences and intensified policing. It never focused on expanding community resources for addressing both short- and long-term needs of those whose lives have been shattered by violence or the empowerment and support for the self-determination of vulnerable individuals, groups, and communities. Beyond this, it did not address the fact that most incarcerated people would eventually return to their communities and that these communities, in turn, would have to find ways to incorporate these former offenders.

"Tough on Crime"[73]

"Get tough on crime" has its genesis in the failed presidential campaign of Barry Goldwater in 1964, who strategically conflated the struggle of Black people for civil rights with crime.[74] In doing so, he was echoing Southern politicians who mounted campaigns of White resistance to desegregation of public facilities in the wake of the U.S. Supreme Court's *Brown v. Board of Education* decision. Sociologists Katherine Beckett and Theodore Sasson note, "[T]hese officials made rhetoric about crime a key component of political discourse on race relations."[75]

From the mid-1960s through the 1980s, conservative and right-wing "get tough on crime" policing/ punishment/policy frames ushered in an era of mass incarceration in the United States. Facing expanding mass movements fighting for Black power, economic justice, farmworker organizing rights, women's liberation, gay liberation, and American-Indian sovereignty—and growing storms of political protest against the war in Vietnam—Richard Nixon framed demands for justice as the distribution of multiple social and economic forms of theft, menace, and danger.[76] This reframing tapped into both conscious and unacknowledged racial fears. In time, it attracted support not only from conservatives and those further to the Right, but also from "Reagan Democrats" and many centrists and moderates. The Justice

Policy Institute, for example, notes that President Bill Clinton, a Democrat, trumpeted the "war on crime" in both of his campaigns for the presidency in 1992 and 1996, and during his administration supported new "get tough" policies that increased penalties, resulted in large increases in the number of people incarcerated in state and federal prisons, and justified new prison construction.[77] Eventually, an ever ever-expanding number of crimes and infractions were met with mandatory minimums, "three strikes" laws, so-called "truth-in-sentencing" laws that limit possibilities for early release, "zero tolerance" policies,[78] and post-conviction penalties.[79]

In 1972, some 330,000 Americans were behind bars. Although rates of violent crime remained stable or decreased over the ensuing years, by the end of 2009, 2.3 million people were imprisoned, the vast majority for nonviolent offenses. At least 60 percent of those incarcerated were people of color; 39 percent were Black, while 21 percent were Latino. White people constituted 34 percent of those incarcerated.[80] The United States now has the highest rate of incarceration in the world.[81] The systemic brutality and widespread abuses of human rights within the criminal legal system have been exhaustively documented.[82] The Sentencing Project estimates that a patchwork of felony disenfranchisement laws temporarily or permanently denies an estimated 5.3 million people the right to vote.[83] Given the magnitude of the racial disparities embedded in mass incarceration, this means that about 13% of Black men in the United States are prohibited from voting.

Civil rights legal scholar and advocate Michelle Alexander's devastating analysis of mass incarceration, *The New Jim Crow,* lays bare the structural racism at its center, its historical roots, the nature of its vast influence, and implications for racial justice struggles in the United States.[84] Beckett and Sasson describe these "get tough" policies as "an attempt to steer state policy toward social control and away from social welfare."[85]

Unfortunately, the "crime victim" frame is so compelling and widely accepted in mainstream social movement circles that progressive objection to it has been largely ignored, dismissed, or wrongly conflated with right-wing objections. To date, few scholars or advocates of hate crime laws have discussed or debated the mounting critiques presented by a growing number of organizations,[86] as well as organizers, attorneys, and scholars who also have been active in movements to end violence

1964 Presidential candidate Barry Goldwater strategically conflated the struggle of Black people for civil rights with crime.

against people of color, women, and queers, including Beth E. Richie,[87] Mimi Kim,[88] Andrea Smith,[89] Anannya Bhattacharjee,[90] Andrea J. Ritchie,[91] Dean Spade,[92] and Eric A. Stanley and Nate Smith.[93]

Why did so many devoted social justice advocates and organizations championing intensified criminal legal system responses to violence fail to see or respond to these larger developments? Perhaps, as Ejeris Dixon, former coordinator of the Audre Lorde Project's Safe OUTside the System (SOS) Collective, once observed, "It's easier to talk about hate than power."[94]

The Challenge for Organizers

At the Second International Conference on Hate Studies in 2011, I listened closely to White, anti-racist organizers Tony Stewart and Norman Gissel of the Kootenai County (Idaho) Task Force on Human Relations talk about an enormously vibrant and successful 28-year campaign to oppose Aryan Nations. Stewart is a political scientist who taught public policy formation and constitutional law for almost four decades. Gissel, an attorney deeply involved in human rights organizing, assisted the Southern Poverty Law Center in a well-publicized Idaho lawsuit against Aryan Nations that ultimately bankrupted the group and sent it packing. They described a relentless campaign to the Aryan Nations' attempt to create a White supremacist stronghold in what was already a White majority county. "Early on," said Stewart and Gissel, "we saw our challenge as promoting a culture in which the community would reject hate while embracing respect and dignity for all people."[95] Year after year, they engaged in outreach to many different constituencies—even winning the support of the local Chamber of Commerce.

After their presentation, I talked with them at greater length; what most impressed me about their organizing approach was its relentless insistence on reaching for the best in their fellow community members. They refused to seek confrontation with Aryan Nations as some would have wished. To do so would have permitted Aryan Nations to control the terms of that confrontation. And while it would have fueled sensational media coverage, it also would have undermined the organizers' community building approach. Instead, they organized counter events. Other communities asked for their help in standing up to White supremacists who believed that smaller, overwhelmingly White Idaho towns could become part of a new, racist homeland.

Before they said a word at meetings, Gissel and Stewart took time to learn about those communities. They didn't want to appear as know-it-alls. They assessed the demographics of a particular community to which they were invited, identified respected leaders, and learned which businesses provided the most jobs. When they sat down with people, they listened more than they talked. They emphasized concepts that resonated with almost everyone—democracy and freedom, for example—and framed them in positive ways so that people could coalesce around these ideas across other political differences.

By any measurement, these two men and their fellow Task Force members are excellent organizers, yet they are also aware of the limits of the kind of organizing they do. In a conversation over lunch, I asked if they could take on, say, issues of systemic racism in their communities. This wasn't a trick question: these men are deeply and wholly committed to a multiracial, pluralistic society. They paused, then shook their heads. They hope and believe that it is possible for local folks to take the lessons learned from opposing White supremacists and translate them into ongoing local action that does affect institutions, though that is not the same thing as challenging systemic racism head-on. From their responses, I knew—I would hazard a guess that we all knew—that the genuine unity that was so painstakingly built under the rubric of "Stand Up Against Hate" efforts could dissipate quickly if they analyzed the "ordinary" structural privilege and racism of Idaho communities as thoroughly as they parsed the bold racism of Aryan Nations.[96]

Tony Stewart and I remain in touch, and much later, in an e-mail exchange, he reflected on the challenge of taking on structural bigotry that he, too, believes is "embedded in the private and public institutions around the world."[97] He told me that the late Bill Wassmuth, mentioned earlier in this discussion paper, "often said to me that it was rather easy for us to rally the public against such hate groups as the Aryan Nations and the horrendous crimes they commit. But Bill also often [asked]: How do we counter and change the covert, historical, deeply-embedded, culturally powerful forms of prejudice that are not so visible?" Stewart believes both struggles are critical.

He's right, although it's important to note that we're not just talking about institutional prejudice. We are speaking of well-documented systemic forms of harassment and violence that generally proceed without widespread public scrutiny, including racial profiling and use of law enforcement authority to harass marginalized communities, threat and intimidation, sexual assault, rape, beatings, forced (sometimes brutal) strip searches, denial of life-saving medical care, long-term solitary confinement, and killing. How, then, can these struggles be linked?

That is a key challenge facing social justice organizers today, and it is difficult work, precisely because sustained challenges to the very real damage done by structural forms of violence, exclusion, and inequality blur any obvious and comforting lines between "us" and "them." But to the extent we refuse this challenge, we sacrifice any real possibility of authentic justice and community well-being.

Years ago, a White lesbian approached me after I'd been speaking about the limitations of hate crime law and said, with considerable fury, "I feel like you're throwing my life in a trash can. That criminals matter more to you than me. Anybody can go ahead and hurt me, but nobody cares. You only care about others. I'm never supposed to stand up for myself and fight back. Well, that's a message I've been hearing all my life, and I'm sick of it!"

The hate frame is so dominant, and the violence embedded in current law enforcement practices so concealed from the sight of many White people and others who have never directly experienced it, that the woman who denounced me could only perceive me as siding against her and with "the criminals," an example of centrist-extremist theory in action.

I understood her anger; it was by no means the first time such rage had been directed against me. In fact, she and so many others are right to be angry about the devaluing of our lives. I share that anger. But we also need to interrogate and resist the easy demonizing of "criminals"—and to challenge over-reliance on the criminal legal system to produce community safety. After all, processes of criminalization, selective law enforcement, and mass incarceration are structural ways of devaluing and destroying the lives of people of color, poor people, immigrants, and queers. Nonetheless, questions of "whose lives matter and whose lives are expendable" too often—even across movements for justice—are reduced to a zero-sum game in which gains for one group can

> *Criminalization, selective law enforcement, and mass incarceration are structural ways of devaluing and destroying the lives of people of color, poor people, immigrants, and queers.*

only be the result of equivalent losses for someone else. That's how wedge politics work.

In order to help unpack this zero-sum presumption that the choice is between supporting "criminals" or "victims of hate violence" I return to where I began, Suffolk County, NY, and the murder of Marcelo Lucero. Who were the "haters" and "extremists" in this community responsible for the killing? Were they Jeffrey Conroy and his pals who committed the violence? Was it FAIR and other anti-immigrant groups whose virulent racism played such an instrumental role in ginning up anti-immigrant sentiment and translating that resentment into public policy? How about the policymakers who enacted more and more restrictions on immigrants?

Was Steve Levy, the county executive the primary hater here? In 1988, as a county legislator, he'd co-sponsored an "English-Only" measure. Almost two decades later, as the head county official, he sought to use local law enforcement to crack down on day laborers and undocumented workers and refused to meet with representatives of Suffolk County immigrant communities. Some measure of responsibility might also be placed on the entire community who elected and re-elected Levy, once by a 96 percent margin. Long before the lethal assault on Lucero occurred, "beaner-hopping" was commonplace, a terrible but predictable feature of community life. The police apparently ignored it. Do they bear any responsibility for what happened?

Certainly, young Jeffrey Conroy and his friends deserve to be held accountable for their reprehensible actions. It would be easiest of all to tell ourselves that a hate crime conviction for Conroy and the imprisonment of his friends who pled guilty constitutes justice. The more complicated truth is that in Suffolk County, as in so many other communities throughout the United States, White people did not want their community changed in any way, or their power diluted, by those who threatened them—in this case, immigrants of color. After all, Marcelo Lucero and other Latinos in Suffolk County were presumptively criminalized: regarded as illegal interlopers and intruders in what was supposed to be White space.

Let's return to Memphis, as well, in order to figure out who is and isn't implicated in the death of Duanna Johnson. Were the only haters in this incident the police responsible for her beating? Was there any culpability in the people who saw what was happening in the police station and neglected or refused to intervene? How about police officials and prosecutors who chose to suspend Officer McRae and fire his rookie accomplice, but not charge them with any legal violations? What about those White LGBT groups who were reluctant to wade into the murky territory of long-established patterns of police misconduct against people of color and take on systemic racism as forcefully as transphobia? Or those Black civil rights advocates who were just as reluctant to stand with Johnson, a transgender person, and the LGBT advocates who spoke out for her? Are the emergency shelters and social services who denied her assistance because of her gender identity implicated in any way?

Does it matter that the media promoted storylines highlighting the three criminalizing strikes against Duanna Johnson—as a Black person, a sex worker, and a transgender woman? In a feature that appeared in newspapers across the United States, for example, an Associated Press headline "Transgender Prostitute Slain in Memphis Shadows" introduced a story that began this way: "It took a bloody jailhouse beating by police to bring Duanna Johnson out of the shadows."[98]

Now let's fast-forward to Sanford, Florida in 2012, and the killing of a Black teenager, Trayvon Martin, as he was walking home—to the house of his father's fiancé, where he was staying for a time—from a convenience store with a can of iced tea and a bag of Skittles. George Zimmerman, a self-appointed neighborhood watch volunteer who entertained hopes of being a cop one day, admitted shooting Martin to death. He was charged with second-degree murder, 46 days after the shooting, and many groups are hailing this indictment as a victory. But even if George Zimmerman is convicted—an outcome that is by no means assured for a variety of reasons—would that do justice in this case? FBI agents have also questioned witnesses, presumably in order to determine if Zimmerman might be charged with a federal hate crime.[99] No such determination has been made yet, though it is worth noting that a murder charge prosecuted under federal hate crime law theoretically could carry a sentence of death. Surely Zimmerman must be held accountable for his actions, but will labeling him "the hater" really address the reasons why Trayvon Martin is dead? Will it help save other young men of color from the same fate?

Just as Sanford police were coming under criticism for their handling of the crime scene investigation and failure to charge Zimmerman, who leaked Miami-Dade County's school disciplinary reports describing Trayvon Martin's minor infractions? What about the media pundits and bloggers who triumphantly produced criminalized images and narratives framing Martin as a young, Black thug—possibly even a hoodie-wearing gang member with tattoos and a gold tooth—in order to establish extralegal justification for his killing? Let's not forget the

long history of racial tension and race-based policing in Sanford. Does that have any bearing on this story?[100] Is the National Rifle Association (NRA) culpable? It is right-leaning institutional promoter of Florida's "Stand Your Ground" law. What about the American Legislative Exchange Council (ALEC)? The conservative, coporate-funded organization develops and promotes model legislation, including, until April 2012, "Stand Your Ground" laws.[101]

Commenting on the killing in Sanford, Florida, political scientist Melissa Harris-Perry said it plainly: Trayvon Martin was not innocent. He was guilty of being Black in presumably restricted public space...Despite the dramatic legal changes brought about by the ending of Jim Crow, it is once again socially, politically and legally acceptable to presume the guilt of nonwhite bodies.[102] So, too, did Marcel Lucero intrude into "White" space simply by being Latino in a time of anti-immigrant frenzy. Duanna Johnson breached two borders: that of Whiteness and gender conformity. It is apparent that the spatial boundaries described by scholars studying hate aren't solely the theoretical invention of academics or the province of crazed extremists with fevered dreams of glory. They are delineated in our laws and the ways we selectively enforce them; in the practices of public and private institutions; in the media; and in our communities.

"Extreme" forms of violence and toxic rhetoric meant to demonize and subjugate targeted groups are not recent phenomena. They are rooted in the country's history and their legacies have never been fully dislodged.

The Southern Poverty Law Center (SPLC) suggests that the most recent expansion of "right-wing extremism came even as politicians around the country, blown by gusts from the Tea Parties and other conservative formations, tacked hard to the right, co-opting many of the issues important to extremists."[103] What such a statement elides is that "extreme" forms of violence and toxic rhetoric meant to demonize and subjugate targeted groups are not recent phenomena, but are rooted in the earliest history of this country, and their legacies have never been fully dislodged. Moreover, right-wing ideas have become increasingly mainstream for quite some time. It is often difficult to distinguish between the messages of "hate" groups and the actions of leaders in public and private institutions.

This doesn't mean that we should stop being concerned about White supremacist, neo-Nazi, and other groups whose agendas are rooted in fear, intimidation, and violence. There is a strong argument for—and tradition of—identifying, monitoring, and exposing virulently bigoted groups and individuals in order to interrupt their ability to carry out their plans and minimize their influence on the larger culture and mechanisms of the state. Political Research Associates, SPLC, Center for New Community, Institute for Research and Education on Human Rights, and others have been doing this for many years. The documentation of the ways in which certain ideas and policy proposals of "extremist" groups and leaders serve to push the center of public discourse to the right and, over time, gravitate into the mainstream, is particularly valuable.

For example, the origins of anti-immigrant vigilante actions at the Arizona/Mexico border in 2005, which inspired the founding of at least 40 similar groups in other states and helped create a climate that only a few years later would produce Arizona Senate Bill 1070 and similar laws in other states, are found in a (Ku Klux) Klan Border Watch initiative in San Ysidro, California in 1977.[104] Focused actions that expose and challenge bigoted leaders and ideas are necessary.

At the same time, we must remember that most people in this country are not dedicated partisans in the Left/Right political wars. They may lean left, right, or center, but most are ordinary people trying to navigate hard economic times while thinking about their futures and those of their children and grandchildren. And people who are anxious about the future can easily fall prey to the mobilization of fear and resentment by the Right, and swept into racist, homophobic/transphobic, Islamophobic, and antisemitic agendas that initially may not have been strong, central components of their personal worldviews.[105] To the extent that people are not yet aligned with progressives on many issues, how useful is it, really, to mount campaigns that tell them that prejudice and bigotry foment hate, and that we are "against hate?" How likely are they to receive those messages in ways that motivate them to re-evaluate their embrace of oppressive agendas as responses to their own fears and resentments? Moreover, how do liberal and progressive groups and leaders go beyond our now well-established pattern of responding to one egregious act of hate violence or police brutality after another with little more than outraged demands for more policing, prosecution, and punishment? Even when these demands are fulfilled in individual cases, the *structures* of violence and injustice remain intact.

Toward the Creation of Safe & Just Communities

What visions of justice, what political frames are bold enough to call us to work more effectively together, across issues and constituencies, to address not only the immediate acts of violence but also the structural conditions that render expendable the lives of Johnson, Lucero, Martin, and so many others? This discussion paper does not attempt to prescribe those visions or new frames, and in any case, there are no "one size fits all" solutions to the very real dilemmas and challenges that our movements—and constituencies—face.

Even so, our collective effectiveness may well depend on the ability of social justice advocates and movements to identify and take advantage of particular political and social shifts and circumstances to name and directly address the interrelationships of hate violence and structural violence. There are compelling reasons why we should strengthen efforts to create opportunities for dialogue in a number of different arenas: within organizations, at conferences, in networks and coalitions of advocacy organizations, at funding roundtables, and in the larger communities where we live. Beyond sharing histories and insights, these dialogues should focus on the limits of single-issue organizing, creation of new, collective action frames for movement building, identification of new opportunities for collaborative work, bold initiatives for challenging processes of criminalization, and generating resources for capacity-building and grassroots community leadership development. But this time, the large, mainstream advocacy organizations must make way for the voices of those who not only bear the brunt of hate violence, but who are most heavily criminalized on the basis of race and at the intersections of race, class, gender, and sexual and gender nonconformity.

The dangers in the current political moment are many, and a number of them have been identified throughout this discussion paper. But there are also indicators of new openings including increasing awareness of ways in which racism permeates formal and informal systems of policing and concern about the devastating community impacts[106] of mass incarceration.

For instance, the federal government's S-Comm program has been met with growing opposition from surprising allies. Law enforcement officials, state and local governments, and dozens of LGBTQ organizations have joined to protest programs and laws that restrict and criminalize immigrants.[107] And while Critical Resistance, INCITE! Women of Color Against Violence, families of prisoners, former prisoners, and a number of other organizations have long educated about and organized to oppose the prison industrial complex, resistance to mass incarceration is now expanding rapidly to include new networks of students, faith communities, and more.[108]

"Extreme" right-wing ideas have become increasingly mainstream. It is often difficult to distinguish between the messages of "hate" groups and the actions of leaders in public and private institutions.

To take advantage of these shifts and openings, a growing number of "movement building" initiatives have emerged to help equip social justice advocacy groups with the additional knowledge, tools, and resources essential to expanding their capacity to organize for lasting change. We stand at an historic crossroads. Under the relentless right-wing assault on the entire framework of civil and human rights, the challenge to create safe and just communities requires bold thinking that is not dependent on the hate frame, with its limitations and unintended consequences, for thinking about appropriate responses to violence on multiple levels.

We don't have to start from scratch. Many organizations haven't waited to convince others of the need for intersectional approaches to organizing, the importance of incorporating structural violence into their analysis and practices, or the need to develop community-based alternatives for responding to multiple forms of violence without relying on the criminal legal system. For years, they've been forging ahead with a variety of concepts and practical models that suggest new forms of community engagement. Their experiences and insights should play a central role in shaping dialogues. What kinds of things might we learn from them?

The Bay Area's Community United Against Violence (CUAV), born of the struggle against anti-gay violence, now also addresses structural violence and works to "build the power of LGBTQQ (lesbian, gay, bisexual, transgender, queer, and questioning) communities to transform violence and oppression. We support the healing and leadership of those impacted by abuse and mobilize our broader communities to replace cycles of trauma with cycles of safety and liberation."[109] Their vision is boldly anti-racist.

Project NIA in Chicago works to dramatically reduce the reliance on arrest, detention, and incarceration for addressing offenses committed by young people through the creation of community-based alternatives that rely on restorative and transformative justice practices.[110] With a focus on building the leadership and power of LGBTQ youth of color, New York City's FIERCE (Fabulous Independent Educated Radicals for Community Empowerment) campaigns have challenged gentrification, displacement, and police harassment in the West Village, making some significant gains in the course of their struggle.[111] INCITE! Women of Color Against Violence produces unique educational resources for use in grassroots organizing efforts to end violence against women of color and create safer, more liberatory communities within broader frameworks of accountability that do not rely on the criminal legal system. The Audre Lorde Project—the nation's first center for community

The challenge to create safe and just communities requires bold thinking that is not dependent on the hate frame.

organizing led by and addressing the needs of lesbian, gay, bisexual, two-spirit, trans, and gender nonconforming people of color[112]—and Creative Interventions, founded to create whole-community strategies for addressing interpersonal violence,[113] have launched innovative, grassroots initiatives focused on the creation of safe and just communities without relying on more policing, prosecution, and imprisonment. These are only a few examples of ways in which broader anti-violence and justice visions, translated into practical action, go far beyond the politics of protest to address much deeper, broader issues of just social and economic relationships within an overall context of community well-being.

It's time to build on the best of our histories, deepen and expand our vision, take in some fresh air, and redouble our efforts to create, in the words of Angela Y. Davis, "new terrains of justice."[114]

TERMS AT A GLANCE

Accountability: Processes for holding individuals, groups, institutions, and systems responsible and answerable for one's actions, sometimes in the discharge of a duty or trust. These processes may be legal or community-based, or some blend of both.

Bias (in terms of hate crime law): Preconception or prejudice against a person or class or persons based on certain actual or perceived status characteristics.[115]

Criminalization: Permanently classifying people from targeted communities as "suspicious" and "dangerous others." Types of criminalization include racial, gender, and sexual profiling.

Enhanced penalties: Provision in hate crime statutes permitting those charged and convicted to receive a greater penalty than would be assessed for the underlying offense if there were no bias motivation; enhancements are justified on the grounds that the offense is intended to intimidate/terrorize entire communities who share a particular characteristic.

Frames: Conceptual channels that guide thinking about particular events, ideas, and realities. Sometimes called "collective action frames" when employed for political purposes.

Hate or bias-motivated crime: A criminal act (possibly including harassment, intimidation, menacing behavior, institutional vandalism, assault, murder, or other appropriate and already statutorily proscribed criminal conduct) motivated by bias related to actual or perceived status characteristics of the persons or groups targeted. These may include race, color, ethnicity, religion, national origin, sexual orientation, gender, gender identity/expression, disability, etc. In U.S. law, the precise definition and the "protected status categories" vary from state to state.

Hate speech In law, any speech, gesture or conduct, writing, or display which intimidates or may incite violence or prejudicial actions towards members of groups with protected status. See protected or included status categories.

Intersectionality: A mode of political analysis and/or organizing that recognizes the intersection of multiple systems of oppression in people's lives—on the basis of such factors as race, gender, gender identity/expression, class, sexual identity, immigration status, religion, disability, and other factors.[116]

Protected or included status categories: Neutrally-worded status indicators or "bias categories" that are covered by hate crime law; in the United States these vary from state to state, but may include such categories as actual or perceived race, ethnicity, religion, national origin, sexual orientation, gender, gender identity/expression, disability, and more.

Endnotes

[1] Bob Moser, *Storm Warning* (Chicago, IL: Center for New Community, 2011). http://www.newcomm.org/content/view/2151/92/ (Accessed May 4, 2011).

[2] See FAIR organizational listing on the website of the Southern Poverty Law Center at http://www.splcenter.org/get-informed/intelligence-files/groups/federation-for-american-immigration-reform-fair. The FAIR website is at http://www.fairus.org/.

[3] Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston, MA: Beacon Press, 2011), 141-145. The summary in this article is derived from the more detailed discussion of Duanna Johnson's beating by police and subsequent murder by unknown assailants.

[4] The police department addressed this purely as a matter of employee discipline, and not justice for Duanna Johnson. The rookie officer who restrained Johnson was fired, and the officer who beat her was first suspended, pending an administrative hearing, then fired.

[5] Robbie Brown, "Murder of Transgender Woman Revives Scrutiny," *The New York Times,* November 17, 2008. http://www.nytimes.com/2008/11/18/us/18memphis.html (Accessed April 24, 2012).

[6] Wendi C. Thomas, "Rights Groups Mum on Beating," *Memphis Commercial Appeal,* June 29, 2008. http://www.commercialappeal.com/news/2008/jun/29/rights-groups-mum-on-02/ (Accessed April 24, 2012).

[7] See Maryann Sinclair Slutsky, "Why We Don't Trust the Hate Crimes Report from Suffolk County," Long Island Wins, January 31, 2011. http://www.longislandwins.com/index.php/features/detail/why_we_dont_trust_the_hate_crimes_report_from_suffolk_county/ (Accessed April 24, 2012). See also Ted Hesson, "Lawmaker Issues Ethics Complaint, Says Levy Official Altered Suffolk Hate Crime Report," Long Island Winds, January 4, 2011. http://www.longislandwins.com/index.php/blog/post/lawmaker_submits_ethics_complaint_says_levy_official_redacted_suffolk_hate_/ (Accessed April 24, 2011).

[8] Moser, *Storm Warning.* See also Southern Poverty Law Center, *Climate of Fear: Latino Immigrants in Suffolk County, NY* (Montgomery, AL: Southern Poverty Law Center, September 2009) http://www.splcenter.org/get-informed/publications/climate-of-fear-latino-immigrants-in-suffolk-county-ny (Accessed April 24, 2012).

[9] Robbie Brown, "Murder of Transgender Woman Revives Scrutiny." See also "TPPC Denounces Brutal Hate Crime Attack by Memphis Police," posted on the website of the Tennessee Transgender Political Coalition (TPPC), June 18, 2008. http://ttgpac.com/2008/06/18/tppc-denounces-brutal-hate-crime-attack-by-memphis-police/ (Accessed April 24, 2012). See also Desiree Evans, "Without Protection: Anti-gay hate crimes in the South spur calls for better state and federal laws," Facing South, The Institute for Southern Studies, January 8, 2009. http://www.southernstudies.org/2009/01/without-protection-anti-gay-hate-crimes-in-the-south-spur-calls-for-better-state-and-federal (Accessed April 24, 2012).

[10] Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism & Racial Inequality in Contemporary America, Third Edition* (Lanham, MD: Rowman & Littlefield, 2010), 26.

[11] Some scholars use the term "collective action frames" to describe strategic thinking in relation to organized political action.

[12] Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 41.

[13] Chip Berlet, "Hate, Oppression, Repression, and the Apocalyptic Style: Facing Complex Questions and Challenges," *Journal of Hate Studies,* Vol. 3, No. 2, (2004), 147.

[14] For a useful overview of hate crime laws in the United States, and differences among them, see Bryce Therrien and Nadia-Elysse Harris, *Criminalizing Hate: America's Legislative Response to Bias Crimes* (New York, NY: Tribeca Square Press, 2011). A 2008 Anti-Defamation League chart indicates that other states do have some form of law, although several others have laws that are limited to institutional vandalism or hate crime data collection. http://www.adl.org/learn/hate_crimes_laws/map_frameset.html (Accessed April 23, 2011). ADL data shows 46 states with criminal penalty provisions. In 2009, the National Gay and Lesbian Task Force reported that five states have no hate crime laws that include crimes based on any characteristics. http://www.thetaskforce.org/reports_and_research/hate_crimes_laws (Accessed March 18, 2011). Despite these inconsistencies, 46 to 50 states have some form of hate or bias crime law. However, no data is available regarding enforcement of these laws.

[15] Federal hate crime laws include the 1990 Hate Crime Statistics Act (28 U.S.C. 534); the Hate Crimes Sentencing Enhancement Act, enacted into law as Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994; the Violence Against Women Act (VAWA) of 1994 (42 U.S.C. 13981) which provides authority for domestic violence and rape crisis centers and for education and training programs for law enforcement and prosecutors. VAWA includes a civil remedy for victims of gender-based violent crimes which provides them with the right to compensatory and punitive damage awards as well as injunctive relief; the 1996 Church Arsons Prevention Act (18 U.S.C. 247). In 2009, the most recent federal bill, the James Byrd, Jr. and Matthew Shepard Hate Crimes Prevention Act was signed into law. This statute provides the U.S. Department of Justice (DOJ) with the authority to assist with investigation and prosecution of state and local hate crimes motivated by bias based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the person targeted, or step in where local and state officials fail to do so. It also includes a provision to strengthen the state and local investigation and prosecution of youth-committed hate crimes and requires the Federal Bureau of Investigation (FBI) to track statistics based on gender and gender identity, just as it already had been doing for the other status categories.

[16] For powerful arguments drawing on direct experience of injury from racist hate speech that favor a First Amendment interpretation that recognizes such injury, see Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberlé Williams Crenshaw, *Words That Wound: Critical Race Theory: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder, CO: Westview Press, 1993). For a different perspective, but one that also departs from "First Amendment absolutism," see Anthony Lewis, *Freedom for the Thought That We Hate: A Biography of the First Amendment* (New York, NY: Basic Books, 2010). See also Timothy C. Shiell, *Campus Hate Speech on Trial* (Lawrence, KS: The University of Kansas Press, 2009).

[17] Southern Poverty Law Center's HateWatch: Keeping an Eye on the Radical Right project is online at http://www.splcenter.org/blog/ (Accessed April 19, 2011).

[18] The Anti-Defamation League's "Extremism in America" online resource serves, in ADL's words, "as a guide to prominent extreme movements, groups, and leaders in the United States." http://www.adl.org/learn/ext_us/ (Accessed May 23, 2011).

[19] The Center for New Community monitors anti-immigration groups in the United States. http://www.newcomm.org/content/category/9/61/92/ (Accessed June 26, 2011).

[20] For example, Campus Pride, an organization for student leaders and campus groups working to create a safer college environment for LGBT students across the United States, sponsors a program called Stop Hate that provides educational resources and training to those who want to stop hate crimes on campus. http://stophate.org/abou-

tus.html (Accessed May 14, 2011). United Methodist Women (UMW) have a "When We Hate: UMW Anti-Hate Campaign" online at http://gbgm-umc.org/umw/anti-hate/ (Accessed June 21, 2011).

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28 Blee, "Positioning Hate," 98.

29 Kathleen Blee, "Becoming a Racist: Women in Contemporary Ku Klux Klan and Neo-Nazi Groups," *Gender and Society,* Vol. 10, No. 6 (1996): 694.

30 Blee, "Positioning Hate," 102.

31 Barbara Perry, "A Crime by Any Other Name: The Semantics of 'Hate,'" *Journal of Hate Studies,* Vol. 4, No. 1 (2005/2006): 121–137, 125.

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33 Barbara Perry and Randy Blazak, "Places for Races: The White Supremacist Movement Imagines U.S. Geography," *Journal of Hate Studies,* Vol 8 No. 1(2009): 29 – 51.

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35 A summary of the provisions of Arizona SB 1070, can be found at http://www.azleg.gov/legtext/49leg/2r/summary/s.1070pshs .doc.htm (Accessed April 23, 2012).

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37 Chip Berlet, "Centrist/Extremist Theory," Political Research Associates. http://www.publiceye.org/research/concepts/Frameworks-01.html#P46_5080 (Accessed May 19, 2012). See also Chip Berlet, "Criticism of Centrist/Extremist Theory," Political Research Associates. http://www.publiceye.org/liberty/Repression-and-ideology-07.html (Accessed May 19, 2012); Chip Berlet, "What's Wrong with Centrist-Extremist Theory," Political Research Associates

http://www.publiceye.org/research/concepts/centrist-extremist-theory.html (Accessed May 19, 2012).

38 Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York, NY: Vintage Books, 1999), 205, 254 [n. 58].

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51 Maroney, "The Struggle Against Hate Crime," 564.

52 Jenness and Grattet, *Making Hate a Crime,* 17–41.

53 This law provides the U.S. Department of Justice (DOJ) with the authority to assist with investigation and prosecution of state and local hate crimes motivated by bias based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the person targeted, or step in where local and state officials fail to do so. It also includes a provision to strengthen the state and local investigation and prosecution of youth-committed hate crimes and requires the Federal Bureau of Investigation (FBI) to track statistics based on gender and gender identity, just as it already had been doing for the other status categories.

54 For example, *Queer (In)Justice* documents ways in which racial profiling distorts the routine policing as well as policing of hate crimes and domestic violence reported by LGBT people; police often profile LGBT people of color as intrinsically "criminal," aggressive, and dangerous, including in predominantly White, gay urban enclaves where they are "perceived by police and residents to be criminally 'out of place.'" See also Mogul, Ritchie, and Whitlock, *Queer Injustice,* 128–129, 45–68 and 118–140; Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual, and Transgender*

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Eradicating Hate Violence Needs Community Engagement

By Pat Clark

The outrageous killings of James Byrd, Jr. and Matthew Shepard shine a light on the power of hatred fueled by racism, sexism, homophobia, and other forms of intolerance that are used to separate and divide us as human beings. Proponents of hate crime legislation and enhanced penalties for hate crimes want to make sure that killings and acts of violence like these provide an opportunity not only to hold accountable those responsible, but to expose and eradicate all violence based on bias, bigotry and prejudice. The goals underpinning this legislation deserve our defense: The lives of those who are often dehumanized, demonized, and marginalized should be valued. Everyone should be afforded protection by our system of justice. Those whose safety has been violated should be free of fear, and confident of redress. Most important, we should seize every opportunity to ensure that these crimes never happen again.

We look to our legal and criminal justice systems to meet such goals. Nonetheless, as Kay Whitlock notes, we are dependent on a criminal justice system that engages in dehumanizing and demonizing the Other. Our legal system emphasizes the differences between us, pitting the monster perpetrator against the less-than-innocent victim, who is often further debased in the course of the judicial process.

Our justice system is not designed to confront crimes or hate crimes in ways that ask people and communities to address the root sources of harm. It is not a system that places as a high value on the importance of the truth as it does on the "win". This system is good at retribution, punishment, and creating a profit on the backs of the same population that is often victimized. It is not a system designed to ask the questions that can unpack a history and legacy of hate. These questions should include not only what happened but why did it happen? Who, beyond the individual perpetrators, are responsible for these acts of violence? What provided the environment or fertile ground for hate to fester? What is needed in order for the victims/survivors, perpetrators, and the broader community to heal?

Our justice system is not designed to ask the questions that can unpack a history and legacy of hate.

Alternative processes are trying to pose some of these questions. In 2004, the Greensboro Truth and Reconciliation Commission was established to address the killing of five people, and wounding of ten, by members of the Ku Klux Klan and neo-Nazis in Greensboro, North Carolina in 1979. Tensions had been mounting for years between those advocating for health care, housing, and other social justice issues and the White supremacists who saw these activities as a threat to their well being and way of life. There was no doubt about the identities of the physical perpetrators of the crimes, yet many years later it was unfathomable that more people had not been held responsible for the murders.

The commission was charged with looking at the "context, causes, sequence and consequences" of the events of November 3, 1979.[1] That process revealed that the violence didn't happen in a vacuum. The perpetrators of the crimes were influenced and aided by some members of the Greensboro community, either specifically or through the perpetuation of an environment of intolerance and hate that sustained White supremacy. Years later, the consequences of hate violence and the continued presence of racism and other forms of intolerance permeated the city in ways that were not always identifiable, but made it difficult for the city to grow and move forward.

The commission provided people who had been silenced for years the opportunity to share their understanding of the events of 1979. More importantly, the process provided people in Greensboro the opportunity to truly heal their divided community.

When people are arrested, convicted and incarcerated for baseless crimes, hate crime legislation can certainly provide a sense of satisfaction to victims, their loved ones, and the community. It can provide momen-

tary acknowledgement that racism, homophobia, and other forms of intolerance exist and continue to be harmful. On the other hand, as Whitlock describes, it can also provide cover for systems, communities, and individuals to separate themselves from the "monsters" who perpetrated those crimes and the conditions that allowed hate and intolerance to foment.

It is not the criminal justice system that will provide the change we seek. If we are serious about the business of eradicating violence based on intolerance, it will require a lot of soul searching about the past, the present, and the future we want. It will also take years and years of outreach, education, building relationships, and working in community with anyone and everyone who is the potential victims of hate crimes and/or the potential perpetrators of hate crimes. That work will never be completed.

Pat Clark, an emeritus member of the Southern Poverty Law Center (SPLC) board and former director of the SPLC's Klanwatch program, is the former executive director of the Fellowship of Reconciliation and over her career has focused on such issues as prison reform, the death penalty, juvenile justice, and restorative justice.

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Look Beyond Police for Solutions

By Rinku Sen

The dominant story about race in the United States goes like this: in the past, we had troubling racial patterns, including genocide, slavery, and segregation. Then heroic individuals took spontaneous action and showed America the error of its ways. We changed all of our racist laws and became colorblind, evidenced by the election of President Barack Obama. When race is evoked today, it is only by people of color aiming to avoid responsibility and gain "special rights." If some people still act on extremist notions of White supremacy, then punishing hate crimes is the best we can do about such behavior which seems to be innate to human beings.

In this narrative, racism is defined as individual, intentional, and overt, causing an enormous problem for those of us working on the institutional and structural causes of inequity. If there isn't a noose hanging, too many Americans think, then there isn't a racial problem. A similar gap between dominant thinking and the reality of systemic oppression affects LGBT people, immigrants, and people of certain faiths. The issue of hate violence is particularly tricky because it offers both expansions and limits in the fight for justice. Hate crimes are a form—sometimes the only form—of racism/homophobia/xenophobia/religious intolerance that most Americans will recognize. It has emotional impact that generates action because hate crime violence is indeed taking so many lives. In addition, we can see the need for structural solutions in the criminalizing policies that have been adopted to address it. On the surface, hate crimes legislation appears to join the individual and the structural in ways that few other issues do.

In her insightful paper, Kay Whitlock points out some severe limits of the hate frame as well, which ultimately amount to the fact that the problem isn't actually being solved. The criminal justice system on which we've pinned our hopes is itself responsible for generating and reinforcing deep bias against the people who are most frequently victimized: queers, people of color and especially queer people of color.

Whitlock's discussion of the role that police officers play in hate crimes mirrors a similar pattern found in domestic violence. The National Center for Women and Policing notes that "most departments across the country typically handle cases of police family violence informally, often without an official report, investigation, or even check of the victim's safety. This "informal" method is often in direct contradiction to legislative mandates and departmental policies regarding the appropriate response to domestic violence crimes."[1] Between 1990 and 1997, the Los Angeles Police Department reported 91 sustained allegations of domestic abuse among its officers, but only four resulting in criminal prosecution.

By relying on criminal justice as our only recourse, we ask the system that puts our very humanity in question to reverse the consequences of such dehumanization. One of the things we should fight for is the

implementation of hate crimes legislation that addresses the role police officers play in perpetrating it. Given how difficult it has been to reform police departments, however, we'd better start looking at some other options.

These options might exist in other institutions. The dehumanization of "protected classes"—people of color, immigrants, queers—is generated not just by criminal justice systems. Racial, sexual, national, and religious profiling takes place in our immigration, energy, education, employment, and health care systems, among many others. In June, the Sikh Coalition in New York City announced the settlement of a lawsuit that forces the Metropolitan Transit Authority to abandon its post-September 11 rule requiring employees with headdresses either to put an MTA logo on it or work away from public view.[2] If the public transit system of the nation's largest city thinks it's okay to "hide" its Muslim and Sikh employees, then many individuals will think it's okay to send such people into hiding permanently.

Hate crime legislation has been one issue around which LGBTQ, immigrant, religious groups, and native-born communities of color have joined forces. If we want to prevent such violence, we need to seek a broader range of campaigns to engage together. In the Applied Research Center's "Better Together" report, which focuses on the relationships between racial-justice and LGBTQ-liberation groups, issues, and communities, we argue that people concerned with both issues need to move beyond abstract moral support to concrete, strategic interventions.[3]

These strategic interventions suggest themselves in every institution of our society. Schools provide a great place to start; we should endeavor, for example, not to replicate the limitations of the hate crimes approach in creating anti-bullying policies. Health institutions and their treatment of victims might be another site of collective struggle. The Employment Non-Discrimination Act offers some options.

There are solutions we haven't thought of yet, because our collective notions of justice are still oriented toward punishment rather than prevention. We need to begin work, together, on breakthrough agendas that uphold the dignity and safety of all our people, in all our institutions. We have to be able to connect individual pain to systemic rules, not only when violence is the result, but any form of dehumanization. We can do it, but only if we're completely honest with ourselves about where the current range of hate crimes solutions have taken us, and where they haven't.

Rinku Sen, president and executive director of the Applied Research Center (ARC) and publisher of Colorlines*, is the author of* The Accidental American: Immigration and Citizenship in the Age of Globalization and Stir It Up: Lessons in Community Organizing. *She is the Chair of the Media Consortium, an association of progressive independent media outlets, and the recipient of numerous fellowships and awards for activists and journalists.*

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Dipping Into the Undercurrent

By Rahsaan D. Hall

At the Lawyers' Committee for Civil Rights and Economic Justice, our mission is to eliminate race and national-origin discrimination through litigation, and community and legislative advocacy. Despite our narrowly focused mission we are always working collaboratively with community partners to advance an agenda that supports and affirms expansive hate crimes legislation.

After reading Kay Whitlock's discussion paper I was moved by the manner in which she touched on the consistent acts of violence and aggression towards the "Other," whoever that might be, throughout the history of this country. I think she did a good job of documenting that history, similar to Isabel Wilkerson's book *The Warmth of Other Suns,* which tells the story of the Great Migration of African Americans

leaving the oppression of the South only to be meet by the oppression in Northern cities, where groups of White people sought to protect their "entitlements" through threats and acts of violence.

Whitlock's discussion paper evoked an idea of an "undercurrent" of fear, animosity, and resentment that is directed toward groups that are not identifiable as straight, Christian, White males. This undercurrent is the reason it is difficult to address the larger structural and systemic iniquities that exist along race and bias lines in this country. Attacking the societal and structural existence of hatred is very difficult. Anything that raises questions about the structural and systemic nature of racism, sexism, homophobia, Islamophobia, and any other structural power inequities undermines and calls into question the foundation of many people's beliefs, and threatens the privileges they benefit from. Therefore, this undercurrent is easily tapped into by many people who feel their position in society is threatened. They need only dip the bucket into the stream of this undercurrent and pull it up to pour out rhetoric that motivates hatred and acts of bias violence.

In my work, I see the impact of that undercurrent played out when I take on police misconduct cases. There are many instances in which Black men speak back to White police officers and the police abuse their power. It's an ultimate show of authority, by the officer, to send the message that 'You don't belong, I am in charge, and any exercise of free speech or expression of dissatisfaction about this encounter is not valuable— and furthermore, I am going to use force against you to insure you know where your place is.

Another set of examples is the cases that invoke the Massachusetts Civil Rights Statute. I have worked closely with the Office of the Massachusetts Attorney General to address neighbor-to neighbor harassment. One case in particular involved a White man creating an unbearable living experience for his Haitian neighbor through racially hostile statements, gestures, and harassment. The ability to provide the victim some protection came through the Massachusetts Civil Rights Statute, because the Massachusetts Hate Crimes Statutes only addresses acts of violence. The latter statute is limited in that it does not afford greater protections to victims of bias-based harassment. Although there are protections through other statutes, bias-based infringements of people's rights have few remedies. This shortcoming touches on the prem-

ise of Whitlock's article and the need to expand the conversation around hate crimes legislation.

As a former prosecutor I recognize that hate crime legislation that allows for criminal prosecution of conduct that would not otherwise be considered criminal is always a tool that can be used. I recognize Whitlock's cautionary note about the South Carolina anti-lynching statute that ended up being used against Black men as something to be aware of. However, I do think prosecutors' ability to leverage the desired outcome is important. Penalty enhancements are useful because they provide additional leverage and help define criminal conduct, and identify the protected status of the victim. Ultimately, this narrow framework is reactionary and will not address the undercurrent that motivates these types of crimes. Nevertheless, even if the existing legislation is limiting, it can still be very helpful.

Realistically, it will take continued advocacy to not only affirm the existing usefulness of the hate crimes legislation that exists, but also to continue to push the envelope about what the conversation regarding hate crimes legislation should be and who the conversation should include. More opportunities for conversation and education are important, but I really think that a dramatic shift will not occur until there are straight, White men in positions of authority, power, and privilege who are able to recognize their privilege and have meaningful conversations geared at reframing the narrative. It's not that change rests on the shoulders of these influential people, but until there are honest conversations about the "undercurrent" we will continue to see resistance to pushing this narrative forward. We have to get people to separate their individual issues from the larger narrative around structural inequities, bias and violence to see how they impact all of us.

Rahsaan D. Hall, a former Public Defender in Dade County, Florida, and a former Assistant District Attorney for Suffolk County, Massachusetts is Deputy Director of The Lawyers' Committee for Civil Rights and Economic Justice, where he engages in both legislative advocacy and community outreach. His litigation practice focuses on police misconduct, and public accommodations. He also serves as the director of the Lawyers' Committee Voting Rights Project, protecting voting rights for racial and ethnic minorities, and other historically disenfranchised groups.

About the Author

Kay Whitlock is a longtime LGBTQ activist who, for almost 40 years, has worked to build bridges between LGBTQ struggles and the movements fighting for racial, gender, economic, and environmental justice. She was the National Representative for LGBTQ Issues with the American Friends Service Committee (AFSC) and an AFSC regional director. She is coauthor, with Joey Mogul and Andrea J. Ritchie, of *Queer (In)Justice* (Beacon Press) which has drawn wide critical acclaim for its call for a multi-issue social justice agenda and was honored with a 2011 PASS (Prevention for a Safer Society) Award from the National Council on Crime and Delinquency.

About the Editor

Debra Cash joined PRA as managing editor of the organization's investigation into antisemitism and Islamophobia on college campuses. A longtime contributor to the *Boston Globe* (1983-2000), *Technology Review* (1986-1997) and WBUR (2001-2006), her commentaries on arts and cultural topics have appeared in print, broadcast and on internet forums, including *The Nation, Village Voice,* TomPaine.com, and the BBC. Currently she contributes to Alternet, ArtsFuse, *Boston Phoenix* and the *Women's Review of Books.* She earned a BA from Brandeis University and an MDesS from the Harvard Graduate School of Design. Her first book, *Who Knows One,* was published by Hand Over Hand Press (2010).

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