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***Combating Hate Crimes through Civil
Litigation***

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I. Introduction

Under U.S. federal law, hate crimes encompass criminal acts motivated by perpetrators who target individuals based on the characteristics of the victim, including race, religion, ethnicity, gender, sexual orientation/identity, and disability.¹ The 2009 Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act² expanded protection from hate crimes to individuals based on gender, sexual orientation/identity, and disability. Moreover, the victim no longer needs to be involved in federally protected activity, such as interstate transportation, as was previously required.³

The Federal Bureau of Investigation's 2012 statistics indicate that there were "6,222 criminal incidents involving 7,254 offenses... as a result of bias toward a particular race, religion, sexual orientation, ethnicity/national origin, or physical or mental disability."⁴ The single-bias incidents that year was motivated as follows: racial bias (46.9%), sexual-orientation bias (20.8%), religious bias (19.8%), ethnicity/national origin bias (11.6%), and disability bias (.9%).⁵

The types of hate crimes against persons in 2012 were as follows: intimidation (45.6%), simple assaults (34.5%), aggravated assaults (19.4%), of

¹ Hate Crimes, OJP Fact Sheet, Office of Justice Programs, U.S. Department of Justice, Dec. 2011, http://www.ojp.usdoj.gov/newsroom/factsheets/ojpfs_hatecrimes.html

² 18 U.S.C. sec. 249 (2013) <http://www.law.cornell.edu/uscode/text/18/249>

³ Matthew Shepard & James Byrd Jr. Hate Crime Prevention Act of 2009, U.S. Department of Justice, n.d., <http://www.justice.gov/crt/about/crm/matthewshepard.php> ; Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act, Anti-Defamation League, n.d., <http://www.adl.org/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf>

⁴ Hate Crime Statistics 2011, Criminal Justice Information Services Division, Federal Bureau of , <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/resources/fbi-releases-2011-hate-crime-statistics>

⁵ Id.

which four murders occurred.⁶ Analogously, the 2,611 hate crimes against property that year were primarily (81.4%) “acts of destruction/damage/vandalism[,]” with the remaining 18.6% of crimes including “[r]obbery, burglary, larceny-theft, motor vehicle theft, arson, and other offenses.”⁷ The perpetrators of reported hate crimes were 59% white, 20.9% black, 10.8% race unknown, and other races comprising the remainder.⁸

The majority of hate crimes (32%) took place “in or near homes.”⁹ The remaining incidents occurred on highways, roads, alleys, or streets (18%), 9.3 % at schools or colleges (9.3%), parking lots or garages (5.9%), and in churches, synagogues, or temples (4.4%), undesignated) or unknown (11.3%). Some 19.1% occurred at other specified or multiple locations.¹⁰ The states with the highest number of reported hate crimes were: California (1,040), New York (544), New Jersey (508), Massachusetts (367), Michigan (346), and Ohio (228).¹¹

According to a 2002 study, hate crime offenders undertake such acts due to: thrill-seeking (desire for excitement), defensive reasons (protect their neighbors from perceived outsiders), retaliatory (responding to real or perceived hate crime), and mission (dedicated to bigotry).¹²

Both hate group members and by unaffiliated individuals perpetrate hate crimes in the United States. According to the Southern Poverty Law Center (SPLC), in 2012, there were 1,007 active hate groups, encompassing entities or movements such as: white nationalists, racist skinheads, Neo-Nazi, Christian Identity, neo-confederates, black separatists, anti-gay, and general hate.¹³ In 2012, the states with the largest number of active hate groups were California (82),¹⁴ Texas (62),¹⁵

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Agency Hate Crime Reporting By State, 2011 <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/tables/table-12>

¹² McDevitt, J., J. Levin, and S. Bennett (2002). "Hate Crime Offenders: An Expanded Typology (abstract)." *Journal of Social Issues* 58(2): 303–317, NCJ 204396. <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=204396>

¹³ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map>

¹⁴ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map#s=CA>

¹⁵ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map#s=TX>

Florida (59),¹⁶ Georgia (53),¹⁷ and New Jersey (51).¹⁸ Only two states—California and New Jersey—were among jurisdictions with the largest number of both active hate groups and hate crimes.¹⁹

Responses to hate crimes have been manifold, including “changes in legislation to law enforcement training aimed at improving responses to these crimes; to investigation, prosecution, and prevention of hate crimes; to victim support programs; to diversity and tolerance education programs.”²⁰

Additionally, government and private-initiated civil suits against hate groups, hate group leadership, and perpetrators of hate crimes have been another methodology to combat hate violence.²¹ Cases involving the participation of the SPLC have been particularly effective in garnering injunctions against subsequent hate crime and participation in hate group activities, specific performance, as well as compensation to hate crime victims and their families.²²

The SPLC and their clients have successfully used various rationales as a basis for recovery including: conspiracy to interfere with federally enumerated rights, participation in an unauthorized militia, wrongful death, assault and battery, unlawful confinement, negligence, intentional infliction of emotional distress, conspiracy, premises liability, aiding and abetting criminal acts, respondent

¹⁶ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map#s=FL>

¹⁷ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map#s=GA>

¹⁸ Hate Map, Southern Poverty Law Center (undated, but showing 2012 figures and map) <http://www.splcenter.org/get-informed/hate-map#s=NI>

¹⁹ See *infra* notes, 11, 14-18

²⁰ Response to Hate Crimes, Office of Justice Programs, U.S. Department of Justice, Undated, <http://www.nij.gov/nij/topics/crime/hate-crime/research-findings.htm> citing Holden, G., P.E. Lawrence, L.D. Moran, R. Kapler, and J.A. Ferrante. [*Policymaker's Guide to Hate Crimes*](#). Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, 1999, NCJ 162304.

²¹ Hate and Extremism Cases, Southern Poverty Law Center, n.d. <http://www.splcenter.org/get-informed/case-docket?keys=&agenda=21&landmark=All>

²² See, for instance, *Keenan v. Aryan Nations*, *Macedonia v. Christian Knights of the Ku Klux Klan*, *Mansfield v. Pierce*, *Mansfield v. Church of the Creator*, *Berhanu v. Metzger*, *McKinley v. Southern White Knights*, *Donald v. United Klans of America*, *Vietnamese Fisherman's Association v. Knights of the Ku Klux Klan*, and *Brown v. Invisible Knights of the Ku Klux Klan*. Landmark Hate and Extremism Crimes, Southern Poverty Law Center, n.d.

<http://www.splcenter.org/get-informed/case-docket?keys=&agenda=21&landmark=Yes>

superior, creation of a special relationship, legal responsibility of bystander/duty of rescue, and negligent incitement, among others.²³

Additionally, more than half the states and the District of Columbia have laws that allow for a victim of a hate crime to pursue a private right of action.²⁴ This article describes these statutes, and underscores the benefits of such additional tools in combating the scourge of hate crimes and their baleful consequences. These statutes are distinct from federal and statute criminal statutes that punish perpetrators of hate crimes.²⁵ Lastly, *Keenan v. Aryan Nations*,²⁶ a landmark case in which victims of violence of by hate group and its members sued the perpetrators, will be discussed so that other litigation approaches to combat extremist groups are presented.

II. State Statutes Supporting a Private Cause of Action Against Hate Crime Perpetrators

An analysis of twenty-six state statutes plus the District of Columbia that allow for an individual to file a civil claim against a hate crime perpetrator shows similar attributes among these laws. Concurrently, variance exists among some of the statutes in relation to: what types of plaintiffs and defendants are envisioned, what conduct merits prospective recovery, and what types of recovery are contemplated. Broadly, the majority of these statutes enable an individual or organization that was harmed during a hate crime to obtain specific performance and damages from the perpetrator, an organization, and in some instances, from a parent or guardian if the attacker is a minor. An overview of such statutes is set out below.

Under Arkansas law, a person who deprives someone “of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.”²⁷ A court may also award the aggrieved party litigation costs and

²³ Id.

²⁴ See footnotes 27-101 and accompanying text.

²⁵ See Matthew Shepard & James Byrd Jr. Hate Crime Prevention Act of 2009 18 U.S.C. sec. 249 (2013) <http://www.law.cornell.edu/uscode/text/18/249> and http://www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws.pdf for state hate crimes.

²⁶ *Keenan v. Aryan Nations* (2000).
<http://www.splcenter.org/get-informed/case-docket/keenan-v-aryan-nations>

²⁷ Arkansas code § 16-123-105 (a) (2013)
<http://law.justia.com/codes/arkansas/2010/title-16/subtitle-7/chapter-123/subchapter-1/16-123-105>

reasonable attorney fees.²⁸ A judge “may look for guidance to state and federal decisions interpreting the federal Civil Rights Act of 1871, as amended and codified in 42 U.S.C. 1983[.]”²⁹ for precedent.

California law allows a civil suit³⁰ against a perpetrator who conducts violence or threatens violence³¹ against a victim due to the latter’s “sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation”.³² The plaintiff may recover actual damages,³³ garner exemplary (or punitive) damages,³⁴ the proceeds of a \$25,000 civil penalty,³⁵ and attorney fees.³⁶

In Colorado, a person, a member of his immediate family, or an organization that suffers ethnic intimidation may recover file a civil suit against the perpetrator, seeking “actual damages, costs, and expenses”.³⁷ An individual in Connecticut who has suffered “intimidation based on bigotry or bias”³⁸ due to one’s “actual or perceived race, religion, ethnicity, disability, sexual orientation or gender

²⁸ Arkansas code § 16-123-105 (b)] (2013)

<http://law.justia.com/codes/arkansas/2010/title-16/subtitle-7/chapter-123/subchapter-1/16-123-105>

²⁹ Arkansas code § 16-123-105 (c) (2013)

<http://law.justia.com/codes/arkansas/2010/title-16/subtitle-7/chapter-123/subchapter-1/16-123-105>

³⁰ California Civil Code 52(b) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s52>

³¹ California Civil Code 51.7 (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s51.7>

³² California Civil Code 51 (b) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s51>

³³ California Civil Code 52 (b) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s52>

³⁴ California Civil Code 52 (b) (1) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s52>

³⁵ California Civil Code 52 (b) (2) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s52>

³⁶ California Civil Code 52 (b) (3) (2013)

<http://codes.lp.findlaw.com/cacode/CIV/5/d1/2/s52>

³⁷ Colorado Revised Statute 13-21-106.5 (2013)

<http://www.cuah.org/co199718.htm>

³⁸ Connecticut General Statutes 53a-181j and k (2013)

http://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_53a-181k

identity or expression of such other person”³⁹ may commence a civil suit against the perpetrator⁴⁰ to recover up to treble damages, equitable relief, and reasonable attorney fees.⁴¹

An individual in Washington, D.C., whose person or property were injured because of an intentional act due to the “accused's prejudice based on the actual or perceived race, color, religion, national origin, sex ... sexual orientation, gender identity or expression ... physical disability”⁴² may obtain an injunction,⁴³ damages for economic or non-economic damages,⁴⁴ punitive damages,⁴⁵ and “attorneys’ fees and costs”.⁴⁶ Also, a “parent or legal guardian”⁴⁷ must pay the aforementioned damages if he “contributed to the actions of a minor.”⁴⁸

In Florida, a person or entity may pursue a civil suit seeking “treble damages, an injunction, or any other appropriate relief in law or in equity[,]”⁴⁹ as well as “reasonable attorney's fees and costs”⁵⁰ arising from being “coerced, intimidated, or threatened”⁵¹ due to ones “race, color, ancestry, ethnicity, religion, sexual orientation, national origin, ... mental or physical disability”.⁵²

A person who is maliciously harassed or intimidated in Idaho due to the victim’s “race, color, religion, ancestry, or national origin”⁵³ may file a cause of action for recovery of “special and general damages, including but not limited to

³⁹ Id.

⁴⁰ <http://www.cga.ct.gov/2011/PUB/chap925.htm#Sec52-571c.htm>

⁴¹ Id.

⁴² D.C. Code 22-3704 (a) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴³ D.C. Code 22-3704 (a) (1) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴⁴ D.C. Code 22-3704 (a) (2) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴⁵ D.C. Code 22-3704 (a) (3) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴⁶ D.C. Code 22-3704 (a) (4) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴⁷ DC Code, sec. 22-3704 (c) (2013) <http://dccode.org/simple/sections/22-3704.html>

⁴⁸ Id.

⁴⁹ Florida statute, Title XLVI 775.085 (2) (2012) <http://www.flsenate.gov/Laws/Statutes/2012/775.085>

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Idaho § 18-7902 (2013) http://www.lawserver.com/law/state/idaho/id-code/idaho_code_18-7902

damages for emotional distress, reasonable attorney fees and costs, and punitive damages.”⁵⁴

Anyone whose person or property is damaged in Illinois during a hate crime may pursue a civil suit against the perpetrator, seeking “actual damages for emotional distress, or punitive damages.”⁵⁵ Also, plaintiff’s recovery of “attorney’s fees and costs” is permitted. If the perpetrator is a minor, then the parent or guardian is liable for actual damages.⁵⁶

“[I]njunctive relief, general and special damages, reasonable attorneys fees, and costs”⁵⁷ are recoverable by an individual who “suffered physical, emotional, or financial harm”⁵⁸ as a result of a hate crime in Iowa.⁵⁹ A person who damages a religious institution⁶⁰ in Louisiana is subject to civil liability for “general or special compensatory damages, including damages for emotional distress, and costs.”⁶¹ Someone whose civil rights have been impinged in Maine can file a civil suit against the perpetrator in order to seek “legal or equitable relief.”⁶²

A person may pursue a “civil action to secure injunctive relief, special and general damages, reasonable attorney fees and costs”⁶³ against someone who “destroys, defaces, mars, or injures a church, synagogue or other building” in

⁵⁴ Idaho § 18-7903 (b) (2013)

http://www.lawserver.com/law/state/idaho/id-code/idaho_code_18-7903

⁵⁵ Illinois 720 ILCS 5/12-7.1 (c) (2013)

<http://www.ilga.gov/search/LISGSApage.asp?target=civil+action+hate+crime&submit1=Go&scope=ilcs>

<http://www.ilga.gov/legislation/ilcs/documents/072000050K12-7.1.htm>

⁵⁶ Id.

⁵⁷ Iowa Code 729A.5 (2013)

<https://coolice.legis.iowa.gov/coolice/default.asp?category=billinfo&service=iowacode&ga=83&input=729A#729A.5>

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Louisiana Revised Statute 14:225 (2013)

<http://law.justia.com/codes/louisiana/2011/rs/title14/rs14-225>

⁶¹ Louisiana Revised Statute 9:2799.2 (2013)

http://www.lawserver.com/law/state/louisiana/la-laws/louisiana_revised_statutes_9-2799-2

⁶² 5 M.R.S. § 4682 (2013)

<http://www.mainelegislature.org/legis/statutes/5/title5sec4682.pdf>

⁶³ Massachusetts, Chapter 266, Section 127B (2013)

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter266/Section127A>

Massachusetts.⁶⁴ Likewise, in Massachusetts, a person may file suit against a person for “injunctive relief, special and general damages, reasonable attorney fees and costs”⁶⁵ based on an “an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person’s race, color, religion, national origin, sexual orientation, or disability”.⁶⁶

Anyone in Michigan who is subject to ethnic intimidation⁶⁷—targeting based on one’s “race, color, religion, gender, or national origin”⁶⁸—may obtain “an injunction, actual damages, including damages for emotional distress, or other appropriate relief.”⁶⁹ An individual may file “a civil action to secure an injunction, damages or other appropriate relief in law or in equity against”⁷⁰ against someone who vandalizes “[a]ny church, synagogue or other building, structure or place used for religious worship or other religious purpose”⁷¹ in Missouri.⁷² Also, the prevailing plaintiff may be awarded “(1) [b]oth special and general damages; and (2) [r]easonable attorney fees and costs.”⁷³

⁶⁴ Massachusetts, Chapter 266, Section 127A (2013)

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter266/Section127A>

⁶⁵ Massachusetts, Chapter 266, Section 127B (2013)

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter266/Section127b>

⁶⁶ Massachusetts, Chapter 265, Section 39 (2013).

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section39>

⁶⁷ Michigan Code 750.147b(3) (2013)

<http://legislature.mi.gov/doc.aspx?mcl-750-147b>

⁶⁸ Michigan Code 750.147b(1) (2013)

<http://legislature.mi.gov/doc.aspx?mcl-750-147b>

⁶⁹ Michigan Code 750.147b(3) (2013)

<http://legislature.mi.gov/doc.aspx?mcl-750-147b>

⁷⁰ Missouri Code 537.523.1 (2013)

<http://www.moga.mo.gov/statutes/C500-599/5370000523.HTM>

⁷¹ Missouri Code 574.085.1 (2013)

<http://www.moga.mo.gov/statutes/C500-599/5740000085.HTM>

⁷² Id.

⁷³ Missouri Code 537.523.3 (2013) <http://www.moga.mo.gov/statutes/C500-599/5370000523.HTM>

A person may file a civil suit “for equitable relief, general and special damages, reasonable attorney’s fees, and costs”⁷⁴ against a perpetrator who commits a criminal offense in Nebraska against a plaintiff due to his “race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability”⁷⁵ or association with someone of a particular “race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.”⁷⁶

Anyone injured in Nevada by a perpetrator “who was motivated by the injured person’s actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation”⁷⁷ can submit a suit for recovery of actual and punitive damages. The plaintiff may also recover “costs and reasonable attorney’s fees.”⁷⁸

A person victimized in New Jersey of criminal bias—someone targeted due to their “race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity”⁷⁹—may file suit against the perpetrator⁸⁰ seeking damages, including emotional distress, attorney, and the costs of litigation.⁸¹

⁷⁴ Nebraska Code 28-113 (1) (2013)

<http://nebraskalegislature.gov/laws/statutes.php?statute=28-113>

⁷⁵ Nebraska Code 28-113 (3) (2013)

<http://nebraskalegislature.gov/laws/statutes.php?statute=28-113>

⁷⁶ Nebraska Code 73. 28-113 (1) (2013)

<http://nebraskalegislature.gov/laws/statutes.php?statute=28-113>

⁷⁷ Nevada Rev. Stat. 41.690.1 (2013)

<https://leg.state.nv.us/NRS/NRS-041.html#NRS041Sec690>

<http://statutes.laws.com/nevada/title-3/chapter-41/liability-of-persons-who-commit-criminal-violations-motivated-by-characteristics-of-victim/41-690>

⁷⁸ Nevada Rev. Stat. 41.690.1 (2013)

<https://leg.state.nv.us/NRS/NRS-041.html#NRS041Sec690>

<http://statutes.laws.com/nevada/title-3/chapter-41/liability-of-persons-who-commit-criminal-violations-motivated-by-characteristics-of-victim/41-690>

⁷⁹ New Jersey 2A:53A-21 (1) (a) (2013) <http://law.onecle.com/new-jersey/2a-administration-of-civil-and-criminal-justice/53a-21.html>

⁸⁰ New Jersey 2A:53A-21(1) (b) (2013) <http://law.onecle.com/new-jersey/2a-administration-of-civil-and-criminal-justice/53a-21.html>

⁸¹ New Jersey 2A:53A-21(1) (d) 1 (2013)

<http://law.onecle.com/new-jersey/2a-administration-of-civil-and-criminal-justice/53a-21.html>

Someone whose civil rights have been impinged in North Carolina may file a suit seeking specific performance coupled with compensatory and punitive damages. Also, the plaintiff may recover “court costs and attorneys’ fees.”⁸²

Anyone who suffers a loss or injury due to ethnic intimidation or desecration of a religious institution, its furnishings, or artifacts in Ohio may pursue a civil suit against the perpetrator. In doing so, the plaintiff may recover “full compensatory damages, including, but not limited to, damages for emotional distress, and may recover punitive or exemplary damages, court costs, other reasonable expenses incurred in maintaining that action, and the reasonable attorney’s fees”.⁸³

An individual who suffers intimidation in Oregon due to the person’s “race, color, religion, sexual orientation, disability or national origin”⁸⁴ may pursue a civil suit against the perpetrator, seeking “injunction, damages or other appropriate relief”.⁸⁵ If successful in the suit, the plaintiff may also recover special and general damages (including damages for emotional distress), punitive damages,⁸⁶ and attorney fees.⁸⁷

An individual who is injured in Pennsylvania during an incident of ethnic intimidation⁸⁸ or institutional vandalism⁸⁹ may be awarded an injunction, damages (general, special, and punitive) as well as attorney fees and costs.⁹⁰

Someone who is harassed or intimidated in Rhode Island because of his “race, religion, or national origin”⁹¹ may pursue a civil suit against the perpetrator,

⁸² North Carolina § 99D-1(b) (2013)

<http://law.onecle.com/north-carolina/99d-civil-rights/99d-1.html>

⁸³ Ohio § 2307.70 (2013) <http://codes.ohio.gov/orc/2307.70>

⁸⁴ Oregon § 166.165 (1) (a) (2013) <http://www.oregonlaws.org/ors/166.165>

⁸⁵ Oregon § 30.198 (1) (2013) <http://www.oregonlaws.org/ors/30.198>

⁸⁶ Oregon § 30.198 (2) (2013) <http://www.oregonlaws.org/ors/30.198>

⁸⁷ Oregon § 30.198 (3) (2013) <http://www.oregonlaws.org/ors/30.198>

⁸⁸ 18 Pa.C.S. § 2710 (2013) <http://law.onecle.com/pennsylvania/crimes-and-offenses/00.027.010.000.html>

⁸⁹ 18 Pa.C.S. § 3307 (2013) <http://law.onecle.com/pennsylvania/crimes-and-offenses/00.033.007.000.html>

⁹⁰ 42 Pa. Cons. Stat. § 8309 (2013) <http://law.onecle.com/pennsylvania/judiciary-and-judicial-procedure/00.083.009.000.html>

⁹¹ Rhode Island, Chapter 9-1-35; <http://law.justia.com/codes/rhode-island/2012/title-9/chapter-9-1/chapter-9-1-35>

seeking “compensatory damages including damages for emotional distress.”⁹² Additionally, a court may seek to enjoin a perpetrator from pursuing similar conduct.⁹³

A person in South Dakota who is harassed or intimidated because of his “race, ethnicity, religion, ancestry, or national origin”⁹⁴ may pursue a civil suit against the perpetrator, seeking “special and general damages, including damages for emotional distress, reasonable attorney fees and costs, and punitive damages.”⁹⁵

Anyone who suffers malicious harassment in Tennessee may sue the perpetrator for “special and general damages, including, but not limited to, damages for emotional distress, reasonable attorney's fees and costs, and punitive damages.”⁹⁶ As with other crime victims, an individual inflicted with a hate crime in Texas may receive compensation through a court order in relation to damage done to person or property.⁹⁷

A person victimized in Virginia because of “racial, religious, or ethnic animosity”⁹⁸ may pursue a civil right of action against an individual who perpetrated intimidation, violence, or vandalism against that person.⁹⁹ The victim “shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.”¹⁰⁰

⁹² Rhode Island, Chapter 9-1-35; <http://law.justia.com/codes/rhode-island/2012/title-9/chapter-9-1/chapter-9-1-35>]

⁹³ Rhode Island, Chapter 9-1-35 <http://law.justia.com/codes/rhode-island/2012/title-9/chapter-9-1/chapter-9-1-35>

⁹⁴ South Dakota 22-19B-1
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=22-19B-1>

⁹⁵ South Dakota 20-9-32
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=20-9-32>

⁹⁶ Tennessee Code 4-21-701
<http://law.justia.com/codes/tennessee/2010/title-4/chapter-21/part-7/4-21-701>

⁹⁷ Texas Code Criminal Procedure, Art. 42.037 (2013)
<http://law.onecle.com/texas/criminal-procedure/42.037.00.html>

⁹⁸ Virginia Code § 8.01-42.1 (A) <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+8.01-42.1>

⁹⁹ Id.

¹⁰⁰ Virginia Code § 8.01-42.1 (B) <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+8.01-42.1>

Someone who has been victimized in Washington by malicious harassment may bring a civil suit against the perpetrator. The victim may recover “actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys’ fees and costs incurred in bringing the action.”¹⁰¹

III. Keenan v. Aryan Nations

In July 1998, Victoria Keenan and her son, Jason, were chased in their vehicle by three members of the Aryan Nations security force—Edward Warfield, John Yeager, and Shane Wright—near the Aryan Nations compound in Idaho.¹⁰² During the chase, the three shot at the Keenans’ car, then “detained them, battered them, and threatened to kill them.”¹⁰³ In an amended complaint in May 1999, the Keenans sought damages and injunctive relief against Warfield, Yeager, Wright, Michael Teague (a senior member of the Aryan Nations), Richard Butler (founder and leader of the Aryan Nations), and Sapphire, Inc. (a company owned by Butler, which controlled the land and buildings where the Aryan Nations had its compound). The plaintiffs alleged that Butler and Teague “were responsible for approving and selecting who served on the Aryan Nations security force. They were also responsible for controlling, monitoring, supervising, and training members of the security force.”¹⁰⁴

The Keenans made the following claims against all the defendants:

Assault (“[b]y shooting into the Keenans’ car, surrounding the Keenans, pointing weapons at them, and threatening to kill them, the Aryan Nations security force defendants caused the Keenans to suffer from a reasonable apprehension that they would be severely injured or killed... The actions taken by the Aryan Nations security force defendants when they assaulted the Keenans were authorized by the Aryan Nations, Butler, and Sapphire.”)¹⁰⁵

Battery (Aryan Nations security defendants struck the Keenans and those actions were carried out “within the scope of their duties”,¹⁰⁶ were a “foreseeable result of the conspiratorial agreement among the defendants to use violence against

¹⁰¹ RCW Washington 9A.36.083

<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.36.083>

¹⁰² Keenan v. Aryan Nations, District Court of the First Judicial District, Idaho, Kootenai County, Case Number CV-99-441, filed May 24, 1999, at 1.

http://www.splcenter.org/sites/default/files/keenanvaryannations_amcomplaint.pdf

¹⁰³ Id. at 5.

¹⁰⁴ Id. at 3.

¹⁰⁵ Id. at 7.

¹⁰⁶ Id. at 8.

persons who were perceived to be a threat to the Aryan Nations”,¹⁰⁷ and “were authorized”¹⁰⁸ by the “Aryan Nations, Butler, and Saphire.”)¹⁰⁹

False imprisonment (“Aryan Nations security force defendants intentionally confined the Keenans”,¹¹⁰ who suffered “severe emotional distress related to their detention.”¹¹¹ The Aryan Nations security force defendants’ actions were carried out “within the scope of their duties”,¹¹² “foreseeable result of the conspiratorial agreement among the defendants to use violence against persons who were perceived to be a threat to the Aryan Nations”,¹¹³ and “were authorized”¹¹⁴ by the “Aryan Nations, Butler, and Saphire.”)¹¹⁵

Intentional infliction of emotional distress (“the acts of the Aryan Nations security force defendants... were extreme and outrageous intentional acts.”¹¹⁶ The Aryan Nations security force defendants’ actions were carried out “within the scope of their duties”,¹¹⁷ “foreseeable result of the conspiratorial agreement among the defendants to use violence against persons who were perceived to be a threat to the Aryan Nations”,¹¹⁸ and “were authorized”¹¹⁹ by the “Aryan Nations, Butler, and Saphire.”)¹²⁰

Other plaintiff claims allege that the defendant Aryan Nations, Butler, Saphire Inc., and Teague were reckless and negligent with regard to the activities of Yeager, Warfield, and the rest of the Aryan Nations security force.¹²¹

The plaintiffs sought:

“(1) a judgment against the defendants in an amount in excess of \$10,000.00 to sufficiently compensate each plaintiff for his or her damages and injuries;

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id. at 9.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id. at 10.

(2) an injunction to prevent the defendants from conducting or allowing activities on the Aryan Nations compound that could impede Victoria Keenan's access to and use of public roads near the Aryan Nations compound;

(3) reasonable costs, interest, and attorney fees; and

(4) any other relief the Court deems just and proper."¹²²

On each cause of action, the plaintiffs alleged that the Aryan Nations security force defendants' actions were:

1. carried out "within the scope of their duties"¹²³
2. "foreseeable result of the conspiratorial agreement among the defendants to use violence against persons who were perceived to be a threat to the Aryan Nations",¹²⁴
3. and "were authorized" by the "Aryan Nations, Butler, and Sapphire."¹²⁵

In September 1990, the jury found in favor of the plaintiffs and against the defendants as follows:

- Actual damages sustained by Victoria Keenan (\$250,000) and Jason Keenan (\$80,000) due to "the wrongful conduct of all Defendants".¹²⁶
- Punitive damages against John Yeager (\$100,000), Jesse Warfield (\$500,000), Michael Teague (\$600,000), and Richard Butler/Aryan Nations/Sapphire (\$4,000,000).¹²⁷

This lawsuit, which decimated the Aryan Nations, illustrates the potency of civil suits against hate groups and their members even if the victims are not victims of hate crimes per se. Rather, individuals, such as the Keenans, who experienced assault, battery, false imprisonment, and intentional infliction of emotional distress, were able to recover compensatory and punitive damages despite not being part of a protected class.

Civil lawsuits against hate groups and their members for compensation and punitive damages arising under both hate crime and other crimes have yielded positive results plaintiffs. Currently, such suits financially weaken and otherwise

¹²² Id. at 11.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

undermine hate groups and their members from carrying out hate crimes and other criminal acts against protected classes and non-protected classes alike.

Conclusion

Against the backdrop of the commemoration of the fifth anniversary of Dr. Martin Luther King Jr.'s "I Have a Dream," speech in Washington, D.C. in August 2013, it is disturbing to note that there are still over 1,000 active hate groups in the United States. Hate groups, their members, and unaffiliated bigots have undertaken hate crimes across our nation, reaching thousands of incidents annually. So, indeed, there is much that needs to be done to lessen the breadth and frequency of hate-based violence in the United States.

One framework by which to combat hate crimes is through federal and state criminal and civil legislation targeting such conduct. Additionally, civil lawsuits by victims of hate groups, their members, and unaffiliated bigots have been pursued successfully for several decades. The more than two-dozen state statutes that allow for such private causes of action have contributed to this record against purveyors of hate crimes.

Hopefully, at the 100th anniversary of Dr. King's famous speech, there will be fewer hate groups and hate crimes in the United States than what we face today. Such a rosy future will take hold if the victims of hate crimes, other victims of hate groups, and unaffiliated bigots seek redress through civil suits against their perpetrators. Relying solely on criminal prosecutions to address these woes will be insufficient.

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