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‘A Look At Brown V. Board Of Education In West Virginia: Remembering the Past, Examing the Present, and Preparing for the Future‘

**\*699 HATE CRIME LAW IN WEST VIRGINIA**

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I. Introduction

The Brown v. Board of Education decision declared the end of government-sponsored and-enforced apartheid in America. [FNaa1] The U.S. Supreme Court decreed that the law and the government would no longer be an overt part of the problem with regard to racial inequality in education. However, clearly the end of mandated segregation did not create equality; whether and to what extent the government might “take sides” on the issue of racial equality was left for another day. At the same time, the fact of Brown, if not the substance of the decision itself, hinted at the possibility of a broader, affirmative role for the courts and the government in the effort to promote racial equality in America.

The affirmative role of government in the area of civil rights was significantly advanced with the passage of the Civil Rights Act of 1964 and parallel state laws such as the West Virginia Human Rights Act. These statutes took \*700 the courts into areas beyond mere “color of law” equality by prohibiting discrimination in employment and places of public accommodation.

The West Virginia Legislature and the Supreme Court of Appeals of West Virginia have clearly articulated the sentiment that government has an important affirmative role to play in the area of civil rights, and that this affirmative role is implied in our nation's most fundamental values. In the case of *Allen v. West Virginia Human Rights Commission*, [FN1] our Court said:

This concept of equality is so basic to our system of government, that the Legislature has declared, “The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness or handicap is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.” (citation omitted) Therefore, every act of unlawful discrimination in employment, housing, or public accommodations is akin to an act of treason, undermining the very foundations of our democracy.

Governments should be expected to be vigorous in their efforts to prevent acts which are “akin to treason.” Hate crime laws, and their implementation, are one manifestation of this public policy that the appropriate role of government and law enforcement is to actively combat the seriously destructive effects of bigotry.

In the last two decades, there has been increased recognition of the problem of biased motivated crime in America. The increased awareness of the problem has been the result of several factors. There occurred in this period several highly publicized hate crimes, including the shocking and grisly murder of James Byrd in Jasper, Texas, in 1998. During this same period, improvements in data collection, driven by the 1990 Federal Hate Crime Statistics Act, revealed that biased motivated crimes are not infrequent events, and that the problem is much deeper and wider than the news reports alone suggest. [FN2]

West Virginia has participated in this awakening. West Virginia currently has several laws designed to target bias motivated intimidation based on race. In addition, there have been efforts to provide training to police officers on effective responses to hate crime. [FN3] Effective implementation remains a challenge.

## \*701 II. Acts of Terrorism

Hate crimes, also referred to as bias crimes, are acts of violence, intimidation or harassment, directed at particular persons or property because of the race, ethnicity, religion, sexual orientation or other characteristic of the victim. They are: a) criminal acts which are b) motivated in whole or in part by the bias of the perpetrator. [FN4]

Hate crimes are best understood as acts of terrorism. Perpetrators of hate crimes use fear as a weapon to further a political or social agenda. These crimes target particular victims because of some characteristic of the victim that the perpetrator “hates.” Victims, however, are not only those directly harmed by the act. Because these acts create fear and insecurity for all those who share the targeted characteristic, these crimes also victimize whole communities.

Hate crimes, when they occur, are serious events. They are, in a very real sense, “acts of treason” against our most basic values. If government is to be true to the public policy promises made since *Brown*, such as articulated in *Allen*, then hate crimes must be taken very seriously by law enforcement officials, community leaders and citizens. Sadly, hate crimes are not always treated as serious events.

### III. Just One “Minor” Hate Crime

The implications of a hate crime, and the importance of effective governmental response, can be illustrated by example.

In 1992, an African American couple and their three children moved into a subdivision outside of the county seat in a southern West Virginia community. The move shortened the work commute for both parents and put the children closer to their schools. Initially, the family felt welcome in the otherwise all-white neighborhood. The children found playmates, and the family was pleased with their new house. Initially, they were all glad they had made the move. Just over a year later, everything changed.

One morning in 1993, a note was left on the windshield of the family car. It read: “N-----, Move or Burn.” The couple was stunned. They called the county sheriff’s department. Although they were given the opportunity to make a “report” over the phone, no police officer came to the home or initiated an investigation. The couple had no idea who might have left the note, and they were unsure how seriously to take the threat. They were not comforted by the lack of police response. They agonized over what, if anything, they should tell their children.

\*702 Several weeks later, the back tires of the family car were slashed. This time when they called the sheriff, a deputy came to the home and filled out a police report. But the couple reported that the deputy did not appear to treat the incident as serious. They perceived that his purpose in filling out a police report was merely to facilitate the filing of an insurance claim with their car insurance company. There still was no police investigation. This time, the couple was very concerned. They talked with the children about remaining vigilant, and they began to consider moving. A few weeks later, when they discovered a bullet hole in their living room window, the decision to permanently move from their home followed quickly.

The harm caused by this incident can hardly be overstated. In this one instance, an unidentified bigot turned the lives of these individuals upside-down. The harm to this couple, and to their three children, was immeasurable and essentially permanent. But the harm is hardly limited to this particular family. There is little doubt that every African American person in that part of West Virginia who heard of this incident “experienced” it, in the same way that every American “experienced” the September 11th attack on the World Trade Center, even if from a thousand miles away. Such a disruption in the sense of security for so many people is a profound consequence.

The true harm of this incident extends even further to the entire community. It includes those outside of the targeted group and those who never heard of the incident. The perpetrator of this hate crime succeeded in enforcing a rule of apartheid on this particular community that had implications not only for everyone in the area, but also on those who might come to live there afterwards. Imagine how long it was before another African American family moved into this neighborhood. Further, how many surrounding communities did families make decisions based upon the fact that the bigotry expressed in this incident was unlikely to be isolated to this neighborhood only?

Part of the tragedy of these events was the failure of law enforcement to respond more effectively. Consider this incident from the perspective of the responding deputy sheriff. Giving him the benefit of the doubt, and assuming a sincere if shallow desire to “serve and protect,” he probably saw these incidents as minor incidents of vandalism, not unlike the types of minor incidents which were part of his daily routine. Slashed tires probably do not usually measure high on the Richter scale of a police officer, and he completely overlooked their real significance. He was probably unaware of [W. Va. Code § 61-6-21](#), which had been enacted in 1987 and makes it a felony to engage in bias motivated threats of force to interfere with another’s rights. He was probably unaware of

the West Virginia Fair Housing Act, passed in 1992, which imposed a potential ten thousand dollar civil penalty on the perpetrator of these incidents. He likely did not perceive any serious harm to the individuals involved, at least prior to their moving, and no harm to the community as a whole, even after the family moved. The officer probably assessed little chance of apprehending a perpetrator, and did not deem it worth investigation. He did not consider the potential or importance of taking action to deter future crimes of this type, even if he could \*703 not solve this one. He did not report any of the incidents as hate crimes, [FN5] and was probably unaware of the Federal Hate Crime Statistics Act, [FN6] which had been in effect since 1992.

A primary challenge for government, of course, is to live up to the commitment articulated in *Allen* by improving the response of law enforcement to bias crimes. Strides have been made in this direction, with the formulation of inter-agency working groups, the training of police officers, improvements in the state's hate crime data collection system and the adoption of regulations prohibiting harassment in schools. [FN7]

#### IV. West Virginia Hate Crime Laws

Like most states, West Virginia has several statutes that are specifically aimed at biased motivated offenses, such as the one described above. They were enacted at various times in history and directed at different hate-related problems. These statutes are valuable weapons for use in the fight against hate crime, if they are effectively used. Several of these laws are described below.

##### A. Felony Statute for Bias Motivated Intimidation and Violence

West Virginia has a statute that creates a separate criminal offense for violence or threats of violence where they are motivated by race, color, religion, ancestry, national origin, political affiliation or sex. This statute, which is entitled “Prohibiting violations of an individual's civil rights,” is codified at *W. Va. Code § 61-6-21*, and is sometimes referred to as West Virginia's Hate Crime Statute.

Enacted in 1987, *W. Va. Code § 61-6-21* articulates a right under West Virginia law to be free from violence and intimidation based on race, color, religion,\*704 ancestry, national origin, political affiliation or sex. [FN8] It establishes two separate felony offenses, with penalties, as tools for enforcing the right to be free from bias motivated violence and intimidation. In addition, it provides that a bias motive in the commission of any crime shall be considered an aggravating circumstance for the purpose of sentencing.

There is no centralized record of prosecutions under this statute, but there have been at least several dozen cases brought under the statute since 1987. In 1993, in Lincoln County, two individuals were charged in connection with a racially motivated assault with an automobile, although the charges were later dismissed. In 1994, three juveniles pled guilty to *§ 61-6-21(b)* charges in connection with harassing an African-American classmate. In 1997, two Braxton County two inmates were charged under this statute in connection with a racially motivated assault. One inmate pled guilty and the other was acquitted. In 1997, a Mingo County jury returned a guilty verdict for a racially motivated attempted arson. To date, there are no reported cases involving this statute.

The felony offense of bias motivated violence and intimidation, set out in *W. Va. Code § 61-6-21(b)*, contains three elements: (a) use of force or threat; (b) a willful attempt to injure, intimidate, interfere with, oppress or threaten another person in the free exercise or enjoyment of a “secured right” and (c) motivation based on the other person's race, color, religion, ancestry, national origin, political affiliation or sex. The first and third elements are usually the most important, as are the defining characteristics of the offense.

In order to constitute a violation of [W. Va. Code § 61-6-21\(b\)](#), it is necessary that the act involve “force” or “threat of force.” The terms “force” or “threat of force” are more familiar to federal criminal statutes than West Virginia statutes, so federal case law is especially useful in providing guidance as to their meaning. Courts have sustained convictions where there is a physical beating, [FN9] a bombing, [FN10] or the shooting of a weapon into a residence. [FN11] Similarly, “waving baseball bats, axe handles, and knives; throwing rocks and bottles, veering cars toward black persons, and physically chasing black persons,” has been held to constitute “force or the threat of force.” [FN12]

Symbolic conduct can also meet the test where the threatening message is clear. It has been held that the burning of a cross outside the home of an African-American family constituted a threat of violence. [FN13] Similarly, the element \*705 was met where correspondence was sent to the director of an interracial adoption agency “threatening death to minorities and those who associate with minorities.” [FN14]

“Mere” vandalism, which lacks the threat of force, even if bias motivated, would not constitute a violation of [W. Va. Code § 61-6-21\(b\)](#). However, it is important to keep in mind that threats of force can come in different forms. By expressly guaranteeing a “right to be free from any (bias motivated) violence, or intimidation by threat of violence, committed against their persons or property”, [FN15] the West Virginia Legislature obviously intended the inclusion of threats expressed through trespass and damage to property.

The second element, willful interference with a secured right, is generally not difficult to find where the first and third elements are present. Secured rights are not “special rights,” especially in the context of this particular statute. Under some federal criminal statutes, the applicable secured rights may be more limited. [FN16] However, the very text of [West Virginia Code § 61-6-21](#) itself establishes a catchall “secured right” which will apply in virtually every instance of biased motivated threat or violence. [West Virginia Code § 61-6-21\(a\)](#) provides:

All persons within the boundaries of the state of West Virginia have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation or sex.

Because of this “right,” a showing of bias motivated intent to intimidate by threat or violence is enough to meet the second element. [FN17]

The second element also contains a requirement of willfulness. Conduct, which is merely negligent, or where the perpetrator did not intend to interfere with the victim, is not a violation. Willfulness can be inferred from the circumstances. As a practical matter, if the evidence establishes that the perpetrator used force or threat of force against another because of a prohibited bias, the issue of willfulness is not likely to be a problem.

\*706 The third element, and the gravamen of a hate crime, is the bias motive. In order to violate [W. Va. Code § 61-6-21\(b\)](#), an act must be “because of” the victim’s race, color, religion, ancestry, national origin, political affiliation or sex. This requirement is similar to the motive element required for a finding of discrimination under the West Virginia Human Rights Act. [FN18]

While the Supreme Court of Appeals of West Virginia has never interpreted [West Virginia Code § 61-6-21](#), it has discussed similar provisions in other laws, which prohibit certain acts “because of” race, religion and sex. These provisions have been interpreted by our Court to mean that the prohibited factor must be proven to be “a motivating factor” but not necessarily the sole or even the primary motivating factor. [FN19] Other courts, applying similar criminal statutes, have upheld hate crime convictions even in the face of evidence that race was not the sole motive. [FN20] Defendants who act with a racial motive can be found guilty of a bias crime “even if

they had mixed motives in committing the act.” [FN21]

Where the victim has been targeted only because she/he is associated with the object of the defendant's animosity, there may be some question about whether [West Virginia Code § 61-6-21](#) applies. [FN22] However, where it is the interracial or interethnic nature of an association that causes the victim to be chosen, this problem is not presented. If either member of an interracial couple were targeted because of the interracial nature of that couple, that person would not have been targeted if they had been the same race of their partner. In other words, such victims were selected because of race, regardless of which race the victim happens to be.

Unlike some federal civil rights crimes, there is no requirement that a violation of [West Virginia Code § 61-6-21](#) be committed under the color of the law. Violation of [§ 61-6-21\(b\)](#) is a felony. Upon conviction, a perpetrator may be fined up to five thousand dollars and imprisoned up to ten years, or both.

Hate crime statutes such as [W.Va. Code § 61-6-21](#), which make bias an element of the crime, do not violate constitutional free speech or free thought rights. [FN23] In addition, [§ 61-6-21](#) should present no equal protection problem. \*707 Indeed, the classification created by the status is based on the defendant's motive and not on the victim's demographic status. [FN24]

[West Virginia Code § 61-6-21\(c\)](#) establishes a second felony offense called conspiracy to commit bias motivated violence or intimidation. Upon conviction, a person may be fined up to five thousand dollars or imprisoned for up to ten years, or both. This offense also has three elements: (1) conspiring with another person to willfully injure, oppress, threaten or intimidate or interfere with any citizen in the free exercise or enjoyment of a secured right; (2) and in willful furtherance thereof to “assemble” for the purpose of teaching any technique or means capable of doing so; and (3) because of that other person's race, color, religion, ancestry, national origin, political affiliation or sex.

There are no known cases brought under subsection (c) of [§ 61-6-21](#). Many of the elements of this crime are similar to [W. Va. Code § 61-6-21\(b\)](#), and the points made above will apply, except that a specific act of threat or force need not have occurred if the perpetrator conspired to injure, oppress, threaten, intimidate or interfere, and assembled to teach such techniques.

At common law, establishing a conspiracy required (i) that the defendant agreed with others to commit the offense, and (ii) that some member of the conspiracy committed an overt act to affect the object of the conspiracy. In subsection (c), the element of assembly is set out separately from the element of conspiracy, but the act of assembly might arguably supply the necessary overt act to establish the conspiracy.

[West Virginia Code § 61-6-21](#) also contains an important provision regarding criminal sentencing in any crime where bias motive can be established. [West Virginia Code § 61-6-21\(d\)](#) provides that:

The fact that a person committed a felony or misdemeanor, or attempted to commit a felony, because of the victim's race, color, religion, ancestry, national origin, political affiliation or sex, shall be considered a circumstance in aggravation of any crime in imposing sentence.

This subsection is not technically a penalty enhancing provision in that it does not increase the maximum penalty, which may be imposed by a judge upon the conviction of a crime. Accordingly, it does not have the constitutional infirmity, which was the subject of *Appendi v. New Jersey*. [FN25] However, [W. Va. Code § 61-6-21\(d\)](#) does provide a sentencing judge with a basis for imposing a stiffer sentence within the available range of sentencing options. Furthermore, the section provides that the bias motive “shall be” considered an aggravating circumstance,\*708 lending itself to the argument that the judge has no authority to ignore this circum-

stance.

This section can be invoked for the purpose of sentencing, regardless of whether a bias crime has been charged. In other words, even if the conviction is for assault, or vandalism, or some other common law crime, the sentencing judge may consider bias motive.

## B. Civil Rights Injunctions and Civil Remedies Statutes

Authority for government response to bias motivated intimidation is not limited to criminal statutes. The West Virginia Human Rights Act, [W. Va. Code § 5-11-1](#) et seq., and the West Virginia Fair Housing Act, [W. Va. Code § 5-11A-1](#) et seq, contain provisions which can be invoked to address these problems. In addition, there are some State Department of Education regulations which can be used to address hate motivated intimidation when it occurs at schools or school-related activities.

In 1998, the West Virginia Legislature authorized the issuance of restraining orders in situations involving bias motivated intimidation. Pursuant to an amendment to the State Human Rights Act, the Attorney General has had authority to seek a civil rights injunction against any person who intentionally interferes or attempts to interfere with another person by actual or threatened physical force, violence or destruction of property, when such interference is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability. [FN26]

There are three elements to the offense set out in [W. Va. Code § 5-11-20](#). To become subject to this statute, a person must: (a) intentionally interfere or attempt to interfere with another person who is engaging in any lawful activity; (b) use or threaten physical force or violence, or use or threaten damage to, destruction of, or trespass on property; and (c) be motivated by race, color, religion, sex, ancestry, natural origin, political affiliation or disability. Whenever these three elements are present, the Attorney General may bring a civil action for injunctive relief to protect the enjoyment of the secured rights and/or for civil penalties of up to five thousand dollars. Violations of an injunction order are misdemeanors and are subject to penalties of one-year imprisonment, a five thousand dollar fine, or both.

The primary objective of this statute is injunctive relief, a court order designed to prevent future incidents, although civil penalties of up to five thousand dollars can be assessed even for the initial offense. Because a civil rights injunction action is a civil case, the standard of proof is by a “preponderance of the evidence,” which is less than the “beyond a reasonable doubt” standard applied in a criminal case.

**\*709** The “secured rights” protected by this statute include the right to engage in any lawful activity without interference motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability. An injunction may be sought whether or not the violator was acting under “color of law.” Therefore, both official and unofficial (private) persons are covered by this section.

To date, [W. Va. Code § 5-11-20](#) has been invoked in about a dozen cases, and every case that has been filed has resulted in an injunction. All of these cases involved racial incidents. Two cases involved juveniles. There are no reported cases involving this statute.

The West Virginia Fair Housing Act makes it unlawful for any person to discriminate in the provision of housing or housing-related services. Portions of that Act have some application to hate-related offenses. For example, [W. Va. Code § 5-11A-16](#) makes it unlawful for any person to coerce, intimidate, threaten or interfere with any person exercising or enjoying their rights to fair housing. Fair housing rights provide that persons may

rent or lease homes without regard to race, color, religion, ancestry, sex, familial status, blindness, disability or national origin.

[West Virginia Code § 5-11A-16](#) can be enforced via a civil claim by the West Virginia Human Rights Commission or by an aggrieved person. A related provision authorizes injunctive relief to stop violations of this section. One who violates the fair housing rights of another, through intimidation, interference or discrimination, may be ordered to cease and desist, pay damages to the victim, and pay up to ten thousand dollars in civil penalties.

Finally, although not always involving criminal conduct, some of the most harmful biased motivated intimidation which occurs in our communities occurs in schools. The West Virginia Board of Education has promulgated regulations prohibiting all harassment in the schools based upon race, sex, religion or ethnicity. [\[FN27\]](#) These regulations also require county boards of education to have in place procedures for receiving complaints, and for investigating and addressing incidents, including discipline for those found to have engaged in prohibited harassment.

## VI. Conclusion

The *Brown v. Board of Education* decision was a milestone in several ways. In addition to the specific holding, it marked the beginning of an era of affirmative involvement by government in promoting racial equality. In recent years, hate crime legislation, including statutes passed by the West Virginia Legislature, have been a part of this affirmative involvement. However, the implementation of those laws has been inconsistent and incomplete. Hate crime remains a serious problem in West Virginia. The promises hinted at in *Brown*, \*710 and later articulated in decisions such as *Allen*, have not been fulfilled. However, if governmental commitment to these objectives can be sustained, further progress can be made.

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[\[FNaa1\]](#). This manuscript is based on a speech given by Paul R. Sheridan on February 21, 2005 at the West Virginia University College of Law as part of the West Virginia Law Review symposium, “A Look at *Brown v. Board of Education* in West Virginia: Remembering the Past, Examining the Present, and Preparing for the Future.”

[\[FN1\]](#). 324 S.E.2d 99, 108 (W.Va. 1984).

[\[FN2\]](#). Since 1992 the FBI has collected data on hate crime. The FBI reported 7,489 bias motivated criminal incidents in the United States in 2003, the most recent year for which data is available. Although crimes motivated by biases other than race are significant, race crimes are by far the most common type of bias crime in America and in West Virginia. See generally U.S. Dep't of Justice, Fed. Bureau of Investigation, *Hate Crime Statistics 2003* (2004).

[\[FN3\]](#). Between 1997 and 2002, the West Virginia Hate Crime Task Force, an inter-agency working group under the auspices of the West Virginia Hate Crime Commission, periodically conducted an eight-hour training program entitled “Responding to Hate Crime.” Approximately 1500 police officers took the course. See 2001 W. Va. Hate Crime Task Force Ann. Rep. 2-3 (2002).

[FN4]. See U.S. Dep't of Justice, Fed. Bureau of Investigation, Training Guide for Hate Crime Data Collection 14.

[FN5]. To this day, this particular county has officially reported only a single hate crime, a racially motivated crime that occurred in 2000. U.S. Dep't of Justice, Fed. Bureau of Investigation, Hate Crime Statistics 2000 (2001) West Virginia Counties. It is reasonable to assume that there have been many other unreported hate crimes, although it is impossible to know how many.

[FN6]. The Federal Hate Crime Statistics Act (P.L. 101-275) mandates that the FBI collect bias crime statistics from states. [West Virginia Code § 15-2-24\(i\)](#) requires all state, county and municipal law enforcement agencies in West Virginia to report crimes to the Uniform Crime Reporting Bureau, in a form prescribed by UCR. The UCR regulations (West Virginia State Police Procedural Rules § 18-11-1 et seq.) and the UCR form require the reporting of hate crime information. Bias categories included on the form are: race, religion, ethnicity/national origin, gender, political affiliation, disability or sexual orientation.

A crime should be reported as a bias crime whenever there are sufficient objective facts present to lead a reasonable person to conclude that the offender's actions were motivated, in whole or in part, by bias. If the bias motive is present, the crime should be reported as a bias crime, regardless of what type of crime is charged.

[FN7]. See 2001 W. Va. Hate Crime Task Force Ann. Rep. 1-11 (2002).

[FN8]. The most common form of hate crime statute enhances the penalty for an otherwise defined crime, if it is established that the crime was bias motivated. The West Virginia statute is not of this form, but instead separately defines the crime and establishes the penalty.

[FN9]. [United States v. Griffin](#), 525 F.2d 710 (1st Cir. 1975).

[FN10]. [United States v. Fine](#), 413 F. Supp. 728 (W.D. Wis. 1976).

[FN11]. [United States v. Johns](#), 615 F.2d 672 (5th Cir. 1980).

[FN12]. [United States v. McDermott](#), 29 F.3d 404, 407 (8th Cir. 1994).

[FN13]. [United States v. J.H.H.](#), 22 F.3d 821 (8th Cir. 1994); [United States v. Hayward](#), 6 F.3d 1241 (7th Cir. 1993); see also [Virginia v. Black](#), 538 U.S. 343 (2003).

[FN14]. [United States v. Gilbert](#), 813 F.2d 1523, 1525 (9th Cir. 1987).

[FN15]. [W. Va. Code § 61-6-21\(a\)](#) (2003) (emphasis added).

[FN16]. For example, to establish a violation of [18 U.S.C. § 245](#), there must be a showing that the bias motivated intimidation in question intentionally impaired one of the listed federal rights such as: free exercise of speech or association, voting, interstate travel and attending schools, fair housing, or the right to be free from excessive force by police officers.

[FN17]. This section should always be cited in a charge, warrant or indictment pursuant to [W. Va. Code § 61-6-21\(b\)](#) for the purpose of defining the victim's secured right. Other secured rights may be included as well. See [People v. Lashley](#), 2 Cal.Rptr.2d 636, 637 (Cal. 1991).

[FN18]. [W. Va. Code § 5-11-9](#) (2003); see [Barefoot v. Sundale Nursing Home](#), 457 S.E.2d 152 (W. Va. 1995).

[FN19]. *Skaggs v. Elk Run Coal Co.*, 479 S.E.2d 561, 585 (W. Va. 1996); *Barefoot*, 457 S.E.2d at 164 n.18.

[FN20]. *United States v. Johns*, 615 F.2d 672, 675 (5th Cir. 1980).

[FN21]. *United States v. Hartbarger*, 148 F.3d 777, 784 n.6 (7th Cir. 1998); see also *United States v. McGee*, 173 F.3d 952, 957 (6th Cir. 1999)); *In re M.S.*, 896 P.2d 1365, 1377 (Cal. 1995); *United States v. Bledsoe*, 728 F.2d 1094, 1098 (8th Cir. 1984).

[FN22]. See *W. Va. Human Rights Comm'n v. Wilson Estates, Inc.*, 503 S.E.2d 6 (W. Va. 1998) (McCuskey, J., concurring opinion).

[FN23]. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

[FN24]. *State v. Beebe*, 680 P.2d 11, 12-13 (Or. Ct. App. 1984). This is frequently overlooked by hate crime statute opponents, who mistakenly argue that these statutes make inappropriate distinctions between victims based on status.

[FN25]. 530 U.S. 466 (2000).

[FN26]. See *W. Va. Code* § 5-11-20 (2003).

[FN27]. See West Virginia Board of Education's Legislative Rules, Racial, Sexual, Religious/Ethnic Harassment and Violence Policy (2421), 126 C.S.R. § 18 (1997).

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