Written by **Michael Tennant** on June 24, 2010

The Long Arm of Hate Crime Law Grows Longer

Think you know what a hate crime is? Think again.

According to a June 22 report in the *New York Times*, if someone defrauds elderly people in Queens, N.Y., he may very well be brought up on hate crime charges in addition to fraud charges simply because he committed his crimes under the belief that old folks are easy marks. Furthermore, this novel use of hate crime law has proved so successful in obtaining stiffer sentences for convicted criminals that it is likely to be adopted across the state of New York, and from there, no doubt, to other states with similarly flexible hate crime statutes.

New York's hate crime law, while obviously intended to create tougher penalties for crimes motivated by animus toward a particular group of people, is (intentionally?) vague enough to permit just this sort of chicanery. The law, writes the *Times*, "says prosecutors must prove only a crime was committed 'because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person'" in order to convict the accused of a hate crime and sentence him to prison time. Thus, people who have targeted the elderly "because they believed older people would be easy to deceive and might have substantial savings or home equity," as the *Times* puts it, can be charged with hate crimes.

The leader of the movement to expand hate crimes to cover fraud against the elderly is Queens Assistant District Attorney Kristen A. Kane, who heads an elder fraud unit. The *Times* explains how Kane came to apply the hate crime statute to elder fraud cases:

> It all started with Sunshine. That was the nickname of Nancy Jace, who bilked five elderly men out of $250,000, pretending to romance them and persuading them to pay for fictitious family emergencies. Ms. Kane was frustrated when Ms. Jace, 37, pleaded guilty in 2004 and served just six months in jail.

When a similar defendant came along, Ms. Kane had an idea. Shirley Miller, 43, who hoodwinked four elderly men out of $500,000, became the first New Yorker charged with grand larceny as a hate crime against the elderly. She pleaded guilty and served four months, but would have faced one to three years if she had not paid $175,000 in restitution. In 2006, Sherry Kaslov, 30, pleaded guilty to similar charges; she served four months and was hit with 10 years of probation.

Kane's success in these and other cases has not gone unnoticed. Her boss, District Attorney Richard A. Brown, has become known as "a leader in finding new uses for hate crime laws, prosecutors in other jurisdictions say," according to the *Times*. In addition, the president of the State District Attorneys Association, says the paper, "looked into the efforts after hearing about it from a reporter, called it 'an epiphany' and said she would suggest it to the group's committee on best practices." After all, when one prosecutor finds a new way to browbeat defendants into pleading guilty, other prosecutors are sure to

follow suit.

Many of the cases Kane has prosecuted have, in fact, ended in plea bargains rather than trials. Charging defendants with hate crimes, writes the *Times*, "gave her extra leverage in plea bargaining. By winning felony pleas and probation, prosecutors ensured that repeat offenders would receive strong sentences." So many of them have pleaded guilty and waived their right to appeal that the hate crime gambit has never been tested in appellate court, though Queens trial judges have permitted it.

Plea bargaining, of course, is a favorite tool of prosecutors, who will levy charge after charge against a defendant in hopes of getting him to plead guilty in exchange for dropping some of the charges. Whether the defendant is actually guilty is beside the point; the prosecutor has another notch on his belt. The existence of hate crime laws only augments prosecutors' abilities to browbeat defendants into guilty pleas.

Even if this were not the case, hate crime laws in themselves are a bad idea. The notion that criminals are somehow deserving of greater punishment for having committed crimes out of hatred (who commits them out of love?) rather than simple greed or anger is an affront to the principle of equality before the law. Why should a man be sentenced more harshly for assaulting someone because he is black rather than because he has a wallet the attacker wants? The punishment should fit the crime, not the politically protected status of the victim.

The absurdity of such laws is demonstrated by another case described in the *Times* article, this one in Brooklyn: "Michael Sandy, a gay man, died after robbers chased him into traffic. One defendant testified that he was gay. The judge ruled that he could still be charged with a hate crime since prosecutors said he went after Mr. Sandy believing gay men were easier to rob. Jurors convicted him but later complained that they did not think the hate crime applied."

Thus, it seems committing a crime against a member of the same politically favored group to which one belongs can still be considered a hate crime if one considers one's own group vulnerable to such a crime. Yet what criminal *doesn't* choose his victim on the basis of the victim's vulnerability?

Rather than finding new uses for hate crime laws to tilt the legal playing field even further in favor of prosecutors, the state of New York — and every other state, plus the federal government — should repeal such laws. Governments should cease treating people as members of groups and start treating them as individuals possessed of exactly the same rights, whether they are accused of being criminals or claim to be victims. Only then can America fulfill its pledge of "liberty and justice for all."