



**Testimony of J. Richard Cohen,
President, Southern Poverty Law Center,
Before the
Committee on the Judiciary
U.S. House of Representatives
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My name is Richard Cohen. I'm the president of the Southern Poverty Law Center (SPLC), a civil rights organization dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society. I appreciate the opportunity, Mr. Chairman and members of the Committee, to appear before you in these hearings on "Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools."

In our view, the federal government has a strong interest in promoting racial harmony in our nation's school. In some cases, this interest may require federal officials to investigate and prosecute hate crimes that occur at schools or to assist State and local law enforcement agencies in their investigation or prosecution of such crimes. But we believe that the bulk of the federal effort should be aimed at preventing hate crimes from occurring in schools in the first place and at helping State and local officials to respond to the tensions that often occur in the aftermath of such crimes. Better data on the incidence of hate crimes would surely be helpful in that effort.

I should note at the start that we are deeply involved in the controversy surrounding the Jena 6, the six black teens charged with serious crimes stemming from the beating of a white student, Justin Barker, at the public high school in Jena, Louisiana, during a period of racial tension in 2006. We do not excuse violence of any kind or minimize Justin's injuries in any way. Our hearts go out to him and his family. But it appears to us that the Jena 6 have been overcharged and have been in danger of not being adequately represented. For these reasons, we are providing legal assistance to some of the teens.

We also are monitoring the reaction of white supremacist organizations to the Jena situation. When our investigative unit, which tracks hate group activity and hate crime trends across the nation, detected evidence that neo-Nazis were contemplating bringing weapons to a rally organized by Jena 6 supporters, for example, we immediately contacted Louisiana law enforcement officials. In addition, we have been advising educators, through our Teaching Tolerance program, on how they can avoid Jena-type situations. Our "Six Lessons from Jena" is available on the Internet and has been sent to more than 50,000 educators. We've provided the shortened, print version to members of this Committee.

The federal government has a strong interest in promoting racial harmony in our nation's public schools as well as in private schools that receive federal financial assistance. If a racially hostile atmosphere exists at a school, students are denied equal educational opportunities, in violation of the Fourteenth Amendment to the Constitution of the United States in the case of public schools and in violation of Title VI of the Civil Rights Act of 1964 in the case of any school that receives federal funds. More than 40 years ago, Congress passed legislation establishing the Community Relations Service to provide assistance to communities in situations where "peaceful relations among the citizens of the community...are threatened" by racial difficulties. Over the years, the Community Relations Service, other offices within the Department of Justice, and the Department of Education have sponsored various initiatives to prevent and respond to hate crimes and bias incidents in our nation's schools.

Unfortunately, racial problems continue to plague many of our schools. FBI hate crime data consistently demonstrate that “schools and colleges” are the third most common venue for hate crimes in our country. And without question, the FBI hate crime data significantly understate the true dimensions of the problem. As a recent Bureau of Justice Statistics study demonstrated, the total number of hate crimes in the United States may be 20 to 30 times greater than the FBI statistics reflect, and race is their most common motivation. Despite the requirement that colleges report hate crimes to the federal government, they often fail to do so.

The problem of hate crimes and racial unrest at schools is not confined to the South—the recent noose hangings at Columbia University in New York City and at the University of Maryland are examples of its widespread nature—and is not confined to tensions between black and white students. In California in recent years, for example, tensions between black and Latino students have erupted in many schools. In one high school in Rialto in 2004, over fifty students were injured in a lunchroom racial brawl.

In Jena, racial tensions erupted when three white students hung nooses from a schoolyard tree the day after black students sat under it. (The tree had apparently been a traditional gathering place for white students.) Local officials appear to have handled the incident poorly. After the initial decision to expel the noose hangers was reduced to some form of suspension that did not include a public apology or an educational program designed to promote empathy and understanding, black students staged a protest under the tree from which the nooses were hung. Instead of providing the students with an opportunity to express their concerns in a constructive way, the principal called an assembly and told the students that it was time to put the incident behind them. At the same assembly, the LaSalle Parish District Attorney, flanked by police officers, ominously warned the students to settle down. “With a stroke of my pen, I can make your lives disappear,” he told them. There is a dispute over whether he was looking at the black students when he uttered these words; however, there is no dispute over the fact that the black students were the ones who were protesting the decision not to expel the white noose hangers.

After the assembly, a group of black parents came to a school board meeting to express their disagreement with the decision not to expel the noose hangers. Because they had not arranged to be on the agenda, they were denied an opportunity to address the board. The following week, they were given that opportunity. Unfortunately, the board was largely silent and did not take the occasion to open a meaningful community dialogue.

The District Attorney’s decision to charge the Jena 6 with attempted murder further exacerbated the racial tensions in the community. The police originally charged the six with aggravated battery, a harsh charge under the circumstances. But the District Attorney, in an apparent effort to show what he could do with a stroke of his pen, used his discretion to increase the charges even further.

The District Attorney’s decision to increase the charges against the Jena 6 stands, in the eyes of many in Jena and throughout the country, in stark contrast to how he treated white youth involved in criminal conduct in LaSalle Parish during the same period. In an ideal world, justice would be blind. But in the real world, it is not; prosecutors see race. In Jena, the District Attorney appears to have thrown the book at black students while giving white youth a slap on the wrist or an outright pass.

A few days before the Barker incident, for example, a black student (one of the six who was later charged in the Barker incident) was reportedly attacked by a group of white youths. The District Attorney charged one white youth with a misdemeanor, and he served no jail time. The other white youth were not charged.

Likewise, the noose hangers—the white youth whose actions sparked the racial turmoil at the school—were never charged with a crime, although they probably could have been. Louisiana Revised Statute 14:107.2, for example, creates a hate crime for any institutional vandalism or criminal trespass motivated by race. Federal law prohibits efforts to intimidate persons from “enjoying the benefits of any program or

activity" receiving federal dollars (public schools, of course, get federal funds), from "attending any public school," or from "enjoying any benefit,...privilege, [or] facility... provided...by any State or subdivision thereof" on the basis of race. If the violation involves "the use...or threatened use of a dangerous weapon"—and a noose could certainly qualify—one could be sent to prison for ten years.

Of course, we would never contend that the noose hangers should have been sent to prison, charged with a crime, or even expelled for that matter. Although we believe that the Jena 6 were seriously overcharged, sending white students to jail would be a poor way of balancing the scales. The federal government should be prepared to investigate and prosecute serious hate crimes that occur in our nation's school when state and local authorities fail to take appropriate action. But the criminal law is a blunt instrument, and too many of our young people are already being pushed out of our schools and into our prisons.

A far wiser course than increasing federal prosecutions would be increasing federal investment in services designed to soothe the racial and ethnic tensions simmering in our nation's schools and to respond promptly when hate crimes occur. Congress should consider mandating an increase in the staff of the Community Relations Service. As our nation's diversity has increased, the size of the Community Relations Service has decreased. In addition, Congress should consider mandating an expansion of programs to fund the activities of non-profit organizations working to prevent hate crimes in our nation's schools. In recent years, federal funding for such programs has been severely curtailed despite the fact that the problems they address have not diminished. Whether conducted by federal agencies or non-profit organizations, hate crime trainings should include a component for raising the awareness of prosecutors about how their public actions and the exercise of their discretion can inflame or calm a volatile situation.

Congress also should hold hearings on the federal effort to collect hate crime data. The "most thorough assessment" of that effort—a study conducted for the Bureau of Justice Statistics—concluded that "the full picture of hate crime...has not yet been captured through official data." Hate crimes, including those in our schools, are vastly underreported for a variety of reasons. The clearer our picture of the true dimensions of the hate crime problem, the better our strategies to combat it are likely to be. Passage of the Local Law Enforcement Hate Crime Prevention Act of 2007 would be a good start because it would require the collection of data about hate crimes committed by and against juveniles.

We have been critical of the public officials in Jena. But we are confident that they are well-meaning professionals who simply were not prepared to deal with the racial tensions at their school. The federal government, working with experts in the field, can help officials like those in Jena work toward the goal of creating schools where all students feel physically and emotionally safe. It is difficult to think of a better ending for the unfortunate events in Jena than a renewed federal effort toward this goal.

Thank you for allowing me to appear before you.