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Race-Hate Crimes [2]

JANE I MURGOIA

10/12/98 04:29:58 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message

Subject: Rep. Sheila Jackson-Lee Request

Rep. Sheila Jackson-Lee just called to strongly request that in lieu of the recent brutal killing of Matthew Shepard of Wyoming, we push hard to include the Administration's Hate Crimes legislation (H.R. 3081) into the final omnibus appropriations bill. She asked me to call her back as soon as possible with feedback from our principals on the prospects for this happening. JM.

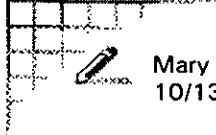
Message Sent To:

Erskine B. Bowles/WHO/EOP
John Podesta/WHO/EOP
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Race - hate crimes



Mary L. Smith
10/13/98 01:32:41 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Hate Crimes Updates & Wyoming

We've already given the press office our announcement from the Hate Crimes Conference, the Q&A, and the Administration's accomplishments document. Here are some additional updates:

1. Based on the press reports detailing the facts, the Wyoming case would clearly fall within the Administration's proposed federal legislation according to Neil Kravitz in the Civil Rights Division at the Department of Justice. Under the existing federal hate crimes law, however, this case would not be covered because sexual orientation is not a protected class.
2. As the result of the Hate Crimes Conference, the President instructed the approximately 100 U.S. Attorney's offices to set up hate crimes working groups that would work with the community to prevent and prosecute hate crimes. The working group in Wyoming has been operational since early this year. Participants in the Wyoming working group include the U.S. Attorney's Office, the FBI, ATF, and the state division of criminal investigations. The Wyoming working group is working with the local prosecutor on the case; however, it would be inappropriate to comment on the specifics regarding this ongoing investigation.
3. The 1997 FBI data on hate crimes will not be available until the end of this month or the beginning of November.

Let us know if we can send this to the press office. Thanks, Mary

Race-hate crimes

Prepared by Neal Kravitz (CRT) (514-4016)
Reviewed by Bill Yeomans (CRT) (514-4127)

DRAFT
6/30/98 5:00 p.m.

Written Testimony of Deputy Attorney General Eric Holder

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today regarding S.1529, the Hate Crimes Prevention Act of 1997. The Clinton Administration is deeply appreciative of the Committee's decision to hold this hearing. President Clinton publicly endorsed S.1529 on November 10, 1997 during the White House Conference on Hate Crimes, and he and the Attorney General continue strongly to support it.

For many years, Mr. Chairman, you have been a leader in the efforts of the Congress to combat hate crimes. In 1988 you led the fight for passage of the Hate Crimes Statistics Act, and in 1994 and 1996, respectively, you were a strong supporter of the Hate Crimes Sentencing Enhancement Act and the Church Arson Prevention Act. You have long recognized that hate crimes have no place in a civilized society, regardless of the race, religion, ethnicity, sexual orientation, gender, or disability of the victims. The Administration is hopeful that you will join Republicans and Democrats, police chiefs and district attorneys, and clergy people and community leaders from all across the country in supporting the bipartisan bill now before the Committee.

As recent tragic events confirm, hate crimes pose some of the most important and vexing law enforcement challenges currently facing our Nation. Hate-filled acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. All of us working together -- at the federal, state, local, and community levels -- must redouble our commitments to the deterrence and punishment of violent hate crimes.

Throughout the past year, the Attorney General has demonstrated her steadfast commitment to the battle against hate crimes through the planning and implementation of her National Anti-Hate Crime Initiative. The centerpiece of the Attorney General's initiative has been the formation in each of the 93 federal judicial districts of a working group consisting of local community leaders and federal, state, and local law enforcement officials. The local working groups are charged, among other tasks, with improving coordination, community involvement, training, education, data collection, and prevention.

Our long term goal must be to prevent hate crimes by addressing bias before it manifests itself in violent criminal activity. But in the meantime, it is essential that we have the law enforcement tools necessary to ensure that, when hate crimes do occur, the perpetrators are identified and swiftly brought to justice. That is why the Administration urges the prompt enactment of S.1529.

OVERVIEW

18 U.S.C. §245, the principal federal hate crimes statute, prohibits certain hate crimes committed on the basis of race, color, religion, or national origin. Despite its undeniable usefulness in a limited set of cases, the current statute is deficient in two essential respects. First, the current statute requires the government to prove that the defendant committed an offense not only because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of six narrowly defined "federally protected activities" specifically enumerated in the statute. Second, the current statute provides no coverage whatsoever for violent hate crimes committed because of the victim's sexual orientation, gender, or disability. These limitations have prevented the federal government from investigating and prosecuting a significant number of violent bias incidents.

The Hate Crimes Prevention Act of 1997 would amend 18 U.S.C. §245 to address each of these deficiencies in the current law. First, in cases involving racial, religious, or ethnic violence, the bill would prohibit the intentional infliction of bodily injury without regard to the victim's participation in one of the six specifically enumerated "federally protected activities." Second, in cases involving violent hate crimes based on the victim's sexual orientation, gender, or disability, the bill would prohibit the intentional infliction of bodily injury whenever the incident involved or affected interstate commerce. These amendments to §245 would permit the federal government to work in partnership with state and local officials in the investigation and prosecution of cases that implicate the significant federal interest in eradicating hate-based violence.

The number of hate crimes reported to the FBI by state and local law enforcement agencies has increased significantly in recent years. Many of these crimes have involved bias against gays and lesbians, women, and people with disabilities. Many others have been committed against victims who were not participating in any of the six specifically enumerated "federally protected activities" at the time of the crimes. The Federal government has a strong interest in protecting its citizens from these types of violent crimes.

It must be emphasized that state and local law enforcement agencies will continue to play a primary role in the investigation and prosecution of all types of hate crimes. From 1992 through 1997, the Department of Justice brought a total of 33 federal hate crimes prosecutions -- an average of fewer than six per year -- under 18 U.S.C. §245. We predict that the enactment of the Hate Crimes Prevention Act of 1997 would result in only a modest increase in the number of hate crimes prosecutions brought each year by the federal government. Our partnership with state and local law enforcement will continue, with state and local prosecutors continuing to take the lead in the great majority of cases. Concurrent federal jurisdiction is necessary only to permit joint state-federal investigations and to authorize federal prosecution in those instances in which state and local officials are either unable or unwilling to pursue cases that adequately address the federal interest in fighting bias crime.

CURRENT FEDERAL LAW AND THE NEED FOR EXPANDED JURISDICTION

1. The "Federally Protected Activity" Requirement of 18 U.S.C. §245

18 U.S.C. §245(b)(2) is the principal federal hate crimes statute. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin" and because of his participation in any of six "federally protected activities" specifically enumerated in the statute. The six "federally protected activities" enumerated in the statute are: (A) enrolling in or attending a public school or public college; (B) participating in or enjoying a service, program, facility or activity provided or administered by any state or local government; (C) applying for or enjoying employment; (D) serving in a state court as a grand or petit juror, (E) traveling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places of public accommodation.

The requirement that a defendant be proved to have acted not only because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of the six federally protected activities enumerated in the statute, has led federal prosecutors to decline prosecution of many incidents of brutal violence that were motivated by hate. This statutory requirement also has led to acquittals in several prominent federal prosecutions.

The following is a sampling of instances in which the "federally protected activities" requirement of Section 245 has led federal law enforcement officials to decline to prosecute serious hate crimes:

- In 1996, a group of white skinheads beat to death a homeless African-American man in a racially-motivated killing in Los Angeles and subsequently confessed to the crime. In a separate incident, several skinheads rode their bicycles over an African-American youth. In both instances, federal prosecutors lacked jurisdiction to prosecute because the victims were on private property — as opposed to a public park or other "facility" administered by a State or local government, *see* 18 U.S.C. §245(b)(2)(B) — at the time of the crimes, and thus were not engaged in "federally protected activities."
- Also in 1996, a group of white youths broke the car windshield of an African-American college student and shouted racial epithets at her as she socialized with a group of friends near Jacksonville, Florida. Again, because the incident occurred on privately owned land, no federal prosecution could be brought.
- In another recent incident in Los Angeles, white skinheads beat a Latino man in the parking lot of a privately owned convenience store. Because the incident occurred on private property, and because the convenience store did not sell food or

beverages "for consumption on the premises," as required by the statutory definition of places of "public accommodation" contained in 18 U.S.C. §245(b)(2)(F), federal prosecutors concluded that they could not satisfy the statutory "federally protected activity" requirement, and they declined to prosecute the case federally.

- In 1993 in Florida, two people robbed an African-American man and taunted him with racial insults as they set him on fire. Badly burned, the victim narrowly escaped death. The Department of Justice, however, determined that it lacked jurisdiction to prosecute because the victim was not engaged in any federally protected activity at the time of the offense.

In several other cases, the Department has brought federal hate crimes prosecutions under 18 U.S.C. §245 but has lost trials due to the statute's "federally protected activity" requirement. Examples include:

- In 1994, a federal jury in Fort Worth, Texas acquitted three white supremacists of civil rights violations arising from unprovoked assaults upon African-Americans. In one of the incidents, the defendants knocked the victim unconscious as the victim stood near a bus stop. After rendering its not guilty verdict, the jury revealed through some of its members that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any "federally protected activity." The government's proof that the defendants went out looking for African-Americans to assault was insufficient to satisfy the requirements of current federal law.
- In 1982, two white men chased a man of Asian descent from a night club in Detroit and beat him to death. The Department of Justice prosecuted the two perpetrators under 18 U.S.C. §245, but both defendants were acquitted despite substantial evidence to establish their animus based on the victim's national origin. Although the Department has no direct evidence of the basis for the jurors' decision, it appears that the government's need to prove the defendants' intent to interfere with the victim's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.
- In 1980, a notorious serial murderer and white supremacist shot and wounded an African-American civil rights leader as the civil rights leader walked from a car toward his room in a motel in Ft. Wayne, Indiana. The Department of Justice prosecuted the shooter under 18 U.S.C. §245(b)(2)(F), alleging that he committed the shooting because of the victim's race and because of the victim's participation in a federally protected activity, i.e. the use of a place of public accommodation. The jury found the defendant not guilty. Several jurors later advised the press that although they were persuaded that the defendant committed the shooting because

of the victim's race, they did not believe that he did so also because of the victim's use of the motel.

In each of these examples, one or more persons committed an act of violence clearly motivated by the race, color, religion, or national origin of the victim. Nevertheless, the additional statutory requirement that a hate crime be committed because of the victim's participation in an enumerated federally protected activity either put the case beyond the reach of federal prosecutors or made federal prosecution extremely difficult.

In several cases in recent years, the Department of Justice has sought to satisfy the federally protected activity requirement by alleging that hate crimes occurred on public streets or sidewalks — *i.e.*, while the victims were using "facilities" provided or administered by a State or local government. See 18 U.S.C. §245(b)(2)(B). The Department has used this theory successfully to prosecute the stabbing death of Yankel Rosenbaum in Crown Heights, Brooklyn and the racially-motivated shooting of three African-American men on the streets of Lubbock, Texas. Although the "streets and sidewalks" theory has enabled the Department to reach some bias crimes that occur in public places, these prosecutions remain subject to challenge. In the Lubbock case, for example, the defendants appealed their convictions, arguing that public streets and sidewalks are not "facilities" that are "provided or administered" by a State subdivision within the meaning of Section 245(b)(2)(B). The United States Court of Appeals for the Fifth Circuit recently upheld the Lubbock convictions in a short, unpublished opinion, but an appeal on similar grounds in the Crown Heights case is now pending before the United States Court of Appeals for the Second Circuit.

The federal government has a strong interest in seeing that violent hate crimes are prosecuted regardless of whether they are committed because of a victim's participation in one of the limited federally protected activities enumerated in the current statute. The statute's federally protected activity requirement has resulted in bizarre distinctions that have unnecessarily frustrated the federal government's efforts to prosecute hate crimes. For example, under current law the federal government can prosecute a violent, racially-motivated hate crime that occurs in the parking lot of a public school, see 18 U.S.C. §245(b)(2)(A), but it may lack jurisdiction if the incident occurs in a private yard across the street from the school. Similarly, it has been suggested that while the federal government can prosecute a violent, racially-motivated hate crime that occurs in a convenience store that has a video game, the federal government may lack jurisdiction if the incident occurs in a convenience store that does not have the type of amenities that would make the store a place "of entertainment." See 18 U.S.C. §245(h)(2)(F).

The proponents of S.1529 are right to seek to eliminate the federally protected activity requirement for violent hate crimes that result in bodily injury. The unnecessary, anachronistic distinctions created by current law have no place in today's federal criminal code. Federal jurisdiction should not hinge upon whether a convenience store has a video game, or upon whether a hate crime occurs in a public park or in the private yard next door.

2. Violent Hate Crimes Based on Sexual Orientation, Gender, or Disability

18 U.S.C. §245, in its current form, does not prohibit hate crimes committed because of the victim's sexual orientation, gender, or disability.

Sexual Orientation

Statistics gathered by the federal government and private organizations indicate that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in the United States. Specifically, data collected by the FBI pursuant to the Hate Crimes Statistics Act indicates that 1,256 bias incidents based on the sexual orientation of the victim were reported to local law enforcement agencies in 1996; that 1,019 such incidents were reported in 1995; and that 677 and 806 such incidents were reported in 1994 and 1993, respectively. The National Coalition of Anti-Violence Programs (NCAVP), a private organization that tracks bias incidents based on sexual orientation, reported 2,529 such incidents in 1996, 2,395 in 1995; 2,064 in 1994; and 1,813 in 1993.

Even the higher statistics reported by NCAVP may significantly underestimate the number of hate crimes based on sexual orientation that actually are committed in this country. Many victims of anti-lesbian and anti-gay incidents do not report the crimes to local law enforcement officials because they fear that they would receive an insensitive or hostile response or that they would be physically abused or otherwise mistreated. According to the NCAVP survey, 12% of those who reported hate crimes based on sexual orientation to the police in 1996 stated that the police response was verbally or physically abusive.

Despite the prevalence of violent hate crimes committed on the basis of sexual orientation, such crimes are not covered by 18 U.S.C. §245 (or any other federal criminal statute) unless there is some independent basis for federal jurisdiction, such as race-based bias. Thus, when two lesbian activists were murdered in Oregon in 1995, the Department of Justice had no jurisdiction to bring a prosecution despite the perpetrator's statement that the victims' sexual orientation "made it easier" to kill them, since he did not like lesbians.

As with all of the categories of victims protected by §1529, the Department of Justice would use its jurisdiction over hate crimes committed on the basis of sexual orientation sparingly — in the investigative stage only where appropriate to work in partnership with state or local law enforcement officials whose investigations would benefit from federal investigative resources, and in the prosecution stage only in the most sensitive cases or where necessary to serve as a backstop for the prosecution of cases that state or local prosecutors are unable or unwilling to bring in the first instance.

b. Gender

Although acts of violence committed against women traditionally have been viewed as

"personal attacks" rather than as bias crimes, many people have come to understand that a significant number of women "are exposed to terror, brutality, serious injury, and even death because of their gender."¹ Indeed, Congress, through the enactment of the Violence Against Women Act (VAWA) in 1994, has recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks. The Senate Report on VAWA, which created a federal civil cause of action for victims of gender-based hate crimes, stated:

The Violence Against Women Act aims to consider gender-motivated bias crimes as seriously as other bias crimes. Whether the attack is motivated by racial bias, ethnic bias, or gender bias, the results are often the same. The victims are reduced to symbols of hatred; they are chosen not because of who they are as individuals but because of their class status. The violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated. "Placing this violence in the context of the civil rights laws recognizes it for what it is -- a hate crime."

Senate Report No. 103-138 (1993) (quoting testimony of Prof. Burt Neuborne).

VAWA provides private parties a broad civil remedy for violence against women motivated by gender-based bias. See 42 U.S.C. §13981. However, VAWA's two criminal provisions regarding violence against women provide extremely limited coverage. Specifically, VAWA's prohibition on interstate domestic violence, 18 U.S.C. § 2261, is limited to violence against a defendant's "spouse or intimate partner" and requires that the defendant travel across a state line. VAWA's other criminal provision, 18 U.S.C. §2262, prohibits the violation of a "protection order" if the defendant travels across state lines with the intent to engage in conduct that violates that order.

The structure of VAWA's criminal provisions gives rise to at least two important concerns. First, because of VAWA's victim-based limitation -- the requirement that the victim be a "spouse or intimate partner" -- VAWA does not give the Department of Justice sufficient authority adequately to address a significant number of violent gender-motivated crimes. Serial rapists, for example, fall outside the reach of VAWA's criminal provisions even if their crimes are clearly motivated by gender-based hate and even if they operate interstate. Second, because VAWA's criminal provisions contain no requirement that the violence be gender-based or gender-motivated, the statute does not authorize the federal government to impose on the defendant the particular stigma associated with a conviction for a gender-based crime.

The majority of states do not have statutes that specifically prohibit gender-based hate crimes. Although all 50 states have statutes prohibiting rape and other crimes typically committed

¹Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, Women and Violence: Hearing Before the Senate Judiciary Committee, 101st Congress, 2nd Sess. 62 (1990).

against women, only 17 have hate crimes statutes that include gender among the categories of prohibited bias motives.

The federal government should have jurisdiction, as envisioned by S.1529, to work together with state and local law enforcement officials in the investigation of violent gender-based hate crimes and, where necessary because of the inability or unwillingness of state and local officials to bring cases in state court, to bring federal prosecutions aimed at vindicating the strong federal interest in combating the most heinous gender-based crimes of violence.

It is important to emphasize in this regard that the enactment of S.1529 would not result in the federalization of all sexual assaults and acts of domestic violence. Rather, as discussed below in greater detail, the language of the bill itself, and the manner in which the Department of Justice would interpret that language, would ensure that the federal government would strictly limit its investigations and prosecutions of violent gender-based hate crimes to those that implicate the greatest federal interest. As is the case with other categories of hate crimes, state and local authorities would continue to prosecute virtually all gender-motivated hate crimes. One principal reason for this is simple: state and local prosecutors need prove only that the perpetrator committed the crime, while federal prosecutors would need to prove not only that the perpetrator committed the crime, but also that he did so because of gender-based bias.

Disability

Over the past decade, Congress has shown a consistent and durable commitment to the protection of persons with disabilities from discrimination based on their disabilities. Beginning with the 1988 amendments to the Fair Housing Act,² and culminating with the enactment of the Americans with Disabilities Act of 1990, Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts.

Concerned about the problem of disability-based hate crimes, Congress amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from state and local law enforcement agencies. The FBI has not yet reported any statistics generated pursuant to this recent legislative directive, but other available information indicates that hate crimes based on disability occur all too frequently.

Because 18 U.S.C. §245 does not cover hate crimes committed because of the perpetrators' biases against persons with disabilities, however, the Department of Justice has no authority to investigate or prosecute these cases. Thus, when a 19 year-old man in Indiana was beaten to death by another man who thought the victim was HIV positive, the Department was without authority to act. And when the family of a man with AIDS in California was harassed by

²Congress amended the Fair Housing Act in 1988 to grant the Attorney General authority to prosecute those who use force or threats of force to interfere with the right of a person with a disability to obtain housing.

a neighbor who killed several of the family's animals, fired a rifle at the family's house, beat one family member, and held a gun to the head of another, the Department again was unable to take any action.

Anecdotal evidence also indicates that a significant number of hate crimes committed because of the victim's disability are not resolved satisfactorily at the state and local level. Examples include:

- In Denver, Colorado in 1991, a paraplegic died from asphyxiation when a group of youths stuffed him upside down in a trash can. Calling the incident a "cruel prank," local police declined to investigate the matter as a bias-related crime.
- In Brooklyn, New York in 1993, a gang of youths beat a mentally disabled 12 year-old boy. As far as the Department of Justice is aware, the case was not prosecuted locally as a hate crime.
- In California in 1995, a 16 year-old youth threw a disabled man to the ground and kicked him repeatedly. Again, as far as the Department is aware, the case was not prosecuted locally as a hate crime.

The Department of Justice accordingly believes that the federal interest in authorizing the Department of Justice to work with state and local officials in the prosecution of hate crimes based on disability is sufficiently strong to warrant amendment of 18 U.S.C. §245, as set forth in S. 1529, to include such crimes when they result in bodily injury and when federal prosecution is consistent with the Commerce Clause.

S.1529, THE HATE CRIMES PREVENTION ACT OF 1997

1. Amendments to 18 U.S.C. §245

The Hate Crimes Prevention Act of 1997 would create a three-tiered system for the federal prosecution of hate crimes under 18 U.S.C. §245, as follows:

- First, it would leave 18 U.S.C. §245(b)(2) as it is now. As discussed above, §245(b)(2) prohibits the intentional interference, or attempted interference, with a person's participation in one of six specifically enumerated "federally protected activities" on the basis of the person's race, color, religion, or national origin. No showing of bodily injury is required to prove a misdemeanor offense under this section; to prove a felony, the government must prove either that bodily injury or death resulted or that the offense included the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire.

- Second, it would add a new provision, codified at 18 U.S.C. §245(c)(1), to the statute. This provision would prohibit the intentional infliction of bodily injury on the basis of race, color, religion, or national origin. Unlike §245(b)(2), this new provision would not require a showing that the defendant committed the offense because of the victim's participation in a federally protected activity. However, an offense under the new §245(c)(1) would be prosecuted as a felony only, and a showing either of bodily injury, or of an attempt to cause bodily injury through the use of fire, a firearm, or an explosive device, would be required. Other attempts would not constitute offenses under this section.
- Third, it would add a second new provision, codified at 18 U.S.C. §245(c)(2), to the statute. This provision would prohibit the intentional infliction of bodily injury (or an attempt to inflict bodily injury through the use of fire, a firearm, or an explosive device) on the basis of religion, gender, sexual orientation, or disability. Like §245(c)(1), this provision would authorize the prosecution of felonies only and would exclude most attempts, while omitting the "federally protected activity" requirement of §245(b)(2). But unlike §245(c)(1), this second new provision would require proof of a Commerce Clause nexus as an element of the offense. Specifically, the government would have to prove "that (i) in connection with the offense, the defendant or the victim travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activity affecting interstate or foreign commerce; or (ii) the offense is in or affects interstate or foreign commerce."

2. Interstate Commerce Requirement

As discussed above, the proposed legislation would extend 18 U.S.C. §245 to cover three categories of hate crimes not reached by current law -- namely, those that are motivated by bias against a person's sexual orientation, gender, or disability. While there is a clear need to extend the scope of §245 to enable federal law enforcement officials to investigate and bring cases in these areas, the Department of Justice believes that the statutory amendments should be effected in a manner that is respectful of the criminal law enforcement prerogatives of the states. The interstate commerce element contained in §245(c)(2) would ensure that federal prosecutions for hate crimes based on sexual orientation, gender, or disability would be brought only in cases in which the federal interest is most clear. It is therefore appropriate to proceed in the measured fashion that S.1529 adopts.

The interstate commerce element also would ensure that hate crimes prosecutions brought under the new 18 U.S.C. §245(c)(2) would not be mired in constitutional litigation concerning the scope of Congress's power under the enforcement provisions of the Thirteenth and Fourteenth Amendments. The Department of Justice is confident that satisfaction of the interstate commerce element, which appears in similar form in numerous other federal criminal statutes, would insulate these new types of prosecutions from constitutional challenges to which they otherwise might be

subjected.

3. Federalization

The Department of Justice has carefully reviewed S.1529 and has concluded that its enactment would not unduly burden federal law enforcement resources. The language of the bill itself, as well as the manner in which the Department would interpret that language, would ensure that the federal government would strictly limit its investigations and prosecutions of hate crimes — including those based on gender — to the small set of cases that implicate the greatest federal interest.

In this regard, the express language of the bill contains several important limiting principles. First, the bill requires proof of a gender-based motivation for an offense; this requirement would limit the pool of potential federal cases to those in which the evidence of hate-based motivation is sufficient to distinguish them from ordinary state law cases. Second, the bill excludes misdemeanors and limits federal hate crimes based on sexual orientation, gender, or disability to those involving bodily injury (and a limited set of attempts to cause bodily injury); these limitations would narrow the set of newly federalized cases to truly serious offenses. Third, the bill's Commerce Clause element requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories; this requirement would limit federal jurisdiction in these categories to cases that implicate interstate interests. Finally, §245 already requires a written certification by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General that "in his [or her] judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice" before any prosecution under the statute may be commenced, see 18 U.S.C. §245(a)(1); this statutory certification requirement, which would extend to all prosecutions authorized by S.1529, would ensure that the Department's new areas of hate crimes jurisdiction would be asserted in a properly limited fashion.

The Department's efforts under the proposed amendments to §245 also would be guided by Department-wide policies that would impose additional limitations on the cases prosecuted by the federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department would defer prosecution in the first instance to state and local law enforcement officials except in highly sensitive cases in which the federal interest in prompt federal investigation and prosecution outweighs the usual justifications of the backstop policy. Second, under the Department's formal policy on dual and successive prosecutions, the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involved a "substantial federal interest" that the state prosecution had left "demonstrably unvindicated."

As mentioned above, the Department of Justice has brought an average of fewer than six federal hate crimes prosecutions per year over the past six years. We do not anticipate that the enactment of S.1529 would result in a significant increase in these numbers.

CONCLUSION

All Americans should join the President and the Attorney General in supporting S.1529. While maintaining the primary role of state and local governments in the investigation and prosecution of violent hate crimes, the bill would authorize the federal government to serve an important backstop function with regard to a wider range of hate-motivated violence than federal law currently permits. The bill is a thoughtful, measured response to a critical problem facing our Nation. We at the Department of Justice look forward to working with the Committee as it considers this important legislation.

105TH CONGRESS
1ST SESSION

S. 1529

To enhance Federal enforcement of hate crimes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. WYDEN, Mrs. FEINSTEIN, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To enhance Federal enforcement of hate crimes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Hate Crimes Preven-
5 tion Act of 1998".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the incidence of violence motivated by the
9 actual or perceived race, color, national origin, reli-

1 gion, sexual orientation, gender, or disability of the
2 victim poses a serious national problem;

3 (2) such violence disrupts the tranquility and
4 safety of communities and is deeply divisive;

5 (3) existing Federal law is inadequate to ad-
6 dress this problem;

7 (4) such violence affects interstate commerce in
8 many ways, including—

9 (A) by impeding the movement of members
10 of targeted groups and forcing such members to
11 move across State lines to escape the incidence
12 or risk of such violence; and

13 (B) by preventing members of targeted
14 groups from purchasing goods and services, ob-
15 taining or sustaining employment or participat-
16 ing in other commercial activity;

17 (5) perpetrators cross State lines to commit
18 such violence;

19 (6) instrumentalities of interstate commerce are
20 used to facilitate the commission of such violence;

21 (7) such violence is committed using articles
22 that have traveled in interstate commerce;

23 (8) violence motivated by bias that is a relic of
24 slavery can constitute badges and incidents of slav-
25 ery;

1 (9) although many local jurisdictions have at-
2 tempted to respond to the challenges posed by such
3 violence, the problem is sufficiently serious, wide-
4 spread, and interstate in scope to warrant Federal
5 intervention to assist such jurisdictions; and

6 (10) many States have no laws addressing vio-
7 lence based on the actual or perceived race, color,
8 national origin, religion, sexual orientation, gender,
9 or disability, of the victim, while other States have
10 laws that provide only limited protection.

11 **SEC. 3. DEFINITION OF HATE CRIME.**

12 In this Act, the term "hate crime" has the same
13 meaning as in section 280003(a) of the Violent Crime
14 Control and Law Enforcement Act of 1994 (28 U.S.C.
15 994 note).

16 **SEC. 4. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.**

17 Section 245 of title 18, United States Code, is
18 amended—

19 (1) by redesignating subsections (c) and (d) as
20 subsections (d) and (e), respectively; and

21 (2) by inserting after subsection (b) the follow-
22 ing:

23 "(c)(1) Whoever, whether or not acting under color
24 of law, willfully causes bodily injury to any person or,
25 through the use of fire, a firearm, or an explosive device,

4

1 attempts to cause bodily injury to any person, because of
2 the actual or perceived race, color, religion, or national
3 origin of any person—

4 “(A) shall be imprisoned not more than 10
5 years, or fined in accordance with this title, or both;
6 and

7 “(B) shall be imprisoned for any term of years
8 or for life, or fined in accordance with this title, or
9 both if—

10 “(i) death results from the acts committed
11 in violation of this paragraph; or

12 “(ii) the acts omitted in violation of this
13 paragraph include kidnapping or an attempt to
14 kidnap, aggravated sexual abuse or an attempt
15 to commit aggravated sexual abuse, or an at-
16 tempt to kill.

17 “(2)(A) Whoever, whether or not acting under color
18 of law, in any circumstance described in subparagraph
19 (B), willfully causes bodily injury to any person or,
20 through the use of fire, a firearm, or an explosive device,
21 attempts to cause bodily injury to any person, because of
22 the actual or perceived religion, gender, sexual orientation,
23 or disability of any person—

1 “(i) shall be imprisoned not more than 10
2 years, or fined in accordance with this title, or both;
3 and

4 “(ii) shall be imprisoned for any term of years
5 or for life, or fined in accordance with this title, or
6 both, if—

7 “(I) death results from the acts committed
8 in violation of this paragraph; or

9 “(II) the acts committed in violation of
10 this paragraph include kidnapping or an at-
11 tempt to kidnap, aggravated sexual abuse or an
12 attempt to commit aggravated sexual abuse, or
13 an attempt to kill.

14 “(B) For purposes of subparagraph (A), the cir-
15 cumstances described in this subparagraph are that—

16 “(i) in connection with the offense, the defend-
17 ant or the victim travels in interstate or foreign
18 commerce, uses a facility or instrumentality of inter-
19 state or foreign commerce, or engages in any activity
20 affecting interstate or foreign commerce; or

21 “(ii) the offense is in or affects interstate or
22 foreign commerce.”.

23 **SEC. 5. DUTIES OF FEDERAL SENTENCING COMMISSION.**

24 **(a) AMENDMENT OF FEDERAL SENTENCING GUIDE-**
25 **LINES.**—Pursuant to its authority under section 994 of

1 title 28, United States Code, the United States Sentencing
2 Commission shall study the issue of adult recruitment of
3 juveniles to commit hate crimes and shall, if appropriate,
4 amend the Federal sentencing guidelines to provide sen-
5 tencing enhancements (in addition to the sentencing en-
6 hancement provided for the use of a minor during the
7 commission of an offense) for adult defendants who recruit
8 juveniles to assist in the commission of hate crimes.

9 (b) CONSISTENCY WITH OTHER GUIDELINES.—In
10 carrying out this section, the United States Sentencing
11 Commission shall—

12 (1) ensure that there is reasonable consistency
13 with other Federal sentencing guidelines; and

14 (2) avoid duplicative punishments for substan-
15 tially the same offense.

16 **SEC. 6. GRANT PROGRAM.**

17 (a) AUTHORITY TO MAKE GRANTS.—The Adminis-
18 trator of the Office of Juvenile Justice and Delinquency
19 Prevention of the Department of Justice shall make
20 grants, in accordance with such regulations as the Attor-
21 ney General may prescribe, to State and local programs
22 designed to combat hate crimes committed by juveniles.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out this section.

7

1 **SEC. 7. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**
2 **ASSIST STATE AND LOCAL LAW ENFORCE-**
3 **MENT.**

4 There are authorized to be appropriated to the De-
5 partment of the Treasury and the Department of Justice,
6 including the Community Relations Service, for fiscal
7 years 1998, 1999, and 2000 such sums as are necessary
8 to increase the number of personnel to prevent and re-
9 spond to alleged violations of section 245 of title 18, Unit-
10 ed States Code (as amended by this Act).

11 **SEC. 8. SEVERABILITY.**

12 If any provision of this Act, an amendment made by
13 this Act, or the application of such provision or amend-
14 ment to any person or circumstance is held to be unconsti-
15 tutional, the remainder of this Act, the amendments made
16 by this Act, and the application of the provisions of such
17 to any person or circumstance shall not be affected there-
18 by.

○

Race-hate crimes

June 23, 1998

Dear Mr. Leader:

I am writing to urge the Senate to act quickly this year to pass the Hate Crimes Prevention Act of 1998. This crucial legislation would expand the ability of the Justice Department to prosecute hate crimes by removing needless jurisdictional requirements for existing crimes and by giving Federal prosecutors the power to prosecute hate crimes committed because of the victim's sexual orientation, gender, or disability.

As you know, there have been a number of recent tragedies across our country that involve hate crimes. I know you were as troubled as I was by the vicious murder in Jasper, Texas, just two weeks ago. This shocking event focused America's attention on the problem of hate crimes. I hope we can join together to reaffirm that no American should be subjected to violence on account of his or her race, color, national origin, religion, sexual orientation, gender, or disability.

Whether it is a gay American murdered as he walks home from work or a Jewish American whose synagogue is desecrated by swastikas, such acts are not only examples of bias and bigotry -- they are crimes. They strike at the heart of what it means to be an American and at the values that define us as a Nation. That is why I believe now is the time for us to take strong and decisive action to fight hate crimes.

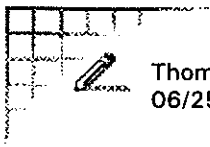
There is nothing more important to the future of this country than our standing together against

The Honorable Trent Lott
Page Two.

intolerance, prejudice, and violent bigotry. The Hate Crimes Prevention Act will lead the way in making all Americans more safe and secure. I implore you to move this vital piece of legislation through the Senate without delay.

Sincerely,

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510



Thomas L. Freedman
06/25/98 10:07:49 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: Clinton wants tough hate-crime law

FYI.

----- Forwarded by Thomas L. Freedman/OPD/EOP on 06/25/98 10:10 AM -----

Richard Socarides 06/25/98 10:05:32 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Clinton wants tough hate-crime law

----- Forwarded by Richard Socarides/WHO/EOP on 06/25/98 10:07 AM -----



Doug Case @ sdsu.edu
06/24/98 09:36:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides
cc:
Subject: Clinton wants tough hate-crime law

Associated Press
June 24, 1998

Clinton Wants Tough Hate-Crime Law

By SONYA ROSS

WASHINGTON (AP) - Citing the dragging death of a black Texas man, President Clinton urged Congress to pass a bill that would make it easier for federal prosecution of hate crimes.

Before leaving for China, Clinton sent a letter to House and Senate leaders of both parties Wednesday urging that they pass the Hate Crimes Prevention

Act, which would remove certain jurisdictional restrictions that keep Justice Department prosecutors from pursuing hate crimes.

For example, federal prosecutors now can pursue a hate crime case only if it occurs on federal property or while the victim was performing a federally protected act, such as voting.

The legislation also would make hate crimes based on gender, disability or sexual orientation federal offenses and authorize additional funds for hate crime prevention and additional law enforcers to help with state and local hate crime investigations. Current rules specify that federal hate crimes cover only incidents based on race, color, religion or national origin.

Congress did not act on the legislation after it was introduced last year. Clinton said the attack on James Byrd Jr., dragged to his death in Jasper, Texas, by three young white men driving a truck and other similar incidents argue that lawmakers must act this time.

"I know you were as troubled as I was by the vicious murder in Jasper, Texas, just two weeks ago," Clinton wrote. "This shocking event focused America's attention on the problem of hate crimes.

"Whether it is a gay American murdered as he walks home from work, or a Jewish American whose synagogue is desecrated by swastikas, such acts are not only examples of bias and bigotry. They are crimes," Clinton said. "That is why I believe now is the time for us to take strong and decisive action."

The House unanimously adopted a resolution to send its "heartfelt condolences" to Byrd's family. Members of the Congressional Black Caucus have urged that the three men charged with killing him be prosecuted under the federal hate crimes law, and the FBI and U.S. attorney's office were working with local authorities to determine whether state or federal prosecution was appropriate.

Using figures from local law enforcement agencies, the FBI reported 8,759 hate crimes in 1996. Of those, 5,396 were based on race, 1,401 on religion, 1,016 on sexual orientation, 940 on ethnic background and six for multiple reasons.

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Race-hate crimes

Draft: June 19, 1998

Honorable Trent Lott

Honorable Tom Daschle

Honorable Newt Gingrich

Honorable Richard Gephardt

Dear:

As you know, there have been a number of recent tragedies across the country that involve hate crimes. Last week, for example, a man in Jasper, Texas was killed after being dragged behind a truck. While this shocking event serves to focus America's attention on the problem of hate crimes, too many of our fellow citizens are subjected to some kind of violence on account of their race, color, national origin, religion, sexual orientation, gender, or disability.

Whether it is the gay American murdered as he walked home from work or the Jewish American whose house of worship was desecrated by swastikas, these acts are not acts of bias and bigotry -- they are crimes. They strike at the heart of what it means to be an American. They are the antithesis of the values that define us as a Nation and I know that most Americans find these acts abhorrent. That is why I believe now is the time for us to take strong and decisive action to fight these hate crimes and to put a stop to this intolerance.

I am writing you today to restate my deeply-held belief that the Congress must act quickly this year to pass the Hate Crimes Prevention Act of 1998. This crucial legislation would expand the ability of the Justice Department to prosecute hate crimes by removing needless jurisdictional requirements for existing crimes and by giving federal prosecutors the power to prosecute hate crimes committed because of bias against a person's sexual orientation, gender, or disability.

There is nothing more important to the future of this country than attacking the divisive issue of intolerance, prejudice, and violent bigotry. This legislation will lead the way in making sure people feel more safe and secure in our country, whatever their race, color, national origin, religion, sexual orientation, gender, or disability. I implore you to move this vital piece of legislation through Congress without delay.

Sincerely,

Peace-hate crimes

A BILL

To enhance Federal enforcement of hate crimes,
and for other purposes

1 *Be it enacted by the Senate and House of Representatives of the United*
2 *States of America in Congress assembled,*

3 **SEC. 1. SHORT TITLE.**

4 This Act may be cited as the "Hate Crimes Prevention Act of
5 1997".

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the incidence of violence motivated by the actual or perceived
9 race, color, national origin, religion, sexual orientation, gender, or
10 disability of the victim poses a serious national problem;

11 (2) such violence disrupts the tranquility and safety of communities
12 and is deeply divisive;

13 (3) existing Federal law is inadequate to address this problem;

14 (4) such violence affects interstate commerce in the
15 following ways, among others:

16 (a) such violence impedes the movement of members of
17 targeted groups and forces such members to move

- 1 across state lines to escape the incidence or risk of such
2 violence;
- 3 (b) such violence prevents members of targeted groups from
4 purchasing goods and services, obtaining or sustaining
5 employment or participating in other commercial activity;
- 6 (5) perpetrators cross state lines to commit such violence;
- 7 (6) instrumentalities of interstate commerce are used to facilitate the
8 commission of the offense;
- 9 (7) such violence is committed using articles that have travelled in
10 interstate commerce;
- 11 (8) Violence motivated by bias that is a relic of slavery can
12 constitute badges and incidents of slavery.
- 13 (9) although many local jurisdictions have attempted to respond to
14 the challenges posed by such violence, the problem is sufficiently serious,
15 widespread, and interstate in scope to warrant Federal intervention to
16 assist such jurisdictions; and
- 17 (10) Many states have no laws addressing violence based on the
18 actual or perceived race, color, national origin, religion, sexual orientation,
19 gender, or disability, of the victim, while other states have laws that
20 provide only protection.

1 **SEC. 3. PROHIBITION OF CERTAIN ACTS OF VIOLENCE**

2 (a) Section 245 of title 18 of the United States Code is
3 amended by adding a new subsection © as follows:

4 “(1) Whoever, whether or not acting under color of
5 law, willfully causes bodily injury to any person,
6 or through the use of fire, a firearm or an explosive
7 device, attempts to cause bodily injury to any person,
8 because of the actual or perceived race, color
9 religion, or national origin of any person shall be
10 imprisoned not more than ten years, or fined in
11 accordance with this title, or both; and if death results
12 from the acts committed in violation of this section or
13 if such acts include kidnapping or an attempt to kidnap,
14 aggravated sexual abuse or an attempt to commit
15 aggravated sexual abuse, or an attempt to kill,
16 shall be imprisoned for any term of years or for life, or
17 fined in accordance with this title, or both.

20 (2) Whoever, whether or not acting under color of law, in any of
21 the circumstances referred to in subsection (3) of this section, willfully
22 causes bodily injury to any person or through the use of fire, a firearm or

1 an explosive device, attempts to cause bodily injury to any person,
2 because of the actual or perceived religion, gender, sexual orientation, or
3 disability of any person shall be imprisoned not more than ten years, or
4 fined in accordance with this title, or both; and if death results from the
5 acts committed in violation of this section or if such acts include
6 kidnapping or an attempt to kidnap, aggravated sexual abuse, or an
7 attempt to commit aggravated sexual abuse, or an attempt to kill shall be
8 imprisoned for any term of years or for life, or in accordance with this
9 title, or both.

10 (3) The circumstances referred to in subsection (2) are that in
11 connection with the offense, the defendant travels in interstate
12 or foreign commerce, uses a facility or instrumentality of
13 interstate or foreign commerce, or engages in activities that
14 affect interstate or foreign commerce, or that the offense is in
15 or affects interstate or foreign commerce."

16 **SEC. 4. TECHNICAL AMENDMENT**

17 Subsection © of section 245 of title 18 is redesigned as subsection
18 (d), and subsection (d) of section 245 of title 18 is redesigned as
19 subsection (e).

20 **SEC. 5. DUTIES OF FEDERAL SENTENCING COMMISSION**

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(a) DEFINITION OF HATE CRIME.--In this section, the term "hate crime" shall have the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).

(b) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.-- Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

© CONSISTENCY WITH OTHER GUIDELINES.-- In carrying out this section, the United States Sentencing Commission shall--

- (1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and
- (2) avoid duplicative punishments for substantially the same offense.

1 **SEC. 6. GRANT PROGRAM.**

2 **(b) AUTHORITY TO MAKE GRANTS.--** The
3 Administrator of the Office of Juvenile Justice and
4 Delinquency Prevention of the Department of Justice shall
5 make grants, in accordance with such regulations as the
6 Attorney General may prescribe, to State and local programs
7 designed to combat hate crimes committed by juveniles.

8 **© AUTHORIZATION OF APPROPRIATIONS.--** There
9 are authorized to be appropriated such sums as may be
10 necessary to carry out this section.

11 **SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**
12 **ASSIST STATE AND LOCAL LAW ENFORCEMENT.**

13 There are authorized to be appropriated to the Department of the
14 Treasury and the Department of Justice, including the Community
15 Relations Service, in fiscal years 1998, 1999 and 2000 such sums as
16 are necessary to increase the number of personnel to prevent, and
17 respond to alleged violations of section 245 of title 18, United
18 States Code.

19 **SEC. 7. SEVERABILITY**

20 If any provision of this Act, or the application of any provision to

1 any person or circumstance, is held invalid, the remainder of this
2 Act, or the application of any provision to persons or circumstances
3 other than those as to which it is held invalid, is not affected
4 thereby.

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Race-hate crimes

Background on
White House Conf.
on Hate Crimes

THE WHITE HOUSE

WASHINGTON
November 6, 1997

THE PRESIDENT WAS SEEN
11-7-97

Handwritten signature/initials

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
MARIA ECHAVESTE

SUBJECT: WHITE HOUSE CONFERENCE ON HATE CRIMES

On November 10, you will host the White House Conference on Hate Crimes at George Washington University. This memorandum outlines the structure of the conference, as well as the policy initiatives that we recommend you announce there.

Purpose and Structure of the Conference

The White House Conference on Hate Crimes is designed to call national attention to the problem of hate crimes and to highlight effective law enforcement and educational strategies to address this problem.

Breakfast in the East Room. The Conference will begin with a breakfast in the East Room for the approximately 350 participants. The Attorney General will introduce you, and you will make brief welcoming remarks.

Morning Session. The morning session will begin with welcoming remarks by Stephen Trachtenberg, President of George Washington University. The Vice-President will then speak briefly. The following people will introduce you and the Vice President:

- Chuennee Sampson, student, Duke University, North Carolina. As an African-American high school student in Crown Heights, NY, Ms. Sampson became a peer trainer with the Anti-Defamation League ("ADL"). She helped start the *Students Against Violence Everywhere* ("SAVE") while in high school. Ms. Sampson continues to work with children in low-income areas.
- William Johnson, retired police officer, Boston Police Department. Mr. Johnson has worked extensively in the hate crimes unit in Boston, and recently won an award for his involvement.

During your remarks, you will announce several new law enforcement and prevention initiatives, including a proposal to expand the principal federal hate crimes statute. These

initiatives are detailed later in this memorandum.

Following your remarks, you will moderate a panel discussion with the Attorney General, the Secretary of Education, and seven other participants. Each of the seven participants listed below will give brief opening remarks:

- Peter Berendt, Principal, Mamaroneck Avenue Elementary School, Mamaroneck, New York. Following a series of hate crimes in the community, Mr. Berendt convened the *E Pluribus Committee* to address the diversity issues facing the school community. His school currently is engaged in a comprehensive diversity awareness program.
- Tammie Schnitzer, Billings, Montana. Ms. Schnitzer is a Jewish woman who was the victim of an anti-Semitic hate crime in Billings, Montana. In response, Ms. Schnitzer successfully encouraged Jews and non-Jews alike to display menorahs in the windows of their homes. Ms. Schnitzer's efforts were the subject of a television movie, *Not in This Town*.
- Hon. Sheila Kuehl, President Pro Tempore, California State Assembly. Ms. Kuehl is the first openly gay or lesbian member of the California State Assembly and the author of legislation to prohibit discrimination against gay and lesbian students in California public schools. Ms. Kuehl also has been an outspoken advocate condemning violence against women.
- Raymond Delos Reyes, sophomore, Franklin High School, Seattle, Washington. Mr. Reyes has worked with the ADL's Children of the Dreams program and is a member of a peer mediation training program at his high school.
- Samuel Billy Kyles, Pastor, Monumental Baptist Church, Memphis, Tennessee. Mr. Kyles is an outspoken advocate of civil rights and plays an important role in the religious community's efforts to erase hate crimes. Mr. Kyles is a member of Ecumenical Minister's Task Force. He also was a close friend of Dr. Martin Luther King and was with Dr. King during the last hours of his life.
- Arturo Venegas, Jr., Chief of Police, Sacramento Police Department. Mr. Venegas helped to develop the Sacramento Police Department's model program to deal with hate crimes in the community.
- Grant Woods, Arizona Attorney General. Mr. Woods was a strong advocate for one of the first and strongest hate crime bills in the country and was the most visible Republican proponent of the Martin Luther King Holiday.

Afternoon Session. The afternoon session will consist of seven breakout sessions of approximately fifty participants each. Each of these sessions will address a different aspect of

the hate crimes issue and will be moderated by a Cabinet Secretary or senior government official. The topics and moderators of the breakout sessions are:

1. Hate Crimes in Schools (K-12): Prevention and Response (Secretary Riley);
2. Hate Crimes on Campus: Prevention and Response (Franklin Raines);
3. Law Enforcement Response to Hate Crimes (Attorney General Reno);
4. Understanding the Problem: Improving Hate Crime Statistics (Deputy Attorney General Holder);
5. Hate Crimes in Public and Private Housing (Secretary Cuomo);
6. Community Responses to Hate Crimes (Secretary Glickman); and
7. Counteracting Organized Hate (Secretary Slater).

Following the breakout sessions, the Attorney General will host a panel, consisting of the six other moderators of the breakout groups. This panel discussion will highlight the issues and ideas that surfaced during the breakout sessions. Following the panel discussion, the Attorney General will make concluding remarks.

Satellite Sites. People at approximately 45 satellite sites across the country will view your remarks and the morning panel discussion. The satellite hosts have planned customized programs for the afternoon to complement the morning program. Some members of your Race Advisory Board are participating in the programs occurring at the satellite sites.

Policy Announcements to be Made at the Conference

We recommend that you make the following policy announcements, which focus on the expansion of the federal hate crimes legislation, the improvement of law enforcement mechanisms to fight hate crimes, and the dissemination of educational materials on this issue.

Legislation. You can announce the Administration's support for legislation to expand the principal federal hate crimes statute. The law currently prohibits hate crimes only on the basis of race, color, religion, or national origin. Your proposed amendment would extend the law to prohibit hate crimes based on gender, sexual orientation, and disability. (To satisfy constitutional concerns, the law would require proof of interstate commerce in this new class of cases.) Senator Kennedy and Senator Spector are expected to introduce this legislation shortly after the Conference.

There is some concern that extension of the statute to gender-motivated hate crimes--which might lead to the inclusion of all rapes and sexual assaults--would greatly expand the number of cases requiring investigation by federal agents. In order to address this concern, the Administration supports several limiting principles that would reduce the number of cases actually investigated and prosecuted by the federal government. Guidance to federal investigators and prosecutors, for example, might suggest investigation and prosecution of gender-motivated hate crimes only in cases that appear to involve the most egregious evidence of

11-7-97

gender-based bias. In addition to rebutting charges that the proposed amendment would lead to the federalization of much "ordinary" crime, such guidance also would greatly reduce the cost associated with federal enforcement. (Given the low probability that this amendment will pass this year -- as well as a fair degree of confidence that, if necessary, DOJ can enforce it with existing resources -- DOJ is not requesting any funds in 1999 to implement this legislation.)

Enforcement. We also recommend that you announce a package of law enforcement proposals, including:

- Creation of a Network of Local Hate Crime Working Groups. Under this proposal, each U.S. Attorney would either establish a local hate crime working group in his or her district, or if such a body already exists, actively participate in the group. These working groups--essentially federal-state-local partnerships-- would include representation from the U.S. Attorney's office, the FBI, state and local law enforcement, state and local prosecutors' offices, and advocacy groups. In addition to addressing law enforcement strategies, the groups would seek to educate the public about hate crimes. A National Hate Crimes Working Group, located at the Main Justice, would coordinate the work of all the working groups across the country. As part of this coordinating function, the National Hate Crimes Working Group would distribute, on an ongoing basis, information on promising practices.

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Additional FBI Agents for Hate Crimes Enforcement. This proposal involves assigning over 40 FBI agents and prosecutors to the task of hate crimes enforcement. OMB and Justice are currently discussing whether Justice needs additional monetary resources to effect this policy. (The cost of the agents and prosecutors is approximately \$4 million; DOJ has asked for about \$13 million in FY99 for hate crimes/civil rights activities.) We plan to try to avoid this budgetary issue by simply saying that the amount of additional resources required, if any, will be settled in the normal budget process.

- Hate Crimes Training for Law Enforcement. DOJ has developed a model law enforcement training curriculum on hate crimes that can be incorporated into programs at local and state law enforcement training centers. This curriculum includes three course segments -- one for law enforcement officers, one for investigators, and one for others in the law enforcement field. You can direct DOJ to make this curriculum available for use across the country in 30 days.
- Make 'em Pay Initiative. HUD has developed an initiative to assist victims of hate crimes and discrimination in housing to seek monetary damages from the perpetrators. HUD has created a unit that will bring civil suits on behalf of residents of public and private housing who have suffered hate crimes and other discrimination. This initiative will require no new money.

11-7-97

- Improved Reporting of Hate Crimes Statistics. The National Crime Victimization Survey is an annual survey conducted by the Department of Justice's Bureau of Justice Statistics to measure levels of crime through a national sampling of victims of crime. At present, it does not include questions about hate crimes. Beginning in 1998, the Department of Justice will include questions related to hate crime in NCVS. The survey will inquire whether the victim believes the incident was bias-motivated and why. (The Government currently does attempt to gather hate crimes statistics, but by a notably less effective mechanism.) Expanded questioning regarding hate crimes will also be a part of a pilot project to take place next spring to improve the NCVS.

Education. You can also announce two new educational initiatives. First, the Departments of Justice and Education have proposed a manual for educators on preventing youth hate crime that encourages schools to confront hate-motivated behavior among students; promotes development of comprehensive, programmatic responses to prejudice and violence; and makes educators aware of resources that can be used for this purpose. The Departments intend to send this resource guide to every school in the country. Second, the Department of Justice has created a new website, "Hateful Acts Hurt Kids," addressing prejudice, discrimination, and related issues in an interactive, graphic format designed for children in kindergarten through fifth grade, as well as their parents and teachers. This site will be available for viewing at the Conference.

THE CLINTON ADMINISTRATION: DRAWING A LINE AGAINST HATE CRIMES

The Clinton Administration: Fighting Hate in Our Communities

- ▶ In Richland, Mississippi, four members of a neo-Nazi skinhead organization pled guilty to conspiracy and interfering with the housing rights of an interracial couple by throwing a molotov cocktail at their trailer home.
- ▶ Three defendants, one of whom is a racist skinhead and a member of the white supremacist group "South Bay Nazi Youth," were convicted of a civil rights conspiracy after they drove through the streets of Lubbock, Texas, hunting African-American men, luring them to the conspirators' car, and shooting the men at close range with a short-barreled shotgun. One victim died, one was seriously wounded in the face, and another had a finger blown off.
- ▶ In Livingston, Texas, six defendants pled guilty to civil rights charges for beating randomly selected African-American men with a rifle and a rodeo belt buckle, and punching them repeatedly as they tried to escape. The defendants had been angered at seeing other black men in the presence of white women.
- ▶ In Livermore Falls, Maine, two defendants pled guilty to civil right charges charges after firing shots at the Latino victims' fleeing car, wounding one victim in the arm.

[Source: Department of Justice, Civil Rights Division,

10/97]

Fighting Hate Crimes Through Tough Law Enforcement:

Vigorously Prosecuting Hate Crimes Under the Civil Rights Statutes. Several federal statutes provide jurisdiction to prosecute hate crimes -- crimes where the perpetrator selects his victim on the basis of certain characteristics such as race, color, religion, and national origin. Since 1989, over 500 defendants in more than half of the 50 states have been convicted on federal criminal civil rights charges for interfering with various federally protected rights of minority victims. Virtually all defendants charged in these cases have been convicted. President Clinton's Justice Department has vigorously prosecuted hate crime incidents, including where the defendants were members of organized hate groups, such as the Ku Klux Klan and various skinhead gangs.

Enhanced Penalties For Hate Crimes. As part of the historic 1994 Crime Act, the President signed the Hate Crimes Sentencing Enhancement Act which provides for longer sentences where the offense is determined to be a hate crime. In 1996 alone, 27 cases received enhanced sentences.

The Bureau of Alcohol, Tobacco and Firearms (ATF) Provides Expertise in Arson and Explosives Investigations to Help Fight Hate Crimes Throughout America. While enforcing explosives and arson laws over which it has jurisdiction, ATF has participated in the

investigations of bombing and arson incidents triggered by animus against characteristics such as race and sexual orientation. The ATF, for example, has investigated the bombing of predominantly gay bars and nightclubs.

Sensible Gun Regulation Helps Stem the Flow Of Firearms that Can Fuel Hate Group Activity. Many organized hate groups use guns to carry out violent offenses covered by hate crime statutes. Treasury bureaus work to intercept gun shipments into the U.S. and to regulate the illegal sale and possession of firearms by potential perpetrators of hate crimes and other offenses.

Prosecuting Hate Crimes Aimed At Our Houses of Worship:

Fighting Hate Crimes Aimed at Houses of Worship. The President fought for and signed the Church Arson Prevention Act of 1996, which facilitates prosecutions of racially motivated arsons and other acts of desecration against houses of worship.

Creating the National Church Arson Task Force. President Clinton established the National Church Arson Task Force (NCATF) in June 1996 to oversee the investigation and prosecution of arsons at houses of worship around the country. The NCATF has brought together the FBI, ATF, and Justice Department prosecutors in partnership with state and local law enforcement officers and prosecutors. Well over 200 ATF and FBI investigators have been deployed in these investigations. In addition, the NCATF has coordinated with other agencies, such as the Federal Emergency Management Agency and the Department of Housing and Urban Development, in the federal government's efforts to promote arson prevention and provide resources for church rebuilding.

- ▶ Many of the 508 incidents investigated by NCATF have been solved, mainly by a combination of federal and state arrests and prosecutions. Since January 1995, there have been 240 arrests and over 100 convictions, including the first convictions under the Church Arson Prevention Act. This rate of arrest (35%) for crimes that may have been motivated by hate or bias is more than double the 16% rate of arrest for arsons in general.

Working with Communities Against Hate:

Bringing Communities Together to Fight Hate. The Department of Justice's Community Relations Service often becomes involved when a hate crime incident threatens harmonious racial and ethnic relations in a community. The Service uses mediation to provide representatives of community groups and local governments with an impartial forum to restore stability through dialogue and discussion. It conducts training conferences on how to prevent and respond to hate crimes for state and local law enforcement and agencies, academic institutions, and civic, business, and community organizations.

Focusing on Youth Attitudes that Create Hate Crimes. The Department of Education is supporting efforts at the local level to develop and implement innovative and effective strategies

for preventing hate crimes, including by funding programs aimed at reducing violent, hate-motivated behavior among youth.

Understanding the Problem of Hate Crimes:

Gathering Information on the National Scope of the Problem. The FBI Uniform Crime Report collects the only national data on hate crimes through the Uniform Crime Reporting (UCR) Program. In 1996, 11,355 law enforcement agencies, representing 84% of the nation's population, participated in the FBI's data collection efforts. These departments reported 8,759 incidents of hate crimes in 1996.

Studying Hate Crimes: The National Institute of Mental Health (NIMH) has funded the first large-scale study of the mental health consequences of hate crimes, focusing on anti-gay hate crimes. The preliminary findings of this research are that hate crimes have more serious psychological effects on victims than do non-bias motivated, but otherwise similar crimes. The study also provides information about the prevalence of anti-gay hate crimes and the rate at which these crimes are reported to the police.

Race-hate crimes



Washington, D.C. 20410

News Release

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FOR RELEASE
Monday
Nov. 10, 1997

PRESIDENT CLINTON ANNOUNCES "MAKE 'EM PAY" CRACKDOWN BOOSTING FINES FOR HOUSING DISCRIMINATION HATE ACTS

WASHINGTON -- As part of his crackdown on hate crimes, President Clinton today announced a five-part "Make 'Em Pay" initiative to fight housing-related acts of hate violence and intimidation with sharply higher fines and increased enforcement.

"The Fair Housing Act says every family in this nation has the right to live in any neighborhood and in any home they can afford," the President said. "Our message to those who violate this law is simple: If you try to take this right away, we will make you pay -- with higher fines and stepped-up enforcement."

"Housing discrimination and hate violence are ugly parts of American history that have no place in our present or future," said Housing and Urban Development Secretary Andrew Cuomo, whose Department will spearhead the Make 'Em Pay initiative in partnership with the Department of Justice. "At the President's direction, HUD is setting far tougher financial penalties to deter people from committing hate crimes and serious housing discrimination -- as well as to punish the worst offenders. This initiative makes clear that hate violence and housing discrimination do not pay."

The five-part Make 'Em Pay initiative is one of a series of actions the President announced at the White House Conference on Hate Crimes today. The initiative intensifies the crackdown on illegal housing discrimination ordered by the President on Sept. 30.

Make 'Em Pay calls for:

- Sharp increases in financial penalties against those who commit hate acts involving housing discrimination.

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- An agreement now being finalized between HUD and the Department of Justice to work together to take many more criminal and civil actions against hate acts involving housing discrimination.

- An intensified effort to work with fair housing groups and government agencies funded by HUD to uncover cases of housing discrimination involving intimidation and violence and to help victims file complaints.

- A training course for fair housing groups, state and local investigators, and HUD employees to help them better identify and take action to prevent and crack down on hate acts involving housing discrimination.

- Using the internet and other technology, and better publicizing HUD's toll-free housing discrimination phone line -- 1-800-669-9777-- to make it easier and less bureaucratic for people to file complaints of housing discrimination and to enable HUD to collect information on more cases.

A new HUD internal task force will monitor progress of the Make 'Em Pay investigations, civil prosecutions and outreach efforts and compile monthly progress reports.

Housing discrimination is an important element of hate crimes. Of 8,759 hate crimes reported nationally to the FBI in 1996, 2,416 -- 27.5 percent -- were covered by the Fair Housing Act. While reported hate crimes overall rose 10 percent from 1995, those involving housing discrimination rose by more than 20 percent during the period. The actual number of hate crimes is believed to be higher, because many go unreported.

The Fair Housing Act bars housing discrimination on account of race, color, religion, sex, disability, family status and national origin. The Act covers the sale, rental, financing and advertising of almost all housing in the nation. Fair housing investigations are conducted by HUD investigators, state and city agencies working with HUD, and private fair housing groups that receive HUD funds.

If an investigation shows that there is reasonable cause to believe that discriminatory housing practices have occurred and a settlement cannot be reached, HUD issues charges and legal action is taken. If someone is found to have violated the Fair Housing Act, he or she can be fined, and the victims can receive monetary compensation for actual damages, humiliation, mental distress, loss of their fair housing rights, and attorney fees and court costs. A finding by a federal court of a violation may also include an assessment of punitive damages.

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Here is a more detailed explanation of each element of the Make 'Em Pay initiative:

• INCREASING PENALTIES FOR HATE ACTS INVOLVING HOUSING

DISCRIMINATION: Currently, HUD guidelines assess a single fine of up to \$11,000 against a first-time offender in a housing discrimination case, no matter how many discriminatory acts the person takes against an individual or family. If someone is found liable for housing discrimination, future offenses also carry greater fines -- \$27,500 for second-time offenders and \$55,000 for third-time offenders. HUD's new rule would assess separate fines for each act of discrimination committed. Under these new guidelines, a first-time offender who commits multiple acts of proven discrimination would face a fine of up to \$11,000 for each individual act. For example three incidents would mean a fine of \$33,000. In contrast, under the existing guidelines this person would face a top fine of \$11,000. Offenders previously found liable would face fines of up to \$27,500 for each act, and offenders found liable twice for discrimination would face fines of up to \$55,000 for each new act under the new guidelines. These will go into effect after a period of public comment and review by Congress.

• A CLOSER PARTNERSHIP BETWEEN HUD AND THE DEPARTMENT OF

JUSTICE: The Department of Justice will strengthen an existing agreement with HUD to assist in the crackdown against hate acts involving housing discrimination. HUD will promptly refer appropriate cases to Justice for criminal prosecution. The Justice Department will notify HUD immediately if it decides a housing discrimination case does not warrant criminal prosecution, so that HUD can act quickly to file civil charges under the Fair Housing Act. Justice will also: promptly report to HUD incidents of housing-related hate violence or intimidation reported to the FBI and other Justice agencies, and train HUD investigators to handle cases of housing-related violence and intimidation.

• A CLOSER PARTNERSHIP BETWEEN HUD AND OTHER GROUPS:

HUD will create a national partnership with civil rights, advocacy and fair housing enforcement agencies at the local and state government level to identify and track housing discrimination cases. Fair housing groups funded by HUD will be required to report housing-related hate activities directly to HUD for fast processing, rather than handling such cases only at the local or state level.

• BETTER TRAINING FOR THOSE FIGHTING DISCRIMINATION:

HUD will develop and implement Make 'Em Pay training programs for fair housing groups, recipients of HUD funds, and HUD staff on the pursuit, investigation and prosecution of housing-related hate activity.

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• **USING TECHNOLOGY TO FIGHT DISCRIMINATION:** Within 60 days, HUD will create a new interactive site on its existing Internet Web Page -- <http://www.hud.gov> -- to enable groups and individuals to report housing discrimination directly to the Department. The Web site will also carry more information about housing discrimination. HUD will also use news databases to learn about housing hate acts and to help victims file complaints if they desire. HUD will more heavily publicize its existing hate crime phone line -- 1-800-669-9777 -- which takes housing discrimination complaints in both English and Spanish.

Cuomo was joined at a news conference announcing the Make 'Em Pay initiative by William Craig Smith and his wife, Gloria -- an African American couple who filed a fair housing complaint with the West Virginia Human Rights Commission in March. HUD later became involved in investigating the case and filed civil charges in October on the Smiths' behalf to recover damages from the neighboring John Hobbs family in Belle, WV and to obtain civil fines from the Hobbs' family.

The Smiths said members of the Hobbs family barricaded the path leading to the Smith's land; threatened the black family with a gun; threatened the Smiths with a knife; and intimidated the Smiths by hanging black plastic ducks from a cross.

HUD's civil charges accuse Hobbs, his wife, son and daughter-in-law of taking a series of actions violating the Fair Housing Act against the Smiths and their three children. Under current guidelines, the Hobbs family members can be fined a maximum of \$11,000 by an administrative law judge. Under the new guidelines, they could be fined \$11,000 for each incident of proven housing discrimination.

During President Clinton's first term, HUD reached out-of-court settlements on 6,517 housing discrimination cases. The Department took enforcement actions on 1,085 cases, in which HUD issued housing discrimination charges or referred cases to the Department of Justice. HUD obtained \$17.8 million in compensation for housing discrimination victims during the President's first term.

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**HATE CRIMES CONFERENCE
TALKING POINTS/BRIEFING MATERIALS
RELATING TO THE ADMINISTRATION'S
LEGISLATIVE PROPOSAL
Monday, November 10, 1997
The White House**

PURPOSE

As part of the conference, the President will be announcing new federal hate crimes legislation. The legislation will alter present federal hate crimes legislation in two significant ways. 18 U.S.C. Sec. 245 prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate or interfere with) "any person because of his race, color, religion or national origin" and because of his participation in any six "federally protected activities" enumerated in the statute. The proposed legislation would:

- also make illegal hate crimes involving bodily injury, eliminating the need to prove a federally protected activity in such instances. The protected activities are: enrolling in or attending any public school or college; participating in or enjoying any service, program, facility or activity provided or administered by any State or local government; applying for or enjoying employment; serving in any State court as a grand or petit juror; traveling in or using any facility of interstate commerce; and enjoying the goods or services of a place of public accommodation; and
- add sexual orientation, gender, and disability as protected categories. These categories would also require proof that, in connection with the offense, the "defendant travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activities that affect interstate or foreign commerce, or that the offense is in or affects interstate or foreign commerce." This interstate commerce connection will make the proposed legislation consistent with Supreme Court rulings on the power of Congress to legislate in this area.

We suspect that there will be a variety of questions regarding this proposed legislation. We have provided bullets and talking points to clarify issues and defend the proposed legislation.

TALKING POINTS/PRESS QUESTIONS

Why "Hate Crimes"

- Hate crimes are horrible crimes against persons motivated by a victims' race, color, religion, gender, national origin, sexual orientation or disability. If the person was not a member of the disfavored group, the hate crime would not occur.
- Hate crimes do not just affect the individual victim. If someone is attacked because of their race, color, national origin, religion, gender, sexual orientation or disability, the violent act is deeply divisive. The government has a strong national interest in condemning the act both because it harms the individual victim, and because of its pervasive harm to the group that the victim belongs to.]
- Hate crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest. [From *Wisconsin v. Mitchell*]
- The incidence of violence motivated by actual or perceived race, color, religion, national origin, gender, disability or sexual orientation of the victim poses a serious national problem.]
- As a society, we cannot tolerate hate crimes and current federal law is inadequate to address the problem.

Elimination of Federally Protected Activity Requirement

- The "federally protected activity" requirement has prevented the United States from prosecuting many instances of brutal violence that were motivated by hate.
- In several cases, the Department has brought federal hate crimes prosecutions under 18 U.S.C. 245 but has lost trials due to the statute's "federally protected activity" requirement. Examples include:
 - In 1980, Vernon Jordan, then the Director of the National Urban League, was shot and seriously wounded as he walked from a car toward his room in the Marriott Motel in Ft. Wayne, Indiana. The Department prosecuted a man named Joseph Paul Franklin under 18 U.S.C. 245(b)(2)(F), alleging that Franklin shot Jordan because of Jordan's race and because Jordan was engaged in a federally protected activity, *i.e.* the use of a place of public accommodation. The jury acquitted Franklin. Several jurors later advised the press that they voted to acquit because they concluded that Franklin did not shoot Jordan out of an interest in interfering with Jordan's use of a hotel.
 - In 1982, two white men chased Vincent Chin, a man of Asian descent, from a night club in Detroit and beat him to death. The Department prosecuted the two

perpetrators under Section 245, but both defendants were acquitted despite substantial evidence to establish their animus based on Mr. Chin's national origin. Although we have no direct evidence of the basis for the jurors' decision, as we do in the case involving Vernon Jordan, it appears that the government's need to prove the defendants' intent to interfere with Mr. Chin's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.

- In other cases, the Department determined it could not make a showing of a "federally protected activity," and thus did not file the case:
 - In 1996, a group of white skinheads beat to death a homeless African-American man in a racially-motivated killing in L.A. and subsequently confessed to the crime. In a separate incident, several skinheads rode their bicycles over an African-American youth. In both instances, federal prosecutors lacked jurisdiction to prosecute because the victims were on private property at the time of the crimes, and thus not engaged in a "federally protected activity."
 - In 1996, a group of white youths broke the car windshield of an African-American college student and shouted racial epithets at her as she socialized with a group of friends near Jacksonville, Florida. Again, because the incident occurred on privately owned land, no federal prosecution could be brought.
 - In another recent incident in Los Angeles, white skinheads beat a Latino man in the parking lot of a privately owned convenience store. Because the incident occurred on private property, and because the convenience store did not sell food or beverages "for consumption on the premises," as required by the statutory definition of places of "public accommodation," federal prosecutors concluded that they could not satisfy the statutory "federally protected activity" requirement, and they turned the matter over to the state for prosecution.
 - In 1993 in Florida, two people robbed an African American man and taunted him with racial insults as they set him on fire. Badly burned, the victim narrowly escaped death. The Department, however, determined that it lacked jurisdiction to prosecute because the victim was not engaged in any federally protected activity at the time of the offense.
- The elimination of a federally protected activity requirement in the proposed legislation applies only in instances where bodily injury occurs. The legislation is therefore intended to cover those egregious instances of hate crimes -- those that result in death or bodily injury.]

Gender

- The addition of gender as a protected group in the hate crimes legislation will vindicate a strong federal interest in prosecuting those who would harm a person because of his or her gender.
- Congress first recognized the problem of hate violence based on gender when it enacted the Violence Against Women Act (VAWA) in 1994. VAWA's criminal provisions apply only when the violence occurred between a spouse or intimate partner. As Congress recognized then, however, women "are exposed to terror, brutality, serious injury, and even death because of their gender." This new statute would extend criminal provisions to cover all gender-based hate crimes.
- Not every rape, sexual assault, or violent act in an abusive relationship is a violation of the proposed federal statute. In addition to the violent act, there must be evidence of bias toward the victim because of the victim's gender and a showing that the offense implicates interstate commerce.
- While we expect that the number of gender- hate crimes investigations and prosecutions will expand the resources of the Department, the statute seeks to limit gender cases prosecuted in a reasoned manner. Generally accepted guidelines for identifying bias crimes will prove useful in analyzing gender-motivated bias crimes. These guidelines look to language, severity of attack, and patterns of behavior.
- There is a strong federal need here. The majority of states do not have statutes that specifically prohibit gender-based hate crimes. Often, there is gender bias in law enforcement that also creates a climate that permits gender-based violence committed by private individuals to flourish. The federal government needs to have jurisdiction to fill this void in appropriate cases.
- Only 17 states have gender hate-crimes provisions.
- We are not talking about all rapes or all violence against women. We are talking about those cases that implicate a strong federal interest and affect interstate commerce. For example, the federal government cannot presently prosecute a serial rapist who travels from state to state, and whose conduct, including language used and mutilation, suggest a gender bias. In considering the volume of cases likely to result from the new legislation, it is noteworthy that gender hate-crimes provisions in the States that have them have not resulted in large numbers of prosecutions.

Sexual Orientation

- Hate crimes based on sexual orientation constitute a significant problem.
- Data collected by the FBI under the Hate Crimes Statistics Act indicates that 1,019

incidents based on sexual orientation were reported to local law enforcement agencies in 1995, that 677 such incidents were reported in 1994, and that 806 such incidents were reported in 1993.

- Information collected by the National Coalition of Anti-Violence Programs (NCAVP), which tracks bias incidents based on sexual orientation, reported 2,529 such incidents in 1996, 2,395 such incidents in 1995, 2,064 such incidents in 1994, and 1,813 such incidents in 1993.
- Even the statistics reported by NCAVP may significantly underestimate the number of hate crimes based on sexual orientation. Many victims of anti-lesbian and anti-gay incidents do not report the crimes to local law enforcement officials because they fear that they would receive an insensitive or hostile response or that they would be physically abused or otherwise mistreated. According to the NCAVP survey, 12% of those who reported hate crimes based on sexual orientation to the police in 1996 stated that the police response was verbally or physically abusive.
- Hate crimes based on sexual orientation are not covered by federal hate crimes statutes unless there is some other, independent basis for federal jurisdiction (i.e. crime that occurred on federal property). Thus, when two lesbian activists were murdered in Oregon in 1995, the Department had no jurisdiction to prosecute despite the perpetrator's statement that the victims' sexual orientation "made it easier" to kill them, since he did not like lesbians.
- State and local officials do not always respond appropriately to hate crimes based on sexual orientation. The NCAVP cited the following examples in 1996:
 - In Marengo, Illinois, a gay man was found dead with multiple stab wounds to the neck and back. A former employee confessed to the crime. The former employee had been taunting and menacing the victim, and then abducted him. After beating the victim and threatening him with a knife, the former employee forced the victim to withdraw a sum of money from his ATM and then stabbed him to death. The victim's partner reported to the police that the victim was missing, but the police failed to respond quickly or seriously to the report, dismissing the victim's absence and claiming that he was "probably out having sex."
 - In Cleveland, Ohio, four or five skinheads attacked a man near two popular gay bars. As they yelled "AIDS infested fag," they ripped the man's jeans, took his wallet, ring and watch, and then pinned him to the ground and shoved a beer bottle up his rectum. The victim walked home and called friends, who took him to a doctor to have glass removed. The victim tried to report the robbery and sexual assault to the police, but the police told him that he could not file a report because he did not know his attackers. The victim then began to receive harassing and threatening phone calls. When he reported the calls to the police and suggested that they might be connected to the robbery and sexual assault, an

officer responded, "Aren't those bars where homosexuals frequent? Why is it that you were there?"

- In New York City, a cab hit two women pedestrians, and words were exchanged. The cab driver circled the block, got out of his cab, knocked one of the women unconscious and threw the other to the ground. The victims reported the incident to the police, but the police appeared not to take the incident seriously, neglecting to include in their report the fact that the driver said such words as "dykes" and "lesbian bitches" during the attack.
- In St. Louis, Missouri, four men wielding baseball bats followed two gay men who had just left a gay bar. The four men smashed out the windows of the two gay men's car and then beat the two gay men so severely that they required hospital treatment. A witness saw the four assailants drive off in a car and gave their licence plate number to the police. Yet the police failed to arrest the four assailants until several weeks later; when the men were arrested, they were charged with burglary rather than assault.

Disability

- Hate crimes also occur against persons with disabilities.
- Congress recognized this problem when it protected persons with disabilities against hate crimes in housing, and in 1994, when it added "disability" to the Hate Crimes Statistics Act.
- The FBI is collecting data on hate crimes against persons with disabilities, but has not yet reported these statistics.

Anecdotal information does indicate that a significant number of hate crimes committed because of the victim's disability are not resolved satisfactorily at the state and local level.

Examples include:

- In 1997, a California, woman with cerebral palsy was threatened with death after she asked for a disabled parking space at the apartment complex where she lives. The tires on the woman's car were slashed, she was told to leave the building, and she received a written death threat to herself and her daughter.
- In 1997, a 50-year-old Ohio man was arrested on charges that he wrote letters threatening to kill a man unless the man who was being threatened stopped receiving federal aid because of his disabilities.
- In 1995, a blind woman using a white cane was descending an escalator at a Washington, D.C. metro stop. A man twisted her arm, threw her cane down the escalator and said "You people belong in a concentration camp."

- In 1993, the schoolmates of an 18-year-old North Carolina high school student with a developmental disability, soaked his lunch with cleaning fluid and watched him eat it. The result was life-threatening poisoning that sent him to the intensive care unit of the hospital and required the removal of much of his intestine.
- Violent bias crimes committed against persons perceived as having AIDS present perhaps the most significant problem in this area. In 1988, the Presidential Commission on the Human Immunodeficiency Virus reported that "violence against those perceived to carry HIV, so-called 'hate-crimes,' [is] a serious problem . . . and [is] indicative of a society that is not reacting rationally to the epidemic." In a national survey of persons infected with the HIV virus, 21 percent reported that they had been victimized outside of their homes because of their positive HIV status.

Questions And Answers

Q: Why is this legislation needed?

A: The legislation is needed for two compelling reasons. First, the problems of hate crimes based on sexual orientation, disability, and gender are serious and compelling, and are not illegal under federal law. Many states do not provide protection on these bases. This legislation would provide protection for cases involving bodily injury. Second, the Department has been hindered in its efforts to prosecute racial hate crimes under existing law that do not occur while the person is engaged in a federally protected activity.

Q: Doesn't providing protections based on sexual orientation legitimize the homosexual lifestyle?

A: No. Most people of good will, wherever they may stand on the question of providing anti-discrimination protections based on sexual orientation or even moral or religious views of the issue, do not support violent attacks on people based on their sexual orientation. No one should be subject to a hate crime based on their sexual orientation. People in this country have a fundamental right to be safe and to live without fear of physical attack. This basic freedom should not be limited based on sexual orientation.

Q: Isn't this the first step for providing special rights for gays and lesbians?

A: No. No one should be subject to vicious physical attacks, as are often witnessed against gays and lesbians. Congress recognized this earlier when it included sexual orientation as a category in the Hate Crime Statistics Act of 1990.

Q: Doesn't adding gender to the bill federalize all rapes?

A: No. The bill does not make every rape a federal crime. In addition to the violent act, there must be evidence of bias toward the victim because of the victim's gender and a showing that the offense implicates interstate commerce.

Q: What sort of rape cases might qualify under the statute?

A: Cases that implicate a strong federal interest and affect interstate commerce would be prosecuted under the statute. For example, the federal government cannot presently prosecute a serial rapist who travels from state to state, and whose conduct, including language used and mutilation, suggest a gender bias.

Q: Will the inclusion of gender as a protected class eat away at the limited investigatory resources, since official statistics report 100,000 rapes per year, and untold numbers of domestic violence cases?

A: No. The proposed bill is not intended to make all of these cases federal crimes. First,

there must be a showing that the crime occurred because of the person's gender. This is no different from other hate crime cases. For example, an assault of an African-American man would be a hate crime only if prosecutors could show that he was assaulted because of his race. An assault without racial motivation would not be a federal crime.

Second, the crime would have to have to satisfy stated interstate commerce requirements in order to allow for federal prosecution. Third, the Department of Justice would develop investigative and prosecutive guidelines that would focus resources on the cases with the most egregious evidence of gender-based bias. Fourth, the Department would follow its longstanding practice of coordinating with the local investigation, and deferring at first to the local prosecutor to make an initial determination whether to prosecute. If the local prosecution does not occur or is inadequate, then a federal prosecution could occur.

We do not believe there will be an overwhelming number of cases that would qualify for federal prosecution, but do believe that the problem is serious enough to warrant federal responsibility.