

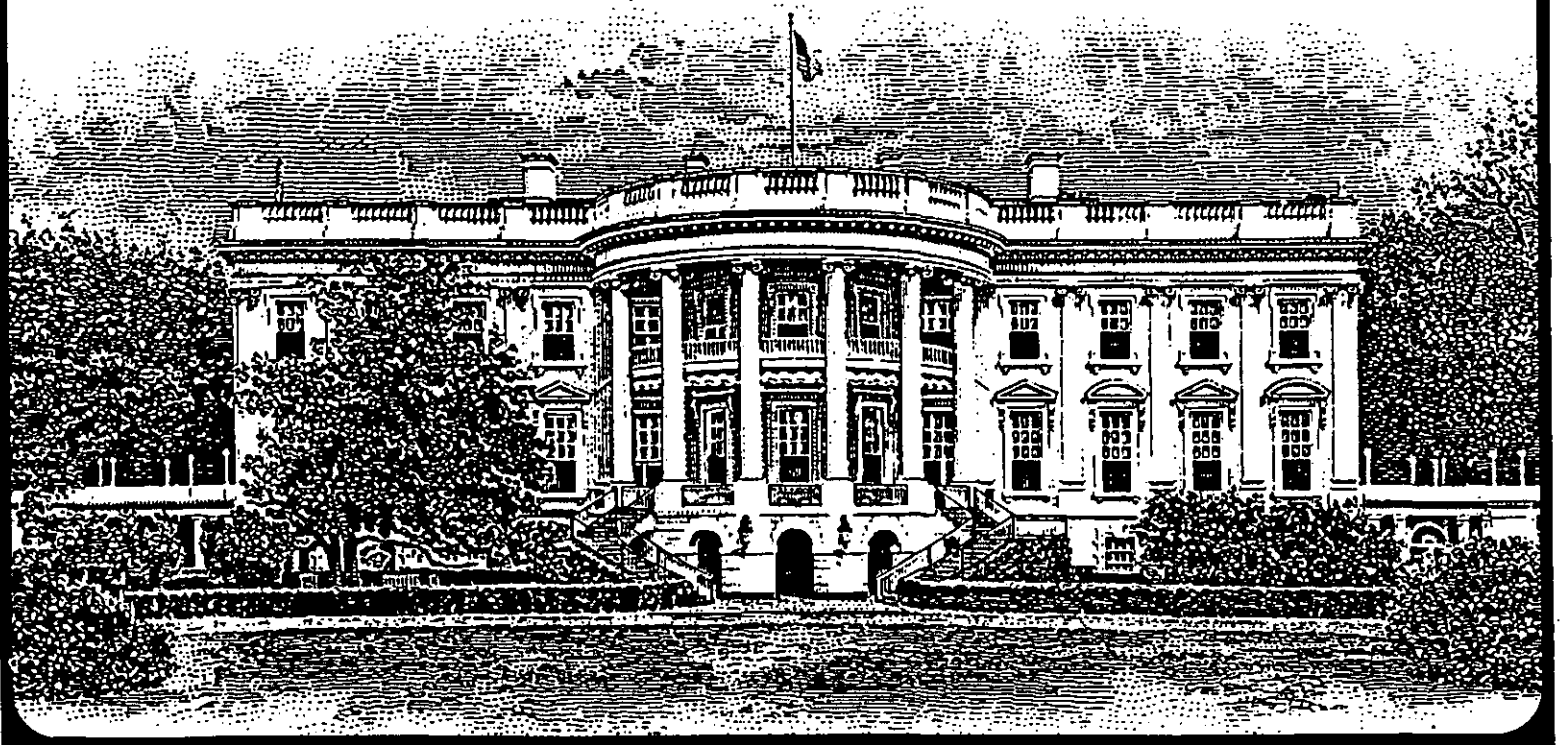
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**DPC - Box 040 - Folder 002**

**Race-Hate Crimes [5]**

# THE WHITE HOUSE CONFERENCE ON HATE CRIMES

NOVEMBER 10, 1997



**THE WHITE HOUSE CONFERENCE  
ON HATE CRIMES**

**NOVEMBER 10, 1997**

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THE WHITE HOUSE

WASHINGTON

November 7, 1997

THE WHITE HOUSE CONFERENCE ON HATE CRIMES

Date: November 10, 1997  
Location: Breakfast - East Room  
Conference - George Washington University  
Time: Breakfast - 9:30 am - 9:50 am  
Conference - 11:30 am - 1:30 pm  
From: Bruce Reed/Maria Echaveste

**I. PURPOSE**

To call national attention to the problem of hate crimes, highlight effective law enforcement and educational strategies to address this problem, and announce significant new federal initiatives to prevent and punish hate crimes.

**II. BACKGROUND**

You will host a breakfast for conference participants at the White House, make the opening address at the conference, and chair a panel discussion in which the Attorney General, the Secretary of Education, and seven others will join.

In the afternoon, members of the Cabinet and other senior Administration officials will chair a number of concurrent working sessions to examine various aspects of the hate crimes issue. Afterward, the Attorney General will chair a closing panel to discuss ideas and themes from the working sessions. Participants will attend a closing reception at the United States Holocaust Museum.

In your opening remarks, you will make the following policy announcements:

- Support for legislation to expand the principal federal hate crimes statute to prohibit hate crimes based on gender, sexual orientation, and disability. (The law currently prohibits only hate crimes based on race, color, religion, and national origin.);
- Creation of hate crimes working groups in every U.S. Attorney's district in the nation to coordinate federal, state, local, and private efforts to respond to and prevent hate crimes;
- Assignment of more than 40 additional FBI agents and federal prosecutors to enforce hate crimes laws and creation of a Civil Rights Analytical Center to

collect data and analyze trends in hate violence.

- Enhanced prosecution of civil cases, including increased penalties, against perpetrators of housing-related hate-crimes;
- Improved reporting of hate crimes statistics through the expansion of the National Crime Victimization Survey to include inquiries on hate crimes; and
- New educational materials, including a Department of Education resource manual on hate crimes for schools and a Department of Justice website designed for children.

### III. PARTICIPANTS

#### Briefing Participants:

Sylvia Mathews  
Rahm Emanuel  
Bruce Reed  
Maria Echaveste  
Elena Kagan  
Richard Socarides  
Marsha Scott  
Jordan Tamagni

#### White House Breakfast Participants (with speaking role):

Attorney General Reno

#### Conference Participants (with speaking role):

Vice President Gore  
Attorney General Reno  
Secretary Riley  
Stephen Tracktenberg, President of George Washington University  
Officer William Johnson, Retired Boston Police Officer  
Chuennee Sampson, Student Duke University  
Peter Berendt, Principal, Mamaroneck Avenue Elementary School, NY  
Hon. Sheila James Kuehl, President Pro Tempore, California State Assembly  
Reverend Samuel Billy Kyles, Monumental Baptist Church, TN  
Raymond Delos Reyes, Student, Franklin High School, Seattle, WA  
Tammie Schnitzer, Survivor of hate crime, Billings, Montana  
Arturo Venegas, Jr., Chief of Police, Sacramento Police Department, CA  
Hon. Grant Woods, Arizona Attorney General, AZ

Members of the audience will include approximately 350 leaders from the law enforcement, civil rights, anti-violence, youth, education, and religious communities. Hate crime victims and students from George Washington University will also be in attendance. The event will

be broadcast via satellite to over 50 sites throughout the country.

#### **IV. PRESS PLAN**

Breakfast - Closed Press.

Conference - Open Press.

#### **V. SEQUENCE OF EVENTS**

##### **White House Breakfast Sequence of Events:**

- YOU will briefly meet the panel participants in the Green Room.
- YOU will be announced into the East Room accompanied by the Attorney General.
- Attorney General Reno will make welcoming remarks and introduce YOU.
- YOU will make remarks, and then depart.

##### **Conference Sequence of Events:**

- YOU will be announced onto the stage accompanied by Vice President Gore, President Tracktenberg, Officer William Johnson, Student Chuenee Sampson.
- President Tracktenberg will make remarks and introduce Officer William Johnson.
- Officer Johnson will make remarks and introduce the Vice President.
- The Vice President will make remarks and introduce Chuenee Sampson.
- Chuenee Sampson will make remarks and introduce YOU.
- YOU will make remarks, and then take your seat with other panelists. (The Vice President and other introducers will depart the stage.)

**\*SEE ATTACHED SCRIPT FOR SEQUENCE OF SPEAKERS ON PANEL.**

#### **VI. REMARKS**

Provided by Speechwriting

#### **VII. ATTACHMENTS**

- Sequence of panel speakers and suggested questions.
- Bios of panelists.
- Conference Agenda.
- Background material on hate crimes.

**THE WHITE HOUSE CONFERENCE ON HATE CRIMES**  
**MONDAY, NOVEMBER 10, 1997**

- 9:00 - 10:00 a.m.      **Breakfast -- The White House**  
**Remarks by the Attorney General and the President**
- 11:30 - 12:00        **Welcoming Remarks -- Stephen J. Trachtenberg**  
**President of The George Washington University**
- Remarks by William Johnston, Boston Police Department (Ret.)**
- Remarks by the Vice President**
- Remarks by Chuenee Sampson, Duke University**
- Remarks by the President**
- 12:00 - 1:30        **Panel Discussion**  
**The President**  
**The Attorney General**  
**The Secretary of Education**  
**Peter Berendt, Principal, Mamaroneck Avenue Elementary School, NY**  
**Honorable Sheila Kuehl, California State Assembly**  
**Reverend Samuel Billy Kyles, Memphis, Tennessee**  
**Raymond Delos Reyes, Franklin High School, Seattle, WA**  
**Tammie Schnitzer, Billings, MT**  
**Chief Arturo Venegas, Jr., Sacramento Police Department, CA**  
**Honorable Grant Woods, Attorney General, State of Arizona**
- 1:30 - 2:15        **Lunch and Information Resource Fair\***  
**Colonial Commons Ballroom**  
**Lunch is underwritten by a gift to the George Washington**  
**University by USA Network**
- 2:30 - 4:00        **Discussion Groups -- Fourth Floor**  
**1. Hate Crimes in Schools (K-12): Prevention and Response (Secretary Riley);**  
**2. Hate Crimes on Campus: Prevention and Response (Director 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).**

4:15 - 5:15 Closing Panel  
The Attorney General  
The Secretary of Agriculture  
The Secretary of Housing and Urban Development  
The Secretary of Transportation  
The Secretary of Education  
The Director, Office of Management and Budget  
The Deputy Attorney General

6:00 - 7:30 Reception  
Sponsored by The White House  
and The United States Holocaust Memorial Museum  
Host Committee for Reception:  
American Jewish Committee, Anti-Defamation League,  
Arab American Institute, Asian Pacific American Legal Consortium,  
Consortium of Citizens with Disabilities, Fund for a Feminist Majority,  
Human Rights Campaign, Justice for All,  
National Association for the Advancement of Colored People,  
The National Conference, National Congress of American Indians,  
National Council of La Raza, National Gay and Lesbian Task Force,  
National Italian American Foundation, National Urban League,  
NOW Legal Defense and Education Fund

\*Note: The materials distributed by conference participants do not necessarily reflect the opinions, findings or recommendations, nor do they necessarily represent the official position or policies, of the U.S. Government.



### **Sequence and Suggested Questions for Panel Discussion**

- The Attorney General will introduce panelists, who will each make opening statements.
- After all opening statements, you will lead the discussion by asking any of the below questions.
- Secretary Riley will close the panel discussion.

#### **Peter Berendt, Principal, Mamaroneck Avenue Elementary School, Mamaroneck, NY.**

- What is the best way to teach children how to be more aware of diversity and the problem of hate crimes?
- What initiatives is your school undertaking? What incidents prompted what you are doing?

#### **Hon. Sheila Kuehl, President Pro Tempore, California State Assembly.**

- Why do you think hate crimes statutes are important?
- What advice would you give other legislators to get hate crimes legislation passed?
- What kind of statistics does your state keep with respect to hate crimes?

#### **Samuel Billy Kyles, Pastor, Monumental Baptist Church, Memphis, Tennessee.**

- What role can the religious community play in combating and preventing hate crimes?
- In your 30-year involvement with hate crimes, do you think people's attitudes have changed?

#### **Raymond Delos Reyes, sophomore, Franklin High School, Seattle, Washington.**

- How did you get involved with ADL's Children of the Dream program? What have you done in that program?
- What do you think reaches students the most in helping them understand the problem of hate crimes?
- What have you experienced that has made the biggest impact on your attitudes?

#### **Tammie Schnitzer, Billings, Montana.**

- Do survivors of hate crimes suffer a different kind of injury than victims of other crimes do?
- What steps would you recommend to get whole communities involved in responding to hate crimes?

#### **Arturo Venegas, Jr., Chief of Police, Sacramento Police Department, Sacramento, CA.**

- Is it difficult to investigate and prosecute hate crimes cases? Why?
- What strategies should law enforcement use in bringing hate crimes cases?
- Do you find that victims often do not want to report hate crimes?

#### **Grant Woods, Arizona Attorney General.**

- Have you experienced any difficulties in Arizona with regard to the enforcement of hate crimes legislation?
- What is the best way to generate widespread support for the enactment and enforcement of hate crimes legislation?

## Panel Participants

**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 underlying diversity issues facing the school community. His school is currently engaged in a multi-year comprehensive diversity awareness program. Mr. Berendt's school is working closely with the Anti-Defamation League in this effort.

**Hon. Sheila Kuehl**, President Pro Tempore, California State Assembly. Sheila Kuehl represents the 41st Assembly District in Encino, CA. She was the first openly gay or lesbian member of the California State Legislature and is the sponsor of legislation to prohibit discrimination against gay and lesbian students in California Public Schools. Kuehl was a pioneering civil rights attorney and professor who worked on woman's and gay and lesbian civil rights issues.

**Samuel Billy Kyles**, Pastor, Monumental Baptist Church, Memphis, Tennessee. Mr. Kyles is an outspoken advocate against hate crimes and plays an important role in the religious community's efforts to further civil rights. Mr. Kyles is a member of Ecumenical Minister's Task Force. He was a close friend of Dr. Martin Luther King and was with Dr. King during his last hours.

**Raymond Delos Reyes**, sophomore, Franklin High School, Seattle, Washington. Mr. Reyes has worked with the ADL's Children of the Dream program. In March, Mr. Reyes traveled to Israel with the ADL's program. Mr. Reyes is also a member of the Peer Mediation Training Program at his high school.

**Tammie Schnitzer**, Billings, Montana. Ms. Schnitzer is a Jewish woman who was the victim of one of several anti-Semitic hate crimes in Billings, Montana. She responded by persuading the entire community -- Jews and non-Jews alike -- to display menorahs in the windows of their home. Ms. Schnitzer's efforts were depicted in a television movie, *Not in Our Town*.

**Arturo Venegas, Jr.**, Chief of Police, Sacramento Police Department, Sacramento, California. 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. As a Republican, Mr. Woods has coordinated bipartisan support for hate crimes enforcement. He backed one of the first and strongest hate crime bills in the country. Mr. Woods also was the most visible Republican proponent of the Martin Luther King Holiday.

# THE WHITE HOUSE CONFERENCE ON HATE CRIMES

## *Participants*

**Elie Abboud**  
*President/CEO  
Randall Financial Corporation  
Bedford Heights, OH*

**Jerry Abramson**  
*Mayor  
City of Louisville  
Louisville, KY*

**Mario Acosta-Velez**  
*Executive Director  
Latino Civil Rights Task Force  
Washington, DC*

**Aileen Adams**  
*Director  
Department of Justice Office for Victims of Crime  
Washington, DC*

**Ismael Ahmed**  
*Founder and Executive Director  
Arab Community Center for Economic and Social Services  
(ACCESS)  
Dearborn, MI*

**Salam Al-Marayati**  
*Los Angeles, CA*

**John Alario**  
*State of Louisiana  
Westwego, LA*

**James Allen**  
*Black People's Union*

**Juan Andrade**  
*President  
United States Leadership Institute  
Chicago, IL*

**Wendell Anthony**  
*Pastor  
Fellowship Chapel  
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**Robert Anthony**  
*Chief of Police  
Provincetown, MA*

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California State University, Bakersfield  
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*Executive Director  
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*Dean  
Graduate School of Political Management  
George Washington University*

**Marsha Atkind**  
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*Unit Chief  
Federal Bureau of Investigation--Hate Crime  
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**Michael Baratz**  
*Jewish Students Leadership Coalition*

**Richard Barreto**  
*Police Chief  
Miami Beach, FL*

**Jacqueline Barrett**  
*President, NOBLE  
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**Dave Barron**  
*The Department of Justice*

**Willie Barrow**  
*Chair  
Rainbow/PUSH Coalition  
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**Michael Bastien**  
*Violent Crimes Assistance  
Office of the Attorney General of Illinois  
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*Iowa Parent Teacher Association  
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*Interfraternity Council  
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**Peter Berendt**  
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Mamaroneck Avenue Elementary School  
Mamaroneck, NY*

**Keith Bergman**  
*Town Manager  
Provincetown, MA*

**Howard Berkowitz**  
*National Chair  
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*Founder and Dean*  
Simon Wiesenthal Center  
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United States Deputy Attorney General  
Department of Justice  
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Freehold, NJ

Benjamin Hooks  
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Sheriff  
Catawba County  
Newton, NC

Roland Hwang  
Secretary & Founding Board Member  
American Citizen's for Justice  
Southfield, MI

Charles Hynes  
District Attorney  
Kings County District Attorney  
Brooklyn, NY

D.J. Ida  
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Asian Pacific Development Center  
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Patricia Ireland  
President  
NOW  
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Robb Johnson  
Victim Advocate  
Fenway Community Health Center  
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Vernon Johnson  
President  
Inter-Tribal Council of California  
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James Johnson  
Assistant Secretary (Enforcement)  
Department of the Treasury  
Washington, DC

Robert L. Johnson, III  
State Senator  
State of Mississippi  
Jackson, MS

William Johnston  
Senior Associate for Police and Community  
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Randy Jones  
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National Bar Association  
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## HATE CRIME: AN OVERVIEW

### Definition

Hate crimes are variously defined in federal and state laws as acts (or threats) of force directed against people or property because of a particular characteristic of the victim, such as the victims' race, ethnicity, religion, gender, disability, or sexual orientation. Hate crimes are also acts of violence against the group of people who share the characteristic, and they often have devastating and lasting psychological and emotional effects. Hate crimes can exacerbate tensions between different groups in the community and with law enforcement.

### Level of Hate Crime

Data on the level of hate crimes by public and private sources are incomplete, but reflect a serious national problem that may be getting worse. Fewer than half of the states require data collection, and even where collection is mandatory, complete reporting is rare. Data are underreported because the most likely targets of hate crime are often the least likely to report incidents to the police because of fear of an insensitive or hostile response. Some jurisdictions may also be reticent to compile hate crime data because acknowledging such activity may exacerbate racial tensions in the community and embarrass the community.

- **FBI Hate Crimes Statistics:** The FBI began reporting hate crime statistics in 1991, based on race, ethnicity, religion, and sexual orientation, pursuant to the Hate Crimes Statistics Act of 1990 (disability was added to the categories in 1994). Data are collected voluntarily by local jurisdictions and reported to the FBI. In 1991, the FBI reported 4,755 crimes, collected from 2,771 agencies. The latest FBI report reflects an increase in 1995 to:
  - 7,947 incidents, reported by 9,584 agencies across the country.
  - 4,831 based on race
    - 2,988 against African-Americans
    - 1,226 against Whites
    - 355 against Asian/Pacific Islanders
  - 814 based ethnicity or national origin
    - 516 against Hispanics
  - 1,277 based on religion
    - 1,058 against Jews
  - 1,019 based on sexual orientation
- **Church Burnings:** The National Church Arson Task Force reported over 500 arsons, bombings and attempted bombings at houses of worship since January 1995. Some 37% of these involved churches attended by African-Americans.
- **Private Statistics:** Several private organizations also track hate crimes. The information from these groups varies from the FBI data because many incidents are

not reported to the police, and several of the organizations report verbal harassment as hate crime incidents even though they are not considered crimes in most states. Outlined below are highlights of some of the more recent surveys by private organizations.

- **Cross Burnings:** Klanwatch documented 51 cases of cross-burnings in the United States in 1996, up from 29 in 1995. The targets of the incidents included black families, interracial couples, and gays.
- **Anti-Semitic Incidents:** The Anti Defamation League reported 1,722 incidents in 1996, a decline for the second straight year. The data showed a rise in vandalism and a decline in acts of harassment.
- **Sexual Orientation:** The National Coalition of Anti-Violence Programs cited 2,529 incidents of hate crime based on sexual orientation in 1996, up 134 incidents from 1995.
- **Asian Americans:** The National Asian Pacific American Legal Consortium reported 534 incidents against Asian Pacific Americans in 1996, an increase of 17% from 1995.

## Offenders

According to a 1993 Northeastern University study, almost 58 percent of offenders committed their crimes for the "thrill." Offenders were predominantly white teenage males; 91% did not know the person they were attacking; and a majority of these attacks were spontaneous, and not the result of a planned incident. A second category, "reactive" hate crimes, accounted for 41% of incidents. Offenders perceive themselves as protecting their neighborhood, their workplace, or their college campus from outsiders. Most such offenders were white males, often acting alone, who did not know their victims. The third category are committed by offenders who perceive themselves to be on a mission, and who are likely to join a hate group and commit violent acts.

## Characteristics of Hate Crimes

A review of hate crimes data reveals certain characteristics:

- Hate crimes involve a higher level of assaults against persons than crimes generally. 45-55% of bias crimes are personal assaults, whereas only ten percent of overall crimes are assaults.
- Hate crimes are more violent than crimes generally. Assaults causing physical injury occur in 74% of bias crimes, versus 29% of non-bias crimes. Hospitalization is required in 30% of bias crimes versus only 7% of non-bias

crimes.

- Attacks are often preceded by a series of confrontations and incidents that escalate in severity.
- Hate crimes are more likely than other criminal activity to be committed by groups of perpetrators.
- Most crimes against persons are committed by someone the victim knows; hate crimes, however, are more likely to be committed by strangers.
- The majority of hate crimes are committed by young males against persons of other races. It is estimated that about one-half of all hate crimes are committed by persons younger than 20.
- Only a small minority of offenders are members of a hate group, but the involvement of hate groups is still significant. Members of such groups have been involved in some of the most violent crimes. Moreover, the encouragement of violence against minority groups can provide the justification for hate crimes.

### Hate Crime Statutes in the States

Thirty-eight states and the District of Columbia have enacted laws that address bias-motivated violence and intimidation. These laws generally fall into three categories: prohibiting specified intimidating actions; prohibiting behavior motivated by certain types of bias; and enhancing penalties for criminal acts motivated by certain types of bias. Twenty one states criminalize interference with religious worship.

### Federal Investigations and Prosecutions

There are several Federal statutes providing jurisdiction to prosecute hate crimes. The federal criminal civil rights statutes provide for prosecution of conspiracies to interfere with federally protected rights (18 U.S.C. 241), the use of force or threat of force to injure or intimidate someone in the enjoyment of specific rights (such as voting, employment, education, use of public facilities)(18 U.S.C. 245), and criminal housing interference (42 U.S.C. 3631). In addition, the Church Arson Protection Act of 1996 amended the criminal civil rights statutes to facilitate prosecutions of racially motivated arsons and other acts of desecration against houses of worship (18 U.S.C. 247). Federal prosecutors can also seek enhanced penalties against persons who commit federal criminal offenses motivated by bias.



## 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.

DRAFT November 4, 1997 (10:05am)

November 4, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: MARIA ECHAVESTE  
BRUCE REED

CC: THE VICE PRESIDENT

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 purpose and structure of the conference, and the policy initiatives that we recommend you announce at the conference.

**Purpose and Structure of the Conference**

The White House Conference on Hate Crimes has three purposes. First, it will call national attention to the serious problem of hate crime in this country and, by highlighting positive community responses, promote unity in addressing the problem. Second, it will demonstrate the Administration's commitment to "draw the line" on hate crimes through combined law enforcement, education, and prevention strategies. Finally, this conference is the Race Initiative event for the month of November.

The conference will highlight the role of law enforcement and prosecutors at the state, local, and national level. The conference also will explore how the public and private sectors can join together in combating hate crime through law enforcement, community efforts, and educational strategies.

*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 at the breakfast.

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

- Chuenee 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 has experienced racial and ethnic violence throughout her life. As a middle-school student in Brooklyn, skinheads threw bottles at the bus that brought her to school. While at Duke University, Ms. Sampson has continued to work with children. Ms. Sampson volunteers at a middle school and works with learning centers 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 has recently won an award for his involvement.

During your remarks, we propose that you announce several significant new law enforcement and prevention initiatives, including a proposal to expand the principal federal hate crimes statute, 18 U.S.C. §245. These initiatives are detailed later in this memorandum.

Following your remarks, you will moderate a panel discussion with eight participants who can address various aspects of hate crimes such as gender issues, youth and education, law enforcement, and community involvement. The Vice President, the Attorney General, and Secretary Riley will also participate in this panel discussion. The eight panel participants are:

- 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 underlying diversity issues facing the school community. His school is currently engaged in a multi-year comprehensive A WORLD OF DIFFERENCE Program that is a model for elementary schools;
- Tami Schnitzer. Ms. Schnitzer is a Jewish woman who was the victim of an anti-Semitic hate crime in Billings, Montana. When Ms. Schnitzer saw that the hate crimes in Billings were targeted toward only the Jewish residents, Ms. Schnitzer galvanized the entire community by encouraging, Jews and non-Jews alike, to display menorah in the windows of their homes. Ms. Schnitzer’s extraordinary efforts were the subject of a television movie, *Not in Our 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. As a young girl, Ms. Kuehl appeared in the television series *The Many Loves of Dobey Gillis*;
- Raymond Delos Reyes, sophomore, Franklin High School, Seattle, Washington. Mr. Reyes has worked with the ADL’s Children of the Dreams program. In March, Mr. Reyes traveled to Israel with the ADL’s program. Mr. Reyes is a member of the Peer mediation Training Program and the Filipino Club;
- 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 further civil rights. 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 his last hours in his hotel room;

- Arturo Venegas, Jr., Chief of Police, Sacramento Police Department, Sacramento, California. Mr. Venegas helped to develop the Sacramento Police Department's model program to deal with hate crimes in the community. Mr. Venegas has participated in innovative law enforcement strategies to combat hate crimes; and
- Grant Woods, Arizona Attorney General. As a Republican, Mr. Woods has coordinated bipartisan support for hate crimes enforcement. He was a strong advocate for one of the first and strongest hate crime bills in the country. Mr. Woods also was the most visible Republican proponent of the Martin Luther King Holiday.
- Stephanie Tubbs Jones, District Attorney, Cuyahoga County, Cleveland, Ohio.

*Afternoon Session.* The afternoon session will consist of ten breakout sessions of approximately thirty-five participants each. Each of these sessions will address a different aspect of hate crimes and will be moderated by a Cabinet Secretary. The topics of the breakout sessions are:

1. Hate Crimes in Schools (K-12): Prevention and Response;
  2. Hate Crimes on Campus: Prevention and Response;
  3. Law Enforcement Response to Hate Crimes;
  4. Understanding the Problem: Improving Hate Crime Statistics;
  5. Hate Crimes in Public and Private Housing;
  - ~~6. Preventing Hate Crimes;~~
  7. Community Responses to Hate Crimes;
  - ~~8. Responding to the Needs of Survivors of Hate Crimes;~~
  - ~~9. State and Local Strategies; and~~
  10. Counteracting Organized Hate
- Handwritten notes: "separate" with a bracket around items 1-5; "??" with a bracket around item 6; "groups" written under item 10; a circled "6" next to item 10.

Riley  
Reno  
Cunio  
Shute  
Stichman  
Raines  
Reed

Following the breakout sessions which will permit the extensive interaction and participation of all 400 Conference attendees, the Attorney General will host a panel, consisting of the nine other Cabinet Secretaries who served as moderators of the breakout groups. The Cabinet Secretaries 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.* Currently, we have approximately 40 official satellite sites. These satellite sites will view your remarks and announcements, along with the panel discussion you will moderate, from the morning session. Following the viewing of the satellite feed from the Conference, the satellite hosts have planned customized programs to complement and augment the Conference. Accordingly, the attendees in these satellite sites will be able to participate actively with the experts assembled at their site.

**Policy Announcements to be Made at the Conference**

We recommend that you make the following policy announcements at the Conference.

**I. LEGISLATION**

- You can announce the Administration's support for legislation to expand the principal federal hate crimes statute, 18 U.S.C. § 245, to include gender, sexual orientation, and disability. Currently, Section 245 prohibits hate crimes only on the basis of race, color, religion, or national origin. Senator Kennedy, along with a Republican senator, would introduce the legislation early next year.

**II. PROSECUTION AND ENFORCEMENT**

- **Creation of approximately 100 Hate Crime Working Groups.** You can announce the formation of a local hate crime working group in each of the approximately 100 federal judicial districts under the leadership of or with the participation of each U.S. Attorney's Office. These working groups would be federal-state-local partnerships that would be the primary mechanism for evaluating and addressing the hate crime problem of the local community. Members of the working groups would be the U.S. Attorney's offices, the FBI, state and local law enforcement, state and local prosecutors, schools, and advocacy groups. In addition to addressing law enforcement strategies, the groups would seek to increase enforcement of hate crime laws, to maximize reporting of hate crimes, and to educate the public about hate crimes. There will also be a National Hate Crimes Working Group, located at the Department of Justice in Washington, D.C., that would have the role of coordinating 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 regarding promising practices that are occurring out in the field to address the problem of hate crimes.
- **Request for 65 New FBI Agents.** You may announce the Administration's request for additional funding in your FY99 budget) to add 65 new FBI agents to investigate hate crimes. *How many new?*
- **Encourage hate crimes training for law enforcement.** You can announce the development of a model training curriculum on hate crimes which can be incorporated into programs at local and state law enforcement training centers. This curriculum includes three course segments -- one segment directed to law enforcement officers, one segment to investigators, and one general segment for others in the law enforcement field. This curriculum would be available within 60 days for implementation at law enforcement training facilities across the country.
- **Make 'em Pay Initiative.** You can announce HUD's Initiative to assist victims of hate

crimes and discrimination in housing to seek civil remedies from the perpetrators. Within the Hate Crimes Task Force, HUD will proactively make victims aware of their right to a civil remedy and will then bring lawsuits on behalf of victims in order to help them recover from perpetrators of hate crimes in the housing context. This initiative will not require new funding, but will merely be implemented by a reallocation of existing resources and will be supplemented by costs recovered by HUD.

- **Prosecutors' Manual.** You can announce the development of a hate crime manual for prosecutors, being developed by the Department of Justice. This manual, which will be available in the spring of next year, will be an invaluable resource to local prosecutors in identifying strategies and highlighting unique problems in prosecuting hate crime cases. The manual will assist prosecutors through the use of case studies, the identification of model procedures, and cataloguing of model hate crime statutes, including the relevant sentencing enhancement statutes.

### III. STATISTICS REGARDING HATE CRIMES

- **New Hate Crime Statistics.** You can announce the annual statistics which DOJ currently collects under the Hate Crimes Statistics Act ("HCSA"). These statistics will provide a total number of hate crime cases that were prosecuted and investigated last year, on a category-by-category basis such as by race, religion, and ethnicity.
- **Support Existing HCSA Implementation through the Uniform Crime Reporting ("UCR") and National Incident Based Reporting System ("NIBRS").** DOJ has submitted a budget enhancement of \$35 million for FY 1999 to provide for further implementation of the NIBRS system, which will assist 35 large law enforcement agencies in converting to the NIBRS system (which will provide "incident-based" crime statistics rather than mere tallies currently available) and will also provide for preparation of a series of analyses of hate crimes. Status: at OMB ???
- **Demonstration Project in 11 Cities Which Add Hate Crimes Questions to the National Crime Victimization Survey ("NCVS").** You can announce a demonstration project in which BJS and the COPs office have committed to an extension of the NCVS to include questions on hate crimes to eleven cities, Kansas City, New York, Los Angeles, Chicago, Savannah, need to finish
- **Study to Research Impediments to Hate Crime Data Collection and Methods to Improve.** You can announce the publishing of a \$100,000 solicitation for later this month which will fund a study on the impediments to hate crime data collection and methods to improve reporting. The study, which will be completed one year after contract award, will be used as a starting point for a demonstration project which will implement the specific recommendations contained in the study.



#### IV. EDUCATIONAL INITIATIVES.

- **Teacher's resource guide for hate crimes awareness.** You can announce the development of a manual for educators on preventing youth hate crime. The Department of Justice and the Department of Education have drafted a guide for teachers that would encourage schools and school districts to confront hate-motivated behavior among students; to promote development of comprehensive, programmatic responses to prejudice and violence; and to provide educators with various resources to undertake such responses. You can announce that the Attorney General and the Secretary of Education will send a copy of the manual to each of the country's 16,000 school districts by December 1.
- **Design a national survey to gather statistical information on the occurrence of hate-based violence in public schools.** Given the statistics that suggest that a large portion of hate crimes are committed by school-age males, you can announce that the Department of Education, along with the Department of Justice, will begin work early next year on the development of a national survey to assess the magnitude of the problem of hate crimes in public schools.
- **PSAs.** You can announce that the Department of Justice will begin the development of a public service announcement campaign designed to increase awareness of the rich diversity of our nation and to highlight the divisiveness of the hate crimes that are perpetrated in the community. These public service announcements will aim to build a deeper understanding of the problem and to mobilize communities from preventing these crimes from occurring in the first place.
- **Hate Crimes Internet Site.** You can announce the availability of a website, "Hateful Acts Hurt Kids," linked to the Department of Justice website. This site will address prejudice, discrimination, and related issues in an interactive, graphic format designed for children in kindergarten through fifth grade, their parents, and teachers. This site will be available for viewing at the Conference.

Race-hate crimes

*Elena,  
Here are  
DOJ's hate  
crime proposals.  
Mary*



Mary L. Smith  
09/18/97 10:27:02 AM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Thomas L. Freedman/OPD/EOP  
Subject: DOJ's Hate Crimes Proposals (not including legislation)

We have received DOJ's hate crime proposals. With the exception of legislative proposals which Tom addressed in an earlier e-mail, these non-legislative proposals generally look pretty good. The centerpiece of DOJ's proposal is the formation, in each of the U.S. Attorney Office's districts, of a working group consisting of federal, state, and local law enforcement, as well as community leaders, to develop a comprehensive approach to hate crimes.

DOJ has proposals centered around (1) data collection, and (2) community outreach, including to the educational communities. The only proposal that might require some additional vetting is one of the educational components which envisions sending pamphlets to each of the nation's school districts with suggestions for classroom activities. I'll send you a copy of the draft memo containing the various non-legislative proposals. If you need anything else, let me know. Mary

Race-hate crimes

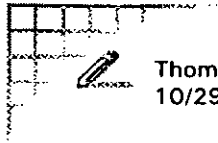
United States Department of Justice

Hate Crimes Initiative

Component	Initiative	Pos	Agt/Atty	FTE	(\$000)
Office of Justice Programs	Improved Hate Crime Reporting	0	0	0	1,000
Office of Justice Programs	Public Service Announcements	0	0	0	50
Office of Justice Programs	Hate Crimes Outreach	0	0	0	200
Office of Justice Programs	State and Local Hate Crimes Training	0	0	0	1,000
Community Relations Service	Hate Crimes Initiative	10	0	5	700
Federal Bureau of Investigation	Civil Rights Analytical Center (HQ)	6	1	3	336
Federal Bureau of Investigation	Civil Rights Field Personnel, Town Hall Meetings and Regional Workshops	130	64	65	12,688
Civil Rights Division	Hate Crime Prosecution	7	5	5	451
United States Attorneys	Hate Crime Prosecution	9	6	5	894
<b>Total.....</b>		<b>162</b>	<b>76</b>	<b>83</b>	<b>17,319</b>

**Note: The Department also has a \$35 million request for the National Incident Based Reporting System (NIBRS). Part of this initiative will include hates crimes statistical reporting.**

Race-hate crimes



Thomas L. Freedman  
10/29/97 02:31:46 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP

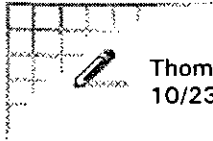
cc: Mary L. Smith/OPD/EOP

Subject: Follow-up on gay issues

You asked about two issues raised by members of the gay community.

1. VAWA discrimination. The current law does not seem to discriminate, it is actually more of a state problem. For instance, according to the groups a gay partner might not have standing in some civil courts to obtain a restraining order, and might have to go to criminal court. A heterosexual couple would be able to use most civil courts and not have to show a criminal assault had occurred. The groups suggested urging changes in state laws using federal pressure.
2. Serial killers. According to the groups, states have been somewhat scattered in reporting suspected serial killers to the FBI. There seems to be no law requiring them to. We are in contact with the DOJ to track down what can be said and see if we can move something.

Race - Hate Crimes



Thomas L. Freedman  
10/23/97 05:24:31 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

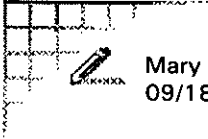
cc: Mary L. Smith/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Make 'em Pay

You dropped me a note about a promising HUD idea you'd forwarded for helping victims of hate crimes receive civil penalties ("the Make 'em Pay Initiative"). We've met with HUD and it should be ready to announce at the Hate Crimes Conference.

~~Tom +  
Excellent. Now tell  
me - is it any good?  
Elena~~

Race - hate crimes



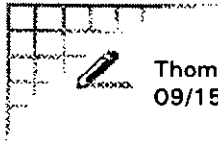
Mary L. Smith  
09/18/97 10:27:02 AM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Thomas L. Freedman/OPD/EOP  
Subject: DOJ's Hate Crimes Proposals (not including legislation)

We have received DOJ's hate crime proposals. With the exception of legislative proposals which Tom addressed in an earlier e-mail, these non-legislative proposals generally look pretty good. The centerpiece of DOJ's proposal is the formation, in each of the U.S. Attorney Office's districts, of a working group consisting of federal, state, and local law enforcement, as well as community leaders, to develop a comprehensive approach to hate crimes.

DOJ has proposals centered around (1) data collection, and (2) community outreach, including to the educational communities. The only proposal that might require some additional vetting is one of the educational components which envisions sending pamphlets to each of the nation's school districts with suggestions for classroom activities. I'll send you a copy of the draft memo containing the various non-legislative proposals. If you need anything else, let me know. Mary



Thomas L. Freedman  
09/15/97 06:14:41 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: re: tobacco, Hate Crimes and Race

Update on the Hate Crimes conference and Race

1. Legislation expanding hate crimes. Ogden has four options to present to Reno with a recommendation, I believe this week. I'm setting up a meeting with him and public liason for tomorrow afternoon to make sure his recommendation is one that will satisfy us, the groups and Senator Kennedy.

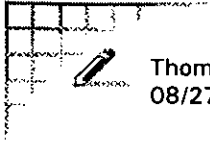
The proposed legislative package on enforcement and statistics looks ok, I'll send you a copy.

\*The only difficulty might be they've left an education provision in which looks like they intend to send some possible curricula to schools. I'd like to relay strong concern about that. You had mentioned this problem to Ogden in a meeting, and so had I.

2. On civil rights agency reform. Can I get a copy of the memos recieved and put together a backgrounder on them-- what problems they seem to have addressed what they left out? I'd suggest we sit down with the most vital ones separately (EEOC) and do a general meeting for the others. I got a call from OMB asking if we had funding requests base <sup>on</sup> the memos we requested from the agencies, and reminding us that if we were going to ask for more money we should do so soon.

3. On my cryptic "international tobacco" e-mail. Sherman Boone at the NEC seems to have been collecting stuff on international tobacco and just wanted to know if he should be writing something or getting more information together.

Regards, Tom



Thomas L. Freedman  
08/27/97 12:13:44 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP  
Subject: Updates--food and hate

1. By Friday it seems likely USDA will have vetted and endorsed a legislative proposal to: (1) increase its recall authority, (2) increase authority for levying civil fines, and (3) be able to pull inspections from repeat violators (essentially putting them out of business). USDA doesn't seem to want much more money, and generally want to avoid looking like they are doing a christmas tree. I'll pass this info along to Jerry. The question is what involvement the POTUS should have. I think these sound like (and USDA says they are) pretty significant steps, and the time of year is great. Of course, he's got no time.
2. Hate crime-- the conference sounds fine, they will get us paper next week, the primary question will be Kennedy's bill-- how to expand hate crimes to include women without flooding the fbi with investigating all sexual assaults. The solution: DOJ needs to be encouraged to come up with workable language to limit the reporting to relevant cases...



Race-hate crimes

Date: Friday, August 8, 1997 1:31 pm  
From: SMO02(SMITHJUD)  
Subject: Hate Crimes Meeting

Hate Crimes Working Group:

I have attached a draft implementation memo to the field drafted by the Prosecution/Enforcement Sub-Group. Discussion of this memo will be a principal agenda item for Monday's meeting of the full Hate Crimes Working Group.

Thanks.  
Ian Gershengorn

Tom/Mary -

This looks good,  
but how do we get  
involved? For example,  
do we direct ~~her~~  
the AG to do this?  
Does she hold off from  
doing it until the  
Pres. presents a package  
of measures at the  
conference?, etc.

Elean

# D R A F T

## MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Implementation of  
National Anti-Hate Crime Initiative

I am deeply concerned about the problem of hate crime in the United States. It is a concern shared by the President and by Americans throughout the country. We as a nation have largely overcome a difficult chapter in our history, and enjoy an unparalleled level of freedom from hatred and bigotry. But pockets of bias-related violence and intimidation remain and threaten the progress we have made. Hate crime has no place in civilized society.

The primary investigative and prosecutive activity against hate crime has been conducted over time by dedicated state and local law enforcement officials. In some communities, their ability to be effective in stemming hate crime has been compromised by inadequate data collection and reporting standards. Others lack the resources, and in some cases the jurisdiction, to conduct proactive investigations and develop cases against hate groups members who engage in organized criminal activity. As a result, increasingly communities have called upon the federal government to assist.

Last year, I asked the Civil Rights Division, the Federal Bureau of Investigation (FBI), and the Executive Office for United States Attorneys (EOUSA) to work together to develop a coordinated national strategy for combating hate crime more effectively. Earlier this year, that effort was expanded to include other components from across the Department, including the Deputy Attorney General's Office, the Criminal Division, the United States Attorneys, the Office of Victims of Crime, the Office of Justice Programs, the Bureau of Justice Statistics, the Community Relations Service, the Violence Against Women Office, the Office of Intergovernmental Affairs, and others. The efforts of this group will complement the President's racial reconciliation outreach initiative and the White House hate crime conference scheduled for this fall.

The organizing principle of the Department's efforts has been the recognition that addressing problems of hate crimes requires a coordinated effort, with cooperation among federal, state and local law enforcement, as well as community leaders. Only by a

# D R A F T

combination of vigorous enforcement, effective community outreach, thorough education and training, and accurate data collection can we hope to address the problem of hate crimes.

In my June meeting with the Attorney General's Advisory Committee ("AGAC"), we described this hate crime initiative in a preliminary way. The purpose of this memorandum is to provide you with written guidance concerning its implementation. I have asked the [Civil Rights Division] to coordinate this initiative, and you will be receiving additional correspondence from the [Assistant Attorney General of the Civil Rights Division] in that regard.

→ [ The centerpiece of the Department's initiative is the formation in each district of a working group consisting of federal, state, and local law enforcement, as well as local community leaders, to develop a coordinated approach to hate crimes.

I would ask you to keep in mind two important points concerning this strategy. First, this initiative does not necessarily require a new task force or bureaucracy to address hate crime if you already have mechanisms in place that are working in your district. The initiative contemplates that you may use or build upon any existing component that has proven to be effective, or that has a strong potential for success.

For example, the FBI, the Civil Rights Division, and EOUSA had previously devised an initiative for improving criminal civil rights enforcement generally. A copy of that initiative is attached. It involves conducting more aggressive FBI field office outreach to local law enforcement and community groups in order to increase detection and reporting of civil rights crimes; improving the training, experience and expertise of civil rights agents; increasing proactive measures; producing faster and better coordinated prosecutive decisions, and sharpening data collection and trend analysis. I encourage you to take advantage of the fruits of any such efforts already underway in your districts. In many districts, however, a working group devoted exclusively to hate crimes will be the most effective vehicle for addressing this problem.

Second, the goal of the initiative is to complement, not supplant, the efforts of state and local prosecutors. If any of your counterparts in your districts has an effective hate crime strategy in place that can - - or does - - take into account the need for coordination and cooperation among federal, state and local law enforcement officials, you should consider building the strategy around that existing state or local hate crime component. The

# D R A F T

key is to develop a strong partnership in this effort with state and local officials in a way that will be most productive.

In order to implement the anti-hate crime initiative in your district, please undertake the following steps:

- ▶ By [DATE], designate a senior Assistant United States Attorney to be a Hate Crime Coordinator to serve as a contact in your office with the [Civil Rights Division]. You may designate your Civil Rights Point of Contact, or any other appropriate person, to fulfill this role.
- ▶ By [DATE], each United States Attorney should meet with all pertinent federal, state and local law enforcement agencies and appropriate community leaders in his or her district to form a new, or strengthen an existing, hate crime working group.
- ▶ With the help of your local working group, you should seek to undertake a survey that will identify a number of issues, including:
  - ◆ your district's most critical hate crime problems that are susceptible to a coordinated federal/state/local attack, with violent hate groups as one possible area;
  - ◆ the relative priority of these problems;
  - ◆ the law enforcement programs and resources currently dedicated to the investigation and prosecution of these problems;
  - ◆ the results achieved to date from these efforts; and
  - ◆ any multi-district or multi-jurisdictional aspects of these problems.

The [Civil Rights Division] will send your Hate Crime Coordinator an outline of the entire list of issues that the survey should address.

- ▶ By [DATE], please forward the results of your survey to the [Civil Rights Division], by faxing it to [Richard Roberts, Chief, Criminal Section, at fax

# D R A F T

number 202-514-8336, or to Neal Kravitz, Acting Counsel to the Assistant Attorney General, at fax number 202-xxx-xxxx].

The [Assistant Attorney General of the Civil Rights Division] and your representatives on the AGAC will quickly analyze the results of the surveys from all the districts. You will then be provided with any needed assistance to develop an appropriate prosecutive strategy for your district. Thereafter, you will be asked to take the following steps:

- ▶ Using the new or existing working group as a mechanism, develop a single district plan to implement the national initiative consistent with your local needs and the available law enforcement resources in your district.
- ▶ Specify in the plan a prosecutive strategy for attacking the problems you have identified as most susceptible to a coordinated federal/state/local effort. The civil rights bluesheet (USAM §§ 8-3.100 to 8-3.150) sets forth the processes for information-sharing and decision making between your offices and the Civil Rights Division in these investigations and prosecutions. The [Civil Rights Division] can send your Hate Crime Coordinator a sample operations plan which you may wish to use in developing a plan for your district.
- ▶ Assist law enforcement agencies in your district in developing or enhancing an operational task force or other working group that will carry out the day-to-day investigations of your highest priority hate crime problems. Where appropriate, existing task forces and other successful joint federal/state/local efforts should be preserved. In other instances, it may be appropriate for existing task forces or other working groups to be combined, expanded or redirected.

The Civil Rights Division and EOUSA will be available to provide support for your local efforts. For example, EOUSA has surveyed your offices for information about existing hate crime working groups or plans underway to set them up. This survey may provide some useful guidance to you in planning your working group. The Department will disseminate the survey results to you shortly. In addition, the Criminal Section of the Civil Rights Division recently updated its portion of the Civil Rights monograph contained on USA Book that addresses the investigation and prosecution of federal hate crimes.

# D R A F T

In addition, the Department is planning to host a Conference for the hate crimes coordinators from each of the Districts. The Conference will focus on enforcement strategies, available Department resources, and other issues that will be important as the hate crimes initiative is implemented.

You should also know that your efforts are part of a significant Department-wide effort to combat hate crimes. I and other members of the Department will be speaking often about hate crimes in the months ahead to help to focus attention on the importance of addressing this problem. In addition, through the Office of Justice Programs, CRS, and others, the Department will make available a wealth of educational and training materials, as well as grant opportunities, to aid in the fight against hate crimes. More details on these resources will be distributed later.

The problems posed by hate crime are difficult, but not intractable. I am confident that, working together in a true partnership of federal, state and local law enforcement, we can make a substantial contribution toward reducing its devastating impact on our communities. I am grateful for your cooperation in this most critical endeavor.

Attachment

**MEMORANDUM**

**TO: ELENA KAGAN, BRUCE REED**

**FROM: TOM FREEDMAN, MARY L. SMITH**

**RE: SUMMARY OF HATE CRIME PROPOSALS AT DOJ/DOE**

**DATE: AUGUST 6, 1997**

---

**SUMMARY**

There are basically four main areas in which the Department of Justice is tackling hate crimes: (1) outreach to the community; (2) statistical collection; (3) educational initiatives; and (4) possible legislation. The first three categories each provide some initiatives that could be announced at White House Hate Crimes Conference on November 10. The proposed legislation, however, is more problematic primarily because it creates a new federalized category of hate crimes based on gender bias. DOJ is concerned that the FBI and other parts of DOJ will be overwhelmed because potentially they could be required to investigate each instance of sexual assault. In addition, many of the initiatives discussed below could easily be announced as part of the race initiative.

**I. OUTREACH: HATE CRIMES WORKING GROUPS**

- DOJ is proposing federal-state-local partnerships that would coordinate the prosecution of hate crimes. Members of the working groups would be the U.S. Attorney's offices, the FBI, state and local law enforcement, state and local prosecutors, schools, and advocacy groups. In addition to prosecuting hate crimes, the groups would seek to increase enforcement of hate crime laws, to maximize reporting of hate crimes, and to educate the public about hate crimes.
- FBI has proposed seeking additional funding in the FY99 budget to add approximately 193 new FBI agents to investigate hate crimes.

**II. STATISTICS REGARDING HATE CRIMES**

- DOJ currently collects hate crimes under the Hate Crimes Statistics Act ("HCSA"). There is an annual report that comes out. DOJ is checking whether we could announce the numbers at the conference on November 10.
- DOJ is also exploring several possibilities to improve the collection of statistics regarding hate crimes.

### III. EDUCATIONAL INITIATIVES

- Northeastern University's Center for Criminal Justice Policy Research reports that approximately 65% of violent hate crimes are committed by boys and young men under the age of 20.
- The Department of Education's Office of Civil Rights is working with the National Association of Attorneys General to develop a manual that will catalog all of the various resources that are available to assist school administrators and teachers in addressing bias crimes and racial and ethnic tensions in school settings.
- Middle-school curriculum entitled "Healing the Hate" (already developed by Educational Development Corporation and funded jointly by DOJ and Department of Education) should be disseminated to schools.
- Middle-school curriculum on hate crimes should be placed on the Department of Education's website.
- Given the statistics that suggest that a large portion of hate crimes are committed by school-age males, DOJ could work with Education's National Center for Educational Statistics to explore mechanisms for collecting information on hate-based violence in schools.
- Elevate awareness of hate-based violence in the educational community through a PSA campaign, conferences, workshops, articles, and the Internet.

### IV. PROPOSED LEGISLATION

- At the behest of Senator Kennedy, DOJ is analyzing and refining proposed legislation. The legislation would expand the category of federal hate crimes. Currently, 18 U.S.C. § 245(b)(2) prohibits the interference with a person's exercise of certain federally protected rights on the basis of the person's race, color, religion, or national origin.
  - The proposed legislation would add a section that prohibits the intentional infliction of bodily injury on the basis of **race, color, or national origin**.
  - The proposed legislation would also add a section that prohibits the intentional infliction of bodily injury on the basis of **religion, gender, sexual orientation, or disability**.



## Problems with the proposed legislation

- There is a potential constitutional problem with the prohibition of hate crimes on the basis of gender, sexual orientation, disability, and, in many instances, religious identity. (There appears to be no constitutional problems with prohibiting hate crimes based on race, color, or national origin.) DOJ recommends that Congress' power to regulate interstate commerce is the strongest source of authority to regulate hate crimes based on gender, sexual orientation, disability, or, in some instances, religion. This constitutional problem is not the most pressing problem, however.
- **Federalization of criminal conduct typically prosecuted at state and local levels.** In DOJ's opinion, the main problem with the proposed legislation is that the possible expansion of § 245 to include other categories of hate crimes, most particularly gender-based hate crimes, will overwhelm the resources of the FBI and DOJ. DOJ's memo states: "There is a very real concern that the approximately 6,000 hate crimes currently reported to the FBI each year could be dwarfed by the number of sexual assaults and other allegedly hate-based crimes that might be brought to the federal government's attention for investigation and possible prosecution under an expanded section 245."
- **NOTE:** Despite these problems, it seems that Senator Kennedy is inclined to introduce some legislation this fall, possibly before the Hate Crimes Conference on November 10. Unless some sort of solution is worked out regarding the gender-based hate crimes, DOJ has grave reservations but is struggling to come up with some sort of solution.

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Race-hate crimes

August 8, 1997

FAX

TO: Tron Brekke -- 324-3155  
 Suzanne Bailliere -- 324-3155  
 Zack Carter -- 718-254-6300  
 Sanford Cohen -- 718-254-6180  
 Redding Pitt -- 334-223-7617  
 Debra Long-Doyle -- 307-3569  
 Tim Johnson -- 4-6383  
 Katia Garrett -- 4-6383  
 Doug Dodge -- 4-6382  
 Doug Hecox -- 7-5846  
 Richard Socarides -- 456-6218

FROM: Judy Smith  
 Office of the Attorney General

RE: Hate Crimes Working Group

Pages: 6 + cover

Tam, Mary —

Is there anything the  
 President should be doing  
 here? Or — is there anything  
 we can/should do to his  
 to prepare the way for the  
 President doing something  
 in November?

Approved TO  
 ELINOR K  
 MARY S.  
 TAM F.

FYE p.s.

etc

Date: Friday, August 8, 1997 1:31 pm  
From: SMO02(SMITHJUD)  
Subject: Hate Crimes Meeting

Hate Crimes Working Group:

I have attached a draft implementation memo to the field drafted by the Prosecution/Enforcement Sub-Group. Discussion of this memo will be a principal agenda item for Monday's meeting of the full Hate Crimes Working Group.

Thanks.  
Ian Gershengorn

# D R A F T

## MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Implementation of  
National Anti-Hate Crime Initiative

I am deeply concerned about the problem of hate crime in the United States. It is a concern shared by the President and by Americans throughout the country. We as a nation have largely overcome a difficult chapter in our history, and enjoy an unparalleled level of freedom from hatred and bigotry. But pockets of bias-related violence and intimidation remain and threaten the progress we have made. Hate crime has no place in civilized society.

The primary investigative and prosecutive activity against hate crime has been conducted over time by dedicated state and local law enforcement officials. In some communities, their ability to be effective in stemming hate crime has been compromised by inadequate data collection and reporting standards. Others lack the resources, and in some cases the jurisdiction, to conduct proactive investigations and develop cases against hate groups members who engage in organized criminal activity. As a result, increasingly communities have called upon the federal government to assist.

Last year, I asked the Civil Rights Division, the Federal Bureau of Investigation (FBI), and the Executive Office for United States Attorneys (EOUSA) to work together to develop a coordinated national strategy for combating hate crime more effectively. Earlier this year, that effort was expanded to include other components from across the Department, including the Deputy Attorney General's Office, the Criminal Division, the United States Attorneys, the Office of Victims of Crime, the Office of Justice Programs, the Bureau of Justice Statistics, the Community Relations Service, the Violence Against Women Office, the Office of Intergovernmental Affairs, and others. The efforts of this group will complement the President's racial reconciliation outreach initiative and the White House hate crime conference scheduled for this fall.

The organizing principle of the Department's efforts has been the recognition that addressing problems of hate crimes requires a coordinated effort, with cooperation among federal, state and local law enforcement, as well as community leaders. Only by a

# D R A F T

combination of vigorous enforcement, effective community outreach, thorough education and training, and accurate data collection can we hope to address the problem of hate crimes.

In my June meeting with the Attorney General's Advisory Committee ("AGAC"), we described this hate crime initiative in a preliminary way. The purpose of this memorandum is to provide you with written guidance concerning its implementation. I have asked the [Civil Rights Division] to coordinate this initiative, and you will be receiving additional correspondence from the [Assistant Attorney General of the Civil Rights Division] in that regard.

→ [ The centerpiece of the Department's initiative is the formation in each district of a working group consisting of federal, state, and local law enforcement, as well as local community leaders, to develop a coordinated approach to hate crimes.

I would ask you to keep in mind two important points concerning this strategy. First, this initiative does not necessarily require a new task force or bureaucracy to address hate crime if you already have mechanisms in place that are working in your district. The initiative contemplates that you may use or build upon any existing component that has proven to be effective, or that has a strong potential for success.

For example, the FBI, the Civil Rights Division, and EOUSA had previously devised an initiative for improving criminal civil rights enforcement generally. A copy of that initiative is attached. It involves conducting more aggressive FBI field office outreach to local law enforcement and community groups in order to increase detection and reporting of civil rights crimes; improving the training, experience and expertise of civil rights agents; increasing proactive measures; producing faster and better coordinated prosecutive decisions, and sharpening data collection and trend analysis. I encourage you to take advantage of the fruits of any such efforts already underway in your districts. In many districts, however, a working group devoted exclusively to hate crimes will be the most effective vehicle for addressing this problem.

Second, the goal of the initiative is to complement, not supplant, the efforts of state and local prosecutors. If any of your counterparts in your districts has an effective hate crime strategy in place that can - - or does - - take into account the need for coordination and cooperation among federal, state and local law enforcement officials, you should consider building the strategy around that existing state or local hate crime component. The



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key is to develop a strong partnership in this effort with state and local officials in a way that will be most productive.

In order to implement the anti-hate crime initiative in your district, please undertake the following steps:

- ▶ By [DATE], designate a senior Assistant United States Attorney to be a Hate Crime Coordinator to serve as a contact in your office with the [Civil Rights Division]. You may designate your Civil Rights Point of Contact, or any other appropriate person, to fulfill this role.
- ▶ By [DATE], each United States Attorney should meet with all pertinent federal, state and local law enforcement agencies and appropriate community leaders in his or her district to form a new, or strengthen an existing, hate crime working group.
- ▶ With the help of your local working group, you should seek to undertake a survey that will identify a number of issues, including:
  - ◆ your district's most critical hate crime problems that are susceptible to a coordinated federal/state/local attack, with violent hate groups as one possible area;
  - ◆ the relative priority of these problems;
  - ◆ the law enforcement programs and resources currently dedicated to the investigation and prosecution of these problems;
  - ◆ the results achieved to date from these efforts; and
  - ◆ any multi-district or multi-jurisdictional aspects of these problems.

The [Civil Rights Division] will send your Hate Crime Coordinator an outline of the entire list of issues that the survey should address.

- ▶ By [DATE], please forward the results of your survey to the [Civil Rights Division], by faxing it to [Richard Roberts, Chief, Criminal Section, at fax

# D R A F T

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The [Assistant Attorney General of the Civil Rights Division] and your representatives on the AGAC will quickly analyze the results of the surveys from all the districts. You will then be provided with any needed assistance to develop an appropriate prosecutive strategy for your district. Thereafter, you will be asked to take the following steps:

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- ▶ Assist law enforcement agencies in your district in developing or enhancing an operational task force or other working group that will carry out the day-to-day investigations of your highest priority hate crime problems. Where appropriate, existing task forces and other successful joint federal/state/local efforts should be preserved. In other instances, it may be appropriate for existing task forces or other working groups to be combined, expanded or redirected.

The Civil Rights Division and EOUSA will be available to provide support for your local efforts. For example, EOUSA has surveyed your offices for information about existing hate crime working groups or plans underway to set them up. This survey may provide some useful guidance to you in planning your working group. The Department will disseminate the survey results to you shortly. In addition, the Criminal Section of the Civil Rights Division recently updated its portion of the Civil Rights monograph contained on USA Book that addresses the investigation and prosecution of federal hate crimes.

# D R A F T

In addition, the Department is planning to host a Conference for the hate crimes coordinators from each of the Districts. The Conference will focus on enforcement strategies, available Department resources, and other issues that will be important as the hate crimes initiative is implemented.

You should also know that your efforts are part of a significant Department-wide effort to combat hate crimes. I and other members of the Department will be speaking often about hate crimes in the months ahead to help to focus attention on the importance of addressing this problem. In addition, through the Office of Justice Programs, CRS, and others, the Department will make available a wealth of educational and training materials, as well as grant opportunities, to aid in the fight against hate crimes. More details on these resources will be distributed later.

The problems posed by hate crime are difficult, but not intractable. I am confident that, working together in a true partnership of federal, state and local law enforcement, we can make a substantial contribution toward reducing its devastating impact on our communities. I am grateful for your cooperation in this most critical endeavor.

Attachment

Race-hate crimes

Tom/Mary  
FYI.  
Elena



UNION COUNTY PROSECUTOR'S OFFICE

COUNTY ADMINISTRATION BUILDING  
ELIZABETH, NEW JERSEY 07207  
(908) 527-4500  
FAX: (908) 289-1267

THOMAS V. MANAHAN  
PROSECUTOR OF UNION COUNTY

JAMES F. KEEFE  
FIRST ASSISTANT PROSECUTOR

August 12, 1997

Mr. Bruce Reid  
The White House Office  
1600 Pennsylvania Avenue  
Washington, D.C. 20502

Dear Mr. Reid:

I have been reading about the Hate Crimes Conference proposed by President Bill Clinton for November 10, 1997. I understand that your Office will play an integral role in both the planning and administration of the event. Bias Crime is a very important issue, one that needs to be addressed by the nation as a whole. The involvement of the President with this forum will serve to spotlight the importance of combating hate crime and will help keep it in the forefront of the concern of the American people.

I believe New Jersey has been one of the states leading the attack on bias crime along many fronts. These fronts include law enforcement, education and community involvement.

Union County, New Jersey, is a virtual gateway to New York City. We are an extremely diverse County in the most diversified area of the United States. Over 500,000 residents live here. Within the school system of our largest City, Elizabeth, there are more than 34 different languages spoken and 50 different ethnicities represented.

I have been the Bias Crime Officer for Union County since January of 1990. Assistant Prosecutor Richard P. Rodbart has been the Supervisor and legal advisor of the unit since its inception in 1988. We are involved with each and every bias incident occurring here with typically sixty or more such crimes occurring annually. We also instruct police recruits and in-service officers on bias crime and cultural awareness. Interacting with the community, including schools, civic, religious, ethnic and cultural groups, is also an important part of our task. The Office has co-sponsored a community forum entitled "Standing

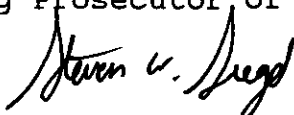
Honorable Janet Reno  
Page 2  
August 12, 1997

Together Against Hate" for the past three years. I have enclosed a copy of our annual bias crime report for your information.

Assistant Prosecutor Rodbart and myself would like to offer our knowledge and experience to you in any way possible to help make this conference a success. Please feel free to contact me at 908-527-4649. We are truly committed to this very important issue.

Respectfully yours,

EDWARD M. NEAFSEY  
Assistant Attorney General  
Acting Prosecutor of Union County



By: STEVEN W. SIEGEL  
Sergeant  
Special Prosecutions Unit

jef

UNION COUNTY PROSECUTOR'S OFFICE

MEMORANDUM

DATE : JANUARY 13, 1997

TO : ACTING PROSECUTOR EDWARD M. NEAFSEY  
THRU: INVESTIGATIONS SUPERVISOR RICHARD P. RODBART

FROM : SERGEANT STEVEN W. SIEGEL *JS*

RE : 1996 BIAS UNIT SUMMARY

---

Attached please find the 1996 Bias Unit Summary with statistics.

kn

c: First Assistant Prosecutor Michael Lapolla  
Chief David J. Hancock  
Deputy Chief James Dougherty  
Assistant Prosecutor Thomas Isenhour  
Lieutenant James Durkin  
Bias Unit Personnel

## 1996 BIAS UNIT SUMMARY

### Unit Composition

The Unit is comprised of the Bias Crimes Officer, who is a Sergeant responsible for all of the Unit functions, two other Sergeants and a Detective who serve on-call, receive incident reports and conduct or assist with investigations as needed. Investigations Supervisor Richard P. Rodbart oversees Unit operations, makes bias determinations, and authorizes complaints.

### Unit Responsibilities and Functions

1. Maintain 24 hour on-call schedule.
2. Receive bias incident reports from municipalities.
3. Oversee and coordinate municipal bias investigations.
4. Assist municipality with bias investigations.
5. Conduct primary bias investigations.
6. Ensure proper reporting of bias incidents to the New Jersey State Police Uniform Crime Report Unit and New Jersey Division of Criminal Justice.
7. Perform community relations functions relating to bias crime.
8. Classify incidents as bias or non-bias.
9. Authorize filing of bias related complaints/warrants.
10. Maintain bias crime related intelligence.
11. Dissemination of bias intelligence to municipalities.
12. Interact with the New Jersey State Office of Bias Crimes and Community Relations.
13. Interact with the Union County Human Relations Commission
14. Interact with private, public and government entities relating to bias crime, human rights, and cultural diversity.
15. Provide speakers to the public including schools, religious, racial and ethnic organizations.
16. Perform training sessions for police recruits and in-service personnel on bias crime, cultural diversity, sensitivity, and community relations.
17. Maintain administrative files and records on bias crimes.
18. Prepare periodic summary report to Attorney General's Office and Union County Prosecutor's Office.
19. Conduct community assessment.
20. Coordinate pro-active bias reduction efforts.
21. Attend New Jersey Bias Investigators Association meetings.
22. Interact with representatives of the media.

	<u>1996</u>	<u>1995</u>	<u>1994</u>
<u>Incidents Referred to the Office:</u>	80	81	95
<u>Suspected or Confirmed Bias Crimes:</u>	57	55	62
<u>Number of Victims Involved:</u>	63	60	63
<u>Municipality:</u>			
Union	13	6	6
Kean College	9	14	12
Linden	7	7	3
Clark	6	0	3
Cranford	6	13	2
Plainfield	4	2	0
Scotch Plains	3	2	1
Elizabeth	2	4	1
New Providence	2	0	2
Hillside	1	0	2
Rahway	1	1	4
Roselle	1	1	1
Roselle Park	1	1	7
Summit	1	0	7
Berkeley Heights	0	0	1
Fanwood	0	1	0
Garwood	0	0	2
Kenilworth	0	0	0
Mountainside	0	0	2
Springfield	0	0	2
Westfield	0	1	4
Winfield	0	0	0
Union County College	0	1	0



Bias Crime Offenses (Most serious crime per incident):

	<u>1996</u>	<u>1995</u>	<u>1994</u>
Murder	1	0	0
Aggravated Assault	4	8	1
Terroristic Threats	5	0	3
Simple Assault	5	8	1
Harassment	13	7	16
Robbery	0	1	4
Burglary	0	1	1
Criminal Mischief	29	36	37

Incidents Cleared:

Cleared by Arrest.....11 (19% cleared)  
Total Number of Arrests.....17  
Adults Arrested.....10 (59%)  
Juveniles Arrested..... 7 (41%)  
Exceptional Clearance..... 4 (7%)  
Juveniles Exceptionally Cleared... 4

**Victim Target:\***

Persons	26	(44.1%)
Public property	15	(25.4%)
Private property	18	(30.5%)

**Bias Classification:\***

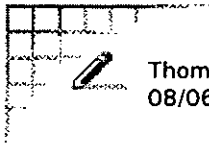
Racial	25	(39.1%)
Religious	28	(43.8%)
Sexual orientation	4	(6.3%)
Ethnic	7	(10.9%)
Gender	0	(0%)
Handicapped	0	(0%)

**Targeted Victim Groups:\***

Jews	28	(43.8%)
African-Americans	22	(34.4%)
Homosexuals	4	(6.3%)
Caucasians	3	(4.7%)
Asian-Indians	3	(4.7%)
Latinos	2	(3.1%)
Arab	1	(1.6%)
Oriental	1	(1.6%)

\* Some incidents have multiple classifications or factors, therefore causing the percentage figures to exceed 100%.

Race-hate crimes



Thomas L. Freedman  
08/06/97 06:36:59 PM

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP  
Subject: Hate Crimes and race

There is some interesting stuff being developed in the DOJ hate crimes group which will go fine with the conference in November, but may suggest a closer connection eventually with the race initiative...it may even be stuff the initiative is doing.

For instance, DOJ is looking to put together hate crime task forces structured around the 90 or so US Attorneys. The groups will include local and federal prosecutors, the FBI, but also local advocacy groups, private sector, and perhaps educators. (Something like 65% of hate crimes are committed by teenage white males). Department of education has a curriculum ready ("Healing the Hate") and DOJ is helping to get a curriculum to train local police in dealing with hate crimes. If we moved it into prevention and punishment it begins to look like the President is coordinating a strategy to deal with the most virulent outgrowths of prejudice in a tough, sensible, regionally based manner. maybe, maybe not.

Race - hate crimes

DISCUSSION DRAFT 6/27/97

MEMORANDUM

*Bruce - This is the hate statute DOT is considering; presumably, we'd unveil it at the hate crimes conference. It looks generally OK to me. Ebera*

TO: Hate Crimes Working Group  
FROM: Legislative Subgroup  
Re: Proposed Bill to Amend 18 U.S.C. 245  
DATE: June 30, 1997

I. INTRODUCTION

The Legislative Subgroup recommends the attached bill to amend 18 U.S.C. 245. This bill, which is patterned on the third option set forth in our earlier memorandum, would create a three-tiered system for the federal prosecution of hate crimes.

First, our proposal would leave section 245(b)(2) as it is now. This section prohibits the intentional interference, or attempted interference, with a person's exercise of certain enumerated, federally protected rights 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 that bodily injury or death resulted.

Second, our proposal would add a new section 245(c)(1). This section would prohibit the intentional infliction of bodily injury on the basis of race, color, or national origin. Unlike section 245(b)(2), this new section would not require a showing that the defendant committed the offense because the victim was engaged in a federally protected activity. However, this offense would be prosecuted as a felony only, and a showing of bodily injury or death would be required. An attempt would not constitute an offense under this section.

Third, our proposal would add new sections 245(c)(2) and (3). Together, these new sections would prohibit the intentional infliction of bodily injury on the basis of religion, gender, sexual orientation, or disability. Like section 245(c)(1), these new sections would authorize the prosecution of felonies only, would exclude attempts, and would require a showing of bodily injury or death, while omitting the "federally protected activity" requirement of section 245(b)(2). Unlike section 245(c)(1), however, these new sections would add a Commerce Clause "hook" as an element of the offense.

II. DISCUSSION

As discussed in our earlier memorandum, current federal law is inadequate to enable the federal government effectively to address the problem of hate crimes in America. The "federally protected activity" requirement contained in section 245(b)(2) hinders the federal government's efforts to prosecute hate crimes based on race, color, religion, or national origin by putting beyond the government's reach much hate-based conduct that cannot be shown to have been committed because of the victim's exercise of one of the federally protected rights specifically enumerated in the statute. In addition, section 245 -- the principal federal hate crimes statute -- provides the federal government with no authority whatsoever to prosecute hate crimes based on gender, sexual orientation, or disability.

Although the Legislative Subgroup considered proposing the broadest possible amendment -- one that would simply repeal the statute's "federally protected activity" requirement while adding gender, sexual orientation, and disability as protected categories -- we are recommending a somewhat less expansive approach, due to significant constitutional, practical, and political considerations.

#### A. Constitutional Considerations

The expansion of section 245 raises several questions concerning the constitutional powers of Congress.

The Office of Legal Counsel advises that the Thirteenth Amendment authorizes Congress to prohibit hate crimes that inflict bodily injury on the basis of a victim's actual or perceived race, color, or (in most, if not all, instances) national origin. OLC advises that the Thirteenth Amendment also authorizes Congress to prohibit hate crimes that inflict bodily injury on the basis of a victim's actual or perceived membership in a religious group -- such as Jews -- that would have been considered a racial group at the time of the adoption of the Amendment. OLC advises, however, that the Thirteenth Amendment probably does not provide Congress with similar authority with respect to hate crimes that are motivated by bias against a victim's actual or perceived gender, sexual orientation, disability, or, in many instances, religious identity. And although Section 5 of the Fourteenth Amendment may provide a source of congressional power for legislation prohibiting hate crimes that target groups not protected by the Thirteenth Amendment, OLC advises that the Fourteenth Amendment remains a questionable source of power, given the proposed statute's breadth and its lack of any "state action" requirement.

This leaves Congress' power to regulate interstate commerce as the strongest source of congressional authority to regulate hate crimes based on gender, sexual orientation, disability, or, in some instances, religion. In light of the Supreme Court's decision in Lopez, OLC advises that the statute should contain a Commerce Clause hook for crimes that Congress could not prohibit pursuant to its power under the Thirteenth Amendment. In accord with this advice, the proposed statute distinguishes between hate crimes motivated by bias against race, color, and national origin (for which the statute includes no Commerce Clause "hook"), and hate crimes motivated by bias against the other protected groups (for

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which a Commerce Clause "hook" has been included). Although the precise contours of the Commerce Clause "hook" are difficult to articulate, we have drafted the bill's Commerce Clause provision in a manner intended to reach all cases within the scope of Congress' commerce power.

Finally, as to the proposed statute's findings, OLC advises that the inclusion of particularized Commerce Clause findings might be perceived as limitations on the scope of the Commerce Clause "hook," and therefore advises against their inclusion.<sup>1</sup> Moreover, OLC advises that the Constitution does not require Congress to identify the sources of power on which it relies on the face of the statute. Given the difficult questions concerning the scope of Congress's power under Section 5 of the Fourteenth Amendment, and the fact that, as drafted, the proposed statute is fully supported by Congress' authority pursuant to the Thirteenth Amendment and the Commerce Clause, OLC advises that it may be prudent to omit references to any sources of power rather than to invite challenges to the scope of Congress' power under Section 5 by referring to that source of power expressly.

On the other hand, the Fourteenth Amendment does authorize Congress to regulate at least some of the conduct reached by our proposed bill (such as that involving state action). And other members of the subgroup believe that the inclusion of broad assertions in the bill identifying Congress' sources of power could protect against misreadings of Lopez in the event of future court challenges to the bill's constitutionality. Accordingly, for purposes of discussion by the Working Group, we have included in the "findings" section of the current draft of our bill a set of broad assertions of congressional power. At its meeting on June 30, 1997, the Working Group should discuss the wisdom of including these assertions.

## B. Practical Considerations

The possible expansion of section 245 to include hate crimes based on gender, sexual orientation, and disability has raised significant concerns within the Department that a deluge of newly federalized cases, most involving gender-based hate crimes, might overwhelm the FBI and the Criminal Section of the Civil Rights Division. There is a very real concern that the approximately 6,000 hate crimes currently reported to the FBI each year could be dwarfed by the number of sexual assaults and other allegedly hate-based crimes that might be brought to the federal government's attention for investigation and possible prosecution under an expanded section 245.

Because of these concerns, the Legislative Subgroup has sought to devise a principled approach that will protect the ability of the Department and the FBI to function effectively while authorizing the federal government to investigate and prosecute those hate crimes that implicate the greatest federal interest in prosecution. Some of the limiting

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<sup>1</sup>In any event, a discussion of what Congress may "find" is premature at this point.

principles we propose are included within the language of the proposed bill; others will appear in implementing guidance that will govern discretionary decisions regarding intake and prioritization among potential federal prosecutions.

The following limiting principles are included within the express language of the bill itself. First, the bill would require proof of a hate-based motivation for an offense; particularly important with regard to rapes and other assaults, 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 would exclude attempts and other misdemeanors and would limit the new categories of cases under section 245 to those involving bodily injury or death; in addition to the possible importance of these limitations with regard to Congress' power to legislate pursuant to the Thirteenth Amendment, these limitations would narrow the universe of newly federalized cases to truly serious offenses.<sup>2</sup> Third, the bill would require proof of a Commerce Clause nexus in cases involving conduct based on religion, gender, sexual orientation, or disability; this requirement would limit federal jurisdiction under these categories to cases that implicate interstate interests.

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A second set of limiting principles will be set forth in implementing guidance provided to federal investigators and prosecutors. Working in conjunction with the FBI and the Criminal Section of the Civil Rights Division, the Legislative Subgroup has drafted written guidance for the FBI's intake of complaints alleging gender-based hate crimes; this guidance would limit the set of cases in which the FBI would be required to open investigations to those that appear to involve the most egregious evidence of gender-based animus. In addition, the subgroup has drafted written guidance for determining the sufficiency of gender-based motivation; intended for use at all stages of the criminal process, this guidance would inform the discretionary decisions of investigators and prosecutors in a way aimed at limiting the set of cases actually prosecuted to those involving sufficient evidence of gender-based motivation.

### C. Political Considerations

We expect that the strongest political opposition to any bill seeking to expand the reach of section 245 would be premised on the view that it is inappropriate to federalize entire categories of criminal conduct that is traditionally prosecuted at the state and local levels. We believe that the statutory limitations contained in our proposed bill would blunt the force of this opposition. As discussed above, the bill would limit federal jurisdiction to serious felony cases involving bodily injury and strong evidence of hate-based motivation.

<sup>2</sup> Our interest in promoting consistency also played a role in our decision to propose the exclusion of attempts from sections 245(c)(1), (2) and (3). Once we decided to propose limiting those sections to felonies, the inclusion of attempts within those sections would have been inconsistent with the misdemeanor status of attempts under section 245(b)(2).

in cases alleging bias based on religion, gender, sexual orientation, or disability, the bill would further limit federal jurisdiction to matters implicating interstate interests. No one could claim fairly that we were seeking to federalize "mere" harassment or other crimes viewed as minor. In addition, the limitations contained in our implementing guidance would tend to refute criticisms that the FBI and the Civil Rights Division would be incapable of handling the added burdens imposed on their caseloads.



## A BILL

To amend section 245 of title 18 of the United States Code to increase federal protection against violence committed because of the race, color, religion, national origin, gender, disability, or sexual orientation of the victim.

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

### SECTION 1. SHORT TITLE

This Act may be cited as the "Civil Rights Crimes Act of 1997".

### SECTION 2. FINDINGS

The Congress finds that --

(1) The incidence of violence motivated by animus based on the actual or perceived race, color, religion, national origin, gender, disability, or sexual orientation of the victim poses a serious national problem.

(2) Such violence often is committed by individuals with ties to groups that operate nationwide.

(3) Such violence is deeply divisive.

(4) Current federal law is inadequate to address this problem.

(5) Although some State and local jurisdictions have attempted to respond to the challenges posed by such violence, the problem is sufficiently serious, widespread, and interstate in scope to warrant Federal intervention to assist State and local jurisdictions.

(6) Congress has authority pursuant to the Commerce Clause of the Constitution, section 2 of the Thirteenth Amendment to the Constitution, and section 5 of the Fourteenth Amendment to the Constitution, to make such violence a violation of Federal law.

### SECTION 3. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.

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

"(1) Whoever, whether or not acting under color of law, intentionally causes bodily injury to any person because of the actual or perceived race, color, or national origin of that person shall be imprisoned not more than ten years, or

fined in accordance with this title, or both; and if death results shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both.

(2) Whoever, whether or not acting under color of law, in any of the circumstances referred to in subsection (3) of this section, intentionally causes bodily injury to any person because of the actual or perceived religion, gender, sexual orientation, or disability of that person shall be imprisoned not more than ten years, or fined in accordance with this title, or both; and if death results shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both.

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(3) The circumstances referred to in subsection (2) are that in committing 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.

#### SECTION 4. TECHNICAL AMENDMENT

Subsection (c) of section 245 of title 18 is redesignated as subsection (d), and subsection (d) of section 245 of title 18 is redesignated as subsection (e).



## DISCUSSION DRAFT 6/27/97

**GUIDANCE FOR INTAKE OF ALLEGATIONS OF §245 GENDER VIOLATIONS**

The causing of bodily injury to a person because of that person's gender, accompanied by the requisite statutory interstate or foreign commerce nexus (see 18 U.S.C. § 245(c)(3)), can be a violation of 18 U.S.C. §245(c)(2). At the same time, not every rape, sexual assault, or violent act in an abusive relationship is a violation of this federal criminal civil rights statute. In addition to the violent act, there must be evidence of animus toward the victim because of the victim's gender. That evidence can manifest itself in a number of different ways. However, without the existence of such evidence, the requisite statutory motive is missing to establish federal jurisdiction.

In these cases, investigations should not be initiated unless there is evidence of gender based animus. The presence of any of the following factors may suggest evidence of gender animus sufficient to require the initiation of an investigation. They give guidance, but are not intended to be an exhaustive list of circumstances that demonstrate gender animus. When an unusual fact pattern is alleged, the FBI field office or the United States Attorney's office should consult with the Hate Crimes Unit at FBIHQ or the Criminal Section of the Civil Rights Division.

**1. THE CONDUCT ITSELF**

Does some aspect of the violent conduct itself tend to indicate that its commission was motivated by gender animus?

While rape alone would not warrant federal investigation, a rape accompanied by an extreme level of egregious violence or brutality, such as multiple stabbing or prolonged beating or torture or mutilation of the victim's sexual organs, could warrant federal investigation to determine whether gender animus was the motivation of the crime. The key to this factor is the existence of evidence in the conduct itself that indicates an explicit expression of a general animus toward persons of the victim's gender.

**2. STATEMENTS BY THE SUBJECT**

Did the subject make a statement at the time of the violent conduct or at some time prior to or after the conduct that reflected an explicit expression of a general animus toward persons of the victim's gender?

When the subject uses epithets or insults during the violent conduct to express a general animus toward persons of the victim's gender, federal investigation could be warranted. While the use of an insult such as "bitch" alone might not be sufficient to warrant the initiation of a federal investigation, a statement like "all you bitches deserve what I'm doing to you" could be an expression of general gender animus sufficient to warrant federal investigation of the violent act.

Statements made before or after the violent conduct also could reveal the existence of such a general animus toward persons of the victim's gender. The frequent and repeated use of epithets or insults directed toward the victim's gender or comments that evince approval of violence directed toward persons of the victim's gender by the subject could be expressions of a general animus toward persons of the victim's gender. Such statements can be made orally to the victim or to others or be otherwise recorded in letters, notes, diaries and electronic mail.

### 3. KNOWN INTERESTS OF THE SUBJECT

Does the subject associate with an organization or collect written or published material that advocates or approves of violence towards persons of the victim's gender?

Such activity suggests the existence of the subject's own gender animus and could provide a basis for federal investigation of a violent act by the subject targeting the victim. The mere lawful possession of erotic materials would not support a finding that federal investigation is warranted.

### 4. SUBJECT'S PAST CONDUCT

Has the subject previously committed wrongful conduct that evidences the existence of a general animus toward persons of the victim's gender?

Past individual incidents or a pattern of conduct could provide support for the federal investigation of a violent act as a potential gender motivated violation, when the motivation for the conduct in question is otherwise ambiguous.

### 5. EVIDENCE OF NON-GENDER BASED MOTIVATION

Is there evidence that the motivation for the violent act was something other than animus toward persons of the victim's gender?

If evidence demonstrates that the subject's motive was other than gender animus, then a basis for federal investigation does not exist. If the subject's motive was robbery, revenge, or some other motive, but not gender animus, federal investigation is not warranted. However, it is not uncommon that violent conduct is the product of mixed motives. If evidence indicates that gender animus is one of several of the subject's motives, then a federal investigation is warranted.

As with other types of hate crimes, consideration of the totality of the circumstances is critical in deciding whether an incident could be a federal gender animus based crime. The factors presented above should not be determinative in and of themselves; rather, the factors should be taken together in the context of all the facts of the particular case at hand. While the presence of any one factor may be enough to support the initiation of a federal

investigation, the decision to initiate an investigation is, of course, fact specific and must look to the totality of the circumstances presented by the allegation.