

ing HATIE

**THE CREATIVITY TO CHALLENGE HATE:**  
**FIVE DEMONSTRATION PROJECTS FUNDED BY THE BJA**

I. **INTRODUCTION**

(Nancy Dist or Rose Oebre)

**D** Bias, Prejudice, and the violence which they engender are not a new phenomenon in America. The trial and execution of women suspected of being witches in colonial New England, the brutal and often deadly treatment of Native Americans by westward moving European Americans, the anti-Catholic fervor of the Know Nothings in the \_\_\_\_\_, bloody rampages of the newly born Ku Klux Klan in the south during Reconstruction and the intimidation, beatings, and killings of southern Black and civil rights workers in the 1960s stand as only a partial testament to our nation's tragic experience with hate and violence. More recently, during the 1980s, 1990s, and continuing into this new decade, we have witnessed hate crimes directed at African Americans, gays and lesbians, Jews, Asian Americans, Latinos, and Native Americans. Some of these hate crimes, the murders of James Byrd, Jr. in Jasper, Texas, and Matthew Sheppard in Laramie, Wyoming, have captured the nation's headlines which for too many others, have occurred in virtual anonymity - except to their victims.

**A** The persistence of hate crimes throughout our history does not, however, mean that the bias, prejudice, and violence are intractable.

Across this country, people are developing new ways to confront hate crimes through effective enforcement of hate crime laws, through providing support to victims, and through prevention. An earlier Bulletin described six initiatives of criminal justice professionals to address hate crimes.

This Bulletin probes five programs funded as demonstration sites by the bureau of Justice Assistance ("BJA").

A. **The Composition of the Local, Regional and State Teams**

1. **The Simon Wiesenthal Center's National Institutes Against Hate Crimes**

The National Institutes bring together teams of law enforcement professionals from cities, regions, and states to develop new coordinated initiatives to combat hate crimes.

2. **The San Diego Police Department and the anti-Defamation League's Victim Assistance Program**

The combined resources of the two sponsoring organizations have developed an

innovative program to provide victims of hate crimes with immediate and short-term assistance.

3. The Los Angeles County District Attorney's Office "JOLT" Program

The JOLT program is a comprehensive program for early intervention, prevention, and diversion for addressing teenage perpetrators of hate crimes and bias incidents.

4. The Maine Department of the Attorney General's civil Rights Teams Project

The Maine Civil Rights Team Project, a state-wide program for preventing bias, prejudice, harassment, and violence in schools, is currently in over 130 high schools, middle schools, and elementary schools.

5. The Massachusetts Governor's Task Force on Hate Crimes Schools Project

The Schools Project combines a Civil Rights Team Project (similar to Maine's) with a week long "Stop The Hate" week involving schools throughout the state.

Individually, each of the five programs presents a new and creative effort to confronting the nation's problem with hate crime. Collectively, the programs demonstrate the multifaceted approach which are needed to confront, respond, and prevent hate violence:

Coordination among all components of the criminal justice system, focused efforts to address the needs of the victims of hate crimes, diversity programs for youth offenders and, finally, prevention in our schools. Ultimately, our success in turning back the tide of hate crimes will depend upon many, many organizations, governmental and private, using similar creativity to focus on not one, but numerous ways to combat bias, prejudice, and violence.

II. COORDINATION AND PLANNING FOR THE CRIMINAL JUSTICE SYSTEM: THE NATIONAL INSTITUTES AGAINST HATE CRIMES

"The concept of the Institute is to bring together a cross-section of local criminal justice professionals who will develop a strategic coalition to share existing ideas, form new ones, and implement the best options to respond to and prevent hate crimes."

A. Liebe Geft, Director, Museum of Tolerance

The Simon Wiesenthal Center, through its acclaimed Museum of Tolerance located in Los Angeles, received a grant from the BJA in 1999 to implement the National Institutes Against Hate Crimes. The Institutes utilized the Museum, a faculty of nationally recognized experts on hate crimes, and the innovative use of the Internet to bring together four or five teams of criminal justice officials from a city, region, or state, for an intensive four-day program.

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Crummy

Kennedy's person:

- 1) Should we change bill
- 2) would we modify

- cops feel it is insult
- we would modify

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- gender
- course down the rd

Hyde - want go on 1. locally  
Connie Morella, Jim Leach

Wade Anderson - J.C. Watts

Winnie - Reg Pryce - former co-sponsor

March 15 - pay equity, hate crimes - conference

Human Rts - week

Jewish federat - 400 people Feb. 22nd

Pat Rose

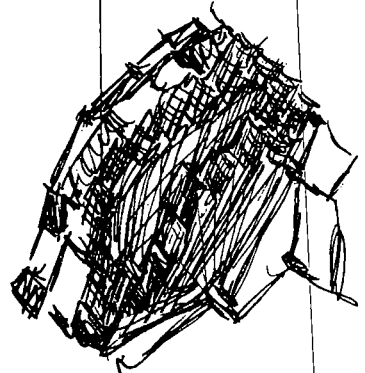
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Der. in  
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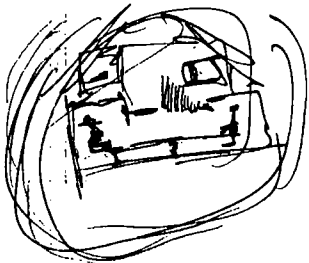


Gerber

1. Hate comes - Gerber bias  
- other evidence needed

2. Sell as backdrop to  
local law enforcement  
- not as attack

Disability -  
is a jury question



Edward M. Kennedy and Arlen Specter

# When Combating Hate Should Be a Federal Fight

The Post's Nov. 17 editorial criticizing the measure we have introduced on hate crimes reflects a misunderstanding of our proposal to close the gaps in federal law and a failure to recognize the profound impact of hate crimes.

Hate crimes are uniquely destructive and divisive because

## Taking Exception

they injure not only the immediate victim, but the community and sometimes the nation. The Post's contention that a "victim of a bias-motivated stabbing is no more dead than someone stabbed during a mugging" suggests a distressing misunderstanding of hate crimes. Random street crimes don't provoke riots; hate crimes can and sometimes do.

The federal government has a role in dealing with these offenses. Although states and local governments have the principal responsibility for prosecuting hate crimes, there are exceptional circumstances in which it is appropriate for the federal government to prosecute such cases.

Hate crimes often are committed by individuals with ties to groups that operate across state lines. The Confederate Hammerskins are a skinhead group that began terrorizing minorities and Jews in Tennessee, Texas and Oklahoma a decade ago.

Federal law enforcement authorities are well situated to investigate and prosecute criminal activities by such groups,

and the federal government has taken the lead in successfully prosecuting these skinheads.

Hate crimes disproportionately involve multiple offenders and multiple incidents and in such cases, overriding procedural considerations—including gaps in state laws—may justify federal prosecution.

In Lubbock, Tex., three white supremacists attempted to start a local race war in 1994 by shooting three African American victims, one fatally, in three separate incidents in 20 minutes. Under Texas law, each defendant would have been entitled to a separate trial in a state court, and each defendant also might have been entitled to a separate trial for each shooting. The result could have been at least three, and perhaps as many as nine trials, in the state courts, and the defendants, if convicted, would have been eligible for parole in 20 years. They faced a mandatory life sentence in federal court.

Federal and local prosecutors, working together, decided to deal with these crimes under federal laws. The defendants were tried together in federal court, convicted and are serving mandatory life sentences. The victims and their families were not forced to relive their nightmare in multiple trials.

Federal involvement in the prosecutions of hate crimes dates back to the Reconstruction Era following the Civil War. These laws were updated a generation ago in 1968, but they are no longer adequate to meet the current challenge. As a

*"Hate crimes disproportionately involve multiple offenders and multiple incidents . . ."*

result, the federal government is waging the battle against hate crimes with one hand tied behind its back.

Current federal law covers crimes motivated by racial, religious or ethnic prejudice. Our proposal adds violence motivated by prejudice against the sexual orientation, gender or disability of the victim. Our proposal also makes it easier for federal authorities to prosecute racial violence, in the same way that the Church Arson Prevention Act of 1996 helped federal prosecutors deal with the rash of racially motivated church arsons.

The suggestion in the editorial that our bill tramples First Amendment rights is ludicrous. Our proposal applies only to violent acts, not hostile words or threats. Nobody can seriously suggest that the neo-Nazis who murdered Fred Mangione in a Houston nightclub last year because they "wanted to get a fag" were engaged in a constitutionally protected freedom of speech.

In addition, hate-crimes prosecution under our bill must

be approved by the attorney general or another high-ranking Justice Department official, not just by local federal prosecutors. This ensures federal restraint and that states will continue to take the lead in prosecuting hate crimes.

From 1990 through 1996, there were 37 federal hate crimes prosecutions nationwide, under the law we are amending—fewer than six a year out of more than 10,000 hate crimes nationwide. Our bill should result in a modest increase in the number of federal prosecutions of hate crimes.

When Congress passed the Hate Crimes Statistics Act in 1990, we recognized the need to document the scope of hate crimes. We now know enough about the problem, and it is time to take the next step.

As the Lubbock prosecution shows, combating hate crimes is not exclusively a state or local challenge or a federal challenge. It is a challenge best addressed by federal, state and local authorities working together. Our proposal gives all prosecutors another tool in their anti-crime arsenal. The issue is tolerance, and the only losers under our proposal will be the bigots who seek to divide the country through violence.

*The writers are, respectively, a Democratic senator from Massachusetts and a Republican senator from Pennsylvania.*

The Washington Post

MONDAY, DECEMBER 1, 1997

Hate Crimes EW

# Questions About Children's Island

ON THURSDAY, the D.C. Council will consider a lease that would allow National Children's Island to build a theme park on 40 acres of wetlands located in the Anacostia River just north of RFK Stadium. The idea of creating such a development on Kingman and Heritage islands has been around for years, along with a great deal of opposition from environmentalists and residents in nearby Wards 6 and 7. Children's Island proponents bill the technology-oriented project as a boon for local education and a generator of jobs and financial support for community-based projects. Opponents call it a destabilizing threat to surrounding neighborhoods and a bad financial deal for taxpayers across the city. Who is right? That's for council members to find out before they vote.

Members inclined to give their assent should first obtain satisfactory answers to legitimate and tough questions raised by project opponents, who include Ward 6 council member Sharon Ambrose and Ward 7 council member Kevin Chavous. Their concerns include the possibility of environmental degradation to

fragile wetlands and the potential loss of city control over the property and of potential tax revenue.

Critics charge that the developers have yet to give the council either a formal development plan or any details regarding the financing of the multimillion-dollar project. The project also has not been subjected to an environmental impact study, according to the National Planning Commission and the director of the President's Council on Environmental Quality. The absence of such a statement led both agencies to urge the council to withhold approval and rightly so.

Likewise, critics contend that the proposed 99-year lease is assignable to another party without further council scrutiny or approval. Can that be true? And is it also the case that the proposed lease requires the city to give developers control over as many as 6,000 parking spaces at RFK, valued in the millions, and not receive any significant rent or property tax? If so, how can the lease be a good deal for the city? National Children's Island supporters must assemble the facts to persuade a skeptical council that their project is not a bad idea. As of now they have a way to go.

## Marguerite Henry's Legacy

IT SOUNDS faintly condescending to credit an author with putting some quiet place or picturesque enclave "on the map"—as if the place or its people hadn't existed all along, sung or unsung. So let's just say that children's book author Marguerite Henry, who wrote "Misty of Chincoteague" in 1947 and followed it with three beloved sequels about the annual swim of the wild ponies from Assateague Island to Chincoteague Island, merely woke up the rest of the world to the existence of these islands—and changed them forever by the recognition. Twenty-five thousand tourists now flock to Assateague and Chincoteague every year to watch the pony swim, and most are there because the excitement of "pony penning day" was etched in their childhood imagination by Ms. Henry, who died on Thanksgiving at the age of 95.

The author of 58 children's books besides "Misty," Ms. Henry was sent to look at pony penning day (when wild horses that breed in Assateague's nature preserve are driven across the channel so some can be auctioned off) by a New York editor who thought she

might find it inspiring. She did, and if the residents of quiet Chincoteague occasionally have chafed over the years at the flood of attention to their local ritual, the event has made a dramatic difference in the local economy and helped keep the ritual robust.

You can picture the jackpot that such matchmaking would represent for a public relations firm nowadays that was seeking to draw tourism to its client—except, of course, that these things can't be faked. You can market products to children with gimmicks; just how much, parents can appreciate in the weeks ahead as they fight their way through the stores. But for immortality nothing beats the hold on the imagination produced by a good children's book. Like other children's classics that have ended up as the bread and butter of the communities where they are set—the Anne of Green Gables books for Canada's Prince Edward Island, the Laura Ingalls Wilder books for De Smet, S.D.—Marguerite Henry's work was the real thing. Assateague and Chincoteague are the beneficiaries, as are the millions who read the books in 12 languages.

The Washington Post

MONDAY, DECEMBER 1, 1997

Nov-19-97 11:38A

P.02



EW  
 Hate Crime

November 18, 1997

Letters to the Editor  
*Washington Post*  
 1150 15<sup>th</sup> Street, NW  
 Washington, 20071

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To the Editor:

Your November 17<sup>th</sup> editorial, "The 'Hate-Crime' Problem" derides legislation sponsored by Sens. Kennedy and Specter to strengthen federal authority over hate crimes and expand resources for state and local authorities to prosecute hate crimes as "a can of worms." As the chief executive of the YWCA of the USA, an organization with a mission to empower women and girls and to work to eliminate racism, I strongly disagree and I applaud President Clinton's support for the 'Hate Crimes Prevention Act.'

If enacted, the legislation would be a potent tool in the fight against hate crimes in two important ways. First, with more resources and expanded jurisdiction, more hate crimes would be prosecuted by federal, state and local authorities.

Secondly, enacting the proposed 'Hate Crimes Prevention Act' would send a clear, powerful message that the full weight of our great nation stands solidly and actively opposed to hate crimes. No 'boys will be boys' admonishments or 'you should have known your kind is not welcome here' rationalizations; hate crime is illegal and contrary to the principles and values that we cherish. Your editorial belittles the president's White House Conference on Hate Crimes, labeling it 'a bully-pulpit exercise.' I call it leadership.

Each year, over 650,000 women and children in the US come to the YWCA for services and support to help them overcome and prevent violence in their lives. Our experience tells us these people are best served by specific, practical solutions combined with clearly articulated leadership that lets them know they will be protected and those who harm them will be punished. I believe the 'Hate Crimes Prevention Act' delivers these two vital components and deserves the vigorous support of all people who value justice.

Sincerely,

Prema Mathai-Davis  
 CEO  
 YWCA of the USA

NOV 17 '97 04:28PM NOW LEGAL DEFENSE

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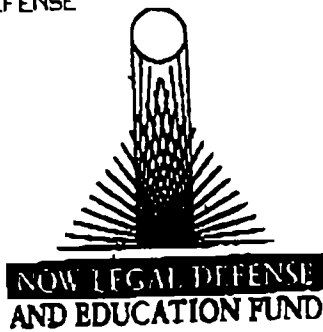
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November 17, 1997

VIA FAX*The Washington Post*

Dear Editor:

The *Washington Post's* November 17, 1997 editorial, "The 'Hate-Crime' Problem" misconstrues both the nature of bias-motivated violence that the White House conference sought to address and the legislative proposal advanced as one strategy to combat the problem.

While local law enforcement systems have made commendable progress in addressing crimes of domestic violence, rape and sexual assault, all too often battered women and survivors of rape and sexual assault still are met with skepticism when they seek to press charges. Cases still abound in which women have been killed after local law enforcement authorities have refused to enforce protective orders. The editorial's suggestion that these crimes are "presumptively local matters" based on "hatred" rather than discrimination makes a distinction without a difference. This kind of hatred results in discrimination based on gender just as racial hatred results in racial discrimination. The federal government has a strong, indeed, compelling interest in preventing this debilitating discrimination. Moreover, the legislative proposal itself would permit federal prosecution for bias crimes motivated by gender, sexual orientation or disability only in those cases in which the violent act affects interstate commerce, another traditional federal interest.

Congress recognized that rape, domestic violence and sexual assault violate women's civil rights and impact our nation's economy in many ways when it enacted the 1994 Violence Against Women Act. Building on that step, the new legislation is an important initiative toward rooting out all forms of bias-motivated violence. Surely, vindicating the civil rights of over half our country's citizens is a "pressing" federal interest that the White House commendably has identified as a cause for national concern and action.

Sincerely,

Kathy Rodgers  
 Executive Director, NOW Legal Defense and Education Fund  
 212-925-6635

11/19/97 20:21 FROM:

ID:

19 November 1997

Washington Post  
Letters to the Editor  
E-mail: [www.washingtonpost.com](http://www.washingtonpost.com)

To the Editors:

Your view that expanding federal law on hate crimes is "a can of worms" that aims to address feelings, not crimes ("The 'Hate Crime' Problem, 11/17/97) ignores two realities, one disturbing, the other promising.

The disturbing reality is that the new federal Office of Violence Against Women at the U.S. Justice Department tells us that the largest number of complaints come from women who find state and local authorities are unwilling or unable to enforce laws on domestic violence, especially restraining orders. You hail the existing law for allowing the federal government to prosecute violent civil rights abuses against others, but would not allow the same strong response to crimes against women.

The promising reality came at the White House Conference on Hate Crimes that you dismissed as little more than a "pep rally." President Clinton warned that activists would have to be prepared to answer critics like you who think adding hate crimes based on sex, sexual orientation and disability is, as he put it, "just creating a whole new category of federal crimes being prosecuted at the state and local level anyway."

The president got a vigorous response from Sacramento, Calif., Police Chief Arturo Venegas, who said, "Both the federal government and state governments, contrary to popular beliefs, hire bright people who can sort out whether or not to prosecute at the federal level or in state courts. But (the federal government has) resources that you may not have at the state and local level. Partnerships work a heck of a lot better (for) the folks who may only have limited resources in some communities, who can not afford in-depth investigations."

Women who face rape and domestic violence face hate crimes that deserve the full resources of our federal government, especially when a state or local response is not forthcoming. It's time we made a federal case out of these crimes.

Sincerely yours,  
Patricia Ireland, President  
National Organization for Women  
1000-16th St. N.W. #700  
Washington, D.C. 20036  
202/331-0066, Ext. 767  
Contact: Diane Minor, Communications Director, via [comms@now.org](mailto:comms@now.org) or 202/331-0066, X 773.

37 THU 12:45



Nancy Duff Campbell  
 Marcia D. Greenberger  
 Co-Presidents  
 National Women's Law Center

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# NATIONAL WOMEN'S LAW CENTER

November 19, 1997

Letters to the Editor  
 The Washington Post  
 1150 15th Street NW  
 Washington, D.C. 20071

To the Editor:

The Post's concerns about the Hate Crimes Prevention Act are unfounded (The 'Hate Crime' Problem, 11/17/97). This important legislation will give federal authorities the tools they need to prosecute crimes of violence targeted at victims because of their race, national origin, religion, sexual orientation, disability or gender. The bill does not, as your editorial suggests, seek to make hateful "feelings" a law enforcement concern; it addresses the violent acts such feelings can trigger. Existing federal laws do not reach many of these crimes, and there is clearly a federal interest in preventing and punishing crimes motivated by bigotry. There is also a strong federal interest in acts affecting interstate commerce, and, in fact, this bill would permit prosecution of crimes based on sexual orientation, disability or gender only when the offense affects interstate commerce.

It is true, as your editorial notes, that in certain circumstances the bill would allow rapes and domestic violence cases to be prosecuted as hate crimes, where the necessary facts and the federal interest in prosecution are established. The treatment of these crimes like all others is long overdue, and enhances the importance of the legislation.

Sincerely,

Marcia D. Greenberger  
 Co-President



# FEMINIST MAJORITY

Working for Women's Equality

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Katherine Spillar  
National Coordinator

November 20, 1997

Letters to the Editor  
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To the Editor,

I was dismayed by a recent Post editorial, "The 'Hate-Crime' Problem," which suggested that hate was not an adequate reason for lowering the threshold of federal involvement in criminal cases. The problem is not how "permissive" including gender in the Hate Crimes Prevention Act would make the federal government, but rather how crucial it is for women's safety.

West Coast Office  
8105 West Third Street  
Los Angeles, CA 90048  
213 651 0495  
213 653 2689 fax

Gender-based hate crimes affect all women - where they can live, work, study, and even walk at night.

Web Site:  
<http://www.feminist.org>

According to the American Psychological Association, "hate crimes not only represent an attack on an individual's physical self but on her or his identity and the community to which she or he belongs." Indeed, a single instance of gender-based hate crime affects all women.

E-mail:  
[femmaj@feminist.org](mailto:femmaj@feminist.org)

Too frequently local and state authorities have refused to act. Study after study shows gender bias in local and state police forces and judicial systems. Federal intervention could provide a court of last resort when local and state authorities refuse to act.

The purpose of including gender in the Hate Crimes Prevention Act is not simply to increase federal involvement but to allow federal intervention when state or local law enforcement is either unable to prosecute under state or local laws or are unwilling to intervene. The Christopher Commission report on the Los Angeles Police Department showed both police brutality toward women who are victims of crime and widespread gender bias among police officers.

Including gender in the Hate Crimes Prevention Act would not constitute a blank check for federal involvement. As outlined in the NOW Legal Defense & Education Fund *Facts on Gender-Based Hate Crimes*, September, 1996, the classification "hate crime" for gender based instances would be determined by very specific qualifications, such as "a history of misogynistic behavior, sexual violence, a pattern of assaulting women, hate language, and extreme brutality." This type of violence re-enforces the imbalance of power between men and women and perpetuates subordinate roles for women.

Similar concerns were voiced against the federal *Violence Against Women Act*, which has already proved an asset in fighting crimes against women without clogging the federal courts or needlessly taking power from state and local governments. Twenty states

Handwritten notes

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20530

FACSIMILE TRANSMISSION SHEET

DATE: NOV. 6, 1997

TO: Tom Friedman  
DPC

FAX #: (202) 456.7431 VOICE #: 456.5557

FROM: LISA M. WINSTON  
FAX #: (202) 514-6897 VOICE: (202) 514-2269

THIS TRANSMISSION CONTAINS 6 SHEETS INCLUDING THIS SHEET

\*\*\*\*\*

Special Note(s) As we discussed, I'm forwarding you As: As re: the work of the National Church Arson Task Force. You will see several references to a report; that was a report prepared last summer by the Task Force for the President. Please let me know if you need any other information or have any questions.

If any page(s) are missing, please call 514-2073 for re-transmission.

## GENERAL Qs and A's on NCATF

### Numbers

Q: So was there really an increase in Church arsons, or just more media attention to it?

A: Federal authorities first noticed an increase in the number of arsons reported toward the end of 1995, especially at African American churches in the South. The arsons appeared to have peaked in June 1996, but they continue today. As new fires occur, we continue to launch investigations.

Q: But weren't churches burning before then, and just not receiving the attention?

A: Certainly there were arsons at houses of worship before 1995. What we saw, though, was a marked increase in reports of church arsons coming in to the ATF, the FBI and the Civil Rights Division in the beginning of 1996. The exact number of arsons at houses of worship is difficult to ascertain, and before the formation of the Task Force, there was no reliable database at the federal level for tracking these arsons. We now have a coordinated database for arsons since 1995. No reliable number exists identifying the number of arsons at houses of worship prior to 1996.

Q: What about reports that the numbers of church arsons actually decreased, according to insurance industry numbers?

A: Those numbers are not good indicators of the rate of arsons at black churches. First, they are estimates, based in part on survey data. Second, there are no numbers for 1995 and 1996. Third, they do not break down the arsons based on the racial congregations at the churches.

### Racial Motivation

Q: Were all the arsons racially motivated?

A: No. In the cases we have prosecuted to date, we have found a range of motives. These include blatant racism and religious hatred, but also financial profit, burglary and personal revenge. Many of the cases remain to be solved, and we can't speak to the motivations in those cases.

Q: Well, the media hyped it up as racist. Were they wrong?

A: No. Of the fires that have lead to convictions, some were motivated by race and some were not. Where we have evidence of racial motivation, we will seek and obtain

convictions under the criminal civil rights statutes, as we have done against 17 of the 39 defendants who have been prosecuted federally. In addition, there have been state cases where there was some evidence of racial motivation, but where the defendants were prosecuted under state statutes that did not require proving the motive in order to gain a conviction. Some of these circumstances are laid out in the Appendix to the Report in the descriptions of the convictions we have obtained. [Note: in addition to the 17, there were other federal civil rights cases before 1995; e.g., convictions of 3 defendants in Mississippi for burning two churches in 1993].

Q: So how many have been proven to be racially motivated?

A: 17 defendants were charged federally with setting fires on account of race -- in Alabama, Nevada, North Carolina, South Carolina, Tennessee and Texas. [These 17 defendants were convicted in connection with 12 incidents].

Q: Was it part of a national conspiracy?

A: While the Task Force continues to explore the question whether there are connections between the fires across the nation, the cases closed to date and the charges that have been filed do not support the theory that these fires were the product of a nationwide conspiracy. For instance, the Task Force has found that only a few of the fires are linked by common defendants. Conspiracy charges have been filed in a limited number of cases. These conspiracies, though, have tended to be confined to the small geographic areas where the arsons have occurred

Q: Were hate groups behind all the arsons?

A: No. There have been a handful of cases in which members and former members of hate groups, such as the Ku Klux Klan, have been convicted for arsons at houses of worship, but most of the defendants were not found to be members of hate groups. Prosecutors need not show, however, that a defendant belongs to a particular hate group in order to gain a conviction.

Q: The Center for Democratic Renewal suggests that the burnings of black churches is part of a broader conspiracy to provoke a race war. (a) What is your response to that? (b) Are you investigating or monitoring hate groups as part of the church fires investigations?

A (a) The specific incidents that are discussed in the March CDR report involve cases in Tennessee, Mississippi and South Carolina, where the federal government brought civil rights charges against the defendants and obtained convictions. Conspiracy convictions were obtained in those cases involving a small number of fires. We have never said, however, that all of these fires are connected in a national conspiracy. We have said that the investigations have revealed a wide range of motives, of which racial hatred is one.

We have instructed our investigators to pursue all lines of inquiry, including whether the crime was motivated by race or religion, and whether any given incident is connected to any other.

(b) Where there is any evidence that white supremacist groups have been involved in any of the arsons, we have thoroughly investigated the matter. There are certain limits and guidelines, however, from a First Amendment perspective, on the types of activities in which we can engage in terms of investigating and monitoring groups.

Q: What is your response to critics who charge that the Administration and civil rights groups have used this issue to further their own political agendas and fund-raising efforts?

A: We have identified a serious crime problem, and we have addressed it as such. Based on our evaluation of the pattern of church fires in the South, we determined that closer coordination between federal and local law enforcement was necessary. In addition, the increased effort that has been focused on solving these crimes, and preventing more fires, has yielded results, in terms of arrests and convictions, better coordination among law enforcement agencies, the investigation of racial motivations involved in the fires, and in enhanced arson prevention efforts.

The fires that have occurred over the past two years have caused great apprehension in many communities, especially African American communities in the South. We believe the federal government responded appropriately and swiftly to this problem, and that we would have been derelict in our responsibilities had we not responded.

Prosecutions and Convictions

Q: How many cases have been prosecuted under amended Section 247, the 1996 Church Arson Prevention Act?

A: So far, there have been convictions under the amended Section 247 in cases involving the following five church fires:

- (1) the July 22, 1996 fire at the Church of God of the Prophecy in Dyersberg, Tennessee;
- (2) the September 19, 1996 fire at the Church of Christ in Henderson, Nevada;
- (3) the March 22, 1997 fire at the Macedonia Baptist Church in Bristol, Texas, where one defendant pled guilty to a 247 charge and another defendant pled guilty to a civil rights conspiracy charge under 18 U.S.C. 241;
- (4) the June 28, 1997 fire at the Joseph Baptist Church in Little River, Alabama; and
- (5) the August 27, 1997 fire at the Harvest Baptist Church in Keller, Texas.

Q: Why haven't more cases been brought under Section 247?

- A: The provision in amended Section 247 has been in effect only since July 3, 1996. Thus, the statute cannot be used in connection with any fires that occurred prior to that date. Arson investigations can be very difficult and time consuming, so there are many cases of fires that occurred since July that are still open. Moreover, the five cases that have been brought in the first fifteen months of the statute's operation should be compared with only one case brought under the earlier version of Section 247 from 1988 to 1996.
- Q: What is the breakdown between federal prosecutions and state prosecutions?
- A: As of November 6, 1997, 39 of the 152 defendants convicted since January 1, 1995, have been convicted of federal charges, while 113 of the 152 defendants have been convicted of state charges. However, this breakdown does not give a full picture of the federal/state cooperation in these cases. Often, the investigation will be conducted jointly by ATF and FBI investigators along with local law enforcement, even in cases that are eventually tried in state court. In addition, the NCATF actively monitors state prosecutions of church arson cases to ensure that any federal interest is vindicated. The decision whether to proceed under state law or federal law is one made jointly by federal and local officials, on a case-by-case basis, and will depend on a variety of factors.
- Q: If most of the cases are being brought by state prosecutors, what justifies the resources being spent by the federal government?
- A: Federal investigators and prosecutors from the Task Force are involved in all of these investigations, even in cases where state charges are ultimately brought. There have been many advantages to having this Task Force. First, local and state officials are now more regularly notifying federal authorities of these fires; as a result, ATF and FBI investigators are on the scene more quickly and can bring additional resources to the investigations. Second, Task Force efforts have resulted in greater coordination and cooperation among law enforcement and, in many cases, better relations between law enforcement and the African American community. The higher arrest rate in NCATF arson cases than in general arson cases can be attributed, at least in part, to efforts of the Task Force. Third, part of every Task force investigation is an investigation into the motive for the fire, where previously, many of the investigations might have stopped at finding the perpetrator.
- Q: How have convicted defendants been sentenced for these crimes?
- A: The sentences in these cases have varied depending on the circumstances of each case. The list of convictions in the Appendix includes information about the sentences. There have been long sentences handed down in several of recent cases. In South Carolina, for example, two former Ku Klux Klan members pled guilty to federal civil rights and arson charges, and received prison sentences of 18 and 19 years, respectively. In Missouri, two defendants were sentenced to 14 years and 19 years of imprisonment on state arson charges, respectively, for burning the Greers Chapel Baptist Church in Sikeston. At the

other end of the spectrum, in the case of the New Liberty Baptist Church in Tyler, Alabama, a juvenile, who was also a volunteer firefighter, pled guilty and received probation at the request of the victim congregation.

Other Questions

Q: Is the task force still operating?

A: Yes. There are a large number of cases that are still being investigated, and there continue to be new fires.

Q: What was the damage?

A: Hundreds of houses of worship burned, congregations were temporarily displaced, and many people were left wondering how this could happen in the 1990's. These arsons destroyed rural wooden churches, ruined 100-year old Bibles, and caused tens of millions of dollars in damage. But those communities which suffered a burned house of worship came to realize that thousands of Americans really care. The arsonists may have sought to divide our communities by burning our houses of worship, but in the end they only helped bring them closer together.

Q: What steps has the Task Force taken to address the issue of juveniles responsible for these arsons?

A: With respect to the issue of investigation and prosecution of these cases, we have made decisions regarding how to treat juvenile defendants based on the circumstances of the individual cases, in consultation with local law enforcement officials. On the prevention side, however, FEMA has several programs that are targeted to addressing the problem of juvenile firesetters.



# U.S. Department of Housing and Urban Development Office of the Secretary

## Chief of Staff

*Make  
Cross*

\*\*\*\*\***FAX**\*\*\*\*\*

DATE: 6 NOVEMBER 1997

TIME: 7:55 PM

NO. OF PAGES: 4 (Including Cover Sheet)

TO: PAUL WEINSTEIN

DOMESTIC POLICY COUNCIL

FROM: JACQUIE LAWING

PHONE NO: \_\_\_\_\_

FAX NO: 456-7028

RE: HUD'S MAKE 'EM PAY INITIATIVE

**Make 'Em Pay: Informing victims, perpetrators and the community at large - Perpetrators of housing-related acts of hate violence and intimidation will pay civil damages and civil penalties for their acts of hate.**

**Make 'Em Pay is designed to create a new intensified focus on HUD's commitment to combat housing-related hate violence and acts of intimidation. HUD will aggressively invoke its Fair Housing Act authority to make perpetrators pay civil damages to victims and civil penalties to the government.**

**Victims of housing-related hate violence and acts of intimidation seldom pursue civil avenues of relief because they are unaware of the federal government's authority to pursue and obtain civil relief for them. This lack of awareness results in an underreporting of incidents of housing-related hate activity. HUD will inform individuals about their right to civil redress by posting a World Wide Web page that provides Make 'Em Pay information and a tip form to transmit information on housing-related hate activity to HUD, by opening HUD's toll-free fair housing complaint number to Make 'Em Pay complaints, and by highlighting Make 'Em Pay during the Department's public celebration of the 30th anniversary of the Fair Housing Act next spring.**

**To demonstrate its commitment to effectively preserve and pursue each and every victim's right to civil redress, HUD will:**

- **Develop national reporting partnerships with civil rights, advocacy, and enforcement organizations to identify and track housing-related hate violence and acts of intimidation.**
- **Condition future grant agreements and NOFAs under the Fair Housing Initiatives and Fair Housing Assistance programs on a requirement to report housing-related hate activities directly to HUD.**
- **Partner with DOJ to receive information on all housing-related hate activity for the pursuit of civil remedies where appropriate.**

**To ensure vindication of the public's right to a society free of acts of hate violence and intimidation, HUD will**

- **Significantly increase the amount of civil penalties sought against perpetrators of these acts of hate.**
- **Develop new regulations which clearly provide for award of civil penalties for each act of housing-related hate violence or intimidation.**

**A new HUD internal task force is dedicated to:**

- **Monitoring the progress of Make 'Em Pay investigations, civil prosecutions, and outreach efforts.**
- **Compiling a monthly internal report documenting incidents of housing-related hate activity collected by way of the Department's outreach efforts and aggressive pursuit of information on hate incidents.**
- **Developing and implementing Make 'Em Pay training programs for fair housing groups, recipients of HUD funds, and HUD staff on the pursuit, investigation and prosecution of housing-related hate activity.**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20410-0001

November 6, 1997

TO: Tom Freedman, The White House  
Paul Weinstein, The White House

FROM: Jacquie Lawing, Deputy Chief of Staff, HUD *Jacquie Lawing*

RE: Belle, West Virginia Hate Violence Case

On October 21, 1997, the Department of Housing and Urban Development charged members of the Hobbs family of Belle, West Virginia with violating the Fair Housing Act by taking action to deny their black neighbors access to their own property and by threatening to physically harm them. Early last year, the Smith's and their three young children, who are black, bought land next to the Hobb's home as the site for their mobile home. Since then, the Smith's allege that the Hobbs have repeatedly threatened and harassed them. A HUD investigation supported the Smiths' assertions that individual members of the Hobbs family erected a steel cable to block the Smiths from bringing their mobile home to the lot they owned, intimidated the Smiths with threats of violence and racial slurs - the senior John Hobbs threatened the family with a gun and knife and threatened to put poisonous snakes in their yard, and erected a cross adorned with hanging, black, painted, plastic ducks near the Smith's land.

HUD is aggressively pursuing and civilly prosecuting these and similar acts of housing-related violence and intimidation. Our Make 'Em Pay initiative - which I understand may be highlighted at the White House's Conference on Hate Crimes on Monday - will intensify this focus and further evidence HUD's commitment to combat this housing-related hate activity. If you are interested in presenting the Smith's story as a tangible illustration of the egregiousness of this hate activity and/or Make 'Em Pay's potential to identify and redress similar activity, HUD would be pleased to facilitate contact with the Smith family. If you are interested in knowing more about HUD's Make 'Em Pay Initiative, please feel free to contact Mercedes Márquez, who has been working closely with Tom and staff of the Domestic Policy Council, at 708-2467.

# RADIO ACTUALITY

Hate  
Crimes

Hate crimes generate fear and divide our communities at a time when we must come together. By forging new links among law enforcement, educators, victims and others, President Clinton's conference will help us build communities that are safer, stronger and more tolerant.

Talking Points for the Attorney General  
Conference on Hate Crimes/Bill Lee

Good Morning

On Monday, I will join President Clinton at the first-ever White House conference on hate crimes--a day-long gathering of more than 300 concerned Americans from across the country.

This conference is an important step. For too many communities, hate crimes are a grim reminder of the challenges we face in building our American family. While the available data understates the problem, FBI figures show nearly 10,000 bias crimes occurred in 1995 alone.

Hate crimes are the embodiment of intolerance -- acts intended to create tension and fear. As President Clinton has stated, hate crimes "tear us apart when we should be moving closer together."

By forging new links among law enforcement, educators and victims, President Clinton's conference will help us build communities that are safer, stronger and more tolerant. At the conference, I will be leading a discussion on the benefits of coordinating efforts by federal, state and local law enforcement to address this problem. That is because hate crimes need to be addressed at every level, and it is one of the most important jobs of our civil rights division.

As many of you know, our Civil Rights Division is charged with pursuing and prosecuting hate crimes at the federal level, from cross burnings to church burnings. That's why the Senate Judiciary Committee's vote today is so important.

By voting for Bill Lann Lee to become the first Asian American to head the Division, Senators can send a clear message that they are committed to strong enforcement of our nation's civil rights laws and strong leadership in the fight against hate crimes.

Bill Lee is a well-qualified career civil rights attorney who knows how to lower the temperature when dealing with racial issues. Even those on the other side of the table, like Republican Mayor Richard Riordan, have hailed his conciliatory style.

Bill Lee's nomination deserves to be considered ~~as~~ by the full Senate. If he is given a fair shake, then I am confident that a majority of Senators will support him.

## Q&A on Hate Crimes

- Q: You say there were at least 10,000 hate crimes in 1995--but that that understates the problem. How widespread is the problem?
- A: We do not have any way of knowing, because the system of reporting is voluntary. Several private organizations track specific types of hate crimes. But even one incident is too many, because of the harm it inflicts on the entire community.
- Q: Should you change the reporting methods?
- A: That is one of the things we will be discussing Monday.
- Q: How many hate crimes have you prosecuted at Justice?
- A: Bert can get you the numbers. While I believe we have charged more than 200 defendants since I have been Attorney General, the vast majority of such crimes are prosecuted at the state level.
- Q: Why the need for federal laws?
- A: It is always important that the United States government has the authority and the resources necessary to tackle the problem. And these laws send a strong message to all Americans.
- Q: Do you think that the hate crime laws should be expanded to include gender, sexual orientation or disabilities?
- A: We have been examining that question and will be discussing it further at the conference on Monday.
- Q: You say you will discuss coordination between law enforcement to address this problem. Does such coordination not already exist?
- A: I think we can always do a better job at coordinating efforts around hate crimes and other types of violence.
- Q: Wouldn't it be impossible to outlaw hate crimes on the basis of gender because that would federalize all rapes and incidents of domestic violence?
- A: Our discussions have raised those very issues, but I would not comment on those conversations at this time.
- Q: So what will be proposed at this event?
- A: Stay tuned. The President will announce some exciting law enforcement initiatives to get tough on hate crimes.

Race-hate crimes

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.

Alan

# 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

EW

**MEMORANDUM**

**TO: ELENA KAGAN**

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

**RE: SUMMARY OF HATE CRIME CONFERENCE**

**DATE: OCTOBER 16, 1997**

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**SUMMARY**

This memo gives you an overview of the White House Conference on Hate Crimes which will be held on November 10. The Conference is mostly in fine shape, but there are some issues that need vetting. The legislative options are listed in Section III.D of this memo. The Department of Justice is coming over for a meeting on Monday, October 20, at 11 a.m. to discuss which legislative option, if any, to pursue. DOJ would like a firm answer from the White House as to whether the Administration should pursue a particular legislative option or merely broad policy principles. When DOJ present the options to the Attorney General, they would like to brief her on the White House's position.

As for the format of the Conference, it is expected that the Attorney General will make opening remarks in the morning, following which remarks the participants would take part in break-out groups of approximately 30 each. Some of the suggested topics for the break-out groups are listed below. The topics center around areas such as education, data collection, law enforcement, and community responses to hate crimes. In the afternoon, the President would make an announcement regarding hate crimes based on legislative and non-legislative proposals. Following or before the President's remarks, one participant from each of the break-out groups would report back on what was discussed.

Below is a summary of some of the areas of the conference, including (1) suggested location; (2) topics of breakout groups; and (3) the President's announcements.

**I. SUGGESTED LOCATION**

The suggested location is George Washington University.

**II. SUGGESTED TOPICS FOR BREAKOUT GROUPS**

There will probably be seven breakout groups with approximately 30 participants each.

1. Role of the Schools (K-12) in preventing and responding to hate crimes

2. Role of Colleges and Universities in preventing and responding to hate crimes
3. Role of Law Enforcement in responding to hate and bias crimes
4. Coordinated Response of Law Enforcement, Victims, and Communities in improving collection of statistics regarding hate crimes
5. Hate Crimes in Public and Private Housing: Causes and Prevention Strategies
6. Responding to the needs of victims of hate and bias crimes
7. Research and Evaluation: What Works in Preventing Hate and Bias Crimes
8. Community Responses to hate and bias crimes

### **III. PRESIDENTIAL ANNOUNCEMENTS**

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.

#### **A. 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.

#### **B. STATISTICS REGARDING HATE CRIMES**

- DOJ is also exploring several possibilities to improve the collection of statistics regarding hate crimes.

#### **C. 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.

#### **D. PROPOSED LEGISLATION**

DOJ has proposed five legislative options for amending 18 U.S.C. § 245, the principal federal hate crimes statute, to expand federal hate crimes jurisdiction to include bias crimes committed because of the victims’s sexual orientation, disability, and gender.

##### **Option 1**

- Option 1 is the most far-reaching of the five options. It would add sexual orientation, gender, and disability as protected categories. It would require proof of a Commerce Clause nexus in the least restrictive manner.
- Concerns about Option 1 are that it would federalize most rapes and would greatly increase the federal resources needed to prosecute these hate crimes. The FBI estimates that the proposed bill could require \$38.5 million per year to hire 219 additional agents. However, others at DOJ believe that the additional cost to the FBI would be substantially less than the estimate.
- Supported by the Civil Rights Division, Office of Policy Development, the Office of Intergovernmental Affairs, the Office of Legislative Affairs, the Violence Against Women Office, and the Office of Victims of Crime.

##### **Option 2**

- Option 2 also would add sexual orientation, gender, and disability as protected activities.

MEMORANDUM

TO: ELENA KAGAN  
FROM: TOM FREEDMAN, MARY L. SMITH  
RE: STATUS OF HATE CRIME NON-LEGISLATIVE PROPOSALS  
DATE: OCTOBER 27, 1997

*For so call review*

*Review*

*[Handwritten signature]*

SUMMARY

This memorandum summarizes the status of hate crimes proposals from the various agencies. Some of these proposals will be ready for announcement at the White House Conference on Hate Crimes on November 10. The four main announcements at the Conference will be: (1) the legislative proposal; (2) the approximately 193 new FBI agents; (3) the Hate Crimes Working Groups in the approximately 100 U.S. Attorney districts; and (4) the Make 'Em Initiative at HUD.

*Let's discuss with*

DEPARTMENT OF JUSTICE

I. PROSECUTION AND ENFORCEMENT

- DOJ is proposing federal-state-local partnerships that would coordinate the prosecution of hate crimes centered in the approximately 100 U.S. Attorney Offices throughout the country. 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. **Status: ready for announcement at the Conference**
- FBI has proposed seeking additional funding in the FY99 budget to add approximately 193 new FBI agents to investigate hate crimes.
- **Encourage hate crimes training for law enforcement.** In order to encourage police academies nationwide to include hate crime as part of their basic training, DOJ, in partnership with the National Association of Attorneys General and others, plans on allocating funds so that state and local law enforcement can attend federal training on hate crimes. **Status: Could be announced at Conference**
- **Best practices guide for working groups.** DOJ plans to distribute to each of the

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arrived  
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hate crimes working groups a best practices guide. **Status: Could be announced at Conference, but will not be completed.**

*Does it have to be manual*

**Modify "backstop" policy.** In "sensitive" cases, the modified policy would replace the presumption in favor of state prosecution with a balanced consideration that may at times support federal (or joint) action rather than state action. This modification, however, would not mandate that federal prosecution become the norm. **Status: ready for announcement at the Conference**

- **Prosecutors' Manual.** The National Institute of Justice is currently conducting a survey of 800 district attorneys offices to identify the policies and practices prosecutors use in hate crimes cases. The report, *Prosecutorial Response to Bias-motivated Crime*, is expected to be available in October 1997. **Status: Publication of book in Spring 1998 could be announced at Conference.**

## 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.
- **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 ???**
- **Add Hate Crimes Questions to the National Crime Victimization Survey ("NCVS").** In 1998, BJS is instituting an extension of the NCVS to eleven cities, and BJS and the COPs Office have committed to adding hate crime-related questions to that supplement. Beginning in 1999, hate crime inquiries will be a part of the annual survey conducted each spring. **Status: ready for announcement at Conference (check?)**
- **Study to Research Impediments to Hate Crime Data Collection and Methods to Improve.** BJS has issued an approximately \$100,000 solicitation for a study aimed at improving collection of statistics on hate crimes and methods to improve reporting. The contract is expected to be awarded sometime in November. **Status: ready for announcement at Conference**

### III. EDUCATIONAL INITIATIVES

- **Teacher's guide for hate crimes awareness.** DOJ and Education are working on materials which would include a teacher's guide, setting forth five or six specific suggestions for age-appropriate classroom activities or discussions for teachers to use at the elementary, middle-school, and secondary levels. **Status: getting draft on October 28 from Bill Modzeleski at Education**
- **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, DOJ could work with Education's National Center for Educational Statistics to explore mechanisms for collecting information on hate-based violence in schools. **Status: ???**
- 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.
- **PSAs. Status: Not ready.**
- **Hate Crimes Internet Site.**
- Middle-school curriculum on hate crimes should be placed on the Department of Education's website.
- Elevate awareness of hate-based violence in the educational community through a PSA campaign, conferences, workshops, articles, and the Internet.

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- **Make 'em Pay Initiative.** 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 money, but will merely be implemented by a reallocation of existing resources and will be supplemented in funding by costs recovered by HUD. **Status: Ready for announcement at the Conference.**



## **HATE CRIMES MEETING**

October 28, 1997

### **TOPICS FOR BREAKOUT GROUPS**

There will be ten breakout groups with approximately 30 participants each.

1. Role of the Schools (K-12) in preventing and responding to hate crimes
2. Role of Colleges and Universities in preventing and responding to hate crimes
3. Role of Law Enforcement in responding to hate and bias crimes
4. Coordinated Response of Law Enforcement, Victims, and Communities in improving collection of statistics regarding hate crimes
5. Hate Crimes in Public and Private Housing: Causes and Prevention Strategies
6. What Works in Preventing and Responding to Hate and Bias Crimes
7. Coordinated Community Responses to hate and bias crimes
8. Responding to the Needs of Victims
9. State Strategies in Combating Hate Crimes
10. Counteracting the Rise of Organized Hate Group Activities, Including Hate on the Net

### **MEETINGS**

**Call Essence Washington at 456-7732 to sign up for any meetings**

1. Education
  - Today, October 28 at 4 p.m. in Room 180
  - Tuesday, November 4 at 4 p.m. in Room 476
2. Law Enforcement, Data Collection, Community Responses, Victims
  - Wednesday, October 29 at 4 p.m. in Room 180
  - Wednesday, November 5 at 4 p.m. in Room 476
3. Housing
  - Thursday, October 30 at 4 p.m. in Room 180
  - Thursday, November 6 at 4 p.m. in Room 476
4. State Strategies and Organized Hate Groups
  - Wednesday, October 29 at 11 a.m. in Room 211
  - Wednesday, November 5 at 11 a.m. in Room 180

**DRAFT October 28, 1997 (1:34pm)**  
**BREAKOUT SESSION AGENDA**

**ROLE OF THE SCHOOLS (K-12) IN PREVENTING AND RESPONDING  
TO HATE AND BIAS CRIMES**

**Moderator: possibly Secretary Richard Riley from Department of Education**  
**Government Official: Gerald N. Tirozzi, Assistant Secretary for Elementary and Secondary  
Education**

**Possible Speakers (one or two of the following):**

- **Jack McDevitt**
- **Jack Levin**
- **someone from PTA**
- **Karen McLaughlin from EDC**

**MODERATOR QUESTIONS**

- Provide an overview of the problem of hate bias crimes in schools.
- What actions can schools and parents take to help prevent students from engaging in hate/bias crimes?
- What should schools and parents do about hate/bias crimes that have occurred?
  - Problem of failure of schools and students to report
- What kind of training or assistance is needed to help schools and parents deal with hate/bias crimes?
- What programs or activities have proven successful in preventing hate/bias crimes?
- What actions has the federal government taken and what actions should it take to help prevent hate/bias crimes in elementary and secondary schools?

**DRAFT October 28, 1997 (1:34pm)**  
**BREAKOUT SESSION AGENDA**

**ROLE OF COLLEGES AND UNIVERSITIES IN PREVENTING AND RESPONDING  
TO HATE AND BIAS CRIMES**

**Moderator: possibly Secretary Federico F. Pena from Department of Energy  
Government Official: David A. Longanecker, Assistant Secretary for Postsecondary  
Education**

**Possible Speakers (one or two of the following):**

- **Eric Jackson**
- **student**
- **Alicia Smith, Cal State Police Department**
- **Janet Jackson, Deputy Superintendent, International Association of Campus Law Enforcement**

**MODERATOR QUESTIONS**

- Provide an overview of the problem of hate bias crimes at colleges and universities.
- What actions can schools take to help prevent students from engaging in hate/bias crimes?
- What should schools do about hate/bias crimes that have occurred?
  - Problem of failure of schools and students to report
- What kind of training or assistance is needed to help schools deal with hate/bias crimes?
- What programs or activities have proven successful in preventing hate/bias crimes?
- What actions has the federal government taken and what actions should it take to help prevent hate/bias crimes at colleges and universities?

**DRAFT October 28, 1997 (1:34pm)**  
**BREAKOUT SESSION AGENDA**

**ROLE OF LAW ENFORCEMENT IN PREVENTING AND RESPONDING  
TO HATE AND BIAS CRIMES**

**Moderator: Eric Holder, Deputy Attorney General**

**Government Official: Ricky Roberts, DOJ**

**Raymond W. Kelly, Under Secretary for Enforcement, Treasury**

**Possible Speakers (one or two of the following):**

- Billy Johnston, Boston Police Department
- Joseph Zito, Suffolk, NY, Hate Crimes Task Force
- Attorney General Doyle, Wisconsin
- Chief Inman, formerly of Billings, Montana
- Robin Parker, New Jersey Attorney General
- James Danforth, Wisconsin

**MODERATOR QUESTIONS**

- Provide an overview of the problem of responding to hate/bias crimes from the perspective of law enforcement.
- What actions can law enforcement officials take to help prevent people from engaging in hate/bias crimes?
- What should law enforcement officials do about hate/bias crimes that have occurred?
  - Problem of failure to report
- What kind of training or assistance is needed to help law enforcement deal with hate/bias crimes?
- What programs or activities have proven successful in preventing hate/bias crimes?
- What actions has the federal government taken and what actions should it take to help prevent hate/bias crimes with respect to the role of law enforcement?

**DRAFT October 28, 1997 (1:34pm)**  
**BREAKOUT SESSION AGENDA**

**COORDINATED RESPONSE OF LAW ENFORCEMENT, VICTIMS, AND  
COMMUNITIES IN IMPROVING COLLECTION  
OF STATISTICS REGARDING HATE CRIMES**

**Moderator:**

**Government Official: Harlan McQueen, New Jersey (works with UCR)?  
Sergeant John Burke**

**Possible Speakers (one or two of the following):**

- Mari Matsuda
- Karen Narasaki
- Jim Zogby
- California person
- a victim who originally did not report

**MODERATOR QUESTIONS**

- Provide an overview of the difficulties of collecting data and the obstacles to reporting hate/bias crimes.
  - Barriers to reporting
- What actions can law enforcement officials, victims, and communities take to help improve data collection?
- What can be done to improve the problem of the failure to report hate crimes that have occurred?
  - Reporting by law enforcement
  - Cultural difficulties to reporting, e.g., language barriers
- What kind of training or assistance is needed to help identify and classify hate/bias crimes?
  - The problem of underreporting
- What programs or activities have proven successful in improving data collection of hate crimes?
- What types of analyses have been done with respect to hate crime trends?
- What actions has the federal government taken and what actions should it take to help improve reporting and data collection of hate/bias crimes?

**DRAFT October 28, 1997 (1:34pm)**  
**BREAKOUT SESSION AGENDA**

**BEST PRACTICES: WHAT WORKS IN PREVENTING AND RESPONDING  
TO HATE AND BIAS CRIMES**

**Moderator: possibly Secretary Glickman, Department of Agriculture**  
**Government Official: Nancy Gist, DOJ, Bureau of Justice Assistance**

**Possible Speakers (one or two of the following):**

- Greg Herek, UC Davis
- West Virginia
- Sacramento; Knoxville, TN
- Michigan, Town Hall
- Reuban Greenburg, Charleston

**MODERATOR QUESTIONS**

- Provide an overview of the problem of responding to and preventing hate/bias crimes.
- What actions can be taken to help prevent people from engaging in hate/bias crimes?
  - Research on what causes hate crimes (psychological)
  - Integrating justice system with victim and mental health services
- What should be done about hate/bias crimes that have occurred?
- What kind of training or assistance is needed to help respond to and prevent hate/bias crimes?
- What programs or activities have proven successful in preventing and responding to hate/bias crimes?
  - Model programs in urban setting, rural setting, etc.
- What actions has the federal government taken and what actions should it take to help prevent and respond to hate/bias crimes?

**DRAFT October 28, 1997 (1:35pm)**  
**BREAKOUT SESSION AGENDA**

**COORDINATED COMMUNITY RESPONSES TO HATE AND BIAS CRIMES**

**Moderator: possibly Secretary Herman, Department of Labor**  
**Government Official: Jim Johnson, Church Arson Task Force**

**Possible Speakers (one or two of the following):**

- Wade Henderson
- Carol Stern, ADL
- Morris Dees, Southern Poverty Law Center
- Barbara Waxman

**MODERATOR QUESTIONS**

- Provide an overview of the problem of coordinating community response to hate/bias crimes.
- What actions can a community take to help prevent people from engaging in hate/bias crimes?
  - Addressing under served groups
  - Responding to new and emerging victimization
- What should be done by communities about hate/bias crimes that have occurred?
- What kind of training or assistance is needed at the community level to help respond to and prevent hate/bias crimes?
- What community programs or activities have proven successful in preventing and responding to hate/bias crimes?
  - Model programs in urban setting, rural setting, etc.
- What actions has the federal government taken and what actions should it take to help communities prevent and respond to hate/bias crimes?

**DRAFT October 28, 1997 (1:35pm)**  
**BREAKOUT SESSION AGENDA**

**HATE CRIMES IN PUBLIC AND PRIVATE HOUSING:  
CAUSES AND PREVENTION STRATEGIES**

**Moderator: Secretary Cuomo, Department of Housing and Urban Development**  
**Government Official: Mercedes Marquez**

**Possible Speakers (one or two of the following):**

- National Conference of Christians and Jews (does a camp for kids)
- Constance Rice, Regional Director, LDF
- Tom Jones, Habitat for Humanity, DC office
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**MODERATOR QUESTIONS**

- Provide an overview of the problem of hate/bias crimes in public and private housing.
- What actions can be taken to help prevent people from engaging in hate/bias crimes in housing?
  - Distinguish between neighborhood disputes and hate crimes
- What should be done about hate/bias crimes that have occurred in public and private housing?
  - Desegregation
- What kind of training or assistance is needed to help respond to and prevent hate/bias crimes in public and private housing?
- What programs or activities have proven successful in preventing and responding to hate/bias crimes in the housing context?
  - Model programs in urban setting, rural setting, etc.
- What actions has the federal government taken and what actions should it take to help prevent and respond to hate/bias crimes in the housing context?

**DRAFT October 28, 1997 (1:35pm)**  
**BREAKOUT SESSION AGENDA**

**COUNTERACTING THE RISE OF ORGANIZED  
HATE GROUP ACTIVITIES, INCLUDING HATE ON THE INTERNET**

**Moderator: possibly Secretary Rodney Slater, Department of Transportation**  
**Government Official: Rose M. Ochi, Director of Community Relations Service, DOJ**

**Panel Description:**

This panel will explore the growth and activities of organized hate groups, their use of modern technologies and interstate travel to commit and coordinate violent acts, and the use of the Internet to recruit new members.

**Possible Speakers (one or two of the following):**

- Abraham Foxman, ADL National Director
- Morris Dees, Southern Poverty Law Center
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**MODERATOR QUESTIONS**

- What is the nature and magnitude of the organized hate group problem? Is it resurging? In addition to existing organized hate organizations such as the KKK and Skinheads, are there other groups, including new foreign-based racial hate groups, emerging?
- What is the difference between hate crimes and hate speech? What actions can be taken to help prevent this organized spread of hate, particularly within constitutional limitations?
- What kind of training or assistance is needed to help respond to and prevent this rise of organized hate activities? What can parents, teachers, and communities do to prevent young people's involvement in these activities?
  - What are special concerns concerning hate on the Internet?
- What programs or activities have proven successful in preventing and responding to the efforts of organized hate groups?
- What actions has the federal government taken and what actions should it take to help prevent and respond to organized hate activities?

**DRAFT October 28, 1997 (1:35pm)**  
**BREAKOUT SESSION AGENDA**

**DEVELOPING COMPREHENSIVE STATEWIDE STRATEGIES  
TO PREVENT AND RESPOND TO HATE AND BIAS CRIMES**

**Moderator:**

**Government Official:**

**Possible Speakers (one or two of the following):**

- Richard Cole, Chief, Civil Rights Division, Office of the Attorney General of Massachusetts
- Richard Devine, State's Attorney of Cook County, Illinois
- Rusty Kennedy, President, California Association of Human Rights Organizations
- Robin Parker, Chief, Office of Bias Crime and Community Relations, Office of the Attorney General of New Jersey

**MODERATOR QUESTIONS**

- Provide an overview of the problem of developing a comprehensive statewide strategy to prevent and respond to hate and bias crimes.
- What actions can a state take to help prevent people from engaging in hate/bias crimes?
  - What are some good models of how coalitions, networks of victim assistance services, and human rights organizations coordinated with law enforcement and prosecutor agencies?
  - What are some good models of how law enforcement agencies have worked together to develop multi-jurisdictional task forces to investigate hate crimes?
  - What are some successful efforts for getting hate crimes legislation passed? What are some legislative strategies that have failed and why?
  - What are some examples of states successfully collecting more data on hate and bias crimes?
- What kind of training or assistance is needed to help states respond to and prevent hate/bias crimes?
- What actions has the federal government taken and what actions should it take to help states prevent and respond to hate/bias crimes?

**DRAFT** October 28, 1997 (1:35pm)  
**BREAKOUT SESSION AGENDA**

**RESPONDING TO VICTIMS OF HATE AND BIAS CRIMES**

**Moderator:**  
**Government Official:**

**Possible Speakers (one or two of the following):**

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**MODERATOR QUESTIONS**

- Provide an overview of the problem of hate/bias crimes from the victim's perspective.
- What actions can be taken to help victims of hate/bias crimes?
- What should be done to help victims of hate/bias crimes?
  - Do different victims of different types of hate crimes have different needs?
  - How can we encourage victims to report hate crimes?
- What kind of training or assistance is needed to help respond to victims of hate/bias crimes?
- What programs or activities have proven successful in responding to victims of hate/bias crimes?
- What actions has the federal government taken and what actions should it take to help respond to victims of hate/bias crimes?

MEMORANDUM

TO: ELENA KAGAN  
FROM: TOM FREEDMAN, MARY L. SMITH  
RE: SUMMARY OF HATE CRIME CONFERENCE  
DATE: OCTOBER 16, 1997

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**SUMMARY**

This memo gives you an overview of the White House Conference on Hate Crimes which will be held on November 10. The Conference is mostly in fine shape, but there are some issues that need vetting. The legislative options are listed in Section III.D of this memo. The Department of Justice is coming over for a meeting on Monday, October 20, at 11 a.m. to discuss which legislative option, if any, to pursue. DOJ would like a firm answer from the White House as to whether the Administration should pursue a particular legislative option or merely broad policy principles. When DOJ present the options to the Attorney General, they would like to brief her on the White House's position.

As for the format of the Conference, it is expected that the Attorney General will make opening remarks in the morning, following which remarks the participants would take part in break-out groups of approximately 30 each. Some of the suggested topics for the break-out groups are listed below. The topics center around areas such as education, data collection, law enforcement, and community responses to hate crimes. In the afternoon, the President would make an announcement regarding hate crimes based on legislative and non-legislative proposals. Following or before the President's remarks, one participant from each of the break-out groups would report back on what was discussed.

Below is a summary of some of the areas of the conference, including (1) suggested location; (2) topics of breakout groups; and (3) the President's announcements.

**I. SUGGESTED LOCATION**

The suggested location is George Washington University.

**II. SUGGESTED TOPICS FOR BREAKOUT GROUPS**

There will probably be seven breakout groups with approximately 30 participants each.

1. Role of the Schools (K-12) in preventing and responding to hate crimes

2. Role of Colleges and Universities in preventing and responding to hate crimes
3. Role of Law Enforcement in responding to hate and bias crimes
4. Coordinated Response of Law Enforcement, Victims, and Communities in improving collection of statistics regarding hate crimes
5. Hate Crimes in Public and Private Housing: Causes and Prevention Strategies
6. Responding to the needs of victims of hate and bias crimes
7. Research and Evaluation: What Works in Preventing Hate and Bias Crimes
8. Community Responses to hate and bias crimes

### **III. PRESIDENTIAL ANNOUNCEMENTS**

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.

#### **A. 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.

#### **B. STATISTICS REGARDING HATE CRIMES**

- DOJ is also exploring several possibilities to improve the collection of statistics regarding hate crimes.

#### **C. 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.

#### **D. PROPOSED LEGISLATION**

DOJ has proposed five legislative options for amending 18 U.S.C. § 245, the principal federal hate crimes statute, to expand federal hate crimes jurisdiction to include bias crimes committed because of the victims’s sexual orientation, disability, and gender.

##### **Option 1**

- Option 1 is the most far-reaching of the five options. It would add sexual orientation, gender, and disability as protected categories. It would require proof of a Commerce Clause nexus in the least restrictive manner.
- Concerns about Option 1 are that it would federalize most rapes and would greatly increase the federal resources needed to prosecute these hate crimes. The FBI estimates that the proposed bill could require \$38.5 million per year to hire 219 additional agents. However, others at DOJ believe that the additional cost to the FBI would be substantially less than the estimate.
- Supported by the Civil Rights Division, Office of Policy Development, the Office of Intergovernmental Affairs, the Office of Legislative Affairs, the Violence Against Women Office, and the Office of Victime

##### **Option 2**

- Option 2 also would add sexual orientation, gender, and disability as protected activities.

Unlike Option 1, however, Option 2 would require proof of a highly restrictive Commerce Clause nexus for hate crimes based on religion, gender, sexual orientation, or disability. Specifically, Option 2 would require that the defendant “travel[ed] across a State line in connection with the offense.” This interstate travel requirement is similar to interstate travel requirements contained in the criminal provisions of the Violence Against Women Act and in a former version of 18 U.S.C. §247, the religious hate crimes statute.

- Option 2 could greatly limit the number of gender-based incidents that would satisfy its strict Commerce Clause element. It is possible then that Option 2 could add gender as a protected category without overwhelming the resources of the FBI and DOJ. However, the interstate travel requirement contained in Option 2 likely would have the effect of excluding the great majority of bias incidents committed because of the victim’s sexual orientation, gender, or disability.

### **Option 3**

- Option 3 presents a middle ground between Options 1 and 2. Option 3 would require proof of the strict “interstate travel” Commerce Clause nexus for gender-based hate crimes, but would require proof of only the broader Commerce Clause nexus of Option 1 for crimes based on religion, sexual orientation, or disability. The advantage of Option 3 is that it would give DOJ broad jurisdiction over hate crimes based on sexual orientation and disability and more limited jurisdiction over hate crimes based on gender, thereby avoiding much of the limited resources problem with Option 1.
- One concern of Option 3 is that it would distinguish between treatment of hate crimes based on gender and treatment of hate crimes based on sexual orientation or disability without any clear constitutional or policy basis for doing so. Option 3 also probably would encounter political opposition from women’s groups that want gender added on the same terms as other categories.

### **Option 4A**

- Option 4A would add gender, sexual orientation, and disability as protected categories and would apply the broad Commerce Clause element from Option 1 to all three categories. However, unlike Option 1, Option 4 would attempt to address the resource issue by including statutory language requiring proof of gender-based animus, making it clear that not every rape or sexual assault was a gender-based hate crime covered by the statute.
- Option 4 is controversial in that some groups argue that all rapes have an inherent element of gender bias. Furthermore, the exclusion of rapes and other sexual assaults that lack additional indicia of gender-based bias may be inconsistent with the federal interest in prosecuting certain gender-based crimes. For instance, a serial rapist, even one who rapes in many states, might evade federal prosecution as long as he didn’t say or do anything

that evinced a gender-bias over and above the bias inherent in rapes themselves.

- Option 4 might not significantly reduce the FBI's investigative burden as compared to Option 1. The FBI might have to investigate to determine whether evidence of animus was present.

#### **Option 4B**

- Option 4B is the same as Option 4 except that it apply the proof of animus restriction to religion, sexual orientation, and disability, as well as gender.

#### **Option 5**

- Option 5 would add sexual orientation and disability as protected categories, but it would omit gender-based hate crimes altogether.
- Option 5 would almost surely face even stiffer political opposition than Option 3 or 4. The coalition of outside groups is adamant that gender be included. In addition, Senator Kennedy's staff has indicated that he will not introduce a bill that does not include gender.

statutory rape laws  
children and internet-- more warnings, parents protect  
have we cut illegal immigration (41% in San Diego)  
welfare achievements  
POTUS

Internet  
Warnings

Religious  
- States  
-  
2000

Special impairment  
→ covered  
= home care  
= elderly

ADL-2

New labor laws

elderly  
- Services

② religious

③

GW

**MEMORANDUM**

**TO: MARY SMITH, TOM FREEDMAN**

**FROM: SKYE PHILBRICK**

**RE: HATE CRIMES**

**DATE: SEPTEMBER 18, 1997**

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**NORTHEASTERN UNIVERSITY  
PROGRAM FOR THE STUDY OF VIOLENCE AND SOCIAL CONFLICT  
JACK LEVIN, Ph.D  
DIRECTOR AND BRUDNICK PROFESSOR OF SOCIOLOGY AND CRIMINOLOGY**

"Landmark Study Reveals Hate Crimes Vary Significantly by Offender Motivation, "  
*Klanwatch Intelligence Report*, August 1995, pp.7-9.

- Levin outlines three different types of hate crime: thrill, defensive, and mission oriented. These crimes are outlined in his recent book *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*.
- 58% of hate crimes are labelled as "thrill hate crimes." These involve small groups of predominantly white males who seek out victims for fun. "Thrill hate crimes" are not always a result of prejudice, rather, they are a result of peer pressure. These young males seek out vulnerable groups which primarily consist of Asians and Latinos. These groups, however, are interchangeable with blacks, gays, and lesbians.
- 91% of thrill hate offenders do not know the victim. 70% of thrill crimes result in assault. Many times, offenders will keep searching for a victim if they are unable to find their original victim. \*Levin emphasizes that mainstream society increasingly supports hate crimes.
- Defensive hate crimes occur when offenders feel they need to protect their way of life, economic situation, or societal position. Defensive hate crimes are often committed by single offenders. 64% of defensive hate crimes involve assault. 79% do not know their victim.
- Mission hate crimes, which are the most serious, occur less frequently than the other two hate crimes. Mission hate offenders are committed to bigotry and usually belong to extremist groups. Levin found only one mission hate crime out of 169 cases.
- Levin suggests that the courts differentiate between these three hate crimes during sentencing of criminals. In addition, he argues that alternative solutions be used to rehabilitate offenders.

"The Research Needed to Understand Hate Crime," *The Chronicle Of Higher Education*, August 4, 1995.

- 95% of hate crimes are committed because of individual bigotry. Two-thirds of hate crimes are thrill hate crimes, committed by young males who are bored and alienated from society.
- "Based on a national survey, in 1990 Louis Harris reported that more than half of all high-school students claimed to have witnessed racial confrontations."
- Levin recommends the institution of an independent national survey to find out more information regarding hate crime offenders and victims. Research does not inform us about the people who commit hate crimes. What is it that evokes their anger and actions? Levin also encourages the Bureau of Justice Statistics and colleges to differentiate between crimes and hate crimes. Levin notes that as society diversifies, hate crime increases.

"The American dream in flames," *The Boston Globe*, June 30, 1996, p. 66.

- Research has found that many church burnings have been committed by young people. Levin notes that two-thirds of arson cases can be attested to thrill crimes. This is the result of young people dissatisfied with themselves and their home life. They use certain groups of people as scapegoats to blame for their own economic and personal problems. Levin argues, "typically, they hate themselves as much as they hate their victims."
- Levin recommends strong hate crime laws as well as innovative means to approach the rehabilitation of these young people.

"Messages of Intolerance," *The Boston Globe*, April 27, 1995, p. 15.

- Levin accuses mainstream leaders of using stereotypical language to describe events and people in society. Levin feels this language facilitates hate crime and encourages extremist ideology.

"Educating students to see beyond their world"

- \*"71 percent of U.S. campuses had at least one hate incidence involving a student's race or religion." Levin suggests that college students learn about different communities while in school. Racial hatred is learned by one's surroundings. Hopefully, college students can overcome prejudice through different surroundings.

"The time bomb of black America," *The Boston Globe*, October 6, 1995.

- Levin predicts that race relations will become more ignited as whites feel they are fighting for economic survival and blacks continue to feel victimized by prejudice.

Although whites feel threatened by a changing economic situation, blacks feel threatened by Asians and Latinos. Both of these groups continue to surpass blacks, economically and socially.

"Effective police departments not built solely on test scores," *Boston Sunday Herald*, September 24, 1995.

- The public's perception of police brutality depends on the racial identity of police officers. Riots and racial tensions are usually evoked when white police officers confront or are confronted by black civilians. Levin suggests pairing white and black officers in order to minimize discriminatory treatment.

"Immigrants create, not just take," *The Philadelphia Inquirer*, June 2, 1997.

- Increasingly, Americans are showing support for proposed legislation such as Proposition 187. Instead of recognizing the advantages immigrants bring to the United States, citizens are concerned about their own economic position.

"Xenophobia, American style"

- Americans are threatened by immigrants because of "diminishing wealth, status, and power." Recently, the Supreme Court heard arguments in the case of "*State of Wisconsin v. Todd Mitchell*" concerning the constitutionality of statutes that increase the penalty for hate crimes." Levin encourages strict penalties.

"Translating concern about juvenile violence into collective action," *The Philadelphia Inquirer*, February 29, 1996, p. A11.

- "Rate of murder committed by teenagers has more than doubled." Levin encourages parents, teachers, churches, and neighbors to help young adults realize the danger and consequences of violent behavior.

**UNIVERSITY OF CALIFORNIA, DAVIS  
DEPARTMENT OF PSYCHOLOGY  
GREGORY M. HEREK, Ph.D  
RESEARCH PSYCHOLOGIST**

"Documenting Prejudice Against Lesbians and Gay Men on Campus: The Yale Sexual Orientation Survey"

- In 1986, Yale University surveyed gay men, lesbians, and bisexual adults on campus to see how frequently occurrences of discrimination and harassment occurred. Yale found that physical abuse was infrequent, however, instances of other forms of abuse proved to be just as detrimental. Yale's study shows, "a majority reported that they feared antigay violence and harassment on campus, and that such fears affected their behavior." Dr. Herek notes that Yale students lobbied for the inclusion of "sexual orientation" in the University's Equal Opportunity Statement. He also worked with

Yale students to document harassment and discrimination experiences of gay men, lesbians, and bisexual adults. Students participated through an anonymous questionnaire which was given out at a dance hosted by gay and lesbian students, at meetings of various organizations, and through friendship networks. The results of this questionnaire are as follows:

- 65% of respondents had been targeted by verbal insults  
25% were threatened with physical violence  
42% experienced some form of physical abuse  
25% reported being chased  
19% had objects thrown at them  
10% had personal property damaged/destroyed  
5% had been beaten  
1% assaulted with a weapon  
18% reported two or more experiences of physical assault  
36% experienced both physical and verbal assault
- One example was given, "At a party on Yale property, a lesbian friend and I were physically threatened by some heterosexual men, ordered to kiss in front of them."  
76% knew at least one person who had been attacked or verbally abused  
39% changed their behavior in order not to be targeted  
49% were perpetrated by roommates  
31% were perpetrated by peers  
55% reported by faculty were the result of other faculty  
60% reported by staff were the result of another staff member  
98% heard disrespectful comments about being gay or lesbian
- As a result, many gay men, lesbians, and bisexual adults do not disclose their sexual orientation even though they find it important to do so.  
90% did not report harassment
- This report confirms that many gay men and lesbians live secretly, inhibiting their true identity. Dr. Herek states, "Documenting the existence of a problem often is a prerequisite to influencing opinions and policies relevant to solving it."

#### "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults"

- Herek argues that methods used to administer anti-gay violence are often inaccurate and irrelevant. Herek contests that anti-gay victims experience much more mental and emotional anguish than victims of other crimes. Mental health is a key issue concerning the recovery of anti-gay victims. Many victims lose self-worth because their identity is attacked. Victims feel personally vulnerable to future attacks and view the world and unsafe. Victims lose trust in society and their own communities.
- Herek administered questionnaires which studied victim's experiences, psychological distress, and victimization-related beliefs. Women were attacked more frequently

- Both gay-men and lesbians identified anti-gay crimes by verbal abuse, if it occurred in a gay-identified setting, and by inference.
- Herek notes that researchers should properly define anti-gay, anti-lesbian, and crime based on your sexual orientation. There needs to be consensus among law enforcement, researchers, and all communities.

#### "Psychological Heterosexism in the United States"

- Heterosexism is defined as "the ideological system that denies, denigrates, and stigmatizes any nonheterosexual form of behavior, identity, relationship, or community.
- One misconception about homosexuality is that gay men cannot conform to gender specific roles which require masculine characteristics. Other stereotypes include cultural ideologies about outside groups which are portrayed as threatening. Herek discusses these stereotypes and the effect it has on society. Perceived sexual orientation can result in violence and threatening incidents. Herek notes that as few as 10 percent of anti-gay hate crimes are reported.
- Herek notes that people respond to gay and lesbians by value-expressive violence, social-expressive violence, ego-defensive violence, and violence with multiple motivations. These motives often reflect ideologies that people feel they need to protect. As a result, many gay men and lesbians face psychological hardship in discovering their sexuality and dealing with it. There is much pressure from society to keep it to one's self. Herek proposes that research be conducted in societal attitudes toward gays and ways that gay men and lesbians can cope with this pressure.

#### "Heterosexism, Hate Crimes, and the Law"

- A study recently revealed that 44% of gay men and women have been threatened with violence because of their sexuality. Herek looks at the legal system which he argues provides arguments for people not to support gay men and lesbians. One case, *Bowers v. Hardwick*, upheld the Georgia sodomy statute, refusing adults the right to privately engage in homosexual behavior. Also, the Department of Defense has excluded gay people from military service. No states permit same-gender marriage which undermines many gay people's religious beliefs. Herek believes that gay men and lesbians are second-class citizens who deserve the same rights as every other American.
- Herek advocates that social psychologists work with different aspects of the community, legal system, and government to change attitudes and policies toward gay men and lesbians.

#### "Psychological Heterosexism and Anti-Gay Violence: The Social Psychology of Bigotry and Bashing"

- Two thirds of Americans condemn homosexuality. 25% say they would strongly

object to working with a gay person. 35% felt uncomfortable around gay men and lesbians. Only 30% of Americans know an openly gay person, therefore, their attitudes are not related to direct experience. Institutions, society, and individuals must be targeted for change.

#### "Hate Crimes Against Lesbians and Gay Men"

- "As many as 92% of lesbians and gay men report that they have been the targets of antigay verbal abuse or threats, and as many as 24% report physical attacks because of their sexual orientation." Hate crimes victimize an entire class, not one person. Gays and lesbians are the victims of institutional prejudice. Researchers feel that the AIDS epidemic has increased anti-gay resentment. It is difficult to track hate crimes because the criminal justice system does not include hate crime data.
- Herek suggests: "obstacles to documenting hate crimes should be removed, resources should be provided for research, passage of the Hate Crimes Statistics Bill, psychological assistance for victims, sensitivity in criminal justice personnel, and community education."

#### "Some of My Best Friends: Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians"

- In a survey conducted by Dr. Herek, respondents expressed more positive attitudes toward gay men and lesbians when interpersonal contact occurred, direct disclosure of one's sexuality transpired, and demographic variables sensitive to gays were available. Herek suggests that further research be administered concerning heterosexual's first contact with gay men or lesbians. This will help psychologist's determine how discrimination and prejudice can be solved.

#### "Black Heterosexuals' Attitudes Toward Lesbians and Gay Men in the United States"

- Black heterosexuals' attitudes did not differ much from White heterosexuals' attitudes. Black women were less opposed to homosexuality than men, however, this is the case with White heterosexuals as well.
- It is important to look at Black heterosexuals' attitudes because Black gay men and lesbians often face racial and sexual discrimination from both Blacks and Whites.
- Herek conducted a telephone survey to test seven hypotheses about Black heterosexual men. Herek was testing:
  - Did Black men have more negative attitudes than Black women?
  - Did Black heterosexuals who are less educated, older, and less affluent have increased negative attitudes?
  - Did religious views make a difference?
  - Did politically liberal Black heterosexuals have more favorable opinions?
  - Did personal contact with gay men or lesbians make a difference?
  - Perception that gay men and lesbians have no control over sexuality
  - Do Black heterosexuals perceive homosexuality as a "White" phenomenon?

- Herek found that disapproval of homosexuality was widespread among Black heterosexuals. Half of the respondents expressed disgust for homosexuality. Herek found that his hypotheses proved to be true in the sample Black respondents. Herek also found that respondents were much more accepting if they did not attend church regularly, had never been married, and believed an individual cannot control one's own sexuality.
- Herek notes that there are some cultural differences between Black and White heterosexuals. Herek discusses that Black heterosexuals do not need contact with homosexuals to believe there is no choice in deciding one's sexuality. White heterosexuals, on the other hand, do require contact to perceive homosexuality as a choice.

## **GAY & LESBIAN CENTER**

"Boy Wonder," *Windy City Times*, July 24, 1997, pp. 1, 8.

- The Gay, Lesbian, Straight Teachers Network is teaming up with their unions, the National Education Association, and students to promote education and safety for gay and lesbian students. One student, Miguel Ayala, has initiated the first gay and lesbian student club in the Chicago area public schools. Ayala has taken his endeavors nation wide and recently started Student Pride, an organization that helps other gay and lesbian students begin their own high school clubs.
- Lisa Neff reports that high school students hear anti-gay slurs 25.5 times a day. 80% of gay and lesbian youths feel socially isolated. 80% of teachers have negative attitudes toward gay and lesbian students. Gay and lesbian students have higher drop-out rates, suicide rates, and lower grades. 77% of teachers do not encourage discussion on homosexuality as well as integrating homosexual curriculum. 78% of school administrators say they know of no gay or lesbian students in their school. However, 94% argue that school is a safe place for all students.
- Ayala contests that organizations such as Student Pride are needed in order to help gay and lesbian student combat the negative attitudes that are prevalent among teenagers.

*Vanguard: the forefront in a movement or action*, August 1997, Vol. 1, No. 1.

- Last year 2, 529 attacks on lesbians and gay men were reported. Lorri L. Jean, Director of the L.A. Gay & Lesbian Center, states that gay men and lesbians are the number one target of hate crimes in Los Angeles. These hate crimes have been increasing since the 1980s.
- The FBI reports that hate crimes against gay men and lesbians are up 6% from 1995 to 1996. Los Angeles reported a 55% increase. One problem in reporting these statistics, however, is that only 30 cities have organizations that report hate crimes.

- "During national debate on gays in the military we saw a significant jump in hate crimes."

### *Against All Odds*

- The Gay & Lesbian Center highlights the issues that surround gay and lesbian youths in the Los Angeles area. The center estimates that Los Angeles county is home to 19,142 gay and lesbian 15 year olds.
- 6,000 of these 15 year olds will experiment with drugs. 74% will use alcohol, speed, and marijuana. One study reveals that 31% will be alcoholics by adulthood.
- 1,722 males and females will be HIV positive.
- 4,211 have been physically attacked by peers. 8,423 have been threatened with physical attack. Four out of five will be verbally abused for being gay or lesbian.
- One in four gay males will drop out of high school. 25% of lesbians and 45% of gay men experience verbal and physical assault in high school.
- 9,571 gay men and lesbians have been kicked out of their family homes and rejected by relatives. 30% to 40% of homeless youths are gay men and lesbians.
- 6,700 gay men and lesbians will attempt suicide.
- Many gay men and lesbians do not receive support from parents, fellow students, church, or the media.
- The Gay & Lesbian Center advocates:
  - School support
  - Family support
  - Church involvement
  - Government enforcement of hate crime statutes, enhanced penalties, equality, and open military service
  - Health care professionals working together to promote specific health care needs of gay and lesbian youths
  - Removing Gender Identity Disorder as a diagnosis of the American Psychological Association
- The center has also proposed a Gay, Lesbian and Bisexual Youths' Bill of Rights.
- Many gay and lesbian youths are not supported by their families. Many youths experience violence and disapproval at home. Gay bashing victims, however, experienced more attacks from strangers than family members in 1994.
- 1995 report by researchers Pilkington and D'Augelli reveal these statistics

concerning gay and lesbian youths:

80% are victims of verbal insults

44% report being threatened by physical attack

22% of boys and 29% of girls report being physically attacked by students

7% report being physically injured by a teacher

- The Southern Poverty Law Center has reported that 33% of all hate crime victims are under the age of 21.
- A group of private and public schools in Seattle started the Safe Schools Anti-Violence Project which documented:
  - Offenders outnumbered targets four to one.
  - In two-thirds of the cases, no student intervened to help their peers.
  - Adults did not intervene in half the cases.
  - 75% of the cases were considered continual.
  - Every targeted youth considered it emotionally damaging.
  - Half of the targeted youths resorted to alcohol or attempted suicide.
  - Out of 12 school principals that know of the incidents, 5 took positive action, 5 took no action, 2 took action against the targeted student, and 1 took action against the offender.
  - College does not offer much relief: 3-5% report physical attacks, 16-26% have been threatened, and 40-76% have been verbally abused.
- High schools do not include homosexuality in sex education courses. In fact, some textbooks incorrectly target homosexuality as a means to contract AIDS.
- Some programs such as Project 10 in Los Angeles have been established to advocate gay and lesbian student rights. Project 10 offers support for students, parents, teachers, and administrators. In addition, Massachusetts approved the Gay and Lesbian Student Rights Bill. This bill protects students from anti-gay discrimination. Some universities have instituted programs to facilitate gay and lesbian student needs. Also, the National Education Association has recognized October as Gay History Month. Although some schools have instituted change, gay and lesbian students are the ones fighting for transformation.
- The Gay & Lesbian Center proposes that schools:
  - Accept responsibility to keep all students safe.
  - Institute specific written policies against discrimination.
  - Mandate reporting of harassment and bias violence.
  - Demand equality in extra-curricular and athletic programs.
  - Institute safer-sex education.
  - Develop a gay/lesbian student bill of rights.
  - Undertake measures to ensure gays and lesbians are portrayed positively.
  - Provide programs and services for gays and lesbians.
  - Institute gay/straight alliances among everyone.

**ANTI-DEFAMATION LEAGUE  
WASHINGTON D.C. OFFICE  
JESS N. HORDES  
WASHINGTON DIRECTOR**

**"Addressing Hate Crimes And Violent Bigotry: AN ADL Blueprint For Action, "  
August 28.**

**ADL National Hate Crime Prevention And Response Initiatives**

- The ADL has compiled a blueprint of ideas and initiatives to challenge the problems of violent bigotry and prejudice.

*The ADL Audit of Anti-Semitic Incidents*

- ADL's thirty regional offices collect and disseminate information to the Audit, which was created in 1979 to watch anti-Semitism in America. The Audit provides the ADL with information concerning crime and harassment towards the Jewish community. In response to the success of the Audit, the ADL has joined with the FBI to support the Hate Crime Statistics Act.

*ADL Model Hate Crime Penalty Enhancement Statutes: A Message to Victims and Perpetrators*

- In 1981, the ADL drafted hate crime legislation to counter bigotry and extremism. The ADL reports that forty states and D.C. have enacted legislation similar to ADL's outline of hate crime initiatives. Also, Congress has enacted the Hate Crimes Sentencing Enhancement Act which allows penalties to be increased due to prejudiced motivation.
- The ADL also instituted the institutional vandalism section. This section provides harsh penalties for vandalism of houses of worship, schools, cemeteries, and community centers. This model helps victims claim civil action for punitive damages as well.
- By confirming the constitutionality of *Wisconsin v. Mitchell*, the Supreme Court allows state legislatures to ensure tough penalties for hate crimes.

*ADL Hate Crime Training Initiatives for Law Enforcement Officials*

- The ADL has crafted a hate crime training program for law enforcement officials. This program helps officers learn about hate crime in order to help the victim cope and to ease community tensions. Training involves investigative strategies, elements of hate crimes, impact of hate crime on the community, as well as an assortment of different criteria concerning hate crime.

### *ADL Hate Crime Training Initiatives: Addressing Prejudice and Violent Bigotry in the Military*

- In response to the murder of two Black individuals by two White soldiers, the ADL has met with the Army to encourage incorporation of diversity training at bases. ADL was concerned with the amount of hate group members in the Army as well as the weapons that were available to these people. Congress has ordered the Army to conduct "ongoing programs for human relations training" and survey the state of racial and gender discrimination. "The League and the Defense Department are currently planning additional cooperative training sessions."

### *ADL Hate Crime Education Programs and Conferences*

- The ADL Regional Offices sponsor programs to look at hate crimes and they have affected their community. Often, these programs are in conjunction with universities, community leaders, churches, and law enforcement.
- During the spring of 1998, the ADL's Philadelphia office plans to hold a conference on "The Mind of the Bigot." The conference will involve different parts of the Philadelphia community. The goal is to educate young people who are influenced and motivated by bigotry.

### *ADL Handbook on Security for Community Institutions*

- In response to increased church arson, ADL Regional Offices have organized Institutional Security Briefings. These briefings allow church representatives to meet with law enforcement to discuss the protection of community institutions. ADL has also published a handbook, "Security for Community Institutions," which gives advice about protecting the community from hate violence.

### *ADL Juvenile Hate Crime Offender Intervention and Diversion Initiatives*

- ADL's juvenile program is designed to rehabilitate young people who have committed hate crimes. It consists of a 20-30 hour program, involving education, community service, and follow-up work. It is meant to show the offenders how detrimental their actions can be for a victim.
- The New England Regional Office has implemented sentencing options since 1989. Offenders are educated and rehabilitated depending on the crime they committed.
- The New York City Regional Office has also set up goals for its juvenile department. For instance, offenders are taught about different cultures, encouraged to interact with different ethnic or religious groups, and taught about their own heritage. Offenders are required to follow-up after completion of the program. Parents are required to attend meetings and community service is a condition.

- Nassau County, New York, has also established their own program, "The Bridge Program." This program advocates the same principles as the NYC Regional Office, however, it is making itself available to different community organizations.

#### *ADL Police-Community Hate Crime Partnerships*

- The ADL's Washington D.C. Regional Office was one of the founding members of the D.C. Bias Crimes Task Force. This Task Force connects police, prosecutors, and community organizations representing different ethnic and religious groups. The Task Force was organized in February of 1996. It works to fight against hate crimes and raise public awareness.
- The Task Force has established:
  - Hate Crimes Hotline to help victims report incidents
  - Hate Crimes Coordinator
  - Community Outreach Program
  - MPD Special Order on the "Bias-Related Crimes Statute of 1989" to help facilitate responses to hate crimes
  - MPD and U.S. Attorney's Office pilot training programs on hate crimes for respective departments
- This fall, the Task Force will join with Maryland and Virginia to build a partnership between law enforcement and each community.
- ADL's Greater Chicago Regional Office has developed a handbook with approaches to prosecuting hate crimes. The U.S. Department of Justice and the Illinois Criminal Justice Information Authority funded the guide. This handbook guides prosecutors through the different stages of a hate crime case.
- The ADL has established community efforts to fight hate crimes. In Chicago, The Hate Crimes Prosecution Council provides policy planning concerning hate crime. In Los Angeles, the County Human Relations Commission Network Against Hate Crime was instituted to provide community support and information concerning hate crime. This Network also established the "crisis response team" designed to provide immediate help in hate crime cases. In San Diego, ADL created the Hate Crime Registry which provides information about hate crimes around the country.

#### *Community Anti-Bias Awareness Initiatives*

- The ADL is trying to encourage responsibility among students in Massachusetts through a poster campaign. The campaign is trying to target students who have been witnesses to hate crimes and have not taken action against it.
- In Omaha, ADL promoted "Prejudice is Foul Play," a program that targets the local community.

- "Hate Crime: It's Not Just Offensive, It's Criminal." This public service announcement will be introduced in D.C. this fall. It is intended to educate the public about hate crime and its consequences. An "800" number will also be available.
- "Hate Crimes Have No Place In Houston." This campaign began in July 1997, after a local Houston Catholic church was vandalized.

## **ADL National Anti-Bias And Diversity Training Initiatives**

### *The ADL A World Of Difference Institute*

- The ADL emphasizes education and training to reduce prejudice and disrespect of different cultures, religions, and ethnic groups. The ADL strongly encourages the federal government to fund and initiate development of anti-discrimination programs.
- In 1985, ADL established A World Of Difference campaign to battle prejudice. The ADL has incorporated this campaign into an educational program:
  - 300,000 elementary and secondary school teachers have participated in A Classroom Of Difference
  - 135 colleges have hosted A Campus Of Difference programs to facilitate race relations on campus
  - 400 colleges have used ADL anti-bias material to educate students
  - 100,000 adult workers employed in private and public sectors have participated in A Workplace Of Difference
- ADL and the Los Angeles School District developed a program to educate teachers, parents, students, and community members about the gravity of hate crimes. This was the result of serious bias-related crimes that began escalating in a Santa Barbara high school. This program had four main goals:
  - Impress upon administrators the urgency of the situation
  - Help teachers recognize and respond to hate crimes
  - Educate teachers and administrators about hate crimes
  - Involve the community
- The Santa Barbara School District adopted this program in April 1997. The ADL will begin A World Of Difference training in September 1997. ADL also had a former white supremacist speak to students about hate crimes and how it affects people.
- Mamaroneck Avenue Elementary School and the A World Of Difference Institute have created a plan to educate and raise awareness about diversity. This education program is in response to parents and residents protesting about racial discrimination in the schools. The education programs targets all members of the community and includes:
  - Needs Assessment

Outreach to All Members of the School Community: using PTA meetings  
Teacher Training  
Student Training  
Parent Training  
Student Peer Training at the High School

Creation of School/Community Task Force to Coordinate and Support Further Initiatives.

- Because of the stressful working conditions law enforcement face, ADL's A World Of Difference Institute National Training Department has developed cultural diversity workshops for Federal, State and Local law enforcement.
- The ADL training program helps individuals understand:  
the nature of prejudice  
stereotypes and cultural assumptions  
the needs of increasingly diverse communities  
racial and ethnic conflict  
diversity within their own ranks

#### *The ADL A World Of Difference Institute Peer Training Program*

- The Peer Training Program was founded in 1991 in Crown Heights, Brooklyn. The program was started as a means to facilitate diversity in school communities. Students are trained to teach their peers about prejudice, discrimination, and stereotyping. This program has been implemented in twelve U.S. cities and six European countries. Students feel that the program helps prevent violence because there is a sense of community among students who participate in this program.

#### *"Children of the Dream"*

- ADL has established a group, "Children of the Dream," to bring together Black Jewish teens from Israel, African-Americans, Latino, and Asian teens from the United States. ADL initiated a discussion between these groups of teens to promote understanding and tolerance among different groups. In 1994, ADL sent nine African-American and Latino students to Israel to reunite with their friends and discover another culture. Also, "Dream Dialogue" was established, uniting "Children of the Dream" participants with the Jewish Community.

#### *Bigotry Burning: ADL Responds to Attacks Against Houses of Worship*

- The ADL and National Urban League established "Rebuild the Churches Fund" which raised money for burned houses of worship in the South. The ADL raised \$350,000 and published "An American Testament: Letters to the Burned Churches." The letters were used to educate young people and the community.

#### *ADL Elementary and Secondary School-Based Anti-Bias Initiatives*

- In July, 1996, the Department of Education announced the availability of \$2 million in new grants to fund "effective strategies for reducing hate crimes." ADL's A

World Of Difference Institute used one of the grants to implement an anti-bias, anti-hate program at four high schools in Los Angeles, San Diego, New York, and Omaha. These programs are the result of Congressional action taken in 1992 to incorporate anti-hate education into federal education.

*ADL A World Of Difference Institute: "Stop The Hate" National Youth Pilot Program*

- The ADL has designed a pilot program which involves teachers and administrators, youth, parents and families, and community. This program is training 1,200 teachers in recognizing bias-related incidents; 400 parents and community leaders as anti-bias trainers; 120 students as peer trainers. The program, which was implemented in October, 1996, has six stages:
  - ADL staff conducts needs assessment at each high school
  - ADL staff meet with community leaders to plan the program's schedule
  - Administrators from each school receive hate crime orientation training
  - Parents and community leaders receive training
  - Students receive training and support to work with peers
  - Each school faculty receives staff development training based on specific needs
- San Diego has used bilingual workshops to combat hate crime and violence. Also, the schools have collaborated with Sheriffs Department and San Diego Office of Education.
- The community of Chattanooga, Tennessee developed a program to integrate the black city school system into the white district of a surrounding county. In order to ensure success, the community implemented diversity and education requirements for teachers, parents, and students. Three objectives of the program include: improving public schools, strengthening families, and promoting positive race relations.

*ADL Regional Office Special Anti-bias Projects and Model Programs*

- Since 1994, the ADL New England Region has sponsored different programs involving respect for diversity. These include:
  - Team Harmony:* this involves an interracial gathering of youth as well as star athletes, government officials, and other popular role models.
  - The Calendar Art Contest:* this involves K-12 students from all schools. Students create artwork which reveals the negative effects of racism.
  - The Teacher Incentive Awards:* this recognizes teachers who have fostered programs to educate students about diversity.
  - The Golden Youth Awards:* acknowledges teens who have stepped outside of their peer group.
  - A World Of Difference Week:* celebrated every April in tribute to Dr. Martin Luther King, Jr.
  - Youth Congress:* brings together 1000 students and teachers for workshops and activities involving respect for diversity.
- The ADL Connecticut Region has instituted *Names Can Really Hurt Us*, a student

program which helps develop leadership skills by emphasizing student's ability to affect social change. The program promotes personal responsibility as well as a means to develop realistic plans for action.

- The ADL San Diego Region has developed the *High School Student Leadership Conference*, which was established in response to the desecration of a local synagogue by juveniles. The program holds annual conferences that brings students together to talk about hatred, prejudice, anti-Semitism, and bigotry.
- The ADL Plains States Region holds an annual *Prejudice Elimination Workshop*, which involves 350 High School Juniors in an education workshop. The workshop is designed to help students recognize their own prejudice
- ConAgra Foundation funds a full-day *Youth Services Workshop* for adults who work with children in out-of-school settings. The Workshop emphasizes prejudice reduction activities. They also emphasize that children need to be taught self respect and respect for others.
- The ADL Greater Chicago/Wisconsin Region has instituted the *Unity Through Diversity Conference*. Almost 6,000 students have attended the Conference which introduces awareness of bigotry and prejudice.
- Annually, ADL brings twenty Chicago area students to Washington D.C. through its *Youth Leadership Mission*. This program is designed to "explore issues of bigotry, hatred, and discrimination." Students visit the Holocaust museum and hear stories from Holocaust survivors. Students also meet with civil rights activists to bring the historical perspective to modern relevance.
- The ADL Cleveland Region has developed *Diversity issues through the study of art*. The Cleveland Foundation and Cleveland Museum of Art have joined to examine diversity issues in art. The project uses religious diversity and issues of race to influence students and their views of discrimination. The project also uses audio-visual kits, which will become available to educators.

#### *College and University-Based Anti-Bias Initiatives*

- ADL has teamed up with the Association of College Unions-International to begin anti-bias education in college. A 1995 study conducted by the California Commission on Teacher Credentialing showed that campus violence is primarily due to "ethnic and cultural ignorance." Both the ADL and the ACU-I propose to:
  - Use multi-day training programs
  - Train students with a continuing series of training programs which include leadership programs.
  - Creation of resource materials
  - Mini-workshops offered at local and national educational conferences
- During the past eight years, anti-Semitic incidents have increased. The ADL and

Greater Chicago/Wisconsin Regional Office now host *Back to Campus: Preparing for the Challenge of Anti-Semitism*. This allows Jewish students to learn about the issues involved and how to handle each issue. Information fairs and group discussions provide support for Jewish students.

- ADL and the residential staff at Northwestern University have combined to educate students about diversity and the implications of bias-motivated activity. This program gives students a better respect for one another.

**"IS IT A HATE CRIME IF THE ASSAILANT SMILES?"  
LINDABOWLES**

- Bowles argues that hate-crime legislation focuses on making hatred a crime, instead of prosecuting actual criminal acts. Bowles contests that there is a difference between crime and targeting someone because of their prejudices. Also, Bowles feels that the president cannot "stereotype and scapegoat a special class of Americans" in order to address the issues hate crime involves.

August 8, 1997

*Hate Crimes*

FAX

TO:

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FROM:

Judy Smith  
Office of the Attorney General

RE:

Hate Crimes Working Group

Pages: 6 + cover

Tom, Mary —

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

*CYRUS TO  
EC MWA K  
MARY S.  
TOM 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

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investor

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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

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.
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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.

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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

*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

DOJ

Pages: 6 + cover

*Copies to  
 RE MWA K  
 MARY S.  
 TOM F.*

*FYE P.S.*

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

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Attachment

MEMORANDUM

*Do we want a [unclear] come with*

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.

*A. - improve reporting*  
*B. - report back*  
*C. Liaison*  
*D. Fed'l working group best practice*

*10/96*

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.

*good in [unclear]*

*64 new agents - 128 total FBI (hate crime, brutality) with [unclear] center*

*Voluntary System*

*Sebring Commission*

### 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.

—POST

### 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**.

5 Training

(A)

(6) State legislation

## 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.

*Hate  
Crimes*

Date: Tuesday, September 23, 1997 12:16 pm  
From: SMO02(SMITHJUD)  
Subject: Hate Crimes WG Legislative Memo

Draft memo on legislative options is attached. We will discuss this memo at Wednesday's (9/24) meeting at 2:30 in room 4260.

Ian

DISCUSSION DRAFT 9/23/97 11:50 a.m.

**HATE CRIME WORKING GROUP**

**MEMORANDUM FOR THE ATTORNEY GENERAL**

**THROUGH:** XXXXXX

**FROM:** XXXXXX<sup>1</sup>

**SUBJECT:** Legislative options for amending 18 U.S.C. 245, the principal federal hate crimes statute, so as to eliminate unnecessary jurisdictional requirements and expand federal hate crimes jurisdiction to include bias crimes committed because of the victim's sexual orientation, disability, and, possibly, gender.

**PURPOSE:** To present the pros and cons of five options for a bill to amend 18 U.S.C. 245.

**TIMETABLE:** Although there is no fixed timetable, a decision is requested as soon as possible. It would be appropriate for the President to announce the Administration's legislative proposal on November 10, 1997, during the White House Conference on Hate Crimes. In addition, Senator Kennedy is working on a parallel track and has developed a bill that is similar to one of the five options presented in this memorandum. Senator Kennedy may offer his bill as a floor amendment to juvenile justice legislation that was reported out by the Senate Judiciary Committee on July 24, 1997. That legislation could reach the floor of the Senate this fall.

---

<sup>1</sup>David W. Ogden, Counselor to the Attorney General, is chair of the Hate Crimes Working Group, which has been meeting since last Spring. Participants include representatives from the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Office of Legal Counsel, the Criminal Division, the Civil Rights Division, the Community Relations Service, the Office of Victims of Crime, the Violence Against Women Office, the Office of Public Affairs, the Justice Management Division, the Office of Policy Development, the Executive Office for United States Attorneys, the United States Attorneys Offices, the Office of Inter-governmental Affairs, the Office of Community Oriented Policing Services, the Office of Legislative Affairs, the Office of Justice Programs, and the Federal Bureau of Investigation. A second memorandum, setting forth the Working Group's recommendations for a Departmental "hate crime initiative" was sent forward on ADD DATE. Together, that memorandum and this one constitute the product of the Working Group.

Memorandum for the Attorney General  
Subject: Hate Crimes Legislative Options

**SYNOPSIS:**

Jurisdictional limitations on the reach of 18 U.S.C. 245 have long impeded the Department's efforts to prosecute, punish and deter hate-based violence. Under existing law, the Department has no jurisdiction to prosecute hate crimes committed because of a victim's sexual orientation, gender or disability. The Department does have jurisdiction to prosecute hate crimes committed because of a victim's race, color, religion, or national origin, but its power to do so is greatly limited by the requirement that it prove not only that the crime was committed on the basis of race, color, religion, or national origin, but also that the crime was committed because of the victim's participation in one of a limited number of "federally protected activities" enumerated in the statute. These jurisdictional limitations have hindered the Department's efforts to pursue the federal government's strong interest in prosecuting the most heinous hate-based crimes.

All five of the Working Group's legislative options would eliminate the "federally-protected activity" requirement contained in section 245 for hate crimes involving bodily injury. Four of the five options also would add sexual orientation, gender, and disability as categories of bias crimes prohibited by the statute, while the fifth option would add only sexual orientation and disability. With regard to all five of the options, we have sought to accomplish the desired reforms without running afoul of the Supreme Court's recent interpretations of the Commerce Clause or imposing an unworkable burden on the Department's limited investigative and prosecutorial resources.

**DISCUSSION:**

**CURRENT FEDERAL LAW AND THE NEED FOR EXPANDED JURISDICTION**

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

18 U.S.C. 245(b)(2) is the principal federal hate crimes statute. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin" and because of his participation in any of six "federally protected activities"

Memorandum for the Attorney General  
Subject: Hate Crimes Legislative Options

enumerated in the statute. The enumerated activities are: (A) enrolling in or attending any public school or public college; (B) participating in or enjoying any service, program, facility or activity provided or administered by any State or local government; (C) applying for or enjoying employment; (D) serving in any State court as a grand or petit juror; (E) traveling in or using any facility of interstate commerce; and (F) enjoying the goods or services of a place of public accommodation.

The requirement that a defendant be proved to have acted not only because of his victim's race, color, religion, or national origin, but also because of his desire to interfere with the victim's participation in one of the six federally protected rights enumerated in the statute, has led federal prosecutors to decline prosecution of many incidents of brutal violence that were motivated by hate but were not so clearly intended to interfere with a victim's participation in one of the enumerated activities. This statutory requirement also has led to acquittals in several prominent federal prosecutions and has occasioned the Department's use of strained legal theories in other cases.

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

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

Memorandum for the Attorney General  
Subject: Hate Crimes Legislative Options

incident occurred on private property, and because the convenience store did not sell food or beverages "for consumption on the premises," as required by the statutory definition of places of "public accommodation" contained in 18 U.S.C. 245(b)(2)(F), federal prosecutors concluded that they could not satisfy the statutory "federally protected activity" requirement, and they turned the matter over to the state for prosecution.

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

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

- In 1980, Vernon Jordan, then the Director of the National Urban League, was shot and seriously wounded as he walked from a car toward his room in the Marriott Motel in Ft. Wayne, Indiana. The Department prosecuted Joseph Paul Franklin under 18 U.S.C. 245(b)(2)(F), alleging that Franklin shot Jordan because of Jordan's race and because Jordan was engaged in a federally protected activity, *i.e.* the use of a place of public accommodation. The jury acquitted Franklin. Several jurors later advised the press that they voted to acquit because they concluded that Franklin shot Jordan not out of any interest in interfering with Jordan's use of a hotel, but because Jordan was a black man in the company of a white woman.
- In 1982, two white men chased Vincent Chin, a man of Asian descent, from a night club in Detroit and beat him to death. The Department prosecuted the two perpetrators under Section 245, but both defendants were acquitted despite substantial evidence to establish their animus based on Mr. Chin's national origin. Although we have no direct evidence of the basis for the jurors' decision, as we do in the case involving Vernon Jordan, it appears that the government's need to prove the defendants' intent to interfere with Mr. Chin's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.

Memorandum for the Attorney General  
Subject: Hate Crimes Legislative Options

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

In several cases in recent years, the Department has sought to satisfy the federally protected activity requirement by alleging that hate crimes occurred on public streets or sidewalks -- *i.e.*, while the victims were using "facilities" provided or administered by a State or local government. *See* 18 U.S.C. 245(b)(2)(B). The Department has used this theory successfully to prosecute the stabbing death of Yankel Rosenbaum in Crown Heights, Brooklyn and the racially-motivated shooting of three African American men on the streets of Lubbock, Texas. Although the "streets and sidewalks" theory has enabled us to reach some bias crimes that occur in public places, these prosecutions remain subject to challenge. In the Lubbock case, for example, the defendants appealed their convictions, arguing that public streets and sidewalks are not "facilities" that are "provided or administered" by a State subdivision within the meaning of Section 245(b)(2)(B). Reminiscent of the jurors' post-trial comments in the Vernon Jordan case, the defendants also challenged the sufficiency of the government's proof that they had targeted the victims because of their use of the streets and sidewalks. The Fifth Circuit recently upheld the Lubbock convictions in a short, unpublished opinion, but we expect the Crown Heights conviction to be challenged on appeal on similar grounds.

The Working Group unanimously supports an amendment to Section 245 that would authorize the Department to bring certain federal hate crimes prosecutions without having to prove a defendant's motive to interfere with his victim's exercise of one of the six enumerated "federally protected activities." All five legislative options presented in this memorandum contain such an amendment for hate crimes involving "bodily injury."

**Hate Crimes Based on Sexual Orientation, Gender, or Disability**

In its current form, Section 245 does not prohibit hate crimes committed because of the victim's sexual orientation, gender, or disability.

**Sexual Orientation**

Information generated by private groups and statistics gathered pursuant to the Hate Crimes Statistics Act indicate that a significant number of hate crimes based on the sexual

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five legislative options presented in this memorandum would provide this jurisdiction for cases that involve bodily injury and satisfy the requirements of the Commerce Clause.

## 2. Gender

An extraordinary number of violent physical and sexual assaults are committed against women every year in this country. For example, the FBI reports that in 1996 more than 97,000 forcible rapes were reported to state and local law enforcement officials; countless more likely went unreported. Although the most common forms of violence against women traditionally have been viewed as “personal attacks” rather than as bias crimes, many people now acknowledge that women “are exposed to terror, brutality, serious injury, and even death because of their gender.”<sup>3</sup> Indeed, Congress, through the enactment of the Violence Against Women Act (VAWA), recently recognized that some violent assaults committed against women are bias crimes rather than mere “random” attacks. The Senate Report on VAWA, which created a federal civil cause of action for victims of gender-based hate crimes, stated:

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

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

The criminal provisions of VAWA have very limited coverage, however. VAWA’s prohibition on interstate domestic violence, 18 U.S.C. § 2261, requires that the defendant

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the hate crimes problem for transgendered persons may be better addressed as an issue of bias based on gender, rather than as an issue of bias based on sexual orientation.

<sup>3</sup> Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, Women and Violence: Hearing Before the Senate Judiciary Committee, 101<sup>st</sup> Congress, 2<sup>nd</sup> Sess. 62 (1990).

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travel across a state line, and it is limited to violence against the defendant's "spouse or intimate partner." VAWA's other criminal provision, 18 U.S.C. §2262, prohibits the violation of a "protection order" if the defendant travels across state lines with the intent to engage in conduct that violates that order. The structure of VAWA's criminal provisions give rise to at least two important concerns. First, because of VAWA's victim-based limitation (i.e., the requirement that the victim be a "spouse or intimate partner"), VAWA does not give the Department sufficient authority to adequately address a significant number of gender-motivated violent crimes. Second, because VAWA contains no requirement that the violence be gender-based, the statute does not permit the government to impose on the defendant the particular stigma associated with a conviction for a gender-based crime.

The majority of the states do not have statutes that specifically prohibit gender-based hate crimes. Although all fifty states have statutes prohibiting rape and other crimes typically committed against women, the VAWA Office reports that only 17 states have hate crimes statutes that include gender among the categories of prohibited bias motives.<sup>4</sup> The Working Group believes that, if feasible, the federal government should have jurisdiction to fill this void in appropriate cases.

One issue that has been the subject of much discussion within the Working Group is how best to define a gender-based hate crime. One concern in this regard is that virtually all sexual assaults and acts of domestic violence could be viewed as hate crimes motivated by gender, because almost every such incident could be viewed as occurring as a result of the victim's gender. The 97,000 reported rapes that occur annually would alone increase the Department's potential hate-crimes docket more than ten-fold. Because of this concern, the Working Group has considered whether any amendment to Section 245 that adds gender as a protected category should expressly require proof of gender-based animus, so as to identify rapes and other assaults against women that demonstrate sufficient gender-based animus to implicate a strong federal interest. In the analogous context of the civil remedy created by VAWA, Congress included a specific animus requirement. Section 40302 of

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<sup>4</sup> The VAWA Office reports further that local prosecutors in states that do have hate crimes statutes that include gender as a protected category have brought only a small number of prosecutions in gender-based cases. This may be because it is easier for local prosecutors to prove violations of their states' sexual assault statutes than it is for them to prove all of the necessary elements of a violation of a hate crimes statute, including the defendant's gender-bias motivation. Accordingly, the relative infrequency with which state hate crimes statutes have been invoked in gender-based cases probably does not provide much guidance for the federal resources issues discussed in this memorandum.

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VAWA defines a “crime of violence motivated by gender” as “a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.”

Other questions with which the Working Group has grappled are whether the addition of gender to Section 245 would inappropriately federalize a large number of crimes previously left to the states, and whether it would overwhelm the limited investigative and prosecutorial resources of the FBI, the Criminal Section of the Civil Rights Division, and the United States Attorney’s Offices. Although it is impossible to know in advance how many newly federalized incidents would actually come to the attention of Department officials, as noted the number of sexual assaults and other gender-based crimes that could be federalized by such an amendment is many times larger than the total number of hate crimes currently investigated by federal law enforcement officials.

There is near unanimous agreement among the members of the Working Group that, at least in theory, violent gender-based hate crimes are worthy of federal jurisdiction. Nevertheless, because the Working Group lacks a consensus on how best to address the resources issues that would be raised by the federalization of gender-based hate crimes, we are presenting five different legislative options for your consideration. As described below, Options 1, 2, 3, and 4 all would add gender as a protected category; however, because Option 1 would require proof of a more expansive Commerce Clause nexus as a necessary element of the crime than would Options 2 and 3, and because Option 4 includes an additional (non-Commerce Clause) restriction on the scope of coverage, the different options likely would subject different numbers of cases to federal investigation and prosecution. Option 5 would not add gender to Section 245. These options will be discussed in detail in Part II of this memorandum.

### **3. Disability**

The evidence collected thus far regarding bias crimes committed because of a victim’s disability is quite limited and largely anecdotal. Nevertheless, Congress, through the 1988 amendments to the Fair Housing Act,<sup>5</sup> the Americans with Disabilities Act of

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<sup>5</sup> Congress amended the Fair Housing Act in 1988 to grant the Attorney General authority to prosecute those who use force or threats of force to interfere with the right of a person with a disability to obtain housing.

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1990, and the 1994 amendments to the Hate Crimes Statistics Act,<sup>6</sup> has made clear its commitment to the extension of civil rights protections to persons with disabilities.

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

- In Denver in 1991, a paraplegic died from asphyxiation when a group of youths stuffed him upside down in a trash can. Calling the incident a "cruel prank," local police declined to investigate the matter as a bias-related crime.
- In California in 1995, a 16 year-old youth threw a disabled man to the ground and kicked him repeatedly. In Brooklyn, New York in 1993, a gang of youths beat a mentally disabled 12 year-old boy. As far as we are aware, neither case was prosecuted locally as a hate crime.

Violent bias crimes committed against persons perceived as having AIDS present perhaps the most significant problem in this area. In 1988, the Presidential Commission on the Human Immunodeficiency Virus reported that "violence against those perceived to carry HIV, so-called 'hate-crimes,' [is] a serious problem . . . and [is] indicative of a society that is not reacting rationally to the epidemic." In a national survey of persons infected with the HIV virus, 21 percent reported that they had been victimized outside of their homes because of their positive HIV status. Yet because Section 245 does not cover hate crimes based on sexual orientation or disability, the Department has no authority to prosecute these cases. Thus, when a 19 year-old man in Indiana was beaten to death by another man who thought the victim was HIV positive, the Department was without authority to act. And when the family of a man with AIDS in California was harassed by a neighbor who killed several of the family's animals, fired a rifle at the family's house, beat one member of the family, and held a gun to the head of another, the Department again was unable to take any action.

The Working Group believes that the federal interest in serving as a backstop for state and local officials in the prosecution of hate crimes based on disability is sufficiently strong to warrant expansion of Section 245 to include such crimes when they result in bodily injury and when federal prosecution is consistent with the Commerce Clause.

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<sup>6</sup> Congress amended the Hate Crimes Statistics Act in 1994 to require reporting on hate crimes based on disability. The FBI has not yet reported any statistics under this section.

## II. PROPOSALS TO AMEND 18 U.S.C. 245

### A. Introduction

The Working Group considered many different options for amending Section 245, ranging from the broadest possible amendment (one that would simply repeal the statute's "federally protected activity" requirement while adding sexual orientation, gender, and disability as protected categories) to the narrowest (an amendment that would add sexual orientation and disability but not gender). With regard to each option, we carefully considered the many constitutional, practical and political issues that enactment of the option would raise.

#### **Constitutional Considerations**

Any expansion of the categories of victims protected by Section 245 raises several questions concerning the constitutional powers of Congress.

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. 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. The Thirteenth Amendment probably does not provide Congress, however, 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, in some instances, national origin. And although Section 5 of the Fourteenth Amendment might provide a source of congressional power for legislation prohibiting hate crimes that target groups not protected by the Thirteenth Amendment -- particularly if Congress were to create a strong evidentiary record establishing that state and local officials treat such crimes differently than other crimes -- the Office of Legal Counsel cautions that the Fourteenth Amendment remains a questionable source of power here, given the proposed breadth of an amended Section 245 and the statute's lack of an element requiring proof of "state action."

This leaves Congress' power to regulate interstate commerce as the strongest source of legislative 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

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Lopez OLC advises that the statute should contain a Commerce Clause element for crimes that Congress could not prohibit pursuant to its power under the Thirteenth Amendment.

In accord with this advice, all five of the legislative options presented in this memorandum distinguish between hate crimes motivated by bias against race, color, and national origin (for which no Commerce Clause element is included) and hate crimes motivated by bias against the other protected groups (for which two different possibilities have been included as required Commerce Clause elements). Because the Thirteenth Amendment probably authorizes congressional action in this area with regard to some religious groups but not others, all five legislative options include religion in both categories; *i.e.* in a case involving bias against the victim's religious group, the determination whether the prosecutor must proceed under a section of the statute that requires proof of a Commerce Clause nexus would depend on whether the religious group to which the victim belonged was a religious group reached by Congress' power under the Thirteenth Amendment.

**The Five Legislative Options**

**Option 1**

Option 1, set forth at Attachment 1, is the most far-reaching of the five options. In essence, it would eliminate the federally protected activity requirement for hate crimes involving bodily injury; add sexual orientation, gender, and disability as protected categories under Section 245; and require proof of a Commerce Clause nexus -- drafted in a way intended to satisfy constitutional concerns in the least restrictive manner possible consistent with recent Supreme Court decisions -- in cases involving sexual orientation, gender, disability, or, in some instances, religion.

Option 1 would create a three-tiered system for the federal prosecution of hate crimes under Section 245, as follows:

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

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- Second, it would add a new Section 245(c)(1) to the statute. This provision would prohibit the intentional infliction of bodily injury on the basis of race, color, or, to the extent reached by the Thirteenth Amendment, religion or national origin. Unlike Section 245(b)(2), this new provision would not require a showing that the defendant committed the offense because of the victim's participation in a federally protected activity. However, an offense under the new Section 245(c)(1) would be prosecuted as a felony only, and a showing of bodily injury would be required. An attempt would not constitute an offense under this section.
- Third, it would add two additional provisions, in Sections 245(c)(2) and (3). Together, these additional provisions 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 provisions would authorize the prosecution of felonies only, would exclude attempts, and would require a showing of bodily injury, while omitting the "federally protected activity" requirement of section 245(b)(2). But unlike Section 245(c)(1), these new provisions would require proof of a Commerce Clause element of the offense. That element has been drafted in a manner intended to reach all cases within the scope of Congress' commerce power: "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."<sup>7</sup>

As discussed above, the possible expansion of Section 245 to include hate crimes based on gender has raised significant concerns within the Department that a deluge of newly federalized cases might overwhelm the FBI and the Criminal Section of the Civil Rights Division. Although no analogous concern has been expressed regarding the addition of sexual orientation and disability as protected categories, there is a real possibility 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 gender-based crimes that might be brought to

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<sup>7</sup> The FBI has raised questions about whether the Commerce Clause element contained in Option 1 is sufficient to satisfy constitutional requirements. However, OLC advises the Working Group that the proposal is constitutional as drafted. Indeed, the entire option — and, in particular, the language of the Commerce Clause "hook" — was drafted in close consultation with OLC's representative on the Working Group.