

Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

the federal government's attention for investigation and possible prosecution under an expanded Section 245.

Because of these concerns, the Working Group's Legislative Subcommittee, which proposed Option 1 to the Working Group, sought to devise a principled approach that would limit the number of cases actually investigated and prosecuted by the federal government under the new provisions, while nevertheless authorizing the federal government to investigate and prosecute those hate crimes that implicate the greatest federal interest in prosecution. Some of Option 1's limiting principles are contained within the language of the statutory amendment itself; others are contained in two sets of proposed implementing guidance that would govern discretionary decisions regarding intake and prioritization among potential federal prosecutions. See Attachment 1A (proposed internal FBI intake guidelines for gender-based hate crimes); Attachment 1B (proposed internal DOJ guidelines for identifying gender-based cases that most strongly implicate a federal interest in prosecution). Still other essential limiting principles emanate from well-established, Department-wide policies.

The following limiting principles are included within the express language of the bill itself. First, the bill would require proof of a gender-based motivation for an offense; this requirement would arguably limit the pool of potential federal cases to those in which the evidence of hate-based motivation is sufficient to distinguish them from ordinary state law cases. On the other hand, it can be argued that rapes and other sexual assaults carry inherent indicia of gender motivation. Second, the bill would exclude attempts and other misdemeanors and would limit the new categories of cases under Section 245 to those involving bodily injury; these limitations would narrow the universe of newly federalized cases to truly serious offenses.⁸ On the other hand, it can be argued that all rapes and most other sexual assaults involve bodily injury. Third, the bill would require proof of a Commerce Clause nexus in cases involving conduct based on religion, gender, sexual orientation, or disability; this requirement would limit federal jurisdiction under these categories to cases that implicate interstate interests. In addition, Section 245 already requires a written certification by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General that "in his [or her] judgment a prosecution by the United States is in the public interest and

⁸ Our interest in promoting consistency also played a role in our decision to propose the exclusion of attempts from Sections 245(c)(1), (2) and (3). Once we decided to propose limiting those sections to felonies, the inclusion of attempts within those sections would have been inconsistent with the misdemeanor status of attempts under Section 245(b)(2).

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necessary to secure substantial justice" before any prosecution under the statute may be commenced. *See* 18 U.S.C. 245(a)(1). This statutory certification requirement, applied to the new amendments, would provide the Attorney General and her senior advisers with yet another opportunity to make sure that the Department's newly expanded jurisdiction was being asserted in a properly limited fashion.

A second set of limiting principles would be set forth in implementing guidance provided to federal investigators and prosecutors. In consultation with the FBI and the Criminal Section of the Civil Rights Division, the Legislative Sub-group has drafted written guidance for the FBI's intake of complaints alleging gender-based hate crimes; this guidance would limit the set of cases in which the FBI would be required to open investigations to those that appear to involve the most egregious evidence of gender-based animus. *See* Attachment 1A. In addition, the Legislative Sub-group has drafted written guidance for the Department's determinations of the sufficiency of gender-based motivation; intended for use at all stages of the criminal process, this guidance would inform the discretionary decisions of Department investigators and prosecutors in a way aimed at limiting the set of cases actually prosecuted to those involving evidence of gender-based motivation of a weight sufficient to implicate a strong federal interest in prosecution. *See* Attachment 1B.

Perhaps of greatest importance, the Department's efforts under an amended Section 245 would be guided by Department-wide policies that would impose significant limitations on the cases prosecuted by the federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department would defer prosecution in the first instance to state and local law enforcement officials except in highly sensitive cases in which the federal interest in prompt federal investigation and prosecution outweighs the usual justifications of the backstop policy.⁹ Second, under the Department's formal policy on dual and successive prosecutions (the "Petite Policy"), the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involved a "substantial federal interest" that the state prosecution had left "demonstrably unvindicated." *See* Attachment 1C.

Despite these protections, some components and individuals within the Department harbor serious practical and jurisprudential reservations about the addition of gender as a

⁹The Working Group has recommended modification of the backstop policy to remove the presumption of deferring to States in "sensitive" cases; even if this modification is adopted, however, the Department will defer to the States in the overwhelming majority of cases.

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protected category under Section 245.

At a recent meeting, for example, the Attorney General's Advisory Committee discussed general concerns that the addition of gender to Section 245 could result in the federalization of most rapes and sexual assaults typically prosecuted by state and local officials. Although the AGAC did not reach any consensus on whether gender should be included in a legislative package to amend Section 245, it did agree that if gender is added, some statutory restrictions should be imposed to limit the universe of gender-based crimes that would be federalized and that additional resources should be set aside for the investigation and prosecution of additional federal civil rights cases.

Elsewhere in the Department, the Terrorism and Violent Crime Section of the Criminal Division opposes the inclusion of gender on the ground that it would federalize a large set of crimes traditionally prosecuted by state and local officials. The Office of Justice Programs shares the concern that we not federalize crimes traditionally prosecuted at the state and local level without strong justification. Robert Litt, Deputy Assistant Attorney General in the Criminal Division, states the concern that under the broad language of Option 1, it could prove difficult for the Department to resist political pressure to prosecute a large number of cases, despite the existence of internal guidelines intended to limit the Department's exercise of its statutory authority.

All agree that these are legitimate concerns. All agree that the Department should not support a legislative proposal that seeks to federalize more crimes than necessary to respond to an important federal interest, and all agree that the breadth of the proposed bill contained in Option 1 could create circumstances in which the Department could be pressured to bring cases it does not find worthy of assertions of its jurisdiction.

The Legislative Sub-group and several components represented on the Working Group -- including the Civil Rights Division, the Violence Against Women Office, the Office of Victims of Crime, and the Office of Justice Programs -- believe that Option 1 is consistent with these principles. These components believe that there is a compelling need for backstop federal jurisdiction for the prosecution of hate crimes based on gender and that the limiting principles contained in the bill itself and in the proposed guidelines are sufficient to protect against the over-federalization of such crimes. These components believe further that the Attorney General and other senior Department officials would exercise their discretionary authority in a principled way to ensure that the Department brought only those cases consistent with a properly limited federal role.

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The FBI takes no position on whether to include gender in the hate crimes statute. But, the FBI is very concerned that its current resources are inadequate to handle the increased caseload that would result from the enactment of the bill contained in Option 1.¹⁰ All members of the Working Group share the FBI's concerns.

It is difficult, if not impossible, to estimate with any degree of accuracy the impact that a decision by the Attorney General to support the bill contained in Option 1 would have on the resource needs of the FBI, the United States Attorneys Offices, and the Criminal Section of the Civil Rights Division. This is so in part because it is unknown what form the legislation ultimately would take. But if legislation that federalized hate crimes based on sexual orientation, gender or disability (and eliminated the "federally protected activity" requirement) were to pass, there could be a significant impact on the Department's resource needs.

The FBI estimates that it currently investigates approximately 9% of the reported racial and religious discrimination cases. If this same ratio were applied to the 97,464 forcible rapes reported last year in the UCR, the FBI could expect to investigate 8,771 additional cases each year. The FBI states that each agent handles approximately 40 cases per year, at a cost to the government of \$176,000 (salary, benefits, travel, etc.). From these figures, the FBI estimates that the proposed bill could require \$38.5 million per year to hire 219 additional agents. This estimate does not consider the impact of domestic violence cases on the FBI's workload. Nor does it capture added costs to be incurred by the USAOs and Civil Rights Division.

The Legislative Sub-group believes that the additional cost to the FBI would be substantially less than this estimate. Because the statutory language and the proposed intake guidelines contained in Option 1 would limit the number of cases in which the FBI was required to open investigations, the ratio likely would be lower than the 9% ratio that applies to other types of civil rights cases (for which the FBI is required to open an investigation every time it learns of a complaint). The Legislative Sub-group also believes that its proposed guidelines for the internal use of Civil Rights Division prosecutors would further limit the FBI's resource drain because the Department would bring charges in a smaller percentage of the cases investigated by the FBI.

¹⁰Indeed, because the FBI recognizes that its current staffing and resource levels are not adequate to meet its obligations under current law, it has requested and the Department (but not yet OMB) has approved a large augmentation for FY 1999. The FBI is concerned that that augmentation would not be sufficient if Option 1 were enacted.

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It may be instructive here to consider the Department's experience in the enforcement of the Violence Against Women Act. Representatives of the VAWA Office report that analogous fears about a deluge of newly federalized, gender-based civil rights cases have not materialized in the three years since VAWA's enactment. Many who expressed skepticism about VAWA predicted that its enactment would federalize all domestic violence cases and overwhelm the federal courts. But to date, a total of only 56 cases, including both civil and criminal actions, have been brought under VAWA.¹¹

Nevertheless, the Working Group considered whether it would be feasible to make an exception for gender-based hate crimes to the FBI's practice of opening an investigation every time it learns of a possible criminal civil rights violation. Specifically, the Working Group considered whether the FBI could be instructed not to open an investigation at the federal level absent a showing that state and local law enforcement authorities had either refused or failed to conduct an adequate investigation themselves.

Such an exception to the FBI's regular procedures could result in a significant decrease in the number of gender-based bias complaints the FBI investigated. The exception would be very difficult to administer, however, because it would be virtually impossible for the FBI to determine the quality of state and local investigations that remained open; many such investigations would be deemed "open" even though little or no investigative activity was ongoing. Moreover, the increased deference to state and local officials inherent in such an arrangement likely would result in a *de facto* limitation of the federal government's jurisdiction to old cases that have significant evidentiary problems.

In the final analysis, all agree that the question of resources is a serious issue. The FBI, the Criminal Section of the Civil Rights Division, and the USAOs likely would need additional resources to handle the increased caseload that would result from enactment of any legislation that added gender, sexual orientation and disability as protected categories under Section 245. Before identifying the legislative option it supports, the Department should determine whether it is in a position to commit itself to resolving the resources issues that can be expected to arise.

Option 2

¹¹It is noteworthy that VAWA's jurisdictional predicate requires interstate travel -- not the broader jurisdictional predicate of Option 1 -- and is akin to Options 2 and 3 in this respect.

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Like Option 1, Option 2 (set forth at Attachment 2) would eliminate the federally protected activity requirement for hate crimes involving bodily injury and would add sexual orientation, gender, and disability as protected categories. Unlike Option 1, however, this second option would require proof of the strictest possible Commerce Clause element for hate crimes based on religion, gender, sexual orientation, or disability — proof that the defendant traveled across state lines with the intent to cause bodily injury to a person because of the actual or perceived religion, gender, sexual orientation, or disability of that person. The Commerce Clause requirement contained in Option 2 is the same requirement of proof contained in the criminal provision of the Violence Against Women Act.

The appeal of Option 2 is that it could greatly diminish the number of gender-based incidents that would satisfy its strict Commerce Clause element. It would also closely tie the new legislation to a clear source of Constitutional power. It is possible, therefore, that enactment of Option 2 would succeed in adding gender as a protected activity without overwhelming the limited resources of the Department.

The strict Commerce Clause showing required by Option 2 likely would have the effect, however, of excluding the great majority of bias incidents committed because of the victim's sexual orientation, gender, or disability. The experience of the Civil Rights Division in enforcing the former religious hate crimes statute, 18 U.S.C. 247, may be informative here. Before its amendment last year by the Church Arson Prevention Act of 1996, Section 247 contained an interstate travel requirement that was virtually impossible to prove. (The old Section 247 also contained a requirement that at least \$10,000 in property damage be proved; this provision, like the interstate travel requirement, was repealed by Congress last year in the Church Arson Prevention Act.) Although we have drafted Option 2 differently in an effort to avoid such problems, the limitations inherent in requiring interstate travel will have a significant impact. And despite the absence of concern about resources necessary to investigate and prosecute hate crimes based on sexual orientation or disability, the Department's ability to bring those cases would be greatly limited by Option 2, as well.

Finally, the interstate travel requirement contained in Option 2 may not be consistent with the federal government's interest in using its limited resources to prosecute gender-based hate crimes that involve the most egregious gender-based bias. Unlike VAWA, which was enacted, at least in part, to address a problem of interstate kidnaping and other family-related violence affecting women or their children, the hate crimes options under consideration are not principally aimed at addressing a problem that has been identified in many instances as involving interstate travel by the perpetrators of gender-based violence.

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Option 3

Option 3, set forth at Attachment 3, would eliminate the federally protected activity requirement for hate crimes involving bodily injury and add sexual orientation, gender and disability as protected categories in a way that presents a middle ground between Options 1 and 2. Specifically, Option 3 would require proof of the strict "interstate travel" Commerce Clause nexus for gender-based hate crimes, *see* Section 245(c)(4), but would require proof of only the broader Commerce Clause nexus of Option 1 for crimes based on religion, sexual orientation, or disability. *See* Sections 245(c)(2) and (3). The potential advantage of Option 3 is that, without imposing as significant a burden on the Department's resources as Option 1 might impose, it would give the Department broad jurisdiction over hate crimes based on sexual orientation and disability and more limited jurisdiction over hate crimes based on gender.¹²

On the other hand, the concerns noted above regarding the interstate travel requirement of Option 2 also apply to Option 3. The strict Commerce Clause showing required for the proof of gender-based crimes likely would result in most cases involving gender-based incidents being deemed non-prosecutable. And the requirement of proof of interstate travel in gender-based cases would limit the Department's jurisdiction to a set of cases not necessarily coextensive with those cases in which the federal government has the strongest interest in prosecution.

In addition, Option 3 would distinguish between the treatment of hate crimes based on gender and the treatment of hate crimes based on sexual orientation or disability without any clear constitutional or policy justification for doing so. It might be argued that there is not evidence of systematic problems with state and local handling of rape cases; on the other hand, such evidence may be lacking with respect to sexual orientation and disability as well, and anecdotal evidence with respect to all these categories doubtless can be found.

Finally, Option 3 would encounter political opposition from the very groups who

¹² Option 3 could be effectuated either by including all of its provisions within Section 245, as indicated above, or by addressing gender-based hate crimes separately through an amendment to the Violence Against Women Act. The criminal provisions of VAWA, which require proof of a strict "interstate travel" Commerce Clause element, currently prohibit certain offenses related to domestic violence. While maintaining the strict interstate travel requirement, these provisions could be expanded to include the full range of gender-based crimes that otherwise would be included in an amended Section 245.

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support this type of legislation. Members of the Working Group have met on several occasions with a large coalition of women's groups and other private organizations that support a legislative expansion of Section 245. Although these organizations recognize that constitutional requirements may require the imposition of some limitations on certain aspects of the hate crimes jurisdiction of the federal government, they are adamant that gender be added on the same terms as the other newly covered categories.

Option 4

Option 4, set forth at Attachment 4, would add gender, sexual orientation, and disability as protected categories and would include the broad Commerce Clause element from Option 1 to all three categories. Option 4 would attempt to address the resource problems by including statutory language that attempted to make clear that not every rape or other sexual assault was a gender-based hate crime covered by the statute. The statute would provide: "The fact that a rape, sexual assault, incident of domestic violence, or other act resulting in bodily injury occurred is not alone sufficient to prove that the bodily injury was caused 'because of the actual or perceived . . . gender' of the victim."

In some ways, this approach is similar to Option 1 in that it includes a broad gender provision, but then attempts to limit the crimes that would be prosecuted so as to exclude rapes and other assaults that lack indicia of gender bias (beyond those indicia inherent in the offense). Unlike Option 1, however, Option 4 would make this limitation explicit in the statute, rather than relying on detailed policy guidance. Option 4 may thus provide stronger evidence to convince a skeptical Congress that the statute does not criminalize every rape. Moreover, the inclusion of this limitation in the language of the statute rather than in policy guidance would insulate the Department from pressure to change its policy in a given case or on a wholesale level and would protect the Department if, in the future, the private groups that now agree to certain limitations changed their positions. Finally, in contrast to Options 2 and 3, Option 4 would limit the reach of the gender amendments in a way that may have a stronger policy justification than would the inclusion of a restrictive Commerce Clause element, which some view as an arbitrary restriction.

On the other hand, Option 4 has a number of significant downsides. First of all, it risks placing the Department squarely in the middle of a heated debate about whether all rapes have an element of gender bias. The Department would seem to have little interest in attempting to resolve this debate. Second, the Department's resolution of that issue would no doubt be extremely unpopular with many of the groups that support this legislation, raising the possibility that we would lose support in Congress for the hate crime

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amendments. Third, it is not clear that this proposal would have a significant effect on the number of cases to be investigated. It may well be the rare case in which the victim cannot allege some evidence (such as gender-biased language) other than the nature of the assault that suggests some gender bias. Fourth, like Options 3 and 5, Option 4 treats gender differently than it treats other protected categories, thus further antagonizing the key supporters of the legislation. As noted above, the private groups have stated that they would not support a bill that treated gender differently than the other newly-protected categories.

Option 5

Option 5, set forth at Attachment 5, would eliminate the federally protected activity requirement and add sexual orientation and disability as protected categories, but it would omit gender-based hate crimes altogether. The Commerce Clause language contained in Option 5 is the same broad language contained in Option 1 for religion, sexual orientation, gender and disability and in Options 3 and 4 for religion, sexual orientation and disability. This fifth option would limit even further the number of additional cases federalized as hate crimes and would thereby resolve most, if not all, of the stated concerns about over-federalization and resources.

But it can be argued that there is no principled reason — other than a lack of federal resources — to make such a stark legislative distinction between bias crimes committed because of a victim's gender -- which would be excluded altogether from Section 245 under Option 5 -- and bias crimes committed because of a victim's race, color, religion, national origin, sexual orientation, or disability, all of which would be included. This question of principle is even more serious because, as set forth above, a very strong case can be made for the need to create federal backstop jurisdiction over gender-based hate crimes.

Finally, Option 4 would almost surely face even stiffer political opposition than Option 3. The coalition of outside groups is adamant that gender be included in any proposed hate crimes legislation. Moreover, Senator Kennedy's staff has made it clear that Senator Kennedy will not consider introducing a bill that does not include gender.

III. STATUS

It would be appropriate for President Clinton to announce a proposal to expand Section 245 on November 10, 1997, during a policy address at the White House Conference

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on Hate Crimes. Once the Department has arrived at a position on an amendment, the Working Group will work with White House staff to determine the Administration's ultimate proposal for presentation at the Conference.

In addition, members of the Working Group have been in contact with Senator Kennedy's staff to discuss the content and timing of the bill Senator Kennedy hopes to introduce. Although the Working Group has not shared the actual language of any of our legislative options with Senator Kennedy's staff, we have discussed the general outlines of Option 1 with Senator Kennedy's staff, and we are satisfied that Option 1 and its three-tiered approach is quite similar to the bill that Senator Kennedy has drafted.¹³

Senator Kennedy is hoping to offer his bill to amend 18 U.S.C. 245 as a floor amendment to the juvenile justice bill that was reported out of the Senate Judiciary Committee on July 24, 1997. Senator Kennedy's staff believes that the juvenile justice bill is a good vehicle for such an amendment because it may be difficult for opponents of the amendment to criticize the federalization of new categories of hate crimes at the same time that they are supporting the federalization of new categories of juvenile crimes. Senator Kennedy did not offer his amendment during the Judiciary Committee's mark-up of the juvenile justice bill, because he did not believe that the amendment would pass in the committee. Rather, he plans to offer his bill as an amendment to the juvenile justice bill when that bill reaches the Senate floor for consideration by the full Senate.

At this time, it is unknown whether the juvenile justice bill will reach the Senate floor before the November 10, 1997 White House Conference on Hate Crimes.

¹³None of the legislative options presented in this memorandum contains death penalty provisions for any of the newly federalized hate crimes to be prohibited by Sections 245(c)(1) and (2). Although it could be argued that our proposal is inconsistent in this regard with current Section 245(b)(2), which does contain a death penalty provision, we have omitted the death penalty from our legislative options largely because we view the Department's role as supporting Senator Kennedy's legislative effort, and because we have been informed by Senator Kennedy's staff that Senator Kennedy is not willing to propose an expanded death penalty provision in his bill. If, however, the Administration decides to announce its own bill on November 10, this choice will need to be revisited.

DISCUSSION DRAFT 9/23/97

GUIDANCE FOR INTAKE OF ALLEGATIONS OF §245 GENDER VIOLATIONS

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

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

1. THE CONDUCT ITSELF

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

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

2. STATEMENTS BY THE SUBJECT

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

When the subject uses epithets or insults during the violent conduct to express a

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

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

3. KNOWN INTERESTS OF THE SUBJECT

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

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

4. SUBJECT'S PAST CONDUCT

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

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

5. EVIDENCE OF NON-GENDER BASED MOTIVATION

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

DISCUSSION DRAFT 9/23/97

**GUIDELINES FOR FEDERAL PROSECUTION OF GENDER-BASED HATE
CRIMES**

1. State and local governments shall continue to have primary responsibility for the investigation and prosecution of gender-based hate crimes.
2. The federal government shall not exercise its authority to prosecute a gender-based hate crime under 18 U.S.C. 245, as amended, unless: (i) all jurisdictional requirements set forth in section 245 are satisfied; (ii) the evidence of gender-based motivation for the crime is sufficient to obtain a conviction; (iii) prosecution by the United States is in the public interest and is necessary to secure substantial justice; and (iv) state and local officials in the jurisdiction in which the crime was committed are unable or unwilling to investigate or prosecute the case, or have done so in a proceeding in which the federal interest has not been vindicated. See AG Memo of December 14, 1994 Re: Dual and Successive Prosecution Policy ("Petite Policy").
3. A determination of whether the evidence of gender-based motivation is sufficient shall be based on the totality of the circumstances. The following factors shall be among those considered. However, this list of factors is not exhaustive, and no single factor shall be either required or determinative in all cases.
 - Whether aspects of the crime itself tend to indicate that the offense was committed because of a bias or hatred toward the victim's gender. This includes but is not limited to conduct that involves an egregious level of violence or brutality, such as violent acts that are directed at one or more of the victim's sexual organs.

Unlike many other types of violent crimes, which tend to be committed because of an assailant's interest in tangible gains (as in a robbery), or because of a personal animus between an assailant and a victim, hate crimes tend to be committed as a means of expressing anger or hatred toward, or attaining a sense of total dominance over, a member or members of a protected group. Perpetrators of violent bias crimes tend to use violence or threats of violence to express their hatred and to dominate and dehumanize their victims. Acts of violence directed at one or more of the victim's sexual organs, such as genital mutilation, or the slashing of a woman's breasts, may

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tend to indicate a specific gender-based bias. Similarly, an egregious level of violence or brutality, such as multiple stabbings of a defenseless victim, may tend to indicate the type of anger or interest in dominance that is often associated with bias motivated crimes.

- **Whether the accused has made statements tending to indicate that the crime was motivated by a gender-based bias or hatred.**

An accused's statements about his or her own conduct often are highly relevant to a determination of the accused's motivation for that conduct. Investigators and prosecutors routinely rely on such statements in a wide range of cases in which an accused's motive is in issue. Such statements relating to the accused's alleged conduct include comments or other statements made by the accused either before, during, or after the alleged incident. They include statements made to the victim or to others, and they include both oral and written or otherwise recorded statements, such as letters, notes, diary entries, and electronic mail, any of which may tend to indicate the motivations for the accused's alleged conduct.

In the hate crimes context, an accused's use of epithets or insults directed at a victim's membership, or perceived membership, in a protected group may tend to indicate that the accused was motivated by a bias against that group. Derogatory language that accompanies acts of violence against women may tend to signify a gender-based bias.

- **Whether there is evidence of any non-gender-based motive for the crime.**

Most crimes are committed for a reason. Such reasons -- or motives -- vary greatly from case to case, from a perceived need for money, to retribution for a perceived past wrong, to the violent expression of a hatred based on race, gender or other characteristic of the victim. Thus, in a case in which gender-based bias or hatred could reasonably be understood to have motivated the accused's conduct, the absence of an apparent motive or explanation other than gender-based bias may tend to indicate that gender-based bias was in fact the motivation for the conduct.

- **Whether there is other credible, relevant evidence of the accused's gender-based bias. Such evidence may include:**

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Statements or other actions by the accused that evince a general hatred or bias based on gender (whether or not specifically related to the conduct alleged)

An accused's membership in or association with a group that advocates gender-based violence or hatred

An accused's commission of other hate crimes motivated by the same gender-based bias or hatred

Evidence that an accused harbors a general gender-based bias or hatred may tend to indicate that the accused was motivated by that bias or hatred in committing an offense, particularly where there is no evidence of any other motive.

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DISCUSSION DRAFT 9/23/97

OPTION 1

A BILL

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

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

SECTION 1. SHORT TITLE

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

SECTION 2. FINDINGS

The Congress finds that --

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

(2) Such violence is deeply divisive.

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

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

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

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SECTION 3. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.

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

"(1) Whoever, whether or not acting under color of law, intentionally causes bodily injury to any person because of the actual or perceived race, color, religion, or national origin of any person shall be imprisoned not more than ten years, or fined in accordance with this title, or both; and if death results shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both.

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

(3) The circumstances referred to in subsection (2) are that in committing the offense, the defendant travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activities that affect interstate or foreign commerce, or that the offense is in or affects interstate or foreign commerce."

SECTION 4. TECHNICAL AMENDMENT

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

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

(3) The circumstances referred to in subsection (2) are that in committing the offense, the defendant travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activities that affect interstate or foreign commerce, or that the offense is in or affects interstate or foreign commerce.

(4) Whoever, whether or not acting under color of law, travels across a State line with the intent to cause bodily injury to any person because of the actual or perceived gender of that person, and thereby intentionally causes bodily injury to any person because of the actual or perceived gender of any person, shall be imprisoned not more than ten years, or fined in accordance with this title, or both; and if death results shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both."

SECTION 4. TECHNICAL AMENDMENT

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

Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

DISCUSSION DRAFT 9/23/97

OPTION 3

A BILL

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

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

SECTION 1. SHORT TITLE

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

SECTION 2. FINDINGS

The Congress finds that --

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

(2) Such violence is deeply divisive.

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

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

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

Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

SECTION 3. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.

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

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Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

DISCUSSION DRAFT 9/23/97

OPTION 4

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

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Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

DISCUSSION DRAFT 9/23/97

OPTION 2

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(3) The circumstances referred to in subsection (2) are that in committing the offense, the defendant travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activities that affect interstate or foreign commerce, or that the offense is in or affects interstate or foreign commerce."

SECTION 4. TECHNICAL AMENDMENT

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

Memorandum for the Attorney General
Subject: Hate Crimes Legislative Options

DISCUSSION DRAFT 9/23/97

OPTION 5

A BILL

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

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

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The Congress finds that --

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

HATE CRIME LAWS

NOTE: Overall, for 1996, there was 8, 759 reported incidents of hate crimes. There were 11, 039 reported victims of hate crimes. This is 10.2% increase from 1995. In 1996, race made up 63% of bias motivated crimes, sexual orientation made up 12 %, ethnicity made up 11% and religion made up 14%.

APPENDIX E

COMPARISON OF FBI HATE CRIME STATISTICS 1991-1996

	1991	1992	1993	1994	1995	1996
Participating Agencies	2, 771	6,181	6,551	7,356	9,584	11, 355
Total Hate Crime Incidents Reported	4,558	6,623	7,587	5,932	7,947	8, 759
Number of States, including DC	32	42	47	44	46	49
Percentage of U.S. Population Agencies Represent	N/A	51	58	58	75	84

OFFENDERS' REPORTED MOTIVATIONS IN PERCENTAGES OF OFFENSES

	1991	1992	1993	1994	1995	1996
Racial Bias	62.3	60.7	62.4	59.8	60.7	63.13
Anti-Black	35.5	34.7	37.1	36.6	37.6	

	1991	1992	1993	1994	1995	1996
Anti-White	18.7	20.3	19.4	17	15.4	
Religious Bias	19.3	17.5	17.1	17.9	16.1	13.9
Anti-Semitic	16.7	15.4	15.1	15.1	13.3	
Anti-Semitic as Percentage of Religious Bias	86.4	87.5	88.1	86.2	82.9	
Ethnicity	9.5	10.1	9.2	10.8	10.2	11.0
Sexual Orientation	8.9	11.6	11.3	11.5	12.8	11.8

RACE OF SUSPECTED OFFENDERS AS PERCENTAGE OF TOTAL KNOWN OFFENDERS

	1991	1992	1993	1994	1995
White	36.8	50.6	51	57	59.2
Black	16.9	40.6	33.6	29.7	26.7
Race Not Reported or Unknown	43.3	3.9	8.1	7.1	7.3

INCIDENTS, OFFENSES, VICTIMS AND OFFENDERS BASED UPON RACIAL BIAS.

1996	INCIDENTS	VICTIMS	OFFENDERS
Anti-White	1,106	1, 445	1, 783
Anti-Black	3,674	4, 600	3, 701
Anti-American Indian/Alaskan Native	51	71	56
Anti-Asian/Pacific Islander	355	544	374
Anti-Multi Racial Group	210	334	208
Total	5, 396	6, 994	6, 122

INCIDENTS, OFFENSES, VICTIMS AND OFFENDERS BASED UPON RELIGIOUS BIAS.

1996	INCIDENTS	VICTIMS	OFFENDERS
Anti-Jewish	1109	1209	371
Anti-Catholic	35	38	17
Anti-Protestant	75	81	44
Anti-Islamic	27	33	16
Anti-Other Religious Group	129	145	64

1996	INCIDENTS	VICTIMS	OFFENDERS
Anti-Multi Cultural Religious Group	24	27	11
Anti-Atheist/Agnostic	2	2	0
Total	1401	1535	523

INCIDENTS, OFFENSES, VICTIMS AND OFFENDERS BASED UPON ETHNIC/NATIONAL ORIGIN BIAS.

1996	INCIDENTS	VICTIMS	OFFENDERS
Anti-Hispanic	564	728	734
Anti-Other Ethnicity/National Origin	376	479	361
Total	940	1, 207	1, 095

INCIDENTS, OFFENSES, VICTIMS AND OFFENDERS BASED UPON SEXUAL ORIENTATION.

1996	INCIDENTS	VICTIMS	OFFENDERS
Anti-Male Homosexual	757	940	925
Anti-Female Homosexual	150	192	150
Anti-Homosexual	84	99	93
Anti-Heterosexual	15	38	4
Anti-Bisexual	10	12	8

1996	INCIDENTS	VICTIMS	OFFENDERS
Total	1, 016	1, 281	1, 180

W. A. Williams

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION
SENATOR EDWARD M. KENNEDY

520 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
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FAX MEMORANDUM

TO:

Mary Smith

FAX:

202/456-7431

FROM:

ANGELA F. WILLIAMS
SPECIAL COUNSEL TO SENATOR EDWARD M. KENNEDY

DATE:

12/14/88

NUMBER OF PAGES, INCLUDING COVER SHEET _____

IF THERE ARE PROBLEMS WITH THIS FAX TRANSMISSION, PLEASE CALL (202) 224-7878

MESSAGE:

Follow-up Questions from Senator Kennedy

1. **According to the FBI's 1996 hate crimes statistics, there were 10,706 offenses and 8,759 single bias incidents. Please provide the number of civil rights investigations initiated each year by the FBI, from 1990 to 1996. How many of these investigations were determined to be violations of 18 U.S.C. §245?**

The FBI initiated the following numbers of civil rights investigations in Fiscal Years 1990 through 1996:

FY 1990:	4,803
FY 1991:	5,461
FY 1992:	5,111
FY 1993:	4,586
FY 1994:	4,681
FY 1995:	3,449
FY 1996:	3,667

These statistics relate to a broad array of civil rights investigations conducted by the FBI, including allegations of hate crimes, violations of federal rights under color of law, involuntary servitude, slavery, interference with housing rights, violations of the Civil Rights Act of 1964, and violations of the Freedom of Access to Clinic Entrances Act. The FBI is not able to determine how many of these civil rights investigations involved allegations of hate crimes.

The Department of Justice does not make a formal determination whether each hate crime allegation it investigates is a violation of 18 U.S.C. §245. The Department brought the following numbers of prosecutions under §245 in Fiscal Years 1990 through 1996:

FY 1990:	3
FY 1991:	4
FY 1992:	4
FY 1993:	3
FY 1994:	5
FY 1995:	10
FY 1996:	8

2. **Please provide a factual summary of the 18 U.S.C. §245 cases prosecuted by the Justice Department from 1992-1997. Of the section 245 cases prosecuted federally, how many were brought after an acquittal in state court?**

The following are brief factual summaries of the cases prosecuted by the Department of Justice under 18 U.S.C. §245 from FY 1992 through FY 1997. The date of indictment and the federal judicial district in which the case was prosecuted follow the name of each case.

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Two of these federal prosecutions followed state prosecutions in which a defendant was acquitted; three others followed state prosecutions in which one or more defendants were convicted. (The five successive federal prosecutions are marked with asterisks.) No state prosecutions were brought in the remainder of the cases.

U.S. v. McGee and Mobley (1/28/97) (W.D. Tenn.)

A jury convicted the owner of a Tennessee Bar of using force to keep an African-American man out of his bar on the basis of race. The jury acquitted a bar bouncer on charges relating to his involvement in the incident.

U.S. v. Machado (11/13/96) (C.D. Cal.)

A jury convicted the defendant, a former student of the University of California at Irvine, of disseminating to fifty-nine students, nearly all of whom were of Asian descent, an e-mail containing racially derogatory threats.

U.S. v. Seminov (10/22/96) (D. Del.)

The defendant pled guilty to firing shotgun blasts into the center of two front windows of C. Moore's Place, a restaurant whose patrons are primarily African-American.

U.S. v. Williams (indictment 7/25/96) (superceding indictment 9/5/96); **U.S. v. John Doe (Juvenile)** (juvenile information 7/25/96) (superceding juvenile information 9/5/96) (indictment 6/25/98); **U.S. v. John Doe (Juvenile)** (juvenile information 9/5/96) (C.D. Cal.)

Federal prosecutors charged one adult and two juveniles -- all members of a skinhead group known as the Nazi Low Riders -- with the assault of a 16-year-old African-American boy on a public street in Lancaster, California. Prosecutors also charged the adult and one of the juveniles with the assault of an 18-year-old African-American man in the parking lot of a Blockbuster Video store. The adult and one of the juveniles have pled guilty. Delinquency charges against the second juvenile were never resolved, and the government recently has been granted leave to charge him as an adult.

***U.S. v. Nelson and Price** (8/10/94) (E.D.N.Y.) (8/14/96 - Superseding Indictment)

Two defendants were convicted of federal civil rights charges arising from the death of Yankel Rosenbaum, a Hasidic Jew, in the Crown Heights section of Brooklyn, New York.

The federal prosecutions followed a state trial in which one of the two defendants was acquitted of murder. State and local prosecutors never charged the second defendant.

***U.S. v. Kinslow, et al.** (7/25/96) (E.D. Okla.)

Federal prosecutors brought federal civil rights charges against four defendants arising from the racially motivated shootings of three African-American men. The defendants, who earlier had taunted the victims with racial epithets, followed the victims as they left a bar in Fort Towson, Oklahoma. During a brief car chase, the defendants fired several shots at the victims' automobile, forcing the automobile off the road and seriously injuring one of the victims. One defendant pled guilty before trial. The jury convicted two of the three remaining defendants and acquitted the third.

The federal prosecution followed state proceedings. State and local prosecutors never brought charges against three of the four federal defendants. The fourth federal defendant pled guilty in state court to Shooting with Intent to Kill. However, the state court sentenced this defendant to 10 years in prison but suspended all but 150 days of the prison sentence, which the defendant was permitted to serve on alternating weekends.

U.S. v. Makowski (1/4/96) (C.D. Cal.)

A jury convicted the defendant of assaulting a Hispanic man in a public park in Cathedral City, California. The defendant used racial epithets during the assault and told the victim that he should go back to his own country.

U.S. v. Johnson, et al. (12/8/95) (S.D. W.Va.)

Three defendants pled guilty to conspiring to firebomb the home of an African-American police officer who earlier had stopped the defendants' car and issued the driver a ticket.

U.S. v. Brown (12/4/95) (S.D. W.Va.)

The defendant pled guilty to setting fire to a bar in Charleston, West Virginia patronized primarily by African-Americans. Before lighting a firebomb outside the bar's lounge area, the defendant made several statements about his hatred of African-Americans.

U.S. v. Lightfoot (9/27/95) (D.N.H.)

The defendant pled guilty to sending a threatening letter containing racially derogatory and obscene terms to the Treasurer of the Association of Black Alumni of Dartmouth College.

U.S. v. Kooker (5/11/95); ***U.S. v. Dunaway, et al.** (5/16/95) (S.D. Iowa)

Federal prosecutors brought federal civil rights charges against five skinheads who beat an African-American man in a park. The victim was with his wife, who is white, at the time of the attack. The defendants struck the victim from behind and knocked him to the ground. They

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then kicked him and beat him with a beer bottle. Four defendants pled guilty. A jury convicted the fifth defendant at trial.

The federal prosecution followed state proceedings in which two of the defendants pled guilty to state charges. When it was determined that the maximum prison sentence on the state charges to which the defendants pled guilty was only five years — a sentence that, in Iowa, would have resulted in less than one year in prison for each defendant — state authorities deferred to the federal government.

U.S. v. Rich and Young (4/27/95) (M.D. Fla.)

Two defendants pled guilty to burning a cross in front of an auto repair shop located in a predominantly white area. The defendants admitted that they burned the cross to intimidate businesses in the area from hiring African-American employees. The auto repair shop employed two African-Americans at the time of the cross burning.

U.S. v. Martin, et al. (3/7/95) (N.D. Tex.)

A jury convicted three defendants, one a member of the white supremacist group "South Bay Nazi Youth," of federal civil rights charges stemming from a series of incidents on a single night in which the defendants drove through the streets of Lubbock, Texas hunting African-American men, luring them to their car, and shooting them at close range with a short-barreled shotgun. As a result of the shootings, one victim died, one was seriously wounded in the face, and a third had a finger blown off.

U.S. v. Walden and Daniel (2/7/95) (E.D. Mo.)

Two defendants pled guilty to spraying African-American victims with a high-pressure mixture of water and red Kool-Aid from a fire extinguisher that the defendants had modified for the raids.

U.S. v. Adams and Page (11/15/94) (D. Maine)

Two defendants pled guilty to using racial slurs and threatening four Hispanics at a store. As the victims drove away from the store, the defendants followed them, fired shots at the victims' car and wounded one victim in the arm.

U.S. v. Kingston, et al; **U.S. v. John Does** (Two Juveniles) (11/4/94) (E.D. Tex.)

Three adult defendants pled guilty to federal civil rights charges for beating several young African-American men they had seen socializing with white women at an entertainment facility. One of two juveniles prosecuted federally also pled guilty to federal civil rights charges. The defendants used a rifle, a rodeo belt buckle, and their fists to assault the victims.

U.S. v. Kila, et al. (10/21/94) (N.D. Tex.)

A jury acquitted three defendants of federal civil rights charges arising from their harassment, intimidation and/or assault of African-Americans who came into contact with the defendants in a downtown area. In the most serious incident, the defendants were alleged to have assaulted an African-American man while he waited for a bus, knocking him unconscious by punching him repeatedly in the head and then kicking him.

U.S. v. Baird, et al. (4/28/94) (E.D. Cal.)

Federal prosecutors brought civil rights charges against five skinheads arising from the assault of an African-American man and a Hispanic man in the parking lot of a convenience store. The defendants used racial epithets as they beat the African-American man, and they assaulted the Hispanic man when he tried to come to the aid of the African-American man. The jury convicted one defendant, acquitted two others, and was unable to reach a verdict with regard to a fourth. The government dismissed the charges against the fifth defendant before trial.

U.S. v. Clayton; U.S. v. John Does (Three Juveniles) (7/19/94) (D. Mass.)

Federal prosecutors brought civil rights charges against one adult and three juvenile members of a skinhead group called the New Dawn Hammerskins arising from a series of incidents in which African-Americans and Jews were targeted. The defendants used baseball bats and other weapons to harass and intimidate African-Americans on the streets and at a shopping mall. They also desecrated two synagogues, painted swastikas on headstones at a Jewish cemetery, and vandalized the car of a teacher of a course on the Holocaust. One of the juveniles also made false statements to the FBI during the investigation. The adult defendant pled guilty, and the three juveniles were convicted at trial.

***U.S. v. Quigley and Jones** (2/17/94) (D. Neb.)

Federal prosecutors brought federal civil rights charges against two men arising from an alleged conspiracy to interfere with the rights of two Native Americans to travel interstate. Prosecutors alleged that the defendants, after offering a ride to the two Native Americans, drove them to a remote location and then robbed, punched, and kicked them. Both victims suffered broken ribs and other physical injuries.

The federal indictment alleged violations of 18 U.S.C. §241 (conspiracy to violate federal rights), 18 U.S.C. §245(b)(2)(E), and 18 U.S.C. §1951 (Hobbs Act). A jury convicted the defendants of the Hobbs Act charges but acquitted them of the charges brought under §§241 and 245. The court subsequently granted the defendants' post-trial motion for judgment of acquittal on the Hobbs Act charges.

The federal prosecution followed state court proceedings in which the defendants were permitted to plead guilty to third degree misdemeanor assault charges and were sentenced to only 14 days in jail.

U.S. v. Aatlo (2/25/93) (D. Maine)

A jury convicted the defendant of federal civil rights charges arising from an incident in which he accosted an African-American woman while she was eating at a restaurant. The defendant shouted racial slurs at the woman and threatened to burn down her house.

U. S. v. McDermott and McDermott (11/17/92) (N.D. Iowa)

A jury convicted two defendants of federal civil rights charges for their efforts to prevent minorities from using a public park. The defendants shouted racial slurs at minorities, swerved at them with cars, and threatened them with weapons.

***U.S. v. Sowa** (11/4/92) (N.D. Ill.)

A jury convicted the defendant of beating a young African-American man with a baseball bat after the victim and an African-American friend got off the bus in a white neighborhood. The federal prosecution followed state proceedings in which the defendant was acquitted of state assault charges.

U.S. v. Evangelista, et al. (9/10/92) (D.N.J.)

Federal prosecutors brought civil rights charges against three defendants who allegedly kicked and beat an Asian-Indian man on a public street, leaving the man with permanent brain damage. A joint trial of all three defendants ended with a hung jury on charges brought under 18 U.S.C. §245 and with acquittals on charges alleging housing rights violations. Prosecutors then re-tried one of the defendants alone on the §245 charge, but the jury returned a not guilty verdict. In light of the results of these two trials, prosecutors dismissed the §245 charges against the remaining two defendants.

U.S. v. Bechen (3/26/92) (N.D. Iowa)

The defendant pled guilty to federal civil rights charges arising from several incidents in which he targeted African-Americans. The defendant threw a brick through the window of an African-American family's apartment and left a burnt cross covered with racial epithets outside the apartment's front entrance. The defendant also painted racially threatening messages on the walls and doors of a local high school.

U.S. v. John Doe (Juvenile) (3/20/92) (S.D. Cal.)

The defendant pled guilty to federal civil rights charges arising from several incidents targeted at Palestinian restaurant owners. The defendant made threatening telephone calls to the victims' restaurant, threw bottles through the restaurant's windows, and painted a swastika and the letters "S.W.P." (Supreme White Power) on the outside.

U.S. v. Black and Clark (12/12/91) (E.D. Cal.)

Federal prosecutors brought civil rights charges against two white supremacists arising from an assault of an African-American man at a convenience store/gasoline station. The defendants attacked the victim while he was buying water for his car, which had overheated. The defendants stabbed the victim several times during the attack. One defendant pled guilty. The other was convicted at trial.

3. What is the Justice Department's policy on double jeopardy?

The Department of Justice has a formal policy known as the "Petite Policy" that limits the discretion of federal prosecutors to bring dual or successive prosecutions. Under this policy, set forth at section 9-2.142 of the United States Attorney's Manual, a federal prosecutor may not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involves a "substantial federal interest" that has been left "demonstrably unvindicated" by the state prosecution. As illustrated by the descriptions provided above of the small number of successive prosecutions we have brought under 18 U.S.C. §245, we take this policy very seriously and strictly follow its requirements. A copy of the Petite Policy is enclosed.

4. What additional resources will be needed in order to implement the current legislation?

President Clinton has made a commitment to obtain forty additional FBI agents in the coming fiscal year to assist in the Nation's law enforcement battle against hate crimes. We believe that these additional resources will be sufficient to implement the current legislation.

5. What is the current number of special agents assigned to civil rights investigations nationwide?

There are 156 FBI special agents dedicated to the investigation of civil rights complaints, although at present an additional 40 to 50 special agent work years are added to this total to help address the needs of ongoing civil rights investigations. As noted in our answer to Question 1, these numbers refer to a large array of federal civil rights cases, of which hate crimes are only one component.

Hate Crimes Prevention Act Meeting
February 8, 1999

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HATE CRIMES PREVENTION ACT

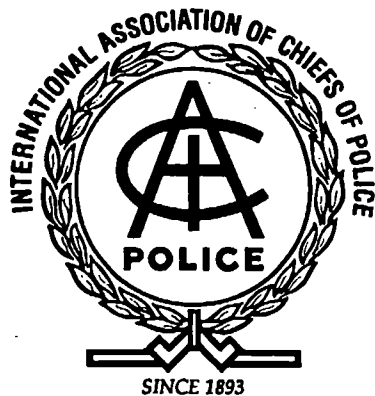
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**NATIONAL ASSOCIATION OF
ATTORNEYS GENERAL INFORMATION
(INCLUDING GENDER-BASED HATE
CRIME CRITERIA)**

*Hate
Crime*

HATE CRIME IN AMERICA

Recommendations from the 1998 IACP Summit



January 1999

FROM THE SUMMIT:

- ▶ *Though hate and its consequences have always been part of the human condition, we are not born with prejudices or intolerance. These attitudes are learned, as are the behaviors that constitute hate crime. Social change, particularly as rapid and pervasive as witnessed in 20th century America, can engender fear of being displaced, and in turn, bias-motivated attitudes and behavior. Most perpetrators of hate crime are steeped in the fear and anger that fuel prejudice.*
- ▶ *Communities become victims when hate crime erodes mutual respect and civility, and undermines the citizens' sense of well-being and safety.*
- ▶ *Summit participants were hopeful that communities, schools, and justice system agencies can work together to create and maintain conditions in which prejudice gives way to tolerance and bias-motivated violence is replaced with peaceful problem-solving.*
- ▶ *To be leaders in preventing hate crimes, law enforcement professionals must ensure that they exemplify the values of tolerance and peaceful conflict resolution, and that any bias-related behavior by police officers is dealt with swiftly, equitably, and severely.*
- ▶ *Law enforcement leaders and officers will continue to contribute significantly to stopping violence and preventing hate crime. However, the work outlined in this report cannot be accomplished solely through the efforts of law enforcement agencies. Implementing summit recommendations requires the continuing collaboration and commitment of community leaders, parents and families, schools, and other public agencies in the ongoing enterprise to create a society of peacemakers.*

ACKNOWLEDGMENTS

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We are indebted most to the summit participants who worked so diligently and productively to fashion the recommendations that appear in this report. We hope we have synthesized and conveyed their contributions faithfully and accurately. Each participant is acknowledged individually later in this report.

Throughout the project, but particularly during the conceptualization and planning stages, the summit benefited from the contribution and collaboration of the Advisory Board, composed of the directors of the funding agencies and:

- ♦ Jennifer Knobe, Bureau of Justice Assistance
- ♦ Charles Kindermann, Bureau of Justice Statistics
- ♦ David Walchak, Office of Community Oriented Policing Services
- ♦ Barbara Wallace, Federal Bureau of Investigation
- ♦ Doug Dodge, Office of Juvenile Justice and Delinquency Prevention
- ♦ Tim Johnson, Office for Victims of Crime

Compelling critiques of a draft of this report were provided by:

- ♦ James Castello, United States Department of Justice
- ♦ Michael Lieberman, Anti-Defamation League
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EXECUTIVE OVERVIEW

Though hate and its consequences have always been part of the human condition, we are not born with prejudices or intolerance. These attitudes are learned, as are the behaviors that constitute hate crime. Social change, particularly as rapid and pervasive as witnessed in 20th century America, can engender fear of being displaced, and, in turn, bias-motivated attitudes and behavior. Most perpetrators of hate crime are steeped in the fear and anger that fuel prejudice.

The concept of hate crime is often misunderstood. In many cases, there is confusion between hate incidents and hate crimes. Legally, a hate crime is any crime enumerated in a hate crime statute in which a perpetrator is subject to an enhanced penalty if the crime was motivated by bias, as defined by the statute. Arson, aggravated assault, and vandalism exemplify such crimes. Hate incidents are those actions by an individual that, while motivated by bias, do not rise to the level of a criminal offense. Both hate crimes and hate incidents are the focus of this report.

Legislation to prohibit racially motivated violence dates back to the Ku Klux Klan Act passed by Congress in 1871. Since that time, federal and state legislators have recognized hate crime as dangerous to our society and have passed numerous pieces of legislation to address it.¹ The federal acts we regard today as hate crime legislation emerge from the Civil Rights Act of 1968, the Hate Crime Statistics Act of 1990, and section 280003 of the Violent Crime Control and Law Enforcement Act of 1995.

Federal, state, and local agencies, as well as public-interest organizations, have initiated a wide array of approaches to prevent and respond to hate crimes. Although a great deal has been accomplished, much work remains to be done.

In June 1998, the International Association of Chiefs of Police (IACP) convened the *Hate Crime in America Summit*, a gathering of over 100 police executives, community leaders, citizen activists, justice system decisionmakers, and scholars with hate crime expertise and experience. At this summit, participants explored the nature of hate crime and discussed

ways to address it. This report summarizes 58 recommendations affirmed as the most promising for communities, justice agencies, schools, social service agencies, and police to help them prevent and respond to hate crime.

The summit produced 46 policy and program recommendations to

- ***Prevent Hate Crime,***
- ***Respond to Hate Crime,***
- ***Measure the Effectiveness of Prevention and Response Efforts.***

The summit also produced a Law Enforcement Action Agenda – 12 vital actions to help police address hate crimes. Collectively, these recommendations constitute a comprehensive agenda to advance understanding of hate crime, prevent hate crime, and improve the effectiveness of our response to this complex and challenging social problem. The agenda sets forth roles and responsibilities for a coordinated, community-wide response by citizens, schools and colleges, police, justice system agencies, social service agencies, and victims. Recommendations are summarized here and detailed later in this report.

HOW CAN WE PREVENT HATE CRIME?

The summit produced 18 recommendations to prevent hate crime.

- **Increase Public Awareness**
 - **Create multidisciplinary planning processes to develop coordinated approaches to prevent and respond to hate crime.**
 - **Create local Human Rights Commissions or other forums to promote community harmony and stability.**
 - **Focus public attention on issues of prejudice, intolerance, and the ways that hate crime affects community vitality and safety.**
 - **Develop public information to promote values of tolerance and social equality.**
 - **Raise awareness of the goals and activities of organized hate groups.**

- Develop national, regional, and/or state task forces to understand and counter the influence of organized hate groups.

■ **Educate Children and Young Adults**

- Involve parents in efforts to prevent and intervene against bias-motivated behavior of their children.
- Foster a “zero-tolerance” atmosphere in schools and colleges.
- Provide every student and teacher the opportunity to participate in hate crime prevention courses and activities.
- Incorporate hate crime education into existing curricula.
- Reinforce diversity training and multicultural education at early ages.
- Provide conflict resolution training to all children.
- Intervene with students who express discriminatory beliefs before their behavior escalates.

■ **Educate Community Groups and Leaders**

- Inform vulnerable groups and individuals about ways to protect themselves from bias-motivated incidents and crime.
- Provide knowledge and impart skills to recognize and defuse high-risk situations.

■ **Encourage Strategic Planning and Collaborative Problem-Solving**

- Develop mechanisms for ongoing problem-solving within local communities.
- Encourage responsible and accurate media coverage.
- Improve accuracy and completeness of information about the incidence of and response to hate crime.

HOW SHOULD WE RESPOND TO HATE CRIME?

The summit produced 22 recommendations to respond to hate crimes.

■ **Develop Shared Definitions of Hate Incidents and Hate Crimes**

- Broaden statutory definitions of hate crimes to eliminate disparities between laws.
- Clarify the difference between hate incidents and hate crimes.

■ **Eliminate Barriers to Hate Crime Reporting**

- Encourage reporting of all hate incidents and crimes.
- Make it safe and easy to report bias-related incidents and crimes.
- Develop and disseminate hate crime reporting protocols.

■ **Provide Adequate Support to Victims of Hate Incidents and Hate Crimes**

- Ensure that responses to hate incidents and crimes are swift, thorough, and sensitive to the feelings of victims.
- Develop coordinated community plans to respond to and manage public demonstrations by organized hate groups.
- Assign organizational responsibility for coordinating and monitoring hate crime response.
- Accord community recognition to "Good Samaritans" who protect victims of hate incidents or crimes, or who report incidents to appropriate authorities.
- Provide specialized support to hate crime victims through existing victim assistance programs.

■ **Establish Mechanisms for Repairing Harms to Communities**

- Support, console, and assist targeted communities.
- Develop coordinated community incident response plans.
- Ensure that schools and colleges establish processes to respond to bias-related incidents.

- Engage the media as partners to restore communities to wholeness.

■ **Develop More Effective Sanctions for Hate Crime Perpetrators**

- Impose enhanced sentences for violent or repetitive hate crime offenders.
- Use restorative justice options for first-time nonviolent hate crime offenders.
- Involve parents of juvenile hate crime offenders in post-adjudication sanctions and interventions.
- Develop strategies to counter the influence of organized hate groups in correctional institutions.

■ **Enhance Professional Training**

- Train first responders, investigators, and leaders.
- Train victim assistance providers.
- Train judges and prosecutors.
- Provide cross-disciplinary training for all those who respond to hate incidents and crimes.

HOW WILL WE KNOW WE ARE SUCCEEDING?

The summit produced six recommendations to improve research and evaluation.

■ **Conduct Basic Research**

- Clearly define expected outcomes of hate crime prevention and response efforts.
- Define valid measures of expected outcomes.

■ **Evaluate Outcomes of Prevention and Response Efforts**

- Ensure that all hate incidents and crimes are documented thoroughly and consistently.
- Collect data on expected outcomes where particular prevention and intervention efforts are being implemented, over time, across jurisdictions, and in a variety of settings.

- Share quantitative and qualitative information about the elements of successful prevention and response programs.
- Systematically record characteristics and activities of organized hate groups.

THE LAW ENFORCEMENT ACTION AGENDA

The summit produced 12 recommendations to encourage and enable police agencies to assume a leadership role in community-wide efforts to address hate crime issues effectively.

- Establish a “zero-tolerance” atmosphere in every law enforcement agency.
- Encourage local jurisdictions to conduct hate crime summits.
- Participate in collaborative development of coordinated approaches to prevent and respond to hate crimes.
- Sponsor and participate actively in community events, forums, and activities concerning diversity tolerance, bias reduction, conflict resolution, and hate crime prevention.
- Respond to and support the individual victims of hate crimes and their communities.
- Employ community policing strategies to prevent and respond to hate crimes.
- Continuously investigate, track, and deal appropriately with the activities of organized hate groups.
- Identify and report all bias-related incidents and hate crimes completely and accurately.
- Ensure that all law enforcement professionals are trained to recognize and respond appropriately to hate crimes.
- Assist schools and colleges to design and deliver hate crime prevention curricula and to develop response protocols.
- Engage the media as partners in preventing hate crimes and restoring victimized communities.
- Collaborate in defining measurable outcomes of efforts to prevent and respond to hate crimes.

Law enforcement leaders and officers will continue to contribute significantly to stopping violence and preventing hate crime. However, the work outlined in this report cannot be accomplished solely through the efforts of law enforcement agencies. Implementing summit recommendations requires the continuing collaboration and commitment of community leaders, parents and families, schools, and other public agencies in the ongoing enterprise to create a society of peacemakers.

IMPLEMENTATION

Several actions are necessary to implement summit recommendations. First, local agencies and organizations should read this report and identify areas of hate crime policy that are most important to their local jurisdiction. Second, agencies should select a set of specific recommendations most relevant to their current hate crime issues. Finally, agencies interested in taking action on the selected recommendations should contact the IACP or OJP to discuss strategies for implementation.

HATE CRIME IN AMERICA: ORIGINS AND NATURE

ORIGINS OF HATE

Though hate and its consequences have always been part of the human condition, we are not born with prejudice or intolerance. These attitudes are learned, as are the behaviors that constitute hate crime. In a review of evidence suggesting that we are not innately hostile, Ashley Montagu notes that "throughout the two million years of [human] evolution the highest premium has been placed on cooperation, not merely intragroup cooperation, but also intergroup cooperation, or else there would be no human beings today."² It is also unfortunately true that many, even most, human groups, tribes, and nations "create a sense of social solidarity and membership in part by systematically creating enemies...The hostile imagination begins with a simple but crippling assumption: what is strange or unknown is dangerous and intends us evil."³

Twentieth-century Americans have witnessed profound and far-reaching shifts in social structures, some of which may be perceived by certain groups (those with limited employment options or restricted social mobility, for example) as threats to economic or personal security. To the extent that fear of being displaced leads to bias-motivated attitudes and behavior, social change can create a climate conducive to increased prejudice and hate crime. Societal changes that may currently be seen as particularly threatening include:

- Formerly disenfranchised groups (e.g., racial and ethnic minorities, women, gays and lesbians, and people with disabilities) are claiming increasing political and economic power.
- The growing emphasis on technological and service work, and a corresponding decline in the availability of high-wage manufacturing jobs, is undermining the economic security of many.

- New waves of immigrants continue to transform the racial, ethnic, and religious composition of our nation.
- Increased mobility is destabilizing.
- Incidents of violence, aggression, and terrorism are regularly conveyed by the news media and increasingly portrayed in the entertainment media.

A group which perceives its security or identity to be threatened may react by consolidating and reinforcing a "consensual paranoia," described by psychologist Sam Keen as "a complex of mental, emotional, and social mechanisms by which a person or a people claim righteousness and purity, and attribute hostility and evil to the enemy."⁴ "Enemy" can be defined as anyone different from the threatened group. Organized hate groups and "mission offenders"⁵ provide the clearest example of this "othering" process at work, but all perpetrators of hate crimes, including both "thrill-seeking" and "reactive" offenders, as defined by Levin and McDevitt, are steeped in the fear and anger that fuel prejudice.⁶

HATE CRIME DEFINED

The following definition, a consensus opinion of participants, was used for summit deliberations:

A hate crime is a criminal offense committed against persons, property, or society that is motivated, in whole or in part, by an offender's bias against an individual's or a group's race, religion, ethnic/national origin, gender, age, disability, or sexual orientation.

Prejudicial behavior exists along a continuum, including negative speech, discriminatory practices, property damage, physical assault, and murder.⁷ Organized hate groups are the most visible manifestations of bias, fueling fear and anger that may motivate individual perpetrators of hate crimes. It is these individuals who commit the majority of hate crimes.

Hate incidents and crimes victimize not only the individuals or institutions targeted, but the entire community or group they represent. "By making members of minority communities fearful, angry and suspicious of other groups - and of the power structure that is supposed to protect them - these incidents can damage the fabric of our society and fragment communities."⁸ Violent hate crimes may lead to cycles of retaliation and vigilantism that can engulf communities and perpetuate hatred and prejudice.

RECENT HATE CRIME LEGISLATION

In 1990, Congress passed the **Hate Crime Statistics Act** (P.L. 101-275) amending section 524 of Title 28 of the United States Code. The current language reads in part "the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder; non-negligent manslaughter; forcible rape; aggravated assault; simple assault; intimidation; arson; and destruction, damage or vandalism of property." The Attorney General shall establish guidelines for the collection of such data and shall publish an annual summary of the data. (28 USC § 534)

The 1994 Violent Crime Control and Law Enforcement Act (P.L. 103-322):

- Amended the definition of "hate crime" to include disability for purposes of statistical reporting (P.L. 103-322, Title XXXII, Subtitle I, 320926, 108 Stat. 2131). See also 28 USC § 534 (1998).
- Directed the United States Sentencing Commission to "promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes." (P.L. 103-322, Title XXVIII, 280003, 108 Stat. 2096) See also 18 USC § 994 Appx § 3A1.1 (1998). (Application note: hate crime penalties are not to be applied on the basis of gender in the case of a sexual offense.)
- Defined hate crime for purposes of sentencing as a "crime in which the defendant intentionally selects a victim, or in the case of a property crime, the

property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation or any person." (P.L. 103-322, Title XXVIII, 280003, 108 Stat. 2096) See also 18 USC § 994 Appx § 3A1.1 (1998).

The **1994 Violence Against Women Act** (P.L. 102-322) created a civil cause of action for crimes motivated by gender. "A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate." (P.L. 102-322, Title IV, Subtitle C, § 40302, 108 Stat. 1941) See also 42 USC § 13981.

Congress unanimously passed the **Church Arson Prevention Act of 1996** (P.L. 104-155), which makes the following actions federal crimes:

- Intentional defacing, damage or destruction of religious real property because of the religious character of that property or attempts to do so when the offense is in or affects interstate or foreign commerce. (18 USCS § 247)
- Intentional obstruction, by force or threat of force, of any person in the enjoyment of that person's free exercise of religious beliefs or attempts to do so when the offense is in or affects interstate or foreign commerce. (18 USCS § 247)
- Intentional defacing, damage or destruction of religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property or attempts to do. (18 USCS § 247)

By 1998, 40 states and the District of Columbia had enacted statutes that require enhanced criminal penalties for crimes in which victims are selected because of perpetrators' perceptions of race, religion, national origin, sexual orientation, or gender.

Of those jurisdictions:

- All criminalize violence and intimidation motivated by race, religion, or ethnicity.
- 37 have passed some form of institutional (particularly church) vandalism legislation.
- 21 criminalize interference with religious worship.
- 20 criminalize violence motivated by gender.
- 21 criminalize violence motivated by sexual orientation.
- 23 criminalize violence motivated by other factors, such as disability, political affiliation, and/or age.⁹

In 1997, Senator Edward Kennedy (D-MA) introduced S. 1529 and Senator Charles Schumer (D-NY) introduced H.R. 3081. Both bills would:

- Amend the Federal criminal code to set penalties for persons who, whether or not acting under color of law, willfully cause bodily injury to any person or, through the use of fire, firearm, or explosive device, attempt to cause bodily injury to any person or, through the use of firearm, or explosive device, attempt to cause such injury, because of the actual or perceived: (1) race, color, religion, or national origin of any person; and (2) religion, gender, sexual orientation, or disability of any person, where in connection with the offense, the defendant or the victim travels in interstate or foreign commerce, use a facility or instrumentality of interstate or foreign commerce, or engages in any activity affecting interstate or foreign commerce, or where the offense is in or affects interstate or foreign commerce.
- Direct the United States Sentencing Commission to study the issue of adult recruitment of juveniles to commit hate crimes and, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements for adult defendants who recruit juveniles to assist in the commission of hate crimes.

- Require the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice (DOJ) to make grants to State and local programs designed to combat hate crimes committed by juveniles. [Authorizes appropriations. Authorizes appropriations to the Department of the Treasury and to DOJ to increase the number of personnel to prevent and respond to alleged violations of provisions regarding interference with specified federally protected activities, such as voting.]

These bills are currently under committee review. IACP has passed resolution number EXC0017.A98, *Recommending Support for Hate Crime Laws*, in support of these bills.

INCIDENCE AND NATURE OF HATE CRIMES

Like all Uniform Crime Reports (UCR) reporting, it is not mandatory for state and local law enforcement agencies to report hate crimes to the FBI. Nevertheless, since passage of the Hate Crimes Statistics Act in 1990, progress has been made in documenting the incidence and nature of hate crimes.

- In 1991, the first year that UCR included hate crime data, 4,755 bias-motivated crimes were reported by 2,771 law enforcement agencies in 32 states.
- In 1997, 11,211 agencies reported a total of 9,861 hate crime offenses.
- By 1997, 21 states and the District of Columbia had passed statutes requiring collection of data on hate crimes, though their definitions and reporting requirements vary.¹⁰

Progress notwithstanding, measurement and reporting challenges make it impossible to determine from UCR data either the actual magnitude of hate crime or whether the rate of hate crime has been rising or falling.

A central challenge to accurate reporting of hate crime is the need to determine offender motivation. Hate crimes traditionally are motivated by bias. Many law enforcement

agencies may be reluctant to ascribe bias motivation until incidents can be thoroughly investigated or offenders apprehended. The FBI suggests a protocol that law enforcement agencies can follow to determine whether bias motivation exists.¹¹

In addition to the FBI, private advocacy organizations such as the Anti-Defamation League, the National Asian Pacific American Legal Consortium, and the National Gay and Lesbian Task Force compile hate crime data. Some of these public-interest groups record all incidents, including bias-motivated speech, as hate crimes, and accept reports from community-based organizations and/or anonymous sources.¹² These organizations may use different definitions of hate crimes than law enforcement agencies. These differences may account for hate crime counts that diverge from UCR statistics.

It is likely that many victims do not report hate crimes to the police. Reasons may include the following:

- fear of revictimization or retaliation by offenders
- feelings of humiliation and shame about being victimized
- uncertainty about the responsiveness of law enforcement and justice system agencies
- cultural and language barriers
- for undocumented aliens, fear of being deported
- for gays and lesbians, fear of being "outed"

Considering these factors, UCR hate crime statistics most likely underrepresent actual incidence. Even if the actual number of hate crimes is small in comparison to other crime types, their impact is broad and powerful. "A single hate crime has the power to send a broad ripple of fear and discomfiture across a community."¹³

The UCR data do provide a profile of hate crimes, victims, and offenders, which can assist policymakers. Of the 9,861 hate crime offenses reported in 1997,

- 71% of all reported hate crimes were motivated by racial or ethnic bias,
- 39% of all reported hate crimes were motivated by bias against blacks,
- 15% of all reported hate crimes were motivated by religious bias,
- 14% of all reported hate crimes were motivated by sexual orientation,
- 0.1% of all reported hate crimes were motivated by disability,
- 63% of known offenders of hate crimes were white,
- 19% of known offenders of hate crimes were black,
- 70% of the 9,861 reported offenses were crimes against persons,
- 30% of reported offenses were crimes against property.¹⁴

The 1996 UCR statistics do not indicate age or gender of suspected hate crime offenders. An Office of Juvenile Justice and Delinquency Prevention study estimated that 17 to 26 percent of hate crimes recorded by law enforcement agencies are committed by juveniles under 18.¹⁵ A 1988 study estimated that half of those arrested for hate crimes are adolescents and young adults between 16 and 25 years of age.¹⁶ The Bureau of Justice Assistance reports that "the UCR for 1994 illustrates that the majority of hate crimes are committed by young white males against persons of other races".¹⁷

Federal, state, and local agencies, as well as public-interest organizations, have initiated a wide array of approaches to combat hate crimes during the past decade. These approaches include the following:

- Increasing community awareness of hate crime and its impact, and promoting a "zero tolerance" atmosphere;
- Encouraging community organizations to collaborate with law enforcement and other justice agencies to prevent and respond to hate crime more effectively;

- Implementing diversity and tolerance education, as well as conflict resolution training, in schools;
- Drafting model hate crime legislation;
- Developing mechanisms to enable systematic state and national reporting of hate crime incidents by law enforcement agencies;
- Increasing efforts to deal with the impact of hate incidents and crimes and to assist and support victims;
- Expanding training options and opportunities for law enforcement, victim assistance and other justice system professionals who respond to hate crimes and their victims;
- Allocating resources to support specialized sentencing options for youthful hate crime offenders that can prevent their recidivism "through education, community service, and exposure to previous targets of their bigotry."¹⁸

Although a great deal has been accomplished, much work remains to be done. The *Hate Crime in America Summit* provided an opportunity to consolidate and build on the achievements of the many community groups, public agencies, and private organizations concerned with this issue.

SUMMIT BACKGROUND AND PURPOSE

Since 1994, the IACP has held annual summits on critical issues facing law enforcement agencies and the communities they serve. Each has brought together approximately 100 police and community leaders, justice system decisionmakers, scholars, and others with expertise in an area to share information, deliberate on issues, and craft recommendations and action plans.

- ***1994: Violence in the United States***

Focusing on all types of violent crime, this summit produced a report to the president and Congress that recommended policies to reduce violence in U.S. communities. The report principally focused on law enforcement strategies at the federal, state, county, and local levels.

- ***1995: Murder in America***

This summit examined various aspects of homicide, including murders committed in the context of domestic violence, gang activities, robbery, and fights that escalate to murder. Participants developed four classes of strategies to reduce homicide: prevention, intervention, enforcement, and prosecution components. The strategies set forth a leadership position for the police.

- ***1996: Youth Violence in America***

Youthful victims and perpetrators of violent crime were the central concern of this summit. Participants called for strong relationships among schools, police, religious institutions, and community leaders to fight youth crime and keep youth out of trouble through early and consistent prevention and intervention strategies.

- ***1997: Family Violence in America: Breaking the Cycle for Children Who Witness***

Children who witness domestic violence were the focal point of this summit. Participants developed policies and protocols to respond effectively to these

children, who are themselves at great risk of becoming abusers or victims if they are not successfully protected and supported.

SUMMIT OBJECTIVES

In November 1997, President Clinton convened the *White House Conference on Hate Crimes* to focus national attention on prejudice and its destructive consequences. More than 200 persons representing groups that have historically been targets of hate crimes gathered to define the scope of the problem and outline innovative solutions. The IACP continued and expanded this dialogue at its *Hate Crime In America Summit*.

Using the findings of the White House Conference as a foundation, the 1998 IACP *Hate Crime in America Summit* brought together over 100 individuals to accomplish six objectives:

- **Prioritize This Critical Problem.** Motivate law enforcement agencies and communities to devote increased attention and resources to the problem of hate crime and its destructive personal, social, and criminal consequences.
- **Illuminate the Issues.** Through presentations, discussions, and debate crystallize knowledge, surface new information, and transform perspectives on hate crime.
- **Achieve Consensus on Effective Approaches.** Forge a consensus on the most promising strategies to prevent, respond to and control hate crimes.
- **Strengthen Capacity to Advocate and Implement the Consensus.** Return participants to their communities better prepared to devise and implement policies and programs to enhance quality of life—with support from a powerful nationwide network of colleagues.
- **Motivate Communities Across the Nation to Take Action.** Produce an action plan to alert communities to the dangers of hate crime and to enable them to build consensus around critical issues, and implement recommended prevention and response strategies.

- **Highlight Law Enforcement's Pivotal Role in Preventing and Responding to Hate Crime.** Build upon the unique capacities and responsibilities of law enforcement agencies to prevent and respond to hate crime.

SUMMIT FRAMEWORK

To illuminate issues, generate action recommendations, and forge consensus on promising strategies, eight issue-specific breakout groups were formed. Groups were encouraged to consider a range of tailored questions.

- **COMMUNITY**

- How can awareness of the hate crime problem be increased?
- How can unhealthy community norms be changed?
- How can the community prevent hate crime? What obstacles might a community encounter and what could be done to surmount them?
- How can communities develop strategies to address hate crime against different victimized groups (e.g., sexual orientation, religion, race, gender)? What should be different for each group? Similar?
- What measurable outcomes should be defined for community hate crime prevention and intervention efforts?

- **SCHOOLS (K - 12)**

- How can schools increase awareness of hate crime? What strategies can be used?
- What policies and programs could be enacted to create a tolerant and peaceful atmosphere in schools?
- What policies and strategies can schools employ to identify students at risk of committing hate crimes?
- How can schools intervene with students who are involved in hate crimes?
- What can schools do to respond effectively to crime victims in the school setting?
- What measurable outcomes should be defined for school hate crime prevention and intervention efforts?

■ SCHOOLS (COLLEGES AND UNIVERSITIES)

- How should colleges/universities educate students regarding hate crime? What about those studying to be teachers, health care providers, or justice system practitioners?
- How can the college/university community engage in hate crime prevention on campus?
- Under what circumstances are non-justice responses (e.g., disciplinary or review boards) to hate crime on campus appropriate? Under what circumstances are justice system responses appropriate?
- What aspects of campus culture contribute to hate crime (e.g., exclusive groups, student isolation from the broader community) and how can they be transformed?
- What criteria should be used to assess effectiveness of the campus response? What differences and similarities in outcome measures might there be across types of campuses?

■ FIRST RESPONDERS

- What is the best definition of hate crime? Do we share a common understanding? How should differences in legal, philosophical, and record-keeping definitions be reconciled?
- How can offender motivation/intent be assessed?
- How can first responders be trained to recognize hate crime and deal with victims and witnesses effectively and sensitively?
- How can first providers be trained to recognize, document, and control crime scene evidence to prove a hate crime was committed?
- What criteria should be used to assess first responder effectiveness? What similarities and differences in outcome measures might there be across types of first responders?

■ JUSTICE

- What is the best definition of hate crime? Do we share a common understanding? How should differences in legal, philosophical, and record-keeping definitions be reconciled?
- What justice system policies, procedures, or protocols can help to heal the harms caused by hate crime?

- What is the appropriate correctional response to hate crime offenders? What can be done to rehabilitate them? Should responses to youthful and adult offenders differ? What about members of organized hate groups?
- How can the responses to hate crimes by various justice system agencies be coordinated within a jurisdiction?
- How can justice agencies develop and sustain a partnership with community organizations, schools, and first responders to prevent and respond to hate crimes? What would these partnerships look like?
- What criteria should be used to assess justice system effectiveness? What differences and similarities in outcome measures might there be across different agencies of the justice system?

■ **LAW ENFORCEMENT LEADERSHIP**

- What role can law enforcement leadership play to reduce hate and hate crimes in the community?
- What is the role of the chief/administrator in response to community concerns?
- What is the role of the chief/administrator when a hate incident occurs?
- How can police leadership respond effectively when a hate crime has been committed?
- How can law enforcement agencies develop and sustain partnerships with community organizations, schools, other justice agencies, and other first responders to prevent and respond to hate crimes? What would these partnerships look like?
- What criteria should be used to assess law enforcement effectiveness in responding to hate crime? What differences and similarities in outcome measures might there be across law enforcement agencies (e.g., rural vs. urban)?

■ **VICTIM RESPONSE**

- What are the primary concerns of hate crime victims regarding response from professionals? What changes should be made?
- How can the community and justice system agencies improve chances that victims will report hate crime?
- How can victims and their communities be restored after a hate crime incident?

- What programs and services should be offered by justice and non-justice agencies to victims, and in what ways should they differ among victim groups?
- How should justice system agencies assist and support victims when a hate incident is not being prosecuted as a hate crime, but the victim/community perceives it as such?
- What criteria should be used to assess the effectiveness of response to victims? What differences and similarities in outcome measures might there be for responding to victims?

■ ORGANIZED HATE

- How should communities be involved in recognizing and monitoring organized hate groups?
- How can the justice system better track, understand, and respond effectively to the activities of organized hate groups?
- How can communities and criminal justice agencies balance free speech and assembly rights of organized hate groups with community and individual rights to safety? What role can justice agency leadership play?
- How can communities become aware of emerging hate groups and newly targeted victim groups?

STRATEGIES TO PREVENT AND RESPOND TO HATE CRIMES: SUMMIT RECOMMENDATIONS

The summit produced 46 recommendations to

- ***Prevent Hate Crime,***
- ***Respond to Hate Crime,***
- ***Measure the Effectiveness of Prevention and Response Efforts.***

Collectively, the recommendations constitute an action agenda to advance understanding of hate crime, prevent hate crime, and improve the effectiveness of our response to this complex and challenging social problem. The agenda sets forth roles and responsibilities for a coordinated, community-wide response by citizens, schools and colleges, police, justice system agencies, social service agencies, and victims.

The summit also produced a Law Enforcement Action Agenda—12 essential actions to help police address hate crime.

HOW CAN WE PREVENT HATE CRIME?

Investing in prejudice reduction and violence prevention is vital to reducing the incidence of hate crime. Summit participants were hopeful that communities, schools, and justice system agencies can work together to create and maintain conditions in which prejudice gives way to tolerance and bias-motivated violence is replaced with peaceful problem-solving. Summit participants recommended 18 proactive initiatives to help communities prevent bias-motivated incidents and hate crime.

■ **Increase Public Awareness**

An informed citizenry is the cornerstone of our democratic society. Citizen involvement is essential to the success of any program to reduce prejudice and prevent bias-related crimes.

1. **Create multidisciplinary planning processes to develop coordinated approaches to prevent and respond to hate crime.**

Some communities already engage in crime prevention planning processes that include representatives of business, religious institutions, advocacy groups, public and private schools and colleges, and the full spectrum of justice agencies. Every community should maintain or develop a strategic crime prevention planning process that includes a focus on hate crime, and view planning as an ongoing responsibility, not just a one-time project.

2. **Create local Human Rights Commissions or other forums to promote community harmony and stability.**

All citizens should be encouraged to talk about their differences and commonalities and to share their visions of safe and healthy communities. HRCs or other organized forums can sponsor community events that bring people together to learn about and celebrate one another and provide multicultural training in many facets of community life.

3. **Focus public attention on issues of prejudice, intolerance, and the ways that hate crime affects community vitality and safety.**

Community and justice system leaders, particularly police chiefs, must continue to speak out forcefully against intolerance, bigotry, and hate crime, not only in the aftermath of high-profile incidents, but at all times. Citizens must recognize that hate crimes, and even bias-motivated behaviors that are not criminal, victimize not only the targeted individuals or groups, but the entire community. Communities become victims when hate crime erodes mutual respect and civility, and undermines the citizens' sense of well-being and safety.

4. **Develop public information to promote values of tolerance and social equality.**

Justice agencies, private foundations, and community groups should collaborate to develop hard-hitting, culturally relevant endorsements of the value of tolerance and

understanding that can be disseminated through print and electronic means to diverse audiences.

5. Raise awareness of the goals and activities of organized hate groups.

Hate groups are less effective in sowing seeds of social unrest and conflict when their activities (including Internet hate sites) are brought to light. Continuous monitoring of hate group activity is vital for contravening their influence on children, youth, and other groups vulnerable to their toxic diatribe. Their messages of bigotry and intolerance can be countered by community leaders, schools, and justice agencies with truthful information that promotes mutual understanding and honors diversity.

6. Develop national, regional, and/or state task forces to understand and counter the influence of organized hate groups.

Because the influence of many organized hate groups is national or regional, strategies to counter their hate-producing efforts must also be national or regional, and be developed by broad-based coalitions of political, business, religious, community, and justice system leaders. Strategies to contain and counteract the negative influences of hate groups, while respecting their First Amendment rights, require creativity, persistence, and constant vigilance. The United States Department of Justice/United States Attorney Hate Crime Task Force Initiative can serve as a model and a vehicle for coordinated efforts.

■ **Educate Children and Young Adults**

Teaching our children to respect differences and celebrate diversity is essential to prevent development of prejudiced attitudes that can lead to hate crime. Because conflict is a fact of human life, children must also be given tools to deal with conflict constructively, to become "peacemakers."¹⁹

7. **Involve parents in efforts to prevent and intervene against bias-motivated behavior of their children.**

Parents should be engaged in hate crime prevention in a variety of ways, from helping to design and deliver conflict-resolution and hate crime prevention curricula, to participating in mediation and conflict resolution activities in their children's schools. Schools should consider involving parents of children expressing prejudicial beliefs or behaving in discriminatory ways in interventions to prevent the speech or behavior from escalating into more harmful criminal acts.

8. **Foster a "zero-tolerance" atmosphere in schools and colleges.**

Written codes of conduct for students, teachers, and other employees should express support for peaceful conflict resolution and clearly delineate the consequences for engaging in bias-motivated behavior. Codes of conduct should be readily available to students, parents of students, faculty, and other employees.

9. **Provide every student and teacher the opportunity to participate in hate crime prevention courses and activities.**

Hate crime prevention curricula can be used in general and alternative classroom settings, schools experiencing bias crime problems, with student government leaders, in after-school programs, and in teacher training. The Education Development Center, with support of the Office of Juvenile Justice and Delinquency Prevention, has prepared a model curriculum for middle and high school students designed to reduce prejudice and prevent crimes based on intolerance.²⁰ The U.S. Departments of Education and Justice collaborated to produce a manual that provides guidance to schools and communities to develop school-based hate crime prevention programs.²¹

10. **Incorporate hate crime education into existing curricula.**

Schools and colleges should encourage faculty to incorporate hate crime education into existing curricula in subject areas such as health, geography, social studies, history, and civics. Studies in these and other areas offer many opportunities to

promote tolerance and to illustrate the negative individual and societal impacts of prejudice and bigotry.

11. Reinforce diversity training and multicultural education at early ages.

Multicultural education diminishes reliance on stereotyping, and reduces the chances of miscommunication between members of cultural groups. To develop an appreciation of similarities and differences among groups of people, children and young adults should learn about the many cultures that make up American society.

12. Provide conflict resolution training to all children.

Children should be taught skills essential to peaceful conflict resolution, including active listening, appropriate expression of feelings, negotiation, and interruption of expressions of bias. There are model curricula and approaches appropriate for various age levels and contexts, including New York City's Resolving Conflict Creatively Program (RCCP),²² peer mediation initiatives, the "peaceable school" approach, as well as parent-led and community-based efforts.²³

13. Intervene with students who express discriminatory beliefs before their behavior escalates.

Standards for recognizing and responding appropriately to discriminatory expressions and behavior should be clearly articulated and widely disseminated to students, teachers, and parents. Faculty and other staff should be trained to identify early warning signs of risk of hate incidents and crimes. Schools and colleges should offer counseling, mentoring, and educational opportunities for all students who exhibit prejudicial beliefs and behaviors. Efforts of organized hate groups to disseminate information to students or recruit them as members should be carefully monitored.

■ **Educate Community Groups and Leaders**

Community leaders and citizen groups should have the skills and knowledge to recognize and actively resist intolerance and hate-motivated actions in their neighborhoods and jurisdictions.

14. Inform vulnerable groups and individuals about ways to protect themselves from bias-motivated incidents and crime.

Individuals or groups that could be a target of hate crime because of race, religion, ethnic/national origin, gender, age, disability, or sexual orientation should be informed about ways to prevent being victimized. Justice system and other professionals should train and counsel potential victims to help them recognize threatening situations and to provide conflict resolution and other coping skills to enable them to deal effectively with bias-motivated behaviors. Vulnerable individuals should be informed about the importance of reporting bias-related incidents and the support that is available for seeking redress of discriminatory actions. Training materials should be published in different languages to reduce language and cultural barriers to reporting.

15. Provide knowledge and impart skills to recognize and defuse high-risk situations.

Community groups and leaders should seek training and support from a coalition of justice system agencies, teachers, social service professionals, and victim advocacy groups to identify patterns of prejudice and discrimination before they escalate into hate incidents or crimes. Coalitions should also train community leaders in techniques for defusing and addressing identified high-risk situations. Professional mediation and conflict resolution services should also be available to support the ongoing prevention efforts of community leaders and neighborhood groups. The Department of Justice Community Relations Service can provide support in this area.

■ **Encourage Strategic Planning and Collaborative Problem-Solving**

Ongoing collaboration of citizens, elected officials, and public employees to develop strategic hate crime prevention enhances chances for success. Citizens who participate in governmental decisionmaking processes are more likely to assume their share of responsibility for specific outcomes and the overall quality of life in their communities.

16. Develop mechanisms for ongoing problem-solving within local communities.

To prevent unresolved racial, ethnic, or other tensions from erupting into hate incidents or crimes, communities should establish coalitions of political, business, religious, and justice system leaders to encourage ongoing dialogue about current problems and recommend collaborative approaches for resolving them. These coalitions could be the same groups that are involved in long-range strategic planning to prevent hate crime.

17. Encourage responsible and accurate media coverage.

The media should be urged to report on hate crimes accurately, to treat victims with dignity and sensitivity, to provide balanced coverage of organized hate group activities, and to highlight community partners' successes in preventing and responding to hate crimes.

18. Improve accuracy and completeness of information about the incidence of and response to hate crime.

Citizens need to know the facts about hate crimes and current responses to them, so they can more effectively prevent hate crime and deal with its impact on communities. Achieving greater accuracy in documenting hate crimes depends to a large extent on developing shared definitions and reducing barriers to comprehensive reporting, as discussed in several recommendations that follow.

HOW SHOULD WE RESPOND TO HATE CRIME?

Summit participants reached consensus that the following are effective responses to hate crime:

- The definition of hate crime must be clear and commonly understood.
- Offenders must understand that hate crime will not be tolerated and those who commit it will be apprehended and appropriately sanctioned.
- Victims must be taken seriously and supported in dealing with the social, emotional, physical, and financial impacts of hate crime.
- Justice system practitioners and their community partners must hold hate crime offenders accountable for their actions and provide opportunities for them to broaden their perspectives and change their values.

These general principles helped summit work groups craft 22 policy and program recommendations to guide communities and public agencies toward more effective responses to hate crime.

■ **Develop Shared Definitions of Hate Incidents and Hate Crimes**

Prejudicial behavior exists along a continuum including negative speech, discriminatory practices, property damage, physical assault, and murder. Legally, a hate crime is any crime enumerated in a hate crime statute in which a perpetrator is subject to an enhanced penalty if the crime was motivated by bias, as defined by the statute. Hate incidents involve behaviors that, though motivated by bias against a victim's race, religion, ethnic/national origin, gender, age, disability, or sexual orientation, are not criminal acts. Communities and justice agencies should develop a common language for these attitudes and behaviors so that their responses can be consistent, equitable, and effective.

1. **Broaden statutory definitions of hate crimes to eliminate disparities between laws.**

Disparities between federal and state hate crime laws should be eliminated by supporting new laws, which encompass criminal offenses committed against persons, property, or society, which are motivated in whole or in part by offenders' bias against an individual's or a group's actual or perceived race, religion, ethnicity/national origin, disability, sexual orientation, or, where legally permissible, gender. For example, federal law includes sexual orientation, while some state laws do not.

2. **Clarify the difference between hate incidents and hate crimes.**

Definitions of reportable incidents (hate crimes) should distinguish hate crimes from hate incidents. Hate incidents, in which an individual or group is subjected to negative or offensive speech or behavior that is not a criminal offense, still harm the sense of safety of victims and communities.

■ **Eliminate Barriers to Hate Crime Reporting**

3. **Encourage reporting of all hate incidents and crimes.**

Citizens should be informed through a variety of sources that reporting crimes as bias-related can result in enhanced penalties for perpetrators and specialized support for victims. Schools and colleges should report all hate crimes occurring on campuses to local police. Law enforcement agencies, school administrators, and other first responders should encourage citizens to report all bias-related incidents to the police, even if these incidents do not constitute hate crimes, so high-risk situations can be tracked and appropriate problem-solving actions can be taken.

4. **Make it safe and easy to report bias-related incidents and crimes.**

To ensure comprehensive reporting of hate incidents and crimes, victims and witnesses must feel safe from retaliation or stigmatization. Telephone hotlines are one way to encourage community members, including students, to report incidents.

Crimes reported on hotlines must be reported to a law enforcement agency to be effectively investigated and prosecuted. Police must ensure that both victims and witnesses feel safe.

5. Develop and disseminate hate crime reporting protocols.

Law enforcement agencies, schools and colleges, medical professionals, and community organizations should collaboratively develop and issue standard operating procedures (SOPs) and memoranda of understanding (MOUs) that detail how and to whom individuals should report hate incidents and crimes.²⁴ SOPs should include criteria to identify incidents as bias-related and determine whether a crime has occurred. They should include specific procedures for reporting both crimes and incidents. These SOPs should be communicated to citizens and community groups in user-friendly, culturally relevant and language-sensitive formats. Hate crimes should always be reported to the police; other hate incidents may be reported to community organizations and kept in some central repository or database.

■ **Provide Adequate Support to Victims of Hate Incidents and Hate Crimes**

6. Ensure that responses to hate incidents and crimes are swift, thorough and sensitive to the feelings of victims.

First responders must obtain accurate information about an incident; conduct a preliminary assessment of physical, emotional, and financial injury to a victim; and reassure victims that their concerns and needs will be addressed. First responders must be prepared to assist victims whose initial emotional reactions to an incident may include rage, terror, and grief. Victims and their families should be immediately referred to victim assistance agencies and other community services when needed.

7. **Develop coordinated community plans to respond to and manage public demonstrations by organized hate groups.**

Plans should specify the responsibilities of law enforcement agencies, including protection of First Amendment rights, techniques to prevent violence through separation of demonstrators and counter groups, and notification and communications responsibilities. Community groups should partner with justice agencies to develop constructive ways to counter the potential negative impacts of such events and to use demonstrations as opportunities to educate citizens, students, and justice system professionals regarding precipitating factors and effective responses. The Department of Justice Community Relations Service can be an excellent resource for help in designing a peaceful response to hate group marches and gatherings.

8. **Assign organizational responsibility for coordinating and monitoring hate crime response.**

Every law enforcement agency should fix responsibility for coordinating and monitoring responses to hate crime in a specific individual/operating unit. Other first responder organizations, particularly schools and colleges, should also designate individuals who will ensure that responses to hate incidents and crimes are timely and appropriate.

9. **Accord community recognition to "Good Samaritans" who protect victims of hate incidents or crimes, or who report incidents to appropriate authorities.**

Individuals who risk their own safety to assist victims of bias crime, as well as those who take the time to report threatening or harmful hate incidents, should be publicly recognized for their efforts.

10. **Provide specialized support to hate crime victims through existing victim assistance programs.**

Victim assistance programs should individualize support for victims of hate incidents and crimes in recognition of the unique and severe impacts they may suffer.

Programs should recognize that hate crimes that involve "only" minor property damage or assaults still may have serious long-term impacts on victims. Programs should partner with schools and community groups to provide ongoing support for all hate crime victims, so victims' alienation from their communities can be ameliorated. Agencies and groups providing ongoing services to hate crime victims should be co-located to permit better coordination.

■ **Establish Mechanisms for Repairing Harms to Communities**

11. Support, console, and assist targeted communities.

Hate crimes harm not only individual victims but also the groups and communities of which they are a part. Justice and victim assistance agencies should convene and facilitate community meetings in the aftermath of hate crimes to provide opportunities to express feelings and begin the process of restoring a sense of safety and well-being to community members.

12. Develop coordinated community incident response plans.

Communities should create hate crime response teams that comprise representatives of law enforcement, other justice agencies, schools, health care providers, victim assistance programs, and cultural diversity advocacy groups. These teams should develop policies and procedures to respond to bias-motivated incidents or hate crimes. Communities can turn to the United States Department of Justice/United States Attorney Hate Crime Task Force for guidance.

13. Ensure that schools and colleges establish processes to respond to bias-related incidents.

Schools and colleges are self-contained communities that should support students victimized by hate incidents and crimes, and provide for appropriate school-based disciplinary actions and remedial interventions for student perpetrators.

14. Engage the media as partners to restore communities to wholeness.

Through responsible reporting, the media can play a critical role in defusing community tensions, preventing further bias-motivated incidents in the wake of identified hate crimes, and educating the public to understand and prevent hate crime. Justice agencies and community groups should establish a single point of contact to provide media representatives with accurate information about the nature and impact of hate incidents and crimes while respecting individual victims' rights to privacy and security.

■ **Develop More Effective Sanctions for Hate Crime Perpetrators**

15. Impose enhanced sentences for violent or repetitive hate crime offenders.

Most hate crime statutes provide enhanced penalties, usually longer sentences, for crimes determined to be bias-related. These enhancements are particularly appropriate for chronic, violent hate crime offenders who pose a significant and continuing risk to community safety.

16. Use restorative justice options for first-time nonviolent hate crime offenders.

Restorative justice options can promote healing of victims and change offender attitudes, while restoring the trust of the community. They are appropriate whenever victims and communities are willing to hold hate crime offenders accountable for repairing the physical and emotional harm caused by their actions.

17. Involve parents of juvenile hate crime offenders in post-adjudication sanctions and interventions.

Families can have a powerful influence, for better or worse, on the outcomes of correctional interventions for youthful offenders. Involving parents and their children in treatment and education opportunities can teach whole families to practice peaceful conflict resolution and exercise tolerance of individual differences.

18. Develop strategies to counter the influence of organized hate groups in correctional institutions.

Efforts to change attitudes and behavior patterns of hate crime offenders sentenced to prison may be thwarted by the influence of organized hate groups operating within prisons and jails. Corrections administrators must develop strategies to contain or counter the bias-motivated activities and expressions of these inmate groups.

■ **Enhance Professional Training**

Professionals who must respond to hate crimes, assist victims and communities, and impose sanctions and interventions on convicted offenders require ongoing training and technical support. In 1995, a model curriculum for training law enforcement and victim assistance professionals was fashioned by the Education Development Center, with funding from the Office for Victims of Crime and the Bureau of Justice Assistance.²⁵ A few years before, the FBI published a guide to assist law enforcement agencies with hate crime data collection and training program design.²⁶ Many other resources can be tapped to help design and implement essential training. Summit participants recommend four types of training:

19. Train first responders, investigators, and leaders.

Topics should include the following: recognizing bias-related incidents, utilizing standard criteria to determine bias and assess perpetrator intent, interviewing victims and witnesses, collecting and preserving evidence, referring victims to appropriate community agencies, providing information to prosecutors and the courts, and standardizing documentation of hate incidents/crimes. The U.S. Department of Justice has available four hate crime curriculums that are excellent training resources: Patrol and Responding Officers; Detectives and Investigators; Core Curriculum for Patrol Officers, Detectives, and Command Officers; and Command Officers.²⁷

20. Train victim assistance providers.

Topics should include assessing impacts of hate incidents and crimes on victims, reviewing hate crime reporting protocols, exploring the continuum of support options, and engaging community groups in the healing process.

21. Train judges and prosecutors.

Topics should include creative alternative sentencing approaches, outcomes and impacts of all types of sanctions, and treatments for perpetrators. Prosecutors and judges must be fully apprised of community and law enforcement strategies for hate crimes, so subsequent charging and adjudication decisions are consistent.

22. Provide cross-disciplinary training for all those who respond to hate incidents and crimes.

Cross-disciplinary training that involves educators, law enforcement officers, victim assistance providers, court personnel, and correctional officers should promote closer collaboration for response to hate crime.

HOW WILL WE KNOW WE ARE SUCCEEDING?

Summit participants cited three types of research that are needed to better understand hate crime, its consequences, and promising responses:

- Conduct basic research to shed light on the causes of hate crime and to provide insight into promising ways to deal with the causes.
- Evaluate research to identify the most effective prevention efforts.
- Evaluate research to identify the most effective strategies to heal community harm and reform offenders.