

Wake Crimes
Copy TO
- Mary Beth L
- Conner
- Mary Conner
- Tim Friedman
RH

April 16, 1999

Richard Socarides
Senior Advisor for Public Liaison
White House
1600 Pennsylvania Ave
Washington, DC 20500

Dear Mr. Socarides:

MTV recently received an important wake up call from our audience that I want to share with you.

According to a survey we completed last month, an overwhelming majority (91%) of young people feel that hate crimes are a national crisis and that not enough is being done to prevent them in the United States.*

Our poll's key findings also included the following:

- 95% of young people support expanding federal hate crimes legislation to include sexual orientation, gender and disabilities.
- 7 out of 10 feel that expanding the law will help stop hate crimes.

The survey was conducted as part of MTV's 1999 pro-social campaign entitled "Fight for Your Rights: Take a Stand Against Violence." We think it is particularly important since the US Congress is now considering expanded hate crimes legislation to cover gender, sexual orientation and disabilities.

Enclosed is more information on the poll. I hope you find the information useful and relevant to the work of your organization. If you would like further information on MTV's *Fight for Your Rights: Take a Stand Against Violence* campaign, please contact Stephen Friedman, MTV's Vice President for Public Affairs, at (212) 258-8539 or check out our website: FightForYourRights.mtv.com

Sincerely,

Judy McGrath
President

* 750 young people ages 12-24 were surveyed. Margin of error: +/- 3.5%.

 fight for your rights:
take a stand against violence





**MTV'S POLL SUPPORTS PRESIDENT CLINTON'S CALL FOR CONGRESS TO PASS HATE
CRIME LEGISLATION AND THE ADMINISTRATION'S ANNOUNCEMENT TODAY ON
PREVENTING HATE CRIMES**

**MTV's Poll Finds Young People See Hate Crimes As National Crisis;
Want Government, Educators, Media To Take Action**

95% Support Expanded Federal Legislation

New York, NY, April 6, 1999 – A poll released today by MTV: Music Television, as part of its "Fight for Your Rights: Take a Stand Against Violence" campaign, shows that the overwhelming majority (91%) of young people feel that hate crimes are a national crisis and that not enough is being done to prevent them in the United States. In addition, 95% of young people support expanding federal hate crime legislation to include sexual orientation, gender and disabilities. Moreover, the poll found that the majority of young people would either be afraid or unwilling to react if confronted with a hate crime and that 17% of 12 to 24 year-olds polled know someone who has been a victim of a hate crime. The poll results support President Clinton's call for Congress to pass expanded hate crime legislation.

Said Judy McGrath, President of MTV, "Young people are both the primary victims and the main perpetrators of hate crimes. This poll is a wake up call; they're saying, 'this is a serious issue and we want the government, the media, and educators to do something about it.'"

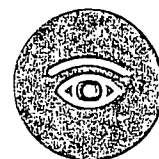
The poll found that 91% see hate crimes as a serious problem in this country, and 89% see them as a national problem – not limited to just cities. The poll also found that young Americans do not think enough is being done to prevent hate crimes; 95% support expanding the law to cover gender, sexual orientation, and disabilities, and 7 out of 10 feel that expanding the law will help prevent hate crimes.

An overwhelming number of young people did not know about the existence of any community-based campaigns or programs, and 62% don't believe parents and 38% don't believe teachers are discussing the issue of hate crimes with them. Nine out of ten think it is important for the media to play a significant role, and 90% feel that entertainment figures can and should be an important part of an awareness/education effort.

The poll also found that nearly a third of respondents admitted to saying something negative or making a joke about another person for being gay, of a different race, for their gender or for being disabled, and between a half and two-thirds admitted to having seen or heard someone else ridicule them.

Said McGrath, "This problem is rooted in the fact that there is a lack of education and access to information on this topic. This poll tells us that far more needs to be done to teach tolerance, understanding and respect for others and a primary focus for any anti-hate crime campaign should be the young people of this country."

--more--



MTV's "Fight for Your Rights: Take a Stand Against Violence" is a year-long campaign aimed at raising awareness and providing actionable solutions to youth violence. "Fight For Your Rights: Take A Stand Against Violence" involves special programming, Public Service Announcements, grass roots events, and MTV News special reports all designed to give MTV's audience a voice in the national debate on violence and to provide them with tangible tactics to take a stand against violence.

* This poll is conducted by Penn, Schoen & Berland. The margin of error is plus or minus 3.6 % for all groups.

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MTV HATE POLL FACTS

Key Findings

Young Americans believe hate crime is a serious, national problem:

91% see hate crimes as a very or somewhat serious problem in this country.

89% think the problem effects all areas of the country.

When asked about a series of issues, 35% of respondents said that hate crime is the most important or second most important issue to them.

59% say recent hate crimes point to a more serious problem.

A majority of respondents (51%) say that hate crime is a very important issue (4 or 5 on a 5 point importance scale).

Young Americans are aware of the hate crime issue:

4 out of 5 respondents had heard the term "hate crime".

59% feel that recent hate crimes are not rare events but rather point to a more serious problem.

33% believe that the problem of hate crime has gotten worse in the past few months.

More than 4 in 5 respondents are aware that hate crimes are illegal.

Young Americans do not think enough is being done to prevent hate crimes:

95% support expanding the law to cover gender, sexual orientation, and disabilities.

7 out of 10 feel that expanding the law will most certainly help stop hate crimes.

There is little awareness of any community-based campaigns or programs which exist – only 8% say that there are neighborhood campaigns or education programs on hate crimes.

Of all student respondents, 62% believe parents, and 38% believe teachers are not discussing the issue of hate crime with kids.

90% felt that it is important for the media to play a significant role.

89% felt that entertainment figures are important to the awareness/education effort.

In terms of impact on the issue, 15% say entertainment figures will have the greatest impact on hate crime prevention (third highest after parents and teachers).

Young Americans admit to their own involvement in discrimination:

Nearly 1/3 of respondents admit to having said something negative about another person for being gay.

Nearly 1/3 admitted to making negative comments themselves about people because of their race.

When any ridiculing or threats against gays and lesbians occurs, 31% of all those surveyed said they didn't care or that what they saw or heard against gays/lesbians was "okay because I wasn't the one who had said or done anything".

16% of students and 33% of non-students admitted to having made negative gender-based comments.

Hate crimes against multiracial/different race people

45% indicated that people they know have made negative comments about people because of their race.

27% admitted to making negative comments about multiracial/people of a different race.

61% said they have seen or heard someone ridiculing multiracial/different race people behind their back.

When gauging reaction to any ridiculing or threats against multiracial/different race people:

11% said "it was okay with me, I didn't do or say it"

37% said "I was offended and wanted to walk away"

1% felt like the person deserved it

10% didn't care

27% said "I wanted to say something but got too nervous"

21% know victims of hate crimes because of their race.

20% say they know someone capable of committing a hate crime against someone of a different race.

Hate crimes against people with disabilities

32% say that people they know have made negative comments about people with disabilities.

23% admit to having made negative comments about people with disabilities themselves.

64% said they have seen or heard someone making a negative comment about someone with a disability behind their back.

When gauging reaction to any ridiculing or threats against people with disabilities:

5% said "it was okay with me, I didn't do or say it"

42% said "I was offended and wanted to walk away"

3% felt like the person deserved it

8% didn't care

29% said "I wanted to say something but got too nervous"

47% say that they know people who would turn their backs on a hate crime against someone with a disability.

17% say they know of a hate crime because of a disability

Gender based hate crimes

The data suggests that awareness and behavior related to gender-based hate crimes is different for non-students compared with students.

23% of students say people they know have made negative gender-based comments, 42% of non-students say the same thing.

16% of students say they personally have made negative gender-based comments whereas 33% of non-students say they have.

22% of students say they have been worried that ridiculing could turn into something worse, 61% of students say the same thing.

When gauging reaction to any ridiculing or threats against people because of their gender:

7% said "it was okay with me, I didn't do or say it"

37% said "I was offended and wanted to walk away"

2% felt like the person deserved it

17% didn't care

22% said "I wanted to say something but got too nervous"

17% say they know a victim of a gender-based hate crime.

This poll is conducted by Penn, Schoen & Berland Associates, Inc. The margin of error is plus or minus 3.6 % for all groups.



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Clinton Turns to U.S. Issues

By Kevin Galvin

Associated Press Writer

Friday, May 7, 1999; 10:25 p.m. EDT

HOUSTON (AP) -- Back from visiting the troops in Europe, President Clinton tended to domestic affairs Friday: a \$700,000 fund-raising day in Texas and plans for a conference on school violence after the Littleton, Colo., tragedy.

"We have to understand there are forces at work in our society that call on us to make an extra effort to protect our children from violence," he said at a \$450,000 fund-raising luncheon for about four dozen people in Houston.

While Clinton said parents, students, firearms makers and movie moguls all should be reflecting on implications of Littleton, he urged people to resist assigning blame. "Instead of saying, 'Whose fault is this?,'" he said, "we should all say, 'What can I do to take responsibility?'"

The president also planned to survey tornado damage in Oklahoma during his two-day trip West. Clinton declared major disasters in Oklahoma, Kansas and one county in Texas after powerful twisters razed communities and left dozens dead.

"Our thoughts and prayers are with the people of Oklahoma, Kansas and Texas, with the people of Tennessee who also endured terrible storms and destruction," he said.

Later Friday, Clinton was the featured guest at a \$250,000 dinner in Austin at the home of prominent Democrat and Clinton ally Roy Spence. He had canceled a fund-raising trip to Texas scheduled the week of the Littleton shootings.

He acknowledged protesters against the U.S. involvement in Kosovo whom he saw along the motorcade route, and said he was often reticent to resort to force.

"I saw the people with their signs on the way in saying we ought to end the fighting. Nobody wants to do it more than me," he said.

But on the same night that reports from Belgrade indicated NATO

dragged behind a pickup truck by a group of white men.

"For me, as a white Southerner, the thought that a man could be murdered because of his race in 1999 is heartbreaking," Clinton said. "I hope that law will pass."

Keeping up the drumbeat, Clinton repeated his call for quick passage of the hate-crime bill as he spoke at the new Austin-Bergstrom International Airport outside the Texas capital. Moments after he stepped off Air Force One, the president gave a prolonged hug to Renee Mullins, Byrd's daughter.

"If we want to do good abroad, we have to be good at home," Clinton told the crowd of several hundred at the airport, recently converted from a closed U.S. Air Force base.

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bombs had struck the Chinese Embassy, he offered a staunch defense of the campaign to end ethnic cleansing in Kosovo.

"People may have legitimate grievances," he said. "But ethnic cleansing and killing people wholesale because of their race or religion is wrong and the United States is in a position to stand against it and we ought to."

Clinton said curbing school violence will require the same kind of sustained national efforts that reduced teen pregnancy and helped trim welfare rolls.

"That is the kind of national commitment we need to protect our children from violence," he said. "I believe more than anything else we need a grass-roots effort which involves every single American from the White House down to the smallest community; a national campaign that draws out everyone's commitment, all our resources and depends upon everyone taking responsibility."

When, in the wake of Littleton, Clinton set up a White House conference on school violence, he also urged students across the country to reach beyond their own cliques to understand their classmates better.

He said gun manufacturers would be involved. However, a list of participants for Monday's conference featuring leaders in education, law enforcement and entertainment didn't include advocates from the other side of the gun-control debate.

The National Rifle Association, the nation's largest gun lobby, said it was not invited. It scheduled its own news conference to announce proposals that the NRA said can have an "immediate and significant impact on violent crime in America."

Clinton said that in addition to encouraging parents to communicate more with their children and entertainment moguls to consider the effects of their films, the problem of youth violence also requires new gun-control measures.

"I hope we will be able to avoid another big fight in Washington between the NRA and others," he said.

In addition to the gun lobby, he also singled out Hollywood.

"I think that there are challenges for those who influence our culture, including the entertainment community," he said, adding that it was a mistake to "trivialize relationships, or trivialize violence."

The president also voiced support for a hate-crime bill submitted to the Texas legislature after the murder of James Byrd Jr., a black man

THE WHITE HOUSE

Office of the Press Secretary
(Austin, Texas)

For Immediate Release

May 7, 1999

REMARKS BY THE PRESIDENT
UPON ARRIVAL TO AUSTIN-BERGSTROM INTERNATIONAL AIRPORT

Austin-Bergstrom International Airport
Austin, Texas

5:38 P.M. CDT

THE PRESIDENT: Thank you very much, Mr. Mayor. I want you to know, folks, I spent some of the best days of my life in Austin, Texas. (Applause.) And when Lloyd went up to make his remarks, I looked at the Mayor and I said, being Mayor of Austin may be the best elected job in the United States. (Applause.) And he didn't dispute me.

I also want to thank Lloyd Doggett for his leadership on this and so many other projects. We've been friends for many, many years. I was elated when he was elected to the Congress and I can tell you he does a terrific job for all the constituents of this district in Washington, D.C. (Applause.)

Ladies and gentlemen, I'm very, very sorry I had to miss the dedication -- you know why -- the events in Littleton, Colorado, compelled me to cancel. I do want to tell you, on Monday Hillary and Al and Tipper Gore and I are going to have a very distinguished array of people from all over the country to meet in Washington to organize a national campaign against violence involving our children. And I know it will have the support of every person here. (Applause.)

But I want to ask you to think a little bit about the significance of this airport not only in terms of what it means to all of you, but in terms of what it means to the future of America and how we ought to do all of our business. Six years ago, when your air base was closed, you saw that it did not have to be an economic setback. In fact, it could be an enormous opportunity. Austin-Bergstrom International Airport today is a testament to your unwavering commitment and vision.

For years, this airport had the following motto: "Bergstrom Air Force Base: Global Power for America." Today this airport is still a symbol of global power for America. It's a different kind of power. Where military aircraft essential to our victory in the Cold War once landed here, now boxes of software take off for markets around the world, fueling our success in the new global economy. Where once pilots flew reconnaissance missions to survey Cold War enemies, now they fly planes that ferry high-tech visionaries between Silicon Valley and these Silicon hills.

This airport will be your gateway to prosperity in the 21st century. And I especially appreciate something that's already been mentioned, that you pay tribute to some of Texas' finest citizens. I hope every visitor will be inspired by Captain Bergstrom's courage and sacrifice; by my good friend, Jake Pickle's life of service and compassion; by President Johnson's bold vision and commitment to progress for all Americans together; and by Barbara Jordan's incomparable voice for

justice on common ground. (Applause.)

Since I'm here today, I cannot help noting that the work of Lyndon Johnson and Barbara Jordan is being carried on today here in Austin by the state legislators who are trying to pass hate crimes legislation in the name of James Bird. (Applause.) As you probably saw on the tarmac, I was honored to meet with members of Mr. Bird's family. I know that what happened to him was anathema to every good citizen in Texas, as well as the United States.

And I ask you, as our men and women in uniform today struggle against the killing, the rape, the looting, the uprooting of people, based solely on their ethnic and religious background in Kosovo -- as they did in Bosnia -- as we fight to reconcile people around, from the Middle East to Northern Ireland -- here in America, if we want to do good abroad, we have to be good at home. We have to stand up for what is right. (Applause.)

We have to acknowledge that there are differences among us that we celebrate; there are differences among us that are real differences, and we are compelled to disagree; but underneath it all, as the Founders of our Republic recognized, there is our common humanity and our equal dignity. And we must always stand for it. If we want to be a force against ethnic cleansing and genocide around the world, we have to be a force for harmony and community, here at home in every place in the United States. (Applause.)

And so I close with the point I tried to make at the beginning. I want you to think about what this represents and how you did it. What it represents is a commitment to a common future, where no one is left behind and everybody has a chance. How you did it is by working together, across all the elements of this richly textured community. If you think about it, we could solve all of our problems that way. Thanks for the model.

Good luck, and God bless you. (Applause.)

Wait a minute. (Applause.) I want to do one other thing. I want to thank the Barbara Jordan Elementary Choir -- (applause) -- and the Pflugerville High School Band. Thank you very much. (Applause.) How about a little more music? Let's go. (Applause.)

END

5:45 P.M. CDT

LRM ID: REJ78

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 6, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: *Richard E. Green* Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109
SUBJECT: JUSTICE Testimony on S622 Hate Crimes Prevention Act
DEADLINE: 2:00 PM Friday, May 7, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:

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If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

Please include the LRM number shown above, and the subject shown below.

FROM: _____ (Date)
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☐ Concur
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☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEETDATE: May 6, 1999

TO:

Ron Jones

PHONE NO.

FAX NO.

395-3109

FROM:

Nancy Scott-Finan

PHONE NO.

514-3752

FAX NO.

305-2643NO. OF PAGES: 26 (EXCLUDING COVER)COMMENTS: Attached is a copy of the draft testimony for the
Tuesday, May 11, 1999, hate crimes hearing.

URGENT

MEMORANDUM

May 6, 1999

TO: CRT - 72839
CRIM - 44042
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DAG - James Castello, Allyson Stollenwerk (46897/61239) CC: Brenda Smith 4046
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OAG - Tom Penney - 59687
ASG - Richard Jerome - 73904
OJP - 45958
OLC - 40539
OPD - 49112

FROM: Nancy Scott-Finan
OLA

SUBJECT: Hate Crimes Testimony for May 11

Attached is a copy of the draft testimony for the Tuesday, May 11, 1999, hate crimes hearing.

Please provide any comments to me by 5:00 p.m. on May 7. 514-3752

I apologize for the short turn around time. Thank you very much.

(25 pages + cover)

URGENT

STATEMENT

OF

ERIC H. HOLDER,

DEPUTY ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

HATE CRIMES

PRESENTED ON
MAY 11, 1999

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today on the important and troubling issue of hate crimes. The Administration very much appreciates your decision to hold this hearing. President Clinton and the Attorney General have remained deeply committed to prosecuting and preventing hate crimes since the 1997 White House Conference on Hate Crimes. We continue to dedicate significant time and resources to this issue. The battle against hate crimes has always been bipartisan, and this Committee has always been at the forefront of that battle. Members of this Committee have long recognized that hate crimes have no place in a civilized society, whether based on the race, religion, ethnicity, sexual orientation, gender, or disability of the victims. In 1990 and 1994, the Committee strongly supported the enactment of the Hate Crimes Statistics Act and the Hate Crimes Sentencing Enhancement Act. In 1996, the Committee responded in a time of great national need by quickly endorsing the Church Arson Prevention Act. I am hopeful that you will respond once again to the call for a stronger federal stand against hate crimes, and that you will join law enforcement officials and community leaders from across the country in support of S. 622, the Hate Crimes Prevention Act of 1999. The bill enjoys bipartisan support in both the House and the Senate. If enacted, this legislation will continue the tradition of forceful Congressional action to eradicate hate crimes.

Unfortunately, recent events have only reemphasized the devastation that hate crimes can bring to a community. This past February, in Sylacauga, Alabama, the body of 39-year-old Billy Jack Gaither was found bludgeoned with an ax handle and charred on a pile of burned

tires; killed, as one paper described it, "for being himself." Last October, in Laramie, Wyoming, Matthew Shepard, an openly gay young man, was found badly beaten and tied to a fence. He died five days later from 18 blows to the head. The state charged two men with the murder; one defendant has pled guilty to the murder, and the second awaits trial on first-degree murder charges. And last June, the nation was horrified by the dragging death of James Byrd, Jr., an African-American man. We, as a nation, sit in stunned silence at the hatred and brutality of these crimes.

Preventing hate crimes and eliminating bigotry and bitterness are among our most important challenges. There is never an excuse for violence against an innocent person. But these kinds of attacks -- committed because the victims look different, practice a different faith, or have a different sexual orientation -- threaten America's most cherished ideals. They represent an attack not just on the individual victim, but on the victim's community. And their impact is broader because they send a message of hate. They are intended to create fear and dissension.

These incidents and other hate crimes like them are not just a law enforcement problem. They are a problem for the entire community: for our schools, for our religious institutions, for our civic organizations and for each one of us as individuals. And when we come together to respond to these crimes, we help build communities that are safer, stronger and more tolerant. All of us working together -- at the federal, state, local, and community levels -- must redouble our efforts to rid our society of hate crimes.

I. The Problem & Current Efforts

A. Accurate Reporting

First, we must gain a better understanding of the problem. The data we have now are adequate. As a result of the Hate Crimes Statistics Act, enacted in 1990, the FBI began collecting information from law enforcement agencies around the country. In 1991, the first year that the FBI reported its findings, 2,700 law enforcement agencies reported 4,560 hate crimes. In 1997, the last year for which we have statistics, 11,211 law enforcement agencies participated in the data collection program and reported 8,049 hate crime incidents.

8,049 hate crime incidents represent almost one hate crime incident per hour. But we know that even this disturbing number significantly underestimates the true level of hate crimes. Many victims do not report these crimes. Police departments do not always recognize hate crimes. Many don't collect any hate crime data. And about 80 percent of those that do, even some in large metropolitan areas, report few or no hate crimes in their jurisdictions, even when most observers conclude a larger problem exists.

B. Training

There are many ways to improve our data collection. First and foremost, increased hate crime training for law enforcement officials is essential. Police officers must know how to identify the signs of a hate crime. What might appear to some as a crime like so many others, can turn out, upon investigation, to be motivated by bias.

Some of you may know that, about a year and a half ago, the Department of Justice launched a multi-faceted Hate Crimes Initiative. Improving data collection and enhancing law

enforcement training are strong components of this initiative. To meet these goals, we recently commissioned a study by Northeastern University to survey some 2,500 law enforcement agencies in order to better understand and improve police reporting practices; and we brought together state police academies, police chiefs, state attorneys general and others around the country to develop uniform curricula for hate crime training. As a result of these efforts, the Department now has available three law enforcement training curricula on hate crimes -- for patrol officers, investigators, and a mixed audience. We also work with communities in their own training and outreach efforts. Next week, Bill Lann Lee, the Acting Assistant Attorney General for Civil Rights, will attend a conference in Ogden, Utah, entitled "The Changing Faces of Hate." This conference, sponsored by the Utah U.S. Attorney's Office, the Simon Wiesenthal Center, Weber State University and the Utah Task Force for Racial and Ethnic Fairness will explore the ways communities can come together to eradicate these horrendous crimes and educate communities about understanding and tolerance.

C. Prosecutions: Current Law

Identification and reporting are, of course, not a complete answer. We must also ensure that potential hate crimes are investigated thoroughly, prosecuted swiftly and punished soundly. Our long term goal must be to prevent hate crimes by addressing bias before it manifests itself in violent criminal activity. In the meantime, however, it is imperative that we have the law enforcement tools necessary to ensure that, when hate crimes do occur, the perpetrators are identified and swiftly brought to justice.

One thing we know for certain, is that we are most effective when we work together. The

centerpiece of the Department's Hate Crime Initiative is the formation of local working groups in United States Attorneys' districts around the country. These task forces are hard at work bringing together the FBI, the U.S. Attorney's office, local law enforcement, community leaders and educators to coordinate our response to hate crimes. The groups are assessing the hate crime problem in their local areas and developing specific strategies to respond to the problem. While local law enforcement has the primary role in responding to and pursuing these crimes, federal law enforcement can provide additional resources and can assist with training. And by involving community organizations in these working groups, we are enhancing our ability to prosecute these crimes. Quite simply we are more effective when we enjoy the trust and support of the community. Community support makes it easier to uncover information, enlist witnesses to testify, and solve cases.

The principal federal hate crimes statute, 18 U.S.C. §245, prohibits certain hate crimes committed on the basis of race, color, religion, or national origin. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin," and because of his participation in any of six "federally protected activities" specifically enumerated in the statute. The six enumerated "federally protected activities," written into the law 30 years ago when Congress first enacted the statute, are: (A) enrolling in or attending a public school or public college; (B) participating in or enjoying a service, program, facility or activity provided or administered by any state or local government; (C) applying for or enjoying employment; (D) serving in a state court as a grand or petit juror; (E) traveling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places of public accommodation.

We have made these cases a top priority. And the great majority of state and local law enforcement officials do their best to investigate and prosecute hate crimes that occur in their communities. In fact, most hate crimes are investigated and prosecuted at the state level. But we want to make sure that federal jurisdiction to prosecute hate crimes covers everything that it should. Concurrent federal jurisdiction is needed to authorize the federal government to share its law enforcement resources, forensic expertise, and civil rights experience with state and local officials. And in rare circumstances — where state or local officials are unable or unwilling to bring appropriate criminal charges in state court, or where federal law or procedure is significantly better suited to the vindication of the federal interest — the United States must be able to bring federal civil rights charges.

D. Federalism

The most important benefit of concurrent state and federal criminal jurisdiction is the ability of state and federal law enforcement officials to work together as partners in the investigation and prosecution of serious crimes. When federal jurisdiction does exist in the limited hate crimes contexts authorized by 18 U.S.C. §245, the federal government's resources, forensic expertise, and experience in the identification and proof of hate-based motivations often provide an invaluable investigative complement to the familiarity of local investigators with the local community and its people. It is by working together cooperatively that state and federal law enforcement officials stand the best chance of bringing the perpetrators of hate crimes swiftly to justice.

It is useful in this regard to consider the work of the National Church Arson Task Force,

which operates pursuant to jurisdiction granted by 18 U.S.C. §247 and other federal criminal statutes that have no limitations analogous to the "federally protected activity" requirement of 18 U.S.C. §245. Created almost three years ago to address a rash of church fires across the country, the Task Force's federal prosecutors and investigators from ATF and the FBI have collaborated with state and local officials in the investigation of each and every church arson that has occurred since January 1, 1995.

The results of these state-federal partnerships have been extraordinary. Thirty-four percent of the joint state-federal church arson investigations conducted during the life of the Task Force have resulted in arrests of one or more suspects on state or federal charges. The Task Force's 34% arrest rate is more than double the normal 16% rate of arrest in all arson cases nationwide, most of which are investigated by local officials without federal assistance. More than 80% of the suspects arrested in joint state-federal church arson investigations during the life of the Task Force have been prosecuted in state court under state law.

[CHOOSE OPTION WHEN WITNESS LIST FINALIZED]

OPTION A - NO SC SLED WITNESS

[We have a particularly effective example of these partnerships in South Carolina, where a team of agents from federal, state, and local law enforcement agencies worked hand-in-hand to bring to justice a group of Ku Klux Klansmen responsible for wave of crimes across the north-eastern part of that state. Representatives from the Justice Department and several state district attorneys offices met to chart the course the

investigation would take. These meetings were admittedly not without a bit of political infighting, but the agents went through to comparing the statutes involved, the available resources, and the potential terms of imprisonment for state vs. federal prosecutions. In the end, they decided it made sense to use both sources of jurisdiction. So they formed a joint federal-state task force.

Both the federal and state governments devoted agents, prosecutors, and supporting resources to the joint investigative team, which used the nationwide subpoena power of a federal grand jury sitting in Charleston, South Carolina. Federal agents from the FBI and ATF rode together as partners with agents of the South Carolina State Law Enforcement Division (SLED) and the fire departments from the counties affected. Their investigation led to five Klansmen being charged with two church arsons, the assault with intent to kill a black mentally retarded man, arsons of several migrant camps, and various firearms offenses. To date, these are the only convictions of members of an organized white supremacist group arising out of the rash of church fires. Those five Ku Klux Klansmen stand convicted on both state and federal offenses and have been sentenced to serve real time prison terms of between 15 and 21 ½ years.]

[OPTION B: SC WITNESS USE BALLINGER INSTEAD: In April, the co-chairs of the Task Force joined U.S. Attorneys in Indiana and Georgia to announce the indictment of a defendant for ten fires in those two states, the largest number of fires charged to any one defendant during the life of the Task Force. One of the Georgia fires resulted in the death of a volunteer firefighter, and injuries to three others. It was a local

officer in Indiana involved with that district's church arson task force that recognized the name of the defendant when he heard a report on an ambulance pickup for severe burns. He questioned the suspect at the hospital and called federal officials. The hard work of investigators from the FBI, the ATF, and the local arson and law enforcement offices led to charges in other fires in Indiana, and ultimately to charges in Georgia. The investigation continues in many other districts, supported by federal investigators and prosecutors.

Because the Department of Justice has not maintained statistics regarding the outcomes of the joint state-federal hate crimes investigations in which it has participated, we are unable to provide similarly stark statistical information regarding arrest rates in hate crimes cases. Nevertheless, we are confident that additional state-federal partnerships would result in an increase in the number of hate crimes solved by arrests and successful prosecutions analogous to that achieved through joint state-federal investigations in the church arson context.]

II. Gaps in Current Law

The current federal hate crimes law has two serious deficits. First, even in the most blatant cases of racial, ethnic, or religious violence, no federal jurisdiction exists unless the federally protected activity requirement is satisfied. This unnecessary, extra intent requirement has led to acquittals in several of the cases in which the Department of Justice has determined a need to assert federal jurisdiction and has limited the ability of federal law enforcement officials to work with state and local officials in the investigation and prosecution of many incidents of brutal, hate-motivated violence. Second, § 245 provides no coverage whatsoever for violent hate

crimes committed because of bias based on the victim's sexual orientation, gender, or disability. Together, these limitations have prevented the federal government from working with state and local law enforcement agencies in the investigation and prosecution of many of the most heinous hate crimes.¹

S. 622, the Hate Crimes Prevention Act of 1999, would amend 18 U.S.C. §245 to address each of these jurisdictional limitations. In cases involving racial, religious, or ethnic violence, the bill would prohibit the intentional infliction of bodily injury without regard to the victim's participation in one of the six specifically enumerated "federally protected activities." In cases involving violent hate crimes based on the victim's sexual orientation, gender, or disability, the bill would prohibit the intentional infliction of bodily injury whenever the incident involved or affected interstate commerce. These amendments to 18 U.S.C. §245 would permit the federal government to work in partnership with state and local officials in the investigation and prosecution of cases that implicate the significant federal interest in eradicating hate-based violence.

The Hate Crimes Prevention Act is a good fix. Earlier this month, President Clinton joined with a bipartisan group of legislators to urge its swift passage. I am pleased to join him in offering my strong support of this bill.

¹ Roughly two-thirds of the hate crimes prosecuted under federal law are pursued as criminal violations of the Fair Housing Act, which protects the rights of all persons to live wherever they choose free from violence because of their race, religion, national origin, family status, gender, or handicap. While this statute broadly protects interference with the housing process, it is limited to residential property and thus has significant limitations.

It must be emphasized that, even with enactment of the bill, state and local law enforcement agencies would continue to play the principal role in the investigation and prosecution of all types of hate crimes. From 1993 through 1998, the Department of Justice brought a total of only 32 federal hate crimes prosecutions under 18 U.S.C. §245 -- an average of fewer than six per year. We expect that the enactment of S. 622 would result in only a modest increase in this number. Our partnership with state and local law enforcement would continue, with state and local prosecutors continuing to take the lead in the great majority of cases.

A. The Federally Protected Activity Requirement

In several cases in recent years, the Department of Justice has sought to satisfy the federally protected activity requirement by alleging that hate crimes occurred on public streets or sidewalks -- *i.e.*, while the victims were using "facilities" provided or administered by a State or local government.² The Department has used this theory successfully to prosecute the stabbing death of Yankel Rosenbaum in Brooklyn (Crown Heights), New York and the racially-motivated shooting of three African-American men on the streets of Lubbock, Texas.³ Although the "streets and sidewalks" theory has enabled the Department to reach some bias crimes that occur in public places, these prosecutions remain subject to challenge. In the Lubbock case, for

² See 18 U.S.C. §245(b)(2)(B)

³ The Department of Justice brought federal civil rights charges against two defendants in the Crown Heights case after the state failed to charge one of the defendants in state court and the state's case against the second defendant ended in acquittal. The Department brought federal charges against three defendants in the Lubbock case when federal and local prosecutors, who had collaborated throughout the investigation, agreed that the procedures and sentences available in federal court were significantly better suited to the interests of law enforcement, of the victims of the crime, and of the entire affected community than were those available in state court.

example, the defendants appealed their convictions, arguing that public streets and sidewalks are not "facilities" that are "provided or administered" by a state subdivision within the meaning of 18 U.S.C. §245(b)(2)(B). The United States Court of Appeals for the Fifth Circuit upheld the Lubbock convictions in a short, unpublished opinion. But an appeal on similar grounds in the Crown Heights case is now pending before the Second Circuit.

In some cases, this problem has precluded entirely the vindication of the federal interest in fighting hate-based violence. Let me briefly tell you about three cases where the Department of Justice brought federal hate crimes prosecutions under 18 U.S.C. §245 after state and local prosecutors declined to bring prosecutions under state law. In each case, the Department lost at trial due to the statute's "federally protected activity" requirement:

- In 1994, a federal jury in Fort Worth, Texas acquitted three white supremacists of federal criminal civil rights charges arising from unprovoked assaults upon African-Americans, including one incident in which the defendants knocked a man unconscious as he stood near a bus stop. Some of the jurors revealed after the trial that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any "federally protected activity." The government's proof that the defendants went out looking for African-Americans to assault was insufficient to satisfy the requirements of 18 U.S.C. §245.
- In 1982, two white men chased a man of Asian descent from a night club in Detroit and beat him to death. The Department of Justice prosecuted the two

perpetrators under 18 U.S.C. §245, but both were acquitted despite substantial evidence to establish their animus based on the victim's national origin. Although the Department has no direct evidence of the basis for the jurors' decision, it appears that the government's need to prove the defendants' intent to interfere with the victim's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.

- In 1980, a notorious serial murderer and white supremacist shot and wounded an African-American civil rights leader as the civil rights leader walked from a car toward his room in a motel in Ft. Wayne, Indiana. The Department of Justice prosecuted the shooter under 18 U.S.C. §245, alleging that he committed the shooting because of the victim's race and because of the victim's participation in a federally protected activity, *i.e.* the use of a place of public accommodation. The jury found the defendant not guilty. Several jurors later advised the press that although they were persuaded that the defendant committed the shooting because of the victim's race, they did not believe that he also did so because of the victim's use of the motel.

Each of these cases involved a heinous act of violence clearly motivated by the race, color, religion, or national origin of the victim. In these cases, state prosecutors sought federal assistance due to inadequate state laws or they did not bring state criminal charges at all. Yet in each case, the extra intent requirement of 18 U.S.C. §245 -- that a hate crime be committed because of the victim's participation in one of the federally protected activities specifically

enumerated in the statute -- prevented the Department of Justice from vindicating the federal interest in the punishment and deterrence of hate-based violence.

Although a number of federal prosecutions under § 245 have been successfully pursued, even those successes highlight the arbitrariness of the coverage of the federal statutes. For example, in 1996, five skinheads were successfully prosecuted under § 245 for brutally assaulting an interracial couple in a city part in Des Moines, Iowa. Had the victims been standing outside the park instead of sitting on a bench inside the park entrance, it is likely that the assault could not have been prosecuted federally.

It is rare that the federal government must go beyond its usual role as the investigative partner of state and local law enforcement officials and bring federal criminal civil rights charges. But when state and local prosecutors fail to bring appropriate state charges, or where state law or procedure is inadequate to vindicate the federal interest in prosecuting hate crimes, it is imperative that the federal government be able to step in and bring effective federal prosecutions. Unfortunately, the double intent requirement of 18 U.S.C. §245 has precluded the Department of Justice from performing its proper backstop role with regard to several heinous hate crimes.

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

Under current law, section 245 provides no federal jurisdiction for violent attacks that occur because of sexual orientation, gender, or disability.

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a. Sexual Orientation

From statistics gathered by the federal government and private organizations, we know that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in this country. Data collected by the FBI pursuant to the Hate Crimes Statistics Act indicates that 1,102 bias incidents based on the sexual orientation of the victim were reported to local law enforcement agencies in 1997; that 1,256 such incidents were reported in 1996; 1,019 such incidents were reported in 1995; and that 677 and 806 such incidents were reported in 1994 and 1993, respectively. The National Coalition of Anti-Violence Programs (NCAVP), a private organization that tracks bias incidents based on sexual orientation, reported 2,445 such incidents in 1997; 2,529 in 1996; 2,395 in 1995; 2,064 in 1994; and 1,813 in 1993.

Even the higher statistics reported by NCAVP may significantly understate the number of hate crimes based on sexual orientation that actually are committed in this country. Many victims of anti-lesbian and anti-gay incidents do not report the crimes to local law enforcement officials because they fear that they would receive an insensitive or hostile response or that they would be physically abused or otherwise mistreated. According to the NCAVP survey, 45 percent of those who reported hate crimes to the police in 1997 labeled their treatment by police as "indifferent to hostile."

Despite the prevalence of violent hate crimes committed on the basis of sexual orientation, such crimes are not covered by 18 U.S.C. §245 unless there is an independent basis for federal jurisdiction, such as race-based bias. Accordingly, the federal government is without authority to work in partnership with local law enforcement officials, or to bring federal

prosecutions, when gay men or lesbians are the victims of murders or other violent assaults because of bias based on their sexual orientation.

b. Gender

Although acts of violence committed against women traditionally have been viewed as "personal attacks" rather than as hate crimes, many people have come to understand that a significant number of women "are exposed to terror, brutality, serious injury, and even death because of their gender."⁴ Indeed, Congress, through the enactment of the Violence Against Women Act (VAWA) in 1994, has recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks. The Senate Report on VAWA stated:

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

Senate Report No. 103-138 91993) (quoting testimony of Prof. Burt Neuborne).

VAWA provides private parties a broad civil remedy for violence against women motivated by gender-based bias.⁵ However, VAWA's two criminal provisions regarding violence

⁴ Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, Women and Violence: Hearing Before the Senate Judiciary Committee, 101st Congress, 2nd Sess. 62 (1990).

⁵ See 42 U.S.C. § 13981.

against women provide extremely limited coverage. Specifically, VAWA's prohibition on interstate domestic violence, 18 U.S.C. § 2261, is limited to violence against a defendant's "spouse or intimate partner" and requires that the defendant travel across a state line. VAWA's other criminal provision, 18 U.S.C. §2262, prohibits the violation of a "protection order" if the defendant travels across state lines with the intent to engage in conduct that violates that order.

The structure of VAWA's criminal provisions gives rise to at least two important concerns. First, because of VAWA's victim-based limitation -- the requirement that the victim be a "spouse or intimate partner" -- VAWA does not give the Department of Justice adequate authority to address a significant number of violent gender-motivated crimes. Serial rapists, for example, fall outside the reach of VAWA's criminal provisions even if their crimes are clearly motivated by gender-based hate and even if they operate interstate. Second, because VAWA's criminal provisions contain no requirement that the violence be motivated by gender-based bias, a conviction under VAWA may not fully vindicate the interest in punishing gender-based crimes.

The federal government should have jurisdiction to work together with state and local law enforcement officials in the investigation of violent gender-based hate crimes. And, in rare circumstances, the federal government should have jurisdiction to bring federal prosecutions aimed at vindicating the strong federal interest in combating the most heinous gender-based

crimes of violence.⁶

I want to emphasize that including gender in § 245 would not result in the federalization of all sexual assaults or acts of domestic violence. The language of the bill itself, together with the manner in which the Department of Justice would interpret that language, would strictly limit federal investigations and prosecutions of violent gender-based hate crimes. We would prosecute only those cases that implicate the greatest federal interest. Just as with other categories of hate crimes, state and local authorities would continue to prosecute virtually all gender-motivated hate crimes. One principal reason for this is that state and local prosecutors must prove only that the perpetrator committed the act alleged in the indictment. Federal prosecutors, in contrast, would have to prove not only that the perpetrator committed the act, but also that the perpetrator did so because of gender-based bias.

We would expect courts deciding gender-bias cases under an amended § 245 to consider the same types of evidence that they consider in analogous contexts in which motive must be proved. This evidence would include but not be limited to: (i) statements the defendant made before, during, or after the offense that tend to indicate the defendant's motive; (ii) the absence of any evidence of an alternative motive; (iii) the defendant's use of epithets during the offense; (iv) other aspects of the offense itself, such as mutilation of the victim's genitals other acts of extreme violence, that may indicate hatred based on gender; and (v) other related or similar bias-

⁶ Although all 50 states have statutes prohibiting rape and other crimes typically committed against women, only 19 states and the District of Columbia have hate crimes statutes that include gender among the categories of prohibited bias motives.

motivated conduct of the defendant. As indicated elsewhere, we expect that most gender based crimes would continue to be prosecuted by state and local prosecutors.

c. Disability

Congress has shown a sustained commitment over the past decade to the protection of persons with disabilities from discrimination based on their disabilities. Beginning with the 1988 amendments to the Fair Housing Act,⁷ and culminating with the enactment of the Americans with Disabilities Act of 1990, Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts.

Concerned about the problem of disability-based hate crimes, Congress also amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from state and local law enforcement agencies. While only 12 incidents based on the victim's disability were reported in 1997, we expect the number of reported incidents to increase substantially as local jurisdictions become more familiar with this category, and as more states join the 21 states that have added disability to the class protected by their hate crimes statutes.

The information we have available does indicate that a significant number of hate crimes committed because of the victim's disability are not resolved satisfactorily at the state and local

⁷ Congress amended the Fair Housing Act in 1988 to grant the Attorney General authority to prosecute those who use force or threats of force to interfere with the right of a person with a disability to obtain housing.

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

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

C. Federalization

The Department of Justice has carefully reviewed S. 622 and concluded that its enactment would neither result in a significant increase in federal hate crimes prosecutions nor impose an undue burden on federal law enforcement resources. The language of the bill itself, as well as the manner in which the Department would interpret that language, would ensure that the federal government would strictly limit its investigations and prosecutions of hate crimes -- including those based on gender -- to the small set of cases that implicate the greatest federal interest.

The express language of the bill contains several important limiting principles. First, the bill requires proof that an offense was motivated by hatred based on race, color, national origin, religion, sexual orientation, gender, or disability; as it has in the past, this requirement would

continue to limit the pool of potential federal cases to those in which the evidence of hate-based motivation is sufficient to distinguish them from ordinary state law cases. Second, the bill excludes misdemeanors and limits federal hate crimes based on sexual orientation, gender, or disability to those involving bodily injury (and a limited set of attempts to cause bodily injury); these limitations would narrow the set of newly federalized cases to truly serious offenses. Third, the bill's Commerce Clause element requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories; this requirement would limit federal jurisdiction in these categories to cases that implicate interstate interests. Finally, 18 U.S.C. §245 already requires a written certification by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General that "in his [or her] judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice" before any prosecution under the statute may be commenced.⁸ This statutory certification requirement, which would extend to all prosecutions authorized by S. 622, would ensure that the Department's new areas of hate crimes jurisdiction would be asserted in a properly limited fashion.

The Department's efforts under the proposed amendments to 18 U.S.C. §245 also would be guided by Department-wide policies that would impose additional limitations on the cases prosecuted by the federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department works with state and local officials and would generally defer prosecution in the first instance to state and local law

⁸ See 18 U.S.C. §245(a)(1).

enforcement. Only in highly sensitive cases in which the federal interest in prompt federal investigation and prosecution outweighs the usual justifications of the backstop policy would the federal government take a more active role. Under this policy, we are available to aid local and state investigations as they pursue prosecutions; for example, in the Jasper case, the U.S. Attorney's Office and the FBI were active participants in the investigation and an AUSA was cross-designated to aid with the trial in state court. Under this policy, we are also in a position to ensure that, in the event a state can not or will not vindicate the federal interest, we can pursue prosecutions independently. Second, under the Department's formal policy on dual and successive prosecutions, the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involved a "substantial federal interest" that the state prosecution had left "demonstrably unvindicated."

Conclusion

We must look at the root causes of hate crime. Intolerance often begins not with a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions. We must foster understanding and respect in our homes and our neighborhoods; in our schools and on our college campuses.

We also realize that legislation, while an important part of the solution, will not solve this problem alone. We must look at the root causes of hate crime. Intolerance often begins not with

a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions. We must foster understanding and respect in our homes and our neighborhoods; in our schools and on our college campuses.

Hate is learned. It can be unlearned. We must engage our schools in the crucial task of teaching our children moral values and social responsibility. Educators can play a vital role in preventing the development of the prejudice and stereotyping that leads to hate crime. I am pleased that the Department will be assisting a new partnership announced last month by the President in its efforts to develop a program for middle school students on tolerance and diversity.

Where does hatred start? Hatred starts oftentimes in someone who feels alone, confused and unloved. Hatred starts with someone who believes he has no control over his life and who lashes out at others. I look at a young perpetrator and I know that at so many points along the way, we could have intervened and helped him take a different path. We have to invest in our children. We have to help them grow in strength, in positive values, and in respect and love for others.

We also believe, however, that law enforcement has a significant role to play. The enactment of S. 622 would significantly increase the ability of state and federal law enforcement agencies to work together to solve and prevent a wide range of violent hate crimes committed because of bias based on the race, color, national origin, religion, sexual orientation, gender, or

disability of the victim. This bill is a thoughtful, measured response to a critical problem facing our Nation.

I look forward to answering any questions that you might have.

Total Pages: _____

LRM ID: REJ80

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 6, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: legislative Liaison Officer - See Distribution below

FROM: *Richard E. Green* Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395 3386 FAX: (202)395-3109

SUBJECT: REVISED JUSTICE Testimony on S622 Hate Crimes Prevention Act

DEADLINE: 3:00 PM Friday, May 7, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct expending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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STATEMENT

OF

ERIC H. HOLDER,

DEPUTY ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

HATE CRIMES

PRESENTED ON
MAY 11, 1999

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today on the important and troubling issue of hate crimes. The Administration very much appreciates your decision to hold this hearing. President Clinton and the Attorney General have remained deeply committed to prosecuting and preventing hate crimes since the 1997 White House Conference on Hate Crimes. We continue to dedicate significant time and resources to this issue. The battle against hate crimes has always been bipartisan, and this Committee has always been at the forefront of that battle. Members of this Committee have long recognized that hate crimes have no place in a civilized society, whether based on the race, religion, ethnicity, sexual orientation, gender, or disability of the victims. In 1990 and 1994, the Committee strongly supported the enactment of the Hate Crimes Statistics Act and the Hate Crimes Sentencing Enhancement Act. In 1996, the Committee responded in a time of great national need by quickly endorsing the Church Arson Prevention Act. I am hopeful that you will respond once again to the call for a stronger federal stand against hate crimes, and that you will join law enforcement officials and community leaders from across the country in support of S. 622, the Hate Crimes Prevention Act of 1999. The bill enjoys bipartisan support in both the House and the Senate. If enacted, this legislation will continue the tradition of forceful Congressional action to eradicate hate crimes.

Unfortunately, recent events have only reemphasized the devastation that hate crimes can bring to a community. This past February, in Sylacauga, Alabama, the body of 39-year-old Billy Jack Gaither was found bludgeoned with an ax handle and charred on a pile of burned

ures, killed, as one paper described it, "for being himself." Last October, in Laramie, Wyoming, Matthew Shepard, an openly gay young man, was found badly beaten and tied to a fence. He died five days later from 18 blows to the head. The state charged two men with the murder; one defendant has pled guilty to the murder, and the second awaits trial on first-degree murder charges. And last June, the nation was horrified by the dragging death of James Byrd, Jr., an African-American man. We, as a nation, sit in stunned silence at the hatred and brutality of these crimes.

Preventing hate crimes and eliminating bigotry and bitterness are among our most important challenges. There is never an excuse for violence against an innocent person. But these kinds of attacks -- committed because the victims look different, practice a different faith, or have a different sexual orientation -- threaten America's most cherished ideals. They represent an attack not just on the individual victim, but on the victim's community. And their impact is broader because they send a message of hate. They are intended to create fear and dissension.

These incidents and other hate crimes like them are not just a law enforcement problem. They are a problem for the entire community: for our schools, for our religious institutions, for our civic organizations and for each one of us as individuals. And when we come together to respond to these crimes, we help build communities that are safer, stronger and more tolerant. All of us working together -- at the federal, state, local, and community levels -- must redouble our efforts to rid our society of hate crimes.

I. The Problem & Current Efforts

A. Accurate Reporting

First, we must gain a better understanding of the problem. The data we have now are adequate. As a result of the Hate Crimes Statistics Act, enacted in 1990, the FBI began collecting information from law enforcement agencies around the country. In 1991, the first year that the FBI reported its findings, 2,700 law enforcement agencies reported 4,560 hate crimes. In 1997, the last year for which we have statistics, 11,211 law enforcement agencies participated in the data collection program and reported 8,049 hate crime incidents.

8,049 hate crime incidents represent almost one hate crime incident per hour. But we know that even this disturbing number significantly underestimates the true level of hate crimes. Many victims do not report these crimes. Police departments do not always recognize hate crimes. Many don't collect any hate crime data. And about 80 percent of those that do, even some in large metropolitan areas, report few or no hate crimes in their jurisdictions, even when most observers conclude a larger problem exists.

B. Training

There are many ways to improve our data collection. First and foremost, increased hate crime training for law enforcement officials is essential. Police officers must know how to identify the signs of a hate crime. What might appear to some as a crime like so many others, can turn out, upon investigation, to be motivated by bias.

Some of you may know that, about a year and a half ago, the Department of Justice launched a multi-faceted Hate Crimes Initiative. Improving data collection and enhancing law

enforcement training are strong components of this initiative. To meet these goals, we recently commissioned a study by Northeastern University to survey some 2,500 law enforcement agencies in order to better understand and improve police reporting practices; and we brought together state police academies, police chiefs, state attorneys general and others around the country to develop uniform curricula for hate crime training. As a result of these efforts, the Department now has available three law enforcement training curricula on hate crimes -- for patrol officers, investigators, and a mixed audience. We also work with communities in their own training and outreach efforts. Next week, Bill Lann Lee, the Acting Assistant Attorney General for Civil Rights, will attend a conference in Ogden, Utah, entitled "The Changing Faces of Hate." This conference, sponsored by the Utah U.S. Attorney's Office, the Simon Wiesenthal Center, Weber State University and the Utah Task Force for Racial and Ethnic Fairness will explore the ways communities can come together to eradicate these horrendous crimes and educate communities about understanding and tolerance.

C. Prosecutions: Current Law

Identification and reporting are, of course, not a complete answer. We must also ensure that potential hate crimes are investigated thoroughly, prosecuted swiftly and punished soundly. Our long term goal must be to prevent hate crimes by addressing bias before it manifests itself in violent criminal activity. In the meantime, however, it is imperative that we have the law enforcement tools necessary to ensure that, when hate crimes do occur, the perpetrators are identified and swiftly brought to justice.

One thing we know for certain, is that we are most effective when we work together. The

centerpiece of the Department's Hate Crime Initiative is the formation of local working groups in United States Attorneys' districts around the country. These task forces are hard at work bringing together the FBI, the U.S. Attorney's office, local law enforcement, community leaders and educators to coordinate our response to hate crimes. The groups are assessing the hate crime problem in their local areas and developing specific strategies to respond to the problem. While local law enforcement has the primary role in responding to and pursuing these crimes, federal law enforcement can provide additional resources and can assist with training. And by involving community organizations in these working groups, we are enhancing our ability to prosecute these crimes. Quite simply we are more effective when we enjoy the trust and support of the community. Community support makes it easier to uncover information, enlist witnesses to testify, and solve cases.

The principal federal hate crimes statute, 18 U.S.C. §245, prohibits certain hate crimes committed on the basis of race, color, religion, or national origin. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or to attempt to injure, intimidate, or interfere with) "any person because of his race, color, religion or national origin," and because of his participation in any of six "federally protected activities" specifically enumerated in the statute. The six enumerated "federally protected activities," written into the law 30 years ago when Congress first enacted the statute, are: (A) enrolling in or attending a public school or public college; (B) participating in or enjoying a service, program, facility or activity provided or administered by any state or local government; (C) applying for or enjoying employment; (D) serving in a state court as a grand or petit juror; (E) traveling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places of public accommodation.

We have made these cases a top priority. And the great majority of state and local law enforcement officials do their best to investigate and prosecute hate crimes that occur in their communities. In fact, most hate crimes are investigated and prosecuted at the state level. But we want to make sure that federal jurisdiction to prosecute hate crimes covers everything that it should. Concurrent federal jurisdiction is needed to authorize the federal government to share its law enforcement resources, forensic expertise, and civil rights experience with state and local officials. And in rare circumstances — where state or local officials are unable or unwilling to bring appropriate criminal charges in state court, or where federal law or procedure is significantly better suited to the vindication of the federal interest — the United States must be able to bring federal civil rights charges.

D. Federalism

The most important benefit of concurrent state and federal criminal jurisdiction is the ability of state and federal law enforcement officials to work together as partners in the investigation and prosecution of serious crimes. When federal jurisdiction does exist in the limited hate crimes contexts authorized by 18 U.S.C. §245, the federal government's resources, forensic expertise, and experience in the identification and proof of hate-based motivations often provide an invaluable investigative complement to the familiarity of local investigators with the local community and its people. It is by working together cooperatively that state and federal law enforcement officials stand the best chance of bringing the perpetrators of hate crimes swiftly to justice.

It is useful in this regard to consider the work of the National Church Arson Task Force,

which operates pursuant to jurisdiction granted by 18 U.S.C. §247 and other federal criminal statutes that have no limitations analogous to the "federally protected activity" requirement of 18 U.S.C. §245. Created almost three years ago to address a rash of church fires across the country, the Task Force's federal prosecutors and investigators from ATF and the FBI have collaborated with state and local officials in the investigation of each and every church arson that has occurred since January 1, 1995.

The results of these state-federal partnerships have been extraordinary. Thirty-four percent of the joint state-federal church arson investigations conducted during the life of the Task Force have resulted in arrests of one or more suspects on state or federal charges. The Task Force's 34% arrest rate is more than double the normal 16% rate of arrest in all arson cases nationwide, most of which are investigated by local officials without federal assistance. More than 80% of the suspects arrested in joint state-federal church arson investigations during the life of the Task Force have been prosecuted in state court under state law. Because the Department of Justice has not maintained statistics regarding the outcomes of the joint state-federal hate crimes investigations in which it has participated, we are unable to provide similarly stark statistical information regarding arrest rates in hate crimes cases. Nevertheless, we are confident that additional state-federal partnerships would result in an increase in the number of hate crimes solved by arrests and successful prosecutions analogous to that achieved through joint state-federal investigations in the church arson context. We certainly know, from example, that these joint efforts have been extremely successfully.

[CHOOSE OPTION WHEN WITNESS LIST FINALIZED]

OPTION A - NO SC SLED WITNESS

[We have a particularly effective example of these partnerships in South Carolina, where a team of agents from federal, state, and local law enforcement agencies worked hand-in-hand to bring to justice a group of Ku Klux Klansmen responsible for wave of crimes across the north-eastern part of that state. Representatives from the Justice Department and several state district attorneys offices met to chart the course the investigation would take. These meetings were not without issues of turf, but eventually the agents worked together to compare the relative strength of the statutes involved, the available resources, and the potential terms of imprisonment for state vs. federal prosecutions. In the end, they decided it made sense to use both sources of jurisdiction. So they formed a joint federal-state task force.]

Both the federal and state governments devoted agents, prosecutors, and supporting resources to the joint investigative team, which used the nationwide subpoena power of a federal grand jury sitting in Charleston, South Carolina. Federal agents from the FBI and ATF rode together as partners with agents of the South Carolina State Law Enforcement Division (SLED) and the fire departments from the counties affected. Their investigation led to five Klansmen being charged with two church arsons, the assault with intent to kill a black mentally retarded man, arsons of several migrant camps, and various firearms offenses. To date, these are the only convictions of members of an organized white supremacist group arising out of the rash of church fires. Those five Ku Klux Klansmen stand convicted on both state and federal offenses and have been sentenced to serve real time prison terms of between 15 and 21 ½ years.]

[OPTION B: SC WITNESS USE BALLINGER INSTEAD: In April, the co-chairs of the Task Force joined U.S. Attorneys in Indiana and Georgia to announce the indictment of a defendant for ten fires in those two states, the largest number of fires charged to any one defendant during the life of the Task Force. One of the Georgia fires resulted in the death of a volunteer firefighter and injuries to three others. It was a local officer in Indiana involved with that district's church arson task force that recognized the name of the defendant when he heard a report on an ambulance pickup for severe burns. He questioned the suspect at the hospital and called federal officials. The hard work of investigators from the FBI, the ATF, and the local arson and law enforcement offices led to charges in other fires in Indiana, and ultimately to charges in Georgia. The investigation continues in many other districts, supported by federal investigators and prosecutors.]

II. Gaps in Current Law

The current federal hate crimes law has two serious deficits. First, even in the most blatant cases of racial, ethnic, or religious violence, no federal jurisdiction exists unless the federally protected activity requirement is satisfied. This unnecessary, extra intent requirement has led to acquittals in several of the cases in which the Department of Justice has determined a need to assert federal jurisdiction and has limited the ability of federal law enforcement officials to work with state and local officials in the investigation and prosecution of many incidents of brutal, hate-motivated violence. Second, § 245 provides no coverage whatsoever for violent hate

crimes committed because of bias based on the victim's sexual orientation, gender, or disability. Together, these limitations have prevented the federal government from working with state and local law enforcement agencies in the investigation and prosecution of many of the most heinous hate crimes.¹

S. 622, the Hate Crimes Prevention Act of 1999, would amend 18 U.S.C. §245 to address each of these jurisdictional limitations. In cases involving racial, religious, or ethnic violence, the bill would prohibit the intentional infliction of bodily injury without regard to the victim's participation in one of the six specifically enumerated "federally protected activities." In cases involving violent hate crimes based on the victim's sexual orientation, gender, or disability, the bill would prohibit the intentional infliction of bodily injury whenever the incident involved or affected interstate commerce. These amendments to 18 U.S.C. §245 would permit the federal government to work in partnership with state and local officials in the investigation and prosecution of cases that implicate the significant federal interest in eradicating hate-based violence.

The Hate Crimes Prevention Act is a good fix. Earlier this month, President Clinton joined with a bipartisan group of legislators to urge its swift passage. I am pleased to join him in offering my strong support of this bill.

¹ Roughly two-thirds of the hate crimes prosecuted under federal law are pursued as criminal violations of the Fair Housing Act, which protects the rights of all persons to live wherever they choose free from violence because of their race, religion, national origin, family status, gender, or handicap. While this statute broadly protects interference with the housing process, it is limited to residential property and thus has significant limitations.

It must be emphasized that, even with enactment of the bill, state and local law enforcement agencies would continue to play the principal role in the investigation and prosecution of all types of hate crimes. From 1993 through 1998, the Department of Justice brought a total of only 32 federal hate crimes prosecutions under 18 U.S.C. §245 -- an average of fewer than six per year. We expect that the enactment of S. 622 would result in only a modest increase in this number. Our partnership with state and local law enforcement would continue, with state and local prosecutors continuing to take the lead in the great majority of cases.

A. The Federally Protected Activity Requirement

In several cases in recent years, the Department of Justice has sought to satisfy the federally protected activity requirement by alleging that hate crimes occurred on public streets or sidewalks -- i.e., while the victims were using "facilities" provided or administered by a State or local government.² The Department has used this theory successfully to prosecute the stabbing death of Yankel Rosenbaum in Brooklyn (Crown Heights), New York and the racially-motivated shooting of three African-American men on the streets of Lubbock, Texas.³ Although the "streets and sidewalks" theory has enabled the Department to reach some bias crimes that occur in public places, these prosecutions remain subject to challenge. In the Lubbock case, for

² See 18 U.S.C. §245(b)(2)(B)

³ The Department of Justice brought federal civil rights charges against two defendants in the Crown Heights case after the state failed to charge one of the defendants in state court and the state's case against the second defendant ended in acquittal. The Department brought federal charges against three defendants in the Lubbock case when federal and local prosecutors, who had collaborated throughout the investigation, agreed that the procedures and sentences available in federal court were significantly better suited to the interests of law enforcement, of the victims of the crime, and of the entire affected community than were those available in state court.

example, the defendants appealed their convictions, arguing that public streets and sidewalks are not "facilities" that are "provided or administered" by a state subdivision within the meaning of 18 U.S.C. §245(b)(2)(B). The United States Court of Appeals for the Fifth Circuit upheld the Lubbock convictions in a short, unpublished opinion. But an appeal on similar grounds in the Crown Heights case is now pending before the Second Circuit.

In some cases, this problem has precluded entirely the vindication of the federal interest in fighting hate-based violence. Let me briefly tell you about three cases where the Department of Justice brought federal hate crimes prosecutions under 18 U.S.C. §245 after state and local prosecutors declined to bring prosecutions under state law. In each case, the Department lost at trial due to the statute's "federally protected activity" requirement:

- o In 1994, a federal jury in Fort Worth, Texas acquitted three white supremacists of federal criminal civil rights charges arising from unprovoked assaults upon African-Americans, including one incident in which the defendants knocked a man unconscious as he stood near a bus stop. Some of the jurors revealed after the trial that although the assaults were clearly motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any "federally protected activity." The government's proof that the defendants went out looking for African-Americans to assault was insufficient to satisfy the requirements of 18 U.S.C. §245.
- o In 1982, two white men chased a man of Asian descent from a night club in Detroit and beat him to death. The Department of Justice prosecuted the two

perpetrators under 18 U.S.C. §245, but both were acquitted despite substantial evidence to establish their animus based on the victim's national origin. Although the Department has no direct evidence of the basis for the jurors' decision, it appears that the government's need to prove the defendants' intent to interfere with the victim's exercise of a federally protected right -- the use of a place of public accommodation -- was the weak link in the prosecution.

- In 1980, a notorious serial murderer and white supremacist shot and wounded an African-American civil rights leader as the civil rights leader walked from a car toward his room in a motel in Ft. Wayne, Indiana. The Department of Justice prosecuted the shooter under 18 U.S.C. §245, alleging that he committed the shooting because of the victim's race and because of the victim's participation in a federally protected activity, i.e. the use of a place of public accommodation. The jury found the defendant not guilty. Several jurors later advised the press that although they were persuaded that the defendant committed the shooting because of the victim's race, they did not believe that he also did so because of the victim's use of the motel.

Each of these cases involved a heinous act of violence clearly motivated by the race, color, religion, or national origin of the victim. In these cases, state prosecutors sought federal assistance due to inadequate state laws or they did not bring state criminal charges at all. Yet in each case, the extra intent requirement of 18 U.S.C. §245 -- that a hate crime be committed because of the victim's participation in one of the federally protected activities specifically

enumerated in the statute -- prevented the Department of Justice from vindicating the federal interest in the punishment and deterrence of hate-based violence.

Although a number of federal prosecutions under § 245 have been successfully pursued, even those successes highlight the arbitrariness of the coverage of the federal statutes. For example, in 1996, five skinheads were successfully prosecuted under § 245 for brutally assaulting an interracial couple in a city park in Des Moines, Iowa. Had the victims been standing outside the park instead of sitting on a bench inside the park entrance, it is likely that the assault could not have been prosecuted federally.

It is rare that the federal government must go beyond its usual role as the investigative partner of state and local law enforcement officials and bring federal criminal civil rights charges. But when state and local prosecutors fail to bring appropriate state charges, or where state law or procedure is inadequate to vindicate the federal interest in prosecuting hate crimes, it is imperative that the federal government be able to step in and bring effective federal prosecutions. Unfortunately, the double intent requirement of 18 U.S.C. §245 has precluded the Department of Justice from performing its proper backstop role with regard to several heinous hate crimes.

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

Under current law, section 245 provides no federal jurisdiction for violent attacks that occur because of sexual orientation, gender, or disability.

a. Sexual Orientation

From statistics gathered by the federal government and private organizations, we know that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in this country. Data collected by the FBI pursuant to the Hate Crimes Statistics Act indicates that 1,102 bias incidents based on the sexual orientation of the victim were reported to local law enforcement agencies in 1997; that 1,256 such incidents were reported in 1996; 1,019 such incidents were reported in 1995; and that 677 and 806 such incidents were reported in 1994 and 1993, respectively. The National Coalition of Anti-Violence Programs (NCAVP), a private organization that tracks bias incidents based on sexual orientation, reported 2,445 such incidents in 1997; 2,529 in 1996; 2,395 in 1995; 2,064 in 1994; and 1,813 in 1993.

Even the higher statistics reported by NCAVP may significantly understate the number of hate crimes based on sexual orientation that actually are committed in this country. Many victims of anti-lesbian and anti-gay incidents do not report the crimes to local law enforcement officials because they fear that they would receive an insensitive or hostile response or that they would be physically abused or otherwise mistreated. According to the NCAVP survey, 45 percent of those who reported hate crimes to the police in 1997 labeled their treatment by police as "indifferent to hostile."

Despite the prevalence of violent hate crimes committed on the basis of sexual orientation, such crimes are not covered by 18 U.S.C. §245 unless there is an independent basis for federal jurisdiction, such as race-based bias. Accordingly, the federal government is without authority to work in partnership with local law enforcement officials, or to bring federal

prosecutions, when gay men or lesbians are the victims of murders or other violent assaults because of bias based on their sexual orientation.

b. Gender

Although acts of violence committed against women traditionally have been viewed as "personal attacks" rather than as hate crimes, many people have come to understand that a significant number of women "are exposed to terror, brutality, serious injury, and even death because of their gender."⁴ Indeed, Congress, through the enactment of the Violence Against Women Act (VAWA) in 1994, has recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks. The Senate Report on VAWA stated:

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

Senate Report No. 103-138 91993) (quoting testimony of Prof. Burt Neuborne).

VAWA provides private parties a broad civil remedy for violence against women motivated by gender-based bias.⁵ However, VAWA's two criminal provisions regarding violence

⁴ Statement of Helen R. Neuborne, Executive Director, NOW Legal Defense and Education Fund, Women and Violence: Hearing Before the Senate Judiciary Committee, 101st Congress, 2nd Sess. 62 (1990).

⁵ See 42 U.S.C. § 13981.

against women provide extremely limited coverage. Specifically, VAWA's prohibition on interstate domestic violence, 18 U.S.C. § 2261, is limited to violence against a defendant's "spouse or intimate partner" and requires that the defendant travel across a state line. VAWA's other criminal provision, 18 U.S.C. §2262, prohibits the violation of a "protection order" if the defendant travels across state lines with the intent to engage in conduct that violates that order.

The structure of VAWA's criminal provisions gives rise to at least two important concerns. First, because of VAWA's victim-based limitation -- the requirement that the victim be a "spouse or intimate partner" -- VAWA does not give the Department of Justice adequate authority to address a significant number of violent gender-motivated crimes. Serial rapists, for example, fall outside the reach of VAWA's criminal provisions even if their crimes are clearly motivated by gender-based hate and even if they operate interstate. Second, because VAWA's criminal provisions contain no requirement that the violence be motivated by gender-based bias, a conviction under VAWA may not fully vindicate the interest in punishing gender-based crimes.

The federal government should have jurisdiction to work together with state and local law enforcement officials in the investigation of violent gender-based hate crimes. And, in rare circumstances, the federal government should have jurisdiction to bring federal prosecutions aimed at vindicating the strong federal interest in combating the most heinous gender-based crimes of violence.⁶

⁶ Although all 50 states have statutes prohibiting rape and other crimes typically committed against women, only 19 states and the District of Columbia have hate crimes statutes that include gender among the categories of prohibited bias motives.

I want to emphasize that including gender in § 245 would not result in the federalization of all sexual assaults or acts of domestic violence. The language of the bill itself, together with the manner in which the Department of Justice would interpret that language, would strictly limit federal investigations and prosecutions of violent gender-based hate crimes. We would prosecute only those cases that implicate the greatest federal interest. Just as with other categories of hate crimes, state and local authorities would continue to prosecute virtually all gender-motivated hate crimes. One principal reason for this is that state and local prosecutors must prove only that the perpetrator committed the act alleged in the indictment. Federal prosecutors, in contrast, would have to prove not only that the perpetrator committed the act, but also that the perpetrator did so because of gender-based bias.

We would expect courts deciding gender-bias cases under an amended § 245 to consider the same types of evidence that they consider in analogous contexts in which motive must be proved. This evidence would include but not be limited to: (i) statements the defendant made before, during, or after the offense that tend to indicate the defendant's motive; (ii) the absence of any evidence of an alternative motive; (iii) the defendant's use of epithets during the offense; (iv) other aspects of the offense itself, such as mutilation of the victim's genitals other acts of extreme violence, that may indicate hatred based on gender; and (v) other related or similar bias-motivated conduct of the defendant. As indicated elsewhere, we expect that most gender based crimes would continue to be prosecuted by state and local prosecutors.

c. Disability

Congress has shown a sustained commitment over the past decade to the protection of

persons with disabilities from discrimination based on their disabilities. Beginning with the 1988 amendments to the Fair Housing Act,⁷ and culminating with the enactment of the Americans with Disabilities Act of 1990, Congress has extended civil rights protections to persons with disabilities in many traditional civil rights contexts.

Concerned about the problem of disability-based hate crimes, Congress also amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from state and local law enforcement agencies. While only 12 incidents based on the victim's disability were reported in 1997, we expect the number of reported incidents to increase substantially as local jurisdictions become more familiar with this category, and as more states join the 21 states that have added disability to the class protected by their hate crimes statutes.

The information we have available does indicate that a significant number of hate crimes committed because of the victim's disability are not resolved satisfactorily at the state and local level. In Denver in 1991, a paraplegic died from asphyxiation when a group of youths stuffed him upside down in a trash can. Calling the incident a "cruel prank," local police declined to investigate the matter as a bias-related crime. In California in 1995, a 16 year-old youth threw a disabled man to the ground and kicked him repeatedly. In Brooklyn, New York in 1993, a gang of youths beat a mentally disabled 12 year-old boy. As far as we are aware, neither case was

⁷ Congress amended the Fair Housing Act in 1988 to grant the Attorney General authority to prosecute those who use force or threats of force to interfere with the right of a person with a disability to obtain housing.

prosecuted locally as a hate crime.

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

C. Federalization and Jurisdiction

The Department of Justice has carefully reviewed S. 622 and concluded that its enactment would neither result in a significant increase in federal hate crimes prosecutions nor impose an undue burden on federal law enforcement resources. The language of the bill itself, as well as the manner in which the Department would interpret that language, would ensure that the federal government would strictly limit its investigations and prosecutions of hate crimes — including those based on gender — to the small set of cases that implicate the greatest federal interest.

The express language of the bill contains several important limiting principles. First, the bill requires proof that an offense was motivated by hatred based on race, color, national origin, religion, sexual orientation, gender, or disability; as it has in the past, this requirement would continue to limit the pool of potential federal cases to those in which the evidence of hate-based motivation is sufficient to distinguish them from ordinary state law cases. Second, the bill excludes misdemeanors and limits federal hate crimes based on sexual orientation, gender, or disability to those involving bodily injury (and a limited set of attempts to cause bodily injury); these limitations would narrow the set of newly federalized cases to truly serious offenses.

Third, the bill's Commerce Clause element requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories; this requirement would limit federal jurisdiction in these categories to cases that implicate interstate interests. Finally, 18 U.S.C. §245 already requires a written certification by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General that "in his [or her] judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice" before any prosecution under the statute may be commenced.⁸ This statutory certification requirement, which would extend to all prosecutions authorized by S. 622, would ensure that the Department's new areas of hate crimes jurisdiction would be asserted in a properly limited fashion.

The Department's efforts under the proposed amendments to 18 U.S.C. §245 also would be guided by Department-wide policies that would impose additional limitations on the cases prosecuted by the federal government. First, under the "backstop policy" that applies to all of the Department's criminal civil rights investigations, the Department works with state and local officials and would generally defer prosecution in the first instance to state and local law enforcement. Only in highly sensitive cases in which the federal interest in prompt federal investigation and prosecution outweighs the usual justifications of the backstop policy would the federal government take a more active role. Under this policy, we are available to aid local and state investigations as they pursue prosecutions; for example, in the Jasper case, the U.S. Attorney's Office and the FBI were active participants in the investigation and an AUSA was

⁸ See 18 U.S.C. §245(a)(1).

cross-designated to aid with the trial in state court. Under this policy, we are also in a position to ensure that, in the event a state can not or will not vindicate the federal interest, we can pursue prosecutions independently. Second, under the Department's formal policy on dual and successive prosecutions, the Department would not bring a federal prosecution following a state prosecution arising from the same incident unless the matter involved a "substantial federal interest" that the state prosecution had left "demonstrably unvindicated."

Finally, the Hate Crimes Prevention Act is fully consistent with constitutional requirements regarding the scope of Congressional powers. Proposed subsection (c)(1), the provision which essentially eliminates the "federally protected activity" requirement, is authorized by the Thirteenth Amendment, which permits Congress to regulate violent hate crimes motivated by race, color, religion or national origin. Proposed subsection (c)(2), which would prohibit the intentional infliction of bodily injury (or an attempt to inflict bodily injury through the use of fire, a firearm, or an explosive device) on the basis of religion, gender, sexual orientation, or disability, requires proof of a Commerce Clause nexus as an element of the offense. Specifically, the government would have to prove "that (i) in connection with the offense, the defendant or the victim travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in activity affecting interstate or foreign commerce; or (ii) the offense is in or affects interstate or foreign commerce." The government would bear the burden at trial of proving the interstate commerce nexus beyond a reasonable doubt. We believe that the interstate commerce element contained in S. 622 for hate crimes based on sexual orientation, gender, or disability would fully satisfy Congress' obligation to comply with the Commerce Clause. The interstate commerce nexus required by the bill is

analogous to that required in many other federal criminal statutes, including the Church Arson Prevention Act, the Hobbs Act, and the Racketeer Influenced and Corrupt Organizations Act (RICO). Accordingly, the interstate commerce element would ensure that hate crimes prosecutions brought under the new statute would not be mired in constitutional litigation concerning the scope of Congress' power.

Conclusion

We must look at the root causes of hate crime. Intolerance often begins not with a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions. We must foster understanding and respect in our homes and our neighborhoods; in our schools and on our college campuses.

We also realize that legislation, while an important part of the solution, will not solve this problem alone. We must look at the root causes of hate crime. Intolerance often begins not with a violent act, but with a small indignity or bigoted remark. To move forward as one community, we must work against the stereotypes and prejudices that spawn these actions.

Hate is learned. It can be unlearned. We must engage our schools in the crucial task of teaching our children moral values and social responsibility. Educators can play a vital role in preventing the development of the prejudice and stereotyping that leads to hate crime. I am pleased that the Department will be assisting a new partnership announced last month by the

President in its efforts to develop a program for middle school students on tolerance and diversity.

Where does hatred start? Hatred starts oftentimes in someone who feels alone, confused and unloved. Hatred starts with someone who believes he has no control over his life and who lashes out at others. I look at a young perpetrator and I know that at so many points along the way, we could have intervened and helped him take a different path. We have to invest in our children. We have to help them grow in strength, in positive values, and in respect and love for others.

We also believe, however, that law enforcement has a significant role to play. The enactment of S. 622 would significantly increase the ability of state and federal law enforcement agencies to work together to solve and prevent a wide range of violent hate crimes committed because of bias based on the race, color, national origin, religion, sexual orientation, gender, or disability of the victim. This bill is a thoughtful, measured response to a critical problem facing our Nation.

I look forward to answering any questions that you might have.

HCPA VOTE 7/14/99

Listed with ^ = VAWA Cosponsor (VAWA contains HCPA as part of the bill)

COSPONSORS (38)

AKAKA (HI)
BIDEN (DE)
BINGAMAN (NM)
BOXER (CA)
BRYAN (NV)
CHAFFEE (RI)
CLELAND (GA)
DASCHLE (SD)
DODD (CT)
DURBIN (IL)
FEINSTEIN (CA)
GRAHAM (FL)
HARKIN (IA)
INOUE (HI)
JEFFORDS (VT)
JOHNSON (SD)
KENNEDY (MA)
KERREY (NE)
KERRY (MA)
LANDRIEU (LA)
LAUTENBERG (NJ)
LEAHY (VT)
LEVIN (MI)
LIEBERMAN (CT)
MIKULSKI (MD)
MURRAY (WA)
REED (RI)
REID (NV)
ROBB (VA)
ROCKEFELLER (WV)
SARBANES (MD)
SCHUMER (NY)
SMITH (OR)
SNOWE (ME)
SPECTER (PA)
TORRICELLI (NJ)
WELLSTONE (MN)
WYDEN (OR)

TARGETS (27)

COMMITTED YES (4)

DORGAN (ND)
EDWARDS^ (NC) - No
HOLLINGS^ (SC) - No
KOHL^ (WI)

LIKELY YES (6)

BAYH^ (IN) - long discussions / probably
BREAUX^ (LA) - Marjorie Scott
COLLINS (ME) - ~~clerk~~
CONRAD (ND) - ~~clerk~~
LINCOLN^ (AR) - ~~clerk~~
MOYNIHAN^ (NY) - ~~clerk~~

UNKNOWN (17)

ABRAHAM (MI) ✓
BOND (MO) ✓
BYRD^ (WV) ✓
CAMPBELL (CO) ✓
COVERDELL (GA) ✓
DeWINE (OH) ✓
DOMENICI (NM) ✓
FEINGOLD (WI) ✓
FITZGERALD (IL) ✓
GRAMS (MN) ✓
LUGAR (IN) ✓
MACK (FL) ✓
McCAIN (AZ) ✓
ROTH (DE) ✓
STEVENS^ (AK) ✓
VOINOVICH (OH) ✓
WARNER (VA) ✓

Italics = Republicans

Conrad
Collins
Morgan
Grams
Fitz.

Lugar
Warner
McLain
Voinovich

① Glickman → Lugar
on hate crimes

② Bruce → McLain

Jose → AG

hate crimes

47

412

WJ - Marjorie
- 1. July T-W

Kennedy

Glickman

BRENNAN
Pope and

THOMAS

Durbin



HUMAN
RIGHTS
CAMPAIGN

*Hate
comes*

July 15, 1999

UPCOMING FLOOR AMENDMENT!

Vote YES on the Kennedy-Schumer-Smith-Wyden Hate Crimes Amendment to Commerce-Justice-State

Senators Kennedy, Schumer, Smith (OR) and Wyden plan to offer the language of the Hate Crimes Prevention Act (HCPA), S. 622, as an amendment to the Commerce-Justice-State Appropriations bill, S. 1217. They recognize that Congress has a duty to responsibly and swiftly address the problem of hate violence in this nation. The Human Rights Campaign urges a YES vote on the Kennedy-Schumer-G. Smith-Wyden language – **with no weakening amendments** -- and will score this as a “key” vote.

Hate crimes reported on the basis of sexual orientation are INCREASING. In 1997, there was an 8 percent increase in reported hate crimes against gays and lesbians according to the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting Program, making them the third highest category reported to the FBI. This increase is particularly disturbing since, overall, serious crime continues to decrease nationally.

Hate crimes require a federal response. Since Reconstruction, federal law has barred certain egregious conduct because it is based on racial prejudice or other kinds of invidious discrimination. This federal role is based on the special constitutional responsibility placed on the federal government to ensure that no American citizen is subject to discriminatory treatment because of deep-seated prejudice.

HCPA offers a balanced approach to this serious problem. Current law (18 U.S.C. 245) permits federal prosecution of a hate crime only if the crime was motivated by bias based on race, religion, national origin, or color, *and* because the victim was exercising a “federally protected right” (e.g. voting, attending school, etc.). This dual requirement substantially limits the potential for federal assistance in investigating or prosecuting hate crimes, even when the crime is particularly heinous. HCPA would amend 18 U.S.C. 245 by removing the federal protected activity requirement and adding actual or perceived sexual orientation, gender and disability to the list of covered categories, thus bringing much needed uniformity to federal law.

States will continue to play the primary role in combating violent crime. Only 21 states and the District of Columbia currently have hate crimes statutes that include sexual orientation. Under HCPA, state and local law enforcement and prosecutors will continue to play the primary role in the investigation and prosecution of hate crimes. HCPA would allow the federal government to provide an important backstop to ensure that justice is achieved in every case.

WORKING FOR LESBIAN AND GAY EQUAL RIGHTS.

919 18th Street NW, Suite 800 Washington, D.C. 20006

phone (202) 628 4160 fax (202) 347 5323 e-mail hrc@hrc.org



452-6310

HCPA is narrowly crafted and limited in its scope. For the three new categories, HCPA only covers violent acts resulting in death or bodily injury and includes a constitutional requirement – or commerce clause nexus -- that the perpetrator or victim has traveled in interstate commerce or used the “facilities” of interstate commerce. Further, the bill includes a provision that the attorney general or his or her designee must certify, in writing, that a federal prosecution may go forward. Under current 18 U.S.C. 245, which has been in place since 1969, there have never been more than 10 prosecutions brought under the statute in a single year.

The Hate Crimes Prevention Act is bipartisan, mainstream legislation. To date, it has 179 cosponsors in the House and 38 in the Senate. It is endorsed by over 100 organizations, groups and individuals, such as: President Clinton; the Department of Justice; President Bush’s Attorney General Dick Thornburgh; 22 State Attorney Generals; The National Sheriffs Association; The Police Foundation; The Police Executive Research Forum; The U.S. Conference of Mayors; The Leadership Conference on Civil Rights; The Presbyterian Church; The United Methodist Church; the American Medical Association; and the Parent’s Network on Disabilities.

The American public supports federal hate crimes legislation. A May 1999 poll conducted by The Feldman Group, Inc., found that an overwhelming majority, 76 percent, of Americans think that crimes motivated by bias based on sexual orientation should be considered hate crimes. This includes 67 percent of Republicans and 70 percent and 74 percent among Fundamentalist and Evangelical Christians, respectively. And, an April 1999 poll conducted by Penn, Schoen & Berland Associates found that 91 percent of young people believe that hate crimes are a serious national problem, and 95 percent support expanding federal law to include sexual orientation, gender and disability – which HCPA does.

HCPA has legislative history. In the last Congress, both the House and Senate Judiciary Committees held comprehensive hearings on HCPA. Last month, the following people gave compelling testimony before the Senate Judiciary Committee on behalf of the bill: Deputy Attorney General Eric Holder; Judy Shepard, mother of Mathew Shepard; Jeanine Ferris Pirro, the Republican District Attorney of Westchester County New York; and Professor Burt Neubourne, New York University Law School.

Congress cannot afford to wait. A recently released report by the National Coalition of Anti-Violence Programs documented 2,552 anti-gay incidents in 1998. The report found an alarming increase in the violence and brutality of hate crimes, with a staggering rise in the use of weapons (guns, ropes, restraints, vehicles, bats, clubs) during anti-gay assaults. Clearly, people are being victimized and killed based on sexual orientation. Vicious and brutal hate crimes are having a crushing impact on families, communities, and our nation.

Please vote YES on the Kennedy-Schumer-G. Smith-Wyden Hate Crimes Amendment to Commerce-Justice-State. If you have questions or need further information, please contact Tracey St. Pierre with HRC at 216-1555; Angela Williams with Senator Kennedy at 4-4031 or Rob Epplin with Senator Gordon Smith at 4-3753.

Make copies

To: ERIC OLSEN

Fm: Tom

Facts, Q & A,

Endorsements.

Thanks

**THE FEDERAL HATE CRIMES
PREVENTION ACT OF 1999
BACKGROUND AND SUPPORTING INFORMATION**

Purpose

****** The Hate Crimes Prevention Act of 1999 would strengthen the existing federal hate crimes law in two ways. First, it would expand the situations when the Department of Justice can prosecute defendants for violent crimes based on race, color, religion or national origin.

****** Second, the Act would authorize the Department of Justice to prosecute individuals who commit violent crimes against others because of the victim's sexual orientation, gender, or disability. Current federal law does not cover these cases at all.

The Federal Role

****** The federal role in prosecuting hate crimes stems from the special constitutional responsibility placed on the federal government to ensure that no American citizen is subject to discriminatory treatment. Examples include: 1) the post-Civil war laws that bar individuals acting under color of law, as well as persons acting in private conspiracies, from depriving individuals of their constitutional rights; 2) the federal statute providing for criminal prosecutions of persons who burn churches or destroy other religious property; 3) the criminal provisions in the Fair Housing Act barring violent interference with housing rights because of race, color, religion, gender, familial status or national origin; and 4) the Violence Against Women Act, which provides for criminal prosecutions of persons who commit violent acts if they have traveled across state lines in connection with abusing a spouse or intimate partner or with the violation of a protective order.

Strengthening the Law against Race and Religion-based Crimes

****** Current law now limits prosecutions to situations where the victim is targeted because he is engaging in certain specified federally protected activities, such as serving on a jury, voting, or attending a public school. U.S. Attorneys have encountered difficulties in a number of prosecutions because of these limitations. The Act would broaden the statute and cover all violent crimes motivated by racial or religious hatred.

Extending the Act to Cover Sexual Orientation, Gender and Disability

****** The amended Act would cover sexual-orientation-based, gender-based and disability-

based hate crimes where these crimes are motivated by discriminatory motives, that is, where it can be established that the defendant acted, at least in part, because of prejudice toward one of these groups, and where there is sufficient connection with interstate commerce. Motivation for the crime is a matter for the jury to determine. As is the case for every element of a criminal offense, prosecutors would have to prove motivation beyond a reasonable doubt.

****** Over forty states have hate crimes statutes. However, only 21 cover sexual orientation, 22 cover gender, and 21 cover disability. Extending the federal law would allow state and local authorities to take advantage of federal investigative resources and personnel in bringing cases based on state law. It would also allow state and local authorities to be authorized by the Department of Justice to bring cases based on federal law.

****** Even in states which have broad hate crimes statutes, the higher penalties available under the federal statute, the complexity of the investigation, the procedural advantages of a federal prosecution, or the failure of a state prosecution may mean that a federal prosecution is warranted.

****** Gender-based cases covered by the expanded Act may overlap with coverage of current state laws against violent crimes. However, the federal Act would apply only where there is additional evidence of animus based on gender. The Act would generally not be used when state laws provide severe penalties, as in the case of rape. The more frequent use would be in cases of violent attacks against women where there is clear evidence of gender bias but state laws do not provide sufficient penalties. In addition, federal jurisdiction would also allow federal authorities to assist states in bringing their own case.

Federal and State Cooperation

****** State and local authorities bring the overwhelming majority of prosecutions of persons who commit violent acts toward racial and other minorities, and they would continue to do so under the Act. Federal jurisdiction functions as a backstop for state enforcement in order to ensure that justice is done in every case.

****** Federal jurisdiction allows the states to take advantage of Department of Justice resources and personnel, even if the state authorities ultimately bring the case based on state law. It also allows state and local authorities to bring a criminal case based on federal law after authorization by the Department of Justice.

****** Federal prosecutions under an expanded hate crimes law would occur primarily in these situations:

1) After consultation between federal and local authorities, there is a consensus that a federal prosecution will be more effective, e.g., because of higher penalties, procedural advantages or the complexity of the case. A Memorandum of Understanding between the

Department of Justice and the National Association of District Attorneys provides guidance for cooperation in enforcement decisions.

2) State prosecutors decline to act or the state prosecution does not achieve a just result, and the evidence warrants a subsequent federal prosecution.

First Amendment Concerns

** The Act would apply to an individual who “willfully causes bodily injury to any persons or, through the use of fire, a firearm, or an explosive device, attempts to cause injury to any person...” It does not apply to name calling or verbal abuse even if it amounts to hate speech.

** The Supreme Court, in Wisconsin v. Mitchell, held that Congress and the states may decide to impose a particular penalty on bias-inspired conduct if it goes beyond protected speech. Causing or attempting to cause bodily injury is clearly not protected speech.

Common Myths about the Hate Crimes Prevention Act (HCPA)

Myth: Every crime is a "hate crime".

Every act of violence is tragic and harmful in its consequences, but not all crime is based on hate. A hate crime occurs when the perpetrator of the crime intentionally selects the victim because of who the victim is. A hate crime affects not only the victim and their family but an entire community or category of people and their families. Hate crimes are destructive and divisive. A random act of violence resulting in injury or even death is a tragic event that devastates the lives of the victim and their family, but the intentional selection and beating or murder of an individual because of who they are terrorizes an entire community and sometimes the nation.

Myth: Hate crimes laws threaten or chill free speech and threaten the First Amendment.

Hate crimes laws punish violent acts, not beliefs or thoughts - even violent thoughts. HCPA does not punish, nor prohibit in any way, name-calling, verbal abuse or expressions of hatred toward any group even if such statements amount to hate speech. HCPA does not punish thought or speech or criticism of another person. It covers only violent actions that result in death or bodily injury.

Doubts about the constitutionality of hate crimes laws were squarely addressed by the Supreme Court in the early 1990's in two cases, *R.A.V. v. City of St. Paul* and *Wisconsin v. Mitchell*. These cases clearly demonstrate that a hate crimes statute may consider bias motivation when that motivation is directly connected to a defendant's criminal conduct. By requiring this connection to criminal activity, these statutes do not chill protected speech and do not violate the First Amendment. In *Wisconsin v. Mitchell*, the Supreme Court made clear that "the First Amendment does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."

Nothing in this act would prohibit the lawful expression of one's deeply held religious beliefs. People will always be free to say things like: "Homosexuality is sinful"; "Homosexuality is an abomination"; or "Homosexuals will not inherit the kingdom of heaven." The act would only cover violent actions committed because of a person's sexual orientation that results in death or bodily injury.

Myth: HCPA gives certain people special protection and is therefore divisive and unfair. It puts more value on some people's lives than others.

Perpetrators of violent crime who intentionally select victims because of who they are single out and separate some Americans from others. They are terrorists who single out victims and commit violent acts as a means of sending a message to society and to others who belong to the same category. The federal government - through decades of civil rights and criminal law - has a history of addressing crime that singles out individuals for violence in this way.

Myth: There's no epidemic of hate crimes.

Every individual's life is valuable and sacred, and even one life lost is too many. It is not the frequency or number of hate crimes, alone, that distinguish these acts of violence from other types of crime, it is the impact these crimes have on the victims, their families, their communities and, in some instances, the nation.

Evidence indicates that hate crimes are underreported; however, statistics show that since 1991 hate crimes have nearly doubled with 8,049 being reported in 1997, the FBI's most recent reporting period. Race-related hate crimes were by far the most common, representing nearly 60 percent of all cases. Hate crimes based on religion represented 17 percent of all cases. And hate crimes against gay, lesbian and bisexual Americans increased by 8 percent -- or about 14 percent of all hate crimes reported.

Anti-gay crimes are becoming increasingly more violent, according to a report released on April 6, 1999, by the National Coalition of Anti-Violence Programs. The report documented 2,552 anti-gay incidents in only 16 cities/jurisdictions across the country in 1998, with an alarming increase in violence, brutality, and the use of weapons in these attacks.

Sadly, statistics only give a glimpse of the problem. It is widely recognized that hate crimes on the basis of sexual orientation often go unreported due to fear and stigmatization. Additionally, the Hate Crimes Statistics Act makes the reporting of hate crimes by state and local jurisdictions voluntary, resulting in no participation by many jurisdictions each year. For example, of the 100 most populous cities in the United States, 10 did not participate in the reporting of hate crime data at all for 1997.

Myth: HCPA federalizes crimes that are better left to the states to address. The recent well publicized hate crimes in Wyoming, Texas, and Alabama show that perpetrators of hate crimes usually get punished severely.

Violent crimes, whether motivated by discriminatory bias or not, are generally covered under state law. Such overlap is common. For example, there is overlapping federal jurisdiction in the case of many homicides, bank robberies, kidnappings, fraud, and other crimes. As is frequently the case when federal and state laws overlap, the number of crimes subject to federal law would greatly exceed the number of federal prosecutions. Even though both the federal and state hate crimes statute may apply, there will be no need for a federal prosecution in the vast majority of cases. Almost all rapes and sexual assaults, violent crimes against gay men and lesbians, and violent crimes against disabled persons will continue to be prosecuted by state and local authorities. The importance of HCPA is to provide a backstop to state and local enforcement by allowing a federal prosecution if - and only if - it is necessary to achieve an effective, just result.

Myth: HCPA is unconstitutional.

HCPA is fully consistent with established constitutional law, including First Amendment precedent and the *Lopez* decision. The act itself and the existing federal criminal civil rights statute that the act amends, 18 U.S.C. §245, only apply to acts of violence, not speech. The existing statute has been upheld under the Commerce Clause, section 5 of the Fourteenth Amendment and the Thirteenth Amendment. Because the Hate Crimes Prevention Act requires a direct link to interstate commerce before the federal government can prosecute a hate crime based on sexual orientation, gender or disability, the Act is fully consistent with the Supreme Court's decision in *United States v. Lopez*.

Myth: In light of the *Brzonkala* decision, Congress does not have the constitutional authority to enact the Hate Crimes Prevention Act.

The Supreme Court's decision in *United States v. Lopez*, 514 U.S. 549 (1995), and the recent Fourth Circuit decision in *Brzonkala v. Virginia Polytechnic Institute and State University* invalidating the civil rights remedy provided by the Violence Against Women Act ("VAWA"), have raised questions regarding the constitutionality of HCPA's addition of "sexual orientation, gender and disability" to existing law. The question is whether these additions are a valid exercise of congressional authority under the Commerce Clause. A number of elements in HCPA affirm this congressional authority:

- The existing federal criminal civil rights statute, 18 U.S.C. §245, has been upheld as a constitutional exercise of Congressional authority under the Commerce Clause, *United States v. Lane*, 883 F.2d 1484 (10th Cir. 1989);
- The Hate Crimes Prevention Act contains an explicit jurisdictional element requiring that each gender-, sexual orientation-, or disability-based violent act in question contain an interstate commerce connection. See also *United States v. Lopez*, 514 U.S. 549 (1995); as post-*Lopez* legislation, HCPA has been carefully drafted to address the concerns expressed by the Supreme Court in that case. The legislation's findings acknowledge the direct connection between bias-based violent crimes and interstate commerce; and
- HCPA creates no new, substantive "right." HCPA simply amends existing federal law to allow the federal government to prosecute bias crimes committed because of the victim's sexual orientation, gender or disability.

Since Reconstruction, federal law has barred certain egregious conduct because it is based on racial prejudice or other kinds of invidious discrimination. This federal role is based on the special constitutional responsibility placed on the federal government to ensure that no American citizen is subject to discriminatory treatment because of deep-seated prejudice.

"Purely private, noneconomic activity" that does not contain the required interstate commerce jurisdictional element could not be prosecuted under HCPA. HCPA applies only to violent acts

committed against an individual (not property) because of the victim's sexual orientation, gender or disability.

The Hate Crimes Prevention Act is supported by twenty-two state Attorneys General, and a broad range of national civil rights groups, state and local government associations, and law enforcement organizations:

American Association for Affirmative Action
American Citizens for Justice
American Network of Community Options and Resources
And Justice For All
AYUDA
Center for Community Change
Justice for All
National Abortion Federation
National Association of Social Workers

Updated 5/99

Law Enforcement

Federal Law Enforcement Officers Association
Lawyers' Committee for Civil Rights Under Law
National Organization of Black Law Enforcement Executives
National Sheriffs' Association
Police Executive Research Forum
Police Foundation

Women's Groups

African-American Women's Clergy Association
American Association of University Women
Business and Professional Women, USA
Center for Women Policy Studies
Church Women United
Coalition of Labor Union Women
Federally Employed Women
Feminist Majority
Gender Public Advocacy Coalition
General Federation of Women's Clubs
National Association of Commissions for Women
National Black Women's Health Project
National Partnership for Women & Families
National Women's Law Center
NOW - National Organization for Women
The Woman Activist Fund, Inc.
Women of Reform Judaism, Federation of Temple Sisterhoods
Women Work!
Women's Alliance for Theology, Ethics & Ritual
National Coalition Against Domestic Violence
NOW Legal Defense & Education Fund

Religious Groups

American Ethical Union, Washington Office
American Jewish Committee
American Jewish Congress

Anti-Defamation League
Catholics for Free Choice
Congress of National Black Churches
The Episcopal Church
Evangelical Lutheran Church of America, Office for Government Affairs
Hadassah
International Association of Jewish Lawyers and Jurists
International Association of Jewish Vocational Services
Jewish Council for Public Affairs
Jewish Labor Committee
Jewish War Veterans of the USA
Jewish Women International
NA'AMAT USA
National Council of Churches of Christ in the USA
National Council of Jewish Women
National Jewish Democratic Council
NETWORK, A National Catholic Social Justice Lobby
Presbyterian Church (USA), Washington Office
Union of American Hebrew Congregations
Unitarian Universalist Association
United Church of Christ - Office of Church in Society
United Methodist Church

Disabilities Groups

Alliance for Rehabilitation Counseling
American Association on Mental Retardation
American Council of the Blind
American Counseling Association
American Foundation for the Blind
American Music Therapy Association
American Nurses Association
American Speech-Language Hearing Association
American Therapeutic Recreation Association
American Psychological Association
Aplastic Anemia Foundation of America, Inc.
Bazelon Center for Mental Health Law
Brain Injury Association, Inc.
Consortium of Developmental Disabilities Councils
Disability Rights Education and Defense Fund
International Dyslexia Association
LDA, The Learning Disabilities Association of America
Learning Disabilities Association of America
National Alliance for the Mentally Ill
National Association of the Deaf
National Association of Developmental Disabilities Councils (NADDC)
National Association of People with AIDS
National Association of Private Schools for Exceptional Children
National Association of Rehabilitation Research and Training Centers
National Coalition on Deaf-Blindness
National Mental Health Association
National Parent Network on Disabilities
National Rehabilitation Association
National Respite Network

National Spinal Cord Injury Association
National Therapeutic Recreation Society
Paralyzed Veterans of America
Rehabilitation Engineering and Assistive Technology Society of North America
Society for the Psychological Study of Social Issues
Spina Bifida Association of America
The Arc of the United States
National Association of Protection & Advocacy Systems

Ethnic Groups

American-Arab Anti-Discrimination Committee
Anti-Defamation League
Arab American Institute
Asian American Legal Defense & Education Fund
Asian Law Caucus
Asian Pacific American Labor Alliance
Asian Pacific American Legal Center
Chinese American Citizens Alliance
Hispanic National Law Enforcement Association
India Abroad Center for Political Awareness
Japanese American Citizens League
MALDEF - Mexican American Legal Defense & Education Fund
MANA - A National Latina Organization
National Asian Pacific American Legal Consortium
National Asian Pacific American Bar Association
National Congress of American Indians
National Federation of Filipino American Associations
National Korean American Service and Education Consortium
National Puerto Rican Coalition, Inc.
Organization of Chinese Americans
Southeast Asia Resource Action Center
Labor Council for Latin American Advancement
National Council of La Raza

Unions

American Federation of Government Employees
American Federation of State, County, and Municipal Employees, AFL-CIO
International Union of United Aerospace and Agricultural Implements
National Alliance of Postal and Federal Employees
Service Employees International Union, AFL-CIO
Union of Needletrades, Industrial & Textile Employees (UNITE)

Civil Rights

American Friends Service Committee
Americans for Democratic Action
Bi-Net
Center for Democratic Renewal
Fair Employment Council of Greater Washington
Human Rights Campaign
Leadership Conference on Civil Rights
NAACP
NAACP Legal Defense Fund, Inc

National Coalition of Anti-Violence Programs
National Conference for Community and Justice (NCCJ)
National Education Association
National Gay and Lesbian Task Force
National Urban League
Parents, Families and Friends of Lesbians and Gays
People For the American Way
A. Philip Randolph Institute
United States Student Association

Civic Groups

American Veterans Committee
Goodwill Industries International, Inc.
Log Cabin Republicans
National Center for Victims of Crime
National Newspaper Publishers Association
The United States Conference of Mayors
YWCA of the USA

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OFFICE OF MANAGEMENT AND BUDGET



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TO: 1 Rene Buren

AGENCY: _____

PHONE: Fax 65501

FROM: Jim Brown/395-3473 _____

Richard Green/395-4607 ✓ _____

Leticia Sierra/395-3589 _____

Michael Hunter/395-3459 _____

Jeffrey Weinberg/395-3457 _____

Ron Jones/395-3386 _____

Legislative Reference Division/RM: 7218

Economics, Science, & General Government Branch (ESGG)

NUMBER OF PAGES(not including this cover sheet): 4

Date: 7-28 Time: 6:10

Comments/Subject: _____



U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

This letter presents the views of the Department of Justice on S. 1406, "A Bill to Combat Hate Crimes." Hate crimes have no place in a civilized society, whether based on the race, religion, ethnicity, sexual orientation, gender, or disability of the victims. We share your conviction that every level of government must take action to respond to these violent, devastating attacks. However, this bill would maintain the "federally protected activity" requirement in section 245 of title 18, an outdated restriction on Federal jurisdiction that has prevented the Department from taking action to investigate, prosecute, and punish several brutal incidents of hate based violence. It also fails to offer Federal protection to victims of violence based on their gender, sexual orientation, or disability. We cannot fully vindicate the Federal interest in combating hate based violence without eliminating these two serious deficiencies in the current law.

I. Section 1(e) and Current Section 245

Section 1(e) would create a new section 249 in title 18, making it a crime to travel across State or Indian country lines in order, by force or threat of force, to willfully injure, intimidate, or interfere with any person because of the person's race, color, religion, or national origin, ~~and~~ to do or attempt to do so. While current law does not cover hate crimes where the defendant crosses State lines, our experience with section 247 of title 18 suggests this amendment would be ineffective and that very few cases would be reachable under this provision.

Before the enactment of the Church Arson Prevention Act of 1996, section 247 prohibited the intentional defacement, damage, or destruction of any religious real property because of the religious character of the property if, in committing the offense, the defendant either traveled in interstate or foreign commerce or used a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce. Confronted

with a rash of arsons at houses of worship in early 1996, the Department and the Congress concluded that section 247 had proven totally ineffective because of these restrictive interstate commerce requirements. In fact, between its enactment and the 1996 amendments, only one case was brought under section 247.

Recognizing this problem, Congress enacted the Church Arson Prevention Act of 1996, which amended section 247 to eliminate the interstate commerce element entirely for racially motivated arsons and to cover other offenses that are "in or affect interstate commerce." Thus it is no longer necessary to establish as a jurisdictional prerequisite that the defendant moved in interstate commerce or used a facility in interstate commerce. The "affects" standard is more in line with existing criminal statutes outlawing, for example, the possession of certain weapons, e.g. 18 U.S.C. 922(g), 924, or the use of fire or explosive devices, e.g. 18 U.S.C. 844(i). These amendments and the expanded Federal jurisdiction have contributed to the success of the Church Arson Task Force, which has worked with State and local investigators and prosecutors to investigate 785 fires that occurred after January 1995, with 340 total defendants arrested. The vast majority of these cases have been prosecuted in State courts under State law. The task force's 34% arrest rate is more than double the average for arson investigations, which is at least partly attributable to the ability of Federal investigators and prosecutors to work closely with their State and local counterparts.

In addition to the limited number of cases that would fall under new section 249, the bill would not remove the serious jurisdictional limitations of section 245. In cases involving racial, religious, or ethnic violence, the Federal government still would have to prove a defendant attacked his victim not only because of racial, religious, or ethnic bias, but also because of the victim's participation in one of the six specifically enumerated "federally protected activities."¹ This requirement can lead to bizarre results. For example, in U.S. v. Black and Clark (12/12/91) (E.D. Calif.), two white supremacists were charged in the assault of a black man at a convenience store/gasoline station. The victim received multiple stab wounds and required hospital treatment. There was no previous State action. After indictment, Clark pled guilty to violating section 245 and was sentenced to serve seven years and 10 months in

¹The six protected activities are attending a public school; participating in a program or activity administered by a State or local government; government employment; serving as State juror; traveling in or using a facility of interstate commerce; or using the facilities or services of certain enumerated places of public accommodation or entertainment. 18 U.S.C. § 245(b) (2).

prison, to be followed by three years supervised release. Black was convicted at trial and sentenced to serve 10 years in prison. Establishing jurisdiction under 18 U.S.C. 245 hinged on the fact that there was a pinball machine in the store, which qualified the gas station as a place of entertainment. Without that pinball machine, we would have had no jurisdiction in the case.

In addition, the bill provides no Federal coverage whatsoever for violent crimes based on sexual orientation, gender, or disability. S. 622, the Hate Crimes Prevention Act of 1999, would correct both of these jurisdictional gaps, permitting the Federal government to work in partnership with State and local officials in the investigation and prosecution of cases that implicate the significant Federal interest in eradicating hate-based violence. The Department supports enactment of S. 622, whose provisions were included in the Senate version of the appropriations bill for the Departments of Commerce, Justice, and State, and the Judiciary.

II. Other Sections

Section 1(b) would direct the Comptroller General, in consultation with the National Governors Association, to conduct a study comparing the number, prosecution and conviction rates, and sentences of hate crimes in ten jurisdictions with hate crimes laws to those in ten jurisdictions without hate crimes laws. A carefully designed study along these lines could provide useful information about the effects of hate crimes statutes on law enforcement.

Section 1(c) of the bill would direct the Attorney General, in consultation with the States, to develop a model hate crimes statute. While we agree that States should be encouraged to adopt and enforce comprehensive hate crimes statutes, the Federal government must do more than provide a model. Federal jurisdiction is needed as a backstop for State and local enforcement to ensure that justice is done in every case.

Section 1(d) directs that, at the request of a State or local law enforcement official, the Attorney General acting through the Director of the FBI "shall provide technical, prosecutorial, or any other form of assistance" in the investigation or prosecution of a crime that is a crime of violence under 18 U.S.C. 16, constitutes a felony under State law, and either is motivated by race, ethnicity or religion or is a violation of a State hate crime law. We have two concerns with this provision. First, in order to give the Attorney General discretion to determine, in light of other Federal interests and priorities, which cases warrant Federal assistance and what type of assistance to provide, section (d)(1)(A) should be amended so that she "may provide" such assistance at the request of a State

OMB/EKD/ESG ID: 202-039-0103
or local official. Second, because the majority of States do not include gender, sexual orientation, and disability as protected categories in their hate crimes law, the bill will not allow the Department to provide investigatory and prosecutorial assistance to most States investigating such violent attacks.

Section 1(d)(2) would establish a grant program within the Department to assist State and local law enforcement in the investigation and prosecution of hate crimes where the State certified that it lacked the resources necessary to do so itself. An application would have to be approved within 24 hours. While we support the goal of providing assistance to States investigating hate crimes, requiring individual grant applications and approvals for each specific case will be burdensome for both State and local law enforcement officials and the Department, and may cause delays that impede investigations.

We look forward to working with you to address these issues by crafting a thoughtful, measured response to this critical problem facing our Nation. We remain convinced that S. 622 embodies that response. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

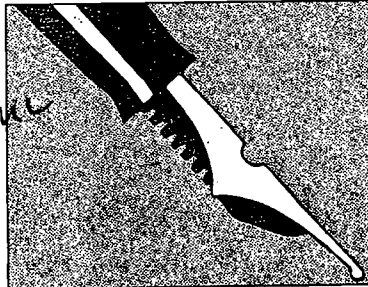
Jon P. Jennings
Acting Assistant Attorney General

cc: Honorable Patrick J. Leahy
Ranking Minority Member



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SERVING THE NATION'S CAPITAL SINCE 1901

Washington Blade

Senate OKs hate crimes act

Approval boosts measure's chances of passage in House

by Lou Chibbaro Jr.

Without debate and by voice vote, the U.S. Senate on July 22 approved a hate crimes prevention bill that gives the federal government authority to prosecute violent hate crimes committed against individuals because of their sexual orientation, gender, or disability.

Gay civil rights groups hailed the Senate's passage of the Hate Crimes Prevention Act as a major victory, saying it will greatly boost the measure's chances of gaining final approval in negotiations this fall between the House and the Senate.

The Senate approved the hate crimes prevention measure in the form of an amendment to an appropriations bill for the departments of Commerce, Justice, and State. The House already passed its own version of the appropriations bill without tacking on the hate crimes measure, and Capitol Hill observers say oppo-



by Clint Steib

Complications surfaced last week when Sen. Orrin Hatch (R-Utah) circulated his own hate crimes amendment.

nents will attempt to kill the Hate Crimes Prevention Act in the fall when the House and Senate iron out differences between their two bills.

A coalition of Gay and mainline civil rights groups had expected the hate crimes bill to surface in the form

of an amendment after Sen. Edward Kennedy (D-Mass.) and a group of Democratic and moderate Republican senators announced last month they would introduce such an amendment and seek to attach it to the appropriation measure.

But complications surfaced early last week when Sen. Orrin Hatch (R-Utah) circulated his own hate crimes amendment that omitted the sexual orientation, gender, and disability clause contained in the Kennedy version. Supporters of the Kennedy amendment feared that Hatch would call for substituting his amendment for the Kennedy version and that senators who were wavering over the Kennedy version might jump ship and vote for the Hatch amendment.

As Senate deliberations over the Commerce, Justice, and State appropriations bill continued into the evening on Thursday, July 22, sup-

Continued on page 19



by Keith Lenharr/Update News

Around 50 people suffered injuries during a tear explosion at San Diego Pride. Many others, including this woman and child, were injured by the incident.

Dozens h

Senate passes two amendments on hate crimes

Kennedy, Hatch measures both included in package of attachments to appropriations bill

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porters and opponents of the two versions of the hate crimes prevention measure were expecting a dramatic Senate debate over the issue. With Kennedy out of town due to the death of his nephew, John F. Kennedy Jr., Kennedy's staff worked closely with Democratic and Republican backers of the Kennedy version. Supporters of the Kennedy version were expected to invoke the memory of slain University of Wyoming student Matthew Shepard and other Gay-bashing victims in a heated floor debate, said Senate staffers familiar with the Senate action.

However, after several hours of behind-the-scenes negotiating, Sens. Judd Greg (R-N.H.) and Ernest Hollings (D-S.C.), the floor managers of the appropriations bill, agreed to add both the Kennedy and Hatch amendments to a package of 32 other amendments slated for bipartisan approval. The agreement came after reports surfaced that Senate GOP leaders were planning to push through a rule that would have barred senators from adding any amendments to the Commerce, Justice, and State appropriations bill.

The Senate then approved the Kennedy and Hatch amendments as part of a package of 34 amendments — with no debate and no public mention on the Senate floor of the nature of any of the amendments. The approval came by unanimous, voice vote.

Sen. Ron Wyden (D-Ore.), one of the co-sponsors of the Hate Crimes Prevention Act, said head counts conducted by the bill's supporters showed that the Kennedy amendment would have passed by a three- or four-vote margin if a recorded vote had been taken.

Opposition still dangerous

According to Capitol Hill staffers familiar with the legislation, opponents believe they have a better chance of

defeating the Kennedy version of the hate crimes measure in a House-Senate conference committee. They chose not to risk losing a roll call vote, fearing such a vote would help supporters build momentum for the amendment's passage in the House. A public debate on the Senate floor highlighting widely publicized hate crimes in recent months against Gays and other minorities might also have given the impression that opponents are insensitive to such crimes, a development opponents wanted to avoid, Capitol Hill observers said.

Hatch, who serves as chair of the Senate Judiciary Committee, has said the Hate Crimes Prevention Act proposed by Kennedy and others goes too far in extending federal authority to law enforcement activities that Hatch says should be carried out by state and local governments. Although Hatch has not called for repealing existing federal law that allows the federal government to prosecute hate crimes based on race, religion, and national origin, he said he opposes the Kennedy bill's call for adding sexual orientation, gender, and disability as additional areas.

Hatch's amendment — while omitting language pertaining to sexual orientation, gender, and disability — calls for providing federal funds to help state and local law enforcement agencies prosecute hate crimes, including anti-Gay hate crimes. It would also allow federal prosecutors to intervene in hate crimes investigations involving the crossing of state lines, but only for such crimes based on a victim's race, religion, or national origin.

Gay civil rights groups waged a lobbying campaign against Hatch's call for substituting his amendment for the Kennedy amendment. The Human Rights Campaign, the nation's largest Gay political group, argued that Hatch's measure would prevent federal prosecutors from



by Clint Steib

Sen. Ron Wyden: "We cannot be for any proposal that guts sexual orientation, gender, or disability. ... What we have to do now is organize like crazy."

intervening in Gay-related hate crimes cases even though local and state law enforcement officials — including many of the nation's police departments — have said they welcome federal assistance in prosecuting such hate crimes.

However, after the Senate passed both versions, supporters of the Kennedy amendment say the two versions are not mutually exclusive and that they would not object to retaining both amendments.

Winnie Stachelberg, HRC's political director, said HRC's concern over the Hatch proposal is that opponents of including sexual orientation protection in a hate crimes bill could have voted for the Hatch proposal as a "cover" for arguing that they support some form of hate crimes prevention legislation while voting against the Kennedy version.

"We cannot be for any proposal that guts sexual orientation, gender, or disability," Wyden said. "What we have to do now is organize like crazy" to build support for the bill in the House.

"This is the first concrete action taken by either chamber since America buried Matthew Shepard, James Byrd Jr., Billy Jack Gaither, and many transgendered

people whose names and faces do not make the newspapers," said Kerry Lobel, executive director of the National Gay and Lesbian Task Force. "It is a good first step, but we have a long way to go and we must now turn to the House and tell our representatives how critically important this legislation is. In short, we must keep up the heat."

Earlier this year, the House passed a Commerce, Justice, and State appropriations bill that does not include the Hate Crimes Prevention Act. The House and Senate appropriations bills must now be reconciled in a House-Senate conference committee or through a separate negotiating process between Republican and

Democratic lawmakers and the White House. The latter process is expected to come about if lawmakers decide to merge the Commerce, Justice, and State appropriations bill with several other appropriations bills, as they have in the past several years.

President Clinton, who worked with Kennedy in drafting the Hate Crimes Prevention Act, released a statement praising the Senate for passing the Kennedy version of the bill.

"Senate approval of this legislation gives it real momentum, and I call on the House of Representatives to meet its responsibility in combating violence that is fueled by hate," Clinton said.

Earlier this month, the White House said Clinton might veto the Commerce, Justice, and State appropriations bill if it contains provisions unrelated to the hate crimes bill that he cannot support. A completed version of the bill is not expected to reach Clinton's desk for signing until September or October at the earliest.

Meanwhile, the House Judiciary Committee is scheduled to hold a hearing on the Hate Crimes Prevention Act on Aug. 4. ▼

Reported Hate Crimes On the Rise

Blacks Are Targeted Most, Records Show

Reuters

CHICAGO, Aug. 6—Reported hate crimes are on the rise in the United States, and African Americans continue to be victims of such acts more often than any other group, experts said today.

A review of federal crime records indicates that from 1991 to 1997, 40 percent of hate crimes were committed against African Americans, 15 to 20 percent involved religious targets, 9 to 14 percent gays, 5 percent Asians or Latinos, and less than 1 percent Native Americans or the disabled.

Hate crimes against Latinos, however, appear to be on the rise, said Valerie Jenness of the University of California at Irvine, one of several experts who briefed reporters on the situation at the annual meeting of the American Sociological Association.

"We've had a documented, reported rise [in hate crime statistics], but we don't know if that's an actual rise or one caused by increased reporting," Jenness said.

However, it would be "absolutely fair" to assume that more such crime occurs than is recorded in the federal government's official crime reports, because not all acts are reported by victims, she said. Experts also have long criticized some law enforcement agencies for not properly documenting hate crimes.

Hate crimes account for only a fraction of 1 percent of all offenses reported in the United States.

Most of those committing such crimes, Jenness said, "are not members of any organized hate groups" but tend to be young white men, acting in informal groups where the victims are

outnum

Abby Ferber of the University of Colorado at Colorado Springs reported that white supremacist groups are increasingly turning to the Internet to recruit members, though it appears that many more young white men read the literature found there and elsewhere than actually join such groups.

Last year there were 537 active white supremacist groups identified in the United States, with a membership of up to 200,000 in all, she said.

Benjamin Smith, 21, who grew up in a prosperous suburb of Chicago, had ties to the World Church of the Creator, a white racist group based in East Peoria, Ill. Smith's two-day shooting rampage last month targeted blacks, Jews and Asians in Illinois and Indiana and left two men dead and nine others wounded.

Benjamin Matthew Williams, 31, and James Tyler Williams, 29, two brothers from Northern California who were charged with murder last month in the deaths of a gay couple and are suspects in arsons at three Sacramento area synagogues, also had links to the World Church of the Creator, authorities said. Investigators also found hate literature published by other white racist groups in the brothers' home.

The appeal of groups such as the World Church of the Creator, Ferber said, is to young white men who fear they will never do as well as their parents did economically and for whom "the American dream seems like an impossibility."

As a result, some young white men face a "crisis of masculinity" and are attracted to hate groups by the promise of regaining power, she said.

Handwritten: Mike Jones

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July 16, 1999

The Honorable Richard Socarides
Special Assistant to the President
And Senior Advisor on Public Liaison
The White House
Washington, DC 20500

Dear Mr. Socarides:

We are pleased to share with you a new Anti-Defamation League research report. **Poisoning the Web: Hatred Online** is our latest publication on the use of the Internet by hate groups to promote bigotry, extremism, and violence. Before the Internet, many extremists worked in relative isolation, forced to make a concerted effort to connect with others that shared their ideology. Today, bigots exploit cyberspace to communicate more easily and inexpensively with fellow extremists.

The League's comprehensive report presents the historical background and current trends of hate online, touching on legal and societal implications of promoting intolerance via the Internet and suggesting counteraction techniques. **Poisoning the Web** exposes many of the perpetrators of "cyber hate" and describes the specific efforts these extremists are undertaking to lure young people to their sites. Along with updates on the traditional hate groups such as the KKK, neo-Nazi skinheads, and the National Alliance, the report details the dangers of online bomb-making manuals, the role of women in white supremacy online, and anti-abortion extremism in cyberspace.

Please do not hesitate to contact our office if you have any questions about this report or if we may be of assistance to you in any way.

Sincerely,


Jess N. Hordes
Washington Director


Michael Lieberman
Washington Counsel

Bruce Reed
Ryd-



Wade

Tom -
Good stuff

BR