

# HATE CRIME LAWS

## I. INTRODUCTION

All Americans have a stake in an effective response to violent bigotry. Hate crimes demand a priority response because of their special emotional and psychological impact on the victim and the victim's community. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable and unprotected by the law. By making members of minority communities fearful, angry and suspicious of other groups -- and of the power structure that is supposed to protect them -- these incidents can damage the fabric of our society and fragment communities.

ADL has long been in the forefront of national and state efforts to deter and counteract hate-motivated criminal activity. Hate crime statutes are necessary because the failure to recognize and effectively address this unique type of crime could cause an isolated incident to explode into widespread community tension.

In June 1993, the United States Supreme Court upheld a Wisconsin hate crime statute that was based on model legislation originally drafted by the Anti-Defamation League (ADL) in 1981.<sup>1</sup>

The following year, ADL published a detailed report on hate crimes laws, *Hate Crimes Laws: A Comprehensive Guide*, which functions as a reference on hate crimes legislation nationwide. This update is meant to complement the 1994 report and encompasses changes that have occurred since that time, including the League's recent addition of gender to its model hate crimes legislation, and the passage of additional Federal legislation, as well as a description of a number of Federal training and education initiatives to confront hate violence.

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<sup>1</sup> Wisconsin v. Mitchell, 508 U.S. 476 (1993).

## II. ADL APPROACH TO HATE CRIME LEGISLATION

### A. ADL MODEL LEGISLATION

The Anti-Defamation League model hate crimes legislation has been drafted to cover not just anti-Semitic crimes, but all hate crimes. Currently, 43 states and the District of Columbia have enacted laws similar to or based on the ADL model, and almost every state has some form of legislation which can be invoked to redress bias-motivated crimes.<sup>2</sup>

The core of the ADL legal approach is a "penalty-enhancement" concept. In a landmark decision issued in June 1993, the United States Supreme Court unanimously upheld the constitutionality of Wisconsin's penalty-enhancement hate crimes statute, which was based on the ADL model. Expressions of hate protected by the First Amendment's free speech clause are not criminalized. However, criminal activity motivated by hate is subject to a stiffer sentence. A defendant's sentence may be enhanced if he intentionally selects his victim based upon his perception of the victim's race, religion, national origin, sexual orientation or gender.<sup>3</sup>

The ADL model statute also includes an institutional vandalism section which increases the criminal penalties for vandalism aimed at houses of worship, cemeteries, schools and community centers. This provision is useful in dealing with crimes such as the very disturbing series of arsons which have occurred at Black churches across the South in recent years. The legislation also creates a civil action for victims and provides for other additional forms of relief, including recovery of punitive damages and attorney's fees, and parental liability for minor children's actions. Finally the model legislation includes a

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<sup>2</sup> See Appendix C, StateHate Crimes Statutory Provisions.

<sup>3</sup> The ADL model statute arguably also covers crimes committed against persons who are associated with the targeted group. For example, the statute would cover crimes committed against either or both members of a mixed-race couple if it can be demonstrated that the crimes occurred because of one's race. In *Illinois v. B.C. and T.C.*, 680 N.E.2d 1355 (Illinois 1997), the Supreme Court of Illinois upheld this interpretation of the Illinois hate crimes statute, a law that was based on the ADL model. Because this controversy may arise in other states, some laws for example, the Iowa hate crimes statute specify that these affiliation cases are covered.

section on bias crime reporting and training, since accurate, comprehensive data is essential in combating hate crimes.

## **B. THE INCLUSION OF GENDER**

In 1996 the Anti-Defamation League added gender to its model hate crimes legislation. The League chose to add gender after coming to the determination that gender-based hate crimes could not be easily distinguished from other forms of hate motivated violence. Gender-based crimes, like other hate crimes, have a special psychological and emotional impact which extends beyond the original victim. The inclusion of gender is important because it sends the message that gender-based crimes will not be tolerated.

In the past eight years, as state legislators have realized that it is difficult to distinguish race-based and religion-based hate crimes from gender-based hate crimes, the trend has been to include gender in hate crimes legislation. In 1990, only seven of the 31 states which had hate crime statutes included gender. Today, 19 of the 41 statutes cover victims chosen by reason of their gender. Furthermore, the Federal Violence Against Women Act of 1994 (VAWA) allows individuals to file Federal civil law suits in cases of gender-based violence. (See Section V(C) below.)

After studying the statutes in which gender is included, ADL came to the conclusion that the inclusion of gender has not overwhelmed the reporting system, nor has it distracted the criminal justice system from vigorous action against traditional hate-based crimes. Clearly not all crimes against women are gender-based crimes, and prosecutors have discretion in identifying those crimes which should be prosecuted as hate crimes. Prosecutors also must have concrete admissible evidence of bias to charge an individual with commission of a hate crime. Even in cases where gender bias can be proven, prosecutors may decide that the penalty imposed by the underlying crime is in itself sufficient and penalty enhancement is therefore unnecessary. It is also important to realize that there has not been an overwhelming number of gender-based crimes reported as an extension of domestic violence and rape cases.

## C. TEXT OF ADL MODEL LEGISLATION

### 1. Institutional Vandalism

- A person commits the crime of institutional vandalism by knowingly vandalizing, defacing or otherwise damaging:
  - Any church, synagogue or other building, structure or place used for religious worship or other religious purpose;
  - Any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead;
  - Any school, educational facility or community center;
  - The grounds adjacent to, and owned or rented by, any institution, facility, building, structure or place described in subsections (i), (ii) or (iii) above; or
  - Any personal property contained in any institution, facility, building, structure, or place described in subsections (i), (ii) or (iii) above.
- Institutional vandalism is punishable as follows:
  - Institutional vandalism is a \_\_\_\_ misdemeanor if the person does any act described in subsection A which causes damage to, or loss of, the property of another.
  - Institutional vandalism is a \_\_\_\_ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of five hundred dollars.
  - Institutional vandalism is a \_\_\_\_ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of one thousand five hundred dollars.
  - Institutional vandalism is a \_\_\_\_ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of five thousand dollars.
- In determining the amount of damage to, or loss of, property, damage includes the cost of repair or replacement of the property that was damaged or lost.

## 2. Bias-Motivated Crimes

- A person commits a Bias-Motivated Crime if, by reason of the actual or perceived race, color, religion, national origin, sexual orientation or gender of another individual or group of individuals, he violates Section \_\_\_\_ of the Penal code (insert code provisions for criminal trespass, criminal mischief, harassment, menacing, intimidation, assault, battery and or other appropriate statutorily proscribed criminal conduct).
- A Bias-Motivated Crime under this code provision is a \_\_\_\_ misdemeanor/ felony (the degree of criminal liability should be at least one degree more serious than that imposed for commission of the underlying offense).

## 3. Civil Action for Institutional Vandalism and Bias-Motivated Crimes

- Irrespective of any criminal prosecution or result thereof, any person incurring injury to his person or damage or loss to his property as a result of conduct in violation of Sections 1 or 2 of this Act shall have a civil action to secure an injunction, damages or other appropriate relief in law or in equity against any and all persons who have violated Sections 1 or 2 of this Act.
- In any such action, whether a violation of Sections 1 or 2 of this Act has occurred shall be determined according to the burden of proof used in other civil actions for similar relief.
- Upon prevailing in such civil action, the plaintiff may recover:
  - Both special and general damages, including damages for emotional distress;
  - Punitive damages; and/or
  - Reasonable attorney fees and costs.
- Notwithstanding any other provision of the law to the contrary, the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor under this Section.

## 4. Bias Crime Reporting and Training

- The state police or other appropriate state law enforcement agency shall establish and maintain a central repository for the collection and analysis of information regarding Bias-Motivated Crimes as defined in Section 2. Upon establishing such a repository, the state police shall develop a procedure to monitor, record, classify

and analyze information relating to crimes apparently directed against individuals or groups, or their property, by reason of their actual or perceived race, color, religion, national origin, sexual orientation or gender. The state police shall submit its procedure to the appropriate committee of the state legislature for approval.

- All local law enforcement agencies shall report monthly to the state police concerning such offenses in such form and in such manner as prescribed by rules and regulations adopted by state police. The state police must summarize and analyze the information received and file an annual report with the governor and the appropriate committee of the state legislature.
- Any information, records and statistics collected in accordance with this subsection shall be available for use by any local law enforcement agency, unit of local government, or state agency, to the extent that such information is reasonably necessary or useful to such agency in carrying out the duties imposed upon it by law. Dissemination of such information shall be subject to all confidentiality requirements otherwise imposed by law.
- The state police shall provide training for police officers in identifying, responding to, and reporting all Bias-Motivated Crimes.

#### **D. WISCONSIN'S PENALTY-ENHANCEMENT STATUTE**

##### **Wis. Stat. §939.645 (1991-1992)**

§939.645. *Penalty; crimes committed against certain people or property*

1. If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

(a) Commits a crime under chs. 939 to 948.

(b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.

2. (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is one year in the county jail.  
  
(b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is 2 years.  
  
(c) If the crime committed under sub. (1) is a felony, the maximum fine prescribed by law for the crime may be increased by not more than \$5,000 and the maximum period of imprisonment prescribed by law for the crime may be increased by not more than 5 years.
3. This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).
4. This section does not apply to any crime if proof of race, religion, color, disability, sexual orientation, national origin or ancestry or proof of any person's perception of belief regarding another's race, religion, color, disability, sexual orientation, national origin or ancestry is required for a conviction for that crime.

### III. CONSTITUTIONAL CHALLENGES TO HATE CRIMES STATUTES

#### A. FREE SPEECH CHALLENGES: *RAV* AND *MITCHELL*

In 1992 and 1993, the United States Supreme Court decided two cases addressing the constitutionality of statutes directed at bias-motivated intimidation and violence: *R.A.V. v. City of St. Paul*<sup>4</sup> and *Wisconsin v. Mitchell*.<sup>5</sup>

These well-known cases have now substantially defined which hate crimes statutes are, and which are not, acceptable under the First Amendment to the United States Constitution. Based on these cases, ADL has been strongly urging states to adopt penalty-enhancement statutes based on the League's model.

In *R.A.V. v. City of St. Paul*, the Supreme Court evaluated for the first time a free speech challenge to a hate crime statute. In that case, the defendant had burned a cross "inside the fenced yard of a black family that lived across the street from the house where the [defendant] was staying." The ordinance before the Court, as interpreted by the Minnesota Supreme Court, criminalized so-called "fighting words" which "one knows or has reasonable grounds to know arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." Fighting words are words which will provoke the person to whom they are directed to violence; more than 50 years ago, in *Chaplinsky v. New Hampshire*,<sup>6</sup> the Supreme Court decided that such words were not protected by the First Amendment. Therefore, in *R.A.V.*, the state of Minnesota argued that because all so-called "fighting words" are outside first amendment protection, race-based fighting words could be criminalized.

<sup>4</sup> 505 U.S. 377 (1992).

<sup>5</sup> 508 U.S. 476 (1993).

<sup>6</sup> 315 U.S. 568 (1942). In *Chaplinsky*, the defendant had been convicted of issuing an insult after calling a city marshal a "racketeer" and a "damned fascist." The doctrine of "fighting words," elaborated in this one case, has not played a significant role in recent free speech jurisprudence. Use of the doctrine in *R.A.V.* gave every appearance of a last-ditch effort to salvage a problematic ordinance.

The Supreme Court disagreed and struck down the statute. The Court held that because Minnesota had not in fact criminalized all fighting words, the statute isolated certain words based on their content or viewpoint and therefore violated the First Amendment. Based on *R.A.V.*, hate crime statutes which criminalize bias-motivated speech or symbolic speech are unlikely to survive constitutional scrutiny. Particularly, cross burning statutes or statutes criminalizing verbal intimidation are more suspect after this decision.

However, in *Wisconsin v. Mitchell*, the Supreme Court unanimously upheld a Wisconsin statute which provides for an enhanced sentence where the defendant "intentionally selects the person against whom the crime [is committed] because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person." The defendant in *Mitchell* had incited a group of young Black men who had just finished watching the movie "Mississippi Burning" to assault a young white man by asking, "Do you all feel hyped up to move on some white people," and by calling out, "You all want to fuck somebody up? There goes a white boy; go get him."

Noting that "[t]raditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant," the Court rejected the defendant's contention that the enhancement statute penalized thought. First, the Court affirmed that the statute was directed at a defendant's conduct -- committing a crime. The Court then held that, because the bias motivation would have to be connected with a specific act, there was little risk that the statute would chill protected bigoted speech. The statute focused not on the defendant's bigoted ideas, but rather on his actions based upon those ideas. Finally, the 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." After *Mitchell*, challenges to penalty-enhancement statutes on the basis of the First Amendment to the United States Constitution appear to be largely foreclosed.

State constitutions may, however, provide greater protection for speech than does the United States Constitution. Thus, notwithstanding *Mitchell*, states are free to decide that

penalty-enhancement statutes violate their own state constitutional provisions on free speech. However, no state has done so and four state supreme courts have denied such a claim. The highest court in Oregon has rejected the claim that the Oregon Constitution prohibits penalty enhancement,<sup>7</sup> and the Supreme Court of Washington upheld the constitutionality of the Washington statute.<sup>8</sup> The Wisconsin Supreme Court rejected a motion by *Mitchell*, after the Supreme Court's decision, to assert Wisconsin state constitutional grounds.<sup>9</sup> The Ohio Supreme Court upheld the constitutionality of the Ohio statute, after *State v. Wyant*<sup>10</sup> was remanded by the United States Supreme Court.

## B. OTHER CONSTITUTIONAL CHALLENGES

Several litigants have claimed that penalty enhancement or bias-motivated crimes statutes violate the due process clause of the United States Constitution<sup>11</sup> because the statutes are unconstitutionally vague. The due process clause requires that a criminal statute give clear notice of what activity is proscribed and provide adequate guidelines to prevent arbitrary law enforcement actions. Primarily, these state cases have focused on the "by reason of" or "because of" language which triggers the bias motivation element of the crimes. Defendants argue that these clauses do not make clear when bigoted behavior will be punished. Because the statutes require the commission of an underlying crime, however, the state courts largely have rejected these claims.

Finally, several litigants have argued that state penalty enhancement or bias-motivated crimes statutes violate the equal protection clause of the United States Constitution. These parties have suggested either that the statutes unconstitutionally benefit minorities, because minorities are more likely to be victims of bias crimes, or that the statutes unconstitutionally burden majority members because majority members are more likely to be prosecuted. In each case, the state court has rejected the argument, noting that the

<sup>7</sup> See *Plowman*, 838 P.2d at 562-64; *State v. Beebe*, 680 P.2d 11, 13 (Or. App. 1984), rev. den., 683 P.2d 1372 (Or. 1984).

<sup>8</sup> *State v. Talley*, 122 Wash.2d 192 (1993).

<sup>9</sup> 504 N.W.2d 610 (1993).

<sup>10</sup> 624 N.E.2d 722 (1994).

<sup>11</sup> U.S. Const. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law"); U.S. Const. amend. XIV, §1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law").

statute is neutral on its face and that the state has a legitimate interest in punishing hate crimes more severely. As previously noted, the defendant in *Mitchell* was Black and his victim was white.

## IV. OTHER MEANS OF ADDRESSING HATE CRIMES

### A. ALTERNATIVE SENTENCING

While hate crimes laws are an essential tool in protecting victims of bias-motivated crimes, these laws cannot and do not address the attitudes which cause offenders to commit such crimes. Therefore, alternative sentencing programs which are aimed at rehabilitating individuals who commit hate-motivated crimes are useful in conjunction with traditional criminal penalties. These programs have proven to be especially effective with first-time and juvenile offenders.

ADL has therefore developed "The Juvenile Diversion Program: Learning About Differences," a 9-week series for students (and during some sessions their parents) on civil rights law, racism, anti-Semitism, the Holocaust, and a short history outlining the legacy of discrimination against minorities in America. The program, pioneered by the League's New York and Boston Regional Offices, is based on the idea that for many nonviolent hate crime perpetrators, ignorance and poor self-esteem contribute to their commission of bias-related acts. Furthermore, juvenile civil rights offenders are more likely than their adult counterparts to act out of ignorance rather than deeply ingrained attitudes. With the help of counseling and a structured program, it is possible in many cases to stimulate a change in the biased attitudes of these youth.

### B. REWARDS

Working in concert with law enforcement, rewards can in certain circumstances be helpful in encouraging individuals with information on hate crimes to come forward. A number of ADL Regional Offices have offered rewards in cases involving certain particularly heinous crimes which have been credited with bringing the perpetrators of these crimes to justice.

Even in cases where the guilty party was not arrested, the ADL rewards were credited with helping to focus public attention on the crime.

The offering of rewards for information leading to the arrest and conviction of individuals involved in hate crimes is, of course, no reflection on law enforcement's ability to prosecute hate crimes.

## FEDERAL INITIATIVES

The Federal government has an essential leadership role to play in confronting criminal activity motivated by prejudice and promoting prejudice reduction initiatives for schools and the community.

### **A. The Hate Crime Statistics Act (28 U.S.C. 534)**

Enacted in 1990, the HCSA requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. In the Violent Crime Control and Law Enforcement Act of 1994,<sup>12</sup> Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability."

Police officials have come to appreciate the law enforcement and community benefits of tracking hate crime and responding to it in a priority fashion. By compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction. Law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims.

The FBI documented a total of 4,558 hate crimes in 1991, reported from almost 2,800 police departments in 32 states. The Bureau's 1992 data, released in March 1994, documented

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<sup>12</sup> Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 18, 21, 28, 42, etc....U.S.).

7,442 hate crime incidents reported from more than twice as many agencies, 6,181 -- representing 42 states and the District of Columbia. For 1993, the FBI reported 7,587 hate crimes from 6,865 agencies in 47 states and the District of Columbia. The FBI's 1994 statistics documented 5,932 hate crimes, reported by 7,356 law enforcement agencies across the country. The FBI's 1995 report documented 7,947 crimes reported by 9,584 agencies across the country.

The FBI's most recent HCSA report, for 2004, documented 7,649 hate crimes reported by 12,711 agencies across the country. The FBI report indicated that about 53 percent of the reported hate crimes were race-based, with 18 percent committed against individuals on the basis of their religion, 13 percent on the basis of ethnicity/national origin, 16 percent on the basis of sexual orientation, and 1 percent on the basis of disability. Approximately 36 percent of the reported crimes were anti-Black, 11 percent of the crimes were anti-White. The 954 crimes against Jews and Jewish institutions comprised 12 percent of the total -- and 69 percent of the reported hate crimes based on religion. Three percent of the crimes were anti-Asian, and just over 6 percent were anti-Hispanic. [For additional details, see the attached comparison of FBI hate crime statistics from 1991-2004 at Appendix E.]

Despite an incomplete reporting record over the early years of the Act, the HCSA has proved to be a powerful mechanism to confront violent bigotry against individuals on the basis of their race, religion, sexual orientation, ethnicity/national origin or disability -- and a spark for increased public awareness of the problem. Studies have demonstrated that victims are more likely to report a hate crime if they know a special reporting system is in place.

## **B. THE HATE CRIMES SENTENCING ENHANCEMENT ACT**

Originally introduced as separate legislation by Rep. Charles Schumer (D-NY) and Sen. Dianne Feinstein (D-CA), this measure was enacted into law as Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994. The provision directed the United States Sentencing Commission to provide a sentencing enhancement of "not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes." The provision defined a hate crime as "a crime in which the

defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure, the Federal counterpart for state hate crime penalty-enhancement statutes, applies, inter alia, to attacks and vandalism which occur in national parks and on other Federal property. In May 1995, the United States Sentencing Commission announced its implementation of a three-level sentencing guidelines increase for hate crimes, as directed by Congress. This amendment took effect on November 1, 1995.

### **C. THE VIOLENCE AGAINST WOMEN ACT OF 1994 (42 U.S.C. 13981)**

In September of 1994, the Violence Against Women Act of 1994 (VAWA), which is comprehensive legislation dealing with the increasing problem of violent crime against women, was passed by Congress. This law provides authority for domestic violence and rape crisis centers and for education and training programs for law enforcement and prosecutors. Under VAWA, "(a)ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." One provision of VAWA is a new Federal civil remedy for victims of gender-based violent crimes which provides them with the right to compensatory and punitive damage awards as well as injunctive relief.

The League joined an amicus brief in *Brzonkala v. Virginia Polytechnic*, 935 F. Supp. 779 (W.D. Va. 1996), which was one of the first cases to address the constitutionality of the Civil Rights Remedy. After the district court dismissed the case, ruling that the Civil Rights Remedy was unconstitutional, the U.S. Court of Appeals for the Fourth Circuit reversed. The Fourth Circuit held that Congress did have the power to enact the Civil Rights Remedy. That court now has agreed to rehear the case en banc. The Fourth Circuit's decision, though, is consistent with the decisions of all other courts ever to consider the matter. *Doe v. Doe*, 929 F. Supp. 608 (D. Conn. 1996), was the first case to uphold the constitutionality of the Civil Rights Remedy. Since then, five other courts have also held that the Remedy is constitutional. Nonetheless, challenges to the constitutionality of the Remedy continue. ADL recently joined an amicus brief in *White and Bentley v. Gabri*, Nos. 96-521 and 96-522 (D.R.I.), again arguing that the Remedy is constitutional.

#### **D. THE CHURCH ARSONS PREVENTION ACT (18 U.S.C. 247)**

The disturbing series of attacks against houses of worship in recent years has had a searing impact on the nation and served as another graphic reminder that America's long struggle against racial and religious intolerance is far from over. Although law enforcement investigators and private watchdog groups, like ADL, have seen no indication that these attacks are part of a national conspiracy of domestic terrorism directed by organized hate groups, we should not be comforted by this fact. If it is not a conspiracy, it only means that individuals in different parts of the country at different times, often inspired by hate, are acting independently to commit these crimes.

According to Justice Department officials, from January 1, 1995, to August 18, 1998, DOJ has opened 658 investigations of suspicious fires, bombings, and attempted bombings, and has made arrests in 225 of these incidents -- involving 301 subjects. Of the 658 attacks directed against houses of worship, 220 were predominately African-American institutions. Of the 301 persons arrested for these crimes, 44 have been African Americans, and 117 have been juveniles.

The Church Arsons Prevention Act, sponsored by Sens. Lauch Faircloth (R-NC) and Edward Kennedy (D-MA), and, in the House, by Reps. Henry Hyde (R-IL) and John Conyers (D-MI), was originally designed solely to facilitate Federal investigations and prosecutions of these crimes by amending 18 U.S.C. 247, a statute enacted by Congress in 1988 to provide Federal jurisdiction for religious vandalism cases in which the destruction exceeds \$10,000.

Hearings were held on both the impact of these crimes and the appropriate response of government. Federal prosecutors testified that the statute's restrictive interstate commerce requirement and its relatively significant damages threshold had been obstacles to Federal prosecutions.

Following the hearings, Congress found that "[t]he incidence of arson of places of religious worship has recently increased, especially in the context of places of religious worship that serve predominately African-American congregations." Legislators appropriately

recognized that the nation's response to the rash of arsons should be more ambitious and comprehensive than mere efforts to ensure swift and sure punishment for the perpetrators. In a welcome example of bipartisanship, both the House and the Senate unanimously approved legislation which broadened existing Federal criminal jurisdiction and facilitated criminal prosecutions for attacks against houses of worship, increased penalties for these crimes, established a loan guarantee recovery fund for rebuilding, and authorized additional personnel for BATF, the FBI, Justice Department prosecutors, and the Justice Department's Community Relations Service to "investigate, prevent, and respond" to these incidents. Recognizing that data collection efforts complement criminal prosecutions of hate crime offenders, Congress included a continuing mandate for the HCSA.

**E. The Hate Crimes Prevention Act (HCPA): Expanding the Justice Department's Criminal Civil Rights Jurisdiction**

The HCPA, sponsored by Sens. Kennedy (D-MA), Specter (R-PA), and Wyden (D-OR), and by Reps. Schumer (D-NY), and McCollum (R-FL), would amend Section 245 of Title 18 U.S.C., one of the primary statutes used to combat racial and religious bias-motivated violence. The current statute prohibits intentional interference, by force or threat of force, with the enjoyment of a Federal right or benefit (such as voting, going to school, or employment) on the basis of race, color, religion, or national origin. Under the current statute, the government must prove both that the crime occurred because of a person's membership in a protected group, such as race or religion, and because (not while) he or she was engaging in a Federally protected activity.

In its current form, the statute leaves Federal prosecutors powerless to intervene in bias-motivated crimes when they cannot establish the victim's involvement in a Federally protected activity. Nor can Federal authorities step in to act in cases involving death or serious bodily injury based on sexual orientation, gender, or disability-based bias when local law enforcement is not available. While states continue to play the primary role in the prosecution of bias-motivated violence, the Federal government must have jurisdiction to address those limited cases in which local authorities are either unable or unwilling to investigate and prosecute.

The legislation, which has attracted the support of a broad range of national civil rights groups, state and local government associations, and law enforcement organizations, would amend 18 U.S.C. 245 in two ways: First, it would provide new authority for Federal officials to investigate and prosecute cases in which the bias violence occurs because of the victim's real or perceived sexual orientation, gender, or disability. In addition, the measure would remove the overly restrictive obstacles to Federal involvement by permitting prosecutions without requiring proof that the victim was attacked because he or she was engaged in a Federally protected activity.

## VI. Current Status of Federal Hate Crime Awareness and Training Initiatives

### A. JUSTICE DEPARTMENT PROGRAMS AND INITIATIVES

#### (1) The Federal Bureau of Investigation/Hate Crime Statistics Act

The FBI has been receptive to requests for HCSA training for state and local law enforcement officials. As of September 1998, the FBI had held more than 126 hate crime training conferences across the country, training nearly 7,700 law enforcement personnel from more than 2,600 agencies nationwide. The Bureau updated both its Hate Crime Data Collection Guidelines and its excellent Training Guide for Hate Crime Data Collection in 1996. ADL and other groups with expertise in analyzing and responding to hate violence have participated in a number of these training seminars for state and local law enforcement authorities on how to identify, report and respond to hate crimes.

#### (2) The Community Relations Service (CRS)

CRS is the only Federal agency that exists primarily to assist communities in addressing intergroup disputes. On many occasions since the establishment of CRS by the 1964 Civil Rights Act, CRS professionals, working with police officials and civil rights organizations, have acted to defuse community tensions and prevent disorders that could have escalated into riots. For example, CRS professionals have frequently provided technical assistance to law enforcement officials and community groups facing the impact of a Klan rally or a

demonstration by organized hate groups. CRS has played a leading role in the implementation of the HCSA, the Justice Department's hate crime data collection mandate. CRS professionals have participated in HCSA training sessions for hundreds of law enforcement officials from dozens of police agencies across the country. CRS has also played a coordinating role in the development and implementation of the Justice Department's new law enforcement training curriculum.

### **(3) The Office for Victims of Crime (OVC)**

In 1992, at the direction of Congress, the Justice Department's Office for Victims of Crime (OVC) provided funds for the development of a training curriculum to improve the response of law enforcement and victim assistance professionals to victims of hate crimes.<sup>13</sup> This excellent OVC training curriculum also promotes coordinated action between law enforcement officials and victim assistance professionals in the investigation and prosecution of these crimes.

### **(4) The Office of Juvenile Justice and Delinquency Prevention (OJJDP)**

In 1992, under the leadership of Sen. Herb Kohl (D-WI) and Rep. Nita Lowey (D-NY), Congress approved several new hate crime and prejudice-reduction initiatives as part of the four-year Juvenile Justice and Delinquency Prevention Act reauthorization.<sup>14</sup>

The Act included a requirement that each state's juvenile delinquency prevention plan include a component designed to combat hate crimes and a requirement that the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) conduct a national assessment of youths who commit hate crimes, their motives, their victims, and the penalties received for the crimes.

In response, in 1993, OJJDP allocated funds for this national assessment -- a Hate Crime Study to identify the characteristics of juveniles who commit hate crimes, the types of hate crimes committed by juveniles, and a profile of victims of juvenile hate crimes. After a baffling, extended delay, OJJDP submitted an incomplete and disappointing report in July 1996<sup>15</sup> that failed to provide any insights into the magnitude of the problem, the

<sup>13</sup> Bias Crimes: National Bias Crime Training for Law Enforcement and Victim Assistance Professionals, Education Development Center, Inc., Massachusetts Criminal Justice Training Council, and the Office for Victims of Crime, 1994.

<sup>14</sup> 42 U.S.C. 5601.

<sup>15</sup> Report to Congress on Juvenile Hate Crime, July 1996.

characteristics of the offenders or victims, or the causes of juvenile hate violence. The report also failed to make recommendations for future study or future action. In addition, OJJDP provided funds for the development of an excellent, wide-ranging curriculum, "Healing the Hate" -- appropriate for educational, institutional, and other settings -- to address prevention and treatment of hate crimes committed by juveniles.

#### **(5) The Bureau of Justice Statistics (BJS)**

Under a grant funded by BJS, scholars and researchers from the Center for Criminal Justice Policy Research at Northeastern University in Boston are studying differences in reporting rates among law enforcement agencies -- and identifying strategies for increasing and sustaining reporting participation by these state and local officials. In addition, BJS is currently integrating questions about bias crime into its National Crime Victimization Survey.

#### **(6) The Bureau of Justice Assistance (BJA)**

Under a grant provided by BJA, the National Criminal Justice Association prepared a comprehensive report on Federal, state and local response to hate crimes. This report, "A Policymaker's Guide to Hate Crimes," includes a review of relevant legal cases and law enforcement hate crime practices. Over the past year, BJA has provided essential funding for the development of a four-part law enforcement training curriculum, piloted in three train-the-trainer conferences in the fall of 1998. BJA also provided funding for the International Association of Chiefs of Police (IACP) for its national Hate Crime Summit in June 1998. In addition, BJA is funding an important new initiative to develop and provide training for prosecutors in responding to hate crimes. The National District Attorneys Association, through its research arm, the American Prosecutors Research Institute, is developing these training materials, best practices, and model protocols for effective response to bias crimes.

#### **(7) National Institute of Justice (NIJ)**

Under a 1995 grant provided by NIJ, the American Prosecutors Research Institute of the National District Attorneys Association conducted a survey of prosecutor protocols in handling bias-motivated cases. The objective of the initiative was to develop a hate crimes training guide for prosecutors.

### **(8) The Office of Violence Against Women**

The Office oversees the implementation of the Violence Against Women Act (VAWA). For further information see Section V(C).

### **(9) The Office of Community Oriented Policing Services (COPS)**

Hate violence can be addressed effectively through a combination of presence, prevention and outreach to the community that is the hallmark of community policing. Over the past year, the COPS Office has provided essential funding for the IACP Hate Crime Summit and for the production and distribution of the Justice Department's excellent law enforcement hate crime training initiative. In addition, the COPS Office funded several bias crime-related initiatives under its \$40 million Problem-Solving Partnership grant program.

## **B. The Department of Education**

There is growing awareness of the need to complement tough laws and more vigorous enforcement -- which can deter and redress violence motivated by bigotry -- with education and training initiatives designed to reduce prejudice. The Federal Government has a central role to play in funding program development in this area and promoting awareness of initiatives that work.

In 1992, for the first time, Congress acted to incorporate anti-prejudice initiatives into The Elementary and Secondary Education Act (ESEA), the principal Federal funding mechanism for the public schools.<sup>16</sup>

Title IV of the Act, Safe and Drug-Free Schools and Communities, also included a specific hate crimes prevention initiative -- promoting curriculum development and "professional training and development for teachers and administrators on the cause, effects, and resolutions of hate crimes or hate-based conflicts." These new Federal initiatives represent an important step forward in efforts to institutionalize prejudice reduction as a component of violence prevention programming.

In a significant step towards fulfillment of the promise of this measure, in July 1996, the Department of Education provided almost \$2 million in new grants to fund the development

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<sup>16</sup> 20 U.S.C. 6302.13

and implementation of "innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes."<sup>17</sup>

ADL received one of these grants for the development and implementation of a four-site anti-bias crime training program, STOP THE HATE, which focuses on peer training for high school students, and diversity training for teachers, administrators, parents, and the surrounding school communities.

The Department of Education took a lead role in planning the White House Conference on School Violence in the fall of 1998. The League's new Anti-Bias Study Guide for secondary schools was highlighted at that Conference.

#### **C. THE U.S. COMMISSION ON CIVIL RIGHTS**

The U.S. Commission on Civil Rights has historically held useful field hearings and briefings on race relations and hate violence. The Commission held community forums on the suspicious fires at houses of worship in six Southern states in July 1996. Hosted by its State Advisory Committees, the Commission heard testimony from community and civic leaders, and Federal, state and local law enforcement officials.

#### **D. THE DEPARTMENT OF THE TREASURY**

Hate crime response experts from around the country -- including ADL representatives -- have assisted in the development of an excellent model hate crime training curriculum for use by the Federal Law Enforcement Training Centers (FLETC) for Federal, state and local police officials. The FLETC curriculum has been presented at 22 training seminars across the country to over 650 law enforcement training personnel -- and deserves much more attention and promotion.

#### **E. THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**

In conjunction with the National Council of Churches and the Congress of National Black Churches, HUD has organized a series of information seminars at which HUD officials

<sup>17</sup> Federal Register, Vol. 61, No. 128 (July 2, 1996).

discuss its \$10 million loan guarantee rebuilding fund, with architects, lawyers, and construction specialists available to offer specific assistance. In addition, representatives from the Justice Department, BATF, and FEMA have also been on hand to discuss enforcement and arson prevention activities. Over 100 houses of worship will receive rebuilding assistance through HUD's National Rebuilding Initiative. In December 1997, HUD promulgated a proposed rule to expand civil penalties for Fair Housing Act violations. Under this new procedure, Administrative Law Judges would be explicitly authorized to assess a separate civil penalty for multiple acts involving housing discrimination. This initiative, called "Make 'Em Pay," is designed to combat housing-related acts of hate violence by increasing the severity of the consequences for committing such a crime. In addition, HUD officials are now planning a national "Healing Neighborhoods" conference in an effort to increase the housing community's awareness of hate crime issues.