



SENATE II

Hate Crime Legislation

By Basima Tewfik

Introduction

In the fall of 2006 in the small rural town of Jena, Louisiana, an African-American student asked his school principal if he could sit under a tree where white students tended to sit. He was given permission from school administrators. However, white students were not behind this decision. The next day, three white students showed their discontent by hanging three nooses from the tree. Although these students were recommended for expulsion, they were only briefly suspended, and their act was deemed as merely a prank. A couple of months later, an unrelated fight broke out between several white and black students, resulting in 6 black students being expelled and put on trial, attracting the national media. The extreme differences in punishments for the two incidents showed that although the United States had come a long way since slavery and **Jim Crow laws**, racial tensions are still present. Although Washington and the Federal Bureau of Investigation (FBI) did find signs of a hate crime in the noose incident, charges were not pressed against the three white students since it did not fall under the definition of a hate crime. This outraged groups such as the **National Association for the Advancement of Colored Peoples (NAACP)** and stirred up discussion on whether the definition of a hate crime should be expanded or not.

“Jim Crow” Laws—*laws that were enacted after the American Civil War to prevent interaction between whites and African-Americans; they long kept African-Americans subordinate to whites even after slavery was abolished.*

Explanation of the Problem

Definition of a Hate Crime

A hate crime is currently defined as “any crime against either person or property which the offender intentionally selects the victim because of the victim’s actual or perceived race, color, religion, national origin, ethnicity, gender disability, or sexual orientation” (Krouse 2). Hate crimes are treated with as much weight as other federal crimes. However, there is some controversy surrounding what constitutes a hate crime, as the incident in Jena, Louisiana proves.

National Association for the Advancement of Colored Peoples—*a non-governmental organization that works towards achieving civil rights for African-Americans.*

The Early Civil Rights Movement

The evolution of hate crime legislation today can be traced back to the Early Civil Rights Movement that gripped the nation beginning in the 1950s. Although slavery had ended nearly 90 years before, from 1880 to 1950 “Jim Crow” laws were present in many states. Although the term “hate crime” and its definition were not formalized yet, the NAACP under the leadership of African-American leaders like Marin

Luther King Jr. began to fight against these discriminatory laws using the text of the United States Constitution, which affirms equality through the 14th and 15th amendments to the constitution.

“The Second Wave of Civil Rights Movements”

In the 1970s, after the African American Civil Rights Movement had initiated some changes for equal protection under the law, the women’s rights movement and the gay rights movement swept the nation, expanding the scope of what were considered crimes motivated by prejudice. For the first time, people who were discriminated against due to the fact that they were women or homosexual began to have a voice. Rights inside and outside the courtroom were established for these two minority groups. Furthermore, the idea of “**secondary victimization**,” which is the psychological trauma that results from a victim’s participation in the legal system, developed as people began to see that defenders were inadequately penalized and victims were given insufficient protection.

Secondary victimization—the psychological trauma that results from a victim’s insufficient treatment in the legal system.

The Anti-Hate Crime Movement

From the “second wave of civil rights movements,” an anti-hate crime movement was formed, suggesting that hate crimes were an issue that society should deal with. In 1981, the Anti-Defamation League (ADL) proposed hate crime legislation and lobbied political figures to draft similar legislation modeled after the ADL’s approach. Furthermore, in the 1980s, the Southern Poverty Law Center, the ADL, and the Coalition on Hate Crimes Prevention, and the Klanwatch Project called for a compilation of hate crime statistics in order to:

1. Provide an empirical basis from which to shape public policy.
2. Raise the consciousness of reporting law enforcement agencies.
3. Stimulate local prevention strategies, more effective responses, and greater sensitivity to the specific needs of hate crime victims (Krouse 11)

Recent Developments

Hate crimes have been on the rise. In 2006, the FBI asked state and local authorities to report incidents that were motivated by bias about race, color, religion, national origin, ethnicity, gender disability, or sexual orientation. Although crimes like the noose incident in Jena, Louisiana were not included due to the narrowness of the definition, state and local authorities still reported 7,722 hate crimes—an 8% rise from the previous year. According to the 2006 FBI Hate Crimes Statis-

tics Report, slightly over half of these incidents were motivated by racial bias, 18.9% resulted from religious bias, 15.5% from sexual-orientation bias, 12.7% from ethnic bias, and 1% from disability bias about race, color, religion, national origin, ethnicity, gender disability, or sexual orientation. However, the biggest increases in hate crimes were found in actions targeting gays, Hispanics, and Muslims. Although there has been an increase in hate crimes, hate crimes are treated no differently than crimes not tinged by bias. Furthermore, historically, hate crimes are known to be underreported, due to factors such as victims' fear or belief that the justice system is against them, the voluntary nature of reporting on the part of state and local authorities, and the differing time frames in which reporting must be completed. The 2006 statistics are no exception, and because of this there has been controversy on whether or not hate crime legislation should be reformed.

Congressional Action

Federal Civil Rights Statute: 18 U S C § 245

In conjunction with other federal statutes, title 18, United States Code, Section 245, included in the Civil Rights Act of 1968, “[p]rohibits willful injury, intimidation, or interference or attempt to do so, by force or threat of force of any person because of race, color, religion, or national origin” (“Civil Rights Statutes”). This law applies to students of public educational institutions, activities administered or provided for by the government, the enjoyment of goods and services provided by public accommodations, and the use of any interstate commerce or common carrier. The FBI’s jurisdiction over hate crimes is mostly determined by this section. It is important to note that under current law the FBI has limited jurisdiction over crimes motivated by a disability bias and has no jurisdiction on crimes motivated by sexual orientation bias.

Hate Crimes Statistics Act (HCSA)

Passed in 1990 and sponsored by Rep. John Conyers, Jr. (D-MI), after years of contention, the Hate Crimes Statistics Act requires the Attorney General to gather statistics about “crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including murder, non-negligent manslaughter, rape, assault, **arson**, and vandalism” (“H.R. 1048”). In 1994, the act was amended to include crimes stemming from prejudice against those with disability. In 1996, it was amended again, making yearly data collection permanent.

Arson—the intentional burning of property.

Violent Crime Control and Law Enforcement Act

Included in the Violent Crime Control and Law Enforcement

Act, which was passed in 1994, is a provision that defines a “hate crime” as:

A crime in which the defendant intentionally selects a victim, or in the case of 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.
(Krouse 16)

The act also amended the current penalties for hate crimes and made them harsher.

Local Law Enforcement Hate Crimes Prevention Act of 2007 (HR 1592)

Introduced by Representative John Conyers, Jr. (D-MI), the act first laid out statistics showing that hate crimes are a societal problem and authorized the Attorney General to assist state and local authorities in the prosecution and investigation of hate crimes. The definition of hate crimes was expanded to include those perpetrated based on gender bias, sexual orientation bias, gender identity bias, or bias stemming from disability. Furthermore, to **offset** expenses on the part of state and local authorities resulting from the costs associated with the prosecution of hate crimes, the Attorney General was given the power to create a grant. Among its many other provisions, the sentencing of hate crime offenders was set as anywhere from 10 years of imprisonment and a fine to a life sentence. This bill is still under consideration.

Offset—to counterbalance.

David Ray Hate Crimes Prevention Act (HR 254)

Sponsored by Congresswoman Sheila Jackson-Lee (D-TX), the David Ray Hate Crimes Prevention Act was introduced in the 110th Congress on January 5th, 2007 where it was referred to the House Judiciary Committee. Action has yet to be taken for this bill. It has similar provisions as HR 1592 including the grant provision. It also asks for the United States Sentencing Commission to gather data to see if there should be stiffer penalties for adult offenders who persuade youth to commit hate crimes. Rep. Jackson introduced a similar bill in the 109th Congress, which was referred to the House Judiciary Committee as well. However, no further action was taken on this bill.

Fiscal Year 2008 Defense Authorization Act (HR 1585) and the Hatch Amendment

Senator Edward Kennedy (D-MA) amended the bill so that its language matched that of HR 1592. On the same day, the Hatch Amendment, proposed by Senator Orrin Hatch (R-UT), was added to the bill. This amendment stated that within 18 months of enactment, the Government Accountability Office must submit a report on hate crimes present

in over 20 jurisdictions. Furthermore, the amendment increased the grant size to up to \$100,000 to be given to state and local authorities to compensate for costs connected to the investigation and prosecution of hate crimes. President George W. Bush vetoed this act on December 28, 2007.

Hate Crimes Statistics Improvement Act of 2007 (HR 1164)

Introduced by Rep. Carolyn Maloney on February 16, 2007, the Hate Crime Statistics Act of 2007 amends the Hate Crime Statistics Act of 1990. It asks for the collection of data on gender-biased crimes in addition to those motivated by a religious, racial, national origin, or sexual orientation biases. This bill was referred to the House and Judiciary Committee and has not been debated yet.

Focus of the Debate

Conservative View

Religious and social conservatives tend to oppose hate crime legislation, believing that such bills criminalize certain thoughts, violating the First Amendment guarantee to free speech. This is especially apparent in the recent debate over the Local Law Enforcement Hate Crimes Prevention Act of 2007, in which the expansion of the definition of hate crime to include crimes committed against homosexuals has stirred up debate. Conservatives state that such an expansion aims to suppress the opinions of those who are against homosexuality on religious and moral bases, such as the clergy. Conservatives also oppose hate crime legislation in general because it protects certain groups included in its definitions, more than it protects others, such as the elderly and victims of non-ideological crimes. Furthermore, conservatives believe federal intervention should be limited, and that state and local authorities should deal with hate crimes.

Liberal View

Liberals tend to be strong **proponents** of hate crime legislation. The increasing trend in hate crimes concerns Liberals, and leads them to believe that hate crimes must be dealt with at the federal level. Furthermore, liberals believe that hate crimes should be treated more severely, because such crimes that are not just attacks on victims, but attacks on groups of people. Attacks directed at victims because of their association with a group are direct messages of hate towards those groups. Rep. Steve Hoyer (D-MD) stated that hate crime legislation is “a statement of what America is, [which is] a society that understands that we accept differences” (Stout).

Proponent—a supporter; one who argues in favor of.

Presidential View

President Obama is strongly in favor of improving Hate Crimes legislation. In December of 2007, then Senator Obama issued a statement in response to the House-Senate failure to include the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act as an amendment to the National Defense Authorization Act of 2007. The amendment would have strengthened the federal government's ability to assist local authorities in investigating and prosecuting hate-motivated crimes, provided additional funding to states to develop hate crimes prevention programs, and expanded the definition of hate crime to include crimes perpetrated because of sexual orientation, gender, and disability. President Obama stated the following: "Almost 40 years after Congress first enacted a federal hate crimes law, it is our moral obligation to continue striving for equality, and ensure that the federal government, along with state and local jurisdictions, have the tools necessary to effectively prosecute these crimes. Given the rise in hate crimes nationally, failure to pass this vital legislation is truly unacceptable."

Furthermore, President Obama's during his campaign made strengthening federal hate crimes legislation, expanding hate crimes protection by passing the Matthew Shepard Act, and reinvigorating enforcement at the Department of Justice's Criminal Section key priorities for his domestic agenda.

Interest Group Perspectives

The Anti-Defamation League

The **Anti-Defamation League (ADL)** is an interest group aimed at fighting against discrimination primarily for Jewish people, but it has expanded to include all people who are the victims of discrimination. Consequently, they are strong supporters of hate crime legislation. In 1980's they came up with model legislation and began lobbying state and federal politicians to incorporate hate crime legislation into congressional debate. They find that greater authority is needed on the federal level in order to truly combat hate crimes. The ADL has also been heavily involved in hate crime prevention targeting youth by educating them on hate crimes. They have also been strong advocates for the collection of hate crime statistics and police training.

Anti-Defamation League (ADL)—*interest group whose original aim was to combat discrimination against Jewish people. It has since expanded to advocate on behalf of all people who are the victims of discrimination..*

American Civil Liberties Union

A non-profit organization, and historically a supporter of hate crime legislation, the American Civil Liberties Union (ACLU) has recently attempted to make a distinction between types of hate crime legislation. The ACLU is opposed to legislation that "punish[es] the mere expression of thoughts, opinions or beliefs, including expressions . . . such as the advocacy of racial supremacy or religious bigotry" ("A Pol-

icy Maker's Guide to Hate Crimes"). However, they are in favor of more severe punishments for hate crime offenders, as the ACLU views hate crimes to be a serious societal problem. Penalties should be enhanced to reflect this. The ACLU also advocates for a narrow definition of hate crimes, believing that legislation "should be limited to situations where the underlying criminal conduct involves harassment, injury, or threat of physical injury to the victim, or damage or threatened damage to the victim's property" ("A Policymaker's Guide to Hate Crimes").

Concerned Women for America

A conservative Christian policy group, the Concerned Women for America (CWA) are opposed to hate crime legislation. They find that it is a threat to civil liberties in three ways. First, it lays groundwork for violation of the First Amendment, because it might suppress free thought. Second, because it protects some groups, but not others, it poses a danger to the idea of equal protection under the law. Thirdly, the CWA believes hate crime legislation categorizes certain actions as "thought crime," which basically means that someone's actions can be worse based on his or her thoughts that occurred before the crime. The CWA believes that although hate crime legislation is well intentioned, it poses too great a threat to existing liberties. As such, the CWA does not support the expansion of the definition of hate crime, and neither does it support the treatment of hate crimes as distinct from other crimes. Thereby, the CWA is opposed to the enhancement of penalties for hate crimes.

Possible Solutions

Improve Hate Crime Statistics

The underreporting of hate crimes may explain conservatives' and liberals' lack of urgency for addressing hate crimes at the federal level. Both conservatives and liberals agree that the statistics are nowhere near dependable enough, and both seek to improve future data. One way to improve the reliability of hate crime statistics is to encourage federal authorities to fund state and local reporting agencies. Often, non-governmental and governmental agencies at the state and local level do not have the manpower, resources, or expertise to adequately collect data. **Deducing** whether or not a hate crime is quite complex, and more training would undoubtedly aid in accurate hate crime reporting. While the FBI has created an anti-hate crime training guide, more must be done to improve data collection and analysis.

Deduce—to arrive at a conclusion through reasoning.

Increase Financial Resources at the State and Local Levels

Conservatives are unwilling to assign people at the federal level the task of investigating and prosecuting hate crimes, but most are content with the hate crime laws at the state and local levels. However, liberals see the increasing trend in hate crimes as an indication that those at the state and local level are ill equipped to deal with hate crimes. Increasing financial resources at the state and local levels may pacify both groups as the responsibility for dealing with the crimes will remain with the states and states will be better equipped to deal with the crimes. However, conservatives tend to be economically conservative so they are generally unwilling to increase funding. However, the Hatch Amendment proposed by Republican Senator Hatch called for an increase in financial assistance to state and local authorities showing that conservatives do indeed find hate crime legislation to be well intentioned, and that they might be willing to compromise with democrats in adapting budgets.

Focus on Hate Crime Prevention

Rather than focusing on hate crimes from a **retroactive** position, approaching the increasing trend in hate crimes with prevention in mind can be a solution. The debate over hate crime legislation hinges partially upon the idea of whether or not it is inherently unconstitutional in its protection of some groups over others and the unequal treatment of violent crimes due to bias. This is why varying perspectives on hate crime punishment and definition exist. However, legislation aimed at educating youth and communities about hate crime may reverse the trend of increasing acts, while not fueling controversy of how to treat crimes after they have already occurred. This consequently may also reduce the amount of financial assistance that state and local authorities need to assess and prosecute hate crimes.

R e t r o a c t i v e —
*extending in scope to a
prior time or to condi-
tions that existed in the
past.*

Questions for Policymakers

A good bill would address several questions due to the complexity of the issue and the strong party positions that come with it. Should federal authorities have greater jurisdiction over hate crimes? Should financial assistance to state and local authorities be increased in addition or as an alternative to broadening federal jurisdiction? Should legislation be aimed at prevention rather than prosecution of hate crimes? Should the definition of hate crime legislation be broadened? If so, how can a wider definition be reconciled with suggestions that it interferes with the First Amendment? Finally, should baseline statistics be improved? If so, how?

Conclusion

Hate crime legislation is a very divisive issue. Conservatives are opposed to federal involvement in the prosecution of hate crimes, the enhancement of penalties, and the expansion of the definition. Liberals, on the other hand, see hate crimes as a significant societal problem that must be addressed at the federal level through increasing federal jurisdiction and the enactment of harsher penalties. Despite the differences, the growing rate of hate crimes puts the issue at the forefront of congressional politics. This nation has been founded on ideas of freedom of speech, equal protection under the law, and opportunities for all regardless of factors such as race, ethnicity or religion, which conservatives see as conflicting when it comes to hate crime legislation. It is up to you, Senators, to tackle this issue, while preserving our nation's ideals.

Guide to Further Research

Members of congress must have solid understanding of both sides of the debate because hate crimes are a very personal issue for many people. Further research can help you understand the varying positions on the issue, which in turn can help you draft well thought-out bills that tackle **intricacies** of the issue. Below are a few links to help guide your research.

- http://www.adl.org/learn/hate_crimes_laws/map_frameset.html
Check out this interactive website to see each state's hate crime statutory provisions! Through this website you can see the range of definitions of hate crimes across the United States.
- <http://www.fbi.gov/hq/cid/civilrights/hate.htm>
The Federal Bureau of Investigation investigates hate crimes as part of their Civil Rights Program. Check out the above website to read the overview of the FBI's program and see compiled hate crimes statistics by year!
- <http://www.hatecrime.net/>
The Department of Sociology at Portland State University created the Hate Crimes Research Network with the goal of achieving a greater understanding of bias motivated crimes. Check out the above link for a wide array of information on hate crimes.

Intricacy—*One of the many small, interrelated parts of a complex whole.*

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