

The Hate Crimes Debate in Utah

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A "hate crime" is any criminal behavior in which a person or property is victimized, in whole or in part, solely because of the offender's bias against the victim's race, religion, ethnicity, national origin, ancestry, disability (mental or physical), gender, age, or sexual orientation (FBI, Hate Crime Statistics 2000, 1). As of 2000, Utah had a higher percentage of hate crimes in several categories compared to the national average, including race, religion, sexual orientation, ethnicity, and disability. The federal government still does not have an official hate crimes statute, and Utah's current law is considered by many to be too weak to be effective. Efforts to modify the law have been frustrated by several emotionally charged factors, including disagreement on the inclusion of language regarding sexual orientation.

INTRODUCTION

The images are vivid and stark: James Byrd, dragged behind a truck to his death by white supremacists because he was black; Matthew Shepherd severely beaten, hung on a fence, and left outside to die because he was gay; and Swastikas and anti Jewish messages spray-painted on synagogues are well known examples of hate crimes that have been committed in the United States. An important policy question remains: "Are hate crimes more severe, heinous and deserving of stronger penalties and punishment than other kinds of crime? And does Utah need to vitally change, strengthen and improve its current hate crimes statute to meet the needs of law enforcement and come into step with the rest of the nation?"

The hate crimes debate is a major and multifaceted issue, overwhelming in its breadth and scope. Citizens are torn and/or influenced by passionate appeals on all sides of the political spectrum. This paper will define hate crimes and compare Utah to the nation overall. It will give the historical background on current hate crimes statutes on the national and

state level, as well as the challenges to those laws, and the policy alternative offered to resolve hate crimes issues.

DEFINING HATE CRIMES

A hate crime is any criminal incident in which a person or property is victimized, in whole or in part solely because of the offender's bias against the victim's race, religion, ethnicity, national origin, ancestry, disability (mental or physical) gender, age or sexual orientation (FBI Hate Crime Statistic 2000, 1). Utah's Bureau of Criminal Investigation (BCI) and the Commission for Public Safety (CPS) describes what a hate crime is NOT:

- Any crime where the offender hates the victim.
- Any crime involving two or more different races, religions, etc.
- Any crime where a member of a majority group victimizes a member of a minority group. (BCI, 2001).

The BCI and CPS also state that hate crimes law is not designed to protect any specific race, religion, and ethnic/national origin group or sexual orientation group. The BCI provides several examples to better explain the difference between hate crimes and another kind of crime.

Example 1- A white man and a black man are drinking alcohol and playing poker, and one accused the other of cheating. A fight results and one man is injured by the other. Even though one man was white and the other black, this IS NOT a hate crime because the offender was motivated by anger, money and the alcohol.

Example 2- Swastikas and Nazi slogans are painted on a Jewish synagogue. This IS a hate crime because Nazi symbols are recognized as being anti-Jewish, and are intended to intimidate the members of the synagogue.

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Example 3- Members of gang Atag@ graffiti on every building in a neighborhood, including a Jewish synagogue. The graffiti is not anti-Jewish in nature. This IS NOT a hate crime because the synagogue just happened to get tagged with the gang graffiti along with every other building in the neighborhood, and specific bias against Jews is not displayed.

Example 4- a homosexual man assaults a heterosexual man because of his hatred toward heterosexual men. During the assault, the homosexual man repeatedly states that this world would be a better place if all the heterosexuals were killed. Even though the victim was a member of a Aminority group@ this still IS a hate crime because he was assaulted based solely on his sexual orientation. (BCI 2001)

THE SCOPE OF THE PROBLEM

Hate crimes are a serious problem in our society. Hateful acts are present in schools, on television, radio, books magazines, and on the Internet. The horrifying impact of hate is felt in every city and town throughout America. The scope of the problem at the national level has become clearer with the passage of the Hate Crime Statistics Act of 1990. Congress mandated the collection of information about crimes motivated by bias against a person’s race, religion, sexual orientation, and/or ethnicity/national origin. The hate crimes data collection program has become a part of the FBI’s annual *Uniform Crime Report* (UCR). This program began with a sample of 11 states in 1990 and has grown to cover more than 12,122 agencies in 48 states that submit data covering 85 percent of the country (FBI Hate Crime Statistics 1999, 1). Following is the statistical data showing the national and Utah percentages.

Hate Crimes 2000 Statistics							Total Incidents
	Racial	Religion	Sexual Orientation	Ethnicity	Disability	Multiple Bias	
National	54.7 %	16.4%	15.9%	12.4%	.04%	.02%	8152
Utah	52.1%	18.3%	16.9%	12.7%	0	0	71
Hate Crimes 1999 Statistics							Total Incidents
	Racial	Religion	Sexual Orientation	Ethnicity	Disability	Multiple Bias	
National	56.3%	16.5%	16.0%	10.9%	0.2%	.01%	7876
Utah	52.4 %	13.6%	17.0%	17.0%	0	0	59

(FBI-UCR, 1999 & 2000)

Nine known hate groups have arrived in Utah since 1998: however it is unknown how many more unofficial groups exist (Suazo, 2001). One recent example conveys the enormity of the problem better than statistics. On Halloween night in 1998 Bernard Repreza was murdered by a Straight Edger gang in downtown Salt Lake City (Jensen, 1999, B2). The late Senator Pete Suazo recalled the Repreza murder. He was killed in front of the Federal Building by a gang of 30 Straight Edgers (Suazo, 2001). They beat him with a spring loaded bully club, metal batons, and bats and finally stabbed him in the stomach (Jensen 1999, B6). The Edgers’ beliefs are anti-smoking, anti-meat eating, anti-ethnic, and anti-immigrant. Although police claimed this was not a hate crime, Senator Suazo contended that the Straight Edgers’ targeted him because he was Latino and small (Suazo, 2001).

FEDERAL AND STATE LAWS

The Federal Government does not have an official hate crimes statute. Senator Edward Kennedy (D-Massachusetts) has spearheaded an effort to pass the *Hate Crimes Prevention Act (HCPA)* every year since 1997. In 2001 the national hate crimes bill had a name change, it is now called the *Local Law Enforcement Enhancement Act of 2001 (LLEEA) S625 IS* (U.S. Senate, 2001). This bill proposes that the Attorney General of the United States can provide, by the request of state law enforcement or Indian tribe official, with technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution or any violent crime or felony that is motivated by prejudice based upon the race, color, religion, national origin, gender, sexual orientation or disability of the victim. The bill also outlines the penalties for those prosecuted for such actions, and provides for the sentencing committee to study and issue sentencing enhancements to adults who have recruited juveniles to commit or assist in the commission of a hate crime (U.S. Senate, 2001. §§ 4, 8).

Forty-seven states and the District of Columbia utilize one form or another of a hate crimes law. Idaho and Wyoming are the two states that do not have any form of a hate crimes statute and Utah’s current hate crimes statute is so vague that cases are routinely thrown out of court. Paul Boyden of the Statewide Association of Public Attorneys (SWAP) said, “Local law enforcement and prosecutors look for some sort of federal connection to bring charges to prosecute most of Utah’s hate crimes at that level instead of using our current law (Boyden, 2001).”

THE CURRENT UTAH STATUTE

In 1990, a Jewish woman approached Representative Frank Pignanelli (D-Salt Lake City), and asked him if he would sponsor some legislation addressing the hate crimes issue. A group of skinheads had moved into her neighborhood, and found out she was Jewish; they painted swastikas and “Die Jewish Slut” on her home. When the woman called the police, she was told the perpetrators could be charged with property damage only, but not discrimination. At the time there were no bias or discrimination laws on the Utah books. A few weeks after this incident, the same group broke into her home and gang raped her. “These crimes were more heinous and more severe,” Pignanelli noted, “because they pre-selected this woman on the mere basis of her being a Jew (Pignanelli, 2001).

After hearing this woman’s story, Pignanelli began his research into the hate crimes issue to determine the need for a law, and how a law might be enforced. He spoke with the Attorney General’s office, state and local law enforcement, attorneys, and the various minority organizations, and found that every group he spoke to said they could benefit from a hate crimes laws. This support and passage of similar legisla-

tion in other states encouraged him to pursue hate crimes legislation in Utah (Pignanelli, 2001).

In 1991, Pignanelli presented to the Utah State Legislature HB 323, *Hate Crimes Statistics Act*, which would establish a statewide crime reporting system including statistics concerning crimes that exhibit evidence of prejudice based on race, religion, sexual orientation or ethnicity (Utah State Legislature, 1991). The bill passed the House but was killed in the Senate (Utah Office of Legislative Research, 2000, 2). The following year Pignanelli presented another version of the *Hate Crimes Statistics Act* as HB 111. This bill amended the duties of the BCI and the CPS to investigate, record and report statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin or ethnicity. Subject to certain restrictions, the bill also required an annual report to be published concerning the extent, fluctuation, distribution and nature of crime in Utah (Utah State Legislature, H.B. 111, 1992). This bill passed the House and the Senate (Utah Office of Legislative Research, 2000 2). That law helped Utah participate in the hate crimes data collection program for the FBI's annual UCR.

When Pignanelli introduced HB 112 *Hate Crime Penalties*, in 1992, he followed the majority of states by using the Anti-Defamation League's (ADL) legal model for his legislation, which provides for enhancement of penalties and a specific listing of protected groups (ADL 1999 § 2). The one difference between H.B. 112 and the ADL's model was that sexual orientation was defined as "consensual homosexuality or heterosexuality" (Utah State Legislature, H.B. 112, 1992). House Bill 112 died in the House Judiciary committee primarily because of the inclusion of sexual orientation in the protected group listing (Pignanelli, 2001). However, the bill was resurrected with the help of some moderate Republicans that felt Utah needed to have some sort of hate crimes law (Pignanelli, 2001). After much amending, HB112 passed through the committee as a mere shadow of the original bill. Pignanelli was concerned that the bill would not be workable, and wanted to start fresh the next year. After consulting with minority groups as well as prosecutors though, all parties indicated they could work with the bill as it stood (Pignanelli, 2001).

At this time conservatives and the American Civil Liberties Union opposed the bill. Pignanelli felt compelled to play what may be termed the "religion card." He reminded House members who belonged to the state's predominant religion that their pioneer ancestors were persecuted, raped, killed and driven by mobs from their homes on several occasions because of religious prejudice. "I felt that they of all people should be sensitive to the needs of all vulnerable groups in our community because of their own historical experience..." (Pignanelli, 2001). H.B. 112 passed with its name changed to *Hate Crimes Penalties-Civil Rights Violation*, and the Substitute bill did not include a specified group listing, nor did it men-

tion bias or prejudice in the selection of a victim. The bill passed in the House and the Senate (Utah Office of Legislative Research, 2000). It is Utah's current hate crimes statute.

ENFORCEMENT AND JUDICIAL CHALLENGES

Over time Pignanelli's initial concerns with the bill having no specified listing of protected groups have become fully justified. Despite prosecutor Paul Boyden's assurances that the amended version would be workable, Boyden contends that prosecutors do not like to use the existing statute for several reasons. "1.) It is too vague. 2.) The language is too tedious and time consuming to relate to a jury, and 3.) It is more of a civil rights statute than a hate crimes law" (Boyden, 2001). In an interview he pointed out the two sections he feels are the biggest problems with the statute.

Section 2- A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is guilty of a third degree felony.

Section 3- "Intimidate or terrorize" means an act, which cause the person to fear for his physical safety, or damages the property of that person or another. The act must be accompanied with the intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or laws of the State or by the Constitution or laws of the United States. (Utah Code 76-3-203.3)

Boyden stated that, "As a prosecutor I have to prove to a judge or jury that the defendant intended to 'intimidate and terrorize' the victim so much that s/he could not participate and enjoy their constitutional rights. That is very difficult to do" (Boyden, 2001).

In addition, a Third District Court Judge expressed some of his concerns in a memorandum during the 1999 case *State of Utah v. Jason Millard and Brian Hitt*. Judge William W. Barratt lauded the state's attempt to protect people against hate-motivated conduct based upon sexual orientation. However, Barratt believed the State had not identified sexual orientation as a protected class, and therefore had not identified any rights that would protect an individual on the basis of sexual orientation. The judge agreed that the statute is incomplete, because it does not clearly identify the class of persons protected (Barratt, 1999).

An actual court ruling on the issue came on June 28, 2001, in a case brought before the Utah Court of Appeals. In the case of *J.W. v. the State of Utah*, defense attorneys raised some of the same issues: Utah's hate crimes statute should be void for vagueness and, they contend the Utah hate crime statute does not pass constitutional scrutiny due to its failure to enumerate protected classes of victims (*J.W. v State of Utah*, Court of Appeals-Brief of Appellate, 2001). J.W., a minor, was convicted of assault-hate crimes under the Utah statute. The Court found sufficient evidence to support J.W.'s assault conviction, but concluded that there was insufficient

evidence to support penalty enhancement of the assault under 76-3-203.3. They reversed the sentence and remanded for re-sentencing for the assault conviction (*J.W. v. State of Utah*, 2002).

The Court referred to section 76-3-203.3 as an “Exercise of Rights Statute” instead of a “Hate Crimes Statute” because it provides for enhancement of penalties whenever one commits a primary offense with the intent to cause fear enough to prohibit someone from freely exercising their Constitutional rights. They noted that the Utah statute refers to hate crimes in the title but there are no enumerated protected classes, and under the current law the penalty for a primary offense may be enhanced regardless of whether or not the defendant was motivated by hatred, bias or prejudice (*J.W. v State of Utah*, 2001).

THE NEW HATE CRIMES BATTLE

Prior to his death in August 2001, Senator Pete Suazo, the only Latino legislator in the Utah Legislature had vowed to pass a more comprehensive hate crimes bill. Two forces had motivated Suazo: the total lack of prosecution of hate crimes under the state’s statute, and the death of Bernardo Repreza. The vagueness of the law, according to Suazo had led to zero prosecutions at the state level. Additionally, at the funeral for Bernardo Repreza Suazo had promised the boy’s mother that he would fight for a stricter law (Suazo, 2001).

Suazo started his crusade during the 1999 Utah Legislative session with SB 34 *Hate Crimes Amendments* SB34 would have provided enhanced criminal penalties for some crimes that targeted certain categories of people (e.g. by color, gender, sexual orientation, and physical and mental disabilities) and institutions (e.g. churches, and medical facilities like abortion clinics) (Utah State Legislature, S.B. 34 1999). The bill died in the Senate Judiciary Committee (Utah Office of Legislative Research, 2000).

Starting in 1999, Suazo received several death threats from hate groups, such as the National Alliance, the same anti-black, anti-Jew and anti-government group which Oklahoma bomber, Timothy McVeigh, belonged to (Suazo, 2001). At least one member of the group specifically targeted Suazo and his family. Because of this intimidation Suazo was persuaded to obtain a concealed weapon permit and carry a gun to protect himself and his family against these political terrorists groups (Suazo, 2001). Even during the 2001 legislative session he wore a bulletproof vest for the four days he debated the bill (Suazo, 2001).

During the 2000 and 2001 Legislatures, Suazo took a different approach by copying language used in an eight-year-old Texas statute. That statute contained provisions that a defendant “intentionally selected a victim primarily because of the defendant’s bias of prejudice against the victim’s affiliation or perceived affiliation with a “group”. The punishment for the offense is “increased punishment prescribed for the next highest category of offense”(Texas Penal Code Ann., §12.47). By

using the word “group” as the key phrase of the Utah bill, instead of naming the protected groups, Suazo and President of the Statewide Association of Public Attorney’s (SWAP), Paul Boyden, felt they had a piece of legislation that could pass the conservative legislature and would also be a more useful tool than the current statute (Suazo, 2001).

In the 2001 session however, Texas determined that the generic referral to “groups” in the law was not effective. The law was rewritten to protect from prejudice groups identified by “race, color, disability, religion, national origin, ancestry, age, gender or sexual preference”(Harrie, 2001). Texas also included age as an additional category in their listing of protected classes. The proponents of the bill in the Texas Legislature made one concession to the conservatives when they allowed an amendment replacing the original wording of “sexual orientation” to “sexual preference” (Harrie, 2001).

Patrick Johnson, counsel to Texas Representative Sefronia Thompson, D-Houston, and sponsor of the new hate crimes legislation, said Utah would be making a big mistake to follow Texas’ eight-year-old lead to the same dead end. Lonestar State lawmakers “voted to repeal an existing statute that critics say is ineffective, vague and legally shaky” (Harrie, 2001). This creates a whole new problem in the fight for a new hate crimes law in Utah because the charges of vagueness in the law are the same arguments that Utah officials use against the current statute.

During the 2002 Utah Legislative session, Senator Alicia Suazo, having been sworn into office in September 2001 to sit in her deceased husband’s stead, had the option to choose between the two legislative models: The ADL model and the Texas model. She chose to use the ADL model instead of the former Texas model for this year’s bill and submitted SB 64, *Hate Crimes Amendment*. This bill would have enhanced penalties for crimes that target anyone belonging to the specified protected group listing. However, the bill was killed in the Senate Judiciary Committee (Utah Office of Legislative Research, 2002). Now that the 2002 session is over, and Alicia Suazo has decided not to run for re-election, a new problem arises in who will lead the effort for a new and more effective hate crimes law in Utah?

THE POLICY ARGUMENT: DO HATE CRIMES DESERVE STRONGER PENALTIES?

Proponents believe that the difference between hate crimes and other crimes is that the victims are not just the individuals, but also the entire community to which they belong. “A crime motivated by bias and prejudice toward groups extends beyond individual victimization and involves injury, threat, and victimization against community and pluralistic society,” said Paul Boyden from SWAP. “It is divisive to the whole community because it alienates that group from the rest of society. The groups are more vulnerable to attack than others” (Boyden, 2001). Ron Gordon of the Commission of Criminal and Juvenile Justice (CCJJ) added, “Someone who

commits a hate crime does not necessarily have any specific problem with the individual personally. He pre-selects his victim to send a message to the entire group as a whole. This is why hate crimes are more serious than other kinds of crime because they victimize more than one person" (Gordon, 2001).

If these statements are true, most hate crimes are pre-meditated, with more thought given in the pre-selection of the victim and the kind of crime committed than other offenses or random acts of violence and vandalism. According to Gordon "This kind of crime becomes more of a public safety issue than anything else because of all the factors it involves" (Gordon, 2001). These factors include:

- Retaliatory offenses.
- Community unrest, fear, and tension
- Copycat acts
- Unique emotional harms
- Redirection of law enforcement resources
- Loss of trust in criminal justice institutions (Utah Sentencing Committee, 2000)

The American Psychological Association (APA) concluded that this kind of attack takes place on two levels; "not only is it an attack on one's physical self, but it is also an attack on one's very identity (APA, 1998. 2). The emotional damage can cause intense feelings of vulnerability, anger, and depression, physical ailments and learning problems, and difficult interpersonal relations – all symptoms of post-traumatic stress disorder can be brought on by hate crimes" (APA, 1998. 4).

Enforcing hate crimes legislation is arduous, emotionally draining, time consuming and resource depleting. Bob Gallagher, the Civil Rights specialist at the FBI's Salt Lake office, said, "Hate and discrimination are instilled and ingrained into children through the environment in which they are raised" (Gallagher, 2001). While hate crimes legislation probably cannot change one's environment, hate crimes supporters feel that new laws with enhanced penalties will have a deterrent effect that would help reduce the influx of hate groups recruiting and moving into an area. Utah State Attorney General Mark Shurtleff said,

The message that [hate crimes] law sends to all the white racist and other hate groups is that when their bias and prejudice is manifested by a physical action, it is considered unacceptable and intolerable behavior. It will be punished to the greatest extent of the law. I am the Attorney General of this state, and it worried me that our lack of a workable hate crimes law leads these groups to believe that Utah is sympathetic and tolerant of their racist beliefs. And we are not (Shurtleff, 2001).

The opponents of hate crimes legislation feel that a crime is a crime, and that bias motivated crimes law is punishing a person's thought process and not necessarily the crime itself. Daniel B. Newby of the Sutherland Institute contends that

the spate of laws takes the difficult job of determining intent to a new level. Special classes of victims are created, who are afforded a higher level of government protection than others victimized by similar crimes. Such laws "attempt to discover and then punish what people think, rather than focusing on criminal acts of violence and vandalism." Newby further suggests that such laws attempt to categorize and play favorites with varieties of hatred. "Can a judicial system remain just," Newby asks, "while setting up a special hierarchy of victims and increasing punishments for those harboring the 'wrong' kinds of thoughts?" (Newby, 1999).

Such arguments suggest that there are enough laws dealing with criminal behavior on the books that there is no need for additional legislation. Opponents quote the U.S. Constitution to remind us that every one is guaranteed equal protection under the law. David Spackman, a political activist and opponent to hate crimes, contends that hate crimes legislation not only violates this principle of individual and equal justice under the law, but that such laws will "almost certainly will bring more misery to the population than whatever injustice happens now" (Spackman, 2001).

The most volatile argument presented against hate crimes legislation is the inclusion of sexual orientation among the protected groups. In general hate crimes legislation has been tagged as a vehicle for gay rights. Acknowledging sexual orientation in the statute is perceived by opponents as a validation, and legislation as the window of opportunity the gay community needs to introduce more gay rights and the eventual acceptance of gay marriage (Mylar, 2001). To many this is unacceptable, especially with the predominant conservative view that homosexuality is a choice and not an innate genetic disposition. The strongest fear is based upon the supposition that a strong homosexual influence would have a negative effect on traditional family values. Parents and political activists feel that a hate crimes law would be the first step to the infiltration, education and forced acceptance of the homosexual lifestyle in schools and the community.

Proponents argue that hate crimes laws do not give gays and lesbians any more rights, but it sends the message that the discrimination, assault or murder of someone based upon their sexual orientation is wrong. Darrin Hobbs of the Gay and Lesbian Community Center of Utah refuted the opponent's claim by stating "We do not consider hate crimes to be the vehicle to gay rights because it is a completely separate body of law" (Hobbs, 2001). Hobbs further purports that the notion of sexuality as a choice is absurd. "Religious affiliation," Hobbs claimed, "is always a matter of choice; it is always included and seems to cause no lawmaker any difficulty in conscience" (Hobbs, 2001). The response of gay groups is that they do not seek gay rights, they just want equal rights. They feel that hate crimes laws would guarantee them the protection they need to go about their own business free from persecution and abuse.

Another policy argument centers around the impact of hate crimes laws on the community as a whole. Supporters of

hate crime legislation maintain that the effect will be positive. Currently, vulnerable groups feel afraid to participate in society and segregate themselves out of the community because of a lack of trust in law enforcement and the judicial system. This belief stems from the perception that law enforcement authorities are apathetic to their needs and less likely to protect their interests. Enactment of legislation will have the effect of healing divisions between groups (Litvack, 2001).

The counterpoint argument suggests that hate crimes legislation is more divisive to the community because the listing of specific protected classes of victims identifies them as different and therefore creates the perception they are unequally protected under the law. Thus, this effort to heal racial and other divisions within society succeeds only in accentuating and aggravating those divisions and pushing the protected classes further out of the mainstream. In a twist of logic, opponents assert that such laws lead to persecution of more minorities than non-minorities, consequently hurting the very people that the law was intended to protect (Reynolds, 2001). The existing level of cynicism would only be aggravated as minority groups come to perceive hate crimes laws as simply another tool for the “powers that be” to further oppress them.

EDUCATION AND TRAINING PROGRAMS

Community leaders and law enforcement, such as city government, judges, police, and school officials, could take important steps to remedy the cynicism and distrust that minorities feel about the disparity in the judicial system. This change in perception can be brought about by improving public relations, and by implementing sensitivity training programs (Litvack, 2001). An example of this kind of training if offered by the Simon Wiesenthal Center’s national Institutes against Hate Crimes at the Museum of Tolerance, brings together multidisciplinary teams of law enforcement professionals from cities, regions, and states, for four-day intensive courses that provides training seminars in diversity awareness and hate crime identification (BJA May, 2000 3-5).

Another example is *Stop The Hate Week* that has been initiated in Massachusetts’ middle and high schools as another method to increase the awareness of prejudice in the community and bias motivated crime. During the week, hate crimes curricula for students are distributed, and lists of bystander responsibilities for acting against bias, prejudice, and hate crimes are promoted. “Cultural and educational activities such as art exhibits on civil rights history; speaking events featuring survivors on the Holocaust; community forums, and a variety of programs are directed and sponsored by students themselves” (BJA May 2002 16). Other hate crime projects have been started by the Attorney General’s Office in the states of Maine and Massachusetts (BJA, May 2000, 13-16). Initiatives have been implemented in Los Angeles County and the City of San Diego, California (BJA, 2000 7-11).

CONCLUSION

Hate-based crimes are a disturbing and complex problem in our society. However, the debate on hate crimes legislation seems to be based more on speculation than evidence. In the most recent statistical data, hate crime incidents rank very low in the percentage of all reported crime in the United States. This does not take into account though, that the data from the FBI concentrates on reported crimes, and there may be numerous instances of unreported crimes (Loven, 2001 A1). Camille Anthony presented “Shedding Light”, a study of crime conducted by CCJJ, to the 2002 Utah State Legislature. She told them that “the most alarming [finding] was that victims don’t report crime as a general rule” (Cantera, 2002. B2). Unreported crime does not allow law enforcement to fully understand the depth and scope of the real issue. Judy Kasten Bell, administrator with the Utah Domestic Violence Advisory Council, commented that social stigma prevents many victims from reporting crime committed against them. Therefore, it stands to reason that the distrust of law enforcement that minorities feel would keep them from reporting hate crimes, and would contribute to the lack of accurate statistical data.

Moreover, the number of hate crimes may not coincide with the severity of such crimes. In an article entitled *Hate Crimes, Worse by Definition*, Bryan Leven wrote, “Hate crimes are more likely to involve excessive violence, multiple offenders, serial attacks, greater psychological trauma, a heightened risk of social disorder, and a greater expenditure of resources to resolve.” Studies have shown that hate crimes are seven times more likely to involve attacks against persons, two times more likely to cause injury, and four times more likely to cause hospitalization when compared to crimes in general (Leven, 1999, 12). Routinely, hate crimes are more premeditated than other types of crimes because they are typically preceded first, by acts of intimidation, as in the case of the Jewish woman. Examples, such as the ones mentioned in this paper, illustrate the severity and heinous nature of these vicious acts, and shows a need for enhanced punishment because of the pre-selection of the victim, and the extra measures taken by the perpetrator(s) to plan and execute the crime.

Fortunately the United States Supreme Court has overturned hate crimes statutes and ordinances that invoke the “thought police”. In 1992, the Court was asked to determine the constitutionality of the St. Paul, Minnesota hate speech ordinance in the case of *R.A.V. v St. Paul*. R.A.V. had burned a cross in an African- American family’s front yard. He was found guilty of violating the hate speech ordinance. The St. Paul City Council believed the ordinance would be upheld because of the “fighting words doctrine” of unprotected speech under the First Amendment. However, the Court unanimously invalidated the ordinance that specifically prohibited certain the kinds of speech, symbols, and expressions that would arouse anger, alarm and resentment in others on the basis of their race, religion, creed or gender (*R.A.V. v St. Paul*, 1992). With its decision in the *R.A.V.* case, the

Supreme Court invalidated those hate crimes laws where the criminality hinged on the idea expressed. No one wants to punish people for their thoughts, or expressions, but when hateful thought becomes action it is then punishable.

After watching the movie *Mississippi Burning*, and being incensed by a scene in which a young black boy is beaten by white supremacists while praying, Todd Mitchell, a nineteen year old African-American incited his friends to beat a white fourteen year old, male passer-by. The boy was rendered unconscious and remained in a coma for four days (*Wisconsin v. Mitchell*, 1993). Mitchell was convicted of aggravated battery under the Wisconsin statute 939.645(1)(b) (*Wisconsin v. Mitchell*, 1993). The statute indicates that a penalty enhancement will be given when the defendant intentionally selected the victim based on specific class characteristics. On appeal the Wisconsin Supreme Court reversed the decision because of the penalty enhancement provision. The case then went to the Supreme Court where the Court reversed the Wisconsin Supreme Court decision, and unanimously upheld Wisconsin's penalty enhancement hate crimes statute (*Wisconsin v. Mitchell*, 1993). With the Mitchell decision the Supreme Court admitted the severity crimes motivated by bias or prejudice, and issued its support for penalty enhancement hate crimes law. In the R.A.V. case the court narrowed the definition of acceptable attributes of hate crimes law.

If a hate crimes law is carefully written and strong enough, it can serve as a deterrent for potential perpetrators and a tool for prosecutors and law enforcement. Forty-three states and the District of Columbia use the penalty enhancement form of hate crimes law and specify the protected groups. Utah needs to amend its current useless statute, and come into step with the rest of the nation. Fortunately, Utah has not had a national headline drawing incident, like the Shepherd and Byrd cases, which would accentuate the inadequacy of the current statute. However it is only a matter of time before a significant incident occurs.

Utahns need a clear statement to come from the Utah State Legislature that there are serious consequences to criminal actions stemming from prejudiced beliefs. It is time to look at worst case scenarios and draft a fair and equitable hate crimes law that would make it possible to prosecute effectively in cases like those of James Byrd and Matthew Shepherd.

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