



United States Mission to the OSCE

Plenary Session 6: The role of legislation, law enforcement, data collection, and civil society in combating and preventing intolerance and discrimination, including hate crimes

As prepared for delivery by the United States Delegation
to the OSCE Tolerance and Non-Discrimination Conference,
Tirana, Albania, May 21, 2013

The United States has consistently utilized the tools of legislation, law enforcement, and data collection, in addition to working with civil society to address nonviolent and violent forms of discrimination.

Our federal hate crimes statutes are an important tool for ensuring that all our citizens can live free from fear of being targeted because of the color of their skin, the religion that they practice, or whom they love. From the passage of the first hate crimes statute in 1968 (18 U.S.C. § 245) to the enactments of the Hate Crimes Statistics Act in 1990 (28 U.S.C. § 534), the Hate Crime Sentencing Enhancement Act of 1994 (28 U.S.C. § 994), the Church Arson Prevention Act in 1996 (18 U.S.C. § 247) and, most recently, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA or Act) in 2009 (18 U.S.C. § 249), our country has made clear that violent acts of intolerance have no place in our society. This is because hate crimes victimize not just individuals, but entire communities.

The Shepard-Byrd Act, named for the victims of two outrageous hate crimes that shocked and galvanized our society, strengthened and expanded existing U.S. hate crimes laws. The preexisting laws covered race and religion, and the 2009 Act added crimes motivated by sexual orientation, gender, gender identity and disability. It marked the first federal statute to include sexual orientation as a protected class. It also authorizes funding to assist state and local agencies in investigating and prosecuting hate crimes.

U.S. hate crimes laws can be used to prosecute those who use actual violence to express their hatred. Our constitution protects the right to free speech and freedom of expression. But free speech is not a license to assault or kill or to engage in acts of vandalism. Some of our hate crimes laws punish threatening conduct that arises to the level of a "true threat." A true threat is a statement that a reasonable recipient would take to mean that the speaker, or people working with the speaker, intend to commit physical harm against the recipient, as opposed to efforts to annoy or engage in political hyperbole.

While enactment of this law was a major milestone, it is not enough to put a law on the books. Effective implementation and training for all stakeholders – federal prosecutors, federal investigators, and their counterparts in our state and local law enforcement agencies, along with civil society members and community leaders – is critical to our mission of

investigating and successfully prosecuting hate crimes. Since 2009, the Civil Rights Division of the U.S. Department of Justice and partners in the FBI, U.S. Attorneys Offices, and the Community Relations Service have conducted dozens of trainings across the country. We have found it particularly effective to include all of these stakeholders together in trainings. This allows law enforcement, civil society and community leaders to build relationships and trust before there is a crisis, promoting communication and an effective response when a possible hate crime occurs.

We have found it particularly important to train law enforcement officers who are the “first responders” to an assault or other act of violence, so that they know what questions to ask and what evidence to gather at the scene to allow prosecutors to make an informed decision about whether a case should be prosecuted as a hate crime. Thousands of law enforcement officials – federal, state, and local – have received training. In fact, one of the first cases to go to trial under the new hate crimes act came to our attention because a law enforcement officer who had attended the training contacted us weeks later to say he had just been called to the scene of a crime that he thought might be covered as a hate crime.

The FBI and other federal agencies continue to lend their investigative and scientific expertise to our state and local law enforcement partners in these crucial cases. In addition, the HCPA has expanded the mandate of the Community Relations Service (CRS), an agency that helps communities prevent and respond to violent hate crimes committed on the basis of gender, gender identity, sexual orientation, religion, and disability, in addition to CRS’s traditional role vis-à-vis hate crimes committed on the basis of race, color, and national origin. These enhancements have improved CRS’s crisis response across the country and have enabled it to better fulfill its mandate.

The collection of data to assess and develop targeted responses to levels of discrimination in our society has been essential to our efforts to address these issues, and we regret that some OSCE participating States have claimed that privacy protections prevent them from collecting information that might be critical for documenting and combating discriminatory practices.

In the United States, we use both incident reporting by law enforcement, and surveys of victims to give us a fuller picture. The FBI’s Uniform Crime Reporting Program (or UCR) collects data from law enforcement agencies throughout the country on instances of hate crimes in their communities. In the most recent Report, for 2011, around 1,900 law enforcement agencies reported 6,222 hate-crime incidents. In the United States, hate crimes data collection involves recording the bias motivation on criminal offenses already being reported to the FBI.

This year, the United States will officially submit the OSCE Hate Crimes Questionnaire for inclusion in the OSCE’s Annual Report. We also will work with ODIHR to make the FBI UCR data for 2012 available on the OSCE’s electronic report when it is published.

Unfortunately, the FBI can track only those hate crimes that are reported to it. Approximately 100 law enforcement agencies in cities with populations of more than 100,000 did not report or reported zero hate crimes in 2011. The collection of accurate statistics is difficult because

some local law enforcement agencies do not know to classify certain crimes as hate crimes or choose not to report to the FBI hate crimes of which they are aware.

To assist in that effort, and to provide training on reporting crimes for the new categories in the Shepard Act, the FBI recently issued a new Hate Crimes Data Collection Guidelines and Training Manual. Available on the FBI website, it includes input from federal, local law enforcement and civil society. It also includes definitions and case studies to train first responders and analysts preparing reports on the categories added in 2009 – gender, disability, and gender identity. Sexual orientation, while new to the hate crimes criminal code, has been included in our hate crimes statistics reporting since 1990. Collecting data can assist states and civil society in identifying problems and trends, and in devising effective solutions. For these reasons, we call on member states to collect and publish disaggregated data reporting on hate crimes incidents by type of bias motivation and by jurisdictions.

Of course, many victims of hate crimes do not report the crimes to their local law enforcement agency. The Department’s Bureau of Justice Statistics’ National Crime Victimization Survey (NCVS) estimated that there were approximately 260,000 bias motivated crimes annually in the United States between 2007 and 2011. Based on the survey, the percentage of hate crimes motivated by religious bias more than doubled between 2003-06 and 2007-11 (from 10% to 21%), while the percentage motivated by racial bias dropped slightly (from 63% to 54%).

Civil society has been another integral component to these efforts, with activities ranging from providing draft language for these laws to monitoring and reporting on incidents of discrimination.

Despite these and many other efforts, we are still grappling with prejudice and unlawful discrimination in our country. These incidents have no place in our country, and they remind us of the civil rights challenges we still face today. We will continue to aggressively prosecute hate crimes of all kinds.

We call on participating States to utilize the specialized work of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Tolerance and non-Discrimination Unit for capacity building and training for civil society and law enforcement, in addition to using the “Hate Crime Laws: A Practical Guide” to assist in the development and implementation of legislation.

Lastly, we believe it is important to commemorate the tenth anniversary of the adoption of the European Union’s Racial Equality Directive (Council Directive 2000/43/EC) and note additional anti-discrimination and equality provisions under the EU Charter of Fundamental Rights following the adoption of the Lisbon Treaty, as laws such as these have served as the foundation for efforts to combat unlawful discrimination and foster equality in the United States.

Thank you.