

8-2019

## The Debate Over the Efficacy of Federal Hate Crime Legislation: A Look at Arlen Specter's Senatorial Efforts and its Legacy

Sierra Reddi

Thomas Jefferson University, [sierra.reddi@jefferson.edu](mailto:sierra.reddi@jefferson.edu)

Follow this and additional works at: [https://jdc.jefferson.edu/ascps\\_fellowship](https://jdc.jefferson.edu/ascps_fellowship)

 Part of the [Civil Rights and Discrimination Commons](#), and the [Political History Commons](#)

[Let us know how access to this document benefits you](#)

---

### Recommended Citation

Reddi, Sierra, "The Debate Over the Efficacy of Federal Hate Crime Legislation: A Look at Arlen Specter's Senatorial Efforts and its Legacy" (2019). *Arlen Specter Center Research Fellowship*. Paper 5.

[https://jdc.jefferson.edu/ascps\\_fellowship/5](https://jdc.jefferson.edu/ascps_fellowship/5)

This Article is brought to you for free and open access by the Jefferson Digital Commons. The Jefferson Digital Commons is a service of Thomas Jefferson University's [Center for Teaching and Learning \(CTL\)](#). The Commons is a showcase for Jefferson books and journals, peer-reviewed scholarly publications, unique historical collections from the University archives, and teaching tools. The Jefferson Digital Commons allows researchers and interested readers anywhere in the world to learn about and keep up to date with Jefferson scholarship. This article has been accepted for inclusion in Arlen Specter Center Research Fellowship by an authorized administrator of the Jefferson Digital Commons. For more information, please contact: [JeffersonDigitalCommons@jefferson.edu](mailto:JeffersonDigitalCommons@jefferson.edu).

# **The Debate Over the Efficacy of Federal Hate Crime Legislation: A Look at Arlen Specter's Senatorial Efforts and its Legacy**

Sierra Reddi

August 2019

## **Abstract**

Bias-motivated violence is considered especially heinous in the United States of America. This research examines the Federal legislation that cements that value into law. Hate crimes are criminal acts where the target was specifically chosen because of their race, sexual orientation, gender expression, ethnicity, or religion. These crimes, whether intentionally or not, have a ripple effect on societal values, and especially spread fear within oppressed minority groups. This research begins by examining the context that precipitated a need for hate crime laws to begin with and then looks at federal developments as a reaction to landmark hate crime cases. One of Senator Arlen Specter's key areas of policy impact lies right here in hate crimes. Through means of the Arlen Specter Senatorial Papers his contributions in both Washington, D.C. and Pennsylvania are explored. Finally, the debate over hate crime legislation as it exists today is had. This research is expected to analyze bias motivated crime through a contextualizing historical lens of Arlen Specter's work and then use that analysis to work through the current debate over legislation.

---

Acknowledgements: I would like to thank Professor Raju Parakkal for critique received on this paper in addition to continued guidance and patience as my mentor. I would also like to thank the Arlen Specter Center for the fellowship opportunity and my Advisor Evan Laine.

## **I. Introduction**

Hate crimes are a sensitive subject, riddled with complexity and much debate regarding their effectiveness at deterring crime. Hate crimes, also known as bias crimes, are instances of criminal behavior specifically targeted at a victim because of attributes like race, sexual orientation, religion, gender identity, and more, as identified and perceived by the perpetrator of the crime (Levin). Both those in favor and against their categorization and enhanced penalties against offenders have strong arguments- all of which seem to attempt to reach a shared goal of a fair justice system, just through different means. The discussion is uniquely complex, as unlike other polarizing political issues in the United States, people from opposite sides of the political spectrum can find themselves in the same camp. This is unusual, as most of the time division is seen along political lines. This paper will be an exploration of bias crimes and their nature in the United States of America, beginning with the appropriate historical context and events that led to the creation of this category of crime. The late Senator Arlen Specter played a key role in the legislation and public advocacy that bias crime was borne of. Both his work and influence will be examined at length, through the means of his archival senatorial papers and correspondences. A large amount of the paper will focus on the aforementioned debates, whether or not hate crimes are an

effective categorization of crime and secondly, if they are an effective deterrent to future crime. This is necessitated by the range of arguments on both sides.

## **II. Historical Overview**

It is crucial to first assess the history of hate crimes in the United States before moving into the developments made during Arlen Specter's tenure. Much happened before his time that must be taken into consideration. This country is no stranger to prejudice-fueled violence and selective criminality. The first African slaves were brought to Jamestown, Virginia in 1619 and the shameful practice of chattel slavery continued in the United States until 1865 (Library of Congress). State-sanctioned violence against Native Americans was made legal with the Indian Removal Act of 1830 (Drexler). In the late sixties anti-sodomy laws directed at same-sex couples were used to "limit the ability of gay people to raise children" and "justify firing gay people, denying [them] jobs" (ACLU). There are many more acts of violence fueled by prejudice in America's history that could be discussed here. But, the historical facts that are relevant to federal hate crime legislation are focused on the United States' government's efforts to remedy prejudiced behavior.

### ***a. Hate Crime Statutes***

The first federal hate crime statute H.R. 2516 was signed by 36th President of the United States Lyndon B. Johnson on April 11, 1968 (GovTrack). This act, known as the 1968 Civil Rights Act included many titles and statutes, but one that specifically made it "a crime to use, or threaten to use, force to willfully interfere with any person because of race, color, religion or national origin" (U.S. Department of Justice). Later

the statutes were expanded to include protections against housing discrimination based on race and the destroying of religious property based on religion or race. The 1968 act was catalyzed by the assassination of prominent civil rights leader Dr. Martin Luther King Jr. on April 4th of 1968. At first, Congress was reluctant to pass the act, which was met with biting debate. But, following the assassination of Dr. King, a proponent of non-violent protest and a Minister of faith, attitudes seemed to shift out of respect. President Johnson “used the tragedy of King's death to urge Congress to quickly pass the legislation” (Maxwell).

Despite the act being signed into law in 1968, crimes motivated by racial and religious differences persisted. Even though the 1968 law made what is now referred to as hate crimes illegal, that term was not yet used. It was not until the 1980s when journalists coined the term (National Institute of Justice). At the time, there was great national attention on multiple bias crimes targeting Jewish people, Asians, and black Americans. The media coverage shifting from use of bias crime to *hate* crime in headlines is indicative of the shift in attitudes towards this sort of behavior.

Furthermore, the shift in language seemed appropriate. Such acts of violence against Americans solely because of their color or creed was so hateful, especially because of the fear it caused among communities. The previous term being “bias crime” used language that minimized the impact of the crime. According to Implicit Bias Theory, unconscious bias is universal among people (Greenwald 3). Each person has a world view biased by their experiences, and prejudice can be negative, but it can also simply mean any judgement a person comes to a situation with what they have

preconceived before actual experience. In fact, the Implicit Association Test showed that many Americans have unconscious bias towards African Americans, “even among individuals who believe themselves to be free of racial bias” (Banks). The shift in language facilitated an attitudinal change which eventually manifested into concrete safeguards. In 1981, Washington and Oregon were the first states to pass their own hate crime laws (National Institute of Justice). Forty-seven other states eventually followed suit.

***b. Landmark Hate Crime Cases***

In order to understand the legislation that the late Arlen Specter worked on it is first necessary to understand the political and social conditions that incubated a need for it. Two cases in particular catalyzed a continuation of the hate crime conversation, in what some believed to be a time post-civil rights issues. These cases are the murders of James Byrd Jr. and Matthew Shepard, two especially heinous crimes that drew national attention and outrage.

***i. James Byrd Jr. Case***

James Byrd Jr. was a forty-nine year old African-American father of three who lived in Jasper, Texas. He was brutally murdered by three men on June 7, 1998. After fraternizing with friends and family he headed home on foot as he did not drive. He was offered a ride by the three perpetrators, Berry, Brewer, and King (Court of Criminal Appeals of Texas). He accepted and climbed in the truck bed, expecting a ride home to his apartment. Instead they drove into the woods. The three men proceeded to beat James, and Brewer used black spray paint to cover his face. Then, they brutally

chained James by his ankles to the back of the truck and proceeded to drive about three miles down the clearing (Altschiller 99). His body was severed when he hit a concrete drainage ditch. The autopsy determined he was alive to endure most of the dragging and died when his head, shoulder, arm, and neck were severed. The assailants put Mr. Byrd's bottom half of his body and torso in front of a nearby church, on the street. The police followed the trail of blood over a mile down the road to locate the rest of James' remains (Court of Criminal Appeals of Texas).

Both Brewer and King were in a white supremacist group while previously incarcerated. The men had racist tattoos on their bodies- swastikas, "Aryan pride", and a noose around a black man, among others. Investigators also found evidence that King intended to start a white supremacy group in Jasper, a chapter of the Confederate Knights of America. There were written materials in the apartment the three assailants shared, convincing others to join, saying that "something big" was to happen on July 4, 1998 (Court of Criminal Appeals of Texas). When King appealed his verdict from death row, a gang expert testified that leaving the body in the street in front of the black church was meant to scare the community with a visceral threat of violence. The murderers went through the trouble of placing the severed body there, where it would be discovered promptly, when they could have hidden the remains in the woods where they murdered James Byrd Jr.

#### ii. Matthew Shepard Case

It was only a few months later on October 6, 1998 when Matthew Shepard was murdered. He was a twenty-one year old openly gay student at the University of

Wyoming. The night he was brutalized he went to a bar and met his assailants for the first time, McKinney and Henderson, who approached him at the Fireside Lounge where Matthew was alone (Hudson 57-58). They befriended him and shared beer, all an act to lure Matthew to rob him (Brooke). Before telling him it was a trick the two men drove him to an isolated location and robbed and viciously beat him. It was determined at the autopsy Matthew was hit on his head about twenty times with the butt of a pistol (Marsden). Mckinney and Henderson then tied Matthew to a fence, where he stayed for eighteen hours before he was found. He died days later on October 12, 1998 in a hospital bed from the injuries inflicted on him in the attack.

In McKinney's confession to the police he used the following terms to refer to Matthew: "a queer," "fag," "the gay" (Mardsen). Similarly to the James Byrd Jr. Case, the assailants went out of their way to make their attack very public and very terrifying. A biker found Matthew's body, spotting what he at first glance assumed to be a scarecrow over the fence. He called the police and responding Deputy Fluty reported, "that Shepard, was 5 feet 2 inches tall and boyish in appearance, looked at first to be a child and that his face was caked in blood except where tears had left tracks along his cheeks" (Mardsen). In the case of Matthew Shepard the placement of his body on the fence was horrific (Hudson 59). The young man was beat until his brain stem gave out and then tied up and left in the cold to die. Like in the case of James Byrd, this was an especially public and deliberate display of violence against members of a minority group, with perceived intention to incite fear.



There are other similarities between these cases. Both happened within such a short time of each other and both, understandably so, incited outrage. There had to be something to do to ensure brutal attacks would not continue. There had to be a way to repair the social conditions that allowed this behavior to exist. People took to the streets and protested, asking for the government to contribute to a solution (Peterson). A national gay and lesbian news publication, *The Advocate*, said that the news coverage of the crime was an, “unprecedented and sympathetic press response” (Noelle 31). The American public was taking notice of prejudice-fueled crime on a national scale.

### ***c. Hate Crimes in Pennsylvania***

In the late nineties, around the same time as the Byrd and Shepard murders, Pennsylvania was experiencing hate crimes of its own. Urban and rural areas alike were affected. A 2015 study by Pennsylvania State University on the topic of Pennsylvania hate crime incidents between 1999-2012 reported a total of forty-one murders over the span, and over one thousand cases of assault, intimidation, both institutional and personal vandalism, and hate-speech literature distribution (Ruback 20). A large majority of the targeted hate was anti-black. Another key finding of the study was its focus on police response to the crimes; the responses were varied and seemed to be biased based on the type of victim and offense. In other words, under Pennsylvania law not all hate crimes were being treated the same by law enforcement. There was variance found between counties and police stations, and an incident with a white victim, rather than a black victim, increase the odds of police involvement by 20 percent (Ruback 25).

This means that each different law enforcement agency did not report at that exact figure, but rather the average finding among all reporters.

In addition to the national calls for reform, Pennsylvanians were scrutinizing the effectiveness of state laws regarding these types of crimes, intended to make people fearful to exist in public spaces or even their homes. Senator Arlen Specter played a key role in the legislation of federal crime laws and was outspoken about his support for said acts.

### **III. Arlen Specter's Contributions**

The late Senator Arlen Specter served as one of Pennsylvania's representatives in the Senate for thirty years. Throughout his tenure, he worked to reform campaign finance laws that deemed funding free speech, provide more services to constituents, make healthcare widely accessible, and more. As a committed moderate, Specter even switched parties in April of 2009 to registered Democrat in order to align more closely with his own beliefs, saying that "his party had moved too far to the right" (Hulse). He assumed a leadership role in the hate crime legislative arena and was committed to expanding coverage for sexual orientation.

The earliest dating document referencing bias crime in the Arlen Specter Senatorial papers is a 1986 press release regarding a bill Specter proposed about expanding the federal protections for religiously motivated violent acts. The press release goes on to explain the motivations behind the bill, "synagogues and churches with black congregations are the targets of the overwhelming majority of religiously motivated crimes of property destruction" (Specter). Senator Specter sought to increase

the federal government's role in the prosecution of these bias-motivated crimes and achieved this by making it illegal to travel across state lines while perpetrating an assault, attack, or act of vandalism. The former federal provisions only covered if a suspect crossed state lines with the explicit intent to escape prosecution, which is not only difficult to prove but limiting in circumstance. This 1986 effort led by Specter in the senate would prove to be ahead of its time in terms of hate crime legislation.

Four years later, Arlen Specter voted in favor of the Hate Crime Statistics Act of 1990 (GovTrack). The 1990 act laid out the proper ways to record and report hate crimes in order to remedy the mystery that surrounded them. Many hate crime victims feel they cannot report to police. According to the 2015 study by the Pennsylvania Legislature on hate and bias incidents in Pennsylvania, "hate crime victims may be even less inclined to report hate incidents if they believe their actions are likely to lead to retaliation, cause them embarrassment, or result in discrimination and mistreatment" (Ruback 4). Congress took action to help ensure proper reporting and counting as a first step to stopping hate crimes. In fact, the Bureau of Justice Statistics found that nearly two-thirds of hate crimes go unreported each year (Bureau of Justice Statistics). The statistics act received bipartisan support in the senate. The act set the foundation for later hate crime legislation, as it allowed for the collection of proper statistics on occurrences in the nation, which were formerly unobserved.

In a 1994 speech to the Anti-Defamation League Senator Specter spoke about the "far-right fringe" and their alienating behavior at the 1992 republican convention. For context, the convention was marked by the speech of a conservative commentator

Patrick J. Buchanan, who “declared there was a ‘cultural war’ taking place for the soul of America, denouncing the Democratic Party as one that supported abortion, radical feminism and the ‘homosexual rights movement’” (Nagourney). Specter spoke to the anti-hate group two years after the convention and spoke about the delicate act of pointing out the hypocrisy of religious folks who preach acceptance, love, and tolerance, but “instead advocate(s) the opposite” (Specter). He concluded his speech with the following statement, “it is critical to draw a bright line between the importance of having people in public life with deep religious and moral convictions as distinguished from those who use religion to fan the flame of intolerance and hatred” (Specter). Senator Specter’s distaste for this type of behavior had to be balanced with his commitment to protecting the rights to religious freedom in the Constitution.

A 1995 media advisory explained Senator Specter’s upcoming meeting with the Attorney General Tom Corbett and State Police Commissioner Paul Evanko to speak about hate crimes at the State Police Academy. This event, including a facility tour and roundtable discussion was open to the press in an effort to publicize the increased police work to combat hate crimes in the state. Namely, a week-long training at the Academy to “educate law enforcement officials in dealing with hate crimes” (Specter). This police initiative exhibited the commitment between both federal and state government to deter and properly deal with hate crimes, a connection made possible by Specter.

Even though he had already done so much, Senator Specter was committed to passing more concrete legislation to combat and deter criminal acts of prejudice. He

co-sponsored the Hate Crimes Prevention Act of 1999 (University of Pittsburgh). This act contained a concrete set of penalties for any person who “willfully cause(s) bodily injury to any person ... because of the actual or perceived: (1) race, color, religion, or national origin of any person; or (2) religion, gender, sexual orientation, or disability of any person” (S.6222). In a 1999 letter to Senate Majority Leader Trent Lott, Specter expressed his support for the act and explained how this new bill would progress hate crime legislation, “the current federal hate crimes law permits federal prosecution of violent crimes motivated by bias based on race, religion, national origin, or color, but only if the victim was exercising a federally protected right, such as voting. The Hate Crimes Prevention Act (HCPA) would amend federal law to remove the overly-restrictive federally protected right requirement and would add sexual orientation, gender, and disability to the list of covered groups” (Specter). Specter and his judiciary committee colleagues wrote to potential co-sponsors in 1999 and explained why federal laws are necessary, even though most hate crimes are prosecuted on a local and state level. The letter states, “Strengthened federal jurisdiction is needed as a back up for state and local law enforcement to ensure that justice is done” (Specter). His colleagues seemed to respond, as the bill had over forty co-sponsors in total and passed in the senate.

Ten years later, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 changed the federal definition of hate crimes and expanded protections to “Crimes based on gender, disability, gender identity, or sexual orientation” (18 U.S. Code § 249). Additionally, federal law enforcement would offer

assistance in investigations. President Obama, in a speech about the Hate Crimes Prevention Act of 2009 spoke of the expansions from the original 1990 act, “And that’s why, through this law, we will strengthen the protections against crimes based on the color of your skin, the faith in your heart, or the place of your birth. We will finally add Federal protections against crimes based on gender, disability, gender identity, or sexual orientation. And prosecutors will have new tools to work with States in order to prosecute to the fullest those who would perpetrate such crimes,” (Obama).

Interestingly enough, the vote on the 2009 Act was only months after Specter’s ballot switch from republican to democrat (Hulse). Looking back to Specter’s 1994 statements on the alienating nature of the “far-right fringe”, his party choice may have been a long time coming.

#### **IV. Hate Crime Effectiveness Debate**

##### ***a. Support for Hate Crime Legislation***

Proponents of hate crime legislation argue that without taking solid governmental action against these acts in the form of sentencing enhancements, a disservice is done to the victims. Unlike typical criminal behavior, there are waves of harm generated by hate crimes, as explained in the *American Behavioral Scientist Journal* by sociologist Paul Iganski of the University of Essex. The waves are as follows: first the initial victim is harmed by the act, then the victim’s local “group”, then the non-local “group” members, other targeted communities, and finally the hateful act manifests influence on societal norms and values (Iganski 629).

The report examined the impact of specific hate incidences on students of various “groups”. The Matthew Shepard murder in particular made many gay students feel unsafe, a widespread fear that began with the question, “could this happen to me” (Iganski 635)? The act of the hate crime itself serves as a message to other members of a targeted group. The violence was not random, but intentionally profiled. The ripple effect of harm can cause lasting impacts on individuals and communities. Proper and increased punishment is deemed appropriate by the circumstances of the crime and its many victims, directly impacted and otherwise.

A 1997 report by the Bureau of Justice Assistance also stands in firm support of enhanced sentencing. The bureau echoes the Iganski study and progresses the affirmative argument further, “A hate crime victimizes not only the immediate target but every member of the group that the immediate target represents... a violent hate crime can act like a virus, quickly spreading feelings of terror and loathing across an entire community. Apart from their psychological impacts, violent hate crimes can create tides of retaliation and counter retaliation” (U.S. Department of Justice). Bias crimes cause retaliatory crimes, which is another reason why they are especially important to address.

Retaliatory hate crimes are defined in a 2008 paper in the Encyclopedia of Peace, Violence, and Conflict, “Hate offenses designed to get even for hate crimes or acts of terrorism” (Levin). An example on a large scale of retaliatory crimes is the response following the events of September 11th, 2001, “there was a 1,600 percent increase in anti-muslim hate crimes reported to police departments” (Schevitz). Around

8% of hate crimes are retaliatory in nature (SPLC). Retaliatory crimes can be avoided if victims and members of the targeted group feel supported and taken seriously by the criminal justice system. Hate crime legislation not only expresses the government's intolerance of these acts, but provide concrete actions for the justice system to take in response to them. Sentencing enhancements help those caught in the ripple effect of harm by making a statement that hateful conduct is not tolerated. The crime deterrence of hate crime legislation is built-in.

Hate crimes constitute a longer sentence in the same way that other circumstances warrant different punishment. Sentencing enhancements are not uncommon, as in “many jurisdictions in America, crimes directed against law-enforcement officers, public officials, teachers on school grounds, and children carry higher penalties” (Hudson 28). These enhanced penalties are viewed as normal and are widely accepted. As a society, for example, there is a shared intolerance for violence against children. The negative tends to argue that penalty enhancements in the cases of hate crimes are unjust and unconstitutional on account of one crime being treated different than another because of the victim. If the negative is to make this argument, it must also apply to other sentencing enhancements, which are widely supported. Someone who brutally assaults an adult versus a child is still just as dangerous, and deserves to be punished. But the blamelessness and naivety of children makes an attack towards them especially heinous, and the crime more severe. There is no exact science to criminal sentencing. It is normal to increase the consequences when the circumstances are deemed especially heinous, like in the case of hate crimes.



Even if the categorization of hate crimes and penalty enhancements do not deter this kind of crime one hundred percent of the time, some sort of safeguard or stance against the behavior is always better than nothing. It is easy to criticize, but alternative ways to respond to hate crimes are scarce. Something must be done to help prevent people from committing these acts. According to the Southern Poverty Law Center, 66% of hate crimes are thrill seeking in nature, which means the perpetrators are acting in pursuit of excitement, in a spur of the moment crime. Further, “over 90% don’t know their victims” (SPLC). Many perpetrators are acting impulsively. But having federal policies that make it well known that hate crimes are very serious and prosecuted to the full extent of the law may prevent many from partaking who would have otherwise without legal consequence. These laws make it clear hate crimes are not tolerated.

#### ***b. Critique of Hate Crime Legislation***

Many, even those in support of LGBTQIA+ rights and ending institutional racism, take issue with hate crimes both as a category of crime and their performance in deterring similar behavior. Many opponents of hate crime legislation take issue with their main function as serving sentencing enhancements to crimes. If the goal is to have a society where no one is targeted or treated differently because of their race, religion, or sexual orientation, laws that go out of their way to treat people differently in criminal justice are counterintuitive. The mere charge of something being a “hate crime” is argued to violate the fifth amendment's protections that guarantee an “impartial jury”. When a jury sees the charge of “hate crime”, there are a slew of assumptions that follow. The categorization itself is indicative of severity, this is not

*just* a crime, it is one that was committed with specific malice and intent. But that label being placed on an act so early in litigation without having proven it was hateful is unfair to a defendant. The crime is no longer the act itself, it is the culmination of whatever that jury member has heard, seen, or thought about hate crimes in their life and the media. It is unreasonable to expect a jury approach a case with an impartial mindset when the label is so polarizing.

All people being equal under the eyes of the law is directly contradicted by hate crime legislation, which adds sentencing enhancements. With these enhancements two people who commit the same violent act would be charged differently based on something that is very hard to prove; malicious intent. Intent is difficult to prove in any case as it is impossible to prove what the perpetrator was thinking in the moments leading up to and during a crime. This same critique of the criminal justice system could be made of murder/attempted murder charge. An individual who attempts a crime such as murder is just as dangerous as someone who was successful in their violent pursuit. However, there are discrepancies in the sentencing for someone who successfully murders versus someone who fails. There is considerably less time awarded to the attempted murderer. Rather than being treated differently, they could be charged the same as they are the same crime, creating a stronger stance against such behavior. In this same way hate crimes and crimes should be treated the same. Beating someone brutally and beating them brutally because of a prejudice are both the same crime, the same act. Therefore both acts should be punished equitably.

While it is acknowledged that these crimes feel especially heinous, the data shows that the categorization does not help the cause in most cases. A Bureau of Justice Statistics study on hate crime victimization between the years of 2004-2015 found that hate crimes seldom result in arrests. The study reported the following findings, “Violent non hate (28%) crimes reported to police were nearly three times more likely to result in an arrest than violent hate (10%) crimes. About 4% of all violent hate crimes, whether reported or not, resulted in an arrest” (Langton 5). This piece of data is quite telling. Not many hate crimes are being prosecuted, and they are ending in arrests less than non-hate incidents of equal severity. This can be explained by the difficulties faced in proving the intent of a perpetrator. In order to prove a hate crime, there must be proof of hate as well.

The evidence used to justify a hate crime as such are not substantial. According to the Bureau of Justice Statistics, 99% of hate crime victimizations are marked by the usage of hate language and 5% due to symbols left at scene (Langton 3). If what makes a hate crime a hate crime is saying specific words or leaving symbols, then the enhancements are not justifiable. If one perpetrator acts fueled by prejudice but fails to vocalize or visualize their motive, the crime will be treated normally and not as a hate crime. A non-hate crime is almost three times more likely to result in arrest than a hate incident, and the non-enhanced sentence is better than no arrest at all (Langton 5). Hate crimes are considered with more weight due to their “ripple effect”, because of the way they spread fear. But that alone cannot constitute harsher punishment (Noelle 28). There is no way of proving these intentions, in some cases perhaps the intention was

not to spread fear. This is not being brought up in an effort to defend perpetrators, but rather accurately assess the fairness of hate crime legislation.

On top of the lack of arrests made in hate cases, the bureau also found in that same report that over 54% of these instances were not reported at all (Bureau of Justice Statistics). Victims failing to report trends could be explained by the United States' history of and continued police brutality. Police brutality and intimidation is spanning issue for a topic of separate research but its existence is nonetheless relevant to this conversation. Minorities cannot be expected to feel comfortable talking to the police about being discriminated against, possibly violently, when the police themselves are notorious for doing similar things to the exact same groups.

Hate crimes legislation is well-intentioned, but ultimately cause more confusion, division, and unfairness in practice. Many of these crimes are not reported, and the data shows that most do not result in arrest. It is ironic that anti-hate crime laws rest upon an understanding of equality among people yet explicitly outline that crimes against certain people are more damning because of specific language and symbols. Therefore hate crimes cause alienation of the victims, making them the "other", which is counter-intuitive to their creation to begin with. Hate crimes are most definitely bad, but the legislation is too.

## **V. Final Thoughts**

Senator Arlen Specter passed away in 2012. But his legacy and legislation lives on. In 2017, the No Hate Act was presented to the House of Representatives. The bill proposed extensions to the James Byrd Jr. and Matthew Shepard Hate Crimes

Prevention Act of 2009. These expansions include state-run hotlines for victims, increased participation in the National Incident-Based Reporting System, federal funding for hate crimes prevention units, and more. Even though the first Hate Crime Statistics Act was passed in 1990, over twenty-five years later Congress is still working to collect accurate figures of incidents from law enforcement. However, on a more encouraging note, the original hate crime acts were such strong pieces of legislation that new sessions of congress work to build upon them rather than creating new provisions.

Those who oppose hate crime legislation see it as a surface-level solution to the issue. Creating laws that threaten longer sentencing for certain acts versus others does nothing but further point out our differences. A more proactive way to deter hate crimes is to confront the United States' history and the conditions that allow this behavior to flourish. The government would better contribute to a solution by supporting a national call for education. Ignorance breeds hate and fear. The threat of longer imprisonment alone is not enough to deter people from committing prejudiced criminal acts, there must be a deeper assessment of what causes perpetrators to seek to incite fear on minority groups through acts of targeted violence, intimidation, and vandalism.

Supporters of these laws hold that the statement they send to potential perpetrators outweighs any shortfalls. Federal hate crime laws do more than add sentencing enhancements. These laws also work to provide funding as well as support to local law enforcement and set the parameters for data collection. Nonetheless, enhancements are vital as they let the public know this type of behavior is

acknowledged by the government. Furthermore, it sends a message that bias crime is especially damaging and not tolerated by the law. It is impossible to know how many people are deterred from committing hate crimes because that would require some sort of surveillance of the mind, which is impossible. The presence of these consequences themselves is a crime deterrent. Without this legislation there is no wide-scale denouncement of prejudiced criminal behavior, leaving even more people at risk.

Federal hate crime legislation is intended to make the United States a safer place for all its inhabitants. No person should have to fear violence targeted at them because of the color of their skin, the religion they practice, their sexuality, where they are from, or what gender they identify as. No matter what side of the debate one falls on, all can agree in that respect.

### **Works Cited**

“18 U.S. Code § 249 - Hate Crime Acts.” *Legal Information Institute*, Legal

Information Institute, [www.law.cornell.edu/uscode/text/18/249](http://www.law.cornell.edu/uscode/text/18/249).

ACLU. “Why Sodomy Laws Matter.” *American Civil Liberties Union*,

[www.aclu.org/other/why-sodomy-laws-matter](http://www.aclu.org/other/why-sodomy-laws-matter).

Altschiller, Donald. *Hate Crimes: a Reference Handbook*. Third ed., ABC-CLIO, 2015.

Banks, Ralph Richard, and Richard Thompson Ford. “(How) Does Unconscious Bias Matter: Law, Politics, and Racial Inequality .” *Emory Law Journal*, vol. 58, no. 5, 2009.

Brooke, James. “Gay Man Beaten and Left for Dead.” *The New York Times*, The New York Times, 10 Oct. 1998,

[www.nytimes.com/1998/10/10/us/gay-man-beaten-and-left-for-dead-2-are-charged.html](http://www.nytimes.com/1998/10/10/us/gay-man-beaten-and-left-for-dead-2-are-charged.html).

Bureau of Justice Statistics. "Data Collection: National Crime Victimization Survey (NCVS)." *Bureau of Justice Statistics (BJS)*,  
[www.bjs.gov/index.cfm?ty=dcdetail&iid=245](http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245).

Court of Criminal Appeals of Texas. *John William King, Appellant, v. The State of Texas*. 18 Oct. 2000. *FindLaw*,  
[caselaw.findlaw.com/tx-court-of-criminal-appeals/1171584.html](http://caselaw.findlaw.com/tx-court-of-criminal-appeals/1171584.html).

Drexler, Ken. "Research Guides: Indian Removal Act: Primary Documents in American History: Introduction." *Introduction - Indian Removal Act: Primary Documents in American History - Research Guides at Library of Congress*, 2019, [guides.loc.gov/indian-removal-act/introduction](http://guides.loc.gov/indian-removal-act/introduction).

GovTrack. "H.R. 1048 (101st): Hate Crime Statistics Act -- Senate Vote #13 -- Feb 8, 1990." *GovTrack.us*, [www.govtrack.us/congress/votes/101-1990/s13](http://www.govtrack.us/congress/votes/101-1990/s13).

Greenwald, Anthony G., and Linda Hamilton Krieger. "Implicit Bias: Scientific Foundations." *Berkeley Law Scholarship Repository*, *California Law Review*, July 2006, [doi.org/10.15779/Z38GH7F](https://doi.org/10.15779/Z38GH7F).

"H.R. 2516 (90th): An Act to Prescribe Penalties for Certain Acts of Violence or Intimidation, and for Other Purposes." *GovTrack.us*,  
[www.govtrack.us/congress/bills/90/hr2516/text](http://www.govtrack.us/congress/bills/90/hr2516/text).

"Hate Crime Laws." *The United States Department of Justice*, 7 Mar. 2019,  
[www.justice.gov/crt/hate-crime-laws](http://www.justice.gov/crt/hate-crime-laws).

“Hate Crime.” *National Institute of Justice*, National Institute of Justice, 14 Nov. 2018,  
[www.nij.gov/topics/crime/hate-crime/pages/welcome.aspx](http://www.nij.gov/topics/crime/hate-crime/pages/welcome.aspx).

Hudson, David L. *Hate Crimes*. Chelsea House, 2009.

Hulse, Carl. “Specter Switches Parties.” *The New York Times*, The New York Times,  
28 Apr. 2009,  
[thecaucus.blogs.nytimes.com/2009/04/28/specter-will-run-as-a-democrat-in-2010/](http://thecaucus.blogs.nytimes.com/2009/04/28/specter-will-run-as-a-democrat-in-2010/)

Iganski, Paul. “Hate Crimes Hurt More.” *American Behavioral Scientist*, vol. 45, no. 4,  
2001, pp. 626–638., doi:10.1177/0002764201045004006.

Levin, Jack, and Jack McDevitt. “Hate Crimes.” *The Encyclopedia of Peace, Violence,  
and Conflict*, 2nd ed., Academic Press, 2008.

“LGBTQ+ Rights.” *Arlen Specter Senatorial Papers - LGBTQ+ - Rights*, University of  
Pittsburgh, [arlenspecter.library.pitt.edu/areas-of-impact/lgbtq-rights/](http://arlenspecter.library.pitt.edu/areas-of-impact/lgbtq-rights/).

Library of Congress. “Slaves and the Courts, 1740-1860.” *Library of Congress*,  
[www.loc.gov/teachers/classroommaterials/connections/slaves-court/file.html](http://www.loc.gov/teachers/classroommaterials/connections/slaves-court/file.html).

Lynn Langton, and Madeline Masucci. “Hate Crime Victimization, 2004-2015.”  
*Bureau of Justice Statistics*, June 2017, [www.bjs.gov](http://www.bjs.gov).

Marsden, Jason. “The Murder of Matthew Shepard.” *WyoHistory.org*, 2014,  
[www.wyohistory.org/encyclopedia/murder-matthew-shepard](http://www.wyohistory.org/encyclopedia/murder-matthew-shepard).

Maxwell, Bill. “THE MLK PARADOX: A MORE PERFECT UNION.’ Tampa Bay  
Times, 1 Apr. 2018.” *Tampa Bay Times*, 28 Apr. 2018,



[www.tampabay.com/opinion/columns/Maxwell-The-MLK-paradox\\_166804205](http://www.tampabay.com/opinion/columns/Maxwell-The-MLK-paradox_166804205)

Noelle, Monique. "The Ripple Effect of the Matthew Shepard Murder." *American Behavioral Scientist*, vol. 46, no. 1, 2002, pp. 27–50.,  
doi:10.1177/0002764202046001004.

Nagourney, Adam. "'Cultural War' of 1992 Moves In From the Fringe." *The New York Times*, The New York Times, 29 Aug. 2012,  
[www.nytimes.com/2012/08/30/us/politics/from-the-fringe-in-1992-patrick-j-buchanans-words-now-seem-mainstream.html](http://www.nytimes.com/2012/08/30/us/politics/from-the-fringe-in-1992-patrick-j-buchanans-words-now-seem-mainstream.html).

Obama, Barack H. "Remarks on the Enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act." *Daily Compilation of Presidential Documents*, 28 Oct. 2009. *ProQuest*,  
[search-proquest-com.ezproxy.philau.edu/pqrl/docview/195201282/fulltext/72527774BAF7428BPQ/1?accountid=28402](http://search-proquest-com.ezproxy.philau.edu/pqrl/docview/195201282/fulltext/72527774BAF7428BPQ/1?accountid=28402).

Ruback, R Barry, et al. "An Examination of Hate and Bias Incidents in Pennsylvania, 1999 – 2012." *Pennsylvania Legislature*, Mar. 2015,  
[www.rural.palegislature.us/documents/reports/hate-and-bias-2015.pdf](http://www.rural.palegislature.us/documents/reports/hate-and-bias-2015.pdf).

Schevitz, Tanya. "FBI Sees Leap in Anti-Muslim Hate Crimes / 9/11 Attacks Blamed for Bias ." *SFGate*, San Francisco Chronicle, 27 Jan. 2012,  
[www.sfgate.com/news/article/FBI-sees-leap-in-anti-Muslim-hate-crimes-9-11-2750152.php](http://www.sfgate.com/news/article/FBI-sees-leap-in-anti-Muslim-hate-crimes-9-11-2750152.php).

Specter, Arlen. "Anti-Defamation League." *Arlen Specter Senatorial Papers, Group 6. Public Relations and Media Files*, University of Pittsburgh, 21 Oct. 1994.

Specter, Arlen. "Senator Specter Bill Would Expand Federal Role in Prosecution of Those Involved in Religiously-Motivated Crimes of Violence." *Arlen Specter Senatorial Papers, Group 6. Public Relations and Media Files*, University of Pittsburgh, 24 Sept. 1986.

Specter, Arlen. "U.S. Senator Arlen Specter to Meet with Attorney General and State Police Commissioner for Discussion on Hate Crimes." *Arlen Specter Senatorial Papers, Group 6. Public Relations and Media Files*, University of Pittsburgh, 17 Nov. 1995.

Specter, Arlen, et al. "Hate Crimes Prevention Act of 1999 Letter to Potential Co-Sponsors." *Arlen Specter Senatorial Papers*, University of Pittsburgh, 9 Mar. 1999.

Specter, Arlen, and Kevin Mathis. "Memorandum to Steve Dunkle." *Arlen Specter Senatorial Papers*, University of Pittsburgh, 12 Mar. 1998.

SPLC. "Hate Crimes, Explained." *Southern Poverty Law Center*, [www.splcenter.org/20180415/hate-crimes-explained](http://www.splcenter.org/20180415/hate-crimes-explained).

"Text - H.R.1566 - 115th Congress (2017-2018): NO HATE Act." *Congress.gov*, 31 Mar. 2017, [www.congress.gov/bill/115th-congress/house-bill/1566/text](http://www.congress.gov/bill/115th-congress/house-bill/1566/text).

U.S. Department of Justice, and Bureau of Justice Assistance. "A Policy Maker's Guide to Hate Crimes." *National Criminal Justice Reference Service*, 2001, [www.ncjrs.gov/pdffiles1/bja/162304.pdf](http://www.ncjrs.gov/pdffiles1/bja/162304.pdf).

United States, Congress, Cong. Senate, Senate - Judiciary . “Congress.gov.”

*Congress.gov*, 1999. 106th Congress, 1st session, bill S.622.