

The Significance of Naming a Hate Crime

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The murder of three young, gifted students in Chapel Hill Tuesday evening has generated a [local, national, and international outpouring of grief and outrage](#). Deah Barakat, 23, his wife, Yusor Abu-Salha, 21, and her sister, Razan Abu-Salha, 19, were shot dead in the Finley Forest condominium where newlyweds Deah and Yusor lived. A neighbor, Craig Stephen Hicks, fled the area after the shooting, but later turned himself into law enforcement officers. Hicks is charged with first degree murder in their deaths, and is being held without bond in Raleigh's Central Prison. Police say that the killings were motivated by an ongoing neighbor dispute about, of all things, parking. Nevertheless, many, including Yusor and Razan's father, suspect it also may have been motivated by the fact that the three were Muslims. Yusor regularly wore a headscarf—an outward manifestation of her faith.

Writing about these killings is difficult. The events are so recent. So close to home. And so horribly tragic. But given the seeming senselessness of the shooting paired with suspicion that it may have been influenced by the victims' faith, I thought this might be an appropriate forum for addressing the significance of declaring a criminal act a hate crime.

Greater punishment for hate crimes. While it is true that hate crimes may be more harshly punished than crimes committed without such animus, the punishment for the killing of Deah, Yusor, and Razan cannot be made more severe.

[First degree murder](#) is a Class A felony punishable by death or life without parole. The prosecutor decides before trial in a first-degree murder case whether to seek the death penalty. A sentence of death may only be imposed upon unanimous recommendation of the jury based upon its finding of a sufficient aggravating circumstance of the type codified in [G.S. 15A-2000\(e\)](#). Among the potential aggravating circumstances that may apply in the prosecutions for the killings of Deah, Yusor, and Razan is the fact that all three apparently were killed in short succession as part of a single course of conduct. See 15A-2000(e)(11).

Obviously, there is no greater sentence than death. Thus, regardless of whether the killings were motivated by religious animus, the potential punishment for these crimes can be made no more severe.

That is not the case for other, lesser, crimes. Committing a crime against a victim because of the victim's race, color, religion, nationality, or country of origin is an aggravating factor under [G.S. 15A-1340.16\(d\)](#). The finding of such a factor supports sentencing in the aggravated, rather than the presumptive, range of the sentencing grid.

Violent hate crimes may be prosecuted by the federal government. While nearly all homicides committed within the United States [fall within a State's jurisdiction](#), some also are subject to the concurrent jurisdiction of the federal government. Those include homicides [committed on a federal enclave](#) (the prosecution of Dr. Jeffrey MacDonald for the murder of his wife and daughters on Fort Bragg in 1970 is the locally notorious example) along with other special types of homicides criminalized by federal legislation. Hate crimes are among the latter sort. A person who willfully causes bodily injury to any person because of the person's actual or perceived race, color, religion, or national origin is subject to federal prosecution under [18 U.S.C. § 249](#). If death results from the offense, the person may be punished by up to life imprisonment.

The federal government may undertake such a prosecution only after the Attorney General or a designee certifies that one of the following four conditions is met:

- (1) the State does not have jurisdiction;
- (2) the State has requested that the Federal Government assume jurisdiction;
- (3) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
- (4) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

Deah, Yusor, and Razan were killed in Chapel Hill, which is located within the federal district designated as the Middle District of North Carolina. The United States Attorney for that district, Ripley Rand, has stated that federal authorities are not launching their own investigation of the crime. Rand's early assessment is that the killings were an isolated incident as opposed to being part of a targeted campaign against Muslims.

If the killings were deemed a hate crime under federal law, the perpetrator could be prosecuted under both federal and state law. Thus, if the outcome in State court failed to vindicate the federal government's interest in protecting civil rights, the federal government could institute its own prosecution. The Department of Justice's [Petite Policy](#) (discussed [here](#)) governs federal officers' discretion in determining whether to bring a federal prosecution based on acts involved in a prior state proceeding.

Prosecution for hate crimes bears symbolic importance. Thomas Walker, the United States Attorney for the Eastern District of North Carolina, noted the importance of acknowledging the concerns of the Muslim community and closely monitoring the investigation, sentiments doubtlessly shared by his Middle District counterpart.

The naming and express prosecution of a hate crime acknowledges the underlying history of prejudice and discrimination and affirms that such crimes do more harm than the act alone—though given that magnitude of the tragedy in this case, that *more* is admittedly hard to fathom. Professor Frederick Lawrence, a leading proponent of federal bias crime legislation, identified three levels on which the harm of a bias crime exceeds that of a parallel crime committed without such a motivation: (1) the nature of the injury sustained by the immediate victim is greater; (2) palpable harm is inflicted on the broader target community; and (3) and society at large is harmed by the violation of the “egalitarian ideal and the anti-discrimination principle fundamental not only to the American legal system, but also to American culture as well.” Frederick M. Lawrence, *The Case for A Federal Bias Crime Law*, 16 Nat'l Black L.J. 144, 150 (2000). Simply put, hate crimes “violate the national social contract.” *Id.* at 164.

Disclaimer. All I know about the prosecution of Craig Stephen Hicks is what I've read and heard in the local media. [Hicks' wife has stated](#) that her husband was not motivated by religious bigotry. The Chapel Hill police department said that its preliminary investigation indicated that the crime was based on a parking dispute. U.S. Attorney Rand has characterized the killing of Deah, Yusor, and Razan, as isolated acts. All of these sources know far more than I about the circumstances of this tragedy, and I don't intend to undermine their conclusions by anything written here.

Next steps. Hicks is next scheduled to appear in court on March 4 for a probable cause hearing. Meanwhile the community mourns. [Thousands gathered](#) a little while ago at North Carolina State University for funeral prayers, and a vigil for Deah, Yusor, and Razan will be held later this evening in the N.C. State brickyard.