

TARGETING HATEFUL CONSPIRACIES

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When Benjamin Smith went on a violent, racist rampage in July 1999, killing two people and wounding nine others, he might have hoped to push Americans toward race war. Smith and fellow disciples of Matthew Hale 's white supremacist World Church of the Creator probably couldn't have predicted some of the more notable consequences of his actions.

For example: In Evanston, hundreds of runners turned out last June for the Ricky Byrdsong Memorial 5K Race Against Hate, in honor of the former Northwestern basketball coach who died in the shooting spree. And last week, an Illinois House committee approved a bill to make it easier to prosecute hate-group leaders who instigate attacks on innocent people.

The bill, sponsored by Rep. Jeff Schoenberg (D-Evanston), has three major elements.

It says a hate crime has occurred whenever animus based on race, religion, sexual orientation and other factors is a motive--even if it is not the main motive. It increases penalties for hate crimes committed in or near schools, churches, synagogues, parks and the like. Most significantly, it draws on federal law to create a crime of conspiracy "when a person agrees with another to use violence, threat or intimidation in order to interfere with another person's free exercise of any right."

This last section seems to have been inspired by the troublesome connection between Hale and Smith.

Smith went on his shooting rampage two days after a state review board ruled that Hale should be denied a license to practice law in Illinois. Hale had issued a press release before the decision warning that there could be violence if he was denied a law license.

Hale, who has not been charged with any criminal offense in relation to the shootings, has blamed the rampage on people who "persecuted" Smith for distributing church literature.

Sherialyn Byrdsong, widow of Ricky, said one reason to pass the bill is that "there are many other Matthew Hales out there who try to get young people to do their dirty work." Cook County State's Atty. Dick Devine is also supporting the bill, which his office says would make it possible to prosecute anyone who agrees with another person to attack others--even if they don't decide on the timing of the crime or the people to be attacked.

But Devine declines to say that the change would have been helpful in the Smith case. Most actual conspiracies to commit violence can already be prosecuted under existing laws. Devine's office acknowledges that this provision would be used only in rare instances.

The bill's opponents worry that it could be interpreted so loosely as to allow the indictment of a minister if one of his congregants interprets a sermon as a command to kill. That sounds unlikely, given the requirement of an agreement between two or more people. But prosecutors should certainly be on notice that a broad reading would run afoul of the 1st Amendment. Spreading hateful ideas--even endorsing racist violence--is constitutionally protected. Attacking people is not.

In some circumstances, the bill would be a useful tool in a prosecutor's effort to combat criminal conspiracies. It will be up to prosecutors to make sure it doesn't become something bigger and worse.

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