

# Hate crimes law used to prosecute Amish beard attacks

by [Harlan Spector](#)

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CLEVELAND (RNS) A pair of scissors transported across state lines has emerged as a controversial element in Ohio's first case under a landmark 2009 federal law that expanded government powers to prosecute hate crimes.

The case involves a dozen members of an Amish sect in central Ohio who are charged with using the shears -- made in New York and brought to Ohio -- to forcibly cut the hair and beards of fellow Amish to avenge a religious dispute.

The travel history of the shears may seem like a peculiar point in the peculiar case that has focused national attention on Ohio's Amish community. But the hate crimes law -- like many other federal statutes, including health-care reform legislation -- is rooted in Congress' far-reaching power to regulate interstate commerce.

Enacted in 2009, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act was named for a gay University of Wyoming student who was beaten and tortured to death by two men in 1998, and a black man who was chained to a pickup truck and dragged to death in Texas that same year.

The act is a historic expansion of a 1968 law that federalized hate crimes directed at people due to their religion, race or nationality. The new law extends protections to people victimized because of sexual orientation, gender or disability.

In the 2009 law, Congress gave prosecutors greater latitude to bring charges in bias-motivated attacks in general, by invoking the commerce connection. The earlier law only protected victims engaged in a federally protected activity, such as going to school.

Some legal observers at the time took issue with the Congress buttressing the law with the commerce connection. To make the connection, the government must

prove the crime involved interstate commerce or affected it. The commerce element allows the federal government to prosecute local crimes where it would otherwise have no jurisdiction.

"Interstate commerce has been interpreted broadly enough to make any garden-variety criminal activity a federal offense," said Milwaukee defense lawyer David Ziemer, who wrote a critical review of the hate crimes law in 2009 in the Wisconsin Law Journal.

Regarding the interstate travel of the shears in the Amish attacks, Ziemer said, "You can make any barroom brawl into a federal crime if that's all it takes."

Though hate crime attackers can face any number of state charges -- most states have some version of a hate crimes law -- the federal statute generally carries far harsher sentences.

The Amish defendants, including sect leader Samuel Mullet, could have been charged locally with assault and other crimes, but local officials are leaving the prosecution to federal officials. The federal law carries a possible life sentence if prosecutors prove kidnapping was an element of the crime.

Prosecutors contend the attacks were motivated by revenge after a group of Amish bishops rebuffed Mullet's excommunication of eight families. The Amish believe men should grow their beards and women should let their hair grow after marriage.

Steven Dettelbach, the U.S. attorney for the Northern District of Ohio who previously worked at the Department of Justice, said enforcement of the hate crimes law would be a priority for his office.

Dettelbach's Amish case is only the seventh brought nationally under the 2009 law.

Asked last week about the commerce connection to the scissors, Dettelbach said federal prosecutors use the same argument in firearms cases. In order to claim federal jurisdiction, they show that guns crossed state lines.

Lawyers for the Amish defendants have filed a motion to have the case dismissed, arguing Congress overreached, and that interstate commerce is not relevant to the case or the law.

Cleveland State University provost Geoffrey Mearns, a former federal prosecutor, said the interstate travel of the shears is a stretch, and the case could be difficult to prove under the federal hate crime law.

Defense lawyers are also challenging whether the law applies to actions between people of the same religion.

Cleveland State law professor Jonathan Witmer-Rich, a former federal public defender, said the case may not fit what is ordinarily considered a hate crime. But the point, he said, is not whether the victims and attackers are of the same religion, or whether the scissors' travels justify federal prosecution.

The importance of the interstate commerce provision is that Congress believed hate crimes instill profound fear, causing people to alter their lives -- their activities, travels and even where they live, he said.

Case Western Reserve University law professor Lewis Katz said he also thinks the interstate travel of the scissors is a tenuous argument. But he said the law does not distinguish between a religious-based attack made by someone from outside or within the religion.

Added Michael Lieberman, a lawyer with the Anti-Defamation League who tracks hate crimes: "It fits squarely into the definition of the statute. The idea that because it's a co-religion it's knocked out of the box is not correct."