



Are Hate Crime Hoaxers Above the Law?

Wilfred Reilly

Published online: 5 November 2019

© Springer Science+Business Media, LLC, part of Springer Nature 2019

The Jussie Smollett case was not unusual. By now, probably the majority of Americans are familiar with Mr. Smollett, a star actor on the hip-hop television show *Empire*, who on January 29, 2019 told police that he was attacked by two white racists in center-city Chicago. According to Smollett, his two assailants wore red “MAGA” hats, taunted him with gay slurs and “the n-word,” doused him with bleach, and placed an actual noose around his neck—all this at 2:00 a.m. on the coldest day of the year! Perhaps unsurprisingly, Smollett’s story eventually collapsed. Surveillance video and other clues led Chicago Police Department detectives to the Osundairo brothers, two Nigerian-American workout aficionados and extras on *Empire*, who stated that Smollett—apparently motivated by a desire for greater fame and sympathy—paid them \$3,500 to beat him up. A police search of the brothers’ apartment February 13, 2019, turned up red hats, bleach, and a fair amount of other corroborating evidence, and Smollett was indicted on March 8 on sixteen felony counts of “false report of offense.”

On March 26, 2019, the Chicago/Cook County District Attorney’s office led by State’s Attorney Kim Foxx unexpectedly opted to dismiss all charges against Smollett and to permanently seal his case file. This struck almost all serious observers of the case as a blatantly partisan political move. Evidence of Smollett’s guilt was truly overwhelming. The simple act of googling “Nigerian brothers buy rope” turns up crystal-clear videos from TMZ and CBS News showing the Osundairo brothers purchasing the items used during the faux attack on Smollett. Both ABC News and the Chicago Police obtained an actual

Wilfred Reilly is an Associate Professor of Political Science at Kentucky State University, a historically black college in Frankfort, Kentucky; Wilfred.Reilly@kysu.edu. Professor Reilly holds a Ph.D. in political science from Southern Illinois University, a law degree from the University of Illinois, and is the author of *Hate Crime Hoax: How the Left is Selling a Fake Race War* (Regnery, 2019).

copy of the \$3,500 check written by Smollett to Abimbola Osundairo, one of the two brothers. Both brothers confessed their role in the crime to CPD officers, giving the police official confessions from two of the three parties involved. Smollett forfeited at least \$10,000 in bond funds to the prosecution, something innocent men tend not to do. It seems overwhelmingly obvious that Jussie Smollett perpetrated a hate crime hoax.

The response to all of this from the center-left mainstream media was sweeping and unrestrained (and telling). Multiple serious publications rushed to tell us, the unwashed, that hate crime hoaxes are vanishingly rare. *Vox*'s headline was "Jussie Smollett's Arrest Doesn't Diminish the Reality of Hate Crimes." The *New York Times* ran with "Hate Crime Hoaxes are Rare, but Can Be 'Devastating.'" *Global News*, a major Canadian outlet, opted for the judicious title, "Let's Shift the Focus: Jussie Smollett Case Is Potentially a Hoax, but Hate Crimes Are Real." Perhaps the boldest banner came from the website Quartz, which went with "The Jussie Smollett Case Shows Exactly Why We Need to Take Hate Crimes More Seriously." The almost universal message was that hate crimes are common, hate crime hoaxes are rare, and hate crime is in fact surging under the garrulous and inflammatory President Donald Trump.

I believe all of these points to be false, or at the very least questionable. First, in a country approaching 330 million residents, only about 7,000 felony or misdemeanor hate incidents are reported during a typical year, according to FBI data. Second, while it is a fact that mainstream media coverage of hate crimes has increased dramatically during the Trump presidency, it is far from obvious that the rate of actual hate crime rose steeply under President Trump. Major recent pieces from *Vox* (again), the *Washington Post*, the *New York Times* (again), and CNN Online have focused on the "Trump Surge"—the fact that reported hate crimes increased by roughly 1,000, or 17 percent, between 2016 and 2017. However, one of the primary reasons—to say the least—for this increase was the fact that at least 1,000 additional state and local law enforcement agencies began to provide hate crime data to the FBI in 2017.

As the *Epoch Times* has pointed out in a recent article which quoted me, each of these newly reporting departments would have had to report "exactly one hate crime" to the FBI in order to explain the full increase from 6,121 hate crimes in 2016 to 7,175 in 2017. This seems eminently possible, although the hate crime reporting rate for American police departments has generally been below one case per year. However, even half that rate would explain fully 50 percent of the Trump surge. Further, there seems no reason to expect that large departments—215 of the police agencies to begin reporting represented sizable "metropolitan counties," and fifteen were based in major cities of more than 100,000 people—which opted

not to fully report crime data for years would be experiencing less than the national average rate of crime. Given that some portion of these new reporting agencies were likely incentivized in the past to downplay hate crime activity, there may well have been no statistically significant increase whatsoever in hate crimes under Trump.

Quite apart from the confusion over hate crime numbers stemming from the addition of 1,000 reporting police departments between 2016 and 2017, hate crime numbers have likely increased due to the expanding definition of “hate crime” in a number of large urban municipalities. In Seattle, for example, the definition has expanded beyond Washington state requirements to cover not only attacks motivated by, for example, racial or religious animus but also those motivated by “homelessness,” “marital status,” “political ideology” or party, “age,” and “parental status.” The city has also hired something on the order of a hate crime “czar,” in the form of a full-time Bias Crimes Coordinator for the police department, who has made a point of “community outreach” aimed at familiarizing citizens with the hate crime laws—and presumably at generating more bias crime reporting.

As the unsurprising result of all this, Seattle reported 521 “bias incidents,” including 125 prosecutable hate crimes in 2018 alone. This represented an increase of 103 incidents over the previous year—which had witnessed an increase of 162 incidents from 2016. According to a 2017 piece in the *Seattle Times*, the Emerald City has in recent years reported more hate crimes than thirty-three U.S. states, including Florida. Most of these incidents hardly seem to be felony-level assaults on innocent taxpayers by Klansmen: data from the Seattle City Auditor indicates that 22 percent of hate incident perpetrators were “living unsheltered” at the time of their offense, 20 percent were mentally ill, and 20 percent were drunk or otherwise “severely intoxicated.” Exactly thirty-seven Seattle hate crime cases were successfully prosecuted between 2012 and 2017. Commenting on the whole situation, the Auditor stated bluntly (and remarkably), “A rise in reported hate crimes does not necessarily mean there are more of these crimes occurring.”

Finally, it is worth taking a serious look at who the victims of recent hate crimes have been. One of the largest increases-by-category in hate crime between 2015 and 2016 concerned attacks on whites—presumably including many white conservatives—which surged from 613 to 720. Attacks on whites increased by another twenty-one cases between 2016 and 2017. Attacks on Jews, where the target is generally white and the perpetrator is often an individual of color, also increased from 684 in 2016 to 938 in 2017. Even attacks on Protestant Christians, presumably not usually committed by

conservative “Nazis,” increased from fifteen in 2016 to forty in 2017. Not only is it questionable whether hate crimes have increased to a significant degree, it is also noteworthy that any such increase would not have been made up entirely or even primarily of stereotypical attacks on minorities by white racists.

Most importantly for the topic at hand, it should be obvious that there are a great many hate crime hoaxes. Mass shootings aside, probably *most* of the highest profile, most widely reported hate crime stories in recent years—Jussie Smollett, the burning of Hopewell Baptist, Yasmin Seweid, Air Force Academy, Eastern Michigan, Kansas State, Kean College and the death threats, Wisconsin-Parkside and the nooses, the Grand Rapids urination claim, the “Rolling Stone rape” story, the terrible Nikki Joly fire, much of the narrative surrounding the U-Mizzou scandal—have turned out to be fakes.

These cases are not rare outliers. In researching my book *Hate Crime Hoax: How the Left is Selling a Fake Race War* (2019), I was able to rather easily assemble a data set of 409 hate hoax cases, concentrated heavily in the past five years. This data set has since swelled to become a list of 608 unique hate hoax case studies, containing more than 800 individual incidents of hoax. This list is by no means comprehensive: other non-partisan sets of, respectively, 360 and 622 cases, which are by no means identical to mine, can be found at www.fakehatecrimes.org or by accessing the Fake Hate Map web resource. I am not affiliated with either list, and cannot speak to the validity of every single case of alleged hoax within them. But both have survived for some years—and a list of 600 cases is a list of 600 cases. Extremism researcher Laird Wilcox put together a fourth distinct data set of more than 300 cases in the mid-1990s, focusing only on matters then contemporary to him.

The response to this point, from any intelligent debater on the activist left, is almost always some variation of: “There are 7,000 hate crimes per year. If these researchers, combined, have found 700 confirmed hate hoaxes over the past five years, that would mean that only one in 50 hate crime allegations is a hoax. So what?” Making this point skillfully, *The Bulwark’s* Cathy Young, who described me as a partisan employee of “the conservative Regnery outfit,” estimates that only about 2 percent of hate crimes are hoaxes.

There are two problems with this argument. First, only about 8-10 percent of hate crime allegations are widely enough reported to catch the attention of an ethical national researcher. This is admittedly my estimate, but it is fairly easy to conduct at least a crude test of its validity. Simply put, if you google the phrase “hate crimes 2014,” and scroll through the first fifty pages of search results, you will find stories detailing a few hundred distinct incidents—many contained within topic-specific resources such as the Southern Poverty Law Center’s

selectively left-leaning but still useful “Hatewatch” column—rather than all 5,479 alleged crimes.

Given my fairly selective methodology of including in my data set only cases of hoax which involve (1) an undisputed claim (police report, or story in a national or reputable regional media outlet), (2) of a serious incident (felony, misdemeanor, basis for serious collegiate or workplace discipline), (3) which was alleged to be definitely or very probably due to dislike of an out-group, that was (4), debunked as described above (again with a national or major regional story proving this), it seems fair to say that the 400-odd incidents I record between 2015 and 2019 come from a potential database of only roughly 2,800 incidents rather than twenty-eight thousand incidents. This matters, because it indicates a significant false reporting rate of about 15 percent.

Further, given the large number of ambiguous cases in essentially every area of law, the ideal comparison would logically seem to be between rates of (1) proven hoax and (2) hate crime conviction. This brings us to another fascinating reality which is rarely discussed. For whatever reason, the conviction rate in hate crime cases is remarkably low, apparently on the order of 6 percent. In California, for example, there were 931 hate crimes reported during the representative year of 2016. However, only 220 of these (23.5 percent) were forwarded to the prosecutor by police and ended up resulting in criminal charges—a fairly basic standard indicating simply that the case was not a hoax and a serious suspect had been found/arrested. Exactly 51 of those cases, or 5.5 percent, resulted in any conviction for a hate offense, with plea bargains included in that category.¹

Indisputably, there are a very large number of fake hate crime cases. From this starting point, the key questions for the intelligent observer would seem to be: (1) how do hoaxers fake hate crimes, (2) why do they do so, and (3) what can be done about the problem? As for the first question, I identified several common categories of hoax hate crime while writing *Hate Crime Hoax*. The largest of these was college campus hate hoaxes, where students marinating in the woke campus environments of such universities as Oberlin and Michigan essentially made up incidents of bigotry to draw attention to themselves or to problems (“systemic heterosexism”) which they perceived as real. “Klan Springs Eternal” incidents, where people of color used false claims of attacks by white bigots or hate group members to cover up their own crimes or struggles with drugs and mental illness, were also common. Political hoaxes, from both non-whites and white alt-righters, seem to be increasing in frequency—with the goal here being to draw attention to the staggering (if wholly fictional) wickedness of the other side of the racial abyss.

¹An even smaller number of cases did result in non-hate related convictions for such charges as assault.

I do find that hoax hate crimes, across these categories and several smaller ones, share certain predictable characteristics. The most obvious of these is a dramatic, cinematic, often unlikely-sounding narrative. Real crime tends to be stupid and mundane, but fictional stories about crimes and oppression made up by smart people tend to have an entertaining Holmes-and-Watson quality to them, often drawing from Hollywood-driven clichés and stock themes. For example, it is not unthinkable that racist violence could occur outside a white biker bar, or a tough, primarily African American club, at closing time. But what are the chances of two burly white men wearing MAGA hats, carrying a multi-foot long noose and a bottle of bleach, attacking a popular black actor in his own diverse neighborhood, at 2 a.m., during one of the biggest blizzards in a year? Probably low. For that matter—while this remains to be conclusively seen—what are the chances that vigilantes representing right-wing groups like the Proud Boys are roaming heavily populated, anarchist-laden neighborhoods of downtown Portland, attacking leftists and LGBT citizens, with not one of them so far taking a beating or facing an arrest? Perhaps not high.

Hate crime hoaxes also tend to be characterized by an odd lack of evidence. When Mizzou's Payton Head claimed that despicable slurs were yelled at him near a busy intersection in a sizable college town, why did no video of the incident, or witnesses to it, ever turn up?²

Claims made by individuals very heavily involved in activist subcultures also seem generally more likely to be false. After the University of Michigan's Hailey Bass claimed that she had been attacked and slashed across the face by a strange white man for wearing leftist political buttons, her actual motivation was eventually exposed as avenging an attack on a fellow campus activist: a Muslim student who alleged that she had been threatened with lynching for wearing a hijab. Somewhat predictably, that case turned out to be a hoax as well. Finally, hate incidents reported largely or entirely on social media, especially when accompanied by some sort of fund-raising pitch ("My GoFundMe is . . ."), seem very often to be fakes. After being beaten by five big guys, a normal person would go first to the precinct or the gun shop, not Twitter. What motivates hate crime hoaxers is an interesting question. At the individual level, many hoaxers seem to have the same tawdry personal motivations as most other criminals: attention, local notoriety, and certainly money. When he was asked why he robbed banks, the Depression-era thief Willie Sutton famously said "Hell, that's

²I will note that Head's allegations here have never been legally proven to be a hate crime hoax. However, it is my informed opinion that they were—in the context of such other Head claims as the false statement that KKK fighters had been spotted on campus and he (then the student body President) was liaising with "The MUPD, the state trooper[s], and the National Guard" in order to keep students safe.

where the money is.” Similarly, many significant hate crime hoaxes were motivated entirely by a desire for financial compensation. The famous Chicago-area Velvet Ultra Lounge fire occurred after bar owner Frank Elliott fell behind on his bills and set his gay nightclub ablaze in order to pursue a \$150,000 insurance claim. Similar cases, involving business owners torching or damaging their own establishments and using scrawled slurs to throw insurance investigators off the trail, occurred in Everett, Washington (the Continental Spices Cash and Carry Fire) and Paris, Tennessee (the Healthy Thyme alleged robbery) during the research period for *Hate Crime Hoax*.

Many other hoaxers, most notably on college campuses, seem to believe strongly in a “social justice” cause, and that they are behaving nobly by bringing intensified attention to bear on what they see as a real problem. In a remarkable case which occurred at Kean University in 2015, student activist Kayla McKelvey left a rally dealing with the topic of racial conflict (which she had helped to organize), created a fake Twitter account inside a campus library building, and used the account to tweet out death threats to Kean’s black students. She then returned to the rally, pulled up the tweets, and was able to say essentially: “Look – THIS is what we’re fighting!” In a similar situation, Yasmin Seweid used what became a national platform to speak out against “Islamophobia,” after accusing a group of male Trump supporters of attacking her for wearing a hijab. The attacks on Seweid and against McKelvey’s classmates never actually occurred, but they certainly helped amplify a political agenda.

As for that agenda, it must be noted that the reason so many hate crime hoaxes “go viral,” and become famous, involves a deeper layer of motivation among individuals beyond the hoaxers themselves. It is no secret that there is a large and active grievance industry in the United States today. To a very significant extent, the justification for entire sectors of American public and economic life—government bureaucracies and large activist nonprofits dedicated to advancing affirmative action, minority set-asides, diversity, “inclusion,” and other similar concepts—is the claim that significant racial (and sexual, homophobic, colonial, Islamophobic, speciesist, etc.) oppression remains a day-to-day reality in the U.S. today. Arguing this can be rewarding: the Southern Poverty Law Center (SPLC) alone has a well-invested endowment of \$471,000,000, and took in \$129,723,028 in “total public support” in 2017 alone. The SPLC is no stand-alone outlier, being joined in the pursuit of justice and money by such other traditional civil rights groups as the National Action Network and Rainbow PUSH Coalition, young lions like the ever-expanding roster of Black Lives Matter (BLM) and

Occupy groups, and influential fringe players like the Nation of Islam and the Aztlan and #Abolish ICE movements.

An ongoing logistical problem for many of these groups is the fact that there is actually rather little serious ethnic conflict in the contemporary United States. The country legally desegregated public facilities with the *Brown v. Board of Education* decision in 1954, made most racism civilly (and sometimes criminally) illegal via the Civil Rights Act of 1964, and instituted affirmative action on a large scale with the Philadelphia Plan back in 1967. Today, interracial violence is rare, at least among the most serious crimes: 93 percent of black murder victims and roughly 85 percent of white ones are killed by someone of the same race. The group with the highest median household income in the country in 2016, according to the U.S. Census, were Indian-Americans, followed a few steps back by Taiwanese and Filipino households. More than 15 percent of all new marriages are interracial, including 29 percent of new marriages among Asian Americans and 27 percent of new Hispanic marriages.

All of this is good news for the country as a whole, but not necessarily for its activists and radicals. Where the demand for bigots greatly outweighs the supply, it may become tempting to drum up incidents of bigotry, or at least to forward any allegations which do appear to the front of the promotional queue. At least partly as a result, the first reaction many high-profile hate hoaxers encounter is not anger or doubt, but rather massive and sympathetic public support from a network of ready-made allies. On February 15, 2019, a bit more than two weeks after falsifying the story of his attack, Jussie Smollett was one of the lead guests on *Good Morning America*, and sat down for an “emotional” seventeen minute interview with host Robin Roberts.

So, what should we do, in this context, about the problem of hoax hate crime? Again, different answers exist at the individual and the societal levels of analysis. At the broader societal level, elected officials and others need to insist on the enforcement of the law. Just as Antifa radicals should not be allowed to redirect traffic on the streets of Portland, individuals within “woke” campus or activist subcultures should not be allowed to falsely allege the commission of a hate crime (or of sexual assault, etc.) and escape with little or no legal penalty.

One very basic suggestion, at least for university-based hate crime, is that all allegations of prosecutable hate crime should immediately be removed from the jurisdiction of non-law enforcement personnel such as campus Diversity and Inclusion bureaucrats or Title IX offices, and referred to the relevant campus police department if not the local city force. Once the police are in charge of a case, accusers should not generally be permitted to simply say they do not wish

to pursue it, but should instead be called in for formal interviews like anyone else involved in a serious criminal matter. Those found to be lying should be prosecuted, at the very least for the crime of filing a false police report. Personally, I would endorse the proposal of academics such as David Kopels, who argue that sentencing enhancements—adding to, for example, the usual penalty for false reporting or obstruction of justice—should exist for people convicted of falsifying a hate offense, just as they do for those convicted of actually committing one.

The government doing sensible things: ah, dare to dream! While we patiently await the nation's district attorneys and flagship universities unanimously adopting these suggestions, there remains an excellent individual defense to the recent wave of fake hate-crime stories: old-fashioned skepticism. Obviously, the numerical majority of ordinary hate crime allegations are almost certainly not hoaxes. Further, the alleged victims of all crimes should be treated with appropriate levels of empathy and fair-mindedness. However, as I have written elsewhere: "When some astonishingly unlikely event is reported—a seemingly targeted attack involving rope, bleach, and MAGA hats during a polar vortex in Chicago, for example—Americans should take a pause for thought and ask some tough questions other than "That's terrible; what can we do to make up for it?" People of goodwill should also begin to—loudly—contribute to the conversation around this issue and a number of related topics, keeping in mind the empirical data on the rates of real hate crime, hoax hate crime, interracial crime, and so on. So long as citizens are not yet too intimidated to express them, real facts have a tremendous advantage over disinformation, and can help bring a greater measure of justice to the increasingly hyperbolic and dangerously misrepresented matter of hate crime.