

PROSECUTION OF BIAS MOTIVATED CRIMES
IN A NEW JERSEY COUNTY, 2001-2004

by

NICKIE D. PHILLIPS

A dissertation submitted to the Graduate Faculty in Criminal Justice in
partial fulfillment of the requirements for the degree of Doctor of Philosophy,
The City University of New York

2006

UMI Number: 3204984

Copyright 2006 by
Phillips, Nickie D.

All rights reserved.

UMI[®]

UMI Microform 3204984

Copyright 2006 by ProQuest Information and Learning Company.
All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

© 2006

Nickie D. Phillips

All Rights Reserved

Abstract

PROSECUTION OF BIAS MOTIVATED CRIMES
IN A NEW JERSEY COUNTY, 2001-2004

by

Nickie D. Phillips

Advisor: Delores Jones-Brown

Beginning in the 1980s, various interest groups recognized and publicized the harm caused by bias motivated violence. As a result, virtually every state enacted some form of bias crime legislation. Over the past two decades, research has focused on an array of issues pertaining to bias crimes including the consequences of victimization and the causes of bias-motivated violence. Additionally, much scholarly debate centered on the concept of bias crimes, the constitutionality of bias crime legislation, and the enforcement of the legislation.

Despite the widespread implementation of the legislation, there is little research focused on the prosecution of bias motivated crimes. This dissertation examined the investigation and prosecution of bias motivated cases in one New Jersey county between 2001 and 2004. The study presented a comprehensive examination of the cases referred for prosecution as well as the types of cases successfully prosecuted. The study also explored the policy implications surrounding the enforcement of bias crimes and the effects of the enforcement of the legislation on minorities.

Many cases that reached the bias unit did not reach the level of a criminal offense, resulting in a large number of declined cases. Of the cases that reached the bias unit for investigation, five percent were referred for prosecution as a bias crime. Of the cases charged as a bias crime, half would not have been indictable crimes without the bias

element, which essentially bumped the crime up to a felony in the 4th degree. The study did not find that minorities were disproportionately prosecuted for bias crimes.

The cases referred for prosecution were categorized according to McDevitt, Levin, & Bennett's (2002) bias crime typology. While the majority of cases fit the typology, about one-third did not, which led to the creation of one additional category labeled "Interpersonal Confrontation." In the current study, the enforcement of bias crime legislation cast a wide net and captured many cases in which relatively minor crimes appeared to be motivated by factors other than primarily bias motivation.

ACKNOWLEDGMENTS

This dissertation would not have been possible without the cooperation of the county prosecutor's office and bias unit. I am especially grateful to the Assistant Prosecutor who never made me feel I had overstayed my welcome, to the family court prosecutor, the family court paralegals, and investigators for being so gracious and allowing me access to the data. I would like to give special thanks to the lead investigator at the bias unit for his patience, understanding, and willingness to accommodate me on each visit I made to the office.

I am grateful to my committee members for their helpful comments and direction throughout this process. Thanks to Delores Jones-Brown and Michael Jacobson for supporting my idea. Additionally, I would like to thank Joshua Freilich for his advice and encouragement throughout the process and Val Jenness for offering her expertise in the area on each of my drafts and for being most generous with her time. I would also like to thank Dr. Maria R. Volpe for her guidance and advice over the past several years and for offering me a place in the CUNY Dispute Resolution family.

Most importantly, I would like to thank my friends and family for all of their encouragement and support throughout this process. My parents will certainly say that, upon completion of the dissertation, I can now get back to the "real world." Thanks to Chad Shults for making me laugh, thanks to Gennifer Furst and Staci Strobl for listening and sharing, and many thanks to Peeps for being a distraction every day as I tried to write. Special gratitude goes to Natasha A. Frost for listening to countless hours of rough ideas and consistently keeping me on track. Most importantly, I would like to thank KT for being there throughout the years and simply believing in me.

TABLE OF CONTENTS

CONTENTS	vii
LIST OF TABLES	xi
LIST OF FIGURES	xiii
CHAPTER 1: INTRODUCTION	1
CHAPTER 2: REVIEW OF THE LITERATURE	3
Bias Crimes – Scope of the Problem	3
Origins of Bias Crime Legislation	6
Purposes of Bias Crime Legislation	7
New Jersey Bias Crime Legislation	11
The Law-in-Action	13
CHAPTER 3: BIAS CRIMES: ENFORCEMENT ISSUES	15
Policing: Identifying and Investigating Bias Crimes	15
Prosecution of Bias Crimes	21
<i>The Role of the Prosecutor</i>	25
<u>Screening and Charging</u>	25
<u>Victim Credibility</u>	27
<u>Victim Cooperation</u>	31
<i>Convictions</i>	34
<i>Sentencing Recommendations</i>	34
<i>Race and Criminal Processing</i>	36
<u>The Impact of Race on the Enforcement</u> <u>of Bias Crime Legislation</u>	39
CHAPTER 4: METHODOLOGY	42
Objectives of the Study and Research Questions	42
Data Sources	43
Investigative Files	44
Variables	46
Case Characteristics	46

<i>Type of Bias Motivation</i>	46
<i>Location</i>	46
<i>Type of Offense</i>	47
<i>Investigative Action</i>	47
Offender Characteristics	48
Victim Characteristics	49
Case Files	49
<i>Seriousness of the Crime</i>	50
<i>Case Typology</i>	50
<i>Evidence Factors</i>	51
<i>Case Outcomes</i>	51
<i>Conviction</i>	52
<i>Sentence Recommendations and Sentences Received</i>	52
CHAPTER 5: RESULTS - TOTAL CASES REACHING THE BIAS UNIT, 2002-2004	54
Screening Bias Motivated Cases	54
Investigative Action	56
Type of Bias Motivation	57
Type of Bias Motivation and Investigative Action	59
Type of Offense and investigative action	61
Location	62
Offender Characteristics Per Case	63
Victim Characteristics Per Case	63
CHAPTER 6: RANDOM SAMPLE OF CASES REACHING THE BIAS UNIT, 2001-2004	65
Investigative Action	65
Type of Bias Motivation	65
Type of Offense	69
Offender Characteristics Per Case	71
Victim Characteristics Per Case	72
Case Seriousness	73

Prior Relationship	74
Criminal Charges	75
Level of Investigation	76
Investigative Activity	77
CHAPTER 7: BIAS CRIME CASES REFERRED FOR PROSECUTION, 2001-2004	79
Case Characteristics	79
Type of Bias Motivation	83
Type of Offense	83
Offender Characteristics Per Case	85
Victim Characteristics Per Case	86
Case Seriousness	87
Injury	88
Prior Relationship	89
Level of Investigation	89
Evidence Factors	90
Criminal Charges	91
Convictions	94
<i>Type of Bias Motivation</i>	95
Sentence Received	96
Case Typology	96
<i>Unclassifiable</i>	98
<i>Interpersonal Confrontation</i>	99
<i>Retaliation</i>	104
<i>Defensive</i>	104
<i>Mission</i>	105
<i>Thrill</i>	107

CHAPTER 8: OFFENDER CHARACTERISTICS, 2001-2004	112
Type of Bias Motivation	113
Criminal Charges	115
Convictions	119
Sentence Recommendations and Sentence Received	120
CHAPTER 9: DISCUSSION	123
The “Perfect” Case: Prior Relationship, Prior Record, Multi-Motives	130
High-Profile Bias Crimes Revisited	132
Impact of Enforcement of Bias Crime Legislation on Minorities	134
Policy Implications	135
Symbolic Impact of the Legislation	136
Limitations	139
Future Research	140
Conclusion	141
APPENDIX A Hate Crime Provisions Across Different States	142
APPENDIX B Codesheet	144
APPENDIX C APRI Bias Indicators	148
APPENDIX D Case Summaries – Cases Referred for Prosecution as Bias Crimes, 2001-2004	149
REFERENCES	156

LIST OF TABLES

Table 3.1	Factors Influencing Prosecutor’s Case Processing Decisions	32
Table 3.2	Previous Research Addressing Factors Influencing Prosecutor’s Case Processing Decisions	33
Table 4.1	Case Files Examined	43
Table 4.2	Variable Description and Measurement	53
Table 5.1	Type of Bias Motivation	58
Table 5.2	Type of Bias Motivation and Investigative Action	60
Table 5.3	Type of Bias Motivation and Investigative Action, Recode	60
Table 5.4	Type of Offense and Investigative Action	61
Table 5.5	Type of Bias Motivation by Type of Offense	62
Table 5.6	Location and Investigative Action	62
Table 6.1	Type of Bias Motivation	67
Table 6.2	Type of Bias Motivation and Investigative Action	68
Table 6.3	Location	68
Table 6.4	Type of Offense	69
Table 6.5	Type of Offense and Investigative Action	70
Table 6.6	Type of Offender and Investigative Action	72
Table 6.7	Prior Relationship	74
Table 6.8	Police Charges	75
Table 7.1	Case Characteristics	81
Table 7.2	Type of Offense and Type of Offender	84
Table 7.3	Race/Ethnicity of Offender Per Case	85
Table 7.4	Race/Ethnicity of Offender/Victim	86
Table 7.5	Victim Perception and Victim Cooperation	87
Table 7.6	Degree of Crimes	91
Table 7.7	Most Serious Charge Per Case	92
Table 7.8	Convictions	94
Table 7.9	Bias Conviction and Type of Offense	95
Table 7.10	Bias Conviction and Type of Offender	95
Table 7.11	Bias Conviction and Type of Bias Motivation	96
Table 7.12	Offender Typology	98
Table 8.1	Offender Characteristics	114

Table 8.2 Most Serious Charge Per Offender	116
Table 8.3 Bias Convictions	120
Table 8.4 Sentence Received	121

LIST OF FIGURES

Figure 6.1 Level of Investigative Activity Per Case	76
Figure 6.2 Investigative Action and Reasons for Disposition Per Case	78
Figure 7.1 Level of Investigation Per Case	90
Figure 8.1 Charges	117

CHAPTER 1

INTRODUCTION

In 2004, according to the Federal Bureau of Investigation's Uniform Crime Report (UCR) there were 7,649 bias crime incidents nationwide. Although the FBI began collecting statistics on bias crimes in 1990, there is currently no nationwide database regarding the prosecution of bias crime cases. To date, beyond anecdotal evidence and preliminary statistics, there is little published empirical research on the case processing and case outcomes of bias crimes (Bell, 2002; Jacobs & Potter, 1998; Jenness & Grattet, 2001; Levin & McDevitt, 2002).

While bias crime legislation was proposed and implemented with the intention to, at least symbolically, protect individuals that have experienced violence motivated by prejudice against race, religion, ethnicity, or sexual orientation (Jenness & Grattet, 2001; Lawrence, 1999), it remains unclear whether the legislation meets those ends. Advocates of bias crime legislation promoted the symbolic effects of the legislation (Herek & Berrill, 1992; Lawrence, 1999), while police and prosecutors were directed by the American Prosecutor's Research Institute to be "tough on hate crime perpetrators" and aggressively enforce hate crime legislation to send "the clear message that hate violence is a law enforcement priority" (APRI, 2000, p. 2-3). However, some critics of the legislation have pointed out that criminalizing hate or bias is not the best way to cure society's prejudicial ills (Hentoff, 2000; Jacobs & Potter, 1998). Research is needed to determine the extent to which bias crime legislation is enforced.

The current study focused on the enforcement of bias crime legislation in a New Jersey county, specifically examining the processing and outcomes of bias motivated cases. The current study contributes to the literature regarding the prosecution of bias crimes by: (1) providing a comprehensive examination of the prosecution of bias crimes in a New Jersey County from 2001-2004, (2) examining the effects of enforcement of bias crime legislation on minorities, and (3) examining the policy implications surrounding the enforcement of bias crimes.

CHAPTER 2

REVIEW OF THE LITERATURE

BIAS CRIMES – SCOPE OF THE PROBLEM

Since 1990, as mandated by the Hate Crime Statistics Act (HCSA), the Federal Bureau of Investigation (FBI) has collected and disseminated data collected from law enforcement agencies across the nation regarding bias motivated crimes (FBI, 1999)¹. According to the UCR, approximately 8,000 to 10,000 bias motivated crimes occur in the United States each year.² According to the most recent FBI statistics, in 2004 a total of 12,711 agencies reported 9,035 bias motivated offenses to the UCR.

Overall, hate crime data reported to the FBI over the past decade indicated that the majority of hate crimes are motivated by racial bias (FBI, 2005; 2004; 2003; 2002; Strom, 2001; see Perry, 2001 for summary statistics from 1991-1998). Consistently, the majority of the racially motivated hate crimes were anti-black. Further, the majority of hate crimes reported to the FBI consisted of crimes against persons, with intimidation³ as the most frequently reported offense (FBI, 2005; 2004; 2003; 2002; Strom, 2001; see

¹ Although some scholars have differentiated between the terms “bias” and “hate” crimes (see Jenness & Grattet, 2001, p. 87; Lawrence, 1999, p. 9), this study focused on the enforcement of bias crimes, as opposed to definitional issues surrounding bias crimes. Therefore, the terms “bias” and “hate” will be used interchangeably.

² Data for the UCR is provided voluntarily from law enforcement agencies. Each year, the number of reporting agencies has varied from 9,584 in 1992 to 12,711 in 2004.

³ The FBI defines intimidation as “to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack” (Federal Bureau of Investigation Hate Crime Collection Guidelines, Uniform Crime Reporting, Appendix III, p. 23).

Perry, 2001). Of crimes against property, destruction/damage/vandalism was most frequently reported.

Rubenstein (2004) objected to the presentation of bias crime statistics by relying on the traditional “neutral” categories such as racial, religious, and sexual orientation (p. 1213). Rubenstein (2004) argued that a more complete picture of who is victimized would be portrayed if the population of the target group was taken into consideration and a per capita figure was presented. For example, when taking into account target group population, Rubenstein (2004) found that per capita, “gay people report the greatest number of hate crimes, followed by Jewish people and blacks” (p. 1213.)

Overall, it is widely believed that bias motivated crimes are underreported (Berk, Boyd, & Hamner, 1992; Garcia, McDevitt, Gu, & Balboni, 1999; McDevitt, Balboni, Bennett, Weiss, Orchowsky, & Walbolt, 2000), and the Southern Poverty Law Center estimates as many as 50,000 bias motivated crimes per year (SPLC, nd). However, despite the alarming estimates, the total number of bias crimes is less than one percent of all index crimes reported to the UCR. For example, in 2004 the UCR reported a total of 11,695,264 index crimes and a total of 9,035 bias motivated offenses (FBI, 2005). Similarly, in 2004 the New Jersey UCR reported a total of 242,444 index crimes and a total of 868 bias motivated offenses (NJ UCR, 2004).

Although bias motivated crimes occur less frequently than non-bias motivated crimes, scholars argue there is reason to be concerned about crimes motivated by bias. For example, bias motivated crimes are believed to produce greater harm than non-bias motivated crimes (Lawrence, 1999). Researchers examining bias motivated crimes found that bias crimes victimize not only the immediate victim(s), but also individuals who

share the same group status as the victim(s) and society as a whole (Herek & Berrill, 1992; Lawrence, 1999). Lawrence (1999) described how the harm of bias crimes extends beyond the immediate victim by illustrating that a cross burning in the yard of a recently relocated black family is, in effect a message to all blacks that they are not welcome in the neighborhood. Such crimes affect whole communities in ways that non-bias motivated crimes do not, thereby potentially increasing inter-group conflict (Craig, 1999; Gerstenfeld, 2004).

Additionally, the victims of bias motivated crimes have been shown to suffer greater psychological trauma (Berk, Boyd, & Hamner, 1992; Garcia et al., 1999; Lawrence, 1999; Levin & McDevitt, 2002). A few studies have shown that bias crime victims are in fact more likely to experience more severe or long-lasting psychological effects than victims of non-bias crimes (Garcia et al., 1999; Garofalo, 1997).

In addition to psychological harm, some scholars argue that victims of bias motivated crimes suffer more severe physical injuries than victims of non-bias motivated crimes (Levin & McDevitt, 1993). In their study of bias motivated crimes reported to the Boston police, Levin and McDevitt (2002) found that 30 percent of bias motivated assault victims required treatment at a hospital, compared to seven percent of victims of non-bias motivated assaults. Similarly, Messner, Mchugh, and Felson (2004) found that “bias offenders are more likely [than non-bias offenders] to seriously injure the victim during the assault” (p. 608). However, not all studies have found that bias crime victims suffer greater physical injury (Garcia et al., 1999; Garofalo, 1997). For those sensitive to minority group interests and concerned with a potential increase in intergroup conflict in

the United States, the attention toward crimes motivated by bias signaled a need for specific legislation as a remedy.

ORIGINS OF BIAS CRIME LEGISLATION

During the 1980s, high profile cases such as the murder of provocative Jewish radio host Alan Berg by members of the hate group Silent Brotherhood, the murder of Mulugeta Seraw in Portland, Oregon by members of the skinhead group East Side White Pride, and the murder of Yusuf Hawkins by white youths in Brooklyn, New York, sparked public outrage across the nation leading some academics to declare a “rising tide” of bias motivated violence reaching “epidemic” proportions (see Jacobs & Potter, 1998, p. 45; Levin & McDevitt, 1993; see also, Paul Simon, U.S. Senator, as quoted in Jenness & Grattet, 2001, p. 53). During this time, dedicated interest groups sensitive to a history of discrimination and violence toward minorities worked toward publicizing bias crime incidents and spurred legislators to action (Jenness & Broad, 1997; Jenness & Grattet, 2001).

Jenness and Grattet (2001) described how the civil rights movement, women’s movement, gay and lesbian movement and the victim’s rights movement converged to form an “anti-hate crime” movement focused on documenting and publicizing violence “connected to racism, nationalism, anti-Semitism, sexism, and heterosexism” and ultimately, implementing policy (p. 32). The effort by the various groups was successful and resulted in state and federal legislation designed not only to punish bias motivated offenders but also to send a message to the larger community that bias motivated crimes would not be tolerated.

Jacobs and Potter (1998) described the convergence of social movements culminating in the passage of bias crime legislation as “identity politics” (p. 5). The authors specifically emphasized that the development of bias crime legislation was not a result of any inadequacy in the law, rather the legislation was a strategy for groups claiming victim status in order to gain political advantage (Jacobs and Potter, 1998). Such proposed legislation was viewed by Jacobs and Potter (1998) as an easy political victory for politicians, focused essentially on rhetoric and symbolism. As of 2005, 45 states have enacted some form of bias crime legislation addressing bias motivated violence and intimidation (ADL, 2005, see Appendix A).

PURPOSES OF BIAS CRIME LEGISLATION

Gerstenfeld (2004) discussed various rationales for the implementation of bias crime legislation including retribution, deterrence, and symbolic effects. Lacking studies on deterrence, it is impossible to determine whether bias crime legislation leads to a decrease in bias motivated crimes. In fact, Jacobs and Potter (1998) argued that the enforcement of bias crime legislation may actually be divisive, creating conflict in society rather than alleviating it (see also Gerstenfeld, 1992). While it is unclear whether the legislation has an impact on the frequency of bias motivated crimes, it appears that it has yet to deter hate group activity. For example, New Jersey has had some form of bias crime legislation since 1981, however Lipka (2005) noted that according to the Southern Poverty Law Center, hate groups have increased over the past year and are “are mushrooming across New Jersey” (Lipka, 2005).

Frederick Lawrence (1999) wrote the most comprehensive argument in favor of bias crime legislation in *Punishing Hate*. Lawrence (1999) argued that while punishment may be justified by either retributive or consequential perspectives, the role of punishment in society may be best understood as expressive (p. 167). The implementation of bias crime legislation then, is an expression of society's disapproval and moral condemnation of bias motivated criminal behavior, thereby increasing social cohesion. As Lawrence (1999) declared, "This act of law-making constitutes a societal condemnation of racism, religious intolerance, and other forms of bigotry that are covered by that law" (p. 167). Thus, according to Lawrence "if bias crimes are not punished more harshly than parallel crimes, the implicit message expressed by the criminal justice system is that racial harmony and equality are not among the highest values in our society" (p. 169).

Gerstenfeld (1992) pointed out that from a purely symbolic perspective, the actual enforcement of the legislation is less important than the message it sends to society. In a sense, merely having the legislation on-the-books should work toward "educating people that bigotry is wrong" (p. 267).

However, from a retributive perspective, the actual enforcement of bias crime legislation is of primary concern. From a retributive perspective, a bias motivated offender "deserves to be punished more than 'ordinary' offenders" for a variety of reasons (Gerstenfeld, 2004). Specifically, bias motivated offenders cause more harm, both to the individual and the target community, and are therefore more deserving of harsher punishments (Gerstenfeld, 2004). However, the definitional issues surrounding bias crimes are especially problematic when approaching bias crime legislation from a

retributive perspective. In order to be effective, more severe punishment must be meted out to the most deserving offenders. However, studies on the policing of bias crimes have pointed out that various departments classify bias crimes according to differing standards (Boyd, Berk, & Hamner, 1996). If bias motivated crimes (and offenders) are not clearly discernable from non-bias offenders, uncertainty remains as to whether the offenders are, in fact, receiving their deserved punishment.

Additionally, in addressing the importance of enforcing bias crime legislation, Gerstenfeld (2004) pointed out that “if prosecuting hate crimes sends a message that such behavior is unacceptable, then *failing* to prosecute might convey the idea that the society approves of the behavior” (p. 22). From this perspective, having the legislation on the books is not sufficient; low rates of prosecution would signal implicit acceptance of bigotry and prejudice.

Some critics of bias crime legislation emphasized that the criminal justice system itself has traditionally been a mechanism for marginalization and oppression, thus the unintended consequences of bias crime legislation may negatively impact the groups that fought so hard for the passage of the legislation and arguably the groups the legislation was initially intended to protect (Franklin, 2002; Kohn, 2002; Maroney, 1998; Spade and Willse, 2000). With regard to anti-gay bias crime legislation, Spade and Willse (2000) questioned, “what is the real emancipatory value of a gay rights agenda that seeks recognition by and entrance into subordinating systems of inequality?” (p. 44).

Furthermore, the authors argued “knowing that the criminal justice system disproportionately targets and punishes people of color and poor people, does it make sense from an anti-racist perspective to consider seeking remedies for homophobia within

the criminal justice system?” (p. 43). National statistics on bias crimes have, in fact, shown that African Americans are disproportionately identified as bias crime offenders⁴ (Strom, 2001). It is reasonable to assume that they will also be likely to disproportionately bear the brunt of the legislation.

An additional policy concern confronts the enforcement of bias crime legislation. The rise of incarceration rates over the past several years leads one to question whether harsher penalties are a wise solution to combating bias motivated crime. As of 2002, the United States had over 6 million individuals under correctional supervision, with over 2 million individuals in jail or prison (BJS, 2002). If bias crime legislation is working as intended, individuals convicted under bias crime legislation will receive harsher sentences than they would receive absent the legislation, thereby increasing sentences in an already overburdened criminal justice system. Critics of bias crime legislation have pointed out that in many instances such as the brutal murders of Matthew Shepard and James Byrd, the offenders already received harsh penalties without additional hate crime penalty enhancements (CNN, 1999a; CNN, 1999b). In fact, hate crime enhancements for homicide are infrequent (Kleinknecht, 2003). But the fact remains that the majority of bias crimes are low-level offenses, most likely resulting in probation, fines, or jail time. Therefore, the vast majority of bias motivated offenders are potentially subject to some form of sentence enhancements.

⁴ According to data from the National Incident Based Reporting System (NIBRS) from 1997-1999, the majority of hate crimes were committed by whites (70%). However blacks comprised 25% of the bias crime offenders (Strom, 2001). According to the 2000 U.S. Census, whites comprise 75.1% of the population, black or African American comprise 12.3%, American Indian and Alaska Native 0.9%, Asian 3.6%, Native Hawaiian and Other Pacific Islander 0.1%, and other 5.5%.

NEW JERSEY BIAS CRIME LEGISLATION

Although scholars have debated the legal and philosophical merits of bias crime legislation (Gellman, 1992-1993; Jacobs & Potter, 1998; Jenness & Grattet, 2001; Lawrence, 1999), in 1993 the U.S. Supreme Court upheld enhanced penalties for crimes in which the victim is intentionally selected “because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person...” (*Wisconsin v. Mitchell*).

The current research focused on the enforcement of bias crime legislation in New Jersey. According to Vitale (2002), New Jersey’s first bias crime law was enacted in 1981. The law “banned acts of intimidation motivated by bias such as the burning of crosses or the painting of swastikas” and “permitted judges to increase the defendant’s sentence if the crime was perpetrated with the ‘purpose to intimidate an individual...because of race, color, gender, handicap, religion, sexual orientation, or ethnicity’” (Vitale, 2002, p. 365). In 1990, the “Ethnic Intimidation Act” was enacted to “enhance sentences in cases where the offender acts ‘at least in part, with ill will, hatred or bias’ toward his victim because of the victim’s race, color, religion, or sexual orientation” (Bean, 1993, p. 4). The Act “upgrades harassment and simple assault from misdemeanors to fourth-degree indictable crimes” (Bean, 1993, p.4). In 1995, the language was changed from “at least in part, with ill will, hatred or bias” to “with a purpose to intimidate” as a result of *R.A.V. vs. City of St. Paul*⁵ (see 2C:33-4). Section d of the harassment statute stated:

⁵ In *R.A.V. vs. City of St. Paul* (1992), the U.S. Supreme Court ruled that St. Paul’s ordinance prohibiting the placing of symbols “...which one knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, religion, or gender...” was “facially unconstitutional in that

A person commits a crime of the fourth degree if in committing an offense under this section, he acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity

Until the U.S. Supreme Court decision in 2000, New Jersey judges were permitted to enhance sentencing of crimes motivated by bias based on a preponderance of evidence (*Apprendi v. New Jersey*). In 1994, Charles Apprendi fired several bullets into the home of an African-American family. Apprendi stated that he fired the shots “because they [the family] are black in color he does not want them in the neighborhood” (*Apprendi v. New Jersey*, 2000). Apprendi later retracted that statement, but entered a plea agreement, pleading guilty on three counts of the 23-count indictment. As stated in *Apprendi* (2000), “none of the counts referred to the hate crime statute, and none alleged that Apprendi acted with a racially biased purpose.” Subsequently, the State requested an enhanced sentence based on racial bias. Apprendi appealed and the case reached the U.S. Supreme Court. In 2000, the Court ruled that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt” (*Apprendi*, 2000). In response to the Court’s decision, New Jersey legislators enacted the “Bias Intimidation” law (Vitale, 2002). New Jersey’s “Bias Intimidation” statute (2C:16-1) reads in part:

- a. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11-18 of Title 2C of the New Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or N.J.S.2C:39-5,
 - 1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses” (505 U.S. 377, p. 381).

- 2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or
- 3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, handicap, sexual orientation, or ethnicity.

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, handicap, sexual orientation, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

c. Grading. Bias intimidation is a crime of the fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise, bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a....

As it stands, virtually every state in the nation has some form of bias crime legislation, although legal and scholarly debates surrounding the legislation continue (ADL, 2005, see Appendix A; Hurd & Moore, 2004).

THE LAW-IN-ACTION

Jenness and Grattet (2005b) identified three stages in the lawmaking and enforcement process: law-on-the-books, law-in-between, and law-in-action. Jenness and Grattet (2001) examined the development of bias crime legislation (the law-on-the-books), tracing the origins to the merging of various interest groups culminating in an anti-hate crimes social movement. Jenness and Grattet (2005b) have also examined the

factors that influence the adoption of bias crime policies by police departments in California (the law-in-between).

The researchers found that organizational perviousness, as measured by the presence of community group meetings, community policing practices, and workplace heterogeneity, was the strongest predictor of having a policy (Jenness & Grattet, 2005b). Although having a department policy indicated some effort to formally address bias crimes, it does not necessarily translate into actual enforcement. Thus, the need to examine the law-in-action.

Jenness and Grattet (2005b) refer to law-in-action as police practices such as reporting and arrest, but law-in-action may also include the prosecution of bias crimes. In their 2001 examination of the development of bias crime legislation, Jenness and Grattet suggested that ambiguities surrounding the concept of bias crimes were decreasing and that as law enforcement training, specialized units, and the distribution of guidelines increase, then “police practices related to hate crime enforcement are likely to reach a greater degree of convergence—and at an accelerated rate” (p. 165). Further, they predicted that the prosecution of bias crimes will become “more uniform” and “that as the ambiguity surrounding the laws lessens police and prosecutors alike will continue to develop a familiarity with the concept and establish case-building routines that facilitate successful policing and prosecution” (p. 165). Chapter 3 addresses the enforcement of bias crimes including the role of police and prosecutors.

CHAPTER 3

BIAS CRIMES: ENFORCEMENT ISSUES

POLICING: IDENTIFYING AND INVESTIGATING BIAS CRIMES

Although this study focuses on the prosecution of bias crime cases, most empirical studies to date have focused on police discretion involving how police identify and classify bias crimes. Such a focus on the front end of the process gives us an idea of how police utilize discretion in identifying and classifying bias motivated crimes. This chapter contains an overview of the research on bias crimes from the perspective of police officers, with an emphasis on how these decisions influence prosecutors.

The enforcement of bias crime legislation is contingent on decision making by various actors at numerous stages. For example, to enforce bias crime legislation, incidents must be reported to law enforcement officers and classified as bias motivated crimes. Classification procedures vary by department, and some scholars express doubt that bias crimes can be properly identified and prosecuted. For example, Jacobs (1992-1993) indicates that in effect, “practically any crime committed by a member of one group against a member of another qualifies for investigation as a hate crime” (p. 548).

To investigate classification issues associated with bias crimes, Boyd, Berk, and Hamner (1996) examined decision making by patrol officers and detectives in two divisions of a large urban police department. The researchers found that while procedures may differ, officers are in fact able to identify and classify bias motivated crimes, and they conclude that “hate crimes are not oriented to by the police detectives

that we observed as any more problematic than any other type of crime, despite their unique definitional and bureaucratic features” (Boyd, Berk, & Hamner, 1996, p. 846).

The department’s policy broadly defines a hate crime as “any malicious or offensive act directed against an individual or group based upon their race, religion, ethnic background, culture or lifestyle, including criminal and non-criminal acts” (p. 824).

Boyd, Berk, and Hamner (1996) found that officers and detectives believed that bias crimes were a rare occurrence and “only a ‘few’ crimes which can ‘really’ be called hate motivated” occurred in their jurisdiction (p. 827). The authors described how each division classified bias motivated crimes. “Division A” of the Metropolitan Police Department utilized one detective to examine all preliminary investigative bias reports completed by the patrol officers. According to Boyd, Berk, and Hamner (1996), the preliminary investigative reports were forwarded to the detective for examination and the detective may declare cases unfounded at this stage. The detective in Division A employed a narrow definition of bias crime stated as an “unprovoked incident between strangers motivated solely by one’s hatred of the other” (p. 837). Such a narrow approach allowed the detective to rule out any incident that may have some motivation other than bias. Boyd, Berk, and Hamner (1996) stated that the focus of Division A is to reduce the number of ambiguous cases, including bias incidents, reported by their division and only proceed with cases perceived as likely to result in conviction.

Boyd, Berk, and Hamner (1996) found that “Division B” had as many as four detectives investigating potential bias motivated cases. In contrast to Division A, Division B simply focuses on discerning whether or not the crime occurred and what type of crime occurred rather than the specific motive. Boyd, Berk, and Hamner (1996)

reported that the perception of the victim is of primary importance to detectives in Division B. For example, if the victim perceived the incident as bias motivated, the detectives classified the incident as such. The researchers stated that detectives in Division B are more inclusive than Division A, continuing to classify cases as bias motivated if there is even a “single element” indicating bias motivation (Boyd, Berk, and Hamner, 1996, p. 843).

Similarly, Bell (2002) investigated the enforcement of bias crime legislation by following detectives for five months as they identified and investigated bias crimes and interacted with prosecutors. In Center City, Bell (2002) described patrol officers as having initial discretion in classifying cases as bias motivated and then forwarding the appropriate cases to the Anti-Bias Task Force (ABTF). Bell (2002) indicated that police officers were required to forward any cases in which there was a suspicion of bias motivation to the Task Force. After a finding by the ABTF that frontline officers were at first “reluctant to forward to the unit cases in which whites were accused of committing hate crime,” all reports were filtered through the Reports Bureau which in turn was required to forward “every report with a difference in race between the victim and the perpetrator to the ABTF” (Bell, 2002, p. 58-59). Detectives of the ABTF then screened out cases if a determination was made that the incident was not bias motivated (Bell, 2002). During the screening process, the detectives classified cases by determining not only what was considered a bias crime, but what was *not* a bias crime, or the “typical *non-hate crime*” (p. 144). The typical “*non-hate crime*” was described by Bell (2002) as “cases involving drugs, fights, retaliation for earlier fights, traffic accidents, and neighbor disputes” (p. 144).

Garofalo and Martin's (1993b; see also Garofalo, 1997; Martin, 1996) study compared police response to bias and non-bias motivated crimes in Baltimore County, Maryland (1982-1988) and New York City (1987-1988). The researchers found that bias motivated crimes were more likely to result in arrest than non-bias motivated crimes. For example, New York City had a higher percentage of clearance rates for bias crimes (24 percent) with only 9 percent for non-bias crimes. Baltimore County has a 20 percent clearance rate for bias crimes and 14 percent for non-bias (Garofalo & Martin, 1993b).

Martin (1996; Garofalo & Martin, 1993b) stated that in both jurisdictions, the percentage of arrests made is related to the type of offense committed. For example, in both jurisdictions, bias motivated confrontational crimes (assault, reckless endangerment, menacing, and robbery) were more likely to result in arrest than their non-bias counterparts. In terms of bias motivation, in New York City, crimes motivated by sexual orientation bias and crimes in which multiple bias was present had a higher clearance rate than other types of bias motivation. In Baltimore County, racially motivated bias crimes had a higher percentage of arrest than the other types of bias motivated crimes. In both jurisdictions, religiously motivated crimes were least likely to result in arrest, most likely due to the predominance of property crimes within this category (Martin, 1996; Garofalo & Martin, 1993b). Overall, the amount of follow-up was the greatest factor that contributed to the higher arrest rate of bias crimes, especially in New York City (Martin, 1996). According to Martin (1996), follow-up included initial interview with victim, later interview with victim, interview with suspect, canvassing for witnesses, collecting physical evidence, photos of crime scene, and showing photos to victim/witnesses.

Bell (2002), noted that in addition to routine investigative procedures, other additional measures specific to screening bias cases were utilized. Bell (2002) found that the detectives frequently asked additional questions of the victim when screening bias motivated cases. For example, Bell (2002) stated the victim may be asked to reveal his or her perception regarding the motivation of the offender or the victim may be asked if he or she was a “racial, religious, or other minority in the area where the attack occurred” (p. 72-73).

Boyd, Berk, and Hamner (1996) stated that the departmental policy required frontline officers to give investigative priority to bias motivated incidents. However, Jacobs and Potter (2001) stated that “with respect to *the most serious* crimes of violence, it is unlikely that a bias crime label will lead to any more investigative effort than would be made absent the label” (emphasis added, p. 109). Even though the majority of bias motivated crimes are deemed low-level, researchers have found that overall, bias motivated crimes received a greater amount of follow-up than non-bias motivated crimes. For example, Bell (2002) examined “case files and the number of reports filed by detectives” and concluded that “detectives in hate crime units spend more time investigating cases than detectives working in other areas” (p. 57) and that 92 percent of the bias cases from 1987-1996 at “Center City” received at least minimal investigation, described as files consisting of at least four to seven pages in length. Similarly, Garofalo and Martin’s (1993b) study comparing bias to non-bias crimes, reported that 94 percent of bias motivated crimes in New York City had 3 or more follow-up reports filed while at least 80 percent of non-bias motivated crimes had *no* follow-up reports filed.

Since the majority of studies on policing are qualitative, it is difficult to ascertain the extent to which cases are “ruled out” or rejected as bias motivated. Bell (2002) stated that the detectives gave the “broom” to cases that were initially screened from further investigation, sometimes after an interview with the victim (Bell, 2002, p, 59). Once broomed, the case was not part of the bias crime statistics. However, such cases should be part of the statistics since some level of investigative effort is expended, if only to reject the cases. In her dissertation study focused on bias motivated offenders, Ituarte (2000) found that investigators may screen out many more cases than not. Ituarte (2000) found that of the 140 bias motivated incidents reaching a bias crime unit in New Jersey during 1997, only 28 were confirmed as bias motivated. Only 14 of the 28 bias motivated cases were formally prosecuted.

Although studies on policing of bias crimes did not investigate case processing beyond the classification stage, Boyd, Berk, and Hamner (1996) noted that “it is likely that Division A’s practices result in a higher rate of successful prosecution and punishment than Division B’s” due to the narrow definition employed by the detective (Boyd, Berk, & Hamner, 1996, p. 847). While each division utilized different classification methods, both considered bias crimes a rare and unusual occurrence in their jurisdiction (Boyd, Berk, & Hamner, 1996).

Similarly, Garofalo and Martin (1993b) indicated that although they were not able to provide data on case processing beyond the arrest stage, they inferred from their data that “there are some indications in our data that bias crime arrestees, in comparison to non-bias crime arrestees, are somewhat more likely to be charged and convicted, and if convicted, to receive more severe sentences” (p. 43). Interviews with investigators

assigned to the bias unit in New York revealed that the court personnel handled bias motivated cases “seriously,” “professionally,” and “competently” and were reported to “[follow] through with punishment” (Garofalo & Martin, 1993b, p. 44).

PROSECUTION OF BIAS CRIMES

Although there is much scholarly work on bias crime legislation, there is little empirical research on the prosecution of bias crimes. The lack of research is partly due to the difficulty of obtaining data, especially the lack of a statewide or nationwide database on the prosecution of bias crimes (Green, 2001; Perry, 2003).

Levin and McDevitt⁶ (1993, 2002) examined 452 bias crime cases from the Boston Police Department between 1983 and 1987. The researchers found that only 7 percent of bias motivated cases that were reported to police resulted in convictions. Their data revealed that 60 bias motivated cases resulted in arrest and only 30 resulted in convictions (Levin & McDevitt, 1993, p. 194; 2002, p. 182). Similarly, Maldonado (1992-1993), an Assistant District Attorney in Kings County, New York, offered a tally of cases as recorded by the Civil Rights Bureau of the Office of Kings County District Attorney between January 1992 and May 1993 as evidence of the difficulty in prosecuting bias crimes. Of the 238 alleged bias motivated incidents, Maldonado (1992-1993) found that only 12 percent were prosecuted through disposition.

Although a low percentage of bias crime convictions may be disheartening, conviction rates for all types of crimes are relatively low. Mauer (1999) stated just how few cases reported to police actually result in conviction through his illustration of the

⁶ Levin and McDevitt (1993, 2002) reported figures from their paper presented at the American Society of Criminology meeting in 1989. In a personal conversation, Dr. McDevitt revealed that only five cases of the 452 resulted in incarceration for the offender (personal communication, 2004).

“criminal justice funnel” (p. 106). Of the 1,900,000 violent felony offenses reported to the police in 1994, only 18 percent of the arrests resulted in a felony conviction. The largest drop is between the incident reporting and arrest stage. Additionally, conviction rates differ according to the type of crime. For example, Forst (2002) reported that murder has a 60 percent conviction rate, while only 30 percent of robbery arrests result in conviction and 13 percent of aggravated assault arrests result in conviction.

Based on data from California from 1995 to 1997, Grattet and Jenness (2001) found that the ratio of bias crime convictions “falls within the range of other crimes” and that prosecutors “do not seem to be struggling greatly with obtaining convictions, at least not any more so than with other crimes” (2001, p. 688). While acknowledging that data regarding the prosecution of bias crimes is limited, Grattet and Jenness (2001) pointed out that in California from 1995-1998, 6 to 18 percent of the bias crime incidents ended in conviction.

Scholars have offered various reasons why bias crime cases are rarely prosecuted. For example, based on their examination of bias motivated crimes in Boston, Levin and McDevitt (2002) stated that in general, bias crimes are “relatively rare,” therefore there exist fewer cases to prosecute. The authors further caution that when faced with cases involving a relatively new status group, such as disability or gender, the prosecutors may be hesitant to apply the legislation (p. 184). The implication being that once the legislation is routinely applied, the prosecution rates should increase.

Moreover, researchers examining the enforcement of bias crimes have pointed out that both investigators and prosecutors tend to look for the “perfect” case when enforcing bias crime legislation (Bell, 2002; Boyd, Berk, & Hamner, 1996; Levin & McDevitt,

2002). For example, Boyd, Berk, & Hamner (1996) found that investigators in one division developed a conception of a “true” or “normal” bias crime (p. 835). According to the investigators, “true” bias crimes share the following characteristics: a lack of provocation by the victim, a lack of prior relationship between the offender and victim, “a specific target, and accompanying derogatory insults” (p. 835). The investigator’s examples of “true” bias crimes consisted of cross-burnings and crimes committed by recognized hate groups (Boyd, Berk, & Hamner, 1996). Other researchers have described the perfect case as involving a repeat bias offender as well as securing an eyewitness to the bias element of the crime (Levin & McDevitt, 2002).

Similarly, other researchers have suggested that prosecutors will be likely to only charge bias crimes in “perfect” cases or those in which “the evidence of bias is overwhelming” (Maroney, p. 604; see also Levin & McDevitt, p. 183). Maroney (1998) stated that investigators and prosecutors will be quick to weed out “mixed-motive” cases, defined as those in which there is the presence of some motive other than bias. Maroney (1998) suggested that both will reject such cases, “even though many hate crime laws and departmental protocols explicitly provide for inclusion of such crimes” (p. 604). Similarly, Bell (2002) found that prosecutors described “good cases” as involving a “repeat offender...occurring in an area where this type of thing has happened before, the victim and the perpetrator are of different races and there is no other reason for this to have occurred” (p. 165).

Some scholars suggested that bias crimes are more difficult to prosecute than parallel crimes due to the difficulty in proving that bias motivation caused the conduct (Gellman, 1992-1993; Jacobs & Potter, 1998). Specifically, Jacobs and Potter (1998)

indicated that introducing bias motivation leads prosecutors away from the facts of the case, specifically in high profile cases such as the Rodney King incident. The authors further stated, “it is typically the defense attorneys who see an advantage to playing ‘the race card’ to divert the jurors from facts that are rarely in the defendant’s favor” (Jacobs & Potter, p. 103).

Scholars have also noted how prosecutors have expressed concern that unsuccessful prosecutions of bias crimes may “render the law ineffective for future prosecutions” (Levin & McDevitt, 2002, p. 183). Bell (2002) further explained that the Assistant District Attorney wanted the law to have significant impact and was therefore careful not to “water down the law” by pursuing weak cases (p. 165).

More broadly, Jacobs and Potter (1998) suggested that the prosecution of bias crimes “politicizes” the criminal justice process by providing prosecutors an opportunity to support a particular interest group by charging a bias crime to gain political advantage (1998, p. 103; Jacobs, 1992, p. 550). If this is the case, then it is likely that highly publicized cases will be more likely to be formally prosecuted than incidents not publicized by the media.

In an effort to aid the prosecution of bias motivated offenders, McDevitt, Levin, & Bennett (2002) applied levels of culpability to their offender typology. In 1993, Levin and McDevitt introduced a typology of bias crimes by exploring the motivations and patterns surrounding acts of violence seemingly propelled by bigotry against those viewed as different or the “other.” The typology consisted of thrill crimes, defensive, and mission, and was later updated to include retaliation. Thrill crimes were described as crimes committed by individuals out for “some fun” and “to stir up excitement” (1993, p.

65). Defensive crimes are those in which the offender feels threatened by outsiders encroaching on their “community, means of livelihood, or way of life” (1993, p. 76).

Mission crimes are those in which the offender believes the victim is “evil” and needs to be destroyed (p. 89). Retaliatory crimes are sparked by “a desire to avenge a perceived degradation or assault on their group” (McDevitt, Levin, & Bennett, 2002, p. 306).

The offender typology was then utilized to develop levels of culpability to assist in the prosecution of bias crimes. For example, the leader of the group would be more culpable than the “fellow traveler” and “unwilling participant” (McDevitt, Levin, & Bennett, 2002, p. 313). The levels of culpability are then used to assist in determining appropriate sanctions, based on likelihood of rehabilitation.

The Role of the Prosecutor

The role of the prosecutor has been described as “potentially, if not in reality, the key actor in the criminal justice system” (McDonald, 1979, p. 19). Cox (1976) pointed out that prosecutors exercise broad discretion in the following areas: decisions to charge, dismiss, plea bargain, recommend sentences, and diversion.

Screening and Charging

Although Cox (1976) indicated that various actors in the criminal justice system such as the judge and defense counsel may influence the prosecutor’s decisions to a certain extent, prosecutors hold virtually unlimited discretion with regard to charging an individual (Jacoby, 1977; Melilli, 1992; Miller, 1970). When deciding whether to charge, Miller, Dawson, Dix, and Parnas (1986) stated that prosecutors take into

consideration the “strength of the evidence, suspect’s background and characteristics, the costs and benefits of obtaining a conviction and the attitude of the community toward the offense the suspect is believed to have committed” (p. 666-667). Jacoby (1977) outlined that the prosecutor must “make his decision based on the belief that: the individual is guilty, the prosecution will result in a conviction, the effort made to prepare the case will result in conviction equal to the effort expended, the influence of public opinion will be in the prosecutor’s favor, the resulting sentence will match the crime, and the jurors are not loathe to convict” (p. 7).

According to Forst (2002), of the cases involving adult arrestees that reach the prosecutors, approximately 30 percent are rejected or dropped for various reasons including lack of physical evidence or testimonial evidence, uncooperative witnesses, procedural difficulty, or triviality of the offense (Forst, 2002).

The screening and charging of bias motivated cases involves additional considerations absent from non-bias motivated crimes (see Table 3.1). The American Prosecutors Research Institute (APRI) (2000) suggested that prosecutors consider three main issues when deciding to charge bias motivated crimes: (1) federal, state, or local definitions of a hate crime and the presence of a substantial bias motive; (2) whether or not the bias, hatred, or prejudice should be a substantial basis for the motivation behind the crime when multiple motives exist; and (3) whether there is proof to support a conviction beyond a reasonable doubt (p. 25). Additionally, the APRI (2000) provided indicators of bias motivated crimes to assist prosecutors in properly screening the case (see Appendix C). For example, the prosecutor may consider whether the victim and

offender are members of different racial or ethnic groups or whether the offender used words, symbols, or acts that were offensive (Appendix C).

Although there is a lack of research focused on the case processing of bias motivated cases, previous researchers have investigated variables believed to influence charging decisions of non-bias motivated crimes including: offense seriousness and severity, prior record, number of witnesses, victim credibility, and relationship between offender and victim (Albonetti, 1986; Hirschel & Hutchison, 2001; Kingsnorth, Lopez, Wentworth, & Cummings, 1998; Kingsnorth, MacIntosh, Berdahl, Blades, & Rossi, 2001; Kingsnorth, MacIntosh, & Wentworth, 1999; Spears & Spohn, 1996, 1997; Spohn, Beichner, & Davis-Frenzel, 2001; Spohn & Spears, 1997). Such studies have resulted in mixed findings. In general, strength of evidence and seriousness of the crime have been found to be the most important factors in charging a defendant (Forst, 2002; Walker, Spohn, & DeLone, 2004). However, some studies have found variables such as victim credibility and victim cooperation to influence case processing (Frohmann, 1991; Spears & Spohn, 1996; Stanko, 1981-1982; see Table 3.2).

Victim Credibility

Similar to domestic violence and sexual assault cases, bias motivated cases often result in scrutiny of the victim that does not occur with regard to other criminal acts. For example, gay men may be viewed as “asking for trouble” because they are openly gay or frequent a particular neighborhood. Berrill and Herek (1992) noted that victims of anti-gay bias crimes often suffer the effects of “secondary victimization,” in which the victims are stigmatized and treated negatively by others based on their sexual orientation (p.

289). The authors stated that victims of anti-gay bias motivated crimes are “often blamed for the incident by police, prosecutors, judges, and jurors” (p. 294; Herek, Cogan, & Gillis, 2002). In fact, the “gay panic” defense has been raised by defendants accused of crimes motivated by sexual orientation, claiming that a sexually suggestive comment by the victim resulted in uncontrollable outrage by the defendant (Berrill & Herek, 1992; Dunbar, 1999). Further, whites may be less likely to be perceived as victims of racially motivated crimes than minorities (Bell, 2002).

The victim’s own perception of the incident is also important in properly classifying the incident as bias motivated by law enforcement officials. For example, according to the FBI’s Hate Crime Training guidelines, one question to consider when classifying bias motivated crimes is, “does the victim perceive the action of the offender to be motivated by bias?” (FBI, 1996, p. 21). As such, the perceived credibility and cooperation of the victim are important determinants of how the case will be processed.

While there are no published studies examining how victim credibility influences the prosecution of bias motivated crimes, other studies have focused on the importance of victim credibility in cases of sexual assault and domestic violence. Victim credibility is influential in determining “case convictability,” or “the likelihood that a jury would return a guilty verdict” (Frohmann, 1997, p. 535). Elizabeth Stanko (1981-1982) witnessed and documented over 1,000 felony (assault, rape, and robbery) screenings in a Manhattan prosecutor’s office and found that victim credibility contributes to the prosecutor’s notion of whether the case is a “solid” case, or one likely to end in conviction (p. 230). According to Stanko (1981-1982), prosecutors relied on “stereotypical imagery” to deem the victim credible (p. 231). For example, prostitutes,

drug dealers or gay men that are victims of robbery may be viewed by the prosecutor as less credible victims because of stereotypical assumptions regarding their behavior (Stanko, 1981-1982). As a result, charges against offenders may be downgraded to less serious offenses (Stanko, 1981-1982).

More recently, Spears and Spohn (1996; 1997) also found that prosecutor's perceptions of victim credibility influence charging decisions. In their examination of sexual assault cases, Spears and Spohn (1996) found that cases are most likely to result in charges filed when the sexual assault victim, over age 13, conformed to the perception of the "genuine victim."⁷ Spears and Spohn (1996) reported that uncertainty regarding the moral character of the victim and her behavior at the time of the incident resulted in a lower likelihood of charges being filed. Victim credibility was more influential on charging decisions than evidence variables such as presence of a witness, victim injury, presence of physical evidence, or the presence of a weapon (Spears & Spohn, 1996; 1997).

Similarly, Frohmann (1991) examined cases of sexual assault and found that prosecutors have developed a concept of a "typical" rape and "typical" post-incident behavior based on their previous experience with such cases. According to Frohmann (1991), when descriptions of the rape and post-incident behavior differed from the prosecutor's conception of a typical rape case, victim credibility was questioned. For example, in instances in which there was a prior relationship between the victim and the

⁷ Spears & Spohn (1996) define the genuine victim as follows: "We presume that the prosecutors define the genuine victim as a woman whose moral character is not in question, who did not engage in any type of risk-taking behavior at the time of the incident, who was raped by a stranger, who demonstrated her nonconsent by both screaming and physically resisting her attacker, and who reported the crime to the police immediately" (p. 192).

suspect, complainants were expected to avoid the suspect after the rape. If a victim interacted with the suspect after the rape occurred, she was considered less credible than victims who had no contact with the suspect after the rape (Frohmann, 1991).

In a more recent study, Frohmann (1997) examined how the geographic area in which a sexual assault occurs is interpreted by prosecutors and how such an interpretation leads to case rejection. According to Frohmann (1997), prosecutors construct “discordant locales,” or “categorize both victims, defendants, jurors, and their communities and the location of crime incidents,” and subsequently develop assumptions regarding race, class, and gender in the process (p. 532). Frohmann (1997) pointed out that the location of the incident influences prosecutors and jurors’ perceptions regarding the moral character of the victim. For example, according to Frohmann (1997), in areas rife with prostitution, female sexual assault complainants were assumed to be prostitutes, and were therefore considered “not credible” victims (p. 538). From the prosecutor’s perspective centered on obtaining a conviction, jurors questioning the moral character of the victim are less likely to convict the defendant (Frohmann, 1997).

Spohn et al. (2001) replicated Frohmann’s (1991; 1997) work and found, consistent with Frohmann (1991; 1997) that prosecutors were less likely to charge “if there were questions about the victim’s moral character or behavior at the time of the incident” (p. 228). However, in contrast to Frohmann (1991; 1997) case rejections were often attributed to the victim’s failure to appear for interview, refusal to cooperate, and filing a false report.

Kingsnorth et al. (1999) also found that in sexual assault cases, victim characteristics such as the use of alcohol or drugs, involvement in prostitution, being

alone at night, assisting in the removal of clothing, hitchhiking, alone in a bar, and accepting a ride in a suspect's car, were not statistically significant with regard to the decision to prosecute, go to trial, conviction, or receiving jail or prison sentence. Such "negative: victim characteristics were only significant with regard to determining sentence length, with "each additional negative victim characteristic subtracts 17 months from the prison term" (p. 295).

Victim Cooperation

Although findings are mixed, some researchers have found that victims of bias crimes sustain more severe injuries than victims of non-bias motivated crimes (Levin & McDevitt, 1993; Messner, Mchugh, & Felson, 2004). Presence of injury may be found to influence the prosecution of bias crimes as it has been found in other contexts. For example, Hirschel and Hutchison (2001) examined domestic violence misdemeanor cases and found that the only significant variables influencing the decision to prosecute domestic violent cases were whether the victim was injured and victim preference for prosecution. Cases in which the victim was injured, including minor injuries such as bruising, were more likely to result in prosecution, and cases in which the victim argued against an arrest or citation were less likely to have their cases prosecuted (Hirschel & Hutchinson, 2001).

In contrast, Kingsnorth et al. (2001) found that victim injury does not significantly impact the decision to charge domestic violence cases, but does impact whether the case is filed as felony or misdemeanor. Similar to Hirschel and Hutchison (2001), two studies by Kingsnorth et al. (1998 and Kingsnorth et al. 1999) found that victim cooperation,

defined as cooperative “unless the crime report specifically identified some degree of reluctance to cooperate further,” was significant in the decision to fully prosecute domestic violence and felony sexual assault cases (1999, p. 301).

TABLE 3.1 FACTORS INFLUENCING CASE PROCESSING DECISIONS

Factors generally influential in case processing	Factors potentially influential in case processing of bias motivated crimes
Convictability	Whether bias is sole or primary motivation
Case severity – victim injury	Victim cooperation
	Victim characteristics and credibility
	Victim perception
	Relationship between offender/victim
Presence of physical evidence	Presence of words, symbols, or acts indicating bias motivation
Suspect’s prior record	Suspect’s prior involvement in bias motivated incidents or crimes
Case seriousness – personal/property crime	Case seriousness – personal/property crime
Presence of witnesses	Presence of witnesses

TABLE 3.2
PREVIOUS RESEARCH - FACTORS INFLUENCING CASE PROCESSING
DECISIONS

Author	Offense	Sample	Main finding
Stanko (1981-1982)	rape, robbery, & assault	1,000 observations; 7 case studies	Victim credibility is an essential element in charging decision; “stereotypical imagery”
Spears & Spohn (1996 & 1997)	sexual assault	n=321	For adults over 13 years of age, “genuine victim scale” including victim’s character, behavior, and credibility significant in charging decisions
Frohmann (1991)	sexual assault	300 observations	Convictability; victim credibility and rape-relevant behavior influential in case rejections
Frohmann (1997)	sexual assault	40 observations	Victim credibility based on stereotyped locations influential in case rejection
Spohn (2001)	sexual assault	n=140	“focal concerns” around reducing uncertainty and securing convictions; also victim’s failure to appear; victim cooperation; admission of false charges
Kingsnorth et al. (1999)	sexual assault	n=467	Incriminating remarks by defendant, victim cooperation, victim injury and presence of witnesses were significant in decision to charge; Negative victim characteristics were only significant with regard to determining sentence length
Hirschel & Hutchison (2001)	domestic violence (misdemeanor)	n=424	Victim injury and victim cooperation
Kingsnorth et al. (2001)	domestic violence (felony and misdemeanor)	n=455	Defendant substance abuse; presence of witness; victim arrest significant in case filing; defendant substance abuse, victim injury, and victim cooperation significant for full prosecution
Kingsnorth et al. (1998)	“major” sexual assault	n=365	Victim cooperation, defendant’s incriminating statement, number of witnesses, prior felony conviction, offense severity were significant in decision to prosecute

Convictions

According to the Bureau of Justice Statistics, 95 percent of all felony convictions in state courts are resolved through a guilty plea (BJS, 2003). The APRI's local prosecutor's guide for responding to hate crimes offers various considerations for plea negotiations including the degree and nature of the offense, mitigating circumstances, the deterrent value of prosecution, and the sufficiency of evidence (APRI, 2000). Friedman (1993) noted, that in general, most defendants plead guilty because they "had, or hoped to have, a deal" (p. 390; Forst, 2002). However, the Prosecutor's Guide provided by Cook County, IL stated, "Prosecutors are strongly discouraged from dismissing the hate crime charge in exchange for a guilty plea to another charge in the indictment or information" (Devine, 1998, p. V-8). In fact, the New Jersey Prosecutor's Office employs a "zero-tolerance" approach to plea bargaining with regard to bias motivated cases. As a result, the defendant must either plead guilty to the charges—without reduction—or proceed to trial. The current study examined the extent to which zero-tolerance policy was implemented.

Sentencing Recommendations

As previously stated, prior to the *Apprendi* decision, New Jersey judges were able to enhance sentences by a finding of the preponderance of the evidence based on the prosecutor's recommendation that the crime was motivated by bias. Post-*Apprendi*, bias motivated crimes were to be charged as a separate offense proven by a reasonable doubt. Sentencing may include a variety of options such as community service, probation, fine, jail, or prison. Another sentencing option is mandatory attendance to a bias program

designed to increase tolerance and educate offenders of the consequences of his or her actions. In addition to criminal penalties, in New Jersey a civil cause of action may be filed against any defendant “acting with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, who engages in conduct that is an offense under the provisions of the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statutes” (NJ 2A:53A-21).

Jacoby (1977) stated that sentence recommendations provided by prosecutors reflect “the prosecutor’s knowledge of the defendant, his background, the seriousness of the offense and the risk presented by the defendant to the community” (p. 3). There are no published studies regarding factors that influence prosecutor’s sentencing recommendations for bias motivated crimes. However, Maldonado (1992-1993) stated that “most prosecutors do not seek to recommend incarceration for bias offenders. However they are sometimes left with no alternative because there are no jail alternatives open for consideration” (p. 561).

In a nationwide survey distributed to district attorneys, Rainville (2001) found that when recommending sentences, prosecutors relied on factors such as the number of correctional resources available in the community and the belief that the defendant will benefit from a less restrictive setting. Resources in the community may include bias programs designed for increasing sensitivity of offenders toward the consequences of bias motivated crimes.

Additionally, Rainville (2001) found that sentencing recommendations were influenced by the prosecutor’s belief that approaches other than the one the prosecutor recommended would fail. Most importantly, Rainville (2001) stated that “legal and extra

legal-variables—that have been correlated in countless examinations of other case-processing decisions, are not major determinants of prosecutors’ preferences in regard to sentencing” (p. 304).

Race and Criminal Processing

Since bias crime legislation was supported by lawmakers concerned with the history of discrimination and victimization against minority populations, there is a need to examine whether the legislation is actually being enforced as intended. The current study seeks to examine the effects of bias crime enforcement on minorities.

Racial disproportionality refers to the rate of a particular racial category in the criminal justice system relative to the rate in the general population. Blacks are represented in the criminal justice system at a disproportionate rate (Mauer, 1999; Tonry, 1995). Researchers have examined whether the disproportionality of blacks in the criminal justice system is a result of the fact that blacks disproportionately offend or whether the disproportionality is a result of racial discrimination (Free, 2001; Tonry, 1995; Walker, Spohn, & DeLone, 2004). Scholars have noted that disproportionate offending does not necessarily indicate the presence of racial discrimination (Barak, Flavin, & Leighton, 2001; Russell, 1998), however some studies have found evidence of racial discrimination at various stages in criminal justice processing (Free, 2001; Walker, Spohn, & DeLone, 2004),

Overall, studies investigating racial discrimination in the criminal justice system have resulted in mixed findings (Free, 2001). In a special issue of the *Harvard Law Review* in 1988 devoted to race and developments in the law, the authors concluded that

in cases involving black defendants “statistical studies indicate that prosecutors are more likely to pursue full prosecution, file more severe charges and seek more stringent penalties than in cases involving nonminority defendants” (Harvard Law Review 1988, p. 1520, as cited in Barak, Flavin, & Leighton, 2001). In a more recent study conducted by the Leadership Conference on Civil Rights, the researchers reported that “minorities in the US face discriminatory treatment at every stage of the judicial process, from arrest to incarceration” (Jones, 2000). Further, the report stated “our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased” (Weich & Angula, 2000, p. 12).

Christopher Schmidt’s (1991) study of approximately 700,000 cases in California found that “at virtually every stage of pretrial negotiation, whites are more successful than non-whites. They do better at getting charges dropped. They’re better able to get charges reduced to lesser offenses. They draw more lenient sentences and go to prison less often. They get more chances to wipe their records clean” (p. 1A). The study also found that whites were more successful at receiving alternatives to incarceration such as diversion and avoiding sentence enhancements (Schmidt, 1991).

In their examination of the criminal justice system, Walker, Spohn, and DeLone (2004) concluded that there is “contextual” discrimination against minorities. For example, the researchers observed that minorities were treated more harshly at some stages during processing, such as the death penalty, while not finding evidence of discrimination at other stages (Walker, Spohn, and DeLone, 2004). Similarly, Donziger (1996) noted a “*cumulative* effect of racial discrimination on the criminal justice process” (p. 108). By comparing arrest rates for blacks and whites to their respective rates of

incarceration, Donziger (1996) concluded that as blacks proceed through the system, they experience harsher treatment than whites at various stages, resulting in a higher rate of incarceration relative to their arrest rate.

In their examination of felony case processing, Walker, Spohn, & DeLone (2004) stated that, “strong cases would be prosecuted and weak cases dropped, regardless of the race or gender of the suspect,” although interestingly, the authors further noted that “prosecutors took both race and gender into account in deciding whether to file charges in ‘marginal cases’” and that in such cases, minorities were more likely to be charged (p. 164). By “marginal,” the authors referred to the strength of evidence. Although the studies mentioned by Walker, Spohn, & DeLone (2004) that reached the aforementioned conclusion were focused on felony cases, an examination of misdemeanors may reveal similar findings. In fact, Free (2001) noted that in a 1982 study, “whites charged with misdemeanors (but not felonies) were more likely to have their cases dismissed than similarly situated African Americans” (p. 206).

Studies on the race of the offender/victim effect have also produced mixed results. Walker, Spohn, and DeLone (2004) pointed out that while some studies reveal that blacks are more likely to be charged than whites, other studies indicate the importance of the race of the *victim* on charging. The authors noted that some studies reached surprising conclusions regarding the race of offender/victim (see also Hagan & Peterson, 1995; Walker, Spohn, & DeLone, 2004). For example, Walker, Spohn, & DeLone (2004) found in cases of sexual assault that “the likelihood of charge dismissal was significantly *greater* for cases involving African-American offenders and white victims than for the other two groups of offenders” (p. 165). Walker, Spohn, and DeLone (2004) suggested

that the reason for the seemingly lenient treatment for blacks was less an elimination of discrimination than a product of police and prosecutors taking blacks into custody on insufficient evidence leading to eventual case dismissal.

The Impact of Race on the Enforcement of Bias Crime Legislation

Findings of racial discrimination in the criminal justice system led many scholars to voice concerns regarding the implementation of legislation that imposes enhanced sentencing, regardless of its original intention (Chorba, 2001; Franklin, 2002; Gellman, 1991; Gerstenfeld, 1992; Hernandez, 1990; Kohn, 2002; Maroney, 1998). For example, Maroney (1998) cautioned that obstacles such as inadequate discretion control and selective enforcement may hinder the prosecution of bias crimes; thus there exists the possibility that bias crime legislation may be used disproportionately against minorities (Chorba, 2001; Franklin, 2002; Gellman, 1991; Hernandez, 1990; Kohn, 2002). Gellman (1991) also voiced concern regarding the possibility of disproportionate enforcement of bias crime legislation against minorities and stated “additional burdens will be borne by members of the very disempowered groups that these laws are designed to protect” and “unless ethnic intimidation laws protect *only* members of minority groups, there is a grave danger that they will be used against leaders of the ostensibly protected groups whenever those leaders inconvenience or criticize the government” (p. 385, 386).

Despite Maroney’s (1998) concern regarding disproportionate enforcement, she noted that telephone interviews with prosecutors revealed that prosecutions are not being brought disproportionately against minorities. Maroney (1998) provided anecdotal evidence by revealing that one prosecutor who stated in a phone interview that most bias

crimes prosecuted in Cook County were “perpetrated against racial minorities, followed by anti-Semitic, and homophobic crimes” (p. 608).

Similarly Bell (2002) concluded that “the data from Center City provide no support for the oft-cited assertion that police will use bias crime laws to single out minorities for abuse” (p. 183). However, Bell (2002) reported that detectives stated they encountered racially biased clerk magistrates and described district court judges as “loath to convict” (p. 162). Bell (2002) reported that clerk magistrates were particularly problematic for officers when they sought a warrant or summons and were opposed to enforcing the civil rights law in many instances. For example, detectives reported to Bell (2002) that some clerk magistrates “felt that the unit should not bring cases against White perpetrators” (p. 178). Another clerk magistrate was reported to have “used racial slurs when he asked a detective whether the unit ever requested that any charges be brought against minorities who attacked Whites” (p. 179). The detectives did not attribute all of the opposition to the enforcement of the civil rights law to racism, but rather viewed those opposed as merely lacking knowledge and understanding of the legislation (Bell, 2002).

Frederick Lawrence (2003) also found that available data does not support the contention that bias crime legislation is enforced by police in a disproportionate manner. Lawrence (2003) argued that if bias crime legislation is perfectly enforced, meaning that the guilty, and only the guilty are convicted, then the results will mirror the actual number, or baseline, of bias crimes committed, regardless of the race of the offender. He emphasized that since such a baseline is not available, scholars merely speculate as to the disproportionate enforcement of bias crime legislation. To buttress his argument,

Lawrence (2003) used data from Los Angeles, Chicago, and the UCR to demonstrate that overall arrests by race are similar to the racial proportion of identified bias motivated offenders. Thus, he concluded there is no evidence indicating that the laws are being disproportionately enforced against minorities.

In light of the concern surrounding the potential unintended consequences of bias crime legislation previously discussed, the current study seeks to assess the patterns of enforcement of bias crime legislation in a New Jersey County. Since the criminal justice system is overburdened and the prisons overcrowded, any policy that enhances punishments should be carefully implemented, with an eye on the potential effects. Tonry (1995) illustrated the danger of implementing policies that demand severe penalties, such as the war on drugs, without regard for the foreseeable consequences. Similarly, other scholars have cautioned against the implementation of bias crime legislation due to the potential for enhancing the punishment of minorities who are already disproportionately enmeshed in the criminal justice system (Franklin, 2002; Maroney, 1998). Certainly, the proponents of bias crime legislation intended the legislation to protect minorities rather than further burden them.

CHAPTER 4

METHODOLOGY

OBJECTIVES OF THE STUDY AND RESEARCH QUESTIONS

This study investigated how bias crime legislation was enforced, particularly with regard to the selection and processing of cases identified for prosecution. The study had three broad objectives: (1) to examine the types of cases classified as bias motivated by investigators and presented to the prosecutor, (2) to examine what types of bias motivated cases are prosecuted, and (3) to examine the policy implications surrounding the enforcement of bias crimes and the impact of the legislation on minorities. In addition to these broad objectives, the following research questions were addressed.

- a. What types of cases are referred by the bias unit to the prosecutor?
 - H1: Based on prior research, it is expected that the majority of cases referred to the bias unit will be personal offenses, most often committed by young offenders. Most offenses will be low-level offenses, such as harassment.
- b. What types of cases referred by the bias unit are successfully prosecuted?
 - H2: Based on prior research, it is expected that cases exhibiting characteristics described as those of a “perfect” bias crime case will be successfully prosecuted. For example, cases in which there was a repeat offender, no prior relationship, eyewitnesses, and lack of multiple motives will be most frequently prosecuted.
- c. Does the prosecution of bias motivated cases vary by type of bias motivation?
 - H3: Prior research has shown that racially motivated bias crimes tend to be personal crimes and that religiously motivated crimes frequently consist of property crimes. Since generally, the clearance rate for violent crimes tends to be greater than for

property crimes, it is expected that the majority of bias crimes investigated and prosecuted will be racially motivated personal crimes.

- d. In what percentage of bias motivated cases were minorities identified and prosecuted as offenders?

H4: Bias motivated legislation was developed as a response to the victimization of minorities. However, critics of the legislation have pointed out that since minorities are disproportionately represented among crime statistics, they may be more likely to bear the brunt of the legislation. As a result, it is expected that minorities will be disproportionately identified and prosecuted as bias crime offenders.

DATA SOURCES

To gain an understanding of the enforcement of bias crime legislation, it is necessary to examine how cases are processed and case outcomes. Since there is no national database of bias crime prosecutions and convictions, the current study focused on a single jurisdiction in New Jersey. The prosecutor's office was chosen because it has been identified as a leader in addressing bias crimes and in 1988 was one of the first to develop a bias crime unit on the East Coast. Access to prosecutor's office was gained through conversations with the First Assistant Prosecutor, who granted permission for me to access bias crime files from both investigators and prosecutors. The study consisted of an examination of bias motivated case files from 2001-2004. Data from the files will be described in Chapters 5 through 8 (see Table 4.1).

TABLE 4.1 CASE FILES EXAMINED

Cases reaching the bias unit, 2002-2004	n=512
Random sample of cases reaching the bias unit, 2001-2004	n=140
Cases referred for prosecution as bias crimes, 2001-2004	n=30
Bias crime offenders referred for prosecution, 2001-2004	n=56

The time frame of the study highlights an important transition in New Jersey's bias motivated legislation. On June 26, 2000, the U.S. Supreme Court decided *Apprendi v. New Jersey*. The Court ruled that New Jersey's sentence enhancements for bias motivated crimes were unconstitutional. In response to the *Apprendi* case, New Jersey legislators drafted the Bias Intimidation statute (N.J.S. 2C:16-1) which was enacted into law January 11, 2002 (Vitale, 2002). As a result, from mid-2000 until January 2002, there was no bias legislation in New Jersey. However, data from the current study revealed that cases continued to be investigated and prosecuted as such. All cases examined in this study are post-*Apprendi* cases.

INVESTIGATIVE FILES

To study the prosecution of bias crimes, it was necessary to track the cases from their initial investigation. The prosecutor's office does not distinguish the bias cases from non-bias cases through any sort of visual marker, so it was necessary to identify the case through the bias unit and track the case to the prosecution case files.

The bias unit in this county consists of two full-time investigators along with two officers that fill-in when the designated investigators are unavailable. The unit is responsible for investigating all cases that reach the unit that are *potentially* bias motivated, outreach to the community and local schools in the form of workshops or presentations, and bias training to police officers. Potential bias motivated crimes reached the bias unit through a variety of sources. The Office of Bias Crimes and Community Relations operates a statewide bias hotline in which victims may report bias related incidents that are then forwarded to the appropriate jurisdiction. Additionally, per

a memorandum of agreement between the Department of Law and Public Safety and the Department of Education (N.J.A.C. 6:29-10.1), schools in New Jersey are mandated to report all allegations of bias motivated incidents to law enforcement. Finally, all police agencies in the county are required to forward all bias motivated crimes for investigation by the bias unit in the county prosecutor's office.

Although a total of 643 cases reached the bias unit from 2001-2004, this study included initial summary information for all of the cases that the bias unit investigated from 2002-2004 (n=512). Beginning in January of 2002, investigators created a "cover sheet" and opened a file on each case. The cover sheets included preliminary information regarding each case including characteristics of the offender(s) and victim(s) as well as case characteristics. Information gathered from the cover sheets is reported in Chapter 5. After a five year period, investigative reports are destroyed. Case files typically consisted of the cover sheet, initial police report, and any subsequent investigative materials such as transcripts of interviews with victims and witnesses. Occasionally, the files contained photographs taken by investigators of the crime scene.

To examine the investigation of bias cases more closely, 35 investigative files spanning the years 2001-2004, were randomly selected for a total of 140 cases. Investigative files were pulled on each of these cases and more detailed information regarding case characteristics, offender characteristics, and victim characteristics was collected and reported in Chapters 6 through 8 (see Appendix B).

VARIABLES

Data from the case files provided information on what types of cases were presented to the prosecutor as potentially bias motivated, what types of cases were prosecuted, and case outcomes. The information gathered from the investigative files contained: (1) case characteristics, (2) offender characteristics, and (3) victim characteristics. Each of the variables related to those dimensions is described below (Table 1 is a summary table that describes the measurement of each variable).

CASE CHARACTERISTICS

Type of Bias Motivation

Cases investigated by the bias unit were classified by the researcher based on one of seven mutually exclusive categories recognized under New Jersey's bias crime law. These included crimes motivated by bias based on the victim's race, color, religion, gender, handicap, sexual orientation, or ethnicity. For the purposes of this research, "race" and "color" were collapsed into a "race" category. Additionally, a separate category was created ("multi-bias") to address the high percentage of incidents that involved any combination of the above categories occurring within one incident.

Location

To determine where the bias motivated incidents and crimes occurred, the location was coded as school, university, place of business, highway/motor vehicle, residence, or other.

Type of Offense

Based on the information in the investigative file, cases were coded according to whether they were “personal” crimes or “property” crimes based on the charges listed in the files and case narrative. New Jersey criminal law includes “crimes” and disorderly persons and petty disorderly persons (see Table 7.6). In the current study, “personal” crimes included crimes (e.g. aggravated assault), disorderly persons offenses, and petty disorderly persons offenses (e.g. harassment). “Property” crimes included crimes such as criminal mischief, theft, and burglary. In addition, many cases that reached the office for investigation involved racial slurs or other types of offensive speech that did not reach the level of a criminal offense and were categorized as “incidents.”

Investigative Action

Complaints that reached the bias unit for investigation were initially designated by investigators as “routine” or “decline.” Routine cases involved potential bias motivated crimes or incidents and were to be further investigated. A designation of “decline” indicated that the case could have been a crime or incident, however, a bias motivation was ruled out.

Of the complaints investigated, investigators noted in the file whether the case proceeded to the grand jury, family court, or was closed. Complaints were typically closed due to a lack of new leads, failure to meet standards of a bias crime, lack of victim participation, and an inability to locate the suspect.

OFFENDER CHARACTERISTICS

Offender characteristics included demographic variables such as age, ethnicity, and gender. Information regarding the religious affiliation and occupational status of the offender was not provided in the file. For confidentiality purposes, data on the offender's residence was not collected. In light of the concern regarding the potential selective enforcement of bias crime legislation, the current study examined the impact of race on case processing outcomes (Gellman, 1991; Maroney, 1998). As previously discussed, many scholars have expressed concern that bias crime legislation will be enforced disproportionately *against* minorities rather than utilized as a means to protect members of groups commonly victimized by bias motivated violence (Chorba, 2001; Franklin, 2002; Gellman, 1991; Hernandez, 1990; Kohn, 2002; Maroney, 1998). Importantly, investigative files collapsed race and ethnicity into one category. As a result, Hispanic was occasionally listed under "race" in the file. Thus, a "race/ethnicity" variable was created and coded as white, black, Asian, American Indian, Hispanic, and other. The consequence of the lack of distinction between race and ethnicity is discussed in Chapter 9.

Previous examinations of hate crimes have revealed that the majority of bias motivated offenders are not members of organized hate groups (Levin & McDevitt, 2002). However, membership in a hate group may influence the perception of the case seriousness by investigators and prosecutors, with hate group members perceived as potentially more dangerous than those not affiliated with hate groups. Therefore, hate group membership was coded.

Victim Characteristics

Similar to the offender characteristics, victim characteristics included demographic variables such as age, race/ethnicity, and gender. Similar to offender characteristics, information regarding the occupational status and residence of the victim was not collected. Based on the research findings indicating the importance of victim perception in identifying bias motivated crimes (Bell, 2002; APRI, 2000), a victim perception variable was created as well as a victim cooperation variable. Victim perception was measured according to whether the victim perceived that the crime was motivated by bias. A victim was considered cooperative if there was no indication that the victim requested that the case be dropped by the prosecutor.

Case Files

As previously stated, cases prosecuted as bias crimes could only be identified through the investigative files. Cases proceeding to the grand jury or family court as bias motivated were identified by investigators with a stamp on the individual folder. Once identified, case outcomes were determined by examining the prosecutor's files. Of the 643 cases that reached the bias unit from 2001-2004, a total of 30 were identified by investigators as bias motivated and proceeded to the grand jury or family court.

Once identified, the case files located at the prosecutor's office were examined and additional data regarding case processing was collected including indicators of the seriousness of the crime, case typology, evidence factors, and case outcomes. Each of these variables are discussed below. The prosecutor's office was unable to locate files for five of the 30 cases, therefore case processing information was limited to 25 cases.

The prosecutor's case files typically contained information on the proposed indictment, grand jury decisions, a plea sheet,⁸ criminal history reports, sentence received, and copies of the investigative materials. The files occasionally contained information regarding the defendant's application to pre-trial intervention as well as the state's recommendation or rejection for pre-trial intervention. A few case files included briefs filed in support of the state or the defendant regarding the case.

Seriousness of the Crime

Indicators of the seriousness of the crime were created according to whether an injury occurred as documented in the file, whether a weapon was used, and the dollar value of property damage. For personal crimes, a victim was considered injured if the victim reported an injury and was coded according to whether the victim requested medical attention.

Cases were also coded according to use of weapon and type of weapon. Personal crimes in which the victim was injured or a weapon was used were considered more serious than crimes without victim injury or use of a weapon. An indicator of the seriousness of property crimes was measured by an estimate of the dollar value of property damage sustained.

Case Typology

To provide context for the cases, each of the cases referred to the prosecutor as a bias crime was coded according to McDevitt, Levin, & Bennett's (2002) hate crime typology, fully discussed in Chapter 3. The typology is comprised of four categories

⁸ The plea sheet contained information regarding plea negotiations among other details regarding the case.

(mission, thrill, defensive, and retaliation) designed to shed light on the motivation for the crime.

Evidence Factors

Strength of the evidence was measured according to the presence of physical evidence and the number of witnesses. Physical evidence included any tangible evidence taken from the scene by investigators to be processed as well as photographs of the crime scene. A count of witnesses was tallied from the prosecutors list of those expected to testify. Thus, the witnesses may have included eyewitnesses (non-victims) to the crime, victims, and law enforcement officers.

Similar to Bell (2002, p. 55) and Garofalo and Martin's (1993b) measurement of case follow-up discussed in Chapter 3, a page count was made of each of the files to determine the level of investigative activity. Following the classification scheme designed by Bell (2002), four categories of investigation were developed: minimal investigation (1-3 pages), investigation (4-7 pages), moderate investigation (8-19 pages), and substantial investigation (20 or more pages).

Case Outcomes

Case outcomes consisted of processing, prosecution, conviction, and sentence received. Processing refers to whether the case proceeded to the grand jury (for adult defendants 18 years or older) or family court (for offenders 17 years of age or younger). Prosecution refers to whether the offender was charged with a bias crime or a criminal charge, no bias. For cases that went to the grand jury, decisions on the indictment were

coded (see Appendix B).

Conviction

A successful prosecution is one that resulted in conviction of a bias crime through a guilty plea or trial. Although various factors such as the seriousness of offense, sufficiency of evidence, and prior record have been identified by prosecutors as relevant in influencing whether a plea bargain in a bias crime case is offered (Walker, Spohn, & DeLone, 2004; APRI, 2000), this prosecutor's office reportedly employed a "zero-tolerance" plea bargain policy toward bias motivated defendants. According to prosecutors, under the "zero-tolerance" policy, plea negotiations were not offered for bias motivated offenders. Cases that would normally be settled by a negotiated plea agreement should, under the zero-tolerance policy, result in either a guilty plea without a prosecutor-initiated charge reduction, or proceed to trial. Conviction was coded as "yes" if the offender pleaded guilty or was found guilty at trial of a bias offense and was coded "no" if the offender was convicted of a crime without bias or not convicted at all.

Sentence Recommendations and Sentences Received

Sentence recommendations made by the prosecutor and sentences received were coded as mandatory attendance to a bias program, community service, probation, jail, or other (see Table 4.2).

TABLE 4.2 VARIABLE DESCRIPTION AND MEASUREMENT

Case Characteristics	
<i>Type of Bias Motivation</i>	Bias motivation (race, religion, ethnicity, sexual orientation, handicap, gender, multi-bias)
<i>Location</i>	Elementary school, middle school, high school, university, place of business, highway/motor vehicle, residence, other
<i>Investigative action</i>	Routine or decline
<i>Charges</i>	Charges on proposed indictment
<i>Type of Offense</i>	Personal, property, or incident
<i>Disposition</i>	Closed, declined, to grand jury, to family court
<i>Reason for disposition</i>	No new leads, does not meet standards, victim refused to proceed, unable to locate suspect, other
<i>Seriousness of Crime</i>	Personal – did victim request medical attention or was a weapon used? Property – estimated dollar value of damage
<i>Hate crime typology</i>	Thrill, mission, defensive, or retaliation
Evidence Factors	
<i>Witness Information</i>	Number of witnesses
<i>Physical Evidence</i>	Photos or other type of evidence
<i>Follow-up</i>	Number of pages in file
Offender Characteristics	
<i>Number of offenders</i>	Number of offenders
<i>Age</i>	Age
<i>Race/ethnicity</i>	White or non-white
<i>Gender</i>	Male or female
<i>Member of hate group</i>	Yes or no
<i>Weapon used</i>	Yes or no
<i>Type of attorney</i>	Public or private
<i>Prior record</i>	Either arrest or conviction
Victim Characteristics	
<i>Number of victims</i>	Number of victims
<i>Age</i>	Age
<i>Race/ethnicity</i>	White or non-white
<i>Gender</i>	Male or female
<i>Victim injury</i>	Yes or no
<i>Victim cooperation</i>	Did victim respond to law enforcement when needed or request case dropped?
<i>Victim perception</i>	Does victim perceive incident as bias motivated?
<i>Prior relationship</i>	Stranger, acquaintance, relative, classmates, neighbors, other
Case Outcomes	
<i>Prosecution</i>	Charged with bias crime or crime (no bias)
<i>Processing</i>	Case sent to grand jury or family court
<i>Conviction</i>	Yes bias conviction (guilty plea or trial) or No bias conviction
<i>Sentence received</i>	Mandatory attendance to a bias program, community service, probation, jail, other

CHAPTER 5

RESULTS

CASES REACHING BIAS UNIT, 2002-2004

During 2001-2004, a total of 643 cases reached the bias unit for investigation. Beginning in 2002, investigators created a cover sheet and a file was opened for each case. In order to gain an understanding of what types of cases reached the bias unit for investigation, cover sheets were examined from 2002-2004 and summary information was collected for a total of 522 cases. Of the total 522 cases reaching the bias unit from 2002-2004, 24.3 percent occurred during 2002, 34.5 percent occurred during 2003, and 41.2 percent occurred during 2004.

For ten cases, the cover sheet was missing, for a final sample of 512. Cases reached the bias unit through a variety of sources including referrals from the bias hotline and referrals from schools, although the majority of cases were referred by the various police departments within the county.

SCREENING BIAS MOTIVATED CASES

The bias unit for the county is responsible for the initial investigation and designation of bias motivated crimes. The *Bias Incident Investigation Standards, Policy and Procedures for New Jersey Law Enforcement* (BIIS, 2000) outlines procedures for law enforcement personnel responding to bias motivated incidents. According to the policy, a *bias incident* is defined as “any suspected or confirmed offense or unlawful act

which occurs to a person, private property, or public property on the basis of race, color, religion, sexual orientation or ethnicity” (BIIS, 2000, p. 9).

As recommended by the FBI (BJS, 1997), the policy adopts the two-tiered approach in which the responding officer makes an initial determination of potential bias, followed by notification of a supervisor. The supervisor is instructed to verify whether the incident was bias motivated, including requesting assistance from other officers if needed. At this point, an investigator may be called by the supervisor. The investigator “assumes control of the bias incident follow-up investigation” including further interviews with the victim(s) and witness(es), recording primary elements of the incident, forwarding incident information to the Uniform Crime Reporting System, and notifying the prosecutor’s office of the incident (BIIS, 2000, p. 13).

The BIIS also contains guidelines for confirming incidents of bias. Investigators are instructed to consider, for example, the totality of the circumstances, note any statements made by the suspect or witnesses, look for bias symbols, words, graffiti, or other types of evidence. In order to classify cases, the investigators look for other motives for the incident, whether the offenders were members of a hate group, and whether the victim and offender share identities (e.g. racial, religious, or ethnic group identities), and whether the victim recently moved into the area (BIIS, 2000, p. 15). The prosecutor’s office monitors the investigation of the incident and “is charged with the duty of faithfully enforcing the law by using all reasonable and lawful means to detect, arrest, indict, and convict offenders” (BIIS, 2000, p. 17).

According to the BIIS, in some situations other law enforcement agencies may be called on for assistance. For example, if a hate group is suspected of involvement, the

Division of State Police, Central Security Bureau may assist in the investigation (BIIS, p. 18). If the incident involves discrimination by employers, employment agencies, or labor organizations or in areas relating to housing, public accommodations, or business transactions, the Division on Civil Rights of the Department of Law and Public Safety may investigate (BIIS, 2000, p. 19). If the incident is perpetrated by a juvenile, the county prosecutor “shall develop intervention programs for appropriate cases involving juveniles apprehended for committing hate/violence crime acts” (p. BIIS, 2000, p. 25). Juveniles may be diverted into educational or community service programs or “positive teen role models” may “provide feedback that this behavior is not condoned” (BIIS, 2000, p. 26).

INVESTIGATIVE ACTION

Cases that reached the bias unit for investigation were designated by investigators as “routine” or “decline.” Routine cases involved crimes or incidents that potentially involved bias motivation and were further investigated. A designation of “decline” indicated that the case may be a crime or an incident, however, bias motivation was ruled out. Of the declined cases that were criminal, case files were not available to determine the case outcome.

In the current sample, of the 512 cases that reached the unit for investigation, 50 percent resulted in a designation of decline. The remaining 49.8 percent were designated as routine and were further investigated. For the one case, the investigation activity was not noted on the cover sheet.

TYPE OF BIAS MOTIVATION

Overall, anti-black cases comprised 35.3 percent of the cases. Anti-Jewish motivation comprised 25 percent of the cases, and anti-gay comprised 6.8 percent. Both anti-white and anti-Middle-eastern bias comprised 4.2 percent each of the total cases and anti-Hispanic comprised 3.7 percent.

Similar to official statistics, the greatest proportion (41.6%) of bias motivated cases were racially motivated (see Table 5.1). Twenty-six percent of the cases referred to the bias unit were religiously motivated, with the vast majority directed against the Jewish faith. About half of the ethnic bias cases were directed toward Hispanics. Twenty cases were directed toward bias against persons of Middle Eastern descent and two were directed toward those of Eastern European descent. The vast majority of sexual orientation cases were directed against gay men. There were only two gender bias cases and seven disability cases during the three year period (see Table 5.1). The single complaint of anti-male gender bias included a complaint by a victim claiming gender bias because he was “overcharged” at the bar on ladies’ night.

TABLE 5.1 TYPE OF BIAS MOTIVATION

TYPE OF BIAS MOTIVATION	512 (100%)
Racial	214 (41.6%)
<i>Anti-black</i>	181
<i>Anti-white</i>	22
<i>Anti-Asian</i>	10
<i>Anti-American Indian</i>	1
Religious	134 (26.1%)
<i>Anti-Jewish</i>	128
<i>Anti-Christian</i>	4
<i>Other</i>	2
Ethnicity	41 (8.0%%)
<i>Anti-Hispanic</i>	19
<i>Anti-Middle Eastern</i>	20
<i>Anti-Eastern European</i>	2
Sexual Orientation	40 (7.8%)
<i>Anti-gay</i>	35
<i>Anti-lesbian</i>	5
Gender	2 (<1%)
<i>Anti-Female</i>	1
<i>Anti-male</i>	1
Disability	7 (1.3%)
<i>Anti-mental</i>	3
<i>Anti-physical</i>	4
Multi-bias	60 (11.7%)
Unknown	14 (2.7%)

The bias motivation was difficult to determine in several cases. For example, one case involved a fax from an attorney stating “your clients entered this transaction with the blackest hands, not the whitest,” apparently in reference to the mafia which is not included in the legislation as a protected group. Another case involving a target group

not included in the legislation involved a town meeting in which the victim was declared “a communist, worse than Hitler.” In other cases, the target group was difficult to discern from the behavior. For example, one graffiti case involved writing on a garage door declaring “war pigs” and another involved graffiti stating “fuck the trees, save the buildings.” Another case involved the accused offering the victim money for sex.

Approximately three percent of the total cases reaching the bias unit involved law enforcement officers as the offender. Six cases (1.2%) involved complaints against police officers for racial profiling and eleven cases (2.1%) were complaints of mistreatment by law enforcement officers, but did not include racial profiling. Such cases often involved verbal slurs against the victim. For example, a correctional officer stated that his co-workers were harassing him because of his physical disability. In another case, an inmate complained that the correctional officer was racist and stated “I hate you niggers.” In another, a victim stated that a police officer called him “faggot.”

TYPE OF BIAS MOTIVATION AND INVESTIGATIVE ACTION

Investigative action varied by type of bias motivation. Racially motivated cases were slightly more likely to be declined (53.3%) than designated as routine (46.7%). In contrast, religiously motivated cases were slightly more likely to be designated as routine (54.5%) than declined (45.5%). Two-thirds of cases motivated by ethnic bias were declined, while eighty-five percent of the multi-bias cases were designated as routine. The gender and disability cases were about equally likely to be designated as routine (see Table 5.2).

TABLE 5.2 TYPE OF BIAS MOTIVATION AND INVESTIGATIVE ACTION⁹

	Routine 256	Decline 255
Racial	100 (46.7%)	114 (53.3%)
Religious	73 (54.5%)	61 (45.5%)
Ethnic	10 (24.4%)	31 (75.6%)
Sexual orientation	15 (37.5%)	25 (62.5%)
Disability	1 (50.0%)	1 (50.0%)
Multi-bias	51 (85.0%)	9 (15.0%)
Unknown	3 (23.0%)	10 (83.3%)

To determine whether investigative action was significantly related to type of bias motivation, the type of bias motivation was recoded as racial, religious, and other (see Table 5.3). A 3x2 chi-square analysis was conducted with no significant difference between type of bias motivation and investigative action ($p = .360$).

TABLE 5.3 TYPE OF BIAS MOTIVATION AND INVESTIGATIVE ACTION, RECODED¹⁰

	Routine 256	Decline 255
Racial	100	114
Religious	73	61
Other	83	80

⁹ Note: For one case, the investigative action was not noted on the cover sheet.

¹⁰ Note: For one case, the investigative action was not noted on the cover sheet.

TYPE OF OFFENSE AND INVESTIGATIVE ACTION

Of the 512 cases that reached the office for investigation, 40.6 percent were incidents and did not reach the level of a criminal offense. Twenty-four percent were personal offenses and 35 percent were property offenses.

A 3x2 chi-square analysis demonstrated a significant difference between type of offense and investigative action (see Table 5.4). Both personal and property crimes were significantly more likely to be designated as routine, while incidents were more likely to be declined.

TABLE 5.4 TYPE OF OFFENSE AND INVESTIGATIVE ACTION¹¹

	Routine 256	Decline 255
Personal	77	47
Property	135	44
Incident	44	164

$\chi^2=122.750, p<.05$

The type of offense differs by type of motivation (racial, religious, ethnic, sexual orientation, disability, gender, or multi-bias), although the numbers were insufficient for a chi-square analysis. Racially motivated cases were more likely to be classified as incidents not rising to the level of a criminal offense, while religiously motivated cases were more likely to involve property crimes (see Table 5.5).

¹¹ Note: For one case, the investigative action was not noted on the cover sheet.

TABLE 5.5 TYPE OF BIAS MOTIVATION BY TYPE OF OFFENSE

	Personal crime 125 (24.4%)	Property crime 179 (35%)	Bias incident 208 (40.6%)
Racial	64	56	94
Religious	26	73	35
Ethnic	13	5	23
Sexual orientation	8	8	24
Disability	4	0	3
Gender	1	0	1
Multi-bias	6	31	23
Unknown	3	6	5

LOCATION

Thirty-one percent of the cases occurred at a school. Seventeen percent of the cases occurred at a residence, places of business comprised 13.3 percent of the cases, and 5.9 percent occurred on a highway or involving a motor vehicle (see Table 5.6).

Locations coded as “other” included emails, instant messages, text messages, phone calls, radio transmissions, letters, and various public locations. For 81 cases, the location was unable to be determined from the cover sheet. To determine whether location was related to investigative action, a chi-square analysis was conducted, with no significant difference found ($p = .087$).

TABLE 5.6 LOCATION AND INVESTIGATIVE ACTION

Location	Total 512	Routine 256	Decline 255
School	163 (31.8%)	86 (52.7%)	77 (47.2%)
<i>Elementary school</i>	10 (2.0%)	5 (50%)	5 (50%)
<i>Middle school</i>	59 (11.5%)	31 (52.5%)	28 (47.5%)
<i>High school</i>	75 (14.6%)	37 (49.3%)	38 (50.7%)
<i>University</i>	19 (3.7%)	13 (68.5%)	6 (31.6%)
Residence	89 (17.4%)	41 (46.1%)	48 (53.9%)
Place of business	68 (13.3%)	27 (39.7%)	41 (60.3%)
Highway/motor vehicle	30 (5.9%)	13 (81.3%)	17 (56.7%)
Other	81 (15.8%)	47 (58.0%)	34 (42.0%)
Unknown	81 (15.8%)	42 (51.8%)	38 (46.9%)

OFFENDER CHARACTERISTICS PER CASE

In slightly over fifty percent of the cases the number of offenders was unknown. Of the 257 cases in which the number of offenders was known, 76.4 percent involved a single offender. Twelve percent involved two offenders, and 14.9 percent involved three or more offenders. The average number of offenders was 1.38 per case. The average age of the offenders was 19.66 years of age per case. Interestingly, cases in which the offender was “unknown” were significantly more likely to be classified as routine ($\chi^2 = 49.693, p < .001$), which may be influenced by the high number of property crimes that are designated as routine, yet the offender is unknown.

Since most offenders tend to engage in conduct with others that are approximately the same age, cases were coded according to whether the majority of offenders were adult (18 or older) or juvenile. Forty-seven percent of the cases were coded as juvenile and 52.8 percent were coded as adult.

VICTIM CHARACTERISTICS PER CASE

The number of victims was known in 334 cases, and the average number of victims was 1.26 per case. Of the 334 cases in which the number of victims was known, 82.6 percent involved one victim, 12.9 percent involved two victims, and 4.5 percent involved three or more victims.

According to the National Crime Victimization Survey, those aged 14-24 experience the highest rates of victimization (Catalano, 2004). In the current study in the cases in which the age of victim was known, the mode was 16 years of age. There were

21 cases in which victims were 60 years or older. As a result, for cases in which age of victim was known there was a mean of 30.10 years old per case.

CHAPTER 6

CASES REACHING THE BIAS UNIT, 2001-2004

This chapter presents the types of cases presented to the bias unit and the investigative action taken by the unit. Of the 643 cases that reached the bias unit for investigation from 2001-2004, 35 were randomly chosen from each year for a total of 140 cases. Case, offender, and victim characteristics are described as well as their impact on investigative action.

INVESTIGATIVE ACTION

Cases that reached the bias unit were classified as “routine” or “declined.” Routine cases were deemed potentially bias motivated and were further investigated. Cases were designated as “declined” for a variety of reasons, but were no longer investigated as bias motivated. Of the 140 cases that reached the bias unit for investigation, only 72 were classified as “routine” and further investigated.

TYPE OF BIAS MOTIVATION

Forty-five percent of the cases reaching the bias unit were racially motivated, and the vast majority of those (84.3%) were anti-black, seven cases were anti-white and three cases were anti-Asian (see Table 6.1). Cases involving anti-white bias included ongoing disputes in which racial remarks were made, an employee dispute, racial remarks on a

school bus, an assault on a white victim in which there were no racial remarks, and anti-white remarks toward a family recently relocating.

Eighteen percent of the cases were religiously motivated, with all but one case anti-Jewish. Thirteen percent of the cases reaching the bias unit were motivated by ethnic bias. Of those, only 31.5 percent of which were anti-Hispanic. The remaining 68.4 percent were “other ethnicity.”

Only 10 cases were motivated by sexual orientation, all of which were anti-gay. Two cases were directed toward the victim’s real or perceived physical disability and one was biased against mental disability. There were no bias motivated crimes against gender in the random sample. In some cases, the motivation may have been expressed against more than one bias target. For example, a case may have contained bias against both Jewish and gay victims. In such instances, the cases were classified as “multi-bias.” Twelve percent of the cases in the current sample were categorized as “multi-bias.” The majority of the multi-bias cases were either property offenses involving graffiti or incidents involving fliers distributed by an organized hate group. For one case, the type of bias motivation was not apparent. An unknown offender wrote “war pigs” on the interior of a recently installed automatic garage door.

Overall, anti-blacks comprised 38.5 percent of the total 140 cases reaching the unit, while anti-Jewish bias comprised 17.8 percent. Multi-bias cases comprised 11.4 percent, anti-Middle-eastern (9.2%) and anti-gay cases comprised 7.1 percent.

TABLE 6.1 TYPE OF BIAS MOTIVATION

Type of bias motivation	140 (100%)
Racial	64 (45.7%)
<i>Anti-black</i>	54
<i>Anti-white</i>	7
<i>Anti-Asian</i>	3
Religious	26 (18.6%)
<i>Anti-Jewish</i>	25
<i>Anti-Christian</i>	1
Ethnic	20 (14.2%)
<i>Anti-Hispanic</i>	7
<i>Anti-other ethnicity</i>	13
Sexual orientation	10 (7.1%)
<i>Anti-gay</i>	10
Disability	3 (2.1%)
<i>Anti-physical</i>	2
<i>Anti-mental</i>	1
Multi-bias	16 (11.4%)
<i>Anti-Jewish, anti-Catholic</i>	1
<i>Anti-Jewish, anti-black</i>	7
<i>Anti-Jewish, anti-black, anti-Hispanic</i>	2
<i>Anti-Jewish, anti-black, anti-gay</i>	2
<i>Anti-black, anti-Hispanic, anti-gay</i>	1
<i>Anti-Jewish, anti-Asian, anti-Hispanic, anti-gay</i>	1
<i>Anti-black, anti-gay</i>	1
<i>Anti-black, anti-Hispanic</i>	1
Unable to determine	1 (0.7%)

To determine whether racially motivated crimes were more likely to be classified as “routine,” the type of bias motivation variable was collapsed into three categories: racial, religious, and other. A 3x2 chi-square analysis was conducted and there was no significant difference between type of bias motivation and investigative action ($p = .902$). In fact, racially motivated crimes were equally likely to be routine or decline. Similarly,

religiously motivated bias crimes were equally likely to be designated as routine or decline.

TABLE 6.2 TYPE OF BIAS MOTIVATION AND INVESTIGATIVE ACTION

	Routine	Decline	Total
	72	68	140
Racial	32	32	64
Religious	13	13	26
Other	27	23	50

One-fourth of the cases reaching the bias unit occurred at a school. An additional one-fourth occurred at places of residence. Twenty-percent occurred at a place of business and 8.6 percent occurred on the highway or while in a motor vehicle. Twenty-six percent of the cases occurred at other locations including via internet communications and various public locations.

TABLE 6.3 LOCATION

Location	140 (100%)
School	35 (25%)
<i>Elementary school</i>	7 (5.0%)
<i>Middle school</i>	8 (5.7%)
<i>High school</i>	13 (9.3%)
<i>University</i>	7 (5.0%)
Residence	34 (24.3%)
Place of business	28 (20.0%)
Highway/motor vehicle	12 (8.6%)
Other	25 (17.8%)
Unknown	6 (4.3%)

TYPE OF OFFENSE

Cases that reached the bias unit for investigation were coded by type of offense. Forty percent of the cases reaching the investigators were personal crimes and 26.4 percent were property crimes (see Table 6.4). Importantly, slightly over one-third of the cases reaching the unit was categorized as “incidents” and did not reach the level of a criminal offense. Incidents often were comprised of derogatory comments that did not reach the level of a crime or included the distribution of hate propaganda. Incidents were not automatically declined. For example, incidents referred from schools and those involving hate propaganda were classified as “routine” and investigated by the bias unit.

TABLE 6.4 TYPE OF OFFENSE

Total	140 (100%)
Personal	56 (40.0%)
Property	37 (26.4%)
Incident	47 (33.6%)

To determine the whether criminal cases were more likely to be result in a designation as routine or decline, the type of offense variable was collapsed into crime (personal/property) and incident. A 2x2 chi-square analysis was conducted and not surprisingly, cases designated as crimes were significantly more likely to result in a designation of routine (see Table 6.5).

TABLE 6.5 TYPE OF OFFENSE AND INVESTIGATIVE ACTION

	Routine	Decline
	72	68
Personal or property crime	60	33
Incident	12	35

$\chi^2 = 18.995, p < .05$

Fourteen of the 47 incidents occurred during school hours. For example, cases included behavior such as a student yelling a racial slur out of a school bus window, or students utilizing a website in which they entered a fellow student's name and the site created a webpage in the image of a press released headline reading: "Neighborhood in Shock After [student's name] is Accused of Displaying Flagrant Homosexuality."

Eleven incidents occurred at a place of business. For example, two adult male interracial customers were involved in a dispute with the salesman over the purchase price of a vehicle. During the dispute, the employee stated "why don't you ladies leave before you break a nail" and "you are a nigger lover." The remark was interpreted by the victims as anti-gay and anti-black slurs, however, the comments did not reach the level of a crime.

Seven of the incidents included complaints against the police for some form of mistreatment or accusations of racial profiling. For example, one victim was being evicted from her apartment as a result of a dispute with her in-laws after her fiancé's death. The victim reported she was mistreated by the police because she was only allowed to remove her clothing, but not her vehicle or furniture, even though she produced receipts of her purchases. Other cases involved accusations of racial profiling while driving. Such cases were declined and forward to the appropriate internal affairs department for further investigation.

OFFENDER CHARACTERISTICS PER CASE

Prior research suggested that bias motivated crimes are more likely than non-bias crimes to involve multiple offenders (Gerstenfeld, 2004; Garofalo & Martin, 1993; Levin & McDevitt, 2002; McDevitt, Levin, & Bennett, 2002). In contrast, according to Strom (2001), although the number of offenders varies by type of offense, seventy-five percent of all bias crime incidents involved a single offender. Strom (2001) found that for the category of intimidation, only 15 percent of incidents involved multiple offenders.

In the current study, the average number of offenders per case was 1.55, with a median of 1.0 per case. “Known” offenders were those in which some characteristic such as age, race, or gender, was known to investigators through either the victim account or investigation. At least one offender was “known” in 64 of the 140 cases (45.7%). Interestingly, cases in which the offender was “unknown” were significantly more likely to be designated as routine ($\chi^2 = 5.785$, $p < .012$), again likely due to the large number of property crimes designated as routine in which the offender is unknown.

Since most offenders tend to engage in conduct with others that are approximately the same age, cases were coded according to whether the majority of offenders were adult (age 18 and older) or juvenile. Of the 140 cases, 30 were categorized as “juvenile” offenders and 51 were categorized as “adult” cases. In 59 cases, the age of the offender was unknown.

To determine whether designation as a juvenile offender significantly impacted investigative action, a 2x2 chi-square analysis was conducted. There was no significant difference between the designation of offender as juvenile or adult and investigative action ($p = .986$, see Table 6.6).

TABLE 6.6 TYPE OF OFFENDER AND INVESTIGATIVE ACTION

	Routine 35	Decline 46
Juvenile	13	17
Adult	22	29

VICTIM CHARACTERISTICS PER CASE

A victim variable was created in which the victim was categorized as a person or “society.” For personal crimes, the victim was deemed a “person.” However, property crimes may be directed against a particular victim or society-at-large. In such cases, when there is no discernable victim, the victim was categorized as “society.” An example would be graffiti such as “white supremacist,” “go Arabs,” or “KKK” in the bathroom of a school or on the side of a building that is not directed toward any particular victim. In 102 cases, the victim was categorized as a “person” and in 38 cases, the victim was categorized as “society.” Of the 37 property crimes, 21 were categorized as “society.” Of the non-criminal incidents, 17 were categorized as “society.”

Of the cases in which a victim was identified, the average number of victims was 1.29, with a median of 1.0 per case. However, in 39 cases (27.9%), the number of victims was unknown. The majority of cases (57.1%) involved only one victim, 10.7 percent consisted of two victims, and 4.3 percent involved three or more victims.

Cases were coded according to whether the victim perceived the behavior as bias motivated and whether the victim cooperated with the investigation. However, not all files contained information on the variables. In cases in which perception and cooperation was known, the victim both perceived the behavior as bias motivated and

cooperated with the investigation in 50 cases. In eight cases, the victim perceived the behavior as bias motivated, yet did not cooperate with the investigation. Additionally, in five cases, the victim did not perceive the behavior as bias motivated, yet did cooperate with the investigation.

A chi-square analysis was conducted to examine the relationship between victim cooperation and investigative action. However, the results were not significant ($p = .128$). Similarly, there was no significant difference between victim perception and investigative action ($p = .435$).

CASE SERIOUSNESS

Case seriousness was measured according to two variables: weapon use and presence of an injury. For personal crimes, a weapon was used in only 18 of the 56 (32.1%) cases. Hands and feet were the most frequently used weapon (8 cases), a blunt instrument was used in three cases, and a knife in two cases. Five cases involved other weapons such as the throwing of rocks, eggs, a bike, and a chain. A 2x2 chi-square analysis was conducted to examine the relationship between weapon use and investigative activity. There was no significant difference between cases in which a weapon was used and whether the case was designated as routine or decline ($p = .757$).

A large portion of the cases referred to the bias unit were relatively minor crimes or incidents. Of the personal crimes, injury was only noted in the files for only six cases. Of those, medical attention was requested in three. Due to the low number of victim injuries, a chi-square analysis could not be conducted between victim injury and investigative action.

PRIOR RELATIONSHIP

For cases in which the victim was classified as “person” (n=102) the prior relationship between the offender and victim was coded. In 30 of the cases, the victim and offender were strangers. However, of those 30, eight cases were police-citizen encounters and three were merchant-customer encounters. The remaining cases involved non-strangers such as neighbors, classmates, co-workers, and other acquaintances (see Table 6.7).

TABLE 6.7 PRIOR RELATIONSHIP

Total	102 (100%)
Strangers	30 (29.4%)
<i>Strangers</i>	19
<i>Police/citizen</i>	8
<i>Customer/merchant</i>	3
Non-Strangers	47 (46%)
<i>Acquaintance</i>	13
<i>Classmates/friends</i>	12
<i>Neighbors</i>	12
<i>Co-workers</i>	5
<i>Relative</i>	2
<i>Teacher/student</i>	2
<i>Landlord/tenant</i>	1
Unknown	25 (24.5%)

To examine the relationship between investigative action and prior relationship, the variable of relationship was collapsed into a dichotomous variable: stranger and non-stranger. A 2x2 chi-square analysis was conducted and there was no significant difference between presence of a prior relationship and whether the case was designated as routine or decline ($p = .723$).

CRIMINAL CHARGES

If there was an indication in the file of a specific crime designated by either police officers or investigators, it was coded as a police charge. The presence of a police charge does not indicate that the offender was arrested, rather it is an indication of how the police viewed and categorized the behavior. The police charges listed in Table 6.8 illustrate that the vast majority of cases reaching the bias unit were relatively minor crimes or, as previously noted, were incidents not reaching the level of a crime. The average number of police charges per case was 1.48, with a median of 1.0. Over half of the charges consisted of harassment and bias intimidation (see Table 6.8).

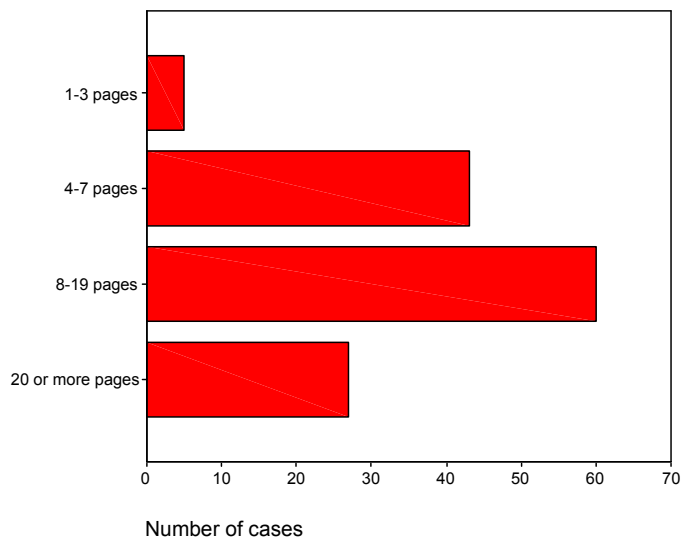
TABLE 6.8 POLICE CHARGES

Total	200
Harassment	66
Bias intimidation	51
Criminal mischief	37
Simple assault	18
Terroristic threats	12
Disorderly conduct	3
Aggravated assault	2
Conspiracy	2
Trespassing	2
Theft	2
Resisting arrest	1
Desecration of venerated objects	1
Possession of weapon for unlawful purposes	1
Robbery	1
Violation of court order	1

LEVEL OF INVESTIGATION

Following Bell (2002), page counts were made of investigation files to determine the “level of investigation” for each case (see Figure 6.1). The average number of pages per investigative file was 16.78, with a median of 9 pages. Only five files were classified as “no investigation” based on a range of one to three pages. Forty-three cases contained 4-7 pages indicating “minimal investigation.” A substantial portion of cases (60 cases) were categorized as “substantial investigation,” and contained 8-19 pages each. Finally, 27 files contained 20 or more pages indicating a “substantial investigation.” Similar to Bell’s (2002) findings, nearly all of the cases reaching the bias unit received at least minimal investigation.

FIGURE 6.1 LEVEL OF INVESTIGATIVE ACTIVITY PER CASE



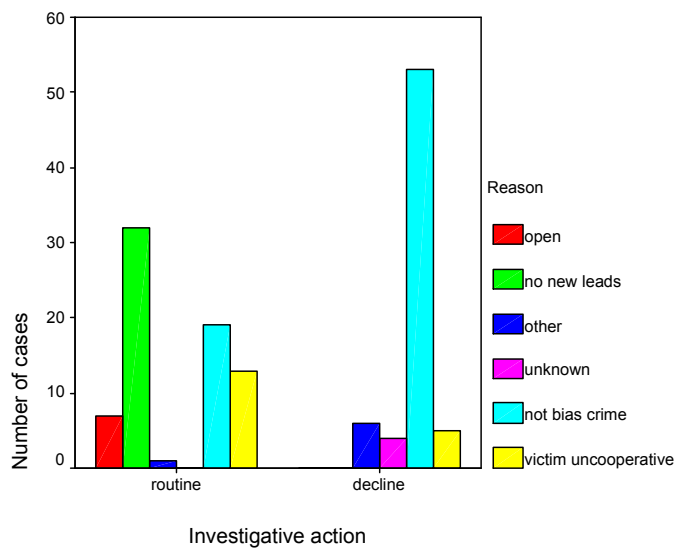
INVESTIGATIVE ACTIVITY

As previously described, cases were designated as “routine” or “decline” by investigators. Routine cases were eventually either closed or referred for prosecution as bias crimes. Of the 140 cases in the random sample, only 7 were referred for prosecution as bias crimes.

Once a case was closed, a reason for the disposition was noted in the file. For the declined cases, the most common reason for closing the case was “does not meet standards of a bias crime” (77.9%). Five cases were declined because the victim refused to participate in the investigation and three were declined because the victim was either not a member of the protected group (e.g. not Jewish or gay) or not intimidated by the behavior.¹² For four of the declined cases, there was no reason given for the disposition (see Figure 6.2).

Of the routine cases, 44.4 percent resulted in “no new investigative leads.” Twenty-six percent did not meet the standards of a bias crime. In 13 of the routine cases, the investigators closed the case due to the victim’s refusal to participate. In one case the suspect was unable to be located and seven cases were referred to the prosecutors as a bias crime (see Figure 6.2).

¹² Two cases were designated as “other.” One case was referred to another jurisdiction and the other was a case alleging employee discrimination at a correctional institution.

FIGURE 6.2**INVESTIGATIVE ACTION AND REASONS FOR DISPOSITION PER CASE**

CHAPTER 7

BIAS CRIME CASES REFERRED FOR PROSECUTION, 2001-2004

CASE CHARACTERISTICS

Of the total 643 cases presented to the bias unit, 30 (less than 5%) were referred by the bias unit for prosecution as a bias crime. Of those referred for prosecution, twenty-three cases (76.6%) resulted in at least one offender charged with bias.

Prosecutor's case files were examined and data was collected regarding demographic information as well as case processing information. As previously discussed, the prosecutor's office was unable to locate files for five cases, however, demographic information was collected from the investigator files and reported for these cases.

The number of cases referred by the bias unit increased from 2001 to 2003, with a precipitous decline in 2004. Of the 30 cases, twelve (40.0%) were prosecuted in 2003 (see Table 7.1). The locations in which the cases occurred were similar to other documented bias crime statistics (Strom, 2001) and included residences (30.0%), businesses (23.3%), schools (13.3%), churches (10%), and other spaces (23.3%; see Table 7.1).

TYPE OF BIAS MOTIVATION

Overall, anti-Jewish cases comprised 30 percent of the total cases referred to the prosecutors by the bias unit. Twenty-three percent were motivated by anti-black bias and

20 percent were multi-bias cases, and may contain any combination of bias motivations (see Table 7.1). Anti-black bias was exhibited in four of the six multi-bias cases, and two of the six “multi-bias” cases exhibited both anti-black and anti-Jewish bias (see Table 7.1).

TABLE 7.1 CASE CHARACTERISTICS

	Frequency
Year	30
2001	6
2002	8
2003	12
2004	4
Type of bias motivation	30
Racial	9
<i>Anti-black</i>	7
<i>Anti-white</i>	2
Religious	10
<i>Anti-Jewish</i>	9
<i>Anti-Christian</i>	1
Ethnicity	2
<i>Anti-other ethnicity (anti-Arab)</i>	2
Sexual Orientation	2
<i>Anti-gay</i>	2
Gender	1
<i>Anti-Female</i>	1
Multi-bias	6
<i>Anti-black, anti-Hispanic</i>	2
<i>Anti-Catholic, anti-Jewish</i>	1
<i>Anti-Catholic, anti-black, anti-Jewish, anti-gay</i>	1
<i>Anti-black, anti-Jewish</i>	1
<i>Anti-Jewish, anti-ethnicity other (Syrian)</i>	1
Type of Offense	30
Personal	18 (60%)
Property	12 (40%)
Type of offender	30
Juvenile	12 (40%)
Adult	18 (60%)
Location	30
Residence	9
Business	7
School	4
Church	3
Highway/driving	3
Other	4
Investigative activity	30
1-20 pages	7
21-49 pages	7
50-99	8
100 or greater	7
Missing	1

Physical evidence	30
Yes	15
No	9
Unknown	6
Number of witnesses	30
1-4	5
5-10	8
11 or more	7
Missing	10
Weapon	30
Hands/feet	3
Blunt instrument	2
Firearm	2
Other weapon	2
No weapon	21
Injury	30
Yes	4 (13.3%)
No	26 (86.7%)
Offenders per case	30
One	14
Two	8
Three	6
Four	2
Average number of offenders per case	1.87
Victims per case	30
One	12
Two	7
Three	2
Four	0
Five	1
Greater than five	1
Society	7
Average number of victims per case	1.68
Prior relationship	30
Stranger	8
Acquaintance	4
Classmate/friend	2
Neighbors	5
Police/citizen	1
Other	9

TYPE OF OFFENSE

Previous research has indicated that bias crimes are typically relatively low-level offenses (Garofalo & Martin, 1993b), and the cases presented for prosecution in the current study were no exception. Cases were categorized as either a personal or property offense. Each case was coded as personal or property according to the criminal offense charged and the case narrative.

Similar to other statistics on bias crimes (Strom, 2001), the majority (60.0%) of the cases were personal offenses, and the remaining forty percent were property offenses. Property offenses were more prevalent among juveniles and personal offenses more prevalent among adult offenders. Two-thirds of the cases involving juveniles were property offenses. In contrast, 15 of the 18 adult cases were personal offenses (see Table 7.2).

A typical personal offense consisted of one adult male offender and one victim, non-strangers, who were engaged in an interpersonal confrontation that occurred at a residence or business, in which racially motivated bias emerged. The victim most often suffered no injury, but if an injury did occur, it was minor and did not require medical attention.

The following religiously motivated bias case provides an example of a typical personal offense. A confrontation erupted between neighbors at a residence during an ongoing party. Various partygoers were described as intoxicated and began to light fireworks. The victim was described as “minding his own business” when the offender approached and stated “loud mouth fucking Jew” and threatened to “kick [the victim’s ass]” while referring to him as a “fucking Jew.” Other comments made in the course of

the confrontation included “I want you fat boy” and “get back in the house you fucking bitch.” As a result of neighbor complaints, police arrived on-the-scene and partygoers became agitated. The offender was arrested and charged with bias harassment, and various partygoers were arrested for disorderly conduct, no bias.

A typical property crime consisted of a group of juvenile offenders who are thrill-seeking and motivated by religious bias. Such offenses typically occur at residences or public spaces in which the number of victims is unknown. The amount of property damage may be relatively high and reached as high as \$17,000 in one case.

One case that resulted in damage of an estimated \$11,000 involved numerous acts of vandalism and bias graffiti at a golf course committed by two juveniles and one adult. Various equipment was damaged and large swastikas were drawn as well as the phrases “fuck the Jews” “fuck you” and “I hate working here.” Of the nine cases in which the value of property damage was noted, the value ranged from zero dollars to \$17,000, with a median of \$1,800.

TABLE 7.2 TYPE OF OFFENSE AND TYPE OF OFFENDER

	Personal	Property	Total
	18	12	30
Juvenile	3	9	12
Adult	15	3	18

OFFENDER CHARACTERISTICS PER CASE

The number of offenders per case ranged from 1 to 4, with an average of 1.87 offenders. Nearly half of the cases involved one single offender, slightly under one-fourth of the cases involved two offenders and only two cases involved four offenders (see Table 7.1).

In Chapter 8, offenders are examined in greater detail. In the current chapter, cases were classified as “juvenile” or “adult” based on whether the majority of offenders per case were juvenile or adult. In twelve of the twenty-three cases the majority of offenders were juvenile and twelve were adult offenders. It should be noted that in three of the cases in which there were a combination of juvenile and adult offenders, the age gap was generally not greater than one year. A juvenile was a lone offender in only one case, however, an adult was a lone offender in thirteen cases.

Fourteen of the cases involved a single offender. Of the multiple offender cases, offenders tended to be of the same race. In 9 cases involving a single offender, the offenders were white and 5 were non-white. Of the cases with multiple offenders, all but three were comprised of white offenders, and one involved a group of non-white offenders. Only two cases were some offenders white and others non-white.

TABLE 7.3 RACE/ETHNICITY OF OFFENDER PER CASE

Offender race/ethnicity	30
Single offender	14
<i>White</i>	9
<i>Non-white</i>	5
Multiple offenders	16
<i>White</i>	13
<i>Non-white</i>	1
<i>White and non-white</i>	2

VICTIM CHARACTERISTICS PER CASE

The average number of victims was 1.68 per case. Twelve of the cases involved a single victim, while nearly one-fourth of the cases involved two victims. Two cases involved three victims, one involved five, and in one case the number of victims was greater than five.

Of the twelve cases with a single victim, seven were white and five were non-white. Of the cases with multiple victims in which the race/ethnicity of the victim was known, three involved white victims, six involved non-white, and one case included both white and non-white victims.

Of the 22 cases in which the race/ethnicity of both offender and victim is known, 10 involved intraracial offenders and victims. Ten cases also involved interracial offenders and victims, and two cases involved a combination of white and non-white offenders and victims.

TABLE 7.4 RACE/ETHNICITY OF OFFENDER/VICTIM (N=22)

	Total
Intraracial	10
<i>White offender/white victim</i>	7
<i>Non-white offender/non-white victim</i>	3
Interracial	12
<i>White offender/non-white victim</i>	7
<i>Non-white offender/white victim</i>	3
<i>Mixed offender/victim</i>	2

For seven cases, the victim was designated as “society” and may have involved numerous, unidentified victims (see Table 7.1). Such cases involved graffiti in various

parts of town, public restrooms, and schools in which individual victims were impossible to discern.

Of the 23 cases in which the victim(s) was designated as “persons”, cases were coded according to victim cooperation and victim perception of bias motivation. However, an indication for cooperation and perception was not mentioned in every file. Therefore, the lack of an affirmative does not necessarily mean that the victim did not cooperate or did not perceive the crime as bias motivated. In 16 of the 30 cases, the offender both perceived the crime as bias motivated and cooperated with investigators and prosecutors. In 5 additional cases, there was a clear indication that the victim did cooperate. And in one additional case there was an indication in the file that the victim perceived the crime as bias motivated (see Table 7.5).

TABLE 7.5 VICTIM PERCEPTION AND VICTIM COOPERATION

	Victim cooperation yes	Victim cooperation unknown
Victim perceived as bias crime	21	2
Victim perception unknown	16	1
	5	1

CASE SERIOUSNESS

Case seriousness was measured according to two variables: weapon use and presence of an injury. A weapon was present in 9 cases, with the use of hands and/or feet as weapons in three cases. A blunt instrument was used in two cases and “other” weapons included a cup of coffee and the drive shaft of a vehicle. A firearm was present

in only two cases. It should be noted that in one of the cases, the firearm was a fake firearm.

The case involving the fake firearm occurred as a victim sat on the boardwalk. Several males approached him and taunted him. In response, the victim reached into his pocket “to scare” away the suspects. The victim stated he had nothing in his pocket and his intention was to frighten the offenders by acting as if he possessed a weapon. Later, two males returned and physically assaulted the victim. The offenders pointed a fake gun at the victim and stated “homo faggot homo,” “you fucking homo,” and “you fucking faggot” while punching the victim in the face.

The offender who attacked the victim and displayed the fake gun stated that he thought “maybe [the victim] was going to rob us, I don’t know” and that he did not call the victim a “faggot” or “homo.” When asked if his co-defendant called the victim a “faggot” or “homo,” the defendant stated “no, not while I was in the vicinity, but maybe when we were walking away.”

The case involving the actual firearm involved an offender who approached the victim’s house and verbally taunted the victim stating “if those kids weren’t on the front porch, I would shoot you.” The offender then exposed a handgun and continued walking. The accused was seen two hours later waving the gun stating “yawl gonna get it, I’m a get yaw Haitians.”

INJURY

In contrast to Messner, McHugh, and Felson (2004) that bias offenders are more likely to injure their victims, and Levin and McDevitt’s (1993) oft-quoted assertion that

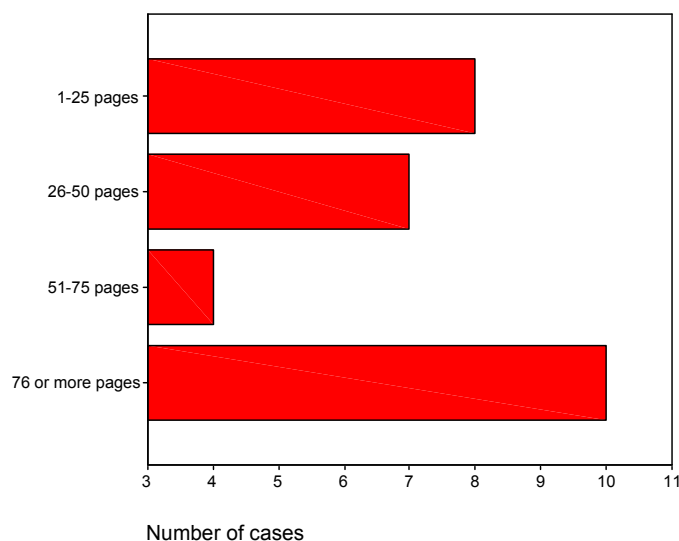
“hate crimes tend to be *excessively brutal*” (p. 11, emphasis in original), the injuries sustained by victims in the current sample were few (four cases) and astonishingly minor. None of the victims were injured seriously enough to require or request medical attention.

PRIOR RELATIONSHIP

In contrast to previous research finding that bias crime offenders tend to be strangers to their victims (Garofalo & Martin, 1993b; Levin & McDevitt, 2002; Messner, McHugh, and Felson, 2004), of the 23 cases with an identifiable victim, only eight involved strangers. In eleven of the cases the offender was known to the victim, for example classmates, friends, or neighbors. Other relationships included police/citizen, student/teacher, patient/healthcare worker, and co-workers (see Table 7.1).

LEVEL OF INVESTIGATION

Based on a modified version of Bell’s (2002) “level of investigation” measure, page counts were used to measure the level of investigative activity. The page counts ranged from 7 to 199 with an average page count of 61.69 and a median of 50 pages (see Figure 7.1).

FIGURE 7.1 LEVEL OF INVESTIGATION PER CASE**EVIDENCE FACTORS**

Cases were coded for the presence of physical evidence collected as part of the investigation as a measure of case strength. However, beyond the collection of a few paint samples, the only other evidence involved photographs of the scene, video tapes, audio tapes, and computer drives. Such evidence was collected in fifteen cases. In six cases, the presence of such evidence was not noted in the file.

As another measure of case strength, the number of witnesses was coded. The number of witnesses were not necessarily eyewitnesses to the crime, but was derived from the list of witnesses expected to testify and may include law enforcement officers. Of the twenty cases in which the number of witnesses was noted, there was an average of 7.10 witnesses per case (see Table 7.1).

CRIMINAL CHARGES

Each of the twenty-five cases referred by the bias unit was coded according to the most serious charge (see Table 7.7). The prosecutor's office was unable to retrieve five files, therefore information will be restricted to cases in which files were available.

Twenty-three of the 25 cases involved at least one offender charged with a bias crime. The remaining two cases resulted in criminal charges, but no bias charge. Only three of the 25 cases referred for prosecution as a bias crime resulted in charges reaching the level of second degree. The case outcomes for each offender will be discussed in Chapter 8.

New Jersey classifies offenses into the following categories: 1) crimes of the first, second, third, and fourth degree and, 2) disorderly persons and petty disorderly persons offenses (2C:43-1; 2C:1-4; see Table 7.6).

TABLE 7.6 DEGREE OF CRIMES

Degree of crimes	Terms of imprisonment
First	10 and 20 years
Second	5 and 10 years
Third	3 and 5 years
Fourth	no more than 18 months
Disorderly persons	up to 6 months in jail
Petty disorderly persons	up to 30 days in jail

As previously discussed, in New Jersey the crime of bias intimidation was signed into law in January, 2002 (P.L. 2001, c443). Prior to the charge of bias intimidation, bias offenders were eligible for enhanced sentences determined by the judge for crimes such as cross burning and painting swastikas. In 1990 harassment and simple assault were upgraded from misdemeanors to fourth-degree crimes "in cases where the offender acts 'at least in part, with ill will, hatred or bias' toward his victim," ultimately resulting in

enhanced punishment for the offender (Bean, 1993, p. 4). Although the 2000 *Apprendi* decision effectively eliminated the harassment upgrade and replaced it with a separate crime of bias intimidation, the charge of “bias harassment” appeared in four cases as the most serious charge (see Table 7.7).

TABLE 7.7 MOST SERIOUS CHARGE PER CASE, 2001-2004 (N=25)

	Bias crime charged	Crime, no bias Charged
Personal crimes	12	2
Possession of weapon for unlawful purposes 2 nd	1	1
Bias intimidation 2 nd	1	0
Bias intimidation 3 rd	1	0
Terroristic threats 3 rd	1	0
Bias intimidation 4 th	3	0
Harassment 4 th	4	0
Riot 4 th	1	0
Criminal mischief 4 th *	0	1
Property crimes	11	0
Bias intimidation 3 rd	3	0
Burglary 3 rd	1	0
Criminal mischief 3 rd	1	0
Bias intimidation 4 th	5	0
Conspiracy to commit bias 4 th	1	0

*This was categorized as a personal crime overall because the additional three DP offenses charged were personal offenses.

One case resulted in a most serious charge of bias intimidation (2nd degree) and four cases resulted in a most serious charge of bias intimidation, 3rd degree. Bias intimidation, is defined as “a crime of the fourth degree if the underlying offense...is a disorderly persons offense or petty disorderly persons offense” (2C:6-1). For example, bias intimidation (3rd degree) is charged when the underlying offense is a charge of criminal mischief (4th degree), a crime causing “pecuniary loss in excess of \$500 or less”

(2C:17-3). Similarly, bias intimidation (4th degree) is charged when the underlying offense is a disorderly persons or petty disorderly persons offense. Therefore, in eight cases, the most serious charge was originally a disorderly persons offense that was “bumped” up due to the bias intimidation charge. Coupled with the four cases in which harassment was the most serious charge, half of the cases would not have been indictable crimes without the bias element.

Cases resulting in second and third degree charges will be discussed below.

Terroristic threat (3rd degree) is defined as threatening “to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out” (2C:12-3). However, the offender charged with terroristic threat was under the supervision or control of law enforcement at the time of the offense and was charged with threatening a law enforcement officer. The case involved a motor vehicle accident in which the offender was subsequently arrested for DUI. Upon transport, the accused repeatedly threatened the transporting officers. The threats included remarks such as “all niggers like this officer need to be hung,” I’ll “fuck this officer’s mother in the ass,” I’ll “kill [victim] nigger, black ass,” and various threats to find out where the officer lived and to kill the officer’s family. According to investigative reports, the offender stated that he was “under the influence” at the time of the threats and that he “made a mistake.”

Another of the more serious cases involved an offender under the control of the department of corrections at the time of the offense. The case involved an inmate who was transported for his routine dialysis treatment. While undergoing treatment, the inmate became abusive and threatening toward the nurse and stated “fuck the white

devil,” “white bitch,” and threatened to beat her up. Investigative reports indicated that the offender has a past history of irritability and agitation toward whites, and was described as by nurses as irrational. The accused said that the patient was a member of the “five percenters” which most likely refers to the “Five Percent Nation and the Nation of Gods and Earths,” a racist splinter group from the Nation of Islam that believes that “the ‘blackman’ is god” and that “whites have deceived the whole world” (ADL, 2005).

CONVICTIONS

As discussed, of the 30 cases reaching the bias unit, the prosecutor’s office was unable to retrieve files of five. Of the 25 remaining, only 23 cases resulted in at least one offender charged with a bias crime. Importantly, less than half (52.2%) of the 23 cases resulted in at least one offender receiving a conviction for a bias crime. Although the average number of offenders charged with a criminal offense per case was 2.0, the average number of offenders charged with a bias offense was 1.87. However, the average number of offenders convicted per case for a bias offense was .96 (see Table 7.8).

TABLE 7.8 CONVICTIONS, 2001-2004

	Mean number of offenders per case
Charged with a criminal offense	2.0
Charged with bias offense	1.87
Convicted of criminal offense	1.43
Convicted of bias offense	.96

Cases involving personal crimes were significantly less likely to result in at least one offender conviction for a bias crime (see Table 7.9). Similarly, juvenile cases were significantly more likely to result in conviction for a bias crime than adult cases (see Table 7.10).

TABLE 7.9 BIAS CONVICTION AND TYPE OF OFFENSE (N=23)

	Bias conviction	No bias conviction	Total
Personal	2	10	12
Property	9	2	11
Total	11	12	23

$\chi^2 = 9.763, p < .05$

TABLE 7.10 BIAS CONVICTION AND TYPE OF OFFENDER (N=23)

	Bias conviction	No bias conviction	Total
Juvenile	9	2	11
Adult	2	10	12
Total	11	12	23

$\chi^2 = 9.763, p < .05$

TYPE OF BIAS MOTIVATION

Of the cases resulting in a bias charge, six of the seven racially motivated cases resulted in no bias convictions. Five of the four religiously motivated cases resulted in at least one offender conviction for a bias crime. Four of the five multi-bias cases resulted in at least one offender conviction for a bias crime (see Table 7.11). Due to the small number of cases resulting in a bias charge, a chi-square analysis to measure the relationship between bias conviction and type of bias motivation could not be conducted.

TABLE 7.11 BIAS CONVICTION AND TYPE OF BIAS MOTIVATION

	Bias conviction	No bias conviction	Total
	11	12	23
Racial	1	6	7
Religious	5	4	9
Ethnicity	0	1	1
Sexual orientation	1	0	1
Multi-bias	4	1	5

In the eleven cases in which at least one offender was convicted for a bias offense, only one involved use of a weapon. Similarly, only one case involved an (minor) injury. Of the eleven cases resulting in at least one offender conviction for a bias crime, nine included the collection of some type of physical evidence. However, due to the small sample size, a chi-square analysis could not be conducted. Similarly, a chi-square analysis could not be conducted to determine the statistical relationship between bias conviction and number of witnesses, victim perception, victim cooperation, case seriousness, and prior relationship and bias conviction.

SENTENCE RECEIVED

Sentences received are discussed more fully in Chapter 8. Of the 11 cases that resulted in at least one bias conviction, four resulted in a jail sentence for at least one offender. Two of the four were juvenile cases and two were adult cases.

CASE TYPOLOGY

To more fully understand the bias element in the cases, each was coded according to McDevitt, Levin, & Bennett's (2002; see also Levin & McDevitt, 1993) offender typology. Briefly described, the typology categorizes the bias motivation into 4 distinct

categories: thrill, mission, defensive, and retaliation. Thrill crimes are described by McDevitt, Levin, & Bennett (2002) as “set off by a desire for excitement and power” (p. 306). Defensive are described as a response to a threat to the offender’s resources such as minorities moving into a homogenous neighborhood. Retaliatory is described as “a desire to avenge a perceived degradation or assault on their group” and mission as “crusaders who hope to cleanse the earth of evil” (p. 306).

However, due to the difficulty in categorizing the cases neatly into the designated categories, one additional category was added: “interpersonal confrontation.” Interpersonal confrontation refers to cases in which bias emerges from some sort of confrontation among parties. Such cases elude the “thrill” category because it does not appear that the offender in any way set out to get kicks or to “stir up a little excitement” (Levin & McDevitt, 2002, p. 67). Rather, the bias appears to emerge due to an interpersonal confrontation with the victim. Although the behavior may in some ways be considered retaliatory, they may be distinguished from McDevitt, Levin, and Bennett’s (2002) concept of “retaliation” which refers “specifically to incidents in which offenders act in response to a hate crime” (p. 309).

Of the 30 cases, thirteen were coded as motivated by “thrill,” three as “mission,” one as “defensive,” and one as “retaliation” (see Table 7.12). Ten cases erupted during the course of an interpersonal confrontation. Of those, two cases seemed to be the direct result of what was perceived as a personal wrong, two cases involved intoxication that seemed to play an important role in the behavior of the offender, and two were simply unclassifiable. The narrative descriptions reveal the complexities of the cases and demonstrate the difficulty in determining just what role bias plays in the crime.

Of the 23 cases resulting in a bias charge, eleven were categorized as thrill, three as mission, and one as retaliation. Seven cases were categorized as interpersonal confrontation, and one was deemed “unclassifiable.” Only eight “thrill” cases and two “mission” cases resulted in a bias conviction. However, of the cases that were categorized as interpersonal confrontation and unclassifiable, only one resulted in a bias conviction (see Table 7.12).

TABLE 7.12 OFFENDER TYPOLOGY, 2001-2004 (N=30)

	Total cases referred to bias unit 30	<u>Cases charged as bias</u>	
		Bias conviction 11	No bias conviction 12
Thrill	13 (43%)	8	3
Retaliation	1 (.03%)	0	1
Defensive	1 (.03%)	0	0
Mission	3 (10%)	2	1
Interpersonal confrontation	10 (33%)	1	6
Unclassifiable	2 (.06%)	0	1

Unclassifiable

One case that appears unclassifiable involved victims traveling on a highway. As the offender’s vehicle approached, the offender threw a water bottle at the victim’s vehicle. At the next light, the offender exited his vehicle and swung the drive shaft from his vehicle, striking the victim’s car on the hood. The accused stated that he was working for the FBI and thought that the victims were Arabic and were harassing him. He stated he was an assassin assigned to kill Osama Bin Laden and he had recently hired gods to “take him out.” The case outcome information was not available for this case.

The second case, previously described above involved an offender who approached the victim's house and verbally taunted the victim stating "if those kids weren't on the front porch, I would shoot you." The offender then exposed a handgun and continued walking. The accused was seen two hours later waving the gun stating "yawl gonna get it, I'm a get yaw Haitians." The offender was charged with terroristic threats, possession of a weapon for unlawful purposes, unlawful possession of a weapon, and bias intimidation. The grand jury failed to return an indictment for any of the charges.

Interpersonal Confrontation

The following section describes cases in which behavior seemed to be a direct response to the victim's actions immediately preceding the crime and were categorized as "interpersonal confrontation." While bias, or some evidence of prejudice, is present, the cases seem to illustrate just how amorphous the concept of a "bias crime" is. As a result, interpersonal confrontation cases create difficulties for prosecutors and therefore are less likely to be successfully prosecuted. This is problematic because one-third of the cases referred from the bias unit fall into this category.

All of the interpersonal confrontation cases were categorized as "adult" cases. Nine of the ten (90 percent) cases consisted of personal crimes. However, the single case categorized as a property crime was the direct result of actions committed against the offender and will be described below. Of the 23 cases in which at least one offender was charged with a bias crime, only one of the six cases categorized as interpersonal confrontation ended in a bias conviction for at least one offender.

In one case, the victim crossed the picket line at his workplace, and was subsequently called “nigger,” “stupid nigger,” by the offender. The offender also turned toward the victim’s girlfriend and stated “oh you come to pick up that nigger.” This case does not clearly fit the thrill, mission, retaliatory, or defense categories. In fact, the comments seemed to be a direct consequence of crossing the picket line.

Due to the difficulty in discerning the true role of bias in this case, a brief was filed on behalf of the defendant stating that “the question posed to the Court is whether the mere making of a statement that someone is a ‘nigger’ without any associated conduct or action, is a violation New Jersey criminal statutes?” The state responded that bias intimidation has two parts: a predicate offense and bias element. The “linchpin of harassment cases is not language used, but whether statements were accompanied by intent to harass.” The state alleged that the defendant “knew his conduct would alarm, upset, and annoy victim.” Ultimately, the Court dismissed the bias intimidation and the harassment would be heard in municipal court. Case notes revealed that the prosecutor realized that this case was a “close call” but preferred the grand jury to “make that call.”

Another case categorized as interpersonal confrontation occurred when a Hispanic man arrived at the victim’s yard sale intoxicated, loud, and boisterous. The accused stated “I’ll kick your mother fucking cracker ass” and proceeded to kick and punch the victim. The accused then stated “I kicked your ass white boy.”

The victim reported that the responding officer refused to arrest the accused. The victim reported the officer as stating that the “fight was between two men” and the “judge would throw the case out of court anyway.” The officer then gave the accused a ride away from the area. The victim called another officer to the scene. Subsequently, an

internal investigation was launched regarding the behavior of the initial responding officer.

In a brief filed by the defense attorney, it was revealed that the report filed by the initial responding officer did not mention bias, but did mention the odor of alcohol and an argument over money. The brief stated that *Apprendi* ruled that “it is not enough to show that during commission of a crime the actor may have exhibited bias. The question is whether the purpose of the crime was to exhibit bias.” In their brief, the state countered that “though the state is required to show that ‘bias’ was an integral element of the offense, it may do so at various levels and is not limited to proving that [the defendant] acted purposefully with prejudicial intent.” The indictment charging bias intimidation (4th degree) was dismissed by the court and may be heard by the municipal court.

The following case also brings up a number of issues surrounding the prosecution of bias crimes and was categorized as interpersonal confrontation. An adult was involved in a motor vehicle accident and was subsequently arrested for DUI. Upon transport, the accused repeatedly threatened the transporting officers. The threats included remarks such as “all niggers like this officer need to be hung,” I’ll “fuck this officer’s mother in the ass,” I’ll “kill [victim] nigger, black ass,” and various threats to find out where the officer lived and to kill the officer’s family. According to investigative reports, the offender stated that he was “under the influence” at the time of the threats and that he “made a mistake.”

One issue concerns whether police officers, while on duty, are “eligible” to be victims of bias. Investigators stated that police officers cannot be victims of bias while on duty. However, the case notes revealed this exception: “it appears that the accused,

though he had been drinking went beyond the officer's uniform to attack him and his family personally by making threats that could be carried out as the accused knows where the victim's live....” Indeed, the offender pleaded guilty to bias intimidation and terroristic threats.

The second issue concerning prosecution was revealed in the case notes themselves. One of the initial charges in this case was (bias) harassment 2C:33-4d. However, this case was a 2002 case and § “d” had long been deleted from the harassment statute. As a result, the grand jury returned a true bill for bias intimidation rather than bias harassment. While this may not have been an issue of concern for prosecutors since the bias charge was simply subsumed under another statute, there was an interesting discussion in the case notes referring to the bias intimidation statute as not having “a definition.” Additionally, the bias legislation was described as being “rushed through the house in 30 days or less as a political move without any real thought.”

Another case illustrates the difficulty of determining just how central a role that bias played in the crime. The case does not fit into any pre-conceived typology category and therefore was designated as interpersonal confrontation. The victim and her two year old grandson pulled into the parking lot of a convenience store. As the victim parked, two offenders in a nearby vehicle stated “why didn't you park straight” and added “bitch, why can't you park straight, I can't get out, nigger.” One offender entered the convenience store to purchase a cup of coffee and returned to the vehicle. The victim stated to the offender, “you need to tell your girlfriend to have more manners.” The driver responded “maybe you're a nigger, standing here arguing with her.” The offender then approached the victim and threw coffee at the victim. The victim ducked and the

coffee splashed on the grandson in the backseat of the vehicle. No injury resulted. The offenders were originally charged with bias harassment and bias assault but both resulted in a downgrade and remand to municipal court. The downgrades eliminated the “bias” portion of the charge.

The following interpersonal confrontation case resulted in charges of criminal mischief and various disorderly persons offenses including disorderly conduct, resisting arrest, and simple assault. However, no bias charges were filed. The victims were leaving a bar and were “bumped” by the offender. The offender repeatedly referred to the victims as “niggers” twenty or more times throughout the confrontation. The offender swung a lug wrench toward the victims and kicked the sunroof of a nearby vehicle where a female was waiting for her friends. The accused was intoxicated and resisted arrest when law enforcement officers arrived on the scene. While the presence of bias is explicit due to the derogatory language, the offender was charged with criminal mischief and disorderly persons offenses including disorderly conduct, resisting arrest, and simple assault. The criminal mischief charge was downgraded and remanded to municipal court.

The following case resulted in initial charges of bias harassment as well as simple assault. According to investigative reports, two adult offenders approached a couple attempting to rent a hotel room, possibly to buy drugs. The victims said “get lost” and one offender stated “you can’t stay here nigger bitch” and other phrases such as “nigger” and “spic bitch.” The accused slapped the female victim across the face and when the boyfriend approached to assist her, the two offenders assaulted the victims” by punching him in the face and stated racial slurs including “ghetto nigger bitch” and “nigger spic

bitch.” One offender was recommended and accepted into the pre-trial intervention program and the other was charged with a disorderly persons offense.

Retaliation

The remaining cases do indeed fit into McDevitt, Levin, and Bennett’s (2002) offender typology. Thirteen of the cases (43 percent) were categorized as thrill, three (10 percent) were categorized as mission, and one as defensive. Retaliatory cases are those in which the offender is responding to a perceived attack against a particular group.

The behavior described in the following retaliatory case was in response to the 9/11 attacks on America and was directed toward an Islamic Center. The center received a series of harassing answering machine messages. The offender left a message stating “how are you? Are you proud of what you did?” as well as the following message on the machine:

“I just like to say, you people are stupid fucking animals. We’re gonna fill your women’s cunts with fucking acid. You rat bastard, child-killing piece of shit. I hope you all drown in your mama’s cunts. Take that and stick it in your Arab asses.”

The offender was charged with bias harassment which was remanded to municipal court, in effect dropping the bias component of the charge. The offender admitted making the call and stated he was “angry beyond words” and that he “spewed some venom that I’m embarrassed by...it was a knee-jerk reaction.”

Defensive

McDevitt, Levin, & Bennett (2002) describe defensive cases as those in which the offender is clearly concerned with protecting his community from “those he considered to

be outsiders or intruders” (McDevitt, Levin, & Bennett, 2002). The following single case provides an example of a defensive bias crime. The case involves an ongoing dispute between two members on a planning board. Both parties have filed various complaints against each other and the present case involved harassing answering machine messages left by the offender that indicated the offender would drop the lawsuit if the victim removed herself from the planning board. The message stated “we don’t need Syrians on the planning board,” “it will be sending a message to your people, and that [this town] is going to be tough on them.”

The offender engaged in various harassment tactics and filed a complaint against her husband for garage construction, called INS on her housekeepers, threw something at her car, and stated phrases such as “fucking Jew, tell your people they can’t get away,” “tell your people not to move into town,” “Jew bitch,” and “Syrian bastards.” The charges on the investigative file indicated bias harassment and bias intimidation, however, the prosecutor’s office was unable to locate the file so case outcome is unknown.

Mission

McDevitt, Levin, and Bennett (2002) described the mission category as cases in which “the perpetrator seeks to rid the world of evil” (p. 309). Such mission hate crimes are frequently committed by members of organized hate groups. Only three cases fit the mission typology and each involved offenders who were believed to be members of an organized hate group.

One case, previously described, involved the inmate that was being transported for dialysis who became abusive and threatening toward the nurse stating “fuck the white devil,” “white bitch,” and threatened to beat her up. The inmate was believed to be a member of the hate group offshoot of the Nation of Islam deemed the “five percenters.” The inmate was charged with terroristic threats (3rd degree) and two counts of bias intimidation (4th degree). The offender pleaded guilty to terroristic threats and the bias intimidation charge was dismissed.

The other two cases categorized as mission involved youths that created their own hate group and had defined their own criteria for membership. The five youth were part of the “Agnostic Neo-Nazis” and engaged in numerous acts of criminal mischief and other property crimes. The first case involved two male youths who engaged in vandalism and graffiti at a local church with damage approximating \$1800. Graffiti was sprayed on the nearby bridge and included various swastikas, pentagrams, and the phrase “God Sucks Ass.” Additionally, the youth knocked over a statute of Mother Mary and removed the head of the statue. The male juveniles were charged with criminal mischief (4th degree), desecration of a venerated object (disorderly persons), bias intimidation (3rd degree), and conspiracy (3rd degree). The juveniles plead guilty to bias intimidation and criminal mischief.

The same weekend, three female youths associated with the hate group, wrote graffiti on a Catholic church and surrounding vehicles, buildings, fences, and roadways. The graffiti included swastikas, pentagrams, and phrases such as “God sucks ass,” “Death from above and below,” “I’m Satan’s child,” “Satan is my lover,” “fuck the world,” “fuck life,” “Satan,” “niggers shall die,” “nazi,” “fuck niggars they all have a new fear,” “big

penises rock,” “S--- sucks pussy,” “K--- is a les,” “white power niggers beware,” “this car makes dingy noises,” and “A.N.N.” The girls also broke into a van and stole various paint cans and spray paint. The girls were charged with 22 counts including burglary (3rd degree), conspiracy (3rd degree), bias intimidation (3rd degree), criminal mischief (4th degree), and criminal mischief (disorderly persons). The girls ultimately plead guilty to bias intimidation, criminal mischief, and trespass. The crimes committed by the female juveniles could have resulted in a maximum punishment of four years in a juvenile detention facility, however, the girls received sentences of 30 days, 45 days, and 60 days each.

Thrill

Thirteen of the 30 cases (43%) were categorized as motivated by thrill. Such cases usually involved juveniles (77%) and frequently involved property crimes (69%). Seven of the thirteen cases (54%) were motivated by bias against religion, with the majority evidencing anti-Jewish bias. In eight of the thrill cases at least one offender was convicted of a bias offense.

One case involved three juvenile offenders who spray painted swastikas and other graffiti (e.g. “fuck”) on vehicles parked in the victim’s driveway. The victims were Jewish and had decorated their house with Hanukkah decorations for the holidays. According to the investigation report, the victims expressed concern that they “were being targeted for some type of violence.”

One co-defendant who witnessed the painting of a swastika by his co-defendant immediately erased it. He stated “I’m sorry...I went over there to do harmless fun, and

then XX drew the swastika. That went over the line and that's why I erased it, but little did I know, there were two." He was further asked if there was any reason that his co-defendant would draw swastikas and he stated "He just thought it would be funny."

According to the investigation reports, when asked why he painted the swastikas, another offender stated "I don't know. I didn't know they were Jewish...I shouldn't have done it. I'd like to say I'm sorry to them, and that if I could, I would take it back."

A similar case involved three male juvenile offenders who drew swastikas on several rocks and threw them through the window of the victim's residence. The victim's house was also decorated with Hanukah decorations at the time of the incident.

One offender denied knowing that the victims were Jewish and when asked the meaning of the swastika, he stated that it is "a racial sign meaning hate." Then, the offender denied being prejudiced. The co-defendant who admitted he knew that the victims were Jewish, stated that the swastika "means you don't like any other race besides your own kind" but claimed that the juveniles "put the swastikas on as a joke."

In another demonstration of anti-Jewish bias, two juvenile males drew swastikas and wrote bias graffiti in the boys restroom at a middle school. The graffiti included phrases such as "Heil Hitler," "Jew kike," "Hitler's back," and "Jews suck." When asked by investigators the significance of the swastika, one juvenile stated "I learned in language we talked about five minutes that it means the place that it's on is going to get bombed or something." The juvenile denied being prejudiced against Jewish people or any other people. The other juvenile was asked the meaning of a swastika and he stated that he did not know. He stated that his actions were "foolish" and subsequently wrote a letter of apology to the police department.

The following case involved an adult offender who claimed that he drew a swastika and “Jews” in front of Jewish residence “on a dare” and that he did not know that the victims were Jewish. However, in a statement contained in the file, the offender admitted to previously writing the “N” word and a swastika at the local laundromat and stated that he said “exterminate the Jews” in front of a Jewish school.

Another example of a thrill crime involved two juvenile males and one adult male offender who engaged in various acts of vandalism and graffiti at several locations around town. The graffiti included swastikas and the phrases “Dark City Gangstas,” “red,” and “casper.” In addition to the graffiti, the adult offender attempted to break into the high school maintenance area to get paint. One offender stated that their behavior was “just stupid” and another stated that he “never intended to show hate towards any race or religion.”

Another graffiti case categorized as thrill involved three juvenile offenders (two male and one female) who painted multi-bias graffiti in the public restrooms of a public park and vandalized walls, doors, mirrors, and benches. The graffiti was comprised of swastikas and phrases such as “die nigger die” and “kkk.” According to investigation reports, the offenders were inspired by a video game that shows American agents going to other countries to stop Nazis who are attempting to resurrect a German king. The game contains references to swastikas, but not “kkk” or the phrase “nigger.” When questioned by investigators, the offenders denied that they are racist or members of a hate group. One defendant, when asked why he painted swastikas and “kkk” stated he did it as a “prank.”

In two of the thrill cases, anti-gay bias was prominent. In the first case, four high school youths (three males and one female) rearranged the letters on the front of a high school sign to read “[victim’s initials] is a fag” and “loves penis.” According to investigation reports, the victim was repeatedly teased and bullied by classmates and was afraid to go to school the following day after the letters on the sign were rearranged.

One male offender stated that the victim was targeted because he “talks and acts gay.” According to the investigation report, the female suggested that her friends change the sign. The female stated in the interview that she was merely “joking around” when she suggested changing the sign, and although her friends did it anyway, she “did not react.” One male offender was asked the possible motivation for her suggestion to change the sign and he stated that “pretty much it just popped up in her head. I’m guessing.” He further stated she had been called a “dirty slut” by the victim. Another male offender confirmed that the female was angry at the victim and stated “I think she was mad at him. He called her names. I think he called her slut and stuff.”

One of the cases that best illustrates the thrill category involved three juvenile males and one adult male offender driving around throwing rocks and yelling out racial epithets at passersby. The racially offensive remarks included “nigger,” “spic,” “spic, I’m going to fuck your mother,” and “go back to your own country.”

According to the investigative reports, the offenders denied racial prejudice. However, when asked to describe their behavior, the offenders stated that they were playing “screamers” which is a game in which the offenders drive “around to random people and scream gibberish at them or whatever is in our heads to scream or whatever is

on the radio to get a reaction.” The juveniles stated that the adult offender was merely driving and did not participate in “screaming.”

When asked why this particular location was chosen for “screamers,” the juvenile stated because the area “has everybody, Chinese, Black, Spanish, Native American, everybody.” When asked what type of victims are targeted, the juvenile replied that nearly everyone is fair game and stated “a black guy and could’ve been white or could’ve been a Spanish girl.” Another juvenile stated that they specifically went out to target blacks and Mexicans. However, when asked if he was a racist, the juvenile replied “hell no.” All minorities are not equally susceptible to being victimized and the offenders explained that the game does have rules. The victims off limits for “screamers” are little children and the elderly.

CHAPTER 8

OFFENDER CHARACTERISTICS, 2001-2004

During 2001-2004, the 30 cases referred by the bias unit comprised 56 offenders. This chapter contains offender based information regarding charging decisions, convictions, sentence recommendations, and sentences received. Similar to other research (Strom, 2001) investigating bias crime offenders, the offenders referred by the bias unit in the current study were relatively young offenders, with 41 offenders age 21 or under, and a median age of 17 years.¹³ Slightly over half of the offenders were categorized as juvenile (55.3%, age 17 and under) and 25 offenders were adult (age 18 and over). Similarly, the data on gender reflects previous research (Strom, 2001) that has found the vast majority of bias offenders were male (89.3%) while only 10.7 percent were female (see Table 8.1).

The race/ethnicity of the offenders is presented in Table 8.1. Considering that the bias unit is sensitive to cultural and identity issues surrounding race and ethnicity, it was surprising to experience numerous difficulties surrounding the collection of racial data on both offenders and victims. The investigative files contained no separate category for ethnicity and occasionally Hispanic would appear as a “race” category. As a result, Hispanics and other ethnic minorities were most likely undercounted as both offenders and victims. Of the offenders referred by the bias unit, 83.9 percent were white, 8.9

¹³ Based on referral to the grand jury, one offender was classified as an adult, although the exact age was unknown.

percent were black, 5.3 percent were Hispanic, and less than one percent were of Arab descent.

TYPE OF BIAS MOTIVATION

Twenty (35.7%) of the offenders exhibited religious bias during the crime. Eighteen of those offenders directed their religious bias toward people of the Jewish faith. Eleven (19.6%) offenders exhibited racial bias, with the majority directed toward blacks (9 offenders). All eleven of the racially motivated crimes were personal crimes wherein bias was expressed through derogatory verbal remarks while the majority of anti-Jewish crimes were expressed through property crimes such as the painting of swastikas.

Sixteen offenders (28.6%) exhibited multi-bias, including anti-Jewish, anti-black, anti-Hispanic, and anti-Catholic bias (see Table 8.1). The relatively high percentage of multi-bias crimes in this sample is in contrast to the low percentage of multi-bias crimes reported annually by the FBI. This is because the FBI categorizes only one bias motivation per offense, thereby masking the fact that property crimes such as graffiti are many times a combination of offensive symbols or words that the offender believes will shock or alarm. For example, what was perhaps the most publicized bias crime in the current study also included graffiti directed toward the most targets in a single offense. The bias graffiti was directed toward Jews, blacks, lesbians, Christians, and included an odd assortment of sexual graffiti. It would be difficult to categorize such a case with a single type of bias motivation.

TABLE 8.1 OFFENDER CHARACTERISTICS

	Offenders referred by bias unit	Charged with a bias offense	Convicted of a bias offense
	n=56	n=43	n=21
Age of offender	56	43	21
1-15	11	11	9
16-21	30	23	12
22-29	6	3	0
>30	7	6	0
Unknown	2	0	0
Type of offender	56	43	21*
Juvenile	31	27	19
Adult	25	16	2
Offender gender	56	43	21
Male	50	37	16
Female	6	6	5
Race/ethnicity of offender	56	43	21
White	47	38	20
Black	5	2	0
Hispanic	3	3	1
Arab	1	0	0
Criminal history	56	43	21
At least one prior arrest	26	24	13
No record	19	17	8
Unknown	11	2	0
Attorney	56	43	21
Public	15	14	8
Private	26	24	13
Unknown	15	5	0
Type of Offense	56	43	21
Personal	25	17	4
Property	31	26	17
Prior relationship	56	43	21
Stranger	15	8	3
Acquaintance	6	5	1
Classmate/friend	6	6	3
Neighbors	7	6	3
Police/citizen	1	1	1
Other	3	2	0
N/A – property crimes	18	15	10

Type of bias motivation	56	43	21
Racial	11	9	1
<i>Anti-black</i>	(9)	(7)	(1)
<i>Anti-white</i>	(2)	(2)	(0)
Religious	20	16	7
<i>Anti-Jewish</i>	(18)	(15)	(7)
<i>Anti-Christian</i>	(2)	(1)	(0)
Ethnicity	2	1	0
<i>Anti-other ethnicity (anti-Arab)</i>	(2)	(1)	(0)
Sexual Orientation	6	4	3
<i>Anti-gay</i>	(6)	(0)	(0)
Gender	1	0	0
<i>Anti-Female</i>	(1)	(0)	(0)
Multi-bias	16	13	10
<i>Anti-black, anti-Hispanic</i>	(6)	(5)	(3)
<i>Anti-Catholic, anti-Jewish</i>	(2)	(2)	(1)
<i>Anti-Catholic, anti-black, anti-Jewish, anti-gay</i>	(3)	(3)	(3)
<i>Anti-black, anti-Jewish</i>	(6)	(3)	(3)
<i>Anti-Jewish, anti-ethnicity other (anti-Syrian)</i>	(2)	(0)	(0)

*significant, $p < .05$

CRIMINAL CHARGES

As previously discussed, New Jersey classifies offenses into the following categories: 1) crimes of the first, second, third, and fourth degree and, 2) disorderly persons and petty disorderly persons offenses (2C:43-1; 2C:1-4). However, no offender referred by the bias unit was charged with a crime greater than the second degree, and the vast majority was charged with fourth degree offenses or lower. The prosecutor's office was unable to locate files for five cases, therefore charging and sentencing information could not be collected on seven offenders.

The most serious charge per offender is displayed in Table 8.2. Only three offenders were charged with a second degree crime, and two of those did not receive a bias charge. In fact, of the 56 offenders, only 43 were charged with a bias crime and the remaining 6 were charged with criminal charges, no bias.

TABLE 8.2 MOST SERIOUS CHARGE PER OFFENDER

	Bias crime charged	Crime, no bias charged
	43	6
Personal crimes	17	4
Possession of weapon for unlawful purposes 2 nd	1	2
Bias intimidation 2 nd	1	0
Bias intimidation 3 rd	1	0
Terroristic threats 3 rd	1	0
Use of juvenile for a crime 3 rd	1	0
Bias intimidation 4 th	6	0
Harassment 4 th	5	0
Riot 4 th	1	0
Criminal mischief 4 th *	0	1
Simple assault DP	0	1
Property crimes	26	2
Bias intimidation 3 rd	4	0
Burglary 3 rd	3	0
Criminal mischief 3 rd	0	2
Conspiracy to commit burglary 3 rd	1	0
Bias intimidation 4 th	16	0
Conspiracy to commit bias 4 th	2	0

*This was categorized as a personal crime because the additional three DP offenses charged were personal offenses.

Of those charged with a bias crime, 37 offenders were male and six were female (see Table 8.1). The vast majority of offenders charged with a bias crime were white (88.3%), two offenders were black, and three Hispanic. Twenty-four of the 43 offenders have at least one prior arrest. For 38 of the 43 offenders charged with a bias crime, the status of the defense attorney could be ascertained from the file. Of those, 14 obtained public counsel and 24 hired a private attorney.

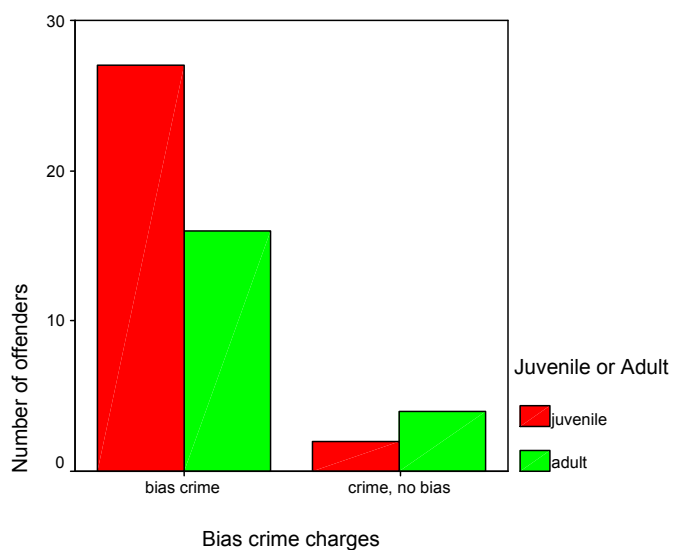
Of those offenders referred by the bias unit, 46 percent had at least one prior arrest. Of those charged with bias, 55 percent had at least one prior arrest, and of those convicted of a bias crime, 61.9 percent had at least one prior arrest. The relationship

between prior arrest and charging could not be analyzed with a chi-square analysis because of the small sample size.

The majority of offenders charged with a bias crime were juveniles (62.7%) and 37.2 percent were adults. Adults were more likely to be charged with personal crimes (12 of 16 offenders), while juveniles were more likely to be charged with property crimes (22 of 27 offenders).

Of the juvenile offenders referred by the bias unit, twenty-seven were charged with bias crimes. Of those, only one juvenile had charges dismissed by the state (see Figure 8.1). Due to the small sample size, a chi-square analysis was not possible to examine the relationship between charges and whether the offender was a juvenile or an adult.

FIGURE 8.1 CHARGES



Of the 15 adult offender cases presented to the grand jury seeking a bias charge,¹⁴ only 10 resulted in indictments for bias crimes. The reasons for the grand jury rejections are unknown, however, it is possible that the lack of grand jury indictments for bias crimes illustrated the difficulty grand jurors had discerning the role of bias motivation.

The typology presented by Levin and McDevitt (1993; 2002; see also McDevitt, Levin, & Bennett, 2002) may shed some insight. Specifically, cases in which the presence of bias motivation is less prevalent may have played a part in the grand juror decisions. Of the eight cases classified as “interpersonal confrontation,” the grand jury returned indictments for a bias crime on five. Additionally, the grand jury returned bias crime indictments on three thrill cases, one retaliation, and one mission.

Four of the five cases in which the grand jury rejected bias charges were classified as either “interpersonal confrontation” or “unclassifiable.” The “thrill” case, in which the grand jury did not indict for a bias crime involved swastikas drawn on various public property, but also included numerous other graffiti not related to bias. It is possible that the grand jurors were reluctant to charge unless bias was perceived as the sole motivation.¹⁵

Of the adult offenders in which an indictment for a bias crime was returned, none proceeded to trial. In contrast to speculation that offenders charged with bias crimes would be likely to proceed to court to challenge the charges, the bias offenders were not opting to proceed to trial to contest the bias charges (Jenness & Grattet, 2001). In fact, the data show that the prosecutors were not adhering to the zero-tolerance plea bargain

¹⁴ For one case, the offender was charged with a bias crime as noted in a co-defendant’s file, but the prosecutor’s office was unable to locate the offender’s file, therefore processing information was unavailable.

¹⁵ The charge of “bias intimidation” is not listed in the model jury charges which was updated 2/2005.

policy and did negotiate pleas with the adult offenders. Of the 10 adult offenders in which the grand jury indicted for a bias crime, only one pleaded guilty to the bias charge without reduction. One offender pleaded guilty to a reduced bias charge, two adult offenders pleaded guilty to harassment (no bias), and two offenders had their cases dismissed by the court. Similarly, 7 of the 27 juveniles charged with a bias crime had charges reduced to disorderly persons offenses effectively eliminating the bias element and one juvenile's case was dismissed by the state.

Four adult offenders applied for and received pre-trial intervention. First-time, non-violent offenders may apply for pre-trial diversion. For offenders admitted into pre-trial diversion, the charges are suspended and the offender is required to abide by certain requirements such as counseling, drug treatment, and restitution. If the offender meets the requirements, the charges will be dismissed.

The two adult offenders admitted into pre-trial intervention were involved in personal crimes with "use of juvenile to commit a crime" (3rd degree) and "bias harassment" as the most serious charges. The remaining two offenders admitted into pre-trial intervention were both involved in property crimes with "bias intimidation" (3rd degree) as the most serious charge. The conditions of pre-trial intervention included community service and either anger management counseling or restitution. Only one offender was mandated to attend the bias program as part of the pre-trial intervention requirements.

CONVICTIONS

Of the 49 offenders referred by the bias unit, 43 were charged with a bias crime. However, only two adult offenders and 19 juvenile offenders were convicted of a bias

crime. Juveniles were significantly more likely than adults to be convicted of a bias crime. Because of the low number of minority offenders, a chi-square analysis could not be calculated for the race/ethnicity and gender variables.

TABLE 8.3 BIAS CONVICTIONS

	Yes 21	No 22	Total 43
Juvenile	19	8	27
Adult	2	14	16

$\chi^2 = 13.466, p < .05$

Of the 27 juvenile offenders charged with a bias crime, seventeen pleaded guilty to the bias charge and in two cases the charges were sustained and the juveniles were adjudicated delinquent. For one juvenile, charges were dismissed by the state. In that case, the file indicated that a cross-complaint had been filed against the victim and both would be dismissed. Of the adults, two offenders pleaded guilty to the bias charges. One adult pleaded guilty to the bias charge without reduction, the other pleaded guilty to a reduced bias charge.

SENTENCE RECOMMENDATIONS AND SENTENCE RECEIVED

Sentences for the bias offenders typically included combinations of the following: mandatory attendance to the bias program, community service, incarceration, restitution to the victim's crime compensation board (usually \$30), law enforcement training fund (\$15), the safe neighborhood services fund (usually \$75), and any other compensation designated to the victim.

Of those offenders convicted of a bias crime, sentence recommendations were noted in the files of 10 offenders. Of the juvenile bias offenders, five received recommendations of probation and three received recommendation of less than 60 days in jail, plus mandatory attendance to a bias program.¹⁶ Of the adult offenders, one was recommended 30 days in jail and the other was recommended 18 months.

If a sentence recommendation was written in the case file, it was followed in all but one case. In that case, the juvenile received a recommendation of probation but received a deferred disposition.

TABLE 8.4 SENTENCE RECEIVED

	Juvenile	Adult
Hours of community service	19	2
None	4	1
1-24	1	0
25-49	3	0
50-99	3	0
100 or more	8	1
Bias program	19	2
Yes	13	0
No	6	2
Sentence	19	2
1 year deferred disposition	5	0
8 months – 2 years probation	9	0
30 – 60 days jail	4	1
> 60 days jail	1	1

Similar to Levin and McDevitt's (1993; 2002) finding that few bias offenders ultimately receive jail time, only seven convicted bias offenders in the current study

¹⁶ All three juvenile offenders were involved in the same incident that included numerous counts of criminal mischief, bias graffiti, and trespassing.

received a jail sentence. The vast majority of offenders received some sort of combination of probation, community service, and mandatory attendance of a bias program. Table 8.4 shows the variety of sentences that convicted bias offenders received. Of the 19 juvenile offenders convicted of a bias crime, 13 were required to attend the bias program. One juvenile not convicted of a bias crime was required to attend the bias program. The juvenile pleaded guilty to a misdemeanor count of harassment (no bias) for spray painting swastikas and other graffiti on vehicles in a driveway.¹⁷ Both adult offenders were sentenced according to the prosecutor's recommendations of jail time.

¹⁷ Only one adult offender was required to attend the bias program, and he was not convicted of a bias crime. Rather, attendance to the bias program was a requirement of pre-trial intervention.

CHAPTER 9

DISCUSSION

The purpose of this study was to examine what types of cases reached the bias unit for investigation and were subsequently referred for prosecution as a bias crime. This research found that, of the cases that reached the bias unit, nearly 50 percent were declined for investigation as a bias crime. Of the total 643 cases presented to the bias unit for investigation between 2001 and 2004, less than 5 percent were referred by the bias unit for prosecution as a bias crime. Of those cases referred, three-fourths resulted in at least one offender charged with a bias crime, and less than half resulted in a bias conviction.

Consistent with the first research question, a greater percentage of the crimes reaching the bias unit were crimes involving personal offenses such as harassment. However, slightly over one-third of the cases reaching the unit was categorized as “incidents” and did not reach the level of a criminal offense as defined under New Jersey law. Similar to the findings by Boyd, Berk, and Hamner (1996), the statewide standards for referring bias crimes to the bias unit for investigation, as noted in the *Bias Incident Investigation Standards*, was broad and cast a wide net. The standards instruct police to categorize and refer cases for investigation as bias crimes if there is any indication of possible bias, including incidents that may not reach the level of a crime. The justification is that although cases may appear minor, the incident may in fact escalate into a larger problem if not taken seriously (BIIS, 2000). The downside is that, as the

data showed, the bias unit expends resources to initially screen out a large number of cases.

Although a substantial number of minor incidents reached the office for investigation, very few serious crimes reached the office for investigation as a bias crime. Since the current study did not address unreported cases, it is impossible to determine whether serious bias crimes actually occurred but were just not reported as such.

Boyd, Berk, and Hamner (1996) predicted that in places where investigators used an inclusive, broad bias crime definition, lower rates of successful prosecutions would result. Although they theorized potential prosecutorial outcomes, Boyd, Berk, and Hamner (1996) did not examine actual prosecution rates or case outcomes. In the current study, the wide net cast by the investigators may explain why less than 5 percent of the cases in the current study were referred for prosecution by the bias unit in that many cases did not reach the level of a criminal offense. Applying a broad definition of a bias crime may be desirable for casting a wide net, but ultimately calls into question the efficacy of the unit that refers an average of only 7.5 cases per year for prosecution.

When examining the “success” rate of the prosecution of bias crimes, it is important to consider how success should be measured (Vera, 2005). One way to look at the “success” rate of the prosecution of bias crimes would be to consider the percentage of cases that reached the bias unit that were ultimately referred for prosecution (in the present study less than 5%). Another way to calculate the success rate would be to consider the percentage of *criminal* cases that reached the bias unit for investigation and were referred for prosecution (9%). The most favorable view of success would be to utilize the percentage of bias convictions. For example, of the 25 case files that were

referred as bias crimes by the bias unit, nearly 50 percent resulted in at least one offender conviction for a bias crime.

Not surprisingly, personal and property crimes were more likely to be designated as “routine” by investigators than incidents not reaching the level of a criminal offense. Consistent with previous research (Strom, 2001; UCR, 2002, 2003), the vast majority of criminal offenses listed in the investigative files were low-level offenses, mainly consisting of harassment, bias intimidation, simple assault, criminal mischief and disorderly conduct. Most importantly, of the cases that were charged as a bias crime, half would not have been indictable crimes without the bias element that essentially bumped the crime up to a felony in the 4th degree. On one hand, proponents of the legislation could argue that these types of cases are exactly the type of cases for which the legislation was designed. Without the bias intimidation charge, the disorderly persons and petty disorderly persons offenses would have merely been processed through municipal court. On the other hand, it could be argued that bias and prejudice manifested at such a low level is “policing thought” and should be tackled outside the already overburdened criminal justice system.

Of the cases that reached the bias unit, the most common type of bias motivation was anti-black, followed by anti-Jewish. Of the 30 prosecuted cases, the most frequent type of bias motivation was anti-Jewish, followed closely by anti-black (see Table 7.1). Rubenstein (2004) cautioned against the traditional portrayal of bias motivation using the groupings such as racial, religious, and sexual orientation. Specifically, Rubenstein (2004) argued that collapsing categories into “racial” and “religious” obscures the fact that the majority of racially motivated cases are anti-black and the majority of religiously

motivated are anti-Jewish. According to Rubenstein (2004), by eliminating the groupings, a clearer picture of who is targeted among bias crimes emerges.

Further, Rubenstein (2004) suggested that the target population must also be taken into account when determining which group most frequently reports bias crimes to law enforcement. Rubenstein (2004) noted that when group population is taken into account, gay individuals have a greater risk of victimization than Jewish or black individuals. For the current study, no population estimates of the Jewish population or gay population were available; therefore relative rates of victimization could not be calculated.

Interestingly, a substantial portion of the cases reaching the bias unit involved bias directed against multi-targets (those that expressed bias directed toward more than one target group). The multi-bias cases were likely to involve property offenses in which offensive remarks were directed against various groups. For example, one property crime involved symbols such as the Star of David with an X through it, along with the phrases “kkk,” “go Arabs,” “big ass dicks,” and “fuck you.” These cases seemed designed to offend the general population, rather than directly target a specific group. Frequently though, the sentiment was both anti-black and anti-Jewish.

Due to the small number of cases resulting in a bias charge and conviction over the four year period, it was not possible to statistically analyze the relationship between type of bias motivation and bias conviction. Findings from the current study support prior research in that racially motivated cases referred for prosecution were more likely to be personal crimes, and religiously motivated cases were more frequently property crimes.

In contrast to the assumption that racially motivated cases would be the most frequently prosecuted, of the seven racially motivated cases prosecuted as bias crimes, only one ended in a bias conviction. Additionally, the data showed that cases involving personal crimes were significantly less likely than property crimes to result in the conviction of at least one offender for a bias crime.

Although most researchers have found that bias crime cases tend to involve multiple offenders (Craig, 2002; Gerstenfeld, 2004; Levin & McDevitt, 1993; 2002), the current study found that of cases reaching the bias unit for investigation when the number of offenders was known, the majority involved a single offender. However, of the cases referred for prosecution, slightly over half involved more than one offender. Importantly, the number of offenders differed by type of offense, with property crimes involving a higher average number of offenders than personal crimes. In slightly less than half of the cases that reached the bias unit for investigation, the number of offenders was unknown.

In contrast to previous research indicating that bias crimes are excessively brutal (Levin & McDevitt, 1992; 2002), and result in a greater likelihood of a major injury (Messner, McHugh, & Felson, 2004), but consonant with Garofalo and Martin's (1993b) findings, the current study found that a large percentage of cases that reached the bias unit for investigation did not reach the level of a criminal offense, and those that did, were not likely to involve injury. Further, when injury did occur, it was most frequently a minor injury and did not require medical attention. Since the investigators cast a wide net, it is unlikely that serious, violent crimes reported to the police slipped through the cracks and were not referred to the bias unit. Although beyond the scope of this study, it

is possible that serious, violent crimes resulting in injury occurred in the jurisdiction, but were simply not reported as bias crimes.

Similar to previous research findings, (Bell, 2002; Garofalo and Martin, 1993b), investigators in the current study engaged in intensive follow-up efforts when it came to the investigation of bias crimes. With number of pages in the investigation file as an indication of level of investigative activity, there was an average of 16.78 pages per file. Of the prosecuted cases, substantially more investigative activity occurred and the average number of pages per file was 61.69. Despite the extensive investigation efforts, numerous ambiguities surrounding the investigation and prosecution of bias crimes remained.

For example, investigators and prosecutors stated that the county employs a “zero-tolerance” plea-bargaining approach which was designed to eliminate plea negotiations with bias motivated offenders demonstrating a tough-on-bias-crimes approach. However, the data indicated that the majority of bias motivated cases appear to have involved plea negotiations. Of the 10 adults in which indictments for bias crimes were handed down by the grand jury, four received pre-trial intervention and two adults pleaded guilty (one pleaded guilty to the bias charges without reduction and one pleaded guilty to a reduced bias charge, see Chapter 8). Cases for the remaining two adult offenders were dismissed by the court. In fact, to the extent that a plea negotiation means the reduction or dropping of some charges in order to secure a guilty plea, then it appears that most cases involved plea negotiations. Despite the intention and verbal support for the zero-tolerance policy by both investigators and prosecutors, in practice plea

negotiations were made. As with any “zero-tolerance” approach, when put into practice, there are inevitable exceptions despite the firm intentions of the policy.

Other ambiguities surround the classification of bias crimes and as in Garofalo and Martin’s (1993a) study on policing of bias crimes, the current study showed that cases with a seemingly similar fact pattern may be treated differently with regard to the designation of bias. For example, Garofalo and Martin (1993a) described a graffiti case that stated “fuck niggers” and was designated as racially motivated “because of the makeup of the area,” while a case in another area contained similar graffiti (“kkk sucks dicks” and “nigger, nigger, nigger”) was not classified as bias motivated (p. 72).

In the current study, a resident posted a sign in his own yard reading “death to Islam” as a response to the terrorist attacks that occurred on September 11, 2001. Although the sign was certainly offensive, the case was designated by investigators as not rising to the level of a criminal offense and was declined. During the same month a separate case involved a subject who painted “death to sand niggers” on both sides of his vehicle.¹⁸ This case was classified as routine by investigators indicating further investigation as potential bias crime.

Another case involving a school sign that was changed to read “Hitler is my hero” was declined by investigators. In a similar case another school sign was changed to read “[initials of victim] is a fag” and “loves penis” but was prosecuted as a bias crime. Such findings bring into question the validity of the very concept of “bias crime,” and reinforce concerns raised by critics of the legislation (Gellman, 1991; Jacobs & Potter, 1998).

¹⁸ This case was investigated by the bias unit, the offender was arrested for bias harassment. Because the case so clearly involved a speech issue, the ACLU recommended that the charges be downgraded to harassment. This case was not included in the sample of prosecuted cases because the prosecutor’s office did not ultimately consider this case a bias crime.

THE “PERFECT” CASE: PRIOR RELATIONSHIP, PRIOR RECORD, MULTI-MOTIVES

It was hypothesized that prosecuted cases would consist of those cases most resembling the concept of a “perfect” or paradigmatic bias crime (Bell, 2002; Boyd, Berk, & Hamner, 1996; Levin & McDevitt, 2002; Maroney, 1998). In her work on policing bias crimes, Bell (2002) noted that detectives classified bias crimes in part by distinguishing what was *not* a bias crime. Thus, the detectives had developed scenarios that were “typical *non*-hate crimes” (p. 144). The typical *non*-hate crime consisted of crimes involving “drugs, fights, retaliation for earlier fights, traffic accidents, and neighbor disputes” (p. 144).

Interestingly, and in contrast to Bell’s (2002) findings, of the 30 cases referred by the bias unit, fifteen had characteristics attributed to the *non*-typical hate crime described by Bell (2002). Of the cases referred by the bias unit for prosecution, seven were engaged in neighbor disputes, four were engaged in fights or threatened fights that were not necessarily prompted by bias, three involved traffic or motor vehicle incidents, and one involved a perceived drug exchange. In fact, of the cases in which offenders were convicted of a bias crime, only three were classified as “stranger” cases in which the offender and victim had no prior relationship.

Similarly, scholars have described the characteristics of the “perfect” bias crime (Bell, 2002; Levin & McDevitt, 2002; Maroney, 1998). According to prior research, from the prosecutor’s perspective, a “perfect” bias crime would involve a repeat offender, demonstrate a lack of provocation by the victim, have no other reason than bias for the crime to have occurred, and would contain overwhelming evidence of bias (Bell, 2002; Levin & McDevitt, 2002; Maroney, 1998). However, these characteristics do not

necessarily correspond with cases in the current study referred by the bias unit and prosecuted as bias crimes.

Of the 43 offenders charged with a bias crime, only 24 had a prior record of at least one arrest. In fact, of those offenders in the current study with a prior arrest, only two had prior arrests relating to bias, and although currently charged with a bias crime, neither resulted in a bias conviction.

When examining whether there was the possibility of multiple motives for the crime, or reasons other than bias that could have motivated the crime, it quickly became evident that many of the crimes were initially prompted by some trigger other than bias. As previously described, when applying the bias crime typology developed by Levin and McDevitt (1993), over one-third of the cases were described as motivated by “interpersonal confrontation” or were simply “unclassifiable.” For example, the offender may have exhibited bias in response to an ongoing neighbor dispute. Even cases that display unambiguous, or “overwhelming,” signs of bias such as painted swastikas or “KKKs,” frequently those symbols were coupled with non-bias related graffiti as well. For example, three offenders painted anti-Semitic graffiti on a golf course containing swastikas and the phrase “fuck the Jews.” However, another phrase was also present: “I hate working here.” In this case, the presence of non-bias graffiti may increase doubt that bias was the “true” motivation. In fact, none of the offenders involved in this case were convicted of a bias crime. The findings of the current study demonstrated that there seems to be no “perfect” bias case and instead support critics of the legislation (Jacobs & Potter, 1998; Gellman, 1992-1993) who warned of the difficulty identifying and proving bias motivation.

In general, typologies, such as those developed toward the understanding of serial killers, have been criticized for a number of reasons such as overlapping categories, reinforcing stereotypes, or simply being misleading (Hinch & Hepburn, 1998). Similarly, Faulkner (2004) criticized the typology of gay bashers and suggested that there is no “typical” gay basher. The worry of both Hinch & Hepburn (1998) and Faulkner (2004) centered on the exclusion of those who do not fit the typology.

Similar to Hinch and Hepburn (1998) and Faulkner’s (2004) concerns, Levin and McDevitt’s (1993; 2002) typology seemed under-inclusive and a separate category was added by this researcher. However, by adding the category of “interpersonal confrontation,” the distinguishing nature of bias crimes virtually vanished.

HIGH-PROFILE BIAS CRIMES REVISITED

Findings from the current study indicated that there is much ambiguity in bias crime cases and that there is no “perfect” or paradigmatic cases that result in prosecution. Additionally, cases heralded by the media as quintessential bias crimes, have, upon closer inspection, revealed the presence of other motives ultimately rendering the concept of bias crimes problematic. For example in 2004, ABC’s news magazine *20/20* aired a follow-up segment to the Matthew Shepard case attempting to make the case that money and drugs were the motivation for the crime, rather than anti-gay bias (Sloan, 2004). The show suggested methamphetamine intoxication as sparking a violent, uncontrollable reaction in the offender. Since the state of Wyoming does not have bias crime legislation, the defendants were not charged with a bias crime and bias motivation was not proven in court. Thus, the “reality” of whether a bias crime truly occurred will continue to be debated.

New evidence in the much publicized Howard Beach incident also threatened to “blow apart that case’s hate-crime angle” (Celona & Olshan, 2005). In July of 2005, three black men were chased by three white men “spewing racial slurs” (Celona & Olshan, 2005, p. 5). One victim was attacked with a baseball bat by one of the white offenders. The accused white men claimed that they were not motivated by racial bias, but rather were retaliating against the black men who were attempting to steal their gold chains. Days later, one of the black victims was apprehended for ripping “a gold chain off his 18-year old victim as an accomplice cocked a loaded pistol on a subway train Sunday in Brooklyn” (Celona & Olshan, 2005, p. 5).

In their updated book on hate crimes, Levin and McDevitt (2002) utilized the Central Park Jogger case as an example of a (potential) gender-based bias crime. The crime was believed to have been committed by five teenagers who were “wilding” in central park. Levin and McDevitt (2002) referred to the case as an example of the excessively brutal nature of bias crimes, as an example of how most bias motivated offenders are strangers to the victim, as an example that the victim is interchangeable, and as an example of how “most hatemongers act in groups” (p. 23). Levin and McDevitt (2002) stated “the attack on the Central Park jogger has many of the elements that we designate hate crimes” (p. 24). At the conclusion of their description of the case illustrating the characteristics of bias crimes, Levin and McDevitt (2002) stated “the ambiguity concerns the basis for the attack, whether it was really motivated by gender, race, both, or neither” (p. 24). Ultimately, Levin and McDevitt’s (2002) characterizations were problematic because it was subsequently revealed that the teens were in fact

innocent of the crime. The actual offender, acting alone, confessed to the crime and DNA testing confirmed that the confession was legitimate (Smith, 2002).

As high-profile cases are revisited, the concept of a bias crime becomes further muddled. The current study found that cases referred for prosecution typically do not fit the conception of a “perfect” bias crime nor the popular bias crime typology. Although the inclusiveness of the definition of a bias crime may be lauded by some, in practice what occurs is that as the net widens, bias increasingly becomes a peripheral motivator, rather than the sole motivation, ultimately rendering the designation nearly useless.

IMPACT OF ENFORCEMENT OF BIAS CRIME LEGISLATION ON MINORITIES

One goal of the current study was to examine the impact of enforcement of bias crime legislation on minorities. As previously discussed, critics of bias crime legislation expressed concern that minorities would be disproportionately impacted by the legislation (Chorba, 2001; Franklin, 2002; Gellman, 1991, 1992-1993; Gerstenfeld, 1992; Hernandez, 1990; Kohn, 2002; Maroney, 1998). However, an analysis of the race/ethnicity of the offender in the current study was hampered by the designation of “race” in the case files. There was no clear distinction between race and ethnicity, with Hispanic often listed as race. Thus, the race and ethnicity categories were collapsed into one category. Of the cases referred by the bias unit, 83.9 percent of the offenders were white, 8.9 percent black, 5.0 percent Hispanic, and less than one percent of Arab ethnicity. Of the offender charged with a bias crime, 88 percent were white, 4.6 percent black, and 6.9 percent Hispanic. Of those offenders convicted of a bias crime, 95 percent were white and 4.7 percent were Hispanic.

County statistics showed that whites comprised 84.4 percent of the population, blacks comprised 8.1 percent, and Hispanics comprised 6.2 percent. When comparing the percentage of minorities referred as bias offenders to the proportion of minorities in the community, neither blacks nor Hispanics were overrepresented among those referred by the bias unit, charged, or convicted of bias crimes. Again, caution should be urged while drawing any firm conclusions from the current study because of the problematic designation of race and ethnicity information in the case files.

In sum, whites comprised the majority of offenders referred, charged, and convicted of bias crimes. Similar to previous research (Bell, 2002; Lawrence, 2003; Maroney, 1998), minorities do not seem to be referred or prosecuted as bias offenders at a disproportionate rate.

POLICY IMPLICATIONS

Jenness and Grattet (2005b) expressed concern that the “law-on-the-books” may not coincide with the “law-in-between” in that various factors such as organizational and environmental characteristics influence the extent to which policies are developed. As a consequence, “law-on-the-books” as well as the “law-in-between” may not translate to the “law-in-practice.”

Findings from the current study show that this particular jurisdiction has a detailed written policy directed toward bias crimes as well as full-time investigators assigned to the bias unit who are dedicated to enforcing the legislation. The investigators and prosecutors were enthusiastic and often stated that their practices are frequently praised as a desired model of bias crime law enforcement. However, despite the

existence of a detailed policy and the effort exerted by law enforcers, ambiguities and difficulties surrounding the enforcement of bias crime legislation remain.

Like other get-tough policies such as three-strikes and sex offender notification laws, bias crime legislation appeals to many constituencies but in practice the legislation potentially sweeps up the types of cases not envisioned by the supporters of the legislation. In the current study, the enforcement of the legislation cast a wide net and captured cases in which offenders committing relatively minor crimes appeared to be motivated by factors other than bias. For those who adhere to the notion that bias should be the sole or primary motivation of the crime, this poses a problem and raises the question of whether the legislation is meeting its original intent.

SYMBOLIC IMPACT OF THE LEGISLATION

The current study validated concerns expressed by scholars that bias crime legislation would be rarely enforced (Gerstenfeld, 1992; Jacobs and Potter, 1998, Levin & McDevitt, 2002; Maldonado, 1992-1993). In fact, proponents of the federal bias crime legislation currently pending in Congress explicitly argued that if passed, the legislation would rarely be enforced and stated that “there would be no more than a ‘modest increase’ in the caseload under the current federal hate crime statute, 18 U.S.C. 245” (Beale, 2000, p. 1238). Perhaps the strength of the legislation lies in the potential symbolic effect of the law and expressive component of the punishment (see also Gerstenfeld, 1992).

As previously discussed, Lawrence (1999) argued that the real impetus for the legislation should be society’s condemnation for the behavior. Although not measured in

the current study, if the jurisdiction publicized the few successful bias convictions, there may be some increased level of social cohesion in the community. Additionally, from a purely symbolic aspect, merely having the legislation on-the-books may serve as a message to the community that bias motivated behavior will not be tolerated.

However, Jenness and Grattet (2005a) pointed out that the symbolic/instrumental dichotomy is a false one and that policies may be both symbolic and instrumental. In a study on the policing of bias crimes in California, the researchers found that the existence of a policy, in concert with organizational and community factors, actually influenced the behavior of officers and thus the reporting and documentation of bias crimes (Jenness & Grattet, 2005a). The degree to which the current findings appear to be merely symbolic or instrumental depends on one's desired outcome. If the outcome is the reporting and investigation of bias crimes, then the policy has notable instrumental effects, but if the desired outcome is conviction of bias motivated offenders, then the effect, if any leans toward the symbolic.

The danger of symbolism is that there may be too much reliance on the symbolic aspect of the law at the expense of additional efforts outside the criminal justice system such as tolerance promotion programs which may actually have a greater impact on the level of prejudice and bias within the community (Gerstenfeld, 1992; Levin & McDevitt, 2002). Even proponents of the legislation suggested that bias motivated discrimination and violence may not be curtailed from legislation alone (Lawrence, 1999; Levin & McDevitt, 2002). However, Levin and McDevitt (2002) suggested "tough sentencing" for repeat offenders who "are beyond rehabilitation and represent a danger to society" and alternative sentences for young, first-time offenders (p. 206).

Consistent with prior research, the current study found that the vast majority of offenders referred for prosecution by the bias unit were relatively young, (most were between 16 and 21 years old). Further, cases designated as juvenile were significantly more likely to involve property crimes and significantly more likely to result in at least one offender being convicted for a bias crime.

Although overall the sentences for bias offenders may not seem harsh—for example only three juvenile offenders received a sentence recommendation of a jail sentence—the sentences received were arguably more severe than they would have been absent the bias charge. Specifically, 13 of the 19 juvenile offenders were required to attend a bias program designed to increase tolerance and reduce prejudice. Mandatory attendance to a bias program may curb future bias crimes, although more empirical research is needed to measure the efficacy and impact of these programs to know with certainty. Generally though, harsh punishments for juveniles prompted by get-tough policies have not been found to be an effective deterrent (Krisberg, 2005).

A more effective approach may be to devote resources toward prevention programs, such as those suggested by Levin and McDevitt (2002). The bias unit examined in the current study does devote time and resources toward bias awareness training specifically for young people within various schools in the area. Such awareness training sessions were both preventative and occurred in response to various bias incidents that were reported and referred to the bias unit by schools. One benefit of mandatory reporting by school officials of any bias incident, even those not reaching the level of a crime, is that the bias unit will keep track of the incidents and conduct anti-bias

sessions directed toward the youth in those areas to prevent further escalation of the problem.

LIMITATIONS

The current study was limited to a relatively small sample size representing one county and therefore the data may not be used to generalize to the nation as a whole. Due to the difficulties of obtaining adequate reported bias crimes (see Green, 2001; McDevitt, Cronin, Balboni, Farrell, Nolan, & Weiss, 2004; SPLC, 2001) and the lack of a nationwide database on the prosecution of bias crime, studies on the case characteristics and processing of bias crimes remain basically limited to local jurisdictions. Due to the small number of bias cases referred for prosecution, more comprehensive statistical analyses were not possible.

Additionally, due to the record-keeping practices of the bias unit, the current study was limited to cases received between 2001 and 2004. Therefore, no analysis could be conducted to measure the changes in practices before the *Apprendi* decision in 2000. However, findings in the current study suggest that the decision had little effect on the identification and investigation of bias motivated cases.

In this jurisdiction, the Assistant Prosecutor, as well as the investigators, were extremely enthusiastic with regard to the prosecution of bias crime cases. Thus, it was demonstrated that the office was not averse to focusing resources and efforts toward the prosecution of bias crimes. However, in order to truly appreciate the unique qualities of bias crimes, as well as a more comprehensive statistical analysis, a comparison between the prosecution of bias crimes and non-bias crimes is needed.

Although there were limitations, this is, to the best of my knowledge, the first study to address the prosecution of bias crimes by examining the types and characteristics of cases and represents a start toward our understanding of the impact of bias crime legislation.

FUTURE RESEARCH

Although states began implementing bias crime legislation during the 1980s, and some form of legislation has been implemented in the vast majority of states, there is surprisingly little research focused on the prosecution and case outcomes of bias crimes. To address unique features that influence the prosecution of bias crimes, future research should continue to examine case characteristics, preferably a matched sample of bias and non-bias motivated cases.

Future research may also benefit from moving beyond a single jurisdiction and conducting multi-jurisdictional comparisons of the prosecution of bias crimes, taking into account variations in legislation. Multi-jurisdictional studies may examine broader institutional and political issues not addressed in the current study. For example, the political climate, public opinion, and media pressures were not addressed in the current study but most certainly impact the types of cases prosecutors charge. Variations in resources and staffing levels may also impact options available to prosecutors and will vary by jurisdiction.

Finally, research may be directed toward examining the deterrent value of bias motivated legislation. Specifically, an examination of the deterrent value of bias programs administered as part of offender sentencing would be useful.

CONCLUSION

New Jersey has had some form of bias crime legislation for over two decades, however ambiguities and challenges to the enforcement of the legislation remain. Despite the enthusiasm and commitment of the investigators and the First Assistant Prosecutor, less than five percent of all the cases reaching the bias unit from 2001-2004 resulted in a referral for prosecution as a bias crime. Many of the cases reported to the bias unit did not meet the level of a criminal offense, resulting in a relatively high percentage of declined cases. Additionally, many cases that resulted in prosecution did not share the characteristics of “true” or “typical” bias crime case.

If the impact of the bias crime legislation is solely measured by those convicted of a bias crime—or worse those sentenced to incarceration for a bias crime—then findings suggest that the legislation may be ineffective. However, if impact is measured by increased attention toward and investigation of bias crimes, then the legislation has some instrumental impact. Additionally, despite the low percentage of cases referred for prosecution there may be worthwhile symbolic effects of the legislation that were not measured by the current study.

APPENDIX A

HATE CRIME PROVISIONS ACROSS DIFFERENT STATES¹⁹

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Bias-Motivated Violence and Intimidation -- Criminal Penalty *1	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Civil Action				✓	✓	✓	✓	✓		✓	✓		✓	✓		✓			✓	✓		✓	✓	✓		✓
Race, Religion, Ethnicity	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sexual Orientation			✓		✓	✓	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓		✓		✓
Gender		✓	✓		✓		✓	✓				✓		✓		✓			✓	✓			✓	✓	✓	✓
Disability	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓		✓	✓		✓	✓		✓		✓		✓
Other *2					✓	✓	✓	✓		✓		✓				✓	✓		✓	✓	✓			✓		✓
Institutional Vandalism	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Data Collection *3			✓		✓		✓	✓		✓		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	
Training for Law Enforcement Personnel *4			✓		✓		✓							✓		✓		✓	✓			✓		✓		

*1. The following states also have statutes criminalizing interference with religious worship: AR, CA, DC, FL, ID, MD, MA, MI, MN, MS, MO, NV, NM, NY, NC, OK, RI, SC, SD, TN, VA, WV.

*2. "Other" includes political affiliation (CA, DC, IA, LA, WV), age (CA, DC, FL, IA, HI, KS, LA, ME, MN, NE, NM, NY, VT) and transgender/gender identity (CA, CO, CT, DC, HI, MD, MN, MO, NM, PA, VT).

*3. States with data collection statutes which include sexual orientation are AZ, CA, CT, DC, FL, HI, IL, IA, MD, MI, MN, NV, NM, OR, TX and WA; those which include gender are AZ, DC, HI, IL, IA, MI, MN, TX, WA.

*4. Some other states have administrative regulations mandating such training.

Compiled by the Anti-Defamation League's Washington Office

More information about ADL's resources on hate crimes can be found on the League's Web site: <http://www.adl.org> and <http://www.partnersagainsthate.org/>

¹⁹ Source: Anti-Defamation League (ADL). (2005). Hate crime provisions across different states. Retrieved October 21, 2005 from http://adl.org/combating_hate/.

APPENDIX A
HATE CRIME PROVISIONS ACROSS DIFFERENT STATES²⁰

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation -- Criminal Penalty *1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓ ^{*5}	✓	✓	✓	✓	✓	
Civil Action		✓	✓		✓			✓		✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓	
Race, Religion, Ethnicity	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	
Sexual Orientation		✓	✓	✓	✓	✓	✓					✓	✓	✓			✓	✓		✓		✓		✓	
Gender		✓		✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓		✓	✓		
Disability		✓	✓	✓	✓	✓	✓				✓		✓	✓			✓	✓		✓		✓		✓	
Other *2		✓				✓	✓						✓							✓			✓		
Institutional Vandalism	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	
Data Collection *3		✓			✓	✓					✓	✓	✓	✓				✓			✓	✓			
Training for Law Enforcement Personnel *4					✓	✓						✓		✓								✓			

*5 The Utah statute ties penalties for hate crimes to violations of the victim's constitutional or civil rights.

Compiled by the Anti-Defamation League's Washington Office

More information about ADL's resources on hate crimes can be found at the League's Web site: <http://www.adl.org> and <http://www.partnersagainsthate.org/>

²⁰ Source: Anti-Defamation League (ADL). (2005). Hate crime provisions across different states. Retrieved October 21, 2005 from http://adl.org/combating_hate/.

**APPENDIX B
CODE SHEET**

1. Case Number: _____
2. Routine: _____ Decline: _____
3. Bias Intimidation Y / N Other: _____
4. Month incident occurred: ____/____
5. Municipality: _____

VICTIM CHARACTERISTICS

6. Victim: Person(s)
Place (specify): _____
7. Victim 1 Age: _____
10. Victim 1 Gender: M F
8. Victim 2 Age: _____
11. Victim 2 Gender: M F
12. Victim 1 Race: black, white, asian, american-indian, other
13. Victim 2 Race: black, white, asian, american-indian, other
14. Victim 1 Ethnicity: Hispanic, other, unknown
15. Victim 2 Ethnicity: Hispanic, other, unknown
16. Does victim perceive incident as bias motivated? Yes No Unknown
Specify: _____
17. Victim 1 Cooperation: Yes No
18. Victim 2 Cooperation: Yes No
19. Prior Relationship between Off/Victim: Stranger
Acquaintance
Relative
Other: _____
Unknown

OFFENDER CHARACTERISTICS

20. Unknown
21. Membership in Hate Group: Yes No Unknown
22. Offender 1 Age: _____ 28. Offender 1 Gender: M F
23. Offender 2 Age: _____ 29. Offender 2 Gender: M F
24. Offender 1 Race: black, white, asian, american-indian, other
25. Offender 2 Race: black, white, asian, american-indian, other
26. Offender 1 Ethnicity: Hispanic, other, unknown
27. Offender 2 Ethnicity: Hispanic, other, unknown

CASE CHARACTERISTICS

28. Type of bias motivation: race-anti-black, white, asian, american-indian
 religion-anti-Jewish, Catholic, Christian, other
 ethnicity-anti-Hispanic, anti-other (specify: _____)
 sexual orientation-anti-gay
 disability - _____
 gender - _____
 multi-bias - _____
29. List of Charges: _____

30. Type of Offense: Personal Property
31. Estimated Value of Property Damage: \$ _____
32. Amount of Case Follow-Up: _____ pages

EVIDENCE FACTORS

33. Number of Witnesses: _____
34. Physical Evidence: Yes No Specify: _____
35. Weapon Used: hands/feet
 knife
 firearm
 blunt instrument
 other
 none

- 36. Injury Occurred: Yes No
- 37. Request Medical Attention: Yes No

CASE OUTCOMES

- 38. Offender 1 Defense attorney: _____ public _____ private
- 39. Offender 2 Defense attorney: _____ public _____ private

- 40. Offender 1 Prior arrest record: _____ felon(ies) _____ misdemeanor(s)
- 41. Offender 2 Prior arrest record: _____ felon(ies) _____ misdemeanor(s)

- 42. Offender 1 Prior convictions: _____ felon(ies) _____ misdemeanor(s)
- 43. Offender 2 Prior convictions: _____ felon(ies) _____ misdemeanor(s)

30. Offender 1 - Initial charges:

45. Offender 2 - Initial charges:

46. Offender 1 – Grand Jury decision:

47. Offender 2 – Grand Jury decision:

48. Offender 1 Conviction 1. plea
 2. trial
 3. conviction
 4. no

49. Offender 2 Conviction 1. plea
 2. trial
 3. conviction
 4. no

50. Offender 1 Convicted of (list charges)

31. Offender 2 Convicted of (list charges)

51. Offender 1 Reasons charges dropped/negotiated

52. Offender 2 Reasons charges dropped/negotiated

53. Offender 1 Sentence recommendation

54. Offender 2 Sentence recommendation

55. Offender 1 Sentence received

56. Offender 2 Sentence received

APPENDIX C
BIAS MOTIVATED CRIME INDICATORS²¹

1. Did the offender(s) use words, symbols, or acts that are or may be offensive to an identifiable group?
2. Are the victim and offender members of different racial or ethnic groups? If so, has there been past hostility or tension between those two groups? Has the victim's group been subject to prior similar criminal acts or harassment?
3. Is the victim the sole member of his or her group, or one of a small number of members living or present in the neighborhood where the crime occurred?
4. Has the victim recently moved to the area in which the incident took place?
5. Does the incident appear timed to coincide with any holiday or observance of significance to a certain group or community, such as religious or holiday or ethnic celebration?
6. Has the victim or victim's group been involved in recent public or political activity that makes the individual a likely target for hate-motivated violence?
7. Does the offender appear to belong to or does the manner of the commission of the crime appear to involve an organized hate group such as the Ku Klux Klan or Neo-Nazi organization?
8. Does the defendant, in a post-arrest interview or in statements made before or during the commission of the crime, recognize the victim to be a member of a potential "target" group?
9. Has there been recent news coverage or media exposure of similar events?
10. Does the defendant have a prior history involving hate-motivated conduct?
11. Is the attack particularly vicious?

²¹ Source: American Prosecutors Research Institute. (2000). *A local prosecutor's guide for responding to hate crimes*. Alexandria, VA:APRI, p. 26.

APPENDIX D
CASE SUMMARIES – CASES REFERRED FOR
PROSECUTION AS BIAS CRIMES, 2001-2004

Case 1

Four high school youths (three males and one female) rearranged the letters on the front of a high school sign to read “XX [victim’s initials] is a fag” and “loves penis.” According to investigation reports, the victim was repeatedly teased and bullied by classmates and was afraid to go to school the following day after the letters on the sign was rearranged. One male offender stated that the victim was targeted because he “talks and acts gay.” According to the investigation report, the female suggested that her friends change the sign. The female stated in the interview that she was merely “joking around” when she suggested changing the sign, and although her friends did it anyway, she “did not react.” One male offender was asked the possible motivation for her suggestion to change the sign and he stated that “pretty much it just popped up in her head. I’m guessing.” He further stated she had been called a “dirty slut” by the victim. Another male offender confirmed her anger at the victim and stated “I think she was mad at him. He called her names. I think he called her slut and stuff.”

Case 2

Three juvenile offenders spray painted swastikas and other graffiti (e.g. “fuck”) on vehicles parked in the victim’s driveway. The victims were Jewish and had decorated their house with Hanukkah decorations for the holidays. According to the investigation report, the victims were worried that they “were being targeted for some type of violence.”

One co-defendant who witnessed a swastika being painted immediately erased it. He stated “I’m sorry...I went over there to do harmless fun, and then XX drew the swastika. That went over the line and that’s why I erased it, but little did I know, there were two.” He was further asked if there was any reason that his co-defendant would draw swastikas and he stated “He just thought it would be funny.”

According to the investigation reports, when asked why he painted the swastikas, the offender stated “I don’t know. I didn’t know they were Jewish...I shouldn’t have done it. I’d like to say I’m sorry to them, and that if I could, I would take it back.”

Case 3

Three juvenile offenders (two male and one female) painted multi-bias graffiti in the public restrooms of a public park and vandalized walls, doors, mirrors, and benches. The graffiti was comprised of swastikas and phrases such as “die nigger die” and “kkk.”

According to investigation reports, the offenders were inspired by a video game that shows American agents going to other countries to stop Nazis who are attempting to resurrect a German king. The game contains references to swastikas, but not “kkk” or the phrase “nigger.” When questioned by investigators, the offenders denied that they are racist or members of a hate group. One defendant, when asked why he painted swastikas and “kkk” stated he did it as a “prank.”

Case 4

One male offender drew a swastika and “Jews” in front of Jewish residence. The offender stated that he wrote the swastika “on a dare” and that he did not know that the victims were Jewish. In a statement, the offender admitted to previously writing the “N” word and a swastika at the local laundry mat and stated that he said “exterminate the Jews” in front of a Jewish school.

Case 5

Three male juvenile offenders drew swastikas on several rocks and threw them through the window of the victim’s residence. The victim’s house was decorated with Hanukah decorations at the time of the incident.

One offender denied knowing that the victims were Jewish and when asked the meaning of the swastika, he stated that it is “a racial sign meaning hate.” The offender denied being prejudiced. Another co-defendant who admitted knowing that the victims are Jewish, stated that the swastika “means you don’t like any other race besides your own kind” but claimed that the juveniles “put the swastikas on as a joke.”

Case 6

Two juveniles and one adult engaged in numerous acts of vandalism and bias graffiti at a golf course. Various equipment was damaged and large swastikas were drawn as well as the phrases “fuck the Jews” “fuck you” and “I hate working here.”

Case 7

Two juvenile brothers were accused of repeatedly harassing and assaulting victims on a daily basis. One victim was assaulted, punched and put in a headlock. The victim stated that the accused was wearing “skinhead” clothing including a confederate flag, black shoes with red laces, and a shaved head. The second offender was accused of threatening to beat and hang the victim. Both juveniles have a history of racially offensive behavior including wearing inappropriate clothing to school including a t-shirt with a hooded man hanging on the front, a sticker of a swastika on his bike, singing racially disparaging songs on the school bus, consistently using the word “nigger” and calling individuals “spic” and “Aunt Jemima.”

Case 8

The adult offender was involved in a motor vehicle accident and was subsequently arrested for DUI. Upon transport, the accused repeatedly threatened the transporting officers. The threats included remarks such as “all niggers like this officer need to be hung,” I’ll “fuck this officer’s mother in the ass,” I’ll “kill [victim] nigger, black ass,” and various threats to find out where the officer lived and to kill the officer’s family. According to investigative reports, the offender stated that he was “under the influence” at the time of the threats and that he “made a mistake.”

Case 9

The victims were leaving a bar and were “bumped” by the accused. The accused repeatedly referred to the victims as “niggers” which led to a physical confrontation. The accused assaulted the victims and kicked sunroof of vehicle in which a female was waiting for her friends. The accused was intoxicated and resisted arrest when law enforcement arrived on the scene.

Case 10

Two juvenile males and one male adult offender engaged in various acts of vandalism and graffiti at several locations around town. Graffiti included swastikas and the phrases “Dark City Gangstas,” “red,” and “casper.” The adult offender attempted to break into the high school maintenance area to get paint. One offender stated that their behavior was “just stupid” and another stated that he “never intended to show hate towards any race or religion.”

Case 11

Three juvenile males and one adult male offender were driving around throwing rocks and yelling out racial epithets at passersby. The racially offensive remarks included “nigger,” “spic,” “spic, I’m going to fuck your mother,” and “go back to your own country.” According to the investigative reports, the offenders denied racial prejudice. The offenders stated that they were playing “screamers” which is a game described as “driving around to random people and screaming gibberish at them or whatever is in our heads to scream or whatever is on the radio to get a reaction.” When asked why this particular location was chosen for “screamers,” the juvenile stated because the boro “has everybody, Chinese, Black, Spanish, Native American, everybody.” When asked what type of victims are targeted, the juvenile replied that nearly everyone is fair game and stated “a black guy and could’ve been white or could’ve been a Spanish girl.” Another juvenile stated that they specifically went out to target blacks and Mexicans. However, when asked if he was a racist, the juvenile replied “hell no.” Additionally, some victims are off limits for “screamers” including little children and the elderly. When questioned, the juveniles stated that the adult offender was merely driving and did not participate in screaming.

Case 12

Two juvenile males drew swastikas and wrote bias graffiti in the boys restroom at a middle school. Graffiti included phrases such as “heil Hitler,” “Jew kike,” “Hitler’s back,” and “Jews suck.” When asked by investigators the significance of the swastika, one juvenile stated “I learned in language we talked about five minutes that it means the place that it’s on is going to get bombed or something.” The juvenile denied being prejudiced against Jewish people or any other people. The other juvenile was asked the meaning of a swastika and he stated that he did not know. He stated that his actions were “foolish” and subsequently wrote a letter of apology to the police department.

Case 13

Two adult offenders approached a couple attempting to rent a hotel room, possibly to buy drugs. The victims said “get lost” and one offender stated “you can’t stay

here nigger bitch” and other phrases such as “nigger” and “spic bitch.” The accused slapped the female victim across the face and when the boyfriend approached to assist her, the two offenders assaulted the victims” by punching him in the face and stated racial slurs including “ghetto nigger bitch” and “nigger spic bitch.”

Case 14

An altercation erupted at victim’s yard sale when accused arrived intoxicated, loud, and boisterous. The accused stated “I’ll kick your mother fucking cracker ass” and proceeded to kick and punch the victim. The accused then stated “I kicked your ass white boy.”

The victim reported that the responding officer refused to arrest the accused because the “fight was between two men” and the “judge would throw the case out of court anyway.” The officer then gave the accused a ride away from the area. The victim called another officer to the scene. An internal investigation was launched regarding the behavior of the initial responding officer.

Case 15

The victim crossed the picket line at his workplace and was called “nigger,” “stupid nigger,” by the offender. The offender also stated “oh you come to pick up that nigger” to the victim’s girlfriend.

Case 16

Several males approached the victim on the boardwalk and taunted him. In response, the victim reached into his pocket “to scare” away the suspects. The victim stated he had nothing in his pocket and his intention was to frighten the offenders by acting as if he possessed a weapon. Later, two males returned and physically assaulted the victim. The offenders pointed a fake gun at the victim and stated “homo faggot homo,” “you fucking homo,” and “you fucking faggot” while punching the victim in the face.

The offender who attacked the victim and displayed the fake gun stated that he thought “maybe [the victim] was going to rob us, I don’t know” and that he did not call the victim a “faggot” or “homo.” When asked if his co-defendant called the victim a “faggot” or “homo,” the defendant stated “no, not while I was in the vicinity, but maybe when we were walking away.”

Case 17

The offender came to the victim’s house verbally taunting victim and stated “if those kids weren’t on the front porch I would shoot you.” The victim then exposed a handgun and proceeded to walk away. The accused was seen two hours later waving a gun and said to the victim “yawl gonna get it, I’m a get yaw Haitians.”

The police originally responded to a call that a black man was in possession of a handgun. When police received information that the suspect was in his Aunt’s house, officers entered and found marijuana in a box.

Case 18

DOC inmate was transported for dialysis treatment. The inmate was abusive and threatening toward the nurse and stated “fuck the white devil,” “white bitch,” and threatened to beat her up. According to investigative reports, the victim stated that the inmate was a “5 percenter.” The report also indicated that the offender has a past history of irritability and agitation toward whites.

Case 19

Graffiti was discovered at a local church and included phrases such as “kill Christ,” “Brando,” “DILSD,” “Brando,” as well as pentagrams. “DILSD” and “Brando” were discovered to be the offender’s tags.

Case 20

A confrontation erupted between neighbors at a residence during an ongoing party. Various partygoers were described as intoxicated and began to light fireworks. The victim was described as “minding his own business” when the offender approached and stated “loud mouth fucking Jew” and threatened to “kick [the victim’s ass]” while referring to him as a “fucking Jew.” Other comments made in the course of the confrontation included “I want you fat boy” and “get back in the house you fucking bitch.” As a result of neighbor complaints, police arrived on-the-scene and partygoers became agitated.

Case 21

When the accused bumped the victim’s shoulder he made anti-Jewish remarks which resulted in a fight. The accused stated “I’ll kill you, you fucking Jew,” “I will kill you and shoot you,” and “I will kick your ass and send my son over to kick your ass. I will kill you and shoot you.” The offender and victim were involved in an ongoing neighbor dispute.

Case 22

This case involves neighbors in a conflict over loud music. The accused yelled “nigger bitches,” “fucking nigger,” “nigger this and nigger that,” and “gave the victim the finger.”

Case 23

Two actors were accused of smashing the rear window of several cars. A witness stated that the accused was at a convenience market when an unidentified person threw a cup of coffee on the accused. The accused picked up a friend and went looking for the subjects responsible. When they could not find the subjects, they smashed the rear windows of all vehicles with New York tags. The witness stated that the accused were “hot headed” and “don’t like Syrians.”

Case 24

Two male youths engaged in vandalism and graffiti at a local church with damage reaching approximately \$1800. A statue of Mother Mary was knocked over and the head was removed. Graffiti was sprayed on bridge and included swastikas, pentagrams,

“God Sucks Ass,” and references to American Neo-Nazis (A.N.N.) a youth hate group formed by one of the co-defendants with approximately eight members. A witness interviewed by investigators explained the rules of A.N.N. He stated that membership in the group requires that everyone have a carved someplace on their body. Additionally, the member has to go with the group founder “when he spray paints around to show off his group. You have to hate God. You can’t be friends with Jewish people or any other race besides white. Another rule is if you see an American flag you have to burn it or turn it upside down. If it’s a girl that is accepted into the group, then the girl has to do sexual favors for him.”

Case 25

Three female youth wrote graffiti on a Catholic church and surrounding vehicles, buildings, fences, and roadways. The graffiti included swastikas, pentagrams, and phrases such as “God sucks ass,” “Death from above and below,” “I’m Satan’s child,” “Satan is my lover,” “fuck the world,” “fuck life,” “Satan,” “niggers shall die,” “nazi,” “fuck niggers they all have a new fear,” “big penises rock,” “S--- sucks pussy,” “K--- is a les,” “white power niggers beware,” “this car makes dingy noises,” and “A.N.N.” The girls also broke into a van and stole various paint cans and spray paint.

When asked if she is racist, the youth responded “a little...I feel like black people, not all of them, but most of them, they like do drugs and stuff and I feel that they are the ones that support it.” When asked if she was prejudiced, the youth replied “yes, sort of. I don’t like bad people or Jews. Black people are always getting into a lot of trouble and causing white people so many problems because I guess they like to start problems, just only the bad black people.”

A co-defendant was asked what a swastika meant to her and she stated “that you don’t like Jews or anyone not white.” When asked why she chose the symbol of a swastika she stated “I don’t even know why” and when pressed if she has ever used prejudiced words or terms towards people “not of her kind” she responded “yes, because people are just ignorant and annoying and I just can’t stand them sometimes.”

Case 26

The answering machine at an Islamic center received a phone message stating: “I just like to say, you people are stupid fucking animals. We’re gonna fill your women’s cunts with fucking acid. You rat bastard, child-killing piece of shit. I hope you all drown in your mama’s cunts. Take that and stick it in your Arab asses.”

The offender later stated “I very stupidly made a call and spewed some venom that I’m embarrassed by...It was just a knee jerk reaction...I don’t see it as harassment. I saw it as an ugly form of free speech.”

Case 27

The victim and her two year old grandson pulled into the parking lot of a convenience store. As the victim parked, two offenders in a nearby vehicle stated “why didn’t you park straight” and added “bitch, why can’t you park straight, I can’t get out, nigger.” One offender entered the convenience store to purchase a cup of coffee and returned to the vehicle. The victim stated to the offender, “you need to tell your girlfriend to have more manners.” The driver responded “maybe you’re a nigger,

standing here arguing with her.” The offender then approached the victim and threw coffee at the victim. The victim ducked and the coffee splashed on the grandson in the backseat of the vehicle.

Case 28

The case involved an ongoing dispute between two members on a planning board. Both parties have filed various complaints against each other and the present case involved harassing answering machine messages left by the offender that indicated the offender would drop the lawsuit if the victim removed herself from the planning board. The message stated “we don’t need Syrians on the planning board,” “it will be sending a message to your people, and that [this town] is going to be tough on them.”

The offender engaged in various harassment tactics and filed a complaint against her husband for garage construction, called INS on her housekeepers, threw something at her car, and stated phrases such as “fucking Jew, tell your people they can’t get away,” “tell your people not to move into town,” “Jew bitch,” and “Syrian bastards.”

Case 29

A high school student of Jordanian/Kuwaiti descent made several comments directed toward female fellow students that were “anti-female” and frequently stated that he did not have to listen to female authority. The student made a paper gun and pointed it at the teacher and stated “women can’t tell me what to do.” The student threatened he would have his cousins “get her.”

Case 30

The victims were traveling on a highway and as the offender’s vehicle approached, the offender threw a water bottle at the victim’s vehicle. At the next light, the offender exited his vehicle and swung the drive shaft from his vehicle, striking the victim’s car on the hood. The accused stated that he was working for the FBI and thought that the victims were Arabic and were harassing him. He stated he was an assassin assigned to kill Osama Bin Laden and he had recently hired gods to “take him out.” The case outcome information was not available for this case.

REFERENCES

- Albonetti, C. (1986). Criminality, prosecutorial screening, and uncertainty: Toward a theory of discretionary decision making in felony case processing. *Criminology*, 24(4), 623-643.
- American Prosecutors Research Institute. (APRI). (2000). A local prosecutor's guide for responding to hate crimes. Alexandria, VA:APRI.
- Anti-Defamation League (ADL). (2005). Hate crime provisions across different states. Retrieved October 21, 2005 from http://adl.org/combating_hate/.
- Barak, G., Flavin, J., & Leighton, P. (2001). *Class, race, gender, and crime*. Los Angeles, CA: Roxbury.
- Beale, S. (2000). Federalizing hate crimes: Symbolic politics, expressive law, or tool for criminal enforcement? *Boston University Law Review*, 80, 1227-1281.
- Bean, L. (1993). Prosecuting bias cases: A delicate balancing act. *New Jersey Law Journal*, 4.
- Bell, J. (2002). *Policing hatred: Law enforcement, civil rights, and hate crime*. New York: New York University Press.
- Berk, R., Boyd, E., & Hamner, K. (1992). Thinking more clearly about hate-motivated crimes. In *Hate Crimes: Confronting violence against lesbians and gay men*. G. Herek & K. Berrill (Eds.). p. 123-143. Newbury Park: Sage.
- Berrill, K. & Herek, G. (1992). Primary and secondary victimization in anti-gay hate crimes: Official response and public policy. In G. Herek & K. Berrill (Eds.). *Hate Crimes: Confronting violence against lesbians and gay men*. Newbury Park: Sage.
- Bias Incident Investigation Standards. (2000). *Bias Incident Investigation Standards, Policy and Procedures for New Jersey Law Enforcement (BIIS)*. Retrieved October 3, 2005 from <http://www.state.nj.us/lps/dcj/agguide/bias01b.pdf>.
- Boyd, E., Berk, R., & Hamner, K. (1996). "Motivated by hatred or prejudice": Categorization of hate-motivated crime in two police divisions. *Law & Society Review*, 30(4), 819-850.
- Bureau of Justice Statistics. (2002). Adult correctional populations. Retrieved April 23, 2004 from <http://www.ojp.usdoj.gov/bjs/glance/corr2.htm>.
- Bureau of Justice Statistics. (2003). *Felony Sentences in State Courts, 2000*.

Washington, D.C.: NCJ 198821.

Bureau of Justice Statistics. (1997). *A Policymaker's Guide to Hate Crimes*. Washington, DC: NCJ 162304.

Catalano, S. (2004). *Criminal Victimization, 2004*. Washington, DC: Bureau of Justice Statistics. (NCJ-205455).

Celona, L. & Olshan, J. (2005, July 12). Bias victim shock: Pal chased by Howard Beach thugs nailed in gun rob. *New York Post*. p. 5.

Chorba, C. (2001). The Danger of Federalizing Hate Crimes: Congressional Misconceptions and the Unintended Consequences of the Hate Crimes Prevention Act. *Virginia Law Review*, 87, 319-379.

CNN. (CNNa). (1999, February 22). *Closing arguments today in Texas dragging-death trial*. Retrieved February 26, 2004 from <http://www.cnn.com/US/9902/22/dragging.death.03/>.

CNN. (CNNb). (1999, November 4). Killer of gay student avoids death penalty. Retrieved February 26, 2004 from <http://www.cnn.com/US/9911/04/gay.attack.verdict.02/>.

Cox, S. (1976). Prosecutorial discretion: An overview. *The American Criminal Law Review: A Symposium, Prosecutorial Discretion*, 13, 383-434.

Craig, K. (2002). Examining hate-motivated aggression: A review of the social psychological literature on hate crime as a distinct form of aggression. *Aggression and violent behavior*, 7, 86-101.

Craig, K. (1999). Retaliation, fear, or rage: An investigation of African American and white reactions to racist hate crimes. *Journal of Interpersonal Violence*, 14, 138-151.

Devine, R. (1998). *Hate crime: A prosecutor's guide*. Chicago, IL: Cook County State's Attorney's Office.

Donziger, S. (Ed.). (1996). *Real war on crime: The report of the national criminal justice commission*. New York: HarperCollins.

Dunbar, E. (1999). Defending the indefensible: A critique and analysis of psycholegal defense arguments of hate crime perpetrators. *Journal of Contemporary Criminal Justice*, 15(1), 64-77.

Faulkner, E. (2004). Researching Anti-Gay/Lesbian Violence In Canada: Methodological and Definitional Issues. *International Journal of Comparative Criminology (IJCC)*. Affiliate Journal of the International Section, ACJS,

3(2):149-174.

- Federal Bureau of Investigation Uniform Crime Reports (UCR). (2005). *Crime in the United States, 2004*. Retrieved October 27, 2005 from http://www.fbi.gov/ucr/cius_04/.
- Federal Bureau of Investigation Uniform Crime Reports (UCR). (2004). *Hate Crime Statistics, 2003*. Retrieved October 27, 2005 from <http://www.fbi.gov/ucr/03hc.pdf>.
- Federal Bureau of Investigation Uniform Crime Reports (UCR). (2003). *Hate Crime Statistics,, 2002*. Retrieved May 6, 2004 from <http://www.fbi.gov/ucr/hatecrime2002.pdf>.
- Federal Bureau of Investigation Uniform Crime Reports (UCR). (2002). *Hate Crime Statistics, 2001*. Retrieved October 9, 2005 <http://www.fbi.gov/ucr/01hate.pdf>.
- Federal Bureau of Investigation. (1999). *Hate crime data collection guidelines*. Bureau of Justice. Retrieved August 10, 2004 from <http://www.fbi.gov/ucr/hatecrime.pdf>.
- Federal Bureau of Investigation. (1996). *Training guide for hate crime data collection*. Bureau of Justice. Retrieved July 4, 2004 from <http://www.fbi.gov/ucr/traingd99.pdf>.
- Forst, B. (2002). Prosecution. In *Crime: Public Policies for Crime Control*. Oakland, CA: Institute for Contemporary Studies Press.
- Franklin, K. (2002). Good intentions: The enforcement of hate crime penalty-enhancement statutes. *American Behavioral Scientist*, 46(1), 154-172.
- Free, M. (2001). Racial bias and the American criminal justice system: Race and presentencing revisited. *Critical Criminology*, 10(3), 195-223.
- Friedman, L. (1993). *Crime and punishment in American history*. New York: Basic Books.
- Frohmann, L. (1997). Convictability and discordant locales: Reproducing race, class and gender ideologies in prosecutorial decisionmaking. *Law & Society Review*, 31(3), 531-556.
- Frohmann, L. (1991). Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections. *Social Problems*, 38(2), 213-225.
- Garcia, L., McDevitt, J., Gu, J., & Balboni, J. (2003). *Psychological and behavioral*

effects of bias and non-bias motivated assault in Boston, Massachusetts, 1992-1997. [Computer file]. ICPSR version. Boston, MA: Boston Police Department/Boston, MA: Suffolk University/Boston, MA: Northeastern University [producers], Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor].

- Garofalo, J. (1997). Hate crime victimization in the united states. In R. Davis, A. Lurigio, & W. Skogan (Eds.), *Victims of Crime (2nd Ed.)*. (p. 134-145). Thousand Oaks: Sage Publications.
- Garofalo, J. & Martin, S. (1993a). The law enforcement response to bias-motivated crimes. In R. Kelly's (Ed.) *Bias crime: American law enforcement and legal responses*. Chicago, IL: Office of International Criminal Justice.
- Garofalo, J. & Martin, S. (1993b). *Bias-motivated crimes: Their characteristics and the law enforcement response*. Washington, D.C.: U.S. Department of Justice.
- Gellman, S. (1992-1993). Hate crime laws are thought crime laws. *Annual Survey of American Law*, 509-531.
- Gellman, S. (1991). Sticks and stones can put you in jail but can words increase your sentence? Constitutional and policy dilemmas of ethnic intimidation laws, *U.C.L.A. Law Review*, 39, 332-396.
- Gerstenfeld, P. (2004). *Hate crimes: Causes, controls, and controversies*. Thousand Oaks: Sage.
- Gerstenfeld, P. (1992). Smile when you call me that!: The problems with punishing hate motivated behavior. *Behavioral Sciences and the Law*, 10, 259-285.
- Grattet, R. & Jenness, V. (2001). The birth and maturation of hate crime policy in the united states. *American Behavioral Scientist*, 45(4), 668-696.
- Green, D., McFalls, L. & Smith, J. (2001). Hate crime: An emergent research agenda. *Annual Review of Sociology*, 27, 479-504.
- Hagan, J. & Peterson, R. (Eds.) (1995). *Crime and inequality*. Stanford, CA: Stanford University Press.
- Hentoff, N. (2000, August 9). Hate crime laws: A costly victory, prosecutors, not judges, are in charge. *Village Voice*. Retrieved August 7, 2003 from <http://villagevoice.com/issues/0032/hentoff.php>.
- Herek, G. & Berrill, K. (Eds.). (1992). *Hate Crimes: Confronting violence against lesbians and gay men*. Newbury Park: Sage.

- Herek, G., Cogan, J. & Gillis, J. (2002). Victim experiences in hate crimes based on sexual orientation. *Journal of Social Issues*, 58(2), 319-399.
- Hernandez, T. (1990). Bias crime: Unconscious racism in the prosecution of "racially motivated violence." *Yale Law Journal*, 845-863.
- Hinch, R. & Hepburn, C. (1998). Researching serial murder: Methodological and definitional problems. *Electronic Journal of Sociology*, 3(2). Retrieved October 14, 2005 from <http://www.sociology.org/content/vol003.002/hinch.html>.
- Hirschel, D. & Hutchison, I. (2001). The relative effects of offense, offender, and victim variables on the decision to prosecute domestic violence cases. *Violence Against Women*, 7(1), 46-59.
- Hurd, H. & Moore, M. (2004). Punishment and its purposes: Symposium article: Punishing hatred and prejudice. *Stanford Law Review*, 56, 1081-1146.
- Iuarte, S. (2000). *Inside the mind of hate: Ethnographic case studies of bias crime offenders*. Unpublished dissertation, Newark, NJ. Ann Arbor, MI: UMI Dissertation Services.
- Kingsnorth, R., MacIntosh, R., Berdahl, T., Blades, C., & Rossi, S. (2001). Domestic violence: The role of interracial/ethnic dyads in criminal court processing. *Journal of Contemporary Criminal Justice*, 17(2), 123-141.
- Kingsnorth, R., MacIntosh, R., & Wentworth, J. (1999). Sexual assault: The role of prior relationship and victim characteristics in case processing. *Justice Quarterly*, 16(2), 275-302.
- Kingsnorth, R., Lopez, J., Wentwork, J. & Cummings, D. (1998). Adult sexual assault: The role of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice*, 26(5), 359-371.
- Jacobs, J. (1992-1993). Implementing hate crime legislation symbolism and crime control. *1992/1993 Annual Survey of American Law*, p. 541-553.
- Jacobs, J. & Potter, K. (1998). *Hate crimes: Criminal law & identity politics*. Oxford: Oxford University Press.
- Jacoby, J. (1977). *The prosecutor's charging decision: A policy perspective*. Washington, DC: National Institute of Law Enforcement and Criminal Justice.
- Jenness, V. & Broad, K. (1997). *Hate crimes: New social movements and the politics of violence*. New York: Aldine de Gruyter.
- Jenness, V. & Grattet, R. (2005a, under review). Beyond symbolic v. instrumental law:

Hate crime policy and law enforcement practice.

- Jenness, V. & Grattet, R. (2005b). The law-in-between: The effects of organizational perviousness on the policing of hate crime. *Social Problems*, 52(3), 338-359.
- Jenness, V. & Grattet, R. (2001). *Making hate a crime: From social movement to law enforcement*. New York: Sage.
- Jones, S. (2000). Study finds widespread racial bias in US criminal justice system. *World Socialist Web Site*. Retrieved from http://www.wsws.org/articles/2000/may2000/bias-m16_prn.shtml.
- Kleinknecht, W. (2003, November 25). Newark stabbing spurs rare bias homicide charges. *The Star-Ledger*. Retrieved December 1, 2003 from www.nj.com.
- Kohn, S. (2002). Greasing the wheel: How the criminal justice system hurts gay, lesbian, bisexual and transgendered people and why hate crime laws won't save them. *27 N.Y.U. L. & Soc. Change* 257.
- Krisberg, B. (2005). *Juvenile justice: Redeeming our children*. Thousand Oaks, CA: Sage.
- Lawrence, F. (2003). Enforcing bias-crime laws without bias: Evaluating the disproportionate enforcement critique. *Law & Contemporary Problems*, 66, 49-69.
- Lawrence, F. (1999). *Punishing hate: Bias crimes under American law*. Harvard University Press: Cambridge
- Levin, J. & McDevitt, J. (1993). *Hate crimes: The rising tide of bigotry and bloodshed*. Boulder, CO: Westview.
- Levin, J. & McDevitt, J. (2002). *Hate crimes revisited: America's war on those who are different*. Boulder, CO: Westview.
- Lipka, M. (2005, June 19). Hate groups in N.J. are rising sharply. *Philadelphia Inquirer*. Retrieved June 27, 2005 from <http://www.philly.com/mld/philly/news/11929285.htm>.
- Maldonado, M. (1992-1993). Practical problems with enforcing hate crime legislation in New York. *Annual Survey of American Law*, (1992-1993), 555-561.
- Maroney, T. (1998). The struggle against hate crime: Movement at a crossroads. *New York Law Review*, 73, 564-620.
- Martin, S. (1996). Investigating hate crimes: Case characteristics and law enforcement

- responses. *Justice Quarterly*, 13(3), 455-480.
- Mauer, M. & The Sentencing Project. (1999). *Race to incarcerate*. New York: New Press.
- McDevitt, J., Balboni, J., Bennett, S., Weiss, J., Orchowsky, S., & Walbolt, L. (2000). Improving the quality and accuracy of bias crime statistics nationally: An assessment of the first ten years of bias crime data collection. Boston, MA: Center for Criminal Justice Policy Research, Northeastern University.
- McDevitt, J., Cronin, S., Balboni, J., Farrell, A., Nolan, J. & Weiss, J. (2003). *Bridging the information disconnect in national bias crime reporting: Final report*. Washington, D.C.: Bureau of Justice Statistics.
- McDevitt, J., Levin, J., & Bennett, S. (2002). Hate crime offenders: An expanded typology. *Journal of Social Science*, 58(2), 303-317.
- McDonald, W. (1979). The prosecutor's domain. In McDonald's (Ed.). *The prosecutor*, p. 9-14. Beverly Hills, CA: Sage.
- Melilli, K. (1992). Prosecutorial discretion in an adversary system. *Brigham Young University Law Review*, 3, 669-705.
- Messner, S., Mchugh, S., & Felson, R. (2004). Distinctive characteristics of assaults motivated by bias. *Criminology*, 42(3), 585-618.
- Miller, F. (1970). *Prosecution: The decision to charge a suspect with a crime*. Toronto: Little, Brown, and Company.
- Miller, F., Dawson, R., Dix, G. & Parnas, R. (1986). *Cases and materials on criminal justice administration*. (3rd Ed.). Mineola, NY: The Foundation Press.
- New Jersey Uniform Crime Report (NJ UCR). (2005). *Uniform Crime Report, Hate Crimes, 2004*. Trenton, NJ: Office of the Attorney General. Department of Law & Public Safety.
- Perry, B. (2003). Where do we go from here? Researching hate crime. *Internet Journal of Criminology*. Retrieved July 12, 2004 from <http://www.internetjournalofcriminology.com/Articlefrontpage.html>.
- Perry, B. (2001). *In the name of hate: Understanding hate crimes*. New York: Routledge.
- Rainville, G. (2001). An analysis of factors related to prosecutor sentencing preferences. *Criminal Justice Policy Review*, 12(4), 295-310.

- Rubenstein, W. (2004). The real story of U.S. hate crimes statistics: An empirical analysis. *Tulane Law Review*, 78, 1213-1246.
- Russell, K. (1998). *The color of crime: Racial hoaxes, white fear, black protectionism, police harassment, and other macroaggressions*. New York: New York University Press.
- Schmidtt, C. (1991, December 8). Plea bargaining favors whites as blacks, Hispanics pay price. *San Jose Mercury News*, 1A.
- Sloan, D. (Executive Producer). (2004, November 26). *20/20*. [Television broadcast]. New York, NY: ABC News.
- Smith, C. (2002, October 21). Central park revisited. *New York Magazine*. Available: http://www.newyorkmetro.com/nymetro/news/crimelaw/features/n_7836/
- Southern Poverty Law Center (SPLC). (2001, Winter). Discounting hate. *Intelligence Report*. Retrieved September 25, 2005 from <http://www.splcenter.org/intel/intpro.jsp>.
- Southern Poverty Law Center. (nd). Discounting hate: Ten years after federal officials began compiling national hate crime statistics, the numbers don't add up. *Intelligence Report*. Retrieved April 23, 2004 from <http://www.splcenter.org/intel/intelreport/article.jsp?aid=157>.
- Spade, J. & Willse, C. (2000). Confronting the limits of gay & hate crimes activism: A radical critique. 21 *Chicano-Latino L. Rev.* 38.
- Spears, J. & Spohn, C. (1997). The effect of evidence factors and victim characteristics on prosecutors' charging decisions in sexual assault cases. *Justice Quarterly*, 14(3), 500-524.
- Spears, J. & Spohn, C. (1996). The genuine victim and prosecutors' charging decisions in sexual assault cases. *American Journal of Criminal Justice*, 20(2), 182-205.
- Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). Prosecutorial justifications for sexual assault case rejection: Guarding the "gateway to justice." *Social Problems*, 48(2), 206-235.
- Spohn, C. & Spears, J. (1997). Gender and case processing decisions: A comparison of case outcomes for male and female defendants charged with violent felonies. *Women & Criminal Justice*, 8(3), 29-59.
- Spohn, C. & Spears, J. (1996). The effect of offender and victim characteristics on sexual assault case processing decisions. *Justice Quarterly*, 13, 649-679.

- Stanko, E. (1981-1982). The impact of victim assessment on prosecutors' screening decisions: The case of the New York county district attorney's office. *Law & Society Review*, 16(2), 225-239.
- Strom, K. (2001). *Hate Crimes Reported in NIBRS, 1997-1999*. U.S. Department of Justice: Bureau of Justice Statistics.
- Tonry, M. (1995). *Malign neglect: Race, crime, and punishment in America*. New York: Oxford.
- Vera Institute of Justice. (2005). *Justice Indicators*. Retrieved October 3, 2005 from <http://www.undp.org/oslocentre/docs05/cross/Justice%20Indicators%20Background%20Paper.pdf>.
- Vitale, (2002). Reflections on legislation: The evolution of New Jersey's bias crime law. *Seton Hall Legislative Journal*, 26, 363-371.
- Walker, S., Spohn, C., & DeLone, M. (2004). *The color of justice*. (3rd Ed). Belmont, CA: Wadsworth.
- Weich, R. & Angulo, C. (2000). Racial disparities in the American criminal justice system. In the Leadership Conference on Civil Rights and Education Fund' *Justice on Trial: Racial Disparities in the American Criminal Justice System*. Washington, D.C.