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A PRACTICAL APPROACH TO BIAS CRIMES

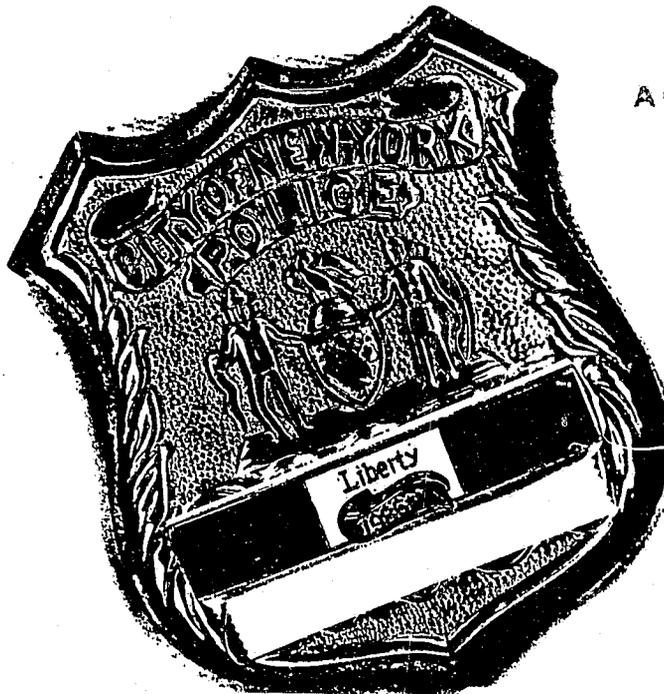
HOW POLICE AND GOVERNMENT CAN COORDINATE TO FIGHT VIOLENT BIGOTRY

Brian Levin

NCJRS

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Training guides, research and procedure.

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Preface to 1993 Edition

1993 is an important year for those of us in the battle against bias crimes. First, the most significant legal challenge to date is taking place as the United States Supreme Court prepares to rule on the constitutionality of the most broadly applicable type of hate crime law-those which enhance sentences when it is established that the victim was intentionally selected by the offender because of race, religion and other characteristics. Perhaps the biggest battle, though, will be one of awareness and response. While more and more agencies are implementing policy and procedures relating to bias crimes a new problem is emerging. A lack of coordination within and between government agencies and civic groups continues to hamper the overall response. All facilitators from police to prosecutors to victim support staff must be educated regarding the overall problem and the distinct role each must play as part of an organized response system. If we do not respond appropriately victims will continue to suffer in silence and community tensions will heat up until they explode.

Attaining a level of operational efficiency is especially important because the conditions which give rise to bias violence will continue to present a substantial risk of social disruption over the coming years. Those conditions include:

Economic shifts and displacement;

Changing demographic and immigration patterns;

The increasing acceptance of violence as a means for resolving disputes and the continued access to dangerous weapons;

Loss of credibility in institutions such as government, police and schools;

The persistence of negative stereotypes across all strata of society which legitimize certain groups for victimization by an increasingly large number of frustrated citizens;

A high probability of international conflict along ethnic and religious lines.

Training, increased enforcement, education, new legislation, research, and the development of strategic alliances by and between communities and police are emerging as necessary responses to the dynamic, often disruptive changes taking place in the area of intergroup relations.

Brian Levin

Los Angeles, Ca.

March 1993

RESEARCH & LEGAL DEVELOPMENTS

June 1992 (Washington, D.C.) - In a landmark case, *R.A.V. v. St. Paul*, the U.S. Supreme Court invalidates a municipal hate crime law that criminalized the use of symbols and burning crosses when they implicated such subjects as race, color, religion and gender.

December 1992 (Washington, D.C.) The United States Supreme Court announces that they will review a decision of the Wisconsin Supreme Court which overturned that states bias crime penalty enhancement law. The Ohio Supreme Court overturned Ohio's main hate crime statute while Oregon's highest court upheld theirs. The U.S. Supreme Court should issue a ruling by June. Nearly every state has a law which could be impacted by this case.

January 1993 (Washington, D.C.) The F.B.I. releases its first report pursuant to the Hate Crimes Statistics Act. Compliance from reporting agencies was limited in that out of 16,000 agencies only 2,771 participated. Of those participating agencies only 27% were able to identify hate crimes in their jurisdiction. 4,558 incidents involving 4,755 offenses were tallied for the reporting year 1991. Racial incidents account for 62% of the total.

January 1993 (Los Angeles) In the first statistical report for 1992 on hate crimes, a national law enforcement survey of ten representative jurisdictions reveals a 24% increase over the previous year. Eight out of the ten jurisdictions surveyed reported increases including New York City, Los Angeles, Boston, New Jersey, Florida and Maryland.

February 1993 (New York) The Anti-Defamation League's 1992 Audit of Anti-Semitic incidents shows an 8% decline over last year's record level. For the second year in a row incidents against persons outnumbered property incidents and there was a disturbing increase in the number of incidents at learning institutions.

February 1993 (Montgomery, Alabama) Klanwatch's Annual Report reveals an increase in bias homicides - 31 nationwide. While the

overall number of hate groups declined the number of Klan groups increased.

March 1993 (Washington, D.C.) The National Gay and Lesbian Task Force annual survey of antigay violence in five cities shows 1898 incidents - a 4% increase over 1991.

March 1993 (Washington, D.C.) Federal legislation which increases sentences for hate crimes is reintroduced in Congress. Sex and sexual orientation are included as protected classes, reflecting a growing trend throughout the country.

March 1993 (California) The California Court of Appeals upholds one of the state's hate crime statutes.

About the author....

Brian Levin is an attorney and authority on bias crimes who has been active in the field since 1986. Mr. Levin is a graduate of Stanford Law School and the University of Pennsylvania. He is also a former New York City Police Officer. He was recently nominated for a national award given by the National Institute Against Prejudice and Violence and is a 1993-1994 White House Fellowship Regional Finalist. He is also on the advisory board of Center for the Study of Racism and Ethnic Violence. Mr. Levin has served as a judicial intern to the Administrative Assistant to the Chief Justice of the United States Supreme Court and as a legal intern, specializing in civil rights, to a Chief Judge on the United States Court of Appeals. Mr. Levin has been recognized for his numerous contributions in the area of bias crimes and his extensive work on behalf of civic organizations as well as state, federal and local governments. He has authored manuals for prosecutors and police as well research, and articles. His work has been used by Congress and he has been cited as authority in numerous briefs submitted to the United States Supreme Court in a landmark bias crimes case. The California Court of Appeals cited his work in an important state decision upholding the constitutionality of bias crime legislation. He is a frequent lecturer at colleges and professional conferences on intergroup relations. He has appeared on television, radio and in print. Most recently, he compiled a nationwide survey of bias crimes for 1992 and was the principal author of two U.S. Supreme Court briefs on hate crimes.

Other pieces by Brian Levin:

Bias Crimes: A Theoretical & Practical Overview, 4 Stanford Law & Policy Rev. 165 (Winter 1992-93)

Training Module for Patrol Officers, Hate Crimes Investigator's Association, Ann Noel, Ed. (1992)

Also articles forthcoming in the National Association of Human Rights Newsletter, Klanwatch Intelligence Report, the Center for the Study of Racism and Ethnic Violence Bulletin and other publications.

President Bush observed an ironic dichotomy that proved prophetic for one sailor from the aircraft carrier U.S.S. Saratoga:

"Today some Americans are the victims of appalling acts of hatred. And this is a sad irony that while our brave soldiers are fighting aggression overseas, a few hate mongers here at home are perpetrating their own brand of cowardly aggression. . . These hate crimes have no place in a free society and we are not going to stand for them."¹

Petty Officer 3rd Class Harold Mansfield, Jr., twenty-two, served on the flight deck of the Saratoga while the ship was stationed in the Persian Gulf during Operation Desert Storm. After returning home, Mansfield, a black seaman, was shot to death in a parking lot near the Mayport Navy Base in northern Florida on May 17, 1991 by a militant white supremacist. Mansfield left behind not only his fiancée and recently widowed mother, but also the fourth-grade class at Oklahoma City's Shidler Elementary School which had adopted him during the war. Only three weeks before his murder, the children, mostly black and Hispanic, had given him a hero's homecoming with flags, cake, speeches and hundreds of red, white and blue balloons.²

Tragedies like Mansfield's murder call attention to the state of intergroup conflict in this country. Other incidents including numerous arsons against Amish farmers,³ the beating and painting of two minority youths in New York,⁴ and the gunfire directed at Black

¹1991 Report on Anti-Arab Hate Crimes at 8.

²Roberts, Teaching Tolerance, Spring 1992 at 14.

³New York Times, , Mar. 21, 1992 at A6, col. 1, Hereinafter "NYT".

⁴NYT, Jan. 28, 1992, at B1, col. 2.

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restaurant patrons by white supremacists in Sacramento⁵ this year, serve as continual reminders of the pervasive problem of bias violence. What these incidents have in common and differentiates them from other crimes is that they were all motivated by prejudice and bigotry. The search for solutions is difficult, even at the most fundamental level. Notwithstanding certain notable advances, the fact remains that prejudice is an enduring feature in American society which limits opportunity and socially divides.⁶ Perhaps the most compelling aspect of this legacy of hatred is that it continues to fuel acts of brutality and terrorism which appear as anachronistic as they do violent.

For the purposes of this article a "bias crime" is: "a criminal offense against a person or property which is motivated, in whole or in part

⁵Sac. Bee, Jan. 7, 1992.

⁶While there has been a significant decline in the number of individuals possessing the most entrenched prejudices relative to past generations, recent polls are hardly comforting. 1 in 7 survey respondents to a recent poll in the rust belt and the "old south" answered a series of questions with the most racist position. 1 in 8 did so in the Mid Atlantic states. Another recent poll of white Americans attributed the following attributes to Blacks- 33% associated Blacks with Crime, Poverty, Violent Behavior and Danger; 25% with laziness; 20% with Vulgarity and 14% with Dirtiness. In another poll 5% objected to Jews moving into their neighborhood, approximately 11% objected to Blacks, while 1 in 6 objected to Hispanics and Vietnamese doing so. L. KRANZ, WHAT THE ODDS ARE 219, 281 (1992). In a study by the University of Chicago's National Opinion Research Center (NORC) the majority of the respondents thought that relative to "whites":

Blacks, Asians, and Hispanics are less patriotic;

Blacks and Hispanics are less intelligent and lazier. T. Smith, Ethnic Images, 1990. In a 1991 survey the NORC found that 75% of respondents thought homosexuality was always wrong. NORC General Social Survey 1991.

The Population Research Center of the University of Chicago found extensive segregation continues to exist in American housing patterns. Residential Segregation of Blacks, Hispanics, and Asians By Socioeconomic Status and Generation, by Douglas Massey and Nancy Denton, National Institute of Child Health and Human Development - Grant No. HD-18594.

by the offender's bias against a race, religion, ethnic/national origin group or sexual orientation group."⁷ Unlike other types of antisocial behaviors, bias violence is often inscrutable to those to whom it is not directed. Those who are best equipped to address the problem are often unaware of its nature and scope. The purpose of this article is first, to show the unique characteristics and harms which distinguish bias crimes from other offenses; second offer guidance for the implementation of a particularized anti-bias response. To that end there will be an examination of both the successes and the difficulties encountered by various progressive jurisdictions in their efforts to combat bias crimes. Particular attention is paid to the role law enforcement can play as part of an organized and cooperative system which addresses these crimes and its victims. Data collection, statutes, sentencing, outreach, policy, training, coordination, and the implementation of anti-bias efforts by police as part of overall reforms will be analyzed.

If the evidence shows anything, it is that bias crimes are more serious and prevalent than many had initially thought. First, these crimes are more assaultive. Overall, only about 11% of conventional crimes are personal assaults, the rest being directed against property.⁸ Bias crimes are much more assaultive, with personal assaults consistently averaging upwards of forty percent of total

⁷ The Federal Bureau of Investigation (FBI) currently uses this definition in the implementation of the Hate Crime Statistics Act (HCSA). Hate Crime Data Collection Guidelines, Federal Bureau of Investigation (FBI) Uniformed Crime Reporting at 4. Hereinafter "Guideline" Note however that it is probable that other categories such as gender may also be added. See e.g. H.R. 4797 (1992).

⁸Report to the Nation on Crime and Justice, 2nd Ed., U.S. Dept. of Justice 1988 at at 12, Hereinafter BJS.

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cases reported.⁹ With certain victim groups, like gays and Blacks, the assault ratio appears far higher. In numerous studies, gay men for example, consistently report being the victims of excessive levels of bias related assaultive behavior, most of which is unreported.¹⁰ Gay criminal victimizations are 400% greater than the national average.¹¹ Professor Gregory Herek, who researches homophobic violence, cautions that while some of the studies are imperfect and exact percentages are somewhat elusive, "It is clear that a serious problem exists."¹²

It could be simply argued that the disparity is caused by more severe underreporting of property based bias crimes than assaultive ones. The argument would be that in aggregate numbers bias and non-bias offenses have about the same person to property ratio when unreported bias property crimes are factored in; the rationale is that the reluctance to report is only overcome with the most serious assaultive offenses. But this hypothesis is not supported by available facts. An examination of Jewish victimization ratios are appropriate here because of their relative tendency to report and their prevalence as victims of bias property crimes. Jews did not experience the extensive historic mistreatment from American law

⁹NYPD BIU, Boston Police Dept., & Maryland State Police. New Jersey State Police reported that 67% of bias crimes in 1991 were directed against persons.

¹⁰An averaging of recent studies indicate 16 -21% reported property vandalism, 18 -24% reported simple assaults, and 9 -12% reported assaults with weapons. Berrill, *Anti-Gay Violence and Victimization in the United States*, 5 J. Interpersonal Viol. 274, 281. (1990), Hereinafter "Berrill".

¹¹Hentoff, *A Case of Loathing*, Playboy (May 1991) at 96

¹²Telephone interview with Prof. Gregory Herek of the University of California at Davis (Mar. 4, 1992)

enforcement which Blacks and Gays¹³ have, so they are less reluctant to report incidents to police. According to anti-gay bias expert Kevin Berrill there are at least six studies which show 70-90% underreporting rates for gay people and this probably due to apprehensiveness about their response¹⁴ and a fear of being "outed". Jewish assimilation makes language and cultural barriers less problematic than it is with other groups. In addition, Jews freely utilize the ADL, arguably the most well established and sophisticated private incident reporting system in the nation. Lastly, anti-semitic property crimes often involve institutions - synagogues, schools and cemeteries¹⁵ in addition to homes, making reporting more likely simply because of the increased likelihood of multiple complainants. For anti-semitic bias offenders, relative to other bias offenders, property is an especially appealing target. Jewish symbols and last names affixed to buildings and other property are often more easily identifiable than are particular individuals. Structures serve as easy targets for offenses ranging from vandalism to arsons and bombings. In many of the suburban areas where Jews live, vandalism has greater appeal for middle class juveniles. Potential middle class offenders may perceive a heightened risk of injury or apprehension in a violent physical encounter. These youths are also much less

¹³Garnets, Herek & Levy, *Violence & Victimization of Lesbian & Gay Men: Mental Health Consequences*, 5 J. Interpersonal Viol. 375. (1990), and Wertheimer, *Treatment and Service Interventions for Lesbian and Gay Male Crime Victims*, *Id.* at 394/1986 ABC-News Washington Post Poll found that 70% of Blacks Nationwide believe urban police treat Blacks unfairly. Wash. Post, Jan 19, 1986 at A1.

¹⁴ Telephone Interview with Kevin Berrill of National Gay and Lesbian Task Force (Dec. 1991)

¹⁵NYPD BIU recording forms for example keeps an extensive separate listing of Jewish institutions, but does not do so for other groups.

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familiar with, and perhaps less comfortable in committing violent crimes relative to their urban counterparts.¹⁶ Offenders also perceive Jews as particularly vulnerable to certain symbols and slogans, particularly those associated with the holocaust. Property crimes are thus a quick low risk vehicle for offenders to deliver a high impact victimization. For example, in suburban Palm Beach and St. Lucie, Florida synagogues and other structures were defaced last year with Swastikas and graffiti including "Satan is a Kike", "Die Jew Parasites" and "Adolph Hitler Lives".¹⁷

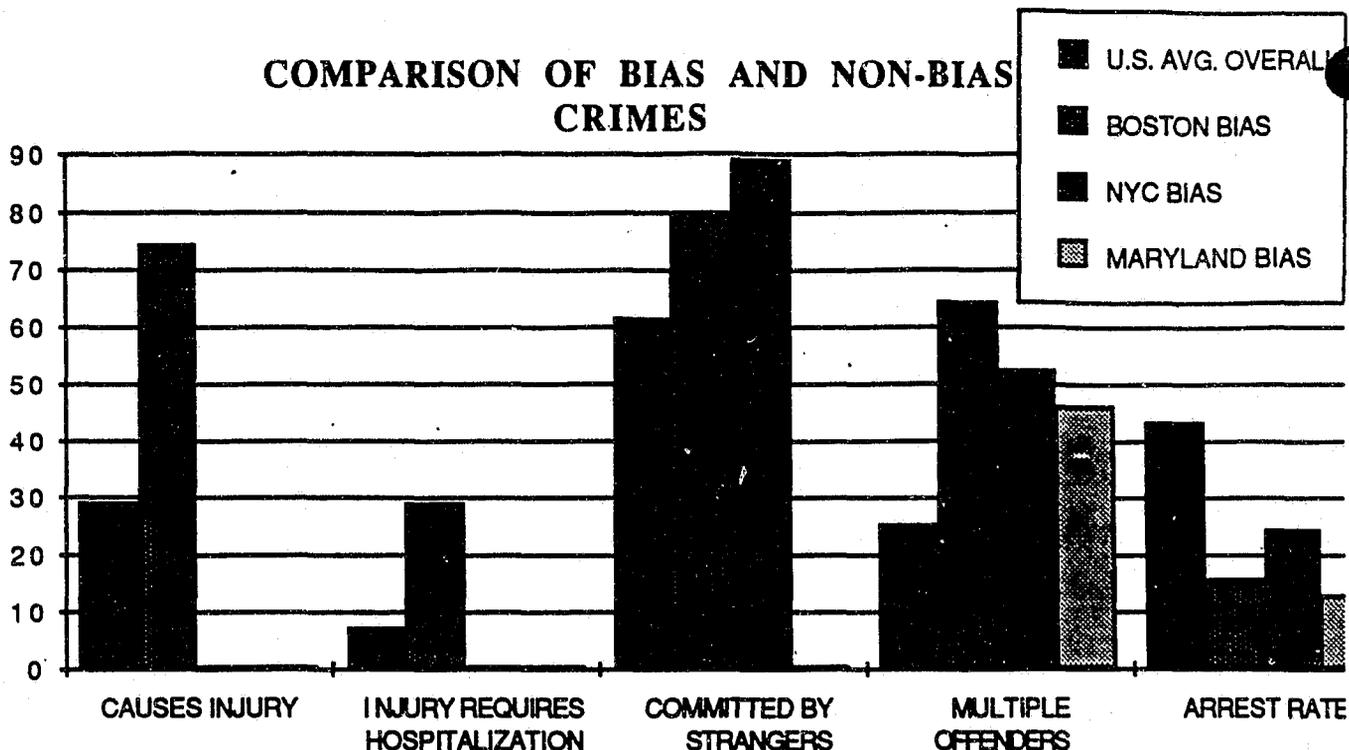
Even with the heightened vulnerability of Jewish owned property and the increased likelihood of reporting, anti-semitic bias crimes are still at least twice as assaultive as overall crimes. The minority group which is perhaps most likely to suffer bias property incidents still has an alarmingly high rate of bias assaults- and those assaults appear to be rising at an ever increasing rate.¹⁸

¹⁶The relative risk of violent victimization in large cities is approximately 1 in 61 while in the suburbs the risk drops to 1 in 1,000 - 5000. L. KRANZ, WHAT THE ODDS ARE 256 (1992).

¹⁷ADL 1990 Audit of Anti-Semitic Incidents at 10.

¹⁸According to the ADL, in 1991, Jews experienced a record number of bias victimizations, 1879 nationwide. They also experienced more person directed victimizations than at any time since records were first maintained in 1979. 1991 marked the first time that harassments, threats, and assaults, numbering 950, outpaced acts of vandalism, numbering 929. 1991 Audit of Anti-Semitic Incidents, Anti-Defamation League of B'nai Brith at 6 & 29.

COMPARISON OF BIAS AND NON-BIAS CRIMES



NOTE: Injury and hospitalization charts are from Prof. McDevitt's Boston Study, as are the other Boston figures. Maryland Figures are from 1990 State Police Report. NYC Figures are from NYPD and Prof. Garafolo. US avg. are from FBI figures- clearance rate for US avg. is for violent crimes, overall U.S. Crime Clearance rate is 19%.

Other bias crime analysis provide further alarming evidence of the level of violence associated with bias crimes. Prof. McDevitt analyzed the BPD's comprehensive collection of bias crime statistics over a four year period. Boston was the first police department to establish a police bias unit and establish a systematic reporting program. Prof. McDevitt found that not only are bias crimes more likely to be manifested by assaultive acts, but the assaults are more severe than their nonbias counterparts.¹⁹ The explanation of the

¹⁹Half of the cases involved assaults against persons with the remainder being property crimes. 74% of the bias assaults resulted in physical injury and 30% resulted in some form of hospital treatment. Comparatively only 29% of assaults nationally result in injury and only 7% in hospitalization.. McDevitt, The Study of the Character of Civil Rights Crimes In Massachusetts (1983 -1987) (July 1989) (paper presented at the American Society of Criminology, November 1989) Hereinafter McDevitt Report.

heightened violence levels may be found in the purpose of these crimes. Melissa Mertz, Director of Victim Services at New York's Bellevue hospital recalled, "attacks against gay men were the most heinous and brutal I encountered." They frequently involved torture, cutting, mutilation, and beating, and showed the absolute intent to rub out the human being because of his preference."²⁰

Particularly distressing is the fact that some of the most blatant and violent acts of bias violence go unrecognized by police. In a 1981 lynching, Michael Donald's severely beaten body was found suspended by a noose from a tree. Before being hanged Michael, a nineteen year old black man, was struck over one hundred times with a tree limb and his throat was slashed.²¹ State pathologists later concluded from heel marks on the victim's head that the noose was tightened to the point of strangulation by an assailant who anchored his foot on the victim's face for leverage.²² Even though the incident took place across from a local Klan meeting hall Mobile, Alabama Police Captain Samuel McLarty stated, "We don't know if the slaying was racially motivated." He continued, "We don't have any evidence to indicate that it was, so we are looking at every possible angle."²³ When the BPD set up its CDU, there was still a pervasive assumption that these were "mickey mouse crimes". The unit was unceremoniously designated, for a brief period, as a "non-arrest oriented unit".²⁴

²⁰ Berrill at 280.

²¹ Turner et al, *The Ku Klux: A History of Racism and Violence*, at 31.

²² Mobile Beacon , Mar. 28, 1981 at 1.

²³ Id.

²⁴ Johnston Interview.

7.

The NIAPV in an extensive study entitled the "Ethnoviolence Project" found that two-thirds of of bias victims experience a series of multiple attacks.²⁵ Professor McDevitt's study found that even in Boston, a city regarded as a national model, bias crime victims did not file a report until after a series of incidents had occurred. In fact a key statistic which Boston examines is repeat incidents either by the same offender or against the same victim.

The fact that these crimes are most often committed by strangers, more so than nonbias crimes, increases the victim's trepidation.²⁶ This high stranger ratio also makes it more difficult to apprehend offenders. Indiana University Professor James Garafolo found that these crimes relative to other offenses require a disproportionate amount of investigation and followup by police to result in arrest.²⁷

Adding to the severity is the fact that bias crimes are often committed, not by organized hate groups,²⁸ but by informal

²⁵Ethnoviolence Project, Institute Report No. 1.

²⁶BJS at 32. Prof McDevitt found that 85% of the Boston bias crimes involved unknown attackers. Even when perpetrators were seen by the victim the stranger rate remains high - about 80%. New York City figures reveal that 89% of bias crimes are committed by strangers while only 65% of non-bias crimes are. J. Garafolo Unpublished Study: Bias Crimes and Non-Bias Crimes In New York City - Preliminary Findings at table 7, Herein after "Garafolo". In comparison 61% of violent crimes nationwide are committed by strangers. BJS at 32/McDevitt Report at 6.

²⁷While arrests were made in 24% of New York's bias crimes against 9% for nonbias crimes; 85% of bias crimes had more than a month of investigative time while, 81% of nonbias crime had no follow up investigative time at all.

²⁸Maryland State Police figures show that only 96 of 792 confirmed bias crimes were traced to organized Hate Groups.

associations of unidentified strangers. These strangers are much more likely to attack in groups than are non-bias offenders.²⁹

Furthermore, direct victims suffer grievous emotional harms. The National Institute's Ethnoviolence Project found that victims of "ethnoviolence", a more expansive category than bias crimes, still experienced close to two and one-half times more negative psychological and behavioral symptoms than did victims of other violence.³⁰ The unprovoked nature and the potential for future attacks creates additional anxiety for victims.³¹

Because the only readily identifiable reason for bias crimes is group affiliation, they have an alarming potential to ignite community disorder. Because whole groups are implicated, as opposed to individuals, the scope of the violence can quickly escalate. Lt. Johnston cautions, "These incidents have great potential to escalate in numbers and severity." In the three weeks following a well publicized attack where minority youths were robbed and painted with white shoe polish the NYPD documented double the previous years average.³² After a fatal mixed race auto accident in Brooklyn in August 1991, 1500 NYPD officers were needed to contain

²⁹ In analyzing NYPD data Professor James Garafolo found that bias incidents involved multiple offenders 51% of the time compared to about 21% for non-bias crimes. While 52% of non-bias crimes were committed by lone offenders only 17% of bias crimes were. Garafolo at table 7. Professor McDevitt's analysis of Boston figures showed that there were multiple offenders in 64% of the relevant bias cases and that most of the time there were four or more attackers. Most of the victims were lone individuals. The national average for for violent crimes involving multiple offenders is only 25%. McDevitt Report at 6.

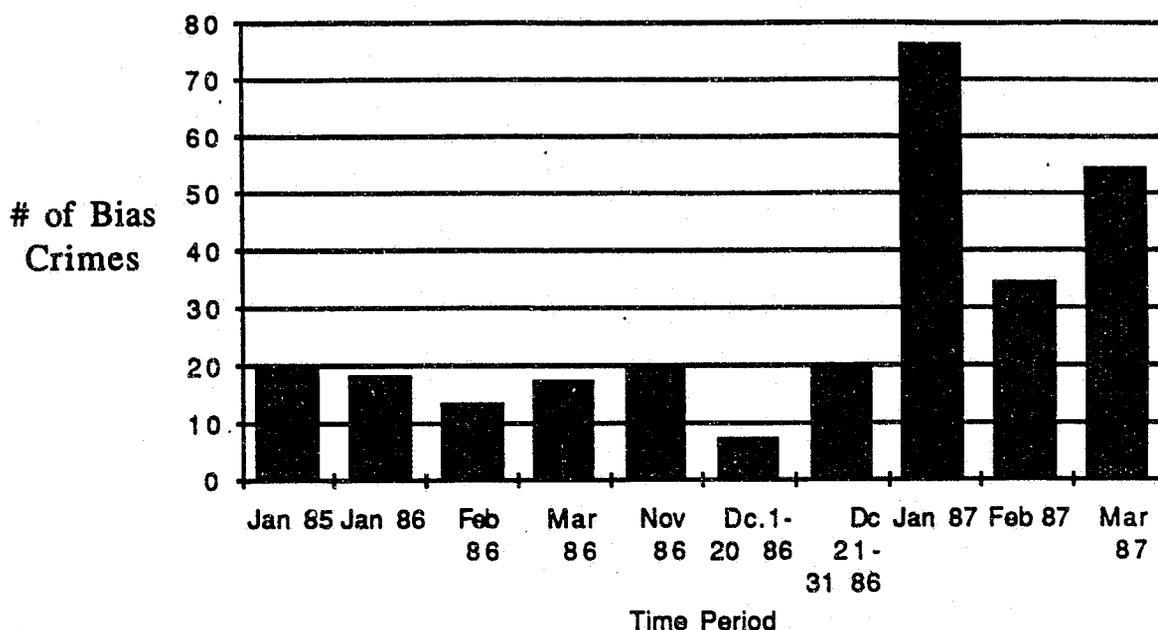
³⁰ Purvis Interview.

³¹ McDevitt Report at 7.

³² NYT, Jan. 28, 1992 at B1, col. 6.

the resulting rioting which lasted for four days and resulted in 180 arrests. Bias related arsons, murder, criminal mischief, and numerous assaults took place during the disorder.³³ The 1992 Los Angeles Riots are perhaps the most violent example of such a tragedy. In 1988 a

Backlash - New York City Bias Crimes In Wake of Howard Beach Homicide



The trigger homicide occurred 12/21/86

³⁴New York State Task Force explained, "A single incident can be the tragedy of a lifetime to its victim and may be the spark that rends and disrupts an entire community."

Lastly, these crimes are different because they implicate forceful and direct interference with the free exercise of civil rights.

³³Id., Aug. 24, 1991 at A27.

³⁴New York State Governor's Task Force on Bias Related Violence - Final Report, March 1988 at ES10.

It is this criminal interference with civil rights which renders additional meaning to the outward act. Bias crimes really consist of two distinct components. The first is the outward act which is manifested in a variety of ways ranging from criminal mischief to murder. The other component is more amorphous and terroristic in nature. It labels victims and their respective groups as not possessing the full rights of citizenship and degrades them as human beings.

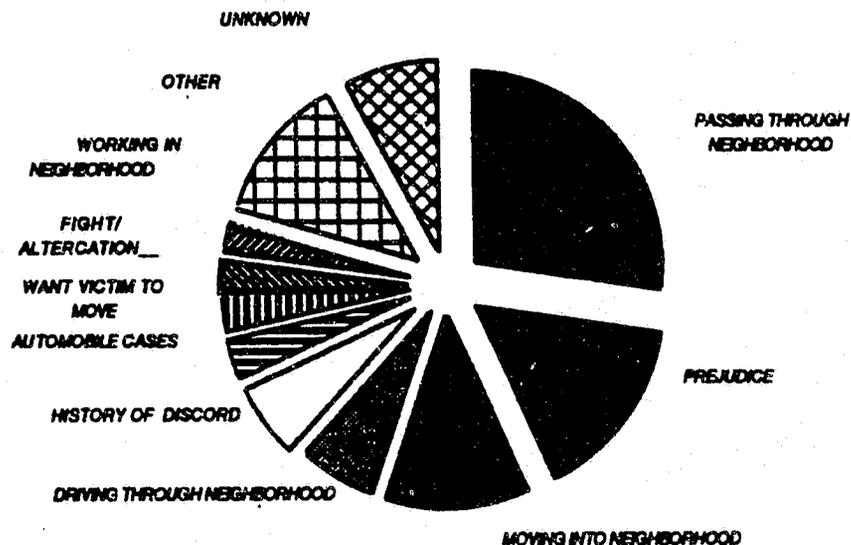
The inevitable cumulative effect of these characteristics is, of course, terroristic. The standard definition of terrorism promulgated by the FBI fits these acts: "Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in the furtherance of political or social objectives."³⁵ Lt. Johnston, is emphatic, "These crimes are acts of terrorism." Typically, the threat is carried out through a random unprovoked brutal attack or increasingly severe serial attacks. The lack of a direct connection - either personal or pecuniary of the attacker to the victim contributes to a pervasive sense of terror. Criminologists have concluded that random irrational crimes, such as these are particularly fear inducing.³⁶ Attacks are usually carried out by multiple unknown offenders, usually strangers. If an assault occurs, it is generally more severe than comparative non-bias attacks. Unlike those other types of crimes, it is the victim's very existence which makes him a target. Because the threat is not limited to a particular activity or

³⁵FBI Law Enforcement Bulletin, Oct. 87 at 14.

³⁶McDevitt Report at 7.

established relationship the victim is placed in a situation of constant vulnerability. There is little remedial action the victim can take to remedy the situation. The ultimate effect is that the victim and his group is suppressed in the exercise of important civil rights through force and threat. A 1987 Klanwatch study found that one of the most common situations in which these crimes occur is when a minority "moves in" to a neighborhood.³⁷ One implication which Professor McDevitt drew from his findings is "[t]he lack of public access to certain neighborhoods in our cities is a truly serious problem."³⁸ Lastly, the invocation of group allegiances often increases the risk of additional incidents by implicating previously uninvolved parties- which threatens community stability, another side effect of terrorism.

Bias Crimes Classified By Reason Given

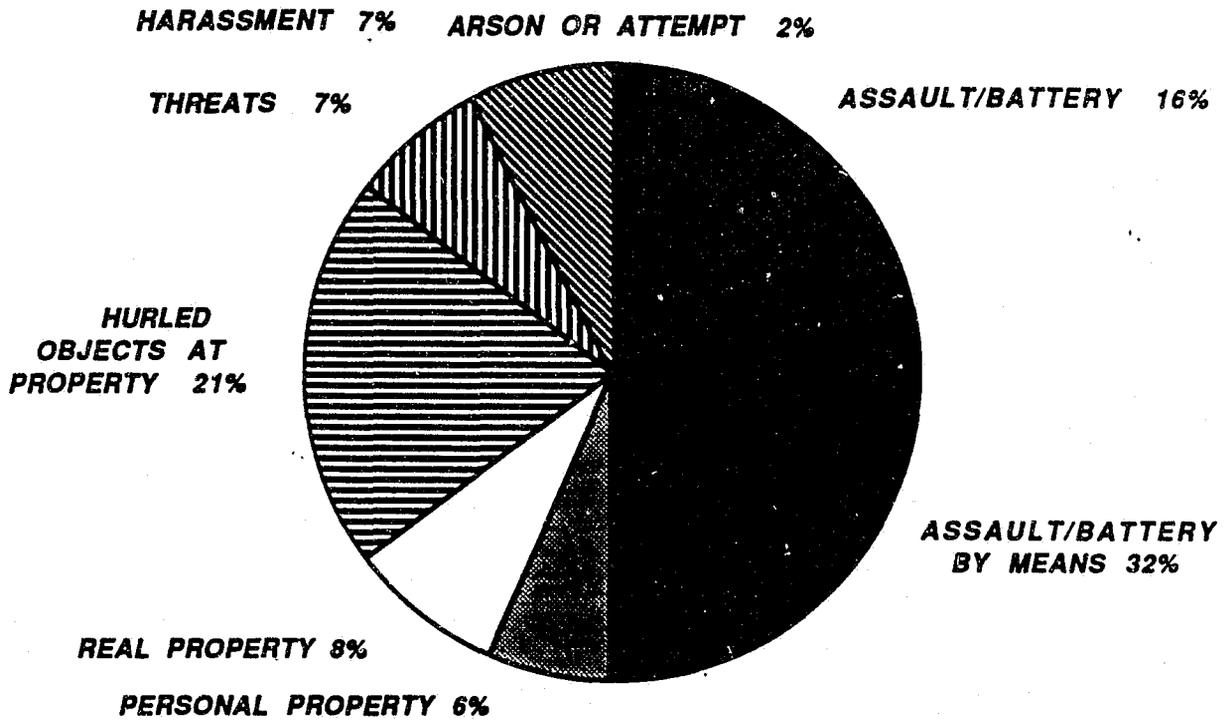


Source: J. McDevitt, The Study of the Character of Civil Rights Crimes in Massachusetts (1983 - 1987) (July 1988)

³⁷Move-In Violence: White Resistance To Neighborhood Integration in the 1980's/ Prof. McDevitt's research revealed that in instances where a reason for a bias attack was known 57% involved the victim presence in the "wrong" neighborhood. McDevitt Report at 8.

³⁸McDevitt Report at 9.

BOSTON BIAS CRIMES 1978-1991 BY OFFENSE



SOURCES: Boston Police Department Figures Charted by Brian Levin.

THE ROLE OF LAW ENFORCEMENT

Researchers Chuck Wexler of Brandeis University and Gary Marx of the Massachusetts Institute of Technology found that when bias crimes "are treated only within the context of general crime problems, they may be invisible."³⁹ Addressing the general problem of bigotry is beyond the scope of police alone. Still, important aspects relating to enforcement and the immediate prevention of these incidents are within their purview. Lt. William Johnston, Commander of the Boston Police Department's (BPD) Community Disorders Unit (CDU), the oldest bias unit in the nation, observes that "The police

³⁹ Wexler & Marx, *When Law and Order Works: Boston's Innovative Approach to the Problem of Racial Violence*, 32 *Crime & Delinquency* 205 (1986) at 216. Hereinafter "Wexler&Marx".

role is crucial."⁴⁰ That is because patrol officer is the official most likely to provide the initial response and enforcement.⁴¹ Captain John Cook, a renowned bias crime expert with the Maryland State Police (MSP), adds, "It's an institutional problem, not just a law enforcement one."⁴² No jurisdiction, though, has attained perfection in dealing with bias crimes. The Legal Director of the National Institute Against Prejudice and Violence (NIAPV) Robert Purvis notes, "You're not going to find a place which doesn't have a lot of defects."⁴³ Accordingly, any solution to these problems is likely to come in the form of an amalgam of distinct achievements deduced by trial and error. Inadequate laws and institutional barriers, along with insufficient training, data collection and coordination all combine to limit the effectiveness, not only of police, but of other appropriate entities potentially capable of responding effectively to the problem of bias crimes.

RECOGNITION OF A UNIQUE CRIME

In the early 1980's only a few reliable police data collection systems existed. These were located in Boston, Maryland, and New York City⁴⁴. These jurisdictions found data collection helpful in

⁴⁰W. Johnston, Remarks at Northeast Regional Conference on Prejudice and Violence (Mar. 3, 1988) (Available on file with National Institute Against Prejudice and Violence). Hereinafter "Northeastern Regional Conference".

⁴¹E. Scott, Remarks at Northeastern Regional Conference

⁴² Telephone Interview with Captain John Cook, Maryland State Police Criminal Intelligence Unit (Mar. 6, 1992). Hereinafter "Cook Interview".

⁴³ Telephone Interview with Robert Purvis, Legal Director of the National Institute Against Prejudice and Violence (Feb. 21, 1992). Hereinafter "Purvis Interview".

⁴⁴BPD, NYPD, MSP. At that time none of them included sexual orientation. The Los Angeles Human Relations Commission started data collection in 1981 but those numbers are considered too low for statistical purposes.

understanding the scope of their bias crime problem. Two significant consequences are associated with data collection: First, in jurisdictions where data collection was implemented, other related developments such as new practices, policies, laws and enforcement priorities emerged. Second, these developments focused pressure on other jurisdictions to examine their problem. Still, by the mid eighties Wexler and Marx found a "pattern of denial and/or minimization" of bias crimes in most large departments.⁴⁵ In 1985, New York City Police (NYPD) Commissioner Benjamin Ward sent bias crime materials to dozens of police executives. These materials asked about the prevalence of bias crimes within their jurisdictions. Los Angeles Police Chief Daryl Gates responded that the "city has had very few reported incidents". Chief Gates further observed that all of the eleven incidents involved vandalism, but cautioned, "Obviously, there may have been other crimes connected to this motivation, but not identified as such."⁴⁶ Dallas Police Chief Billy Prince stated that, "There have been no significant number of known hate offenses within at least the past year in Dallas."⁴⁷ A Connecticut police chief noted, "There is a great deal of perception that there is no need for this [bias crime reporting and policy] program, but I suspect there may be some isolated areas where a program of this nature would be helpful."⁴⁸ Wexler and Marx noted that, "It is far easier in the short

⁴⁵Wexler & Marx p. 216.

⁴⁶Letter from Chief Daryl Gates to Commissioner Benjamin Ward (Sep. 17, 1985) (discussing bias crimes).

⁴⁷Letter from Chief Billy Prince to Commissioner Benjamin Ward (Sep. 12, 1985) (discussing bias crimes)

⁴⁸Letter from Windsor Police Chief Maxie Patterson to Commissioner Benjamin Ward (Sep. 30, 1985)(discussing bias crimes) Note: Connecticut has since

run not to see it, or define it as something else."⁴⁹ In 1986 Tom Olsen of the United States Commission on Civil Rights observed, "It's a negative thing so a lot of jurisdictions won't want to give their town a bad name."⁵⁰

As more jurisdictions took action to assess and address bias crimes, it became difficult for officials in other jurisdictions to refute charges about their own bias crime problem. The passage of the federal HSCA in 1990⁵¹ solidified awareness of bias crimes within law enforcement. The Act requires the FBI Uniformed Crime Reporting Unit (UCR) to collect data on offenses motivated by bias through the nationwide crime reporting system and the FBI is currently working towards its full implementation. More generally, the institutional recognition of bias crimes has hastened reforms throughout the country. Although the reporting system is voluntary, virtually all of the nation's 16,000 law enforcement agencies participate.⁵² MSP Captain John Cook observed that departments without data collection are increasingly viewed as being "behind the times". When New Jersey analyzed its anti-bias response in 1987 it found that its bias crime efforts were being constrained by the lack of effective data collection. After officials met with representatives from the Anti-Defamation League (ADL), a private Jewish civil rights organization; NYPD; and the National Organization of Black Law

implemented a comprehensive bias crime response including training and data collection.

⁴⁹ Wexler & Marx, *supra* note at 39.

⁵⁰ B. Levin, Blacks, Racial Bias and the Criminal Response (Oct. 1987).

⁵¹ Hate Crimes Statistics Act, 104 STAT. 140, Pub. L. 101-275.

⁵² Crime in the United States - 1989, FBI-UCR at iii.

Enforcement Executives (NOBLE) New Jersey developed a comprehensive program to count and enforce bias crimes.⁵³ While improvements are occurring faster than ever before, most areas are not yet collecting data. Even among those jurisdictions that technically are collecting data, many are functionally deficient. The FBI, with Lt. Johnston's help, is actively training police in every state about bias crime data collection.⁵⁴ The effectiveness of this data collection effort rests primarily on the willingness of victims to report and on the ability of the responding officer to identify the incident.

In a technical sense, the HCSA created no new category of offense: "Hate crimes are not separate, distinct crimes, but rather traditional offenses, motivated by the offender's bias."⁵⁵ For the FBI's statistical purposes, bias motivation is a descriptive element concerning an established offense such as arson or aggravated assault. The FBI uses generic crime definitions that are not dependant on state statutory definitions or departmental guidelines. As a practical matter, stepped up data collection efforts resulting from the HCSA are being accompanied by related reforms at the state and local level as well as by relevant criminal research. Notwithstanding the FBI's definition, criminologists and police now regard bias crimes as a distinct category of offenses requiring special attention and presenting unique difficulties.⁵⁶ The issue has become

⁵³J. Mulvihill, Remarks at Northeastern Regional Conference.

⁵⁴BPD 1991 CDU Annual Report

⁵⁵ Guidelines at 1.

⁵⁶See generally, *Racial and Religious Violence: A Model Law Enforcement Response*, National Organization of Black Law Enforcement Executives (NOBLE)

how to address these crimes rather than whether they should be addressed.

THE SIGNIFICANCE AND LIMITATIONS OF DATA COLLECTION

Data collection is widely viewed as a first step in a community's fight against bias crimes. Adelle Terrell formerly of NOBLE and the NIAPV stated, "A major problem in [the] law enforcement response to hate crime has been the failure to keep records of incidents in order to effectively assess the extent of the problem."⁵⁷ Currently, there is no accurate way to list the overall frequency of bias crimes because there is no functional national system of data collection and the inherently deceptive nature of these figures.⁵⁸ A recent FBI report using 1991 figures from a relatively small number of agencies, revealed 4755 bias offenses.⁵⁹ There is a direct correlation between the accuracy of the data and the proficiency of those who are conducting the calculations. Where training, policy, procedure, or awareness are faulty or nonexistent, the data will suffer. The quality and applicability of bias crime data is often quite limited, especially in the early stages. Operational challenges to police include lack of awareness, misidentifications, limited oversight, reluctance of

Hereinafter NOBLE BOOK

⁵⁷NOBLE Newsletter, Fall 1986 at 4.

⁵⁸Klanwatch Intelligence Report, April 1991 at 3, "Why Hate Crime Statistics Don't Add Up" by Sara Bullard

⁵⁹FBI Preliminary Hate Crime Report, Jan. 1992.

victims to report, insufficient referral, and ill adapted definitions and complaint forms.

Those law enforcement agencies and private organizations which collect data are thus constrained by victim underreporting, as well as by operational, definitional, and geographic factors. Since different things are often being counted and the calculations themselves are done with varying degrees of accuracy, cross comparisons are problematic. The ADL has an established and nationally respected reporting system, but it is limited in scope to anti-semitic cases. Other private organizations count criminal as well as non-criminal incidents using their own criteria. Among those jurisdictions where data are collected, there are differences as to what motivational threshold has to be reached and what groups are covered. Until June, 1991, the NYPD relied on an administrative definition which limited bias crime classification to cases where bias was a prevailing motive. After bias advocates exerted pressure, a new, more inclusive definition modeled after the FBI definition was adopted. The new definition included incidents where bias motivation was partial as opposed to predominant. In 1991, New York City⁶⁰ reported 525 bias crimes,⁶¹ while Boston, with a population less than one-tenth of New York's recorded 218 incidents; this is partly due to BPD's more expansive definition. Many commentators argued that New York's figures represented a significant undercount because of that city's heightened motivational

⁶⁰New York City's population of 7,322,000, while Boston's is 532,000. 1992 World Almanac at 98.

⁶¹NYT, Jan. 27, 1992 at A1, col. 1.

standard.⁶² An example critics pointed to was the year long delay it took to classify the "gaybashing" murder of Julio Rivera⁶³ as a bias crime.

Another area of difference is in what classes of victims are covered. Oregon's bias crime data collection statute covers over a dozen categories including sexual orientation, marital status, political affiliation, association or opposition to labor organizations, physical or mental handicap, age, economic and social status.⁶⁴ New Jersey and Pennsylvania both maintain bias crime statistics, but the former includes sexual orientation while the later does not.⁶⁵

Newer reporting systems are limited because in the early stages figures are often deceptively low due to "reporting effect". "Reporting effect" occurs because record keepers are unaccustomed to collecting such data and because of distrust and a lack of awareness in relevant communities. This invariably adds to the already problematic issue of underreporting.⁶⁶ Often the substantial initial increases that occur are the natural consequence of increased efficiency and accuracy, rather than an actual increase in total numbers.⁶⁷ This provides a disincentive to public agencies to implement more accurate forms of data collection because the

⁶² *Id.*, Jan. 27, 1992 at B2, col. 1.

⁶³ Telephone interview with Matt Foremann of New York City gay and Lesbian Anti-Violence Project (Dec. 1991)

⁶⁴ Or. Rev. Stat. § 181.550 (1991)

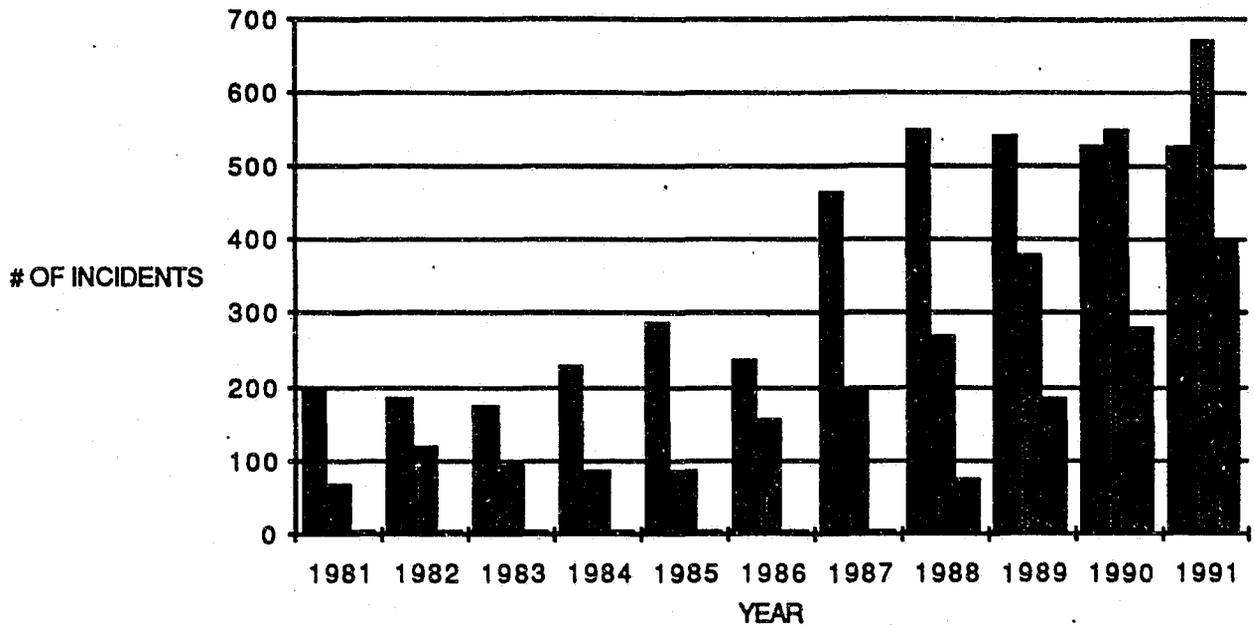
⁶⁵ New Jersey with a population less than that of Pennsylvania recorded 824 cases in 1990 while Pennsylvania recorded only 194.

⁶⁶ Interview with Daniel Bibel, Massachusetts Uniform Crime Reporting, in Boston (Jan. 7, 1991)

⁶⁷ Berrill at 287.

increasing numbers appear to indicate an appalling "trend". These formidable obstacles and the lack of uniformity also work against accurate cross comparisons. Some of these difficulties will be corrected as compliance with the HCSA increases.

BIAS CRIME REPORTING EFFECT MAKE CROSS COMPARISONS DIFFICULT



NOTE: 1st Col. -NYC/ 2nd Col. - LA CNTY/ 3rd Col. San Francisco. NYC and LA started data collection 1980/81, S.F. started in 1988.

A distressing corollary to data collection is that effective reforms are often tied to a superficial numerical interpretation. This is hazardous for three reasons. First, the adequacy of a given response is often incorrectly tied to the number of cases. Since effective programs are more likely to result in increased reporting, a small number of recorded incidents is as likely to be due to flawed response than it is to the absence of a problem. Therefore, the fact that most police departments report only a nominal number of cases

is hardly reassuring.⁶⁸ Second, bias crimes appear to have a higher periodic variance than other crimes. Because community tensions can be sparked by a single incident, the natural tendency to frame a response based on crime numbers from a previous period is dangerous. Bias crimes occur because of an interplay of attitudes, demographics, and tensions which can erupt into seemingly spontaneous acts of violence. The situational dynamics should not be eclipsed by overreliance on an incomplete portrait based on limited "numerical trends". Third, bias crimes are most appropriately viewed as a negative ongoing community condition rather than merely as distinct autonomous incident. The proper perspective for bias crime data should be a proactive situational approach rather than a reactive incident based one.

WHAT THE NUMBERS DO NOT SHOW

Credible statistics have aided police, policymakers and legislators to better respond to bias crimes in the more progressive jurisdictions. Still, the essence of bias crimes runs deeper than just incident numbers. A black is far more likely to be victimized by a black assailant than in a racially motivated crime.⁶⁹ A Jew is more likely to be killed in a motor vehicle accident than to be personally victimized in an anti-semitic incident.⁷⁰ In 1991, the NYPD reported three bias murders and 146 bias assaults. By comparison, roughly the same number of non bias assaults are reported in New York in a

⁶⁸McDevitt Report at 6.

⁶⁹BJS at 33.

⁷⁰BJS at 24, 26-7 .World Almanac 1992, p. 725, 940. U.S. Jewish population 5,944,000(1990). 950 Personal. Anti-semitic Incidents in U.S. (1991) M.V. death rate per 100,000 in U.S. 18.6 Total M.V. deaths is 1105.5 vs. bias.

typical day.⁷¹ A numerical rendition of cases alone, though, ignores not only the civil rights which are implicated, but a variety of the other factors as well. Captain Cook observes, "Raw numbers [alone] mean absolutely nothing in this business."⁷² The heightened violence, terroristic nature, potential for community disorder, and the far reaching effects of the trauma and degradation can not be adequately understood if we approach these crimes in the same manner as we do motor vehicle thefts. Lt. Johnston argues, that in regard to bias incidents, "Numbers are never a true barometer."⁷³

In general the responses needed for effective data collection are identical to those needed for an effective overall response to bias crimes. Training, policy, laws, and outreach, for example enhance both. Still, there are measures specifically related to bias crime accounting which have yielded success, but which are not yet in general use. The current standard which has been adopted by the FBI in its data collection guidelines provides for a two tier review.⁷⁴ The first tier is the responding officer, who refers all questionable cases to a supervisor - the second tier. In some police departments, like New York's, the supervisor must then in turn notify a duty captain of a suspected bias incident. The notification chain in New York also includes a specialized unit, that is promptly informed of suspected incidents.⁷⁵ According to NOBLE and NYPD executive Elsie

⁷¹ NYT, Jan. 27, 1992 at A1, col. 1.

⁷²Cook Interview

⁷³Interview with William Johnston, Commander BPD-CDU, in Boston (Jan. 8, 1991), Hereinafter, "Johnston Interview".

⁷⁴ Training Guide for Hate Crime Data Collection, FBI at 16.

⁷⁵NYPD Patrol Guide § 108-26.

Scott the rationale of this structure is to "take discretion away from the patrol officer."⁷⁶

The problem with the standard two tier system is that its success is dependant on correct identification and referral by the responding officer. Former NYPD Bias Unit commander Michael Markman observed that the responding patrol officer is typically "the least trained and the most cynical." The prevailing system is set up so that the officer need merely suspect a bias motive before referring the case to the supervisor. To encourage referral there is no sanction against the patrol officer for an incorrect referral. Furthermore, there is no extra paperwork required by the street officer in these systems.⁷⁷ BPD Sgt. Brian Flynn explains that the officers know that, "It's no extra work- pass the buck (by referral)." Still, according to Prof. Jack McDevitt, a criminologist at Northeastern University, there is convincing evidence that there is a significant undercount resulting not only from victim underreporting, but from police misidentification as well. In his examination of 452 bias incidents handled by the BPD's CDU Professor McDevitt found only 19 were classified as bias incidents by the responding officer. In New York City, where police have instituted some of the most thorough training, policy, and investigative methods in the nation, the vulnerability of the two- tier method was illustrated in a dispute between blacks and Koreans in 1990. Responding officers initially failed to identify a storeowner's assault on a customer in the

⁷⁶E. Scott .

⁷⁷The rationale is to have patrol officer to concentrate his efforts on identification.

Flatbush section of Brooklyn as a potential bias incident. The situation erupted into a tense and sometimes violent dispute of several months in duration. A subsequent report by the city found, "Failure [by police] to focus on the bias aspects of the alleged assault precluded the possible involvement of units, resources and expertise."⁷⁸

If the predominant method of classifying bias crimes is flawed, Boston has instituted a unique system which bypasses the problem. Boston police had relied exclusively on a system where officers marked a bias crime box on complaint reports and described the details in the form's body. The system, similar to what is currently used in the FBI model, was found to be inadequate. Now the BPD's CDU has an investigator conduct a daily review of all crimes where the victim is from one group and the offender from another. Each case is carefully tracked and all communications in the course of investigations are carefully logged. The CDU maintains its own set of bias crime records. Crimes occurring on certain holidays, in newly integrated areas, and in predominantly gay areas also receive special review from investigators. Each member of the unit is responsible for monitoring a high risk group. For example, a police officer from the CDU meets daily with representatives of the Fenway Community Health Center, a prominent gay advocacy group.⁷⁹ Boston has the highest per capita number of bias crimes of any jurisdiction in the nation. Rather than being the most bigoted city, Boston is probably

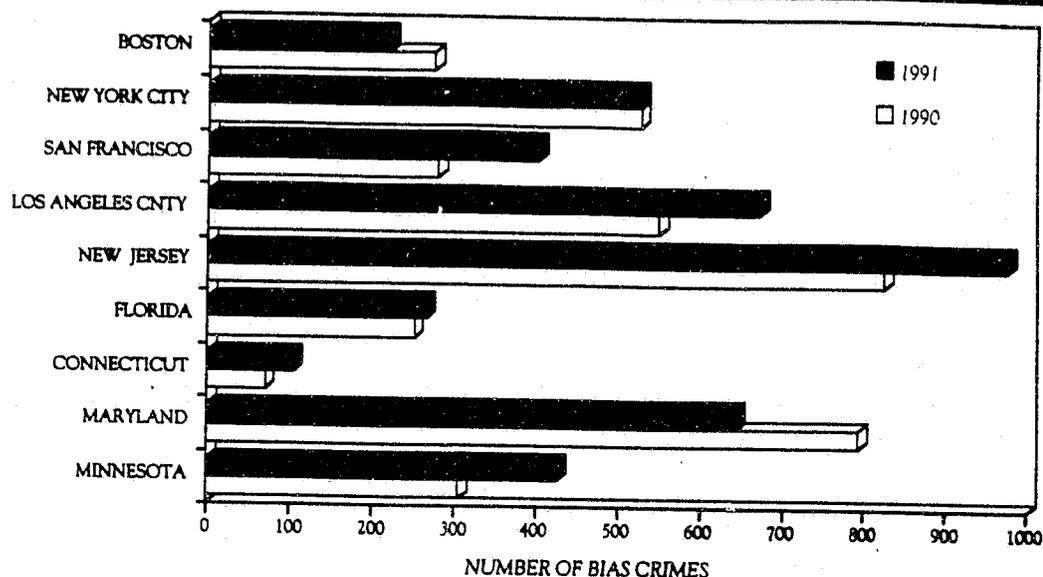
⁷⁸Report of the Mayor's Committee Investigating the Protest Against Two Korean-Owned Groceries on Church Avenue In Brooklyn, August 30, 1990 at 41.

⁷⁹Interview with Brian Flynn of BPD-CDU (Mar. 1992), Hereinafter, "Flynn Interview".

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the city with most accurate picture of its problem.⁸⁰ The bias crime data maintained by the BPD has been described as being "quite extraordinary in detail, thoroughness and accuracy."⁸¹

BIAS CRIMES REPORTED BY SELECTED JURISDICTIONS 1991/1990



While it may be burdensome for many smaller police departments to maintain a separate unit with its own data collection the CDU's methods are still instructive. The third-tier review and community outreach procedures are inexpensive common sense methods which will dramatically improve the quality not only of data collection, but of the overall response as well. Det. Sgt. Brian Flynn reviews all of Boston's questionable cases in about 20-30

⁸⁰An opinion poll revealed that New England had significantly less hard core racist sentiment than other areas of the United States. L. KRANZ, WHAT THE ODDS ARE 219, 281 (1992).

⁸¹McDevitt Report at 3.

minutes each morning.⁸² Since the the vast majority of crimes are committed by offenders against victims of the same race⁸³, it is not a numerically prohibitive task. Since many anti-gay victimizations, unlike most other bias victimizations, involve offenders leaving their own community to enter the victim's neighborhood,⁸⁴ those cases can be better monitored through careful outreach and attention to particularly vulnerable geographic areas.⁸⁵ Effectiveness is increased if the reviewing investigator is well informed and sensitive to the problem

While critics of police often cite personal prejudice as the main cause of misidentification, there are also less benign reasons.⁸⁶ Patrol officers are conditioned to identify crimes based on the severity of the injury or amount of property damage. Furthermore, patrol officers are not generally called upon to determine motive as a basis for treatment. Patrol officers are also conditioned by their routine. They respond to service calls as distinct, autonomous incidents with at most, only some general connection to each other. With bias crimes, this myopia often causes officers to view the incident by its most obvious manifestation, rather than in the context of a community wide problem. Even well trained officers might not be

⁸²Flynn Interview.

⁸³BJS at 33.

⁸⁴Hentoff at 98, e.g. NYPD figures show 75% anti-gay attacks occur in Manhattan, where the predominantly gay community of Greenwich Village is located, Garafolo at 6. See also forthcoming B. Levin & J. McDevitt study

⁸⁵Hentoff, at 96.

⁸⁶Hernandez, *Bias Crimes and Unconscious Racism in the Prosecution of "Racially Motivated Violence"*, 99 Yale L.J. 845 (1990)

able to understand subtleties or be aware of relevant information because they are too busy or too far removed.

Professor McDevitt found that while the vast majority of bias injury cases were probably identified under the Boston system, "much bias violence occurring in the city goes unreported to police." He observed that "the data that does get to the BPD is only the tip of the iceberg of bias violence."⁸⁷ The CDU records themselves showed bias property cases were often preceded by a long line of unreported victimizations. The NIAPV estimates underreporting for bias crimes generally could be as high as 80%.⁸⁸ This presents a number of difficulties. First, victim's needs are not being served when individual incidents are left unaddressed. Second, with potentially explosive crimes like bias crimes, a proactive response is essential. If the responses of relevant agencies are delayed because they are unaware of escalating conditions and tensions, the consequences can be devastating. Third, an inaccurate portrait of the state of affairs in the community emerges. Lastly, the prevalence of even relatively minor property offenses diminishes the overall quality of life within the community.

One method that can be used to assist governments in better monitoring bias tensions is to create a system where noncriminal bias incidents can be collected and referred to appropriate agencies.

⁸⁷McDevitt Report at 3.

⁸⁸ NYT, Jan. 27, 1992, at A1, col. 1.

The MSP probably have the most progressive statewide data collection program. In addition to maintaining records on cognizable bias crimes, they also monitor incidents which are not technically crimes, such as noncriminal harassments. In many instances HRCs collect such data, but these agencies frequently face severe budget cuts and a lack of police cooperation. The importance of tracking noncriminal incidents is that they give authorities valuable information of potential trouble spots and thus the ability to intervene early.

Lastly, victimization surveys have provided insight as to the prevalence of bias crimes in a given jurisdiction, since even under the best systems, many incidents will undoubtedly go unreported.⁸⁹ A recent commentator concluded that "victimization surveys... can be useful as a supplement to UCR figures to highlight the degree of underreporting involved in hate crime data collection."⁹⁰ Victimization surveys involve researchers taking a statistically relevant sample of citizens while the UCR is an index of reported crimes. Dan Bibel, a criminal statistician with the Massachusetts Uniformed Crime Reporting Unit warns that "UCR data is not the same as victimization data." There is serious underreporting by victims to police.⁹¹ The NIAPV found that one-third of bias victims did not notify police even though they are often subject to violent serial attacks which have deleterious effects on lifestyle and

⁸⁹See generally, *Bringing Hate Crimes into Focus - The Hate Crimes Statistics Act of 1990*, Pub. L. No. 101-275, 26 Harv. C.R.-C.L. L. Rev. 261. BJS at 11.

⁹⁰Id. at 291.

⁹¹Interview with Daniel Bibel of Massachusetts UCR, in Boston (Jan. 7, 1991).

attitude.⁹² Bob Purvis of the NIAPV states, "There is no other way to get a truly accurate count without doing a survey."⁹³ Ironically, the NIAPV has recently been unable to secure federal funding to do an updated comprehensive victimization survey.⁹⁴

Police should not lose sight of the importance of victim support. Victims of violent crime often do not report crimes to police, not because their trauma is slight but for other reasons. Often victims believe that the crime wasn't serious enough, nothing could be done, the police would be unresponsive or that the matter is too personal. 11% of the time the victim will report someone besides the police.⁹⁵

This figure highlights the importance of a coordinated chain where the police can receive reports through intermediaries, such as advocacy or community groups or Bias crime victims feel degraded and isolated, so it is important for police to conduct a professional response which includes promptness, care, follow up and proper referral to victim service agencies.

CRIMINAL STATUTES

Because the vast majority of arrests and prosecutions of bias offenses typically involve state and local authorities we will

⁹²Ethnoviolence Project, Institute Report No. 1, NIAPV. The state of Maryland and the NIAPV conducted a victimization survey of state residents in 1986. The survey revealed that 13% of the base sample and 17% of the black sample were victims of bias crimes at some point. The survey also revealed that even in Maryland, arguably the most progressive jurisdiction at that time in regard to bias crimes, 44% of the victims and 36% of the black victims failed to report the incidents to authorities.

⁹³Purvis Interview.

⁹⁴Id.

⁹⁵BJS at 35

concentrate at those levels.⁹⁶ The existence and scope of state bias crime statutes vary greatly by jurisdiction. Nebraska has no anti-bias criminal statute while California has about one dozen statutes related to bias crimes. Many of California's bias statutes were enacted after an Attorney General's Task Force concluded in 1986: Hate violence persists in part because current state legislation fails to adequately deter and punish perpetrators.⁹⁷ Bias crime expert Adelle Terrell observed that under conventional laws "many acts of the acts of harassment and vandalism which are motivated by prejudice are not illegal or carry only minor penalties, especially when committed by juvenile offenders."⁹⁸

There are several basic categories which cover most bias related criminal statutes. There are two main types of statutes with broad applicability. Criminal Civil Rights Statutes such as Massachusetts' Civil Rights Act of 1979 (MCRA) is one type. The law, which has served as a model for other states⁹⁹, requires a showing of willful interference or its attempt with state and federal rights and privileges¹⁰⁰:

⁹⁶See Lee, Legislative Responses to Hate Motivated Violence: The Massachusetts Experiment and Beyond, 25 Harv. C.R.-C.L L. Rev. 287, 293 note 30. Hereinafter "Lee". Showing that there more civil rights prosecutions were made by state prosecutors involving private persons than by the federal government. Applicable federal statutes: 18 U.S.C. § 241, Conspiracy to Interfere with Civil Rights; 18 U.S.C 245, Forcible Interference with Civil Rights; and 42 U.S.C. 3631, which relates to housing rights. While the federal statutes are often used for serious incidents or in cases where local prosecution fails, federal prosecutions are sometimes hampered by limitations relating to coverage.

⁹⁷Attorney General's (California) Commission on Racial Ethnic and Minority Violence: Final Report, April 1986 at 23, Hereinafter "1986 Report"

⁹⁸NOBLE Newsletter at 4.

⁹⁹1986 Report at 23

¹⁰⁰See generally Lee.

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with or attempt to injure, intimidate, or interfere with or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the Commonwealth or by the constitution or laws of the United States.¹⁰¹

In order to successfully prosecute a criminal case under the MCRA the following elements must be established:

1. The Defendant through force or threat of force,
2. Willfully and,
3. Illegally hinders
4. Another in the exercise or enjoyment of a state or federal right or privilege.¹⁰²

This type of law has the broadest applicability. The statute has been applied in Massachusetts to protect such rights as travel employment, housing, expression, public accommodations, and freedom from sexual harassment. Furthermore, Massachusetts courts, relying on federal decisions in analogous cases, have upheld convictions even where the defendant had a mixed motive and was ignorant of his deprivation of a protected right.¹⁰³ Unlike other types of bias statutes there is no requirement that the victim be part of a statutorily enumerated class.¹⁰⁴ Citing the governmental aim of "freeing discernable or perceived groups in the country from discrimination or violence because of their status as members of the

¹⁰¹MASS. GEN. L. ch. . 265 §37.

¹⁰²BPD training Materials

¹⁰³Commonwealth v. Stevens, 25 Mass. App. Ct. 117.

¹⁰⁴MASS GEN. L. ch. 265 §37.

group," Roxbury District Court Judge Gordon Martin applied the criminal civil rights statute in the case of a homophobic assault.¹⁰⁵

The second type of statute with the potential for broad application is the bias intimidation law. It is a closely related analogue to the forementioned criminal civil rights statute and is sometimes incorporated into it, to form a hybrid. Bias intimidation laws create a more potent offense when the underlying crime is motivated by enumerated kinds of bigotry. Sometimes a distinct offense category is created. The ADL has created a model bias intimidation statute, used in some form by dozens of states, which creates a new offense:

A person commits the crime of intimidation if, by reason of the actual or perceived, color, religion, national origin or sexual orientation of another individual, he violates Section ____ of the Penal Code.

The enhanced penalty is at least one degree higher than for the underlying offense. The blank space is included so lawmakers can determine which applicable underlying offenses are to be included.¹⁰⁶ The Illinois Intimidation statute includes assault, criminal trespass and mob action,¹⁰⁷ while Massachusetts' stipulates assault, battery and damage to real or personal property.¹⁰⁸ In other

¹⁰⁵Commonwealth v. Jeffery A. Nelson, Roxbury District Court, Massachusetts, No. 8062 Cr. 6396, 6397; and 8702 Cr 297, 298 (April 3, 1987).

¹⁰⁶ADL: Hate Crime Statutes: A 1991 Status Report at 4, Hereinafter, "ADL 1991 Status".

¹⁰⁷ILL. ANN. Stat. ch. 38, § 12 -7.1.

¹⁰⁸MASS. GEN. STAT. C265 §39. Note that Massachusetts has both a criminal civil rights statute and an intimidation statute.

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states, such as Florida, the presence of bias intent will increase the penalties associated with a preexisting offense, rather than creating a distinct separate offense: "The penalty for any felony or misdemeanor shall be reclassified... if the commission of such felony or misdemeanor evidences prejudice..." The statute covers prejudice based on race, color, ancestry, ethnicity, religion, national origin and sexual orientation."¹⁰⁹ State courts have been split on the constitutionality of penalty enhancement statutes. The U.S. Supreme Court will make a final decision on these laws by June 1993. Legal experts are cautiously optimistic that the laws will be upheld. ¹¹⁰

Prosecutors and police have found broad statutes helpful. The ADL which has drafted model bias crime statutes used by 31 states concluded that heightened penalties "would make it more worthwhile for prosecutors to pursue convictions."¹¹¹ The MCRA was used by the Suffolk County District Attorney to prosecute 123 cases involving 89 defendants from 1981-1987. There were guilty verdicts in 91 cases. ¹¹² Threats, harassment, simple assaults and property offenses which accounted for 119 out of 218 of Boston's bias crimes.¹¹³ These statutes can significantly increase penalties in those types of cases. Furthermore, they send out an important message that crimes with these characteristics are not merely pranks.

¹⁰⁹FLA. STAT. ANN. § 775.085 (1991).

¹¹⁰D. Savage, *Shaky Future for Statutes on Hate Crimes*, L.A. Times, Dec. 15, 1992.

¹¹¹ADL: Hate Crime Statutes: A 1991 Status Report /1991 Audit p.32-33.

¹¹²Lee at 294.

¹¹³BPD.

Another category is Institutional Vandalism statutes. These statutes create a separate offense for damage or destruction of real or personal property of:
houses of worship,
cemeteries and and their analogues,
educational facilities and
community centers.

Houses of worship are frequent targets of bias violence.¹¹⁴ A related category of statutes enacted in about 20 states prohibit disruption of religious services.¹¹⁵

The Supreme Court recently invalidated a municipal law which outlawed the use of bias symbols under certain circumstances.¹¹⁶ In *R.A.V. v. St. Paul*, a landmark 1992 case involving a crossburning targeted at an African-American family, the Court held that a municipal ordinance that prohibited the use of a symbol which "arouses anger, alarm, or resentment... on the basis of race, color, creed or religion or gender" was unconstitutional. The Court held that such acts could be banned, but not in a manner which selectively punishes the idea expressed.¹¹⁷

¹¹⁴In 1991 New York City police documented 33 cases involving these types of religious targets. NYPD BIU. From April through December, 1991 Florida experienced one of the most destructive bouts of arson in American history when fifty churches were burned resulting in twelve million dollars worth of damage. *Newsday*, Dec. 30, 1991 at 15. 115NIAPV Chart.

¹¹⁶Maryland had a dozen verified crossburnings in 1990. Maryland State Police - Criminal Intelligence Division: Racial, Religious and Ethnic Incident Assessment 1990 at 7, Hereinafter, "Md. 1990." New Jersey had five in 1991 along with the 105 crimes involving swastikas and 119 cases of bias graffiti. Annual Bias Incident Offense Report (1991/New Jersey) at 6, hereinafter, "NJ 19--".

¹¹⁷*R.A.V. v. St. Paul, Minn.* 112 S.Ct. 2538 (1992).

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John Harris, a domestic terrorism expert with the FBI, observed in 1987 that "bombings, armed robberies, assaults, and murder" have been carried out to further the cause of right-wing bigoted extremists, one of the most dangerous manifestations of organized domestic terrorism." Even though the majority of bias crimes are not committed by organized hate group members,¹¹⁸ these groups pose a significant threat because of their deep commitment and the preoccupation of many of them with weapons and violence. Although overall membership in hate groups, like the Klan, is down significantly from their their high levels of a decade ago the apparent erosion in membership has been halted, aided by a change in image and tactics.¹¹⁹ Klanwatch, an established hate crimes tracking organization, reported 346 hate groups in existence in 1991, a 27% increase from 1990 with the largest increases in "established Ku Klux Klan and Neo- Nazi (including "skinheads") organizations."¹²⁰ In 1992 the group reported a decline in Skinhead groups, but an increase in the number of Klan groups and bias homicides.¹²¹

¹¹⁸See e.g., NJ 1988 Report & Md. 1990

¹¹⁹ Perhaps in emulation of David Duke some groups have tried to soften their image in an attempt to go mainstream: "We don't hate anybody - [w]e just love the white race," Knights Of The Ku Klux Klan director asserted in 1991. The rhetoric of other leaders, though, is sounding more violent. Confederate Knights Imperial Wizard Terry Boyce urged adherents to learn to "kill 1,000 ways" as part of an effort to eliminate white traitors and prepare for an impending race war. " This incredibly violent rhetoric that some of the groups and its leaders have adopted is very disturbing," observed Klanwatch Director Danny Welch."Klanwatch Intelligence Reporter Feb. 1992 at 3.

¹²⁰Id.

¹²¹ Id. , Feb. 1993 Over the last decade some of the most pernicious hate groups such as United Klans of America, and White Aryan Resistance (WAR) were devastated by seven and twelve and a half million dollar civil judgments respectively. Other groups such as The Order, The Covenant, and Aryan Nations were ravaged by the unprecedented success of federal prosecutors in obtaining convictions for armed robberies, bombing, and murder. Hate at 2,18.

State criminal statutes prohibiting paramilitary training have been a particularly effective weapon for authorities fighting the most violent organized hate groups. In 1980 ADL investigations established the presence of secret paramilitary training camps in Alabama, California, Connecticut, Illinois, North Carolina and Texas. In 1985 David Tate, a Neo - Nazi trained in military weaponry shot two Missouri Troopers after a car stop, killing one. Authorities found six machine guns, four assault rifles, 35 hand grenades, numerous handguns, half case of dynamite, and a bottle of nitro-glycerin in his truck.¹²² In 1987, Mr. Harris noted that the most violent hate groups "are engaged in demonstrating and distributing propaganda and they participate in paramilitary and survivalist training." In Texas heavily armed and trained Klansmen were terrorizing Vietnamese fishermen. Most states which enacted paramilitary training statutes relied on an ADL model. The model prohibits training in the area of firearms, explosives and techniques capable of causing injury or death. The conduct is also prohibited if the person intends, knows or has reason to know that it will be used in the furtherance of a civil disorder.¹²³ The statute allows for lawful conduct such as self defense classes and target shooting. Prosecutors must prove intent to further a civil disorder to gain a conviction.¹²⁴ By 1987, 18 states passed legislation and it was noted that "[p]aramilitary training by hate groups has been reduced to virtually zero". In Florida, Klansmen were convicted for violating the state's paramilitary training statute. In North Carolina white supremacists were convicted of disobeying a federal

¹²²Author's Police Training materials at 1.

¹²³ADL Paramilitary Training Statute: A Response to Extremism, at 5.

¹²⁴Id. at 6.

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court order prohibiting them from violating that state's statute.¹²⁵ As of late 1991 26 states had legislation specifically addressing paramilitary training.¹²⁶ Some states heighten penalties when a hate crime is committed or planned by more than one individual.¹²⁷ A few states ban secret societies,¹²⁸ but these laws may violate the First Amendment's guarantee of freedom of association. California arguably has the most comprehensive set of criminal bias statutes of any state in the union. The centerpiece is a broad criminal civil rights statute which criminalizes intentional interference with civil rights based on a wide range of characteristics. The laws

carpenter to build a house with no lumber, nails, or equipment."¹²⁹

Among the other strong points of the California laws are:

1. Inclusion of sexual orientation
 2. Availability of civil relief including damages and injunctive relief
 3. Parental Liability
 4. Heightened sentencing including those for past bias convictions and those involving multiple offenders
 5. Low dollar thresholds for property damage
 6. Provision for victim confidentiality in incident reports to protect gay or alien victims from eviction, discharge and invasion of privacy.
- The BPD for instance will not report undocumented aliens to the INS.¹³⁰

¹²⁵Hate at 3.

¹²⁶ NIAPV Unpublished Chart on file with author.

¹²⁷CAL. PENAL CODE §422.75

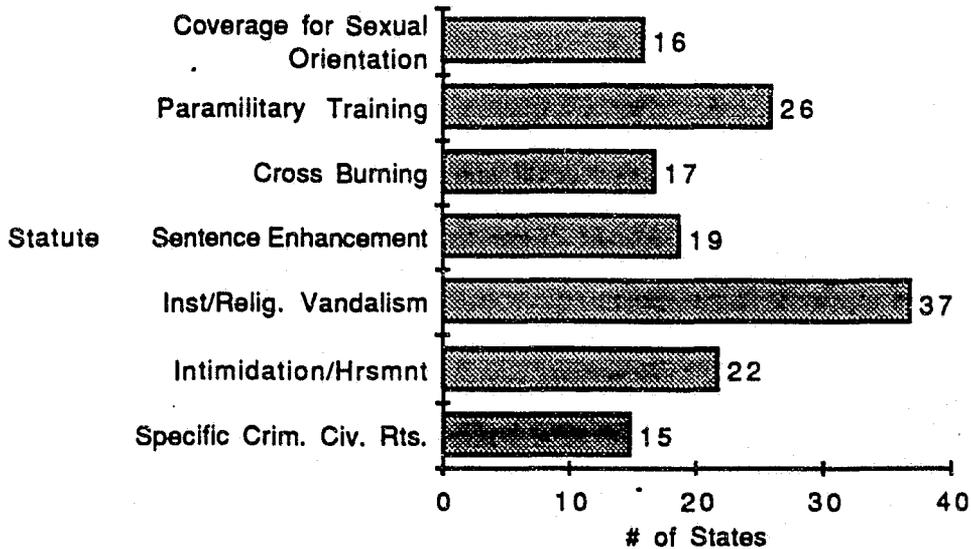
¹²⁸NIAPV, Striking Back at Bigotry: Remedies Under Federal and State Law for Violence Motivated By Racial Religious and Ethnic Prejudice (1986 and Supp. 1988) at 78.

¹²⁹William Johnston at Northeastern Conference.

¹³⁰Johnston Interview

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State Bias Laws



Sources: NIAPV and ADL- used with permission as of 1991. Note: In 1992 sexual orientation was added to a strengthened NY statute.

California Civil Code § 52.1 (Bane Civil Rights Act) (a) and (b) allow for injunctive relief in the case of active interference with the exercise of a various broad rights. Failure to comply with an injunction is punishable as a misdemeanor under California Penal Code §422.9. Victim can sue for damages and injunction in the same action.

California Penal Code § 302 is a misdemeanor which prohibits willful disruption of a religious ceremony.

California Penal Code § 422.6 prohibits through threat, injury, or property damage the interference or intimidation of a person in the exercise of various broad rights based on race, color, religion, ancestry, national origin, sexual orientation, gender or disability. Punishment is up to \$5000 and/or one year in jail.

California Penal Code § 422.7 covers the same prohibition as §422.6. This provision is to be used when an injury results or when there was apparent

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violent ability to commit such; when property damage exceeds \$500, or in cases where offender has previously been convicted under § 422.6. § 422.7 provides for up to one year incarceration and/or up to a \$10,000 fine if the underlying crime is not already punishable by state imprisonment.

California Penal Code § 422.75 provides for sentencing enhancements of 1 -3 years for felonies motivated by hatred against the forementioned groups. It also provides for heightened penalties of 2 - 4 years if the felony hate crime was committed in concert with another. The statute also tacks on a year if the defendant had a prior hate crime conviction.

California Penal Code § 594.1 makes it unlawful for a minor to purchase or any person or entity other than a parent to provide a minor with aerosol paint containers in excess of six ounces.

California Penal Code § 594.3 (a) makes it a misdemeanor to knowingly desecrate buildings used primarily for religious purposes. Under (b) if the act is to deter the free exercise of religion based on race, color, religion, or national origin the offense becomes a felony.

California Penal Code § 1170.75 creates an aggravating circumstance when a felony or attempt is committed based on the victim's race, color, religion, nationality, country of origin, ancestry or sexual orientation. This section excludes offenses under §1170.8.

California Penal Code § 1170.8 (a) creates an aggravated circumstance when certain conditions are met in the course of a robbery or assault committed in a religious building. (b) creates an aggravated circumstance in cases of arson or attempt of a religious building.

California Penal Code § 1170.85 (a) has to do with an aggravating circumstance involving the intimidation of witnesses in various proceedings. (b) creates an aggravating circumstance if victim is vulnerable to a crime based on age or disability.

California Penal Code § 11410 is a legislative declaration dealing with permissible and impermissible advocacy.

California Penal Code § 11411 makes it a crime under most circumstances to burn crosses or display hate symbols such as a Swastika on the property of another. Punishable by up to \$5,000 and / or one year of incarceration. Subsequent convictions are punishable by up to \$15,000 and one year of incarceration.

California Penal Code § 11412 makes it a felony under certain circumstances to attempt or cause another to refrain from exercise of religion through threat or violence.

California Penal Code § 11413 makes it a felony punishable by three, five or seven years incarceration and up to a \$10,000 fine to terrorize through the bombing or arson of various facilities including houses of worship.

California Penal Code § 11460 prohibits the private paramilitary activity often undertaken by hate groups.

ADDRESSING YOUTHFUL OFFENDERS

It is also important for the laws to recognize and address the relative youth of many of these offenders. In New York City the median and mean age for bias offenders were 18 and 20 years old, compared to 27 and 25 years of age for nonbias perpetrators.¹³¹ New Jersey recently became the first state to systematically address this issue by creating mandatory statewide sentencing programs which concentrate on alternative sentencing for certain bias offenders. Standard punishments are often ill-suited for nonviolent youthful bias offenders. A recent Massachusetts study found that "judges

¹³¹Garafolo at 8.

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report a high level of frustration at the lack of intermediate sanctions..." Imprisonment is most often disfavored because of prison overcrowding, youthfulness, or the lack of injury.

Furthermore jail does not address the underlying mental and emotional roots which cause youths to behave this way. The Massachusetts study observed that standard responses alone fail "to channel aggression in constructive ways and... rationally restructure attitudes..."¹³²

New Jersey requires that young offenders complete a mandatory program upon a finding of guilt. The Massachusetts proposal includes screening, monitoring, counseling, education, restitution, and cross cultural activities.¹³³ After authorities in New York found young bias offenders were generally given probation or no punishment, a program of alternative community sentencing was implemented for certain low level offenders.¹³⁴ In Montgomery County, Maryland authorities have found that structured alternative community sentencing and education programs involving parents, have been successful when carefully implemented.¹³⁵

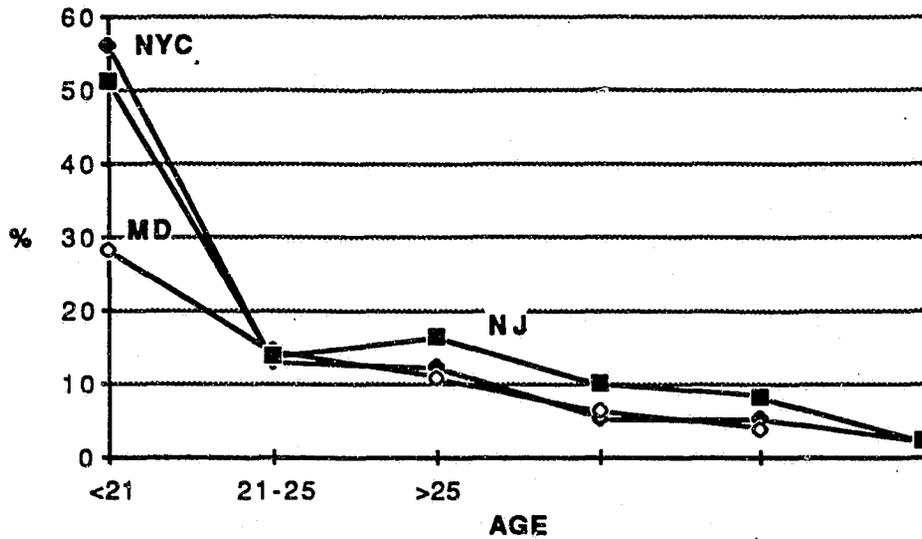
¹³²Unpublished ADL- Northeastern University Study on file with author.

¹³³Telephone Interview with Paul Goldenberg, New Jersey State Official (Feb. 1992).

¹³⁴McNeil, Bias Crime: A Special Target for Prosecutors, The Prosecutor at 14.

¹³⁵Telephone Interview with Elyse Rothschild, Montgomery County Human Relations Commission. (Dec. 1991), Hereinafter, "Rothschild Interview".

AGE OF BIAS OFFENDERS



NOTE: No ages are listed in the over 25 categories because of slight variations in age cutoffs between different jurisdictions.

CIVIL INJUNCTIONS

Civil injunctions offer one of the most effective means available to combat bias violence. Their broad protections and swift enforcement mechanisms send a potent message to victims and offenders. The relevant MCRA provisions punishes violations with a maximum \$5000 and fine and two-and one-half years of incarceration. The prison sentence is a maximum of ten years and the potential fine is \$10000 if an injury occurs pursuant to the violation. Offenders can be prevented from pursuing all kinds of contact to person or property. The clarity of the injunction order makes enforcement by police an a straightforward matter.¹³⁶

¹³⁶McDevitt Report at 14.

POLICY, TRAINING AND COORDINATION

While implementation is far from complete law enforcement has taken great strides in the area of departmental policy, procedure and training. New Jersey, Maryland, Boston, New York City were among some of the first jurisdictions to implement formal police policies specifically related to bias crimes. NOBLE, NIAPV, the International Association of Chiefs of Police (IACP) and the ADL have also been in the forefront of private organizations which have assisted police in formulating policies. As early as 1985 NOBLE urged every police department adopt specific policy statements as a necessary first step. That same year a NOBLE survey of large departments and those departments deemed to have experienced bias crime episodes found that only half had distinct policies and specialized reporting. Only 58% had special investigations for bias crimes.¹³⁷ By 1988 the ADL observed, "[M]any law enforcement agencies have been slow to establish specialized policies and procedures for investigation or documentation for these crimes."¹³⁸ Today most large departments have formal bias policies, but many other departments do not.¹³⁹ As a management tool it sets departmental priorities and sends out a clear message to officers and citizens. The U.S. Commission on Civil Rights observed in a 1983 report:

¹³⁷NOBLE BOOK at 92.

¹³⁸Hate Crimes Policies and Procedures for Law Enforcement, ADL at 1.

¹³⁹A representative sample of departments with formal policies includes Nassau County & Suffolk County, New York; Los Angeles; San Francisco; San Jose, Seattle, Washington, D.C., Montgomery County, Maryland; Boston, Chicago, Detroit, as well as state law enforcement in Maryland, Connecticut, Georgia, New Jersey, Virginia, Minnesota, Rhode Island and Pennsylvania.

Effective police responses....are necessary to keep such [bias] incidents from spreading. If the police fail to respond or respond in ways that clearly demonstrate a lack of sensitivity, perpetrators can interpret the police inactivity as official sympathy or even sanction."¹⁴⁰

Generally these directives consist of a preamble, policy pronouncement, and procedures for implementation.¹⁴¹

POLICY STATEMENTS

Preamble (San Francisco Police Department Special Order 88 - 06)

This order sets forth policies and procedures for recognizing, responding to, and uniformly reporting criminal and noncriminal incidents motivated by hatred or prejudice which are directed against identifiable individuals or groups, and for supporting community efforts to prevent the occurrence of these incidents.

Model Policy Statement Introduction

It is the policy of the Police Department to ensure that all individuals within the jurisdiction of (City) be protected in the exercise of rights and privileges provided under the laws and constitution of the State of _____ and the United States. Accordingly this department will act to ensure that all people within the City of _____ be free from violence, threat, intimidation or property damage due to bias based in whole or in part on race, ethnicity, national origin, religion, sexual orientation [or other characteristic as provided for by law or department directive such as gender, age or disability]. To effectuate these aims this department shall take an active role in promoting peace and tranquility between all groups within our jurisdiction.

¹⁴⁰Intimidation and Violence, Racial and Religious Bigotry In America, U.S. Commission on Civil Rights (1983, 1990) at 17.

¹⁴¹*Id.*, see generally.

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In cases of suspected bias crimes this department will respond promptly with a full investigation and will vigorously enforce all applicable laws.

This department will cooperate and coordinate with other appropriate agencies and community organizations to provide for a comprehensive effort in regard to both criminal and non criminal bias incidents.

This department will collect data relating to bias crimes [and incidents].

Coextensive with this policy this department is implementing specific procedures for all personnel relating to suspected bias crimes. All members will be trained in these procedures and to provide for a professional response to bias crimes. Furthermore, this department will make sure that the conduct of all our personnel will reflect the department's commitment. ¹⁴²

These directives also typically include detailed definitions, criteria for identification and data collection, as well as specific duties for officers of each rank. In formulating and implementing these policies and procedures officials should be wary of crucial details, contextual factors and the fact that these changes are not self executing.

¹⁴²Adapted by author from several policy statements. Note citizenship is not necessary.

THE BIAS LIASON OFFICER'S ROLE IN A COORDINATED RESPONSE

The addition of a bias liaison officer who helps coordinate activity is an important, yet often ignored reform. As previously discussed most departments which have a policy which utilizes a two tier method of identification. Responding officers pass suspected cases to supervisors who at varying levels make a final determination. While a number of larger departments in such cities as New York, Los Angeles, Boston, and San Francisco maintain distinct bias crime units, such entities may be ill-suited for smaller departments because of limited resources and the relatively small number of incidents. In Maryland police have had widespread success in combatting bias crimes without the creation of distinct units. MSP Captain John Cook believes that thorough training, effective policy, coordination, victim support and full investigations are essential irrespective of a department's choice whether or not to maintain a special unit.¹⁴³

Whatever the size of the department the installation of a bias liaison officer fills an important void. This added layer provides for increased effectiveness for identification in two important ways. First, there can be review of all suspicious cases whether or not they were referred to a supervisor. Second, a third tier is a necessary component of an interagency approach. The liaison officer would be part of an interagency chain. There will be bias liaison analogues in other relevant agencies, notably the district attorney's office, HRC, school district, and mayor's office. It is not necessary that the liaison

¹⁴³Cook Interview

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officer devote her time exclusively to bias matters. A community affairs or precinct administrative officer could fulfill these duties. The bias liaison officer would be available by beeper to respond incidents, if necessary. Adhering to the standard used with bias units the bias officer would work directly under the chief. The placement of the bias entity close to the chief serves two purposes says Commander Markman, "It highlights the priority given to these crimes and provides a direct communication link with the department executive."¹⁴⁴ The bias liaison officer would also be the contact person in the police department for religious and community groups. The bias liaison person would meet on a regular basis with her analogue in other agencies to keep abreast of community conditions. Captain Cook urges departments, "If they don't do anything else, get the liaison person."¹⁴⁵

INTERAGENCY COOPERATION

Perhaps most important, though is the bias liaison officer's role in information retrieval and referral. In Montgomery County, Maryland and Santa Clara County, California there are laws and procedures which mandate notification between HRCs and police.¹⁴⁶ In Montgomery County there is a Memorandum of Understanding between the HRC and the police calling for prompt cross notification of significant developments. It is crucial that when a bias incident occurs that cross notifications be made, particularly between HRCs,

¹⁴⁴Markman at Northeastern Conference.

¹⁴⁵ Cook Interview.

¹⁴⁶ Montgomery County "Memorandum of Understanding"/ Santa Clara County District Attorney's Office.

police and prosecutors. Relevant agencies should set a time limit for cross notification of respective bias liaison personnel. In New Jersey, for example prosecutors must be notified of suspected bias incidents within 48 hours.¹⁴⁷ Because of the added difficulty of proving motivation police-prosecutor coordination is crucial. Similar methods of coordination implemented in regard to gangs, sex crimes, homicide, and arson have resulted in more effective prosecutions. Central to any strategy is prompt notification of prosecutors so that police will be guided in their investigations, interrogation, and evidence collection. ¹⁴⁸ In New Jersey prosecutors monitor bias investigations by police. This is because victim's are frequently scared and reluctant and motivational evidence is often intangible. Santa Clara County's District Attorney regularly organizes meetings with police and other officials as part of its newly created Intraagency Task Force on Bias Crimes.

HRC's are important because they are often aware of underlying tensions before police and prosecutors. In New York City, the HRC has several field offices, a Bias Response Team and numerous investigators throughout the city to monitor conditions. Furthermore, they can be a valuable resource for victims after incidents occur. In Montgomery County a specialist from the HRC assists bias crime victims in all aspects of their case. The HRC representative assists with outreach, community support, counseling, restitution, and accompanies victims in their foray through the

¹⁴⁷ Mulvihill at Northeastern Conference.

¹⁴⁸NIJ Report No. 214, May/June 1989. Police -Prosecutor Teams: Innovations In Several Jurisdictions.

justice system. These counselors help victims get over their trauma while they make it easier for police and prosecutors to bring a successful case. In other jurisdictions HRCs serve an important intermediate mediation function for relatively minor incidents before they escalate.¹⁴⁹ Says New York HRC Commissioner Dennis DeLeon, "What's important in these cases is some form of official adjudication or hearing so victims don't feel abandoned."¹⁵⁰ Unfortunately HRCs are often regarded as less important than other agencies. Many jurisdictions don't even have HRCs and in some of those that do that do their effectiveness is limited by a lack of staff, resources, authority, and coordination with other agencies. Robert Purvis contends:

HRCs are being cut to the bone around the country. These agencies can't keep up. HRCs are underfunded and shunted aside.¹⁵¹

NYC HRC Commissioner DeLeon believes that HRCs could be relied upon more by police departments in bias cases for data, insight and victim support. They often have valuable demographic data and heightened community contact which can assist police in formulating a proactive response.

Schools are in the informational chain because most offenders are of school age and many incidents occur at or are connected to schools.¹⁵² While it may also be obvious to include municipal chief

¹⁴⁹Rothschild Interview.

¹⁵⁰DeLeon Interview

¹⁵¹Purvis Interview.

¹⁵²The Los Angeles County HRC did a study and found that there thousands of incidents occurring in the county's schools. 1988 Los Angeles County HRC Report on School Bias./San Francisco is one of many jurisdictions attempting

executives in the informational chain to coordinate a broad response, experts also advise the importance of involving a public works official so minor paintings and repairs can be quickly effected in cases involving vandalism.¹⁵³ It is also important to have some kind of regional system for the exchange of information on bias crimes, in California, for example, the Hate Crimes Investigators Association serves that purpose.

Lt. Johnston has proposed another type of model for more remote and less populated areas which often lack resources. The model's acronym is D.I.R.T. for Direct Intervention Response Team and is modeled after programs used to fight narcotics dealing. Under DIRT the state attorney general would be empowered to call upon the most able bias crime prosecutors, police, HRC personnel or other individuals in the state to assist local authorities experiencing bias crime difficulties. They would form a coordinated team with at least one ranking official from the municipality requesting the assistance. The involvement of local officials is crucial because of their knowledge of local conditions. Furthermore, by actively participating in the process local authorities will gain valuable insight. The local authorities will be viewed by citizens as being part of the solution, rather than as bystanders. Former New York City Bias Unit Commander Michael Markman, for instance, relied on a system, still in use, where precinct detectives always work on joint investigations with the centralized bias unit personnel.

to implement a comprehensive anti-bias system. Interview with Fred Persily, School Consultant, in San Francisco (Feb. 12, 1992)

¹⁵³Cook Interview.

TRAINING

Ideally, training will increase the effectiveness of officers by familiarizing them with both the problem and their responsibilities. Reforms can only be implemented if officers are aware of them. Many jurisdictions as well as private organizations have developed training for police. These programs are implemented through the academy for recruits and through inservice training for line officers. There is a wide variance relating to the existence and coverage of trainings. Only seven states have enacted laws mandating police training on bias crimes.¹⁵⁴ Large police departments such as Maryland, New Jersey, Montgomery County, Boston, Baltimore and New York City were among the first to implement specific bias crime trainings.

Much of the training in existence today have similar components because they are variances of those pioneered by BPD, NYPD, Maryland, Montgomery County, and NJSP. Generally, these programs cover the following subjects:

- Bias Crime Definition and Background*
- Criteria for Identification*
- Relevant Statutes*
- Civil Rights and the Constitution*
- Departmental Policy*
- Responsibilities of Officers By Rank*
- Data Collection Guidelines*
- Background on Prejudice*
- Intergroup and Community Awareness*
- Victim Support*

¹⁵⁴Unpublished Table courtesy of NIAPV.

*Interviewing Techniques*¹⁵⁵

As important as what is covered is how it is presented. A recent survey of Los Angeles County Sheriffs Officers revealed that 36% felt undertrained for their current position. One third of white officers said they had a diminished tolerance for minorities¹⁵⁶ at the same time the state was experiencing the most dynamic demographic shift in history. Matt Foreman of the Antiviolence Project has developed training on homophobic violence for New York and New Jersey Police describes most bias training programs as "uniformly awful".¹⁵⁷ The following suggestions have been culled from a variety of training experts. According to Lt. Johnston, one of the most prominent bias crime instructors, training should highlight the fact that these are serious crimes with devastated victims who require a prompt professional response. The training should implement well publicized firm policy and procedures. The department's commitment must be effectively articulated by the chief executive.

¹⁵⁵For interested law enforcement executives videos, handbooks, guidelines, and other valuable training information are currently available from a variety of sources for free or at a nominal charge:

ADL - 17 minute VHS Video and Guidebook

NOBLE- Video and Curriculum Guide

Baltimore County, Md Police - Video "Fear that Does Not Fade"

Minnesota POST- Training Manual and companion book

Connecticut State Police- Training Manual

Bay Area Hate Crimes Investigators Association (California) - Manual

Montgomery County, Maryland Human Relations Commission- Training Manual

Maryland State Police- Procedural Handbook

NYPD- Procedures and Anti-gay Bias Training Video

FBI- Training Guide for Hate Crime Data Collection

New York City Gay and Lesbian Antiviolence Project (AVP)- Anti-gay training guide.

¹⁵⁶ Los Angeles County Sheriffs Dept.

¹⁵⁷Foreman Interview

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Lt. Johnston maintains the message must be directed "from the top down" so it will not be dismissed.¹⁵⁸ At least one of the instructors should be an experienced law enforcement officer who will be respected by the ranks. Frame the training in a manner consistent with their sense of duty, patriotism, and fairness. Maintain bias crime training as a distinct module from such subjects as cultural awareness. The department's bias response should be presented as being part of a permanent effort being made at all levels of government. The expanding community service oriented role of law enforcement should be presented as being coextensive with this response.

Bias offenses should be presented in a manner which highlights the immediate threat they pose to law enforcement, as well as to victims and our system of government. Police support can be galvanized by an introduction which includes the facts that police officers have been labeled as an enemy by hardened bigots. It is important to point out that at their extreme bias offenders have threatened, injured, and killed police officers.

The heightened vulnerability which police feel and the support system that exists for them should be contrasted with those of bias crimes victims. The presenter should use graphic photos and descriptive language to capture the devastation that victims experience. Shock photos of bias crime victims should be prominently presented. In addition historical photos of graphic acts of bigoted brutality should also be shown. This accomplishes two

¹⁵⁸Johnston Interview.

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purposes. First, they provide a continuing historical context for these crimes. Second, when the historical shock photos are presented alongside symbols of hate, the officer can "see what the victim sees" even when in cases of "minor" property incidents. Local examples should be recounted. If it is practical to have a victim make a statement that should be done as well. At this point the importance of victim support can be accomplished more effectively. It is important to point out that bias victims are devastated. Still, officers must be reminded that their overall credibility with the community through all interactions is crucial to an effective bias response.

The training should also explain how bias crimes are different - with many important aspects hidden from view. The serial nature, heightened violence, terroristic aspects and community disorder potential should be discussed. The goal is to show the hidden severity which make bias crimes a top priority.

The connection to the exercise of civil rights, the police oath to uphold them and our system of government should be made. Officers should be reminded that these rights apply to all and there is no litmus test for such protection. Since protection does not equal endorsement, all people must be protected if these rights are to have meaning.

Contrast illegal interference with rights with legal interference. Point out that if the police and government must adhere to due process there is no place for criminals to constrain citizens in the

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exercise of their rights. Relate the unacceptability of bias offenses by placing them within the same context as acts of terrorism overseas.

It should be emphasized that while the patrol officer's role is essential, it is not difficult. All acts, even minor ones, which involve any suspicion of bias must be referred to the supervisor- with no penalty for "false positives". It is the supervisor who receives the complex work, not the officer. It should be explained that it is far easier to discard illegitimate complaints after investigation than it is to intercede in legitimate cases after the window of opportunity has passed. Emphasize the importance of early intervention by pointing out these crimes are cowardly acts that are easily deterred by a professional police response.

Lastly, exercises are helpful to help officers identify bias crimes and understand the dynamics of prejudice. It is important to answer all questions candidly.

The Proper Perspective

Over the past decade the most significant management trend has involved a change in what is viewed as the proper role of police within the community. "Community" and "problem oriented policing" invokes a broader mission for police. Under such systems police take a proactive role to responding to negative situations in the community which have a deleterious effect on quality of life. The goal is twofold. First, heighten the overall quality of life in the community by concentrating on conditions which cause fear and distress for residents. There is an amorphous, yet real, fear felt by

citizens, which emanates not from their being the victims of direct violent contact, but from experiencing disorder or threatening behavior. Second, recognize the link between continual disruptive conditions and criminality by acting proactively. Non violent disturbances, derelict automobiles, truancy, litter, congestion, vandalism and the presence of alcoholics or addicts are examples of these conditions.¹⁵⁹

Inspector William Wallace, current NYPD BIIU commander believes that effective bias crime enforcement results from "keeping with the principles of community policing." He finds that while sometimes bias incidents are spontaneous most often they are not, "Oftentimes you'll find that other incidents occur at a location" Inspector Wallace points to an example where a homogeneous group of youths congregated in a park treating it as their own "turf". Inspector Wallace urges executives to: "Get the beat officer to work on the problem and the condition." Central to the concept of community policing is the beat foot patrol officer. A multifaceted solution to the problem of these disorderly included such responses as parental involvement, better youth activities and increased lighting illustrates this proactive perspective.¹⁶⁰

Community policing and bias response are not self executing operations. Today most police departments still rely on the older English paramilitary model where the police role typically involves reactive responses to exigent circumstances and apprehension. There

¹⁵⁹Wilson & Kelling, Broken Windows, Atlantic Monthly, March 1982 at 29.

¹⁶⁰ Telephone Interview with William Wallace, Commander NYPD Bias Incident Investigation Unit (Mar. 5, 1992)

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is always the distinct possibility that measures will be technically ratified but never full implemented. Lt. Johnston is adamant, "You've got to keep the pressure on law enforcement."¹⁶¹ Community policing requires a deep commitment in regard to awareness, interaction, and credibility. Studies show that in most large departments there is a disproportionate number of brutality complaint against a small number of officers.¹⁶² Perceptions of brutality and prejudice diminish police credibility, hampering their overall effectiveness in all interactions, not just with bias crimes. Captain Cook observes, "The perception of bias by the police is a part of it [the problem]."¹⁶³ Departments often do little to discourage prejudicial behavior among patrol officers and make minimal effort to enhance promotional requirements in this area. Most departments are not heterogeneous enough to reflect the communities in which they serve¹⁶⁴. Police departments are not doing enough to ensure that citizen complaints of all kinds get to them. This problem can be addressed by aggressive outreach to established community and advocacy groups¹⁶⁵ as well as by improved multilingual access to police by victims.¹⁶⁶ Police departments must make better effort to stay abreast of developments within the community. To that end the police should shift their perspective. According to Dennis DeLeon the predominant departmental view should change resulting in the

¹⁶¹ Johnston Interview.

¹⁶² Report of the Independent Commission on the Los Angeles Police Department (Summary) at 4.

¹⁶³ Cook Interview.

¹⁶⁴ Intimidation and Violence at 28.

¹⁶⁵ Generally, Johnston and DeLeon Interview

¹⁶⁶ Law Enforcement News Sep. 30, 1990 at 3. Article about availability to police of translators from AT&T.

establishment of "a greater cooperative process".¹⁶⁷ Community problem solving should involve many agencies and organizations. The traditional police role as an autonomous entity which primarily responds to specific exigent calls for service will hamper this response if left in its present form. Accordingly, other agencies should work to improve their awareness, response and coordination. One thing is apparent, old methods do not respond to community problems, like bias crimes. As our expectations of our police changes, so must their ability to meet these new challenges.

The assistance of the following agencies & organizations is appreciated and noted:

NYPD

Boston Police Dept.

NYCHRC

NIAPV

FBI - Uniform Crime Reporting Section

ADL

SPLC

NYC Anti-Violence Project

Northeastern Univ.

Dr. Jack McDevitt

Robert Purvis, Esq.

Montgomery County, Maryland

Calif. Fair Employment & Housing Comm.

¹⁶⁷DeLeon Interview.

Ann Noel, Esq.

Anastasia Steinberg, Esq., Santa Clara District Attorneys Office

LA County HRC

Maryland State Police

Professor Robert Weisberg

Stanford Law School

Mr. Dan Bibel- Mass. UCR

NOBLE

BIAS CRIME-DEFINITION

WHAT - An act of:

Intimidation
Harassment
Physical Force or Threat of Physical Force

WHO - Against a:

Person
Family
Property
Supporter

WHY - Motivated in whole or in part by hostility based on

Race/Color
Ethnicity
Nationality
Ancestry
Religion
Sexual Orientation
Gender
Disability

PURPOSE:

To Deter the exercise of any right or privilege
provided under the

LAWS or
CONSTITUTION

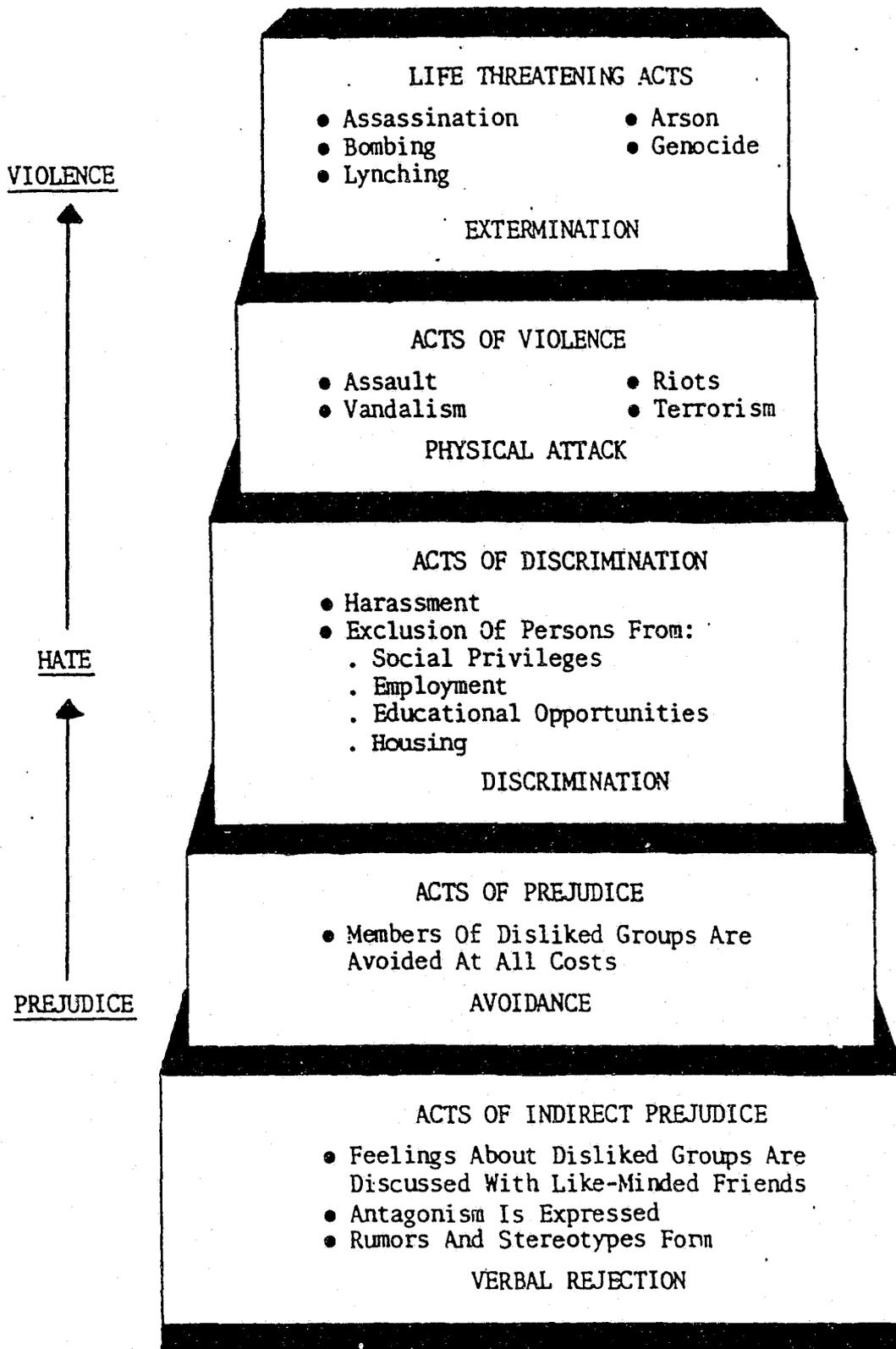
of the UNITED STATES or
CALIFORNIA

GENERALLY RELATE TO: Life, Liberty, Pursuit of Happiness

EXAMPLES OF PROTECTED RIGHTS

- . Association
- . Assembly
- . Due Process
- . Education
- . Employment
- . Equal Protection
- . Expression
- . Freedom from Violence
- . Holding Public Office
- . Housing
- . Privacy
- . Speech
- . Travel
- . Use of Public Facilities
- . Voting
- . Worship

H A T E / V I O L E N C E P Y R A M I D



CRITERIA FOR IDENTIFYING A BIAS INCIDENT

1. The motivation of the perpetrator
2. The absence of any motive.
3. Perception of the victim
4. The display of offensive symbols, words, or acts.
5. The date and time of occurrence (corresponding to a holiday of significance - i.e. Hanukkah, Martin Luther King Day, Chinese New Year, Tet New Years Celebration, Gay and Lesbian Freedom Day Parade)
6. Common sense review of the circumstances surrounding the incident (consider the totality of the circumstances)
 - A. Groups involved in the attack
 - B. Manner and means of the attack
 - C. Similar incidents in the same area against the same victim
7. Statements made by the perpetrator.

QUESTIONS TO BE ASKED:

1. Is the victim the only group member or one of only a few in the neighborhood?
2. Is the victim from one distinct group and the perpetrator from another?
3. Did the victim recently move to the area?
4. If multiple incidents have recently occurred, do all victims belong to the same group?
5. Has the victim been involved in a recent public activity that make him or her a target?
6. What was the modus operandi? Is it similar to other confirmed incidents?
7. Has the victim been subjected to incidents in the past?
8. Has there been recent news coverage of similar incidents?
9. Is there an ongoing neighborhood problem that may have spurred the event?
10. Could the act be retribution for some conflict with neighbors or area juveniles?
11. Did the perpetrators distribute or carry hate literature or belong to a hate group?

BASIC RESPONSIBILITIES OF RESPONDING OFFICER:

1. Respond Promptly
2. Apprehend perpetrator or keep incident from escalating (if applicable)
3. Notify Supervisor
4. Preserve Crime Scene

Protect any evidence (Cross, literature, spray paint can, broken bottle)

If statements were made, ascertain what they were as early and as thoroughly as possible.

5. Stabilize the victim - give physical & emotional first aid

Victims feel:

Degraded

Isolated

Frightened

Suspicious of others

Powerless

Sad

In a state of denial

Do the following:

- a) Maintain a non-critical, non-judgmental attitude.
- b) Permit the victim to ventilate.
Remember this might very well be one of the worst experiences of their lives. The hate crime is a degrading experience which strips them of their dignity.
- c) Be supportive throughout the process: Make it known that this is a priority. Don't make it a double victimization. Victims need to be reassured that this is important to the police.

(Cont'd)

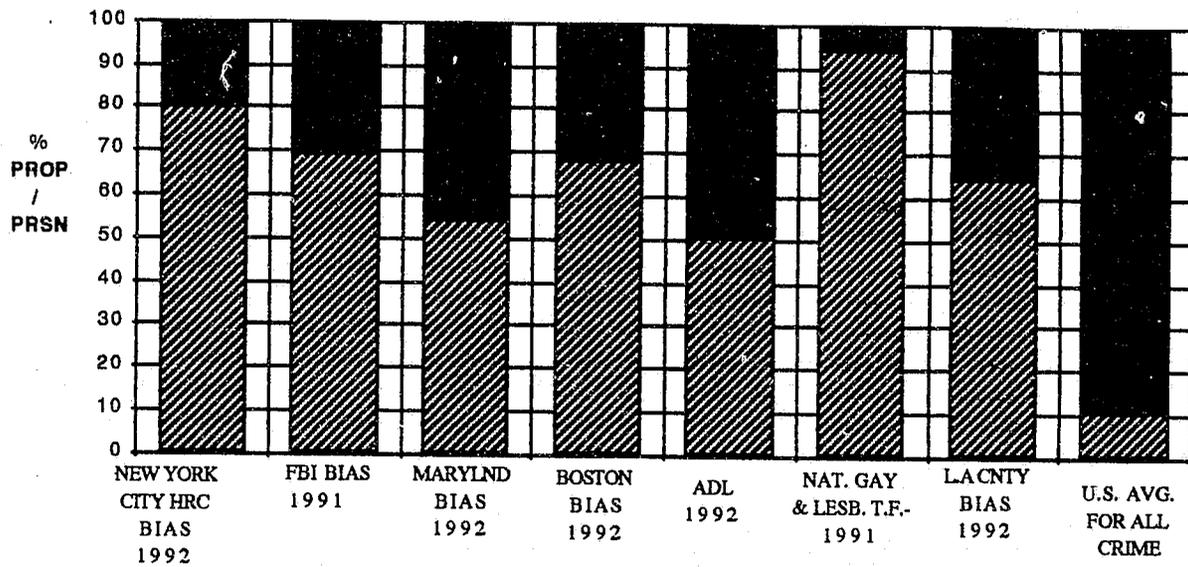
- d) Responding officer should provide the victim with information about civil remedies available, the phone numbers of the victim witness coordinator and the local Human Relations Commission or other appropriate community groups.
- e) Detective or supervisor should notify District Attorney responsible for prosecuting hate crimes as soon as possible - within 48 hours.
- f) Department should conduct a follow up visit within the week - inquire as to referrals.
- g) Department or Chief should collect relevant telephone numbers for referrals.

6. Conduct Preliminary Investigation

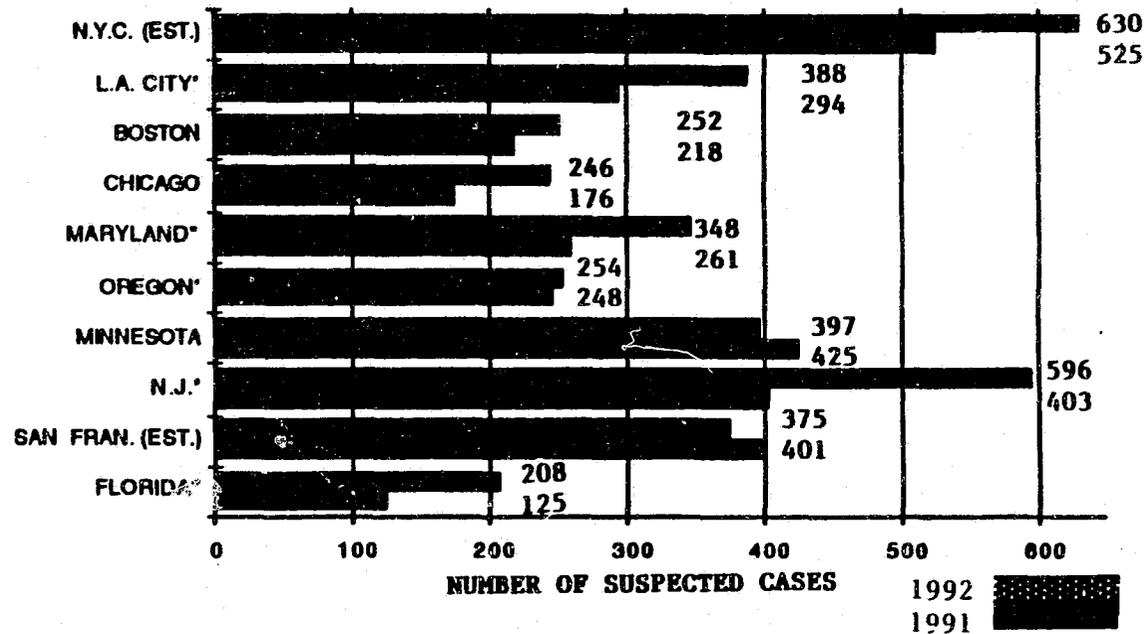
Knock on doors in the neighborhood seeking information about the incident and expressing concern (unless confidentiality or investigative concerns override). This sends a message to the community, the victim & the perpetrator.

7. File an appropriate report.

PROPERTY/PERSON RATIOS FOR U.S. CRIME AVG. & BIAS CRIMES



**STROOCK & STROOCK & LAVAN NATIONAL LAW ENFORCEMENT
SURVEY OF BIAS CRIMES (1992/1991)**



NOTE: See Full Report For Details
 *Refers to partial year comparisons. Many figures are provisional.
 To the extent possible definitions have been standardized.

Hate Crimes Up 25%

Hate crimes in the United States increased an average of 24.4 percent from 1991 to 1992, according to a survey of 18 representative jurisdictions released last week by the Los Angeles office of the national law firm of Stroock & Stroock & Lavan. The results were:

SUSPECTED BIAS CRIME CASES

Selected Jurisdictions
(See Endnotes)

Jurisdiction	1991	1992	Percent Change
New York City	525	630	+20.0
Los Angeles City (through 3rd quarter)	294	388	+32.0
Boston	218	252	+15.6
Chicago	176	246	+39.7
Maryland (Jan-May)	261	348	+33.3
Oregon (Jan-June)	248	254	+ 2.4
Minnesota	425	397	+ 6.6
New Jersey (Jan-June)	403	596	+48.0
San Francisco	401	375	- 6.5
Florida (Jan-June)	125	208	+66.4
AVERAGE			+24.4

BREAKDOWN OF BIAS CRIMES

By Victim or Type of Prejudice

Chicago		Los Angeles (Through 3rd quarter)	
Racial	165	Racial	+255
Religious	15	Religious	+ 53
National Origin	30	National Origin	+ 34
Sexual Orientation	36	Sexual Orientation	+ 46

Minnesota		Oregon (Jan.-June 1992)	
Racial	335	Racial	+145
Religious	19	Religious	25
National Origin	10	National Origin	34
Sex	4	Sexual Orientation	49
Sexual Orientation	29	Handicap	1

Boston		New York City (Through 10/20/92)	
Racial	210	Racial	225
Sexual Orientation	32	Religious	146
Other	10	National Origin	25

Florida (Jan.-June 1992)

Racial	139
Religious	18
National Origin	20
Sexual Orientation	31

The survey, the first multi-jurisdictional survey for 1992, is part of a second United States Supreme Court brief being prepared by Stroock & Stroock & Lavan. The brief is being filed on behalf of 11 government agencies and civil rights organizations in support of Wisconsin's bias crime penalty enhancement statute.

Eight of the 10 jurisdictions surveyed reported increases, ranging from 2.4 to 66.4 percent. The highest was Florida with a 66.4 percent increase. The two jurisdictions reporting declines, Minnesota and San Francisco, reported a drop in incidents of about six and-a-half percent each.

The main factors contributing to the upswing were the economy, the Rodney King incident, demographic changes the persistence of negative stereotypes and acceptance of violence as a way to handle disputes," noted attorneys Henry Silberberg and Brian Levin.

The survey used the best available figures. The jurisdictions

See 'Hate Crimes' on page A-11

Hate Crimes ...

(continued from page A-2)

were selected to minimize the vagaries present with less well established reporting systems. Less well established systems often experience initial "reporting effect" increases which result from increased efficiency and victim reporting rather than verifiable increases in the overall number of incidents. In addition, some groups like gays, new immigrants and Asians are not completely represented in this survey due to significant underreporting.

Criteria for selection included level of participation by relevant reporting units, length of time collecting hate crime data, and number of incidents relative to population size over an extended time period. Among the organizations participating were New Jersey State Police; Los Angeles Police Department; Chicago Department of Police; Boston Police Department, Community Disorders Unit; Maryland State Police; San Francisco Police Department; Minnesota Department of Public Safety; Law Enforcement Data System-Oregon Uniform Crime Reporting New York City Police Department, and the Florida Department of Law Enforcement.

Stroock & Stroock & Lavan is headquartered in New York and has offices in Los Angeles, Miami, Washington and Budapest.

ENDNOTES

- Chicago** Only those cases labeled "bonafide," undetermined and "open" were enumerated.
- New York** Refers to such cases as "suspected" bias cases. These are estimates.
- Maryland** Counts a small number of non-criminal incidents in its total figure. Numbers are "provisional" and "preliminary" and refer only to verified cases.
- Boston** Counts all cases investigated by Community Disorders Unit, of which about one quarter turn out to be not motivated by bias.
- Minnesota** 1992 figure will increase because not all agencies have reported.
- Oregon** While Oregon includes data on crimes motivated by prejudice based on political/beliefs and economic/social status as bias crimes, those figures are deleted in this tabulation.
- San Francisco** Numbers are estimates.
- Florida** These figures are "preliminary" and that sexual orientation was just added to the 1992 reporting period. The percentage change if sexual orientation wasn't included in the 1992 tabulation is 41.6.
- Los Angeles** LAPD counts a small number of non-criminal incidents in their reports which have been deleted from this tally.

LOS ANGELES SENTINEL

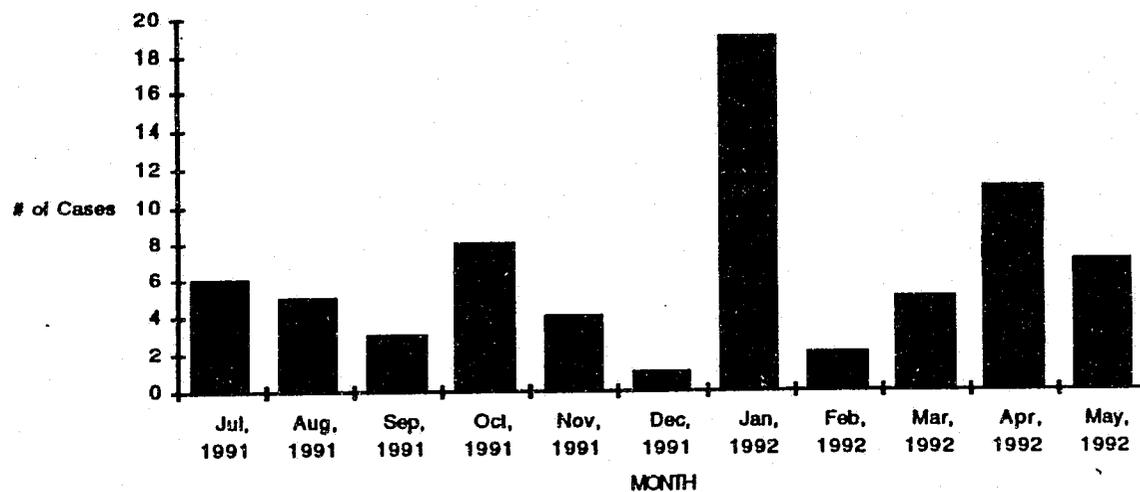
LOS ANGELES, CA
WEEKLY 23,866

JAN 28 1993

BURRELLE'S

370 6x
6x

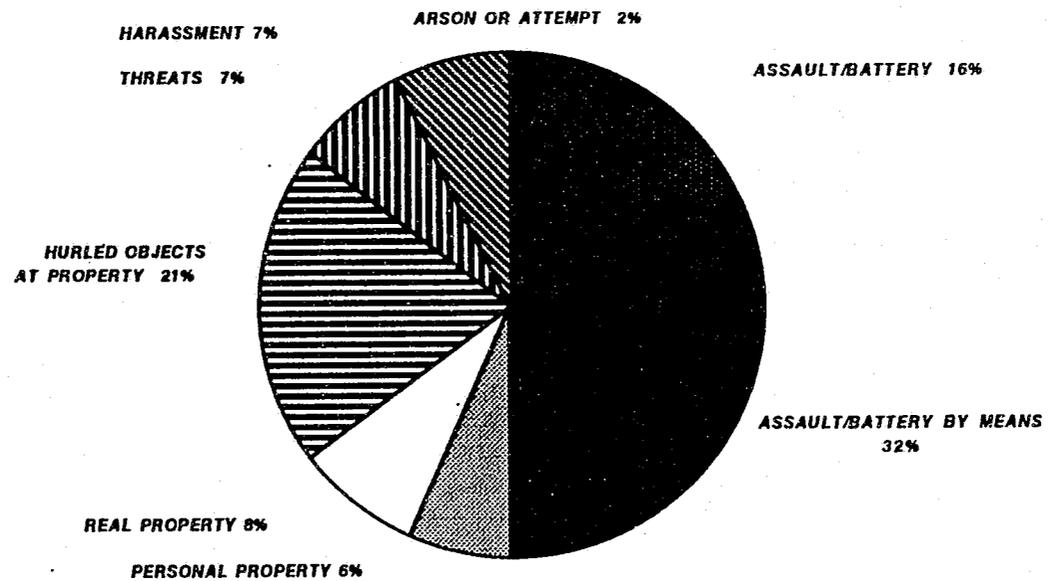
THE CONFLICT GENERATING POTENTIAL OF BIAS CRIMES
The Bronx, New York 1991-1992



NOTE: "Trigger" Incident Took Place In January 1992

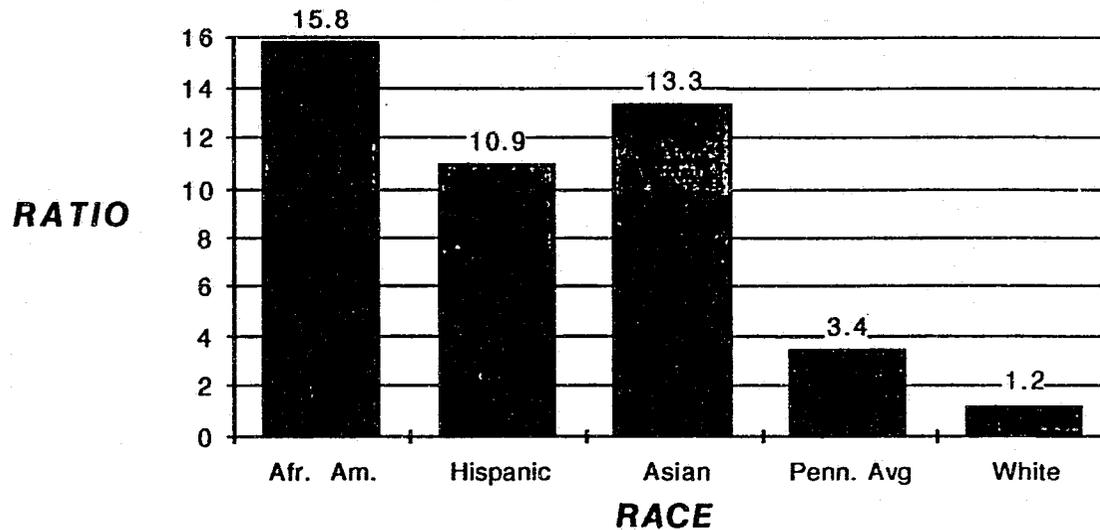
Source: New York City Police Department

BOSTON BIAS CRIMES BY TYPE 1978 - 1991



Source: Boston Police Department Community Disorders Unit.
Chart reprinted courtesy of Stanford Law & Policy Rev.

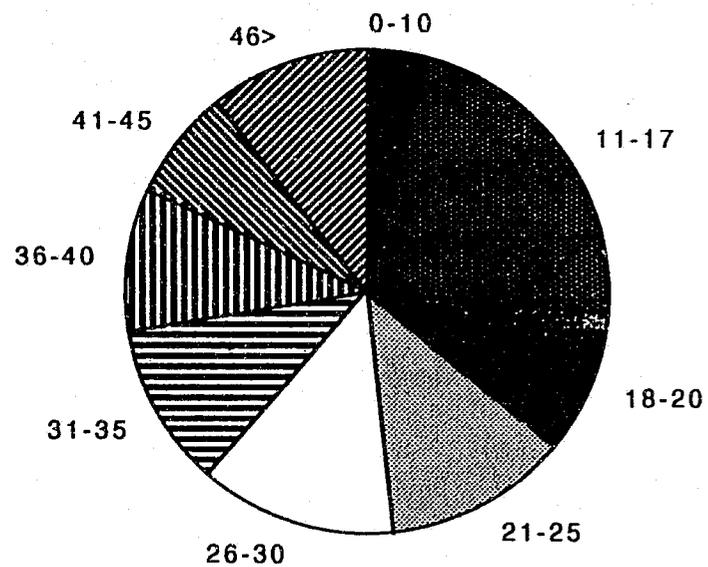
DISPROPORTIONATE IMPACT OF BIAS CRIMES
BY RACE IN PENNSYLVANIA



NOTE: Numbers Reflect victimizations Per 100,000 people.

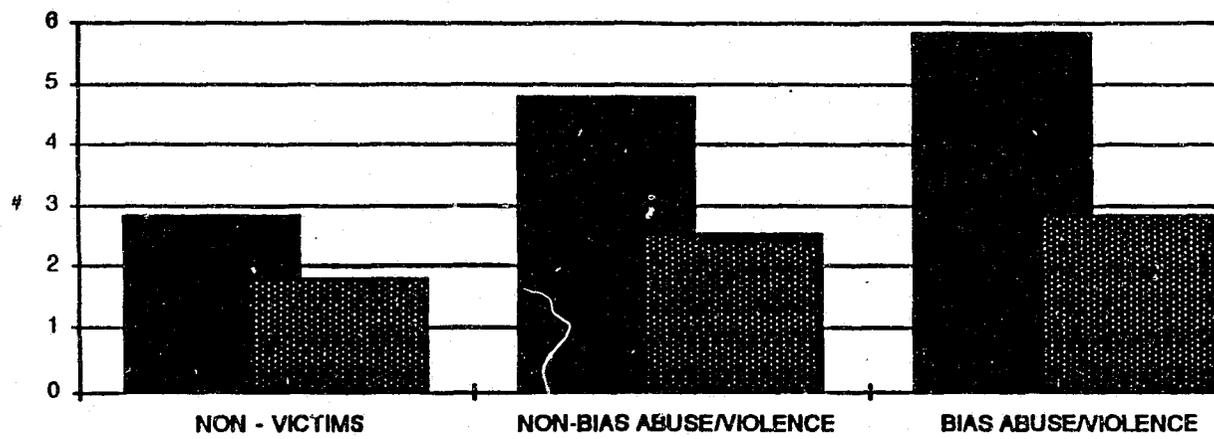
SOURCE: Pennsylvania Attorney General, Hate Crimes
Report 1990-1992 (1992)

**BIAS CRIME VICTIMS BY AGE
NEW JERSEY (1991)**



**SOURCE: New Jersey State Police, 1991
Bias Incident Report 7 (1992)**

NEGATIVE PSYCHO-PHYSIOLOGICAL SYMPTOMS/
DEFENSIVE BEHAVIORAL CHANGES
BY VICTIMIZATION

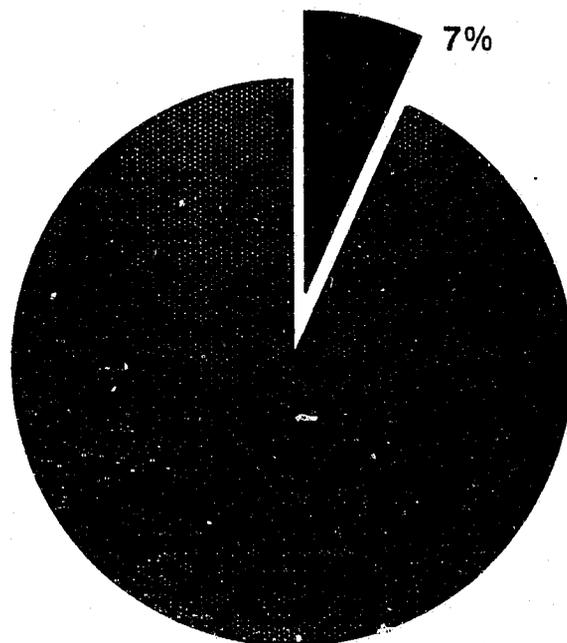


STRESS INDICATOR *Left : Psycho-phys./ Right: Defensive Behaviors*

NOTE: The study measured the number of physiological and psychological stress factors along with the number of behavioral changes that individuals experience in different circumstances.

Source: National Institute Against Prejudice & Violence.

PERCENTAGE OF UNITED STATES POPULATION
EXPERIENCING BIAS ABUSE IN ONE YEAR



NOTE: Includes Criminal and Non-Criminal Incidents

SOURCE: National Victimization Survey, 1989