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The Prosecution of Hate Crimes

The Limitations of the Hate Crime Typology

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Since the development of bias crime legislation over the past few decades, scholars have debated the merits of the legislation and questioned its enforcement.[1] In light of such concerns, this study presents characteristics of all cases prosecuted as bias crimes in a New Jersey county between 2001 and 2004 and applies the hate crime typology originally developed in 1993. Results show that, in this jurisdiction, the typology is an inadequate tool for classifying cases prosecuted as hate crimes. Approximately one third of the cases are unclassifiable according to the typology. Findings indicate that the typology is useful for understanding cases in which bias is the sole motivation but inadequate for application to the many cases in which bias is a peripheral motivation.

Keywords: *bias crimes; hate crimes; crime typology; prosecution of hate crimes*

O ver the past few decades, there has been increased public debate concerning bias-motivated crimes as well as the development of legislation in virtually every state to combat such crimes (Jenness & Grattet, 2001). Currently, despite the president's veto threat, a bill is pending in Congress that will add gender, sexual orientation, and gender identity to the federal hate crime legislation (Stout, 2007). Despite the proliferation of legislation designed to combat hate crimes, few empirical studies have addressed the prosecution of hate crimes.

In an effort to fill the void, this article contributes to the literature in two ways. First, it examines court data for all cases referred by investigators for prosecution as bias crimes in one New Jersey county between 2001 and 2004.

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These cases represent 5% of the 643 cases referred to investigators as potential bias crimes. Second, it appears that this is the first empirical study applying Levin and McDevitt's (1993, 2002) hate crime typology to cases occurring outside of Boston. Preliminary findings indicate that the typology is incomplete because it fails to account for a large number of cases that were prosecuted as bias crimes in this jurisdiction.

In general, bias crimes are defined as crimes "that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity" (Federal Bureau of Investigation [FBI], 2006). According to the most recent *Uniform Crime Report*'s hate crime statistics, 8,380 hate crime offenses had occurred nationwide in 2005. However, scholars agree that bias-motivated crimes are underreported (Berk, Boyd, & Hamner, 1992; Garcia, McDevitt, Gu, & Balboni, 2003; Herek & Berrill, 1992; McDevitt et al., 2000). For example, Southern Poverty Law Center (SPLC) has estimated as many as 50,000 bias-motivated crimes per year, whereas the findings of National Crime Victimization Survey indicated that only about 44% of the 210,000 hate crime victimizations from July 2000 through December 2003 were reported to police (Harlow, 2005, p. 1: Southern Poverty Law Center, n.d.).

Although bias crimes are believed to be underreported, they are a small percentage of the total crimes that occur. Specifically, Harlow (2005) had estimated that bias crimes comprised only "3% of all violent crimes revealed to the NCVS [National Crime Victimization Survey] by victims" (p. 1). Although bias crimes occur relatively infrequently, proponents of bias crime legislation argue that such crimes are qualitatively different from nonbias crimes and are therefore deserving of more severe punishment (Herek & Berrill, 1992; Lawrence, 1999; Levin, 1999).

Enforcement of Bias Crime Legislation

Prior research found much variability in the way law enforcement personnel have interpreted and enforced laws prohibiting bias crimes. For example, Jenness and Grattet (2005) examined the various factors influencing the extent to which hate crime policies developed at the local level across the state of California. The researchers found that organizational perviousness, as measured by the presence of community group meetings, community policing practices, and workplace heterogeneity, was the strongest predictor of having a policy (Jenness & Grattet, 2005). Although having a department policy indicated some effort to formally address bias crimes, it did not necessarily translate into actual enforcement.

Haider-Markel (2002) surveyed police departments and district attorneys across the nation about their perception of the enforcement of anti-gay/lesbian–bias crime legislation. According to the survey results, factors such as hate crime training for law enforcement, favorable attitudes toward enforcement of officers and supervisors, belief that enforcement has an impact on the level of hate crime, and the presence of state hate crime legislation were found to impact the enforcement of hate crime legislation.

The above suggests that the development of hate crime policies and subsequent implementation varies across jurisdictions. The enforcement of bias crime legislation is contingent on decision making by various actors at numerous stages, all influenced by the social context from which they operate. For example, to enforce bias crime legislation, incidents must be reported to law enforcement officers and classified as bias-motivated crimes. Research has indicated that classification and investigation procedures vary by department (Boyd, Berk, & Hamner, 1996; Martin, 1995). Furthermore, researchers examining the enforcement of bias crimes have noted that both investigators and prosecutors tend to look for the "perfect" case when enforcing bias crime legislation (Bell, 2002; Boyd et al., 1996; Levin & McDevitt, 2002). For example, Boyd et al. reported that investigators in one division developed a conception of a "true" or "normal" bias crime (p. 835). The investigators described true bias crimes as sharing the following characteristics: a lack of provocation by the victim, a lack of prior relationship between the offender and victim, and "a specific target, and accompanying derogatory insults" (Boyd et al., 1996, p. 835). The other division defined bias crime more broadly, classifying cases as bias motivated if there was even a "single element" indicating bias motivation (Boyd et al., 1996, p. 843).

Similarly, other researchers have suggested that prosecutors are likely to only charge bias crimes in "perfect" cases or those in which "the evidence of bias is overwhelming" (Bell, 2002; Maroney, 1998, p. 604; see also Levin & McDevitt, p. 183). Maroney suggested that investigators and prosecutors will be quick to weed out "mixed-motive" cases, defined as those in which there is the presence of some motive other than bias. Maroney further suggested that both will reject such cases "even though many hate crime laws and departmental protocols explicitly provide for inclusion of such crimes" (p. 604).

Despite the effort by investigators to screen out problematic cases, Martin (1996), in her examination of hate crime incidents in Baltimore County, found that ambiguous cases remained for which investigators had to make a determination and "judgment about First Amendment issues that have vexed constitutional scholars" (p. 317). Thus, crimes in which bias is expressed, but not the primary motivation, present problems for investigators and prosecutors in the enforcement of hate crime legislation.

Hate Crime Typology

Typologies are developed and used to conceptualize and classify information in meaningful ways. Specifically, typologies have been developed for various crimes such as rape, terrorism, domestic violence, and homicide (Groth & Birnbaum, 1979; Holmes & Holmes, 1998; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000; Hudson, 1999; McCabe & Wauchope, 2005). One of the earliest efforts to focus on bias crimes included the seminal book by Levin and McDevitt (1993), *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*. Levin and McDevitt examined the cultural influences on those that harbor bigotry and illustrated how bigotry manifests itself in violence. The book contributed to our understanding of hate crimes, by exploring the motivations and patterns of violence, seemingly propelled by bigotry and prejudice and directed toward those viewed as different or the *Other*. Specifically, the authors developed a typology based on offender motivation.

The typology, designed as an aid toward understanding the motivation of hate crime offenders, has been widely cited by scholars and has appeared in law enforcement training materials (American Prosecutors Research Institute [APRI], 2000; Gerstenfeld, 2004; McDevitt, Levin, & Bennet, 2002; McLaughlin, Malloy, Brilliant, & Lang, 2000; Perry, 2003; Shively, 2005; Wessler, 2000). For example, according to the training curriculum featured in McLaughlin et al.'s "Responding to Hate Crime: A Multidisciplinary Curriculum," the typology has been used to do the following: assist law enforcement in identifying suspects, locate offenders, gain insight into the victim's perception of his or her vulnerability, gain insight into the offender's motivation, determine the probability of escalation, and anticipate community response (p. 48). The curriculum suggest that whereas offenders may fit into more than one category, the typology assists in recognizing typical hate crimes. The typology is also referenced in the American Prosecutors Research Institute's *A Local Prosecutor's Guide for Responding to Hate Crime* as aiding officers to identify potential offenders.

Levin and McDevitt's (1993) original typology consisted of three categories: thrill, reactive (or defensive), and mission crimes. It was later updated to include a fourth category, retaliatory crimes (McDevitt et al., 2002). Thrill crimes were described as criminal behavior "set off by a desire for excitement and power" in McDevitt et al. (p. 306) and to have "some fun" and "to stir up a little excitement . . . at someone else's expense" in Levin and McDevitt (p. 65). Reactive crimes, later renamed defensive, were characterized by those in which the offender feels threatened by outsiders encroaching on their "community, means of livelihood, or way of life" (Levin & McDevitt, p. 76). Such

crimes were considered a response to a threat to the offender's resources, such as minorities moving into a homogenous neighborhood. Mission crimes were described as those in which the offender believed the victim was "evil" and needed to be destroyed (Levin & McDevitt, p. 89). This often, but not necessarily, involved allegiance to a particular bias-related group or ideology. Retaliatory crimes were said to be sparked by "a desire to avenge a perceived degradation or assault on their group" (McDevitt et al., 2002, p. 306). Retaliatory crimes referred "specifically to incidents in which offenders act in response to a [real or perceived] hate crime" (McDevitt et al., 2002, p. 309).

In their updated work, *Hate Crimes Revisited*: *America's War on Those Who Are Different*, Levin and McDevitt (2002) devoted a chapter to each category of the typology, offering numerous examples of crimes that have occurred across the nation. Many of the cases received significant media attention such as Tom and John Metzger's involvement in the murder of Mulugeta Seraw (mission category) as well as the murder of Yusuf Hawkins in Bensonhurst, New York by a group of White young men (defensive category).

In 2002, McDevitt et al. (2002) applied the typology to 169 cases reported and investigated as bias motivated by the Boston Police Department. Of the 169 cases, 111 were categorized by the researchers as *thrill*, 43 as *defensive*, 14 as *retaliatory*, and 1 as *mission*.

The typology has been widely cited and used in training curriculum. Beyond the original authors, however, there are no empirical studies in which the typology has been systematically applied to a universe of cases forwarded to prosecutors in a particular jurisdiction. As Gerstenfeld (2004) stated, "its utility and meaning remain to be found" (p. 77; Shively, 2005). As such, the applicability of the typology must continue to be tested by researchers who are able to gain access to prosecutorial information about hate crimes in local jurisdictions.

Despite its widespread use, the hate crime typology has some clear limitations. The categories are not mutually exclusive and various categories overlap. For example, in three of the four categories, the offender is likely to seek a location where victims congregate or are located. Similarly, in three of the four categories, peer influence is an important characteristic. Only in the retaliatory category is there a tendency that the offender will act alone.

Furthermore, the typology omits cases in which bias is a peripheral component to the crime. For example, Martin (1995) found that although in some cases bias is expressed during the crime, it is not the primary cause of crime. Scholars have pointed out that the conception and definition of hate crime, specifically the determination of motive, is fraught with difficulty (Berk et al., 1992; Green, McFalls, & Smith, 2001; Jacobs, 1992-1993). Jacobs and Potter

Table 1
Levin & McDevitt's Hate Crime Typology

	Thrill	Reactive/ Defensive	Mission	Retaliatory[a]
Triggering event	Need not be precipitating event	Precipitating or triggering event	Need not be precipitating event	Precipitating or triggering incident, event may be real or merely rumor, media may publicize event
Goal	Thrill seeking; may be sadistic	To protect homes, schools, neighborhood under attack by outsiders; offenders feel threatened and as a result, go on the defensive	To rid world of evil; offender may be psychotic or hate group member	Get even for some previous crime against members of their own group
Peer influence	Group involvement; peers are influential	Group involvement; peers are influential	Peers are influential; may be loosely associated with group	Tends to be single offender
Targeted victims	Victim interchange-ability; utter randomness	Tend to target individual or set of individuals; victims are aware that their particular situation precipitated the attack and that they could be easily attacked again	Directed toward elimination of entire group of people	Victim interchange-ability
Typical location	Seek location where victims congregate	Typically occur in offender's own neighborhood, workplace	Wherever target group members are located	Seek location where victims congregate

Source: Levin and McDevitt (1993), and McDevitt, Levin, and Bennett (2002).
a. Category added by McDevitt et al. (2002). The authors argued that retaliatory hate crimes tend to have greatest potential for fueling and refueling additional hate offenses.

(1998), who warned of the difficulty in investigating and classifying bias crimes, presented the dilemma in one concise statement: "Must the criminal conduct have been totally, primarily, substantially, or just slightly caused by prejudiced motivation?" (p. 21). Furthermore, Jacobs stated that, in effect, "Practically any crime committed by a member of one group against a member of another qualifies for investigation as a hate crime" (Jacobs, 1992-1993, p. 548). Excluding cases in which bias is a peripheral component reduces the possibility of having an unwieldy typology. However, there is a lack of research documenting what types of cases are actually prosecuted as bias crimes. If many cases that involve bias as a peripheral motivation are in fact prosecuted as bias crimes, the typology may be of limited usefulness in this context.

Method

Data on hate crime incidents and offenses are collected from local law enforcement agencies and disseminated annually by the FBI. The FBI data are limited to aggregate measures of incidents and arrests, and contain no information on case processing. Unfortunately, there is no annual national database of hate crime prosecutions and convictions. Furthermore, the definition of hate crime varies among jurisdictions, and few states provide databases in which hate crime case processing and outcome information are provided. Instead, researchers must approach individual jurisdictions for access to case-processing data in disaggregate form.

This study is the first systematic application of the typology to all cases prosecuted as bias crimes in a particular county over a 4-year period. These cases were determined by investigators to meet the criteria of a bias crime and, as a result, were referred to prosecutors. These cases represent 5% of the total cases examined by investigators during the study period. The purpose of the study is to provide an empirical test of the usefulness of the typology as it pertains to cases prosecuted as bias crimes. A jurisdiction in New Jersey was chosen because it has been identified as a leader in addressing bias crimes. It was among the first to develop a bias crime unit on the East Coast. The county has a population of more than 250,000, which is relatively affluent, with a median household income greater than the national median. In terms of race/ethnicity, the majority of the population is categorized as White. Blacks comprise the largest minority population, with Hispanic or Latino persons comprising less than 10% of the population (U.S. Census Bureau, 2000). The crime rate in the county is

slightly lower than the crime rate for the state of New Jersey (New Jersey State Police, 2005).

This research involved the analysis of the files pertaining to all cases referred for prosecution as bias crimes between 2001 and 2004. These 30 cases were considered by investigators as the only cases suitable for bias crime prosecution out of a total of 643 cases originally investigated.[2] As such, the cases in the current study have met the legal rigors of inclusion according to the New Jersey statute. They were judged by police and prosecutors who specialize in bias crimes as exhibiting legal characteristics of a bias crime. Therefore, the cases were by definition the least ambiguous from a legal standpoint and as such should be classifiable according to the hate crime typology. According to investigators, each case referred met the criteria as indicated in the New Jersey's Bias Incident Investigative Standards (BIIS; 2000). According to BIIS, a bias incident is defined as any suspected or confirmed offense or unlawful act which occurs to a person, private property, or public property on the basis of race, color, religion, sexual orientation, or ethnicity. An offense is bias based if the motive for the commission of the offense or unlawful act pertains to race, color, religion, gender, handicap, sexual orientation, or ethnicity (BIIS 2000, p. 9).

By way of background, the bias unit in this county consists of two full-time investigators along with two officers that fill in when the designated investigators are unavailable. The unit is responsible for investigating all bias-motivated incidents (criminal and noncriminal), outreach to the community and local schools in the form of workshops or presentations, and bias training for police officers. Potential bias-motivated crimes reach the bias unit through a variety of sources. The Office of Bias Crimes and Community Relations operates a statewide bias hotline in which victims may report bias-related incidents that are then forwarded to the appropriate jurisdiction. Furthermore, following a memorandum of agreement between the Department of Law and Public Safety and the Department of Education (New Jersey Administrative Code [N.J.A.C.], 6:29-10.1), schools in New Jersey are mandated to report all allegations of bias-motivated incidents to law enforcement. Finally, all police agencies in the county are required to forward all reported bias-motivated crimes to the bias unit at the county prosecutor's office.

Once identified and confirmed as bias motivated by investigators, a case may be referred for prosecution as a bias crime. The New Jersey Bias Intimidation statute defines a bias crime as an offense committed "with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity or knowing that the

conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation, or ethnicity'' (New Jersey Statute [NJS], 2C:16-1).

The BIIS (2000, p. 15) also contains guidelines for confirming incidents of bias. Investigators are instructed to consider, for example, the totality of the circumstances, note any statements made by the suspect or witnesses, and look for bias symbols, words, graffiti, or other types of evidence. To classify cases, the investigators look for other motives for the incident, that is, whether the offenders are members of a hate group, whether the victim and offender share identities (e.g., racial, religious, or ethnic group identities), and whether the victim recently moved into the area.

Information on cases was retrieved from both investigative and prosecutor case files. Investigative case files typically contained a cover sheet that included preliminary information regarding case characteristics, offender(s) and victim(s) characteristics, initial police report, and any subsequent investigative materials such as transcripts of interviews with offender(s), victim(s), and witnesses. The prosecutor's case files typically contained information on the proposed indictment, grand jury decisions, a plea sheet, criminal history reports, sentence received, and copies of the investigative materials. Information coded from case files included the following: type of bias motivation (race, ethnicity, sexual orientation, and gender), type of offense, location, number of offenders/victims, victim injury, age and race of offender/victim, charges, and case disposition.

This research entailed analyzing case file information and investigators' narratives, and coding those details according to McDevitt et al.'s (2002) bias crime typology (see also Levin & McDevitt, 1993).[3] As previously mentioned, the characteristics of each category are noted in Table 1. In classifying cases into the typology, I followed as closely as possible the characteristics and examples provided in Levin and McDevitt, and McDevitt et al. Case narratives and interview transcripts of offenders, victims, and witnesses were examined to gain information pertaining to the triggering event, goal, peer influence, targeted victims, and typical location (see Table 1). The triggering event refers to any event that either precipitated, or acted as a catalyst to the behavior on the part of the offender. The goal refers to the underlying rationale for the behavior on the part of the offender (e.g., to rid the world of evil or to protect their neighborhood from outsiders). Peer influence, targeted victims, and location were noted for each case. However, the typology contains overlapping categories, making difficult the task of straightforward classification of cases into distinct categories. For example, both reactive/defensive and retaliatory hate

crimes may involve a precipitating or triggering event. Similarly, peer influence is characteristic of thrill, mission, and reactive/defensive categories. Cases in which there was no clear indication of the goal on the part of the offender were coded as *unclassifiable*.

Results

Of the total 643 cases presented to the bias unit between 2001 and 2004, 30 (less than 5%) were referred by the bias unit for prosecution as bias crimes. Although the data from the current study were limited to one jurisdiction, this study includes the entire population of cases referred for prosecution as bias crimes between 2001 and 2004 ($N = 30$). Descriptive information for these cases is displayed in Table 2.[4] Racial and religiously motivated crimes comprised 63% of the total cases. The number of offenders per case ranged from 1 to 4, with an average of 1.87 offenders. Nearly half of the cases involved a single offender, slightly under one fourth of the cases involved two offenders, and only two cases involved four offenders (see Table 2).[5]

Previous research has indicated that bias crimes are typically relatively low-level offenses (Garofalo & Martin, 1993). The cases presented for prosecution in the current study were no exception. The prosecutor's office was unable to retrieve five files, therefore, case outcome information was restricted to cases in which files were available. Of these 25 cases, 23 involved at least one offender charged with a bias crime and the remaining 2 resulted in criminal charges but not bias charges. Although the average number of offenders per case charged with a criminal offense was 2.0, the average number of offenders charged with a bias offense was 1.87. The average number of offenders convicted per case for a bias offense was 0.96 (see Table 3).

Due to the small numbers of cases referred for prosecution as bias crimes during the 4-year period, it was not possible to conduct sophisticated statistical analyses to determine the impact of independent variables on conviction rates. However, identifiable patterns did emerge from the analysis. Of the cases resulting in a bias charge, religiously motivated and multibias cases were more likely to result in conviction than racially motivated cases (see Table 4).

Nearly half of the cases that resulted in bias crime charges were categorized as juvenile cases (11 out of 23 cases). Juveniles were more likely than adults to be involved in property crimes than personal crimes. Furthermore, cases involving juveniles were more likely to result in conviction for a bias

Table 2
Case Characteristics

	Frequency ($N = 30$)	
	n	*%*
Type of bias motivation		
Racial	9	30.0
Religious	10	33.0
Ethnicity	2	6.6
Sexual orientation	2	6.6
Gender	1	3.3
Multibias[a]	6	20.0
Type of offense		
Personal	18	60.0
Property	12	40.0
Type of offender[b]		
Juvenile	12	40.0
Adult	18	60.0
Location		
Residence	9	30.0
Business	7	23.3
School	4	13.3
Church	3	10.0
Highway/Driving	3	10.0
Other	4	13.3
Injury		
Yes	4	13.3
No	26	86.7
Offenders per case		
One	14	46.6
Two	8	26.6
Three or more	8	26.6
Average number of offenders per case = 1.87		
Victims per case		
One	12	40.0
Two	7	23.3
Three or more	4	13.3
Society	7	23.3
Average number of victims per case = 1.68		

a. Multibias cases refer to cases involving any combination of racial, religious, ethnicity, sexual orientation, or gender bias occurring within one incident.
b. Cases were classified as juvenile or adult based on whether the offender was juvenile or adult (18 years or older) at the time of the crime. In cases with more than one offender, cases were coded according to the age of the majority of offenders. In cases in which there was a combination of juvenile and adult offenders, the age gap was generally not greater than 1 year.

Table 3
Charges and Convictions per Case

Case Categories	Mean Number of Offenders per Case ($N = 25$)
Charged with a criminal offense	2.00
Charged with bias offense	1.87
Convicted of criminal offense	1.43
Convicted of bias offense	0.96

Table 4
Bias Crime Typology

	Total Cases Referred to Bias Unit ($N = 30$)[a]		Cases Charged as Bias in These 30 Cases ($N = 23$)	
Case Typologies	n	%	Bias Conviction ($n = 11$)	Nonbias Conviction ($n = 12$)
Thrill	13	43.3	8	3
Racial	—	—	0	1
Religious	—	—	5	2
Sexual orientation	—	—	1	0
Multibias	—	—	2	0
Retaliation	1	3.3	0	1
Ethnic	—	—	0	1
Defensive	1	3.3	0	0
Mission	4	13.3	2	1
Racial	—	—	0	1
Multibias	—	—	2	0
Unclassifiable	11	36.6	1	7
Racial	—	—	1	4
Religious	—	—	0	2
Multibias	—	—	0	1

a. The prosecutor's office was unable to locate files for five cases, therefore, case outcome information was not available for those cases.

crime than adult cases. Correspondingly, cases involving property crimes were more likely to result in at least one offender conviction for a bias crime. One possible reason why cases involving juveniles were more likely to result in a bias conviction may relate to the extent to which the grand jury was reluctant to return an indictment on a bias charge for adult offenders.

It is also possible that juveniles committed crimes in which bias was likely to be perceived as the sole motivation for the crime and therefore more likely to result in conviction.

Case Typology

The hate crime typology was applied to the 30 cases referred for prosecution by the bias unit. Two independent raters coded the cases, with 73% agreement. According to Rubin and Babbie (2004), a 70% agreement rate is considered acceptable.

Of the 30 cases referred for prosecution by the bias unit, 13 were coded as motivated by thrill, 4 as mission, 1 as defensive, and 1 as retaliation (see Table 4). The remaining cases were simply unclassifiable. Many cases did not fit any of the four predesignated categories of the typology. Many cases eluded the thrill category because there was no apparent evidence that the offender set out to get kicks or to "stir up a little excitement" (Levin & McDevitt, 2002, p. 67). Rather, the bias appeared to emerge due to an interpersonal confrontation with the victim. Furthermore, although the behaviors often appeared retaliatory in scope because they occurred in the context of ongoing interpersonal confrontations, they were distinguishable from McDevitt et al.'s (2002) concept of "retaliation," which refers "specifically to incidents in which offenders act in response to a hate crime" (p. 309). In other words, bias was a peripheral component, emerging during the context of an already existing interpersonal confrontation.

Of the cases in which outcomes were known, eight thrill cases and two mission cases resulted in a bias conviction. However, not surprisingly, of the cases that were unclassifiable—and arguably falling outside the conception of the typical hate crime—only one resulted in a bias conviction (see Table 4).

Thrill

Of the 30 cases 13 (43%) were categorized as motivated by thrill. The cases appeared to have no clear precipitating event, and the vast majority of thrill cases involved more than one offender. Such cases usually involved juveniles (77%) and frequently involved property crimes (69%). Of 13 cases, 7 (54%) were motivated by bias against religion, with the majority evidencing anti-Jewish bias. In eight of the thrill cases at least one offender was convicted of a bias offense.

An example of a thrill case involved three juvenile offenders who spray painted swastikas and other graffiti (e.g., "f . . .") on vehicles parked in the victim's driveway. The victims were Jews and had decorated their house with Hanukkah decorations for the holiday. According to the investigation report, the victims expressed concern that they "were being targeted for some type of violence." Case files revealed that the juveniles "just thought it would be funny" to paint swastikas. One juvenile erased his own graffiti and stated that he participated because he thought it would be "harmless fun."

Another thrill case involved three juvenile males and one adult male offender driving around throwing rocks and yelling out racial epithets at passersby. The racially offensive remarks included "n . . . ," "spic," "spic, I'm going to f . . . your mother," and "go back to your own country." According to the case files, the offenders denied racial prejudice. However, when asked to describe their behavior, they stated that they were playing "screamers" which they described as a game in which they drive "around to random people and scream gibberish at them or whatever is in our heads to scream or whatever is on the radio to get a reaction." When asked why this particular location was chosen for "screamers," one juvenile stated because the area "has everybody, Chinese, Black, Spanish, Native American, everybody." However, when asked if he was a racist, the juvenile replied, "hell no." According to the offenders, all minorities are not equally susceptible to being victimized and the offenders explained that the game does have rules; the victims off-limits for "screamers" are little children and the elderly.

Retaliation

Retaliatory cases are those in which the offender is responding to a real or perceived attack against members of their own group. The single retaliatory case was in response to the 9/11 attacks in the United States and was directed toward an Islamic center. The center received a series of harassing and threatening answering-machine messages.

The offender was charged with bias harassment. The offender admitted to making the call and stated that he was "angry beyond words" and that he "spewed some venom that I'm embarrassed by . . . it was a knee-jerk reaction."

Defensive

McDevitt et al. (2002) described defensive cases as those in which the offender is clearly concerned with protecting his community from "those he considered to be outsiders or intruders" (p. 308). The following single case

provides an example of a defensive bias crime. The case involved an ongoing dispute between two members on a planning board. Both parties filed various complaints against each other. The case involved harassing answering-machine messages left by the offender that indicated the offender would drop the lawsuit if the victim removed herself from the planning board. The message stated, "We don't need Syrians on the planning board," and "It will be sending a message to your people, and that [this town] is going to be tough on them."

Mission

McDevitt et al. (2002) described the mission category as cases in which "the perpetrator seeks to rid the world of evil" (p. 309). Mission hate crimes are frequently committed by members of organized hate groups and may include offenders exhibiting symptoms of mental illness. Only four cases in the current study were categorized as mission.

Two related cases categorized as mission involved youths that created their own hate group and had defined their own criteria for membership. The youth engaged in numerous acts of criminal mischief and other property crimes. Graffiti was sprayed on the nearby bridge and included various swastikas, pentagrams, and the phrase, "God sucks ass." Furthermore, the youth knocked over a statue of the Mother Mary and removed the head of the statue.

The juveniles scrawled graffiti at various locations, including a church and surrounding vehicles, and buildings, fences, and roadways. The graffiti was at times pointedly bias and included drawings of swastikas and pentagrams as well as phrases such as "N . . . s shall die," "Nazi," "white power n . . . s beware," and so on. However, much of the graffiti was unrelated to bias and included phrases such as "big penises rock," "S . . . sucks pussy," "This car makes dingy noises," "f . . . the world," "God sucks ass," and "Satan is my lover."

A few mission cases involved offenders exhibiting symptoms of mental illness. One case involved victims traveling on a highway. As the offender's vehicle approached, the offender threw a water bottle at the victim's vehicle. At the next light, the offender exited his vehicle and swung the drive shaft from his vehicle, striking the victim's car on the hood. The accused stated that he was working for the FBI and thought that the victims were Arabs and were harassing him. He stated he was an assassin assigned to kill Osama Bin Laden and he had recently hired gods to "take him out." The case files indicated that the offender was delusional, exhibiting symptoms of mental illness.

Unclassifiable

The following section describes cases in which bias seemed peripheral to the crime and the offender's actions appeared to be a direct response to the victim's actions immediately preceding the crime. Such cases were simply unclassifiable and did not fit the typology. As a result, these cases create difficulties for prosecutors. This is problematic because more than one third of the cases referred from the bias unit fall into this category.

All of the unclassifiable cases were comprised of adult offenders. Of the 11 unclassifiable cases, 10 consisted of personal crimes. Of the 23 cases in which at least one offender was charged with a bias crime, only one of the seven unclassifiable cases ended in a bias conviction for at least one offender.

One case involved a victim and her 2-year-old grandson who pulled into the parking lot of a convenience store. As the victim parked, two offenders in a nearby vehicle stated, "Why didn't you park straight" and added, "Bitch, why can't you park straight, I can't get out, n . . . ." One offender entered the convenience store to purchase a cup of coffee and returned to the vehicle. The victim stated to the offender, "You need to tell your girlfriend to have more manners," and the offender responded with racial slurs. The offender then approached the victim and threw coffee at the victim. There was no information in the case files indicating whether the offenders fall into any of the four categories, that is, thrill seeking, on a mission, defensive, or retaliatory. Rather, the precipitating event emerged as a direct result of the parking dispute.

In another case, a Hispanic man arrived at the victim's yard sale intoxicated, loud, and boisterous. The accused stated, "I'll kick your mother f . . . ing cracker ass" and proceeded to kick and punch the victim. The accused then stated, "I kicked your ass white boy." The victim reported that the responding officer refused to arrest the accused. The victim reported that the officer stated that the "fight was between two men" and that the "judge would throw the case out of court anyway." The officer then gave the accused a ride away from the area. The victim called another officer to the scene. Though the verbal comments directed toward the victim were biased, there was no indication in the files whether the offender's goal was thrill seeking, retaliatory, mission, or defensive in nature. Subsequently, an internal investigation was launched regarding the behavior of the initial responding officer. The case files revealed that the report filed by the initial responding officer made no mention of bias, but did mention the odor of alcohol and an argument about money.

The final example of an unclassifiable case brings up an interesting issue concerning the prosecution of bias crimes: The victim of the alleged bias

crime was an on-duty police officer.[6] The offender was involved in a motor vehicle accident and was subsequently arrested for driving under the influence (DUI). The accused repeatedly threatened the transporting officers during transport. The offender made racial slurs and threatened to find out where the officer lived and to kill the officer's family. According to investigative reports, the offender stated that he was "under the influence" at the time of the threats and that he "made a mistake." The context of the case—the fact that the offender was in the custody of law enforcement at the time of the crime and made his remarks in response to his arrest—indicate that the offender was acting in response to the action of the officers rather than acting in a manner that can be classified as thrill seeking, mission, retaliatory, or defensive.

Discussion

Due to the lack of empirical research on the prosecution of bias-motivated crimes, criminologists know very little about what kind of cases are successfully prosecuted. This study focused on each of the cases prosecuted as a bias crime between 2001 and 2004 in one New Jersey county. As such, they were presumably cases in which both bias investigators and prosecutors believed were reasonably likely to result in a bias crime conviction. By examining cases that were actually prosecuted as bias crimes, rather than the larger pool of cases that potentially included an element of bias, this study aimed to exclude cases in which the bias element was most ambiguous.

Although the cases were screened and identified as hate crimes, the cases did not easily fit the hate crime typology developed by Levin and McDevitt (1993). Generally, the cases designated as defensive, retaliatory, and mission were categorized with relative ease. However, the remaining one third of the cases was unclassifiable. Although the unclassifiable cases included some element of bias, this bias did not seem to be the primary motivation for the crime.

The typology was developed to aid law enforcement in "investigating and identifying hate crimes"; arguably, the typology was designed to provide an organized way of recognizing hate crimes (McDevitt, Levin, & Bennett, 2002, p. 305). The typology omits cases in which bias is a peripheral component to the crime. It is recognized that if the typology were to be expanded to include such cases, it would ultimately water down the concept of a hate crime, rendering it virtually useless. Such an omission is consistent with Lawrence's (1999) suggestion that bias crime legislation should

target those offenders exhibiting racial animus rather than discriminatory selection, thereby excluding cases in which bias is peripheral to the motive. However, not all legislation is defined so narrowly. Case files revealed that, in this jurisdiction, there is still disagreement about whether bias need only be exhibited or be an integral element of the offense. Because such a large percentage of cases in the current study were unclassifiable, the typology did not appear to be a useful tool for categorizing cases in this jurisdiction. The typology may be most useful for law enforcement in those jurisdictions in which the law is defined rather narrowly.

In the current study, cases in which bias seemed to be the primary, if not sole, motivation were most likely to end in a bias conviction. Similar to Martin's (1995) findings, determining the role of bias was sometimes problematic. Even cases that displayed unambiguous, or included overwhelming, signs of bias such as painted swastikas or "KKKs," frequently also included nonbias-related graffiti as well. For example, in one case, the offenders painted anti-Semitic graffiti along with the phrase, "I hate working here." In such cases, the presence of nonbias graffiti may increase doubt among prosecutors (and jurors) that bias was the "true" motivation. Future research is needed in other jurisdictions to more fully understand the various types of cases prosecuted as bias crimes.

An additional concern regarding the application of the typology centers on cases categorized as mission, which involved evidence of mental illness, specifically psychotic symptoms, on the part of the offender. In general, the typology (as does the legal system) makes the assumption that offenders act rationally, with the exception of the mission category. Levin and McDevitt (1993, 2002, p. 91) proposed that the mission category includes those who target an entire group of people, whether due to "severe mental illness," including hallucinations and other psychotic symptoms, and/or allegiance to a hate group. A few cases in the current study involved offenders exhibiting paranoid delusions and other symptoms of psychosis. Conceptually categorizing the severely mentally ill along with (presumably otherwise rational) hate group members seems problematic. There is a qualitative difference between those who commit crimes as a result of mental illness and those whose crimes manifest as a consequence of their adoption of hateful ideology.

As previously mentioned, a number of factors influence the way bias crime legislation is enforced across jurisdictions. The attitudes of law enforcement personnel, training, bureaucratic organization, community context, and public support may impact the extent to which policy is implemented (Haider-Markel, 2002; Jenness, 2007; Jenness & Grattet, 2005). Findings from the current study show that this particular jurisdiction has not only a detailed written

policy directed toward bias crimes but also has a dedicated team of full-time investigators assigned to enforcing the legislation. The investigators and prosecutors were enthusiastic, stating that their practices have frequently been praised as a desired model of bias crime law enforcement. However, despite the existence of a detailed policy and the effort exerted by law enforcers, ambiguities and difficulties enforcing bias crime legislation remain.

Due to the variations in the enforcement of hate crime legislation, findings from this jurisdiction may not be generalized to other jurisdictions. Future studies should examine the application of the typology among a variety of jurisdictions, specifically those in which bias is defined as the sole, or the primary, motivation.

Conclusion

This research begs the question of at what point a typology is useful. Echoing Jacobs and Potter's (1998) concern regarding the very conception of a hate crime, must the typology provide for the vast majority of cases, only half, or only a fourth? A more optimistic take on the results may be that two thirds of the cases did indeed fit the typology. Furthermore, cases that fit the typology were more likely to result in at least one offender with a bias conviction than those that did not fit the typology. The findings suggest that the typology may be helpful only in identifying the most extreme examples of bias-motivated crimes. In this jurisdiction, the legal definition of a bias incident considered suitable for prosecution is defined rather broadly. The net is cast even wider for the number of cases that have elements of bias motivation and undergo investigation. Hypothetically, if the concept of hate crime is widened to include the mere presence or expression of bias (or the typology is widened to more accurately include a substantial number of cases triggered by interpersonal confrontation), then a net-widening effect occurs. As a result, the distinguishing nature of bias crimes virtually vanishes.

The net-widening effect also illustrates the concern regarding the unintended consequences of hate crime legislation (Franklin, 2002; Maroney, 1998). At its inception, hate crime legislation was focused on addressing violence "connected to racism, nationalism, anti-Semitism, sexism, and heterosexism" (Jenness & Grattet, 2001, p. 32). Anti–hate crime advocates not only influenced policy designed to punish bias-motivated offenders as well as send a message to the larger community that bias-motivated crimes would not be tolerated (Jenness & Grattet, 2001). However, scholars were quick to voice

concerns about how the legislation would be enforced and who would be punished (Franklin, 2002; Jacobs & Potter, 1998). Findings from the current study show that enforcement of the legislation applies to atypical offenders (e.g., mentally ill exhibiting psychotic symptoms) and atypical victims (e.g., on-duty police officers). Further research is needed to examine the types of cases prosecuted in other jurisdictions.

Although much scholarly work has centered on various aspects of hate crimes, there is a paucity of research focused on cases actually prosecuted as hate crimes. Results indicate that the typology has limited usefulness in categorizing cases that are actually prosecuted as hate crimes in this jurisdiction. A successful typology proves useful in a variety of empirical contexts in which it is applied. Therefore, this research suggests at the outset that the everyday cases investigators and prosecutors encounter may be difficult to classify into the widely cited and academically accepted hate crime typology. Rather than bias or hate, many cases appear to be primarily motivated by interpersonal confrontation between the parties who then use hate speech as a means of expressing anger or other emotion in an arguably impulsive manner. Future studies should examine the application of the typology among a variety of jurisdictions, specifically those in which bias is legally defined as the sole or primary motivation.

Notes

1. The terms bias crime and hate crime will be used interchangeably.

2. Of the 30 cases referred for prosecution, the prosecutor's office was unable to locate files for 5 cases. Therefore, although descriptive information was available for all 30 cases, case outcome information was available for 25 cases.

3. McDevitt, Levin, and Bennett (2002) describe the hate crime typology as an "offender typology" (p. 303). In the current study, the unit of analysis is cases rather than offenders. The reason for this is that although each offender may have a different level of involvement within the same incident, the offenders shared the same bias motivation, and the case as a whole was categorized according to the typology.

4. Of the 25 cases for which case files were available, 23 (76.6%) resulted in at least one offender charged with bias intimidation, and 11 of these 23 cases resulted in at least one bias conviction.

5. Cases were classified as juvenile or adult based on whether the offender was juvenile or adult (18 years or older) at the time of the crime. Cases with more than one offender were coded according to the age of the majority of offenders. In cases in which there was a combination of juvenile and adult offenders, the age gap was generally not greater than 1 year.

6. The issue is, are police officers, while on duty, eligible to be victims of bias? Bias unit investigators repeatedly informed me that police officers cannot be victims of a bias crime while on duty, however, the case was prosecuted as a bias crime. Case notes revealed this exception: "It appears that the accused, though he had been drinking, went beyond the officer's uniform to attack him and his family personally by making threats that could be carried out as the accused knows where the victims live . . . ."

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The prosecutions total is the highest since hate crime statistics were first compiled in 2005-06. In all, the CPS brought 15,284 hate crime prosecutions, also including cases where people were apparently targeted based on sexuality or disability, or for being transsexual or transgender. The vast majority of prosecutions - 12,711 - were for racially-motivated offences. Â The proportion of guilty pleas in hate crime cases has crept up over the last couple of years, which Mr Starmer said showed prosecutors were building stronger cases. "The increase in guilty pleas benefits the victims of these crimes, many of whom would find giving evidence a stressful ordeal," he said. Figures also showed a record number of people - 2,822 - prosecuted for crimes against older people. The term 'hate crime' can be used to describe a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim's disability, race, religion, sexual orientation or transgender identity. These aspects of a person's identity are known as 'protected characteristics'. Â Read how the CPS goes about prosecuting the different strands of Hate Crime in our Prosecution Guidance section. Racist and Religious Hate Crime. Homophobic, Biphobic and Transphobic Hate Crime. Disability Hate Crime and other crimes against disabled people. Crimes Against Older People (CAOP). Our approach to dealing with CAOP has much in common with the monitored strands of hate crime. Hate crimes are the highest priority of the FBIâ€™s civil rights program because of the devastating impact they have on families and communities. The Bureau investigates hundreds of these cases every year, and we work to detect and prevent incidents through law enforcement training, public outreach, and partnerships with community groups. Traditionally, FBI investigations of hate crimes were limited to crimes in which the perpetrators acted based on a bias against the victimâ€™s race, color, religion, or national origin. In addition, investigations were restricted to those wherein the victim was e