

Bias Crime and the Law

Overview of the Session: At a Glance

Presentation: Introduction to Federal and State Laws	30 minutes
Activity: Criminal Law Case Application and Discussion	30 minutes
Optional Activity: Drafting Civil Rights Injunctions	20 minutes
Presentation: Emerging Legal Issues	10 minutes
TOTAL TIME	90 minutes

Objectives

By the end of this session, participants will be able to:

- Explain why law enforcement and victim assistance professionals need to know the laws relating to bias crime
- Understand the relevant federal laws
- Understand the range of bias-related state statutes
- Understand their state's bias crime laws
- Analyze cases to determine if they may be prosecuted as bias crimes and, if so, under which statutes
- Describe emerging bias crime-related legislative trends

Materials and Equipment



Time: 90 minutes



Handouts: Appendix B: State Bias Crime Statutory Provisions; Appendix C: Bias Crime Statutes and Related Provisions Nationwide; Federal Criminal Statutes; Federal Civil Statutes; Reconciling Bias Crime and the First Amendment




Transparencies: Importance of Bias Crime Laws; Categories of State Bias Crime Laws; Your State's Criminal, Civil, and Data Reporting Statutes; Federal Criminal Statutes; Federal Civil Statutes; Federal Hate Crime Statistics Act; Criminal Case Illustrations; Civil Injunction: Case Illustration; Characteristics of Gender-Based Crimes; Gender as Hate Crime: The Law; Legal Criteria for Determining Gender-Based Hate Crimes



Equipment: Overhead projector; screen

Instructor's Notes

1. Presentation: Introduction to Federal and State Laws (30 minutes)



Note to Instructor

*A local, state, or federal prosecutor or other attorney familiar with criminal civil rights law should teach this session. It is also critical to **research** and **identify** any relevant changes in federal and state law that may have occurred since this curriculum was drafted, and **amend** the lesson as necessary.*


Explain the following:

- Law enforcement professionals need to be knowledgeable about the law to make arrests, conduct investigations, establish intent, assist prosecutors, and assist and refer victims.
- Victim service providers need to be equally knowledgeable about the law to inform victims of their legal options, assist and advocate for them in the court system, and support police investigations and prosecution.
- It is critical for departments and agencies to establish mechanisms for staying current on case law and national and state legislative trends.
- There are federal and state laws that provide criminal and civil causes of action to protect victims of bias crime.
- Even if a bias crime case cannot be criminally prosecuted, there may be remedies under civil law. Provision for damages and injunctive relief may be granted to victims in successfully prosecuted civil cases. Civil remedies can be pursued even if there is a successful criminal prosecution.

Jurisdictional Issues

Explain the following jurisdictional issues related to federal, state, and local hate crimes:

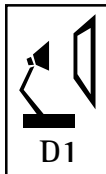
- Generally, federal criminal statutes are intended to supplement state criminal laws. The prosecutor with jurisdiction over the crime is either the United States attorney for violations of federal law or the state or local prosecutor (state attorney general, district attorney, state's attorney, or city attorney) for violations of state law.
- In some states, the state attorney general may have jurisdiction in criminal as well as civil cases. The U.S. Department of Justice may also have jurisdiction over some civil cases.



Note to Instructor

*The following transparency stresses that hate crime laws play multiple roles in the criminal justice system. This is a good opportunity to **stress** to participants that hate crime laws protect **all** citizens, not just those in certain "groups."*

Explain to participants that bias crime laws serve multiple societal purposes, and *review* the points in Transparency D1, “Importance of Bias Crime Laws.”



IMPORTANCE OF BIAS CRIME LAWS

- Provide a means for enforcement
- Aid in deterrence
- Send zero tolerance message to perpetrators and community
- Protect vulnerable groups/individuals from harm
- Send message to victims that these crimes will be dealt with aggressively
- Set societal norms
- Express the collective belief that our country is stronger when we protect all citizens
- Maintain social order¹

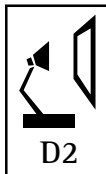
Ask participants if they can identify other reasons for bias crime legislation.

Overview of State Laws

Explain the following:

- Nearly all states have enacted legislation targeted specifically at criminal acts of bias.
- The largest number of criminal prosecutions occur as a result of violations of state law, rather than federal.
- Many states also provide a separate civil cause of action remedy that often includes injunctive relief, compensatory and punitive damages, attorney’s fees, and/or enhanced penalties.
- The majority of the laws protect against racial, religious, ethnic, and national origin bias.
- Some states, however, have expanded their bias crime laws to include protection against bias related to sexual orientation, gender, disability, age, and/or political affiliation.

Explain that, in addition to criminal penalty laws for bias-motivated crimes, most states have additional laws that may apply to bias crime cases. Review the different types of laws by using Transparency D2, “Categories of State Bias Crime Laws.”



CATEGORIES OF STATE BIAS CRIME LAWS

The majority of states have laws under one or more of the following categories:²

Criminal Penalty Laws

- Criminalize certain acts committed due to prejudice
- Provide enhanced penalties
- Include several types of criminal statutes:
 - *Institutional vandalism*: Prohibit vandalism and defacement of a variety of locations and institutions, including houses of worship, cemeteries, schools, public monuments, and community centers.
 - *Bias-motivated violence and intimidation*: Make it illegal to intimidate, harass, assault, or trespass on the property of an individual because of the person’s race, religion, national origin, and, in some states, gender, sexual orientation, etc.
 - *Interference with religious worship*: Prohibit acts that disrupt an ongoing religious service; they also prohibit stealing a scroll, religious vestment, or other object normally used in a religious service.

Cross-Burning Laws

- Prohibit cross burning or the burning of other symbols

Mask-Wearing Laws

- Ban the wearing of hoods, robes, masks, or other disguises in public, except during holidays and parades

Paramilitary Training Laws

- Prohibit military-style training camps, such as those sometimes run by racist organizations

Civil Cause of Action Laws

- Civil remedies may include injunctive relief, compensatory and punitive damages, and attorney’s fees (these forms of relief may have a significant deterrent effect and should encourage victims to bring civil lawsuits)

Parental Liability Laws

- Make parents financially liable for their children’s crimes

Data Collection Laws


- Require state and/or local police agencies to gather and sometimes disseminate statistics on the incidence of bias crime

Police Training Laws

- Require law enforcement personnel to receive training in identifying, reporting, and investigating bias-motivated crimes



Explain that there are different models of state criminal and civil statutes. For instructors' and participants' reference, statutory information for each state is provided in Appendices B and C in this curriculum. You may wish to *reproduce* these pages and *distribute* them as handouts. They are useful for understanding the differences in state statutes and comparing individual states with national trends.



Note to Instructor

Insert your state's particular criminal, civil, and bias crime reporting statute(s) here in the text of the curriculum. **Create** Transparency D3, "Your State's Criminal, Civil, and Data Reporting Statutes," and **use** it in the session.

Review the actual language of your state's laws. *Special legal issues to address include the following:*

- Identify and review each essential element of your state's criminal statutes relevant to bias crime. *Define* each element in lay terms and *discuss* the impact of case law on the application of each statute, which will make the information relevant to law enforcement and victim assistance professionals.
- If possible, *describe* how courts have interpreted—or are likely to interpret—your state statutes, their provisions, and the legal standards to be applied.

Specific legal questions to address with participants may include the following:

- Does bias need to be the *sole*, the *predominant*, or a *motivating* factor?
- What specific bias motivations are covered by your state's statutes (e.g., race, religion, ethnicity, national origin, sexual orientation, disability, gender, etc.)?
- Does the statute apply to a case with mixed motives?
- Does the statute require proof of bias or prejudice, or do you only need to show that the victim was targeted because of his or her status or affiliation? (For example, with a "because of" statute, the perpetrator could be prosecuted under hate crime law for selecting an Asian American for robbery and attack because he believes that Asian Americans carry a lot of money with them, or for targeting a gay victim because he believes such a victim would be more vulnerable to attack.)
- What is necessary to provide force or threat of force under the statute?
- What amount of force is necessary to violate the statute?
- What is necessary to prove a joint venture or conspiracy under the statute?
- How are the penalties applied under the statute?

Overview of Federal Civil Rights Laws

Many criminal acts of bias can be prosecuted under federal criminal civil rights statutes. The FBI has jurisdiction to investigate these criminal acts, and investigations are frequently conducted in collaboration with state and local law enforcement agencies.

Explain the limitations of the federal civil rights statutes:

- Currently, federal remedies only protect victims who are threatened or attacked while they are exercising a federally protected right, such as riding public transportation, eating in a restaurant, renting an apartment, or buying a home.
- Most federal statutes apply only to acts motivated by racial or religious prejudice. This excludes a number of bias crime categories from prosecution and civil relief.
- Legislation pending in Congress would expand federal jurisdiction over hate crime cases. (See below for more information on pending legislation.)



Overview of Federal Criminal Statutes

Distribute Handout D1, “Federal Criminal Statutes” and use Transparency D4 to review the main concepts.



FEDERAL CRIMINAL STATUTES

Congress has enacted laws that provide both criminal and civil remedies to victims of bias-motivated crime. Four principal federal criminal statutes concern race-, skin color-, religion-, and national origin-related violence by private individuals:

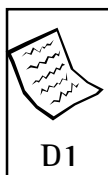
18 USC Section 241: Conspiracy Against Rights of Citizens

- Broadly prohibits conspiracies to injure any person who is exercising rights protected by the Constitution or laws of the United States.
- Has been applied to a variety of federal rights, including the right to hold property, the right to enjoy public accommodations, and the right to occupy a home free from racially motivated violence.

18 USC Section 245: Forcible Interference with Civil Rights/Federally Protected Activities

- Enacted in 1968 in response to violent attacks on civil rights workers in the South.
- Prohibits intentional interference, by force or threat of force, with certain specified constitutional rights, where the interference is motivated by race, color, religion, or national origin. Activities protected under this law include the following:
 - Enrollment in a public school or college
 - Participation in programs administered or financed by any state
 - Federal and state employment and jury service
 - Interstate travel by common carrier
 - Use of restaurants, lodging, gas stations, public entertainment facilities, and other establishments serving the public

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18 USC Section 247: Damage to Religious Property/Obstruction of Religious Activity (Church Arson Prevention Act)

- Prohibits damaging or destroying religious property because of its religious nature.
- Prohibits intentionally defacing, damaging, or destroying religious property because of the race, color, or ethnic characteristics of any individual associated with that property.
- Prohibits interference with religious exercise, without regard to race, if a connection with interstate commerce can be shown.

42 USC Section 3631: Willful Interference with Civil Rights Under the Fair Housing Act

- Prohibits forcible interference with any person in selling, purchasing, renting, financing, occupying, or contracting for any dwelling due to that person's race, color, religion, gender, national origin, disability or family status.

A fifth federal criminal statute governs civil rights violations under "color of law":

18 USC Section 242: Deprivation of Rights Under Color of Law

- Prohibits willful deprivation of constitutional and federal statutory rights, but only those deprived by reason of race, color, or ethnicity.
- Most frequently used to prosecute violent misconduct by law enforcement officials, but can be used against other officials or anyone purporting to be an official while committing such acts as sexual assault or deprivation of due process.

The federal government also has authority to enhance penalties for federal crimes motivated by bias:

Hate Crimes Sentencing Enhancement Act (Section 280003 of Public Law 103-322)

- Enacted into law as part of the Violent Crime Control and Law Enforcement Act of 1994.
- If a perpetrator commits any federal crime and chooses the victim on the basis of race, religion, national origin, ethnicity, gender, disability, or sexual orientation, this evidence can be used to impose enhanced penalties.
- This is the first federal hate crime legislation to include gender, disability, and sexual orientation as protected categories.
- Jurisdiction, however, is limited to federal crimes.



Overview of Federal Civil Statutes

Use Transparency D5 and *distribute* Handout D2, “Federal Civil Statutes.”



FEDERAL CIVIL STATUTES

Several federal statutes provide civil redress for victims of bias-motivated violence by private individuals:

42 USC Sections 1981 and 1982: Civil Actions Under the Civil Rights Act of 1866

Both sections of this statute originated in Section 1 of the Civil Rights Act of 1866, enacted by Congress shortly after ratification of the Thirteenth Amendment, which prohibited slavery.

- Section 1981 states that “all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”
- Section 1982 ensures equal rights for citizens in terms of personal property. Damage awards under both sections often include compensatory damages for emotional distress or humiliation. Injunctive relief is also available under Section 1981.

42 USC Section 1985 (3): Conspiracy to Deprive Any Person or Class of Persons of Equal Protection of the Laws

- Enacted by Congress as part of the Ku Klux Klan Act to provide redress for victims of Klan offenses during Reconstruction.
- Imposes civil liability on anyone who conspires to deprive another individual or class of people of “the equal protection of the laws or of equal privileges and immunities under the laws.” Compensatory and punitive damages can be awarded under this section.

42 USC Section 3617: Interference, Coercion, or Intimidation in Violation of the Fair Housing Act

- Created a statutory civil cause of action for anyone coerced, threatened, intimidated, or interfered with for exercising rights granted under Sections 3603, 3604, 3605, or 3606 of the Fair Housing Act. Restricts punitive damages to \$1,000.

42 USC Section 13981: Violence Against Women Act of 1994

- Establishes a federal civil rights cause of action for victims of crimes of violence motivated by gender.
- Makes the offender liable for compensatory damages to the victim and authorizes injunctive and declaratory relief to protect the victim.

Use Transparency D6, “Federal Hate Crime Statistics Act.”



FEDERAL HATE CRIME STATISTICS ACT

28 USC Section 534: Federal Hate Crime Statistics Act

- Signed into law in April 1990; amended in 1994 and 1996.
- Requires the U.S. Attorney General to collect data and publish an annual summary on crimes that manifest prejudice based on race, religion, sexual orientation, ethnicity, or disability.
- The Attorney General has delegated responsibilities under the Act to the director of the FBI. The FBI’s Uniform Crime Reports Section develops the procedures for and manages the implementation of the collection of hate crime data.
- This statute helps identify the geographical location and the nature and types of bias crime occurring in the United States.
- The effectiveness of the law depends on its implementation by and support from state and local law enforcement officials. Your department or law enforcement agency should report all bias crimes to the appropriate state and federal reporting agencies, using the standardized reporting form.



RECONCILING BIAS CRIME AND THE FIRST AMENDMENT³

The First Amendment to the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Note that the Fourteenth Amendment makes the First Amendment applicable to the states as well.

1. Free speech goals of the First Amendment:

- Citizens may express their political beliefs and opposition to government without government reprisal.
- Society and government are better off when free exchange of political ideas and views is encouraged rather than chilled.
- The government may not choose which political beliefs it finds acceptable or unacceptable.

2. What constitutes speech? It may be written, oral, public, or private. It may be used for political or commercial purposes.

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Note to Instructor

The issue of free speech and its relevance to hate crime law is widely debated in both public and legal forums. Depending on your audience and the time available, you may wish to review this information on freedom of speech issues and their relevance to bias crimes. Cases 1–3 present issues that are applicable to a discussion of free speech protections. This section is also provided as Handout D3, “Reconciling Bias Crime and the First Amendment.”



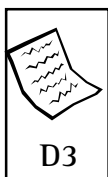
3. The First Amendment protects speech, not conduct. Forms of speech include the following:

- Symbolic speech to convey a message, e.g., picketing, boycotts, T-shirts with political statements, arm bands, and flag burning (all deemed protected speech)
- Anti-government (political) speech; anti-censorship protection for unpopular political speech
- Freedom not to speak, pray, or salute the flag
- Offensive speech of many types
- Speech that reflects bias or prejudice; racist, anti-religious, or sexist speech is generally protected, even if it includes use of slurs or epithets (unless incidental to conduct or used when communicating ideas in a threatening, intimidating, or coercive manner)

4. Exceptions to First Amendment protections for speech include the following:

- **Threats of force**, i.e., language placing a person in reasonable fear of physical injury
- **Slander or libel**
- **Pornography/obscenity**
- **Fighting words**, where speech is directed at a particular person or group of persons and is said in a manner that causes a hostile, physical reaction that tends to incite an immediate breach of the peace
- **“Captive audience speech,”** i.e., it is constitutional, with appropriate limitations consistent with court decisions, to limit, by statute or ordinance, the picketing of private homes (*Carey v Brown*, 1980)
- **Clear and present danger to public safety**, e.g., falsely yelling “Fire!” in a theater or inciting others to immediate violent action
- **National security**, i.e., speech that can constitute treason
- **False and deceptive advertising**
- **Where speech is incidental to conduct**, i.e., it is not the idea being expressed that is being punished, but the intolerable mode of expressing the idea the speaker wishes to convey (e.g., during a beating, the perpetrator says, “I hate blacks.”) (*Wisconsin v. Mitchell*, 1993)
- **Solicitation crime**, e.g., asking a person to murder one’s spouse for payment of \$10,000.
- **Words used that tend to prove discriminatory motive**, i.e., words expressing discriminatory motive are admissible to prove employment,

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D3

housing, public accommodation, credit, and other forms of discrimination; words expressing a discriminatory animus may serve as evidence of the prohibited conduct (for example, to prove reason for failure to promote) or may constitute the prohibited conduct itself

- **Racial, religious, or sexual harassment in schools and workplace**, i.e., discriminatory language used to verbally harass another in a confined environment, such as a school setting or place of employment, may be admissible to prove unlawful harassment; for example, a sexual harassment claim may be proven by evidence of unwelcome, offensive *verbal comments* of a sexual nature that creates an intimidating or hostile school or work environment

Note: Speech may fall into more than one category of exception.

On most occasions speech that reflects a person's prejudice cannot be punished. But at times, mere words may cause a reasonable person to feel threatened, intimidated, or coerced (e.g., "I'm going to kill you because I hate Catholics."). In that case, a person is not punished for his or her beliefs or offensive thoughts, but for language deemed the equivalent of conduct.

Application of judgment and experience is needed to determine whether speech or writings constitute a criminal threat. Fact patterns are not always clear, and reasonable discretion and reasoned judgment are crucial in determining whether a bias crime, giving rise to civil or criminal liability, has occurred. Prior to arresting or prosecuting a suspect for a bias crime for a written or verbal statement, law enforcement officials and prosecutors need to carefully examine the context in which the statement was made.

II. Activity: Criminal Law Case Application and Discussion (30 minutes)

(The cases in this session were reprinted with permission of Assistant Attorney General Richard Cole, Massachusetts Attorney General's Office, Civil Rights Division.)



Refer participants to Transparency D7, "Criminal Case Illustrations," and read the first part of Case 1 aloud. Discuss this case and the following cases with the entire group. There are six cases; if you run out of time, use only the cases that best suit your audience.

Case 1 attempts to identify what constitutes offensive or "hate speech" protected by the First Amendment, and what differentiates it from words that may constitute a criminal violation (e.g., a threat of bodily harm directed at a specific person or group of persons).

Case 1



On a Saturday morning, a man stands in a section of your town or city Common; he uses anti-Semitic epithets and makes offensive remarks (e.g., "All Jews should die," "It's a shame Hitler wasn't successful in exterminating the Jews").

- *Does this constitute a violation of any state criminal law? (No)*
- *Do these remarks constitute a threat of harm? Do they place those present in reasonable fear of physical injury or damage? (No, probably not)*
- *Were these remarks directed at any individual? (No)*
- *Does that make a difference in analyzing whether these remarks constitute a violation of criminal law? (Yes)*
- *Is this protected speech under the First Amendment to the U.S. Constitution or under your state constitution? (Yes)*

This man also hands out hate literature.

- *Would this in any way change your analysis of whether this constitutes a crime? (No)*
- *Is this protected speech under the federal and state constitutions? (Yes)*

This man also self-identifies as a member of a neo-Nazi group.

- *Does that change your analysis of this problem? (No)*

Assume that this same man sets up a kiosk on the side of a Jewish religious parade; hundreds of Jews walk past the kiosk as the epithets are made.

- *Would that in any way change whether he violated criminal law? (No)*
- *Would it change how you would handle the matter if you were at the scene at that time? (You may consider altering the parade route to separate parade participants and the man making the remarks, or provide police barriers to create greater distance between the participants and this man.)*

Case #2 and Case #3 illustrate that a change of a single fact—in this case, the size differential between the perpetrator and victim—may affect whether language constitutes a criminal offense (threat).

Case 2

An 11-year-old black girl sees a 6'5" 250-pound white male in full uniform exercising on the high school football field in the heart of a black neighborhood in your town or city. She walks up to him, stands inches away, and says in a loud voice, "This field is in a black neighborhood, white boy. Stay out of my neighborhood."



- *Are there bias indicators present? (Yes) What are they? (Different races, use of epithets, statement based on racial differences, incident occurred in predominately black neighborhood)*
- *Can the girl be charged under any state criminal (hate crime) law? (No) Why not? (Legally, the incident does not constitute a threat or intimidation)*
- *Does the incident constitute a threat? (No; based on these facts, the 250-pound white man would not reasonably believe that he was at risk of physical injury in this circumstance)*
- *What other evidence would you need for the incident to constitute a threat? (Other evidence that may have led the white man to be reasonably placed in fear by the small girl, e.g., whether or not she was holding a weapon at the time, whether others appeared to be participating with her in a joint venture, etc.)*
- *Does this constitute a bias incident? (Yes)*

Note to Instructor

The answers to some of the questions in Cases 3, 4, and 5 depend upon the details of your state's relevant statutes. Review the questions in advance and be prepared with the correct answers.

Case 3

A 6'5" white man sees an 11-year-old black girl walking on the football field at a high school in the heart of an all-white neighborhood. He walks up to her and, standing inches away, leans down and says in a powerful voice, "This is a white neighborhood, blackie. Get out of my neighborhood."



- *Does this constitute a threat, creating reasonable fear of physical injury or damage? (Yes)*
- *What specific factors led you to conclude that the language constitutes a threat? (Words directed at a specific person; size, strength, age, and gender differences; close physical proximity; tone of voice)*
- *Are all the necessary elements met to charge under your state's criminal civil rights statute? (Review facts of each element for each relevant statute)*

Case 4 illustrates that many cases have mixed motives. Even when hate language is used, bias motivation may not be the catalyst or cause for the incident. Hate language at times can be incidental to—and result from—anger, rather than bias or prejudice against the victim’s group.

Case 4



A white and an Asian American family are neighbors. Both have lived in their adjoining houses for three years without any problems. One Saturday, the father of the Asian American family cuts down an oak tree located on the property of the white neighbor’s house, mistakenly believing it is on his side of the property line. The father of the white family observes this, runs out, yells racial epithets, and punches the Asian American man in the face.

- *Are there bias indicators present? (Yes) What are they? (Different races, use of racial epithets)*
- *What do you believe was the motivating factor for this incident? (Cutting down the tree) Were there more than one? (Possibly underlying bias against Asian Americans)*
- *Does this conduct constitute a violation of any state or federal criminal law? (Yes) Which ones? (Review relevant state statute[s])*
- *How do you determine if a bias motive is involved? (Investigator needs to determine the perpetrator’s attitude toward neighbors and the nature of the relationship prior to this dispute. For example, were they social friends, or did they exchange few words over the years? Did the perpetrator ever express unhappiness over having Asian American neighbors?)*
- *Assuming that you conclude there are mixed motives that led to the incident or contributed to its seriousness (e.g., the tree cutting and anti-Asian bias), does that make a difference as to whether one can prosecute under your state’s hate crime statute?*
 - *Does bias motivation need to be the sole or primary motivation for conduct, or can it be one of the motivating factors in order to prosecute under your state’s statute?*
 - *Could a person be prosecuted under your state’s statute if you conclude that the incident became more violent because of bias, even though the catalyst for the initial dispute was based on race-neutral factors?*
 - *Would you still list it as a bias crime under the Hate Crime Statistics Act?*

Same scenario as above, except that the Asian American family just moved into the house the week before and has had no contact with the neighbors.

- *Are there bias indicators present? (Yes) What are they? (Different races, use of racial epithets, recently moved into neighborhood)*

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- *What do you believe was the motivating factor for this incident? (Racial differences and tree cutting) Were there more than one? (Yes, but racial difference was probably the predominant motive)*
- *Would it change your conclusion if the perpetrator was friendly with another Asian American family residing on the street or in the neighborhood? (This **may** indicate anti-Asian bias was not involved, or was not the primary motive)*
- *Does this conduct constitute a violation of any criminal laws? Which ones?*
- *Does the fact that the Asian family just moved into the house in any way change your analysis of the perpetrator's motivation? (Yes, more likely racial bias was a factor)*

Case 5 attempts to identify the investigative steps needed to properly assess whether a civil rights violation or hate crime occurred versus a situation in which the couple was randomly selected. The case requires discussion of statutory elements to determine if they are applicable when no direct physical confrontation or violence is involved. It is also important to have participants *identify* not only the relevant criminal civil rights statutes but also the general criminal laws that govern this situation.

Case 5



An interracial couple lives in a deserted area or on a dead-end street in your town or city. On two occasions, in the dark of night, three high school youths throw numerous eggs at their house. The family is home, but the youths run away before the family members are able to go outside to confront the perpetrators. Also assume that this couple has spoken out publicly about bias and prejudice in the town, and, in fact, has published an article in the local newspaper about what they believe is rampant racism in the town.

- *What information would you want to know before determining whether this was a hate crime? (e.g., did any of the youths know who lived in the home? Were other houses also egged? Egged twice?)*
- *Was this house selected randomly? What facts would lead you to conclude that it was not a random attack? (The couple lived in a deserted area; they had been targeted on two separate occasions.)*
- *Does the time of year this occurred matter (e.g., Halloween versus another period during the year)? (Possibly)*
- *Assuming these youths are later identified, with whom would you want to communicate to determine if any of the youths has engaged in similar conduct? (School officials, neighbors)*

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- *What else would you want to learn about these youths? (Their attitudes toward interracial couples and whether they have made openly biased statements)*
- *How does one go about determining the potential motivation of these youths (i.e., was it that the victims were an interracial couple, or because of their outspoken views, or for some other reason)? (Find out if any of the youths had made statements to friends, family, or school personnel indicating a biased attitude or motive either before or after the incident. Law enforcement should attempt to elicit expressions of bias during interrogation of the suspects.)*
- *For purposes of the investigation, would it matter what the emotional reaction of the family was to these egging attacks? (Yes) Why? (The victims' experience of the incident as threatening or intimidating may be a necessary element of the crime. It may also determine the nature of the law enforcement response to the victims.)*
- *Since there was no direct physical confrontation or violence against a person, would this case still constitute a violation of a criminal civil rights law (e.g., a law that prohibits intentionally damaging property to intimidate a person because of his or her race for associating with a person of another race, or for advocating certain views)? (Review statutes to answer this and the following questions.)*
- *Would this conduct constitute intimidation or coercion? Would that make a difference in terms of the applicability of the criminal civil rights statute?*
- *Under your state's statute, does it matter if the perpetrators believed the couple was an interracial couple and this turned out not to be true?*

Assume that you are able to develop evidence that the youths engaged in this conduct to intimidate the couple from speaking out in the future about racial bias and prejudice in your area.

- *Do any civil rights or other criminal statutes apply in that situation?*
- *For purposes of charging the youths, would it matter to you that these youths were honor students rather than known troublemakers?*
 - *Are less serious charges appropriate based on the background of the perpetrators? Could this lead to the wrong message being received by the community? (Yes, an effort needs to be made to detail reasons to the public.)*
 - *What are the risks if the community then perceived that the police did not take the incident seriously? (e.g., it creates the risk of vigilante-type retaliation if members of the community believe the police response was inadequate; engenders distrust of police by the targeted community)*

Case 6 should elicit discussion as to the applicable criminal civil rights statutes when buildings used for religious purposes are defaced. It also raises the problem regarding the occasional tension between victims' desires to remove hate symbols and hate graffiti as soon as possible versus the investigative need of the police to preserve the evidence.



Note to Instructor

Explain to participants that, at times, criminal justice professionals are placed in the very difficult position of being asked to comment on a situation in which the wrong response may polarize a community or escalate a situation. If a comment must be made, it is best to simply state that the incident is viewed very seriously, but that any statement about motive would be premature until a thorough investigation is completed.

Case 6




On Easter Sunday, two youths write anti-Catholic graffiti on a church, which includes threats against the parishioners such as, "You will all die."

- *What criminal (civil rights) statutes may be applicable in this situation? (Review state statutes to answer this and the following questions.)*
- *In reviewing the elements of those criminal statutes, do you have enough information at this point to charge the youths (assuming you identify the perpetrators)?*
- *What other facts do you need to learn in order to be able to charge under those statutes?*
- *What steps would you take to preserve evidence in this case? (Photograph graffiti and analyze the type of paint or marker used by the perpetrators)*
- *How do you deal with the priest's request that the graffiti be painted over immediately—before you are able to photograph the evidence? (Recognize the desire to eliminate these visible expressions of hatred on a house of worship, but indicate that if the graffiti is removed prematurely, the police may never be able to identify or prosecute the perpetrators. Assure the priest that the police will make every effort to complete this portion of the investigation immediately.)*

Assume that the reporter from the local newspaper sees you on the scene seconds after you arrive and asks you whether this constitutes a hate crime. How do you respond?

III. Optional Activity: Drafting Civil Rights Injunctions (20 minutes)



Note to Instructor

*If your state is among the majority of states that have no injunctive relief remedies, then **devote** this time to a discussion of any cases in the previous section that were not covered. If your state civil rights law allows for an injunctive relief remedy, **create** a transparency outlining the relevant state statute(s) and **discuss** it with participants.*

Review with the participants the information below.

Advantages of Civil Rights Injunctions

- The availability of a lower standard of proof—preponderance of evidence
- The speed with which a temporary restraining order can be obtained
- The inadequacy of criminal law to deal with some types of violations
- The unlimited duration of a permanent injunction as compared to the specific and, at times, quite brief, period in which controls are placed on the perpetrator as conditions of probation or through a “stay-away” order pending trial
- The deterrent effect of a criminal sanction for violations of restraining orders or injunctions

Civil injunctions can be granted by the court to keep the accused away from the victims. Allegations do not have to be proven beyond a reasonable doubt, the standard for proving a criminal offense. Instead, the prosecution need only convince the judge that the allegations are probably true (preponderance of evidence is the standard in civil cases).

Scope of Civil Rights Injunctions

- The scope of the injunction is often a key issue in injunction hearings before the court:
 - The court will want to provide protection to the victim without *unreasonably* restricting activity of the defendant.
 - This represents a case-by-case balancing.
- An injunction can do the following:
 - Protect the actual victim and other individuals from similar interference with secured rights
 - Protect witnesses/family members
 - Restrain perpetrators from going near the victim, her or his residence, neighborhood, place of employment, school, etc. (100 feet is the usual distance proposed, but up to 500 feet has been requested and granted in appropriate circumstances)
 - Restrain individual from being in “own backyard,” if it is reasonable and necessary
 - Prohibit communication with victim and witnesses, except through law enforcement or prosecutor’s office
 - Prohibit filing of frivolous civil or criminal complaints against the victim
 - Require notification of Attorney General’s office before the filing of any court action against the victim

- An injunction prohibits otherwise lawful conduct, for example:
 - Being present on certain streets or neighborhoods
 - Communicating with the victim or his or her family
- In some states, an injunction increases the exposure to higher criminal penalties for the same conduct
- In some states, civil rights injunctions are applicable to juveniles

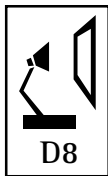
Factors to Consider in Determining Whether to Pursue Injunctive Relief

- Seriousness of incident (does not need to be a criminal violation)
- Language used during incident; words alone are usually not enough to constitute a violation of law
 - First Amendment-protected language versus actual threats, or words that intimidate or coerce a person
- Threats, intimidation, coercion, or harassment involved (violence or actual threat of violence not necessary)
- Prior conduct against victim (pattern of conduct)
- Likelihood of future contact between parties
- Relationship of the perpetrator and victim, if any, before the incident
- Whether the offender targeted or selected the victim because of his or her race, religion, ethnic background, gender, sexual orientation, or disability status
- Whether the primary motivation for the action(s) was based on bias
- Whether the offender has a history of prior bias-motivated incidents against other victims (pattern of bias-motivated conduct)
- Criminal record of the perpetrator
- Likely impact of an injunction on future conduct
- Whether the perpetrator is a member of a hate group and has interfered with victim's rights in any way connected to involvement with that group
- Whether a criminal prosecution is occurring for the same offense; issues to consider include the following:
 - Likelihood of incarceration (injunction would probably be denied if offender is incarcerated, unless it is proven that a serious threat of violence will continue once the offender is released and incarceration is not for a lengthy period, or unless demonstrated threat would continue while in prison—but this carries a very difficult burden of proof)
 - Length of potential incarceration (injunction outlives length of probation)
 - Date of trial (soon or in months)

- Whether the stay-away order, as a condition of bail, will be a sufficient deterrent and protect the victim and witnesses
- Potential negative impact of injunctive action on criminal prosecution
- Whether the potential offender may act in the future to threaten or intimidate others (who were not the victims of this incident) based on their status
- Likelihood of success (general success rate has important deterrent effect against potential perpetrators)

Drafting Civil Rights Injunctions

Use Transparency D8, “Civil Injunction: Case Illustration.”



CIVIL INJUNCTION: CASE ILLUSTRATION



Case 7

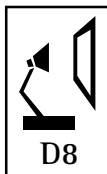
The Torreses, a Hispanic family, move onto a street in a predominately white area of your city or town. Their home is next to a large baseball field and playground. Shortly after they move in, they begin experiencing harassment. On one occasion, their car is tipped over; on another, their car is vandalized.

- *Are bias indicators present? (Yes) What are they? (Hispanics living in predominately white area, Hispanic family recently moved in, car tipped over—unusual occurrence [important factor])*
- *What steps do you take to determine the identity of the perpetrators of these two separate incidents? (Canvas the neighborhood, identify and interview individuals who use the field, perhaps set up video camera to monitor the house for further incidents)*
- *What violations of criminal (civil rights) statutes may the conduct involve? (42 USC Section 3631, forcible interference with occupying a dwelling)*
- *What other facts do you need to learn in order to charge perpetrators under any of these statutes? (Prior incidents against)*

This harassment culminated in an incident that occurred two weeks ago. On that day, the Torreses drove down their street, followed by a Hispanic family who lived nearby. As they drove, they were accosted by a group of 15–20 white males and females. One of the white males, John C., yelled a racial comment at the Torreses. John C. then stood in front of the Torres’ car, blocking its forward movement, and began to strike their car with a tire iron. The Torreses drove past him down the street and went to a barbecue at their friends’ home.

- *What potential civil rights were denied by the actions of the youths? (The right to travel; the right to access to public accommodation, which includes access to the streets; the right to live in housing free of ethnic harassment)*

(continued)




- *What criminal (civil rights) statutes may be violated here? (The right to travel; the right to access to public accommodation, which includes access to the streets; the right to live in housing free of ethnic harassment)*
- *Is a civil injunctive order an available law enforcement tool in your state to deter future conduct by these youths? If so, what would you want a court to order these white youths to do or not to do? (Options include prohibiting any form of future harassment or violence; prohibiting approaching within a specified distance of the family, house, car, and field; prohibiting communication with family or witnesses; prohibiting encouraging or causing another person to engage in prohibited conduct)*
 - *Can court orders be drafted to deter all the youths, even if you are unable to identify all the youths who participated? (Yes, by obtaining an order against the named defendants as well as others participating or acting in concert with the named defendants, and then serving the other youths with the order)*
 - *Can an order be issued that prohibits these individuals from also threatening, assaulting, coercing, or intimidating any other Hispanic family located in your town or city or in your state? (Yes)*
 - *If so, do you have effective systems in place for being notified if one of the youths perpetrates a bias crime against another Hispanic family outside your city and town or in another section of your city or town?*
- *What steps would you take to try to deal with the racial tensions and reduce the likelihood of recurrence? (Hold community meetings and discussions with community groups and leaders, make a public statement that the conduct will not be tolerated in your community)*

Assume that two days after a court order was issued for the youths to stay away from that particular street and the park, one of the defendants showed up in the park across from the Torreses' house and began yelling at the family.

- *Would that constitute a violation of the order you have drafted? (Yes)*
- *What are the potential penalties for violation of this order?*
- *If you were informed of the violation of the order, would you have a right to arrest without needing to obtain an arrest warrant?*
- *What would you explain to the victim about the maximum penalty for violating your injunctive order if a member of the Hispanic family were actually struck by one of the youths?*
- *How would you write the police report in this case in order to assist in the prosecution of this individual for violation of the injunction? (Detail conduct, existence of order, nature of the violation of the order).*



Divide participants into small groups and *ask* each group to draft injunctions appropriate to this case. *Encourage* participants to be creative.



Note to Instructor

If time allows, this hands-on activity is an excellent learning tool for participants.


When the activity is completed, *convene* entire group. *Ask* volunteers to write their draft injunctions on a flipchart. *Ask* participants from the entire group to review and comment on the appropriate language in the injunctions. *Caution* participants that they should seek counsel from the appropriate prosecutorial jurisdiction (local county district attorney or state's attorney and/or state attorney general).

IV. Presentation: Emerging Legal Issues (10 minutes)

Constitutionality

Explain that the constitutionality of some federal and state bias crime laws and municipal ordinances have been challenged in the courts:

- In 1992, the Supreme Court reviewed *R.A.V. v St. Paul*, in which an adolescent was accused of burning a cross in the yard of the only African American family in a neighborhood. He was charged with a misdemeanor for violating a city ordinance that bans the display of a swastika, burning cross, or any symbol that “arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender.” The Supreme Court struck down the St. Paul ordinance on the basis that it violated the First Amendment’s guarantee of free speech. As a result of this ruling, some hate crime statutes that criminalize bias-motivated speech may not survive constitutional challenges.
- In its 1993 review of *Wisconsin v Mitchell*, the Court unanimously upheld a Wisconsin statute that provides for enhanced penalties for hate-motivated crimes. In this case, the defendant, an African American youth, incited a group of friends who had just watched the film *Mississippi Burning* to “move on some white people.” The group subsequently assaulted a 14-year-old white teenager. The defendant was sentenced to two years in prison for aggravated battery and had two additional years added to his sentence because the crime was racially motivated. The Court’s ruling in this case provides an important protection for penalty-enhancement statutes for hate crimes.



Note to Instructor

Wisconsin v Mitchell does not preclude states from deciding that penalty-enhancement laws violate their own state constitutions’ free speech provisions. Thus far, four such challenges have been presented, but state courts in Oregon, Wisconsin, Washington, and Ohio have upheld the constitutionality of their respective hate crime penalty-enhancement statutes.⁴


Note to Instructor

Before teaching this section, **research** the status of the Hate Crime Prevention Act, and **amend** the text as necessary.

Hate Crime Prevention Act

Legislation pending in Congress would expand federal jurisdiction over hate crime cases. The Hate Crime Prevention Act, a bill offered in both Houses of Congress for the past several sessions, would amend 18 U.S.C. 245 in two ways: (1) by adding sexual orientation, gender, and disability to the list of protected categories (race, religion, and ethnicity/national origin), and (2) by removing current restrictions that enable prosecution only if the victim was attacked because he or she was engaged in a federally protected activity.

Civil Suits Against Organized Hate Groups

A growing number of civil suits are being pursued against organized hate groups. In a landmark case in Oregon, a jury awarded \$10 million in punitive damages to the estate of a black man who had been beaten to death by skinheads. The suit was filed against both the murderers and Thomas Metzger, the president of the White Aryan Resistance organization (WAR).

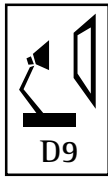
Gender Violence as Hate Crime⁵

Despite the similar characteristics of gender-based bias crimes and other bias crimes, crimes motivated by gender bias have not been included in most anti-bias crime legislation at either the federal or state levels. There is, however, a trend toward including gender in bias crime legislation as a protected category. In 1990, only 7 of the 31 states with hate crime statutes included gender.⁶ As of January 1999, 20 states plus the District of Columbia include gender as a protected category in their hate crime laws.

Discuss the inclusion of gender as a protected category under bias crime law and the consideration of domestic violence and sexual assault cases as gender-based bias crimes. *Cover* the following points:

- While women are often the victims of violence for the same reasons as men (i.e., the reasons that prompt robbery, burglary, larceny, motor vehicle theft, etc.), women are also victims of violence simply because they are women.
- Attacks against women often suggest bias crime—from their lack of provocation and/or lack of apparent motive, the severity of the attack, the existence of mutilation, and the obvious intention to terrorize.
- The guidelines for identifying an act of violence as a bias crime can also be applied to spouse or partner abuse.
- Suggestions that violence against women as women should be defined as bias-motivated hate crime and included in anti-bias crime legislation have met with some resistance. Concerns have been raised about the efficacy of including gender in bias crime legislation, about the usefulness of defining rape, battery, and murder of women as bias-motivated hate crimes, and about the legitimacy of fashioning civil rights remedies for such crimes.

Use Transparency D9, “Characteristics of Gender-Based Crimes,” and *review* the major points.

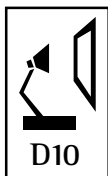


CHARACTERISTICS OF GENDER-BASED CRIMES

Bias-motivated violence against women has characteristics similar to all other types of hate violence, including the following:

- *Absence of other dominant motive*
- *Excessive violence/lack of provocation:* Many crimes against women involve the excessive violence, including mutilation, that characterizes bias-motivated crime. The ultimate example of hate violence against women is that perpetrated by serial murderers, who usually mutilate their victims, frequently binding, raping, and torturing them before they murder them. Three of the four women students murdered in August 1990 at the University of Florida in Gainesville were mutilated.
- *Community impact:* The murders in Gainesville, Florida, traumatized the entire university community and left women terrorized, fearful, and intimidated—as bias crimes are intended to do.
- *Long-term harm:* Bias crimes are significantly different from other violent acts because of the motivation that provokes them and their long-term impact. Not only do bias crimes victimize entire groups, but their individual victims may suffer more serious harm than do other crime victims. Bias crime victims are more likely to be attacked by multiple perpetrators and suffer long-term psychological harm than are victims of other crimes.⁷ The subordination of women and its attendant violence have long-term effects on women’s psychological and physical health.
- *Intimidation of an entire group:* Violence against one woman affects all women. Virtually all women, whether or not they have been victims of violence themselves, have been intimidated by the pervasiveness of hate violence.

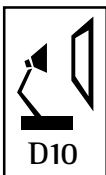
Use Transparency D10, “Gender Violence as Hate Crime: The Law.”



GENDER VIOLENCE AS HATE CRIME: THE LAW

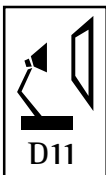
- As of January 2000, 20 states and the District of Columbia included gender as a protected category under their hate crime statutes.
- The proposed Hate Crime Prevention Act, first offered in Congress in 1997 and again in subsequent Congressional sessions, would add gender-motivated crime as a protected bias crime category (along with other new additions including crimes motivated by disability and sexual orientation).

(continued)



- The federal Violence Against Women Act of 1994 (42 USC 13981) allows individuals to file federal civil lawsuits in gender-based violence cases. This law, a comprehensive piece of legislation addressing the increasing problem of violence against women, asserts that “all persons within the United States shall have the right to be free from crimes of violence motivated by gender.” The gender-bias provision of the law makes the offender liable for compensatory and punitive damage to the victim, and authorizes injunctive and declaratory relief to protect the victim.
- The federal Hate Crime Sentencing Enhancement Act includes gender in its definition of bias crime.
- The federal Hate Crime Statistics Act does not include gender among its reporting requirements, and the FBI does not collect gender-based hate crime data as part of its activities under this act. It does, however, collect data on violent crimes against women within the Uniform Crime Reporting System.

Use Transparency D11, “Legal Criteria for Determining Gender-Related Bias Crimes.”⁸



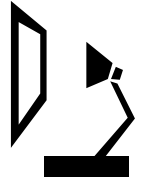
CRITERIA FOR DETERMINING GENDER-RELATED BIAS CRIMES

The following criteria can assist law enforcement officials in determining whether an act should be treated as a gender-related bias crime:

- Offender and victim are of different genders
- Offender makes abusive or derogatory remarks based on gender
- Offender articulates hatred for the gender as a group
- Offender has multiple victims, and all of the same gender
- A pattern of verbal, physical, and sexual abuse, control, or domination of victims of the same gender can be established

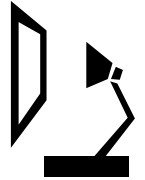
References

- ¹ Levin, J. and McDevitt, J. (Dec. 1998–Jan. 1999). Backlash to hate crime laws. *CAHRO News*. San Francisco, CA: California Association of Human Relations Organizations (CAHRO).
- ² Adapted from Berrill, K. (1992). *Countering anti-gay violence through legislation*. Washington, DC: The National Gay and Lesbian Task Force Policy Institute.
- ³ Reprinted with permission of Assistant Attorney General Richard W. Cole, Massachusetts Attorney General’s Office, Civil Rights Division.
- ⁴ Anti-Defamation League (1999). *1999 hate crimes laws*. New York: Anti-Defamation League.
- ⁵ Adapted from Copeland, L. and Wolfe, L. R. (1991). *Violence against women as bias-motivated hate crime: Defining the issues*. The Center for Women’s Policy Study.
- ⁶ Anti-Defamation League (1999). *1999 hate crimes laws*. New York: Anti-Defamation League.
- ⁷ Klanwatch (1989, November 20). *Special report: Outlawing hate crime*. Montgomery, AL: Southern Poverty Law Center.
- ⁸ Adapted from U.S. Department of Justice (1998). *National hate crimes training curriculum: Multilevel state and local law enforcement professionals*. Washington, DC: U.S. Department of Justice.



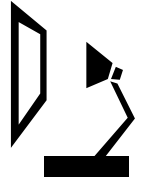
IMPORTANCE OF BIAS CRIME LAWS

- Provide a means for enforcement
- Aid in deterrence
- Send zero tolerance message to perpetrators and community
- Protect vulnerable groups and/or individuals from harm
- Send message to victims that these crimes will be dealt with aggressively
- Set societal norms
- Express the collective belief that our country is stronger when we protect all citizens
- Maintain social order

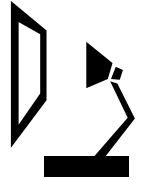


CATEGORIES OF STATE BIAS CRIME LAWS

1. Criminal Penalty Laws
2. Cross-Burning Laws
3. Mask-Wearing Laws
4. Paramilitary Training Laws
5. Civil Cause of Action Laws
6. Parental Liability Laws
7. Data Collection Laws
8. Police Training Laws

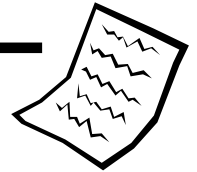


YOUR STATE'S CRIMINAL, CIVIL, AND DATA REPORTING STATUTES



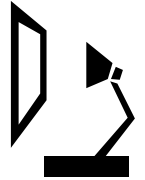
FEDERAL CRIMINAL STATUTES

- ◆ **18 USC Section 241**
Conspiracy Against Rights of Citizens
- ◆ **18 USC Section 245**
Forcible Interference with Civil Rights/
Federally Protected Activities
- ◆ **18 USC Sections 247**
Damage to Religious Property/Obstruction of
Religious Activity
- ◆ **42 USC Section 3631**
Willful Interference with Civil Rights Under
the Fair Housing Act
- ◆ **18 USC Section 242**
Deprivation of Rights Under Color of Law
- ◆ **Hate Crimes Sentencing Enhancement Act
(Section 280003 of Public Law 103-322)**



Federal Criminal Statutes

- ◆ **18 USC Section 241: Conspiracy Against Rights** broadly prohibits conspiracies to injure any person who is exercising rights or privileges protected by the Constitution or laws of the United States. The statute has been applied to a variety of federal rights, including the right not to be deprived of life without due process of the law, the right to vote in a federal election, and the right to occupy a housing free of racially motivated violence.
- ◆ **18 USC Section 245: Forcible Interference with Civil Rights/Federally Protected Activities** was enacted in 1968 in response to violent attacks on civil rights workers in the South. It prohibits intentional interference, by force or threat of force, with certain specified constitutional rights where interference is motivated by discrimination on the basis of race, color, religion, or national origin. Activities protected under this law include:
 - enrollment in a public school or college
 - participation in programs administered or financed by the United States or by a state
 - federal and state employment and jury service
 - interstate travel by common carrier
 - use of restaurants, lodging, gas stations, public entertainment facilities, and other establishments serving the public
- ◆ **18 USC Sections 247 and 248: Damage to Religious Property/Obstruction of Religious Activity** prohibits damaging or destroying religious property because of the religious nature of that property, or attempting to do so. Also prohibits intentionally defacing, damaging, or destroying religious property because of the race, color, or ethnic characteristics of any individual associated with that property.
- ◆ **42 USC Section 3631: Willful Interference with Civil Rights Under the Fair Housing Act** prohibits forcible interference with any person in selling, purchasing, renting, financing, occupying, or contracting for any dwelling due to that person's race, color, religion, sex, or national origin.
- ◆ **18 USC Section 242: Deprivation of Rights Under Color of Law** prohibits willful deprivation of constitutional and federal statutory rights, but only those deprived by reason of race, color, or ethnicity. It is most frequently used to prosecute violent misconduct by law enforcement officials, but it can be employed against other officials.
- ◆ **Section 280003 of Public Law 103-22: Hate Crimes Sentencing Enhancement Act** allows for the imposition of enhanced penalties if a perpetrator commits any Federal crime and chooses the victim on the basis of race, religion, national origin, ethnicity, gender, disability, or sexual orientation.



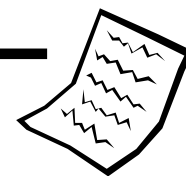
FEDERAL CIVIL STATUTES

- ◆ **42 USC Sections 1981 and 1982**
Civil Actions Under the Civil Rights Act of 1866

- ◆ **42 USC Section 1985 (3)**
Conspiracy to Deprive Any Person or Class of Persons of Equal Protection of the Laws

- ◆ **42 USC Section 3617**
Interference, Coercion, or Intimidation in Violation of the Fair Housing Act

- ◆ **42 USC Section 13981**
Violence Against Women Act



Federal Civil Statutes

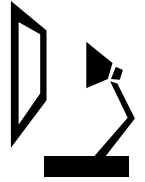
- ◆ **42 USC Sections 1981 and 1982: Civil Actions Under The Civil Rights Act of 1866**

Both sections of this statute originated in Section 1 of the Civil Rights Act of 1866 enacted by Congress shortly after ratification of the 13th Amendment which prohibited slavery.

Section 1981 states that “all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.” Injunctive relief is also available.

Section 1982 ensures equal rights for citizens in terms of personal property. Damage awards under both sections often include compensatory damages for emotional distress or humiliation.

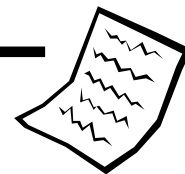
- ◆ **42 USC Section 1985 (3): Conspiracy to Deprive any Person or Class of Persons of Equal Protection of the Laws** was enacted by Congress as part of the Ku Klux Klan Act to provide redress for victims of Klan offenses during Reconstruction. This law imposes civil liability on anyone who conspires to deprive another individual or class of people of “the equal protection of the laws or of equal privileges and immunities under the laws.” Compensatory and punitive damages can be awarded under this section.
- ◆ **42 USC Section 3617: Interference, Coercion, or Intimidation in Violation of the Fair Housing Act** created a statutory civil cause of action for anyone coerced, threatened, intimidated, or interfered with for exercising rights granted under Sections 3603, 3604, 3605, or 3606 of the Fair Housing Act. This statute restricts punitive damages to \$1,000.
- ◆ **42 USC Section 13981: Violence Against Women Act of 1994** establishes a Federal civil rights cause of action for victims of crimes of violence motivated by gender. The statute makes the offender liable for compensatory damages to the victim and authorizes injunctive and declaratory relief to protect the victim.



FEDERAL HATE CRIME STATISTICS ACT

28 USC Section 534

- Signed into law in April 1990; amended in 1994 and 1996.
- Requires the U.S. Attorney General to collect data and publish an annual summary on crimes that manifest prejudice based on race, religion, sexual orientation, ethnicity, or disability.
- Data collection responsibilities were delegated to the FBI's Uniform Crime Reports Section.
- Helps identify the geographical location and the nature and types of bias crimes occurring in the U.S.
- Effectiveness of the law depends upon its implementation by and support from state and local law enforcement officials.



Reconciling Bias Crime and the First Amendment

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The First Amendment to the United States Constitution states:

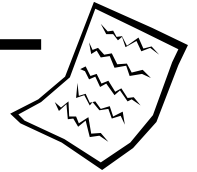
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Note that the Fourteenth Amendment makes the First Amendment applicable to the states as well.

1. Free speech goals of the First Amendment:
 - Citizens may express their political beliefs and opposition to government without government reprisal.
 - Society and government are better off when free exchange of political ideas and views is encouraged rather than chilled.
 - The government may not choose which political beliefs it finds acceptable or unacceptable.
2. What constitutes speech? It may be written, oral, public, or private. It may be used for political or commercial purposes.
3. The First Amendment protects speech, not conduct. Forms of speech include:
 - Symbolic speech to convey a message, e.g., picketing, boycotts, T-shirts with political statements, arm bands, and flag burning (all deemed protected speech)
 - Anti-government (political) speech; anti-censorship protection for unpopular political speech
 - Freedom not to speak, pray, or salute the flag
 - Offensive speech of many types
 - Speech that reflects bias or prejudice; racist, anti-religious, or sexist speech is generally protected, even if it includes use of slurs or epithets (unless incidental to conduct or used when communicating ideas in a threatening, intimidating, or coercive manner)
4. Exceptions to First Amendment protections for speech include the following:
 - **Threats of force**, i.e., language placing a person in reasonable fear of injury
 - **Slander or libel**
 - **Pornography/obscenity**
 - **Fighting words**, where speech is directed at a particular person or group of persons and is said in a manner that causes a hostile, physical reaction that tends to incite an immediate breach of the peace

(continued)

Reconciling Bias Crime and the First Amendment (cont'd)

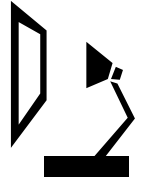


- **“Captive audience speech,”** i.e., it is constitutional, with appropriate limitations consistent with court decisions, to limit, by statute or ordinance, the picketing of private homes (*Carey v Brown*, 1980)
- **Clear and present danger to public safety,** e.g., falsely yelling “Fire!” in a theater or inciting others to immediate violent action
- **National security,** i.e., speech that can constitute treason
- **False and deceptive advertising**
- **Where speech is incidental to conduct,** i.e., it is not the idea being expressed that is being punished, but the intolerable mode of expressing the idea the speaker wishes to convey (e.g., during a beating, the perpetrator says, “I hate blacks.”) (*Wisconsin v. Mitchell*, 1993)
- **Solicitation crime,** e.g., asking a person to murder one’s spouse for payment
- **Words used that tend to prove discriminatory motive,** i.e., words expressing discriminatory motive are admissible to prove employment, housing, public accommodation, credit, and other forms of discrimination; words expressing a discriminatory animus may serve as evidence of the prohibited conduct (for example, to prove reason for failure to promote) or may constitute the prohibited conduct itself
- **Racial, religious, or sexual harassment in schools and workplace,** i.e., discriminatory language used to verbally harass another in a confined environment, such as a school setting or place of employment, may be admissible to prove unlawful harassment; for example, a sexual harassment claim may be proven by evidence of unwelcome, offensive *verbal comments* of a sexual nature that creates an intimidating or hostile school or work environment

Note: Speech may fall into more than one category of exception.

On most occasions speech that reflects a person’s prejudice cannot be punished. But at times, mere words may cause a reasonable person to feel threatened, intimidated, or coerced (e.g., “I’m going to kill you because I hate Catholics.”). In that case, a person is not punished for his or her beliefs or offensive thoughts, but for language deemed the equivalent of conduct.

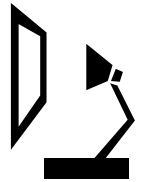
Application of judgment and experience is needed to determine whether speech or writings constitute a criminal threat. Fact patterns are not always clear, and reasonable discretion and reasoned judgment are crucial in determining whether a bias crime, giving rise to civil or criminal liability, has occurred. Prior to arresting or prosecuting a suspect for a bias crime for a written or verbal statement, law enforcement officials and prosecutors need to carefully examine the context in which the statement was made.



CRIMINAL CASE ILLUSTRATIONS

Case 1

- On a Saturday morning, a man stands in a section of your town or city Common; he uses anti-Semitic epithets and makes offensive remarks (e.g., “All Jews should die,” “It’s a shame Hitler wasn’t successful in exterminating the Jews”).
- This man also hands out hate literature.
- This man also self-identifies as a member of a neo-Nazi group.
- Assume that this same man sets up a kiosk on the side of a Jewish religious parade; hundreds of Jews walk past the kiosk as the epithets are made.



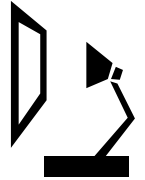
CRIMINAL CASE ILLUSTRATIONS (cont'd)

Case 2

- An 11-year-old black girl sees a 6'5", 250-pound white male in full uniform exercising on the high school football field in the heart of a black neighborhood in your town or city. She walks up to him, and, standing inches away, leans up and says in a loud voice, "This is a black neighborhood, white boy. Stay out of my neighborhood."

Case 3

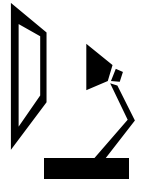
- A 6'5" white man sees an 11-year-old black girl walking on the football field at a high school in the heart of an all-white neighborhood. He walks up to her and, standing inches away, leans down and says in a powerful voice, "This is a white neighborhood, blackey. Get out of my neighborhood."



CRIMINAL CASE ILLUSTRATIONS (cont'd)

Case 4

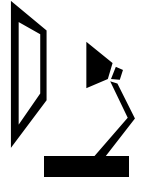
- A white and an Asian American family are neighbors. Both have lived in their adjoining houses for three years without any problems. One Saturday, the father of the Asian American family cuts down an oak tree located on the property of the white neighbor's house, mistakenly believing it is on his side of the property line. The father of the white family observes this, runs out, yells racial epithets, and punches the Asian American man in the face.
- Same scenario as above, except that the Asian American family just moved into the house the week before and has had no contact with the neighbors.



CRIMINAL CASE ILLUSTRATIONS (cont'd)

Case 5

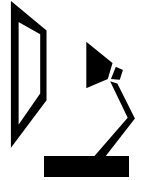
- An interracial couple lives in a deserted area or on a dead-end street in your town or city. On two occasions, in the dark of night, three high school youths throw numerous eggs at their house. The family is home, but the youths run away before the family members are able to go outside to confront the perpetrators. Also assume that this couple has spoken out publicly about bias and prejudice in the town, and, in fact, has published an article in the local newspaper about what they believe is rampant racism in the town.
- Assume that you are able to develop evidence that the youths engaged in this conduct to intimidate the couple from speaking out in the future about racial bias and prejudice in your area.



CRIMINAL CASE ILLUSTRATIONS (cont'd)

Case 6

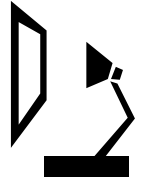
- On Easter Sunday, two youths write anti-Catholic graffiti on a church, which includes threats against the parishioners such as, “You will all die.”
- Assume that the reporter from the local newspaper sees you on the scene seconds after you arrive and asks you whether or not this constitutes a hate crime. How do you respond?



CIVIL INJUNCTION: CASE ILLUSTRATION

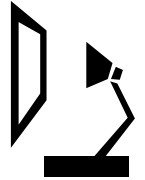
Case 7

- The Torreses, a Hispanic family, move onto a street in a predominantly white area of your city or town. Their home is next to a large baseball field and playground.
- Shortly after they move in, they begin experiencing harassment. On one occasion, their car is tipped over; on another, their car is vandalized.
- This harassment culminated in an incident that occurred two weeks ago. On that day, the Torreses drove down their street, followed by a Hispanic family who lived nearby.



CIVIL INJUNCTION: CASE ILLUSTRATION (cont'd)

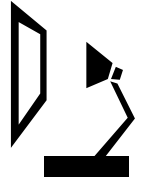
- As they drove, they were accosted by a group of 15–20 white males and females. One of the white males, John C., yelled a racial comment at the Torreses. John C. then stood in front of the Torreses' car, blocking its forward movement, and began to strike their car with a tire iron. The Torreses drove past him down the street and went to a barbecue at their friends' home.
- Assume that two days after a court order was issued for the youths to stay away from that particular street and the park, one of the defendants showed up in the park across from the Torreses' house, and then began yelling at the Hispanic family.



CHARACTERISTICS OF GENDER-BASED CRIMES

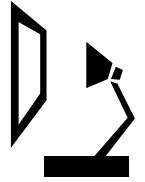
Similar to other types of bias crime, including:

- Absence of other dominant motive
- Excessive violence/lack of provocation
- Community impact
- Long-term harm
- Intimidation of an entire group



GENDER AS HATE CRIME: THE LAW

- Gender is a protected category in 20 states' bias crime statutes
- Proposed Hate Crime Prevention Act would include gender
- The Violence Against Women Act of 1994 provides a federal civil remedy for some victims of gender-related bias crime
- Federal Hate Crime Sentencing Enhancement Act includes gender as a protected category
- Federal Hate Crime Statistics Act currently excludes gender from reporting requirements



LEGAL CRITERIA FOR DETERMINING GENDER-BASED HATE CRIMES

- Offender and victim are of different genders
- Offender makes abusive or derogatory remarks based on gender
- Offender states hatred for the gender as a group
- Offender has multiple victims, all of the same gender
- A pattern of verbal, physical, and sexual abuse, control, or domination of victims of the same gender can be established

