

Don't Ask, Tell or Respond: Silent Acceptance of Disability Hate Crimes

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Cellophane Crimes

My plan for this talk is to clarify our understandings of hate crimes as a concept, to outline the FBI data on disability hate crimes, and then to develop various explanations of this data. But before I do this I want to set the scene. When I think of disability hate crimes I am reminded of the song "Mister Cellophane" from the musical Chicago. Disability hate crimes could be regarded as 'cellophane crimes': people walk right through them, look right through them, and never know they are there. In Somerville, Massachusetts on October 24th, 2 deaf girls were raped by gang members. One of these girls had cerebral palsy. A few weeks later then on Saturday 9th of November, another deaf girl was raped, again by gang members. Again, this week, another deaf woman was raped in the Boston area. While I don't wish to examine any of these cases in particular, I want to raise the question: when the circumstances indicate that such crimes may be neither random nor circumstantial, why has no one suggested these may be hate crimes? I suspect it has something to do with the absence of disability awareness in critical approaches to society. In the words of Lennard Davis (1995:1) disability is "the missing term in the race, class gender triad". As a result of this absence, disability was not a category which has been automatically included in discussions of hate crime. Even today, many discussions of hate crime completely ignore the issue of disability. For instance, *Punishing Hate: Bias Crimes Under American Law* by Frederick Lawrence (1999), acknowledges that bias crimes occur on the basis of race, ethnicity, religion, national origin, sexual orientation and gender but notably omits disability. Before I pursue this argument, however, I want to clarify what I mean by "hate crime".

What is a Hate Crime?

The Community Relations Department of the US Department of Justice (2001:1) defines a hate crime as:

the violence of intolerance and bigotry, intended to hurt and intimidate someone because of their race, ethnicity, national origin, religious, sexual orientation, or disability. The purveyors of hate use explosives, arson, weapons, vandalism, physical violence, and verbal threats of violence to instill fear into their victims, leaving them vulnerable to more attacks and feeling alienated, helpless, suspicious, and fearful.

Barbara Perry has made an important point with regard to hate crime victimization. She stresses that victims may be selected for either transcending normative categories of difference, or for conforming to such categories.

A Crime with Two Victims

There are two victims with hate crimes – individuals and communities. Hate crimes not only represent an attack on the rights and freedoms of individuals, they indicate a lack of physical safety for many people in minority communities. Hate crimes are crimes against a community because the message of intolerance which they send can terrorize particular groups. As a result, penalty enhancement is a common response to hate crimes. Martin (1996) points to three reasons why hate crimes deserve a different response to other crimes: first, hate crimes inflict more psychological harm than do non bias crimes; second, hate crimes have negative impact upon

communities by spreading fear and anger; and third, the bias which is expressed when the crime is committed has its own meaning which is separate from the actual crime. Some of the practical consequences of hate crimes are that other members of the targeted population may move away from or avoid the area, or may significantly alter their routines to enhance their safety (Craig, 2002).

Two Crimes Within One Act

The unique aspect of hate crimes is that they involve “parallel crimes” (Jenness and Grattet, 2001: 130). That is, there are two crimes embedded in a single act: a crime such as vandalism, theft, arson, murder, or assault, and another crime, a bias crime. In order to prove that a bias crime has occurred, it is necessary to demonstrate that the offender discriminates in the selection of his or her victim. In order to prove a disability hate crime exists, discrimination on the basis of real or perceived disability must be a substantial reason for discriminating against this particular individual.

Particularly Violent Crimes

Hate crimes tend to be associated with high levels of violence. Compared to other forms of crime, hate crimes are far more likely to involve physical threat and harm to individuals, rather than property. Victims of a hate crime are three times more likely to require hospitalization than victims of a non-bias assault (Bodinger DeUriate and Sancho, 1992). In one study half the victims of hate crimes were assaulted. This is a significantly higher rate than the national crime average – where only 7% of crimes involve assault (Levin and McDevitt, 2001: 17). The psychological consequences of hate crimes also seem to be more significant than those for non-bias crimes, in terms of depression, anger, anxiety and post-traumatic stress (Herek et al, 1999; Herek et al 1997). Many hate crimes involve multiple perpetrators (whereas most assaults usually involve two mutual combatants) and often the victims are unarmed while the perpetrators are armed (Bodinger DeUriate and Sancho, 1992). Also, perpetrators of hate crimes often do not live in the area where they commit the crimes. They frequently spend time and money in travelling to unfamiliar areas in order to perpetrate the crime (Medoff, 1999). And in most property crimes, something of value is stolen, but hate crimes that involve property are more likely to entail the destruction rather than the theft of that property (Medoff 1999).

“Stranger” crimes

Many hate crimes are committed by complete strangers – people who do not know the victim at all. Hate crimes are also often unprovoked (McPhail, 2000). This aspect of the crime reinforces the sense that it is not something about the particular individual, but simply their shared identity with a collective group, which is the source of the victimization. In fact, this aspect of the crime is often seen as pivotal in establishing that the act was a hate crime, rather than another form of crime. In her study of how law enforcement officers enforce hate crime law, Jeannine Bell (2002) found that any type of pre-existing relationship with the perpetrator was sufficient to convince many officers that the act was not a hate crime.

Evidence of Hate

Signs of a hate crime can include: words or symbols associated with hate, demeaning jokes about a particular group, the destruction of group symbols, a history of crimes against a group, a history of hate crimes in the community, and the presence of hate group literature. Hate crimes often involve serial victimizations and multiple offenders.

Organized Hate Groups

Only a very small minority of hate crimes involve organized hate groups. Disability hate crimes are no different in this respect. However it is important to acknowledge that some organized hate groups overtly display their hostility to disabled people. In early November 2002, I accessed the discussion forum of the white supremacist group Stormfront (www.stormfront.org). They had allocated a section of their discussion forum to eugenics. Among the disablist language which appeared on the forum included the following comments: "Ever notice how visually offensive those savants tend to be??" and "Just as the Christian hates the sin not the sinner. We hate the defective genes that have crippled some of our people". Another comment stated "we must put into place social and economic systems that encourage the best genes to dominate in numbers as well as power". A past 'Quote of the Week' was from H.G. Wells which stated:

The ethical system that will dominate the world-state will be shaped primarily to favor the procreation of what is fine and efficient and beautiful in humanity – beautiful and strong bodies, clear and powerful minds – and to check the procreation of base and servile type.

Categories Protected Under Hate Crime Legislation

Hate crime legislation typically outlines specific identity categories which are protected under bias legislation. This has led some critics to suggest that there is a hierarchy of protected categories, with race, religion and ethnicity being the least controversial categories, and gender, sexual orientation and disability being the most controversial (McPhail, 2000). In *Hate Crimes: Criminal Law and Identity Politics*, James Jacobs and Kimberly Potter (2001) argue that protecting certain categories of identity generates political conflict, produces an overly negative picture of intergroup relations, and creates recurrent occasions for intergroup conflict. The proponents of hate crimes legislation counter these arguments by arguing that the legislation responds to, rather than creates, intergroup conflict – particularly the violent suppression of marginalized identities and the violence defense of hegemonic identities.

Which Legislatures Outlaw Hate Crimes?

California was the first state to enact any form of hate crime legislation, in 1978 (McPhail, 2000). Since then, all but five of the State Legislatures has enacted some form of hate crime legislation. The five states, which do not have any hate crime statutes, are Arkansas, Indiana, New Mexico, South Carolina and Wyoming. However, only twenty-three States provide various penalties for disability hate crimes. The 23 States which include disability in hate crime laws are: Alabama, Alaska, Arizona, California, Connecticut, District of Columbia, Delaware, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, Oklahoma, Rhode Island, Vermont, Washington and Wisconsin. Federal laws on hate crimes do not include disability.

Proposed Federal Legislation Stalled in Senate

Earlier this year, there was some hope that disabled people would receive enhanced protection from hate crimes under the Federal Local Law Enforcement Enhancement Act (S.625). This Act proposed to expand federal jurisdiction over violent hate crimes. It would have enabled Federal law enforcement agencies to investigate hate crimes which caused death or bodily injury, or which were committed with a firearm or explosive device, regardless of whether the victim was exercising a federally protected right. Current Federal law only covers hate crimes based on race, national origin, and religion. Many other forms of hate crimes (including hate crimes based on disability, gender and sexual orientation) are ignored in the current law, which is 32 years old. Current federal legislation only protects citizens who are threatened or attacked while they are exercising a federally

protected right. Such rights include renting a house, riding public transportation, or eating in a public restaurant. The hope that this federal legislation will be extended seems to have diminished now that the Local Law Enforcement Act has stalled in the Senate.

Hate Speech and Hate Crime

Hate crime laws typically emphasize their intent to punish conduct, not speech. The First Amendment guarantees the right to free speech; hate crime laws never can, and never intend to, over-ride this Constitutional right. However, the right to free speech may protect the right to express offensive views but does not protect the right to behave criminally even if the crime consists solely of speech. That is speech intended to seriously frighten someone is a verbal assault that may be punished (Lawrence, 1999). The “hate crimes- hate speech paradox”, as it has been labeled, involves simultaneously punishing the bias criminal and protecting the right of the bigot to free speech. Hate crime laws do not punish free speech – they simply increase penalties for acts that are already illegal.

It must be recognized, however, that the line between speech and conduct is difficult in practice to establish. Whillock (1995:32) suggests that the function of hate speech is to create a “symbolic code for violence” which inflames the emotions of followers, denigrates the out-class and inflicts harm on the victims. Many victims of hate speech have very real fears that the speech will escalate into physical violence (Mallon, 2001).

In the disability area, there is much evidence of the damage caused by hate speech. A recent story in the *Ragged Edge* magazine by Nicolas Steenhout (2002) discusses one experience of the damage done by hate speech. Nicolas is a wheelchair user with a service dog. When he was working with the Progress Center for Independent Living, he was the victim of hate speech. When he and his wife first moved in to the area, a woman said to her that they “didn’t belong here”. On another occasion, he was sworn at, and called an offensive disablist epithet, and was told that “God punished you, and I hope he punishes you some more”. The damage such hate speech can do to someone is very real indeed. Mairian Corker (2000) argues that such hate speech can create a political climate where disabled people experience “oppressive silencing”.

Those who favor penalizing hate speech tend to take a more expansive definition of “hate crimes” than those who strongly support free speech. That is, they do not conceive of hate speech or hate crimes as a series of discrete acts, but instead view them as part of a continuum of bigotry and prejudice. Benjamin Bowling (1998:158) has highlighted some of the effects of regarding hate crimes as a process:

Conceiving of violent racism (and other forms of crime) as processes implies an analysis which is dynamic; includes the social relationships between all the actors involved in the process; can capture the continuity between physical violence, threat and intimidation; can capture the dynamic of repeated or systematic victimization; incorporates historical context; and takes account of the social relationships which inform definitions of appropriate and inappropriate behavior.

A recent book by Barbara Perry (2001), called *In The Name Of Hate*, views hate crime as a process, which plays an important role in social power structures. Perry defines hate crimes as “a mechanism of power intended to sustain somewhat precarious hierarchies, through violence and threats of violence (verbal or physical). It is generally directed toward those whom our society has traditionally stigmatized and marginalized”.

Responding To Disability Hate Crimes

It is sometimes assumed that because hate crimes are a legal matter, the most appropriate way to respond to them is also a legal approach. But the prevention of hate crimes requires far more than that. It is interesting to note that one of the most comprehensive guides for responding to hate crimes has been produced by the International Association of Chiefs of Police (1998). Their twenty-two recommendations for responding to hate crimes recognize the complexities of the causes of hate crime and work to reduce prejudice and bigotry at the individual and the societal level. Their recommendations include:

- increasing public awareness and community involvement in responding to prejudice, intolerance and hate crime;
- developing coordinated planning processes, task forces and institutional frameworks to promote community stability and respond to hate groups;
- providing adequate support to victims;
- reforming school curricula to include diversity training, conflict resolution and information about hate crimes;
- developing more effective sanctions for perpetrators;
- encouraging responsible and accurate media coverage of hate crimes; and
- establishing mechanisms for repairing harm to communities.

These recommendations should be read in conjunction with those resources which have been developed specifically for an educational context, such as *Healing The Hate: A National Hate Crime Prevention Curriculum For Middle Schools* by McLaughlin and Brilliant (1997) and *Preventing Youth Hate Crime* published by the US Department of Education (2002).

One of the areas which is not addressed by these reports is the role of social movements in politicizing hate crimes. In *Making Hate A Crime*, Valerie Jenness and Ryken Grattet (2001) highlight the roles of social movements in politicizing the issue of hate crimes and in drawing attention to the levels of hate crime victimization experienced by specific groups. Social movements gather data on hate crime and publicize this information, which is then distributed to policy makers, law enforcement agencies and the general public. Jenness and Grattet suggest that the first stage in the public policy process is for social movements to construct the problem of hate-motivated violence and pressure politicians to pass legislation, well before courts and police administer and interpret those laws. The implication of this argument is that the disability movement must engage in more lobbying to have disability hate crimes included in the political agenda.

In another paper, I have discussed some of the social changes which need to occur in order to reduce the incidence of disability hate crimes (Sherry, 2000). These changes include: a change in attitudes towards disability, improved background checks for caregivers, enhanced accessibility for domestic violence shelters and women's refuges, and a breakdown of segregated institutions which may foster a culture of abuse.

One Successful Prosecution which went to trial

There is a notoriously low rate of prosecution and conviction for hate crimes. In fact, only one disability hate crime has ever been successfully prosecuted. However, while this low rate of prosecution is appalling, it is not something which is unique to disability hate crimes. Boston has been cited as a national model for hate crime investigations, and yet a study of 452 hate crimes in Boston between 1983 and 1987 found that approximately 85% of offenders were not arrested, and charges were dropped against one third of those arrested. For a total of 452 incidents, many of which were extremely violent, only five individuals were sent to jail (Levin and McDevitt, 2002).

Jack Levin and Jack McDevitt (2002) have written a book entitled *Hate Crimes Revisited: America's War on Those Who Are Different*. They argue that one of the reasons for such low arrest and prosecution rates is that prosecutors look for a perfect case when a new statute is enacted. In this regard, it may be useful to examine the sole case, which has been prosecuted for a disability hate crime.

On January 30, 1999, Eric Krochmaluk, a cognitively disabled man from Middletown NJ, was kidnapped, choked, beaten, burned with cigarettes, taped to a chair, his eyebrows were shaved, and he was then abandoned in a forest. Eight people were subsequently indicted for this hate crime; the first prosecution of a disability hate crime in America. Similar attacks had occurred on two previous occasions.

Monmouth County Prosecutor John Kaye said "They tormented this mentally disabled man because of his disability... They did it to him because they could – because they could manipulate him, and because they believed he could not tell on them, which was almost true".

FBI DATA ON HATE CRIMES

As a result of the Hate Crime Statistics Act of 1990, the FBI is required to collect data on hate-motivated crimes under its Uniform Crime Reporting Program. The FBI now publishes annual reports on hate crime in America. These reports indicate that a very small number of people with disabilities have experienced hate crimes. Data for disability hate crimes was not collected prior to 1997, but is now collected for anti-physical and anti-mental hate crimes. This is the definition of “physical” and “mental” disability bias used in this context by the FBI:

A performed negative opinion or attitude toward a group of persons based on physical or mental impediments/challenges, whether such disabilities are congenital or acquired by heredity, accident, injury, advanced age or illness (US Department of Justice, 1999, Hate Crime Data Collection Guidelines, Appendix Three).

The details of the FBI statistics for disability bias crimes, from 1997-2000, are outlined in the Tables and Figures below.

Table One:

Victims by Disability Bias Motivation, 1997- 2001

Disability	Offenses 2001	Offenses 2000	Offenses 1999	Offenses 1998	Offenses 1997	TOTAL
Anti-Physical	12	20	11	14	9	66
Anti-Mental	25	16	10	13	3	67
Total	37	36	21	27	12	133

Source: FBI, “Hate Crime Statistics”, 1997, 1998, 1999, 2000, 2001.

This data suggests that only 133 incidents of disability-related hate crime occurred in the USA in the years 1997-2001^[1]. Of these 133 disability hate crimes recorded since 1997, 125 were directed at individuals, 2 were directed at government agencies, 2 were directed at public places, 1 was against a business/financial institution, 1 was against a religious organization, 1 was a crime against “society/public”, and 1 was against other/unknown/multiple victims. To put these figures in perspective, the FBI data recorded 44, 265 hate crimes in this time. It also indicates that people with physical disabilities experienced a slightly higher level of bias crime than people with mental disabilities from 1997–2000, but that this trend was reversed in 2001. The FBI has recorded only 37 disability-related hate crimes in the USA in the year 2001, the last year for which published data is available. This figure was in fact the highest number of disability hate crimes ever recorded by the FBI. However, even in this year, the total number of disability-motivated hate crimes is less than one-half of one percent of the total hate crimes recognized by the FBI figures.

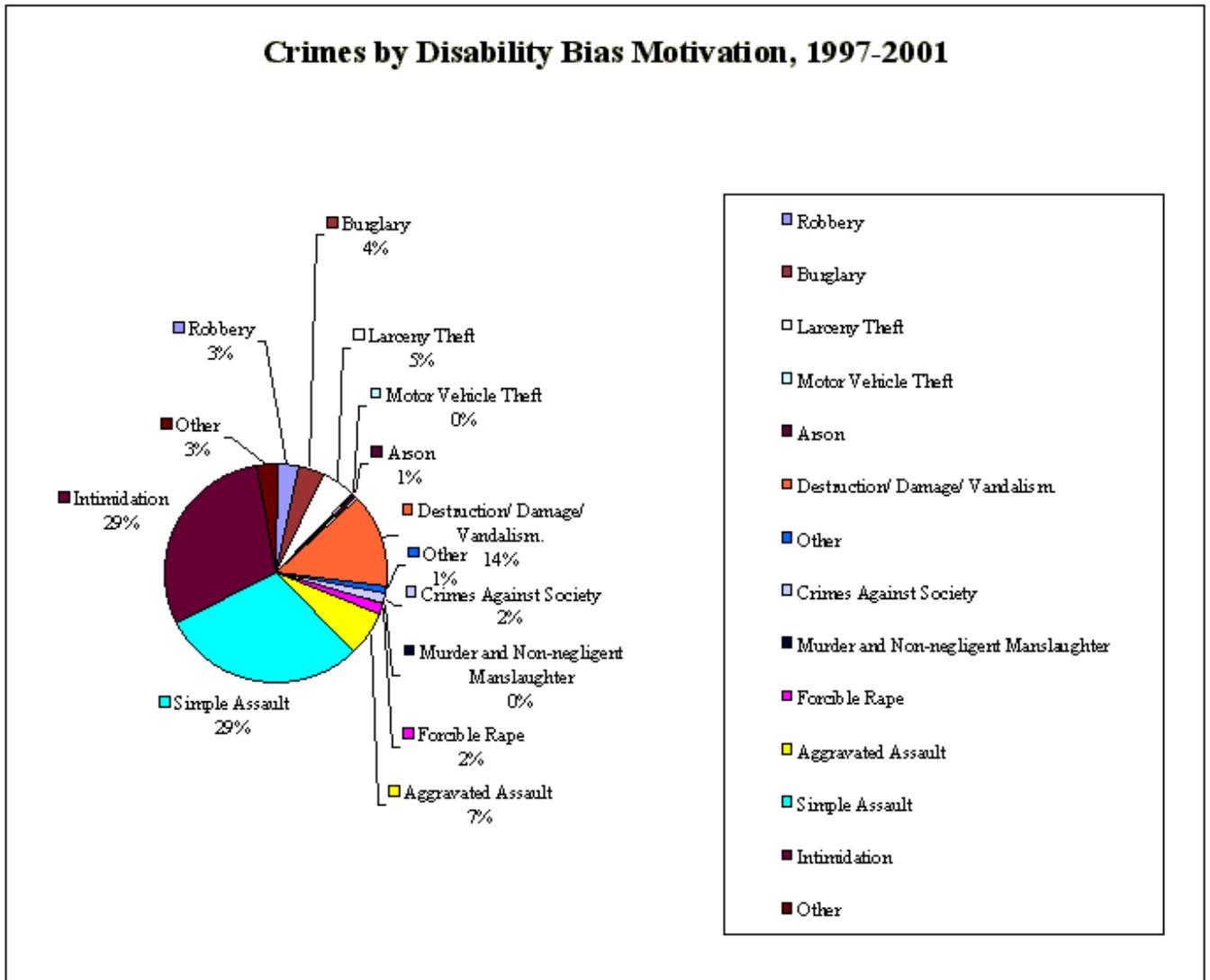
The FBI breaks this aggregate data into three main categories of crime: crimes against persons (including murder and nonnegligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation and other crimes); crimes against property (such as robbery, burglary, larceny-theft, motor vehicle theft, arson, destruction/damage/vandalism and other crimes); and crimes against society (which includes crimes that are recorded on the National Incident-Based Reporting System).

Figure One summarizes the percentages of various forms of disability bias crimes. The most common forms of disability bias crime are simple assault and intimidation, both of which comprise 29% of all disability bias crimes. The next most common form of disability bias crime is destruction, damage or vandalism, which comprised 14%

of all disability bias crimes. And the fourth most common form of disability bias crime is aggravated assault, which comprised 7% of all disability bias crimes. The remaining disability bias crimes were comprised of various sorts of crimes including: larceny-theft (5%), burglary (4%), robbery (3%), forcible rape (2%), and arson (1%)

Figure One:

Crimes by Disability Bias Motivation, 1997-2001.



Disability Bias Crimes Against the Person

The FBI data also records in detail of the type of incidents recorded as hate crimes against persons, motivated by disability bias. The data for crimes against persons by disability bias motivation for the years 1997-2000 is summarized in Table Two.

Table Two:

Crimes Against Persons by Disability Bias Motivation, 1997-2001

Crimes Against the Person						
YEAR	Murder and Nonnegligent Manslaughter	Forcible Rape	Aggravated Assault	Simple Assault	Intimidation	Other
2001	0	0	3	7	12	2
2000	0	0	1	11	6	2
1999	0	1	1	7	6	0
1998	0	1	3	10	9	0
1997	0	0	1	5	6	0
TOTAL	0	2	9	40	39	4

Source: FBI, "Hate Crime Statistics", 1997, 1998, 1999, 2000, 2001.

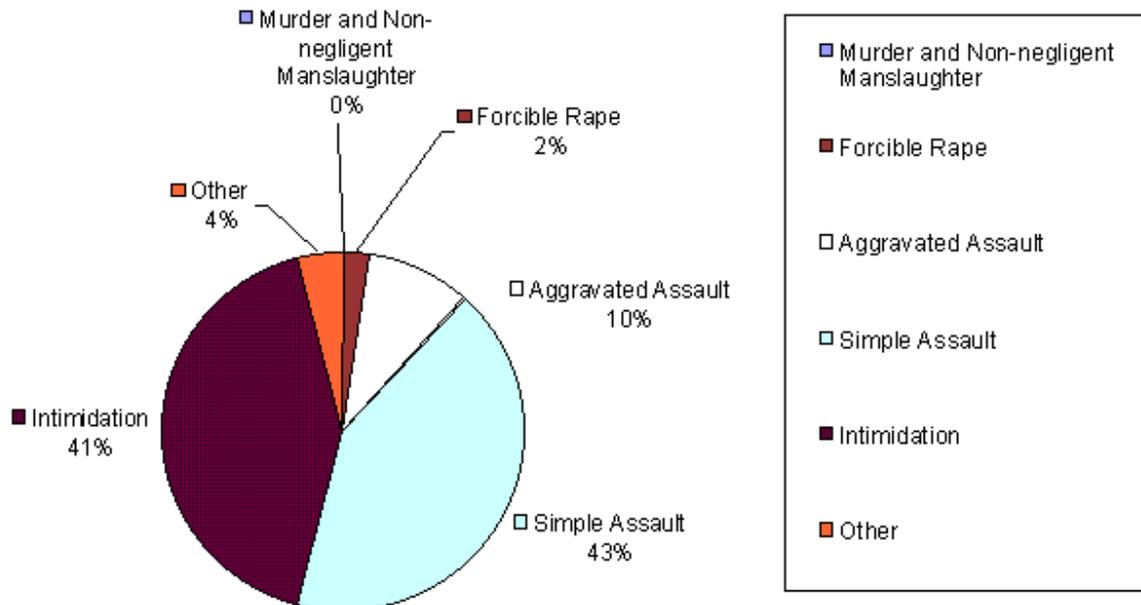
The FBI has recorded 94 disability bias crimes against the person in the years 1997-2001. In every year for which data has been collected, a majority of reported disability hate crimes involved violent crimes against the person. Also, if these statistics are correct, there were no disability hate crimes that involved murder and non-negligent manslaughter from 1997 till 2001. In terms of the total percentages of disability bias crimes against the person, the most common form was simple assault (43% of the total), followed by intimidation (41%), aggravated assault (10%), forcible rape (2%) and other crimes (4%). These statistics are interesting because they differ quite markedly from the overall national percentages of bias crimes against the person. In the aggregate figures on bias crimes, intimidation represents 54.39% of all crimes against persons, which is more than 13% higher than the percentage of intimidation in disability bias crime. The aggregate level of aggravated assault, 17.74% is also much higher than the reported disability figures of 10%. On the other hand, the figures for simple assault by disability bias are 43%, which are much higher than the aggregate national figures for simple assault of 27.36%.

These percentages are presented in Figure Two, which summarizes the incidence of various forms of crimes against the person, by disability bias motivation, from 1997 to 2001.

Figure Two:

Crimes Against Persons by Disability Bias Motivation, 1997-2001

Crimes Against Persons by Disability Bias Motivation, 1997-2001



This Figure illustrates the fact that the overwhelming majority of recorded crimes against the person, by disability bias, are either simple assault or intimidation. Aggravated assault, the next most common form of crimes against the person, constitutes approximately 10% of the total.

Table Three:

Crimes Against Property by Disability Bias Motivation, 1997-2000

Crimes Against the Person								
YEAR	Robbery	Burglary	Larceny-Theft	Motor Vehicle Theft	Arson	Destruction/Damage/Vandalism	Other	Crimes Against Society
2001	2	2	4	0	0	4	0	1
2000	1	1	1	0	1	11	0	1
1999	0	2	1	0	0	2	1	0
1998	1	0	1	0	0	2	0	0
1997	0	0	1	0	0	0	0	0
TOTAL	4	5	7	0	1	19	1	2

Source: FBI, "Hate Crime Statistics", 1997, 1998, 1999, 2000, 2001.

This Table suggests that destruction, damage and vandalism are the most common forms of crimes against property by disability bias motivation. There are also relatively small numbers of other property crimes (including burglary, larceny-theft and robbery) motivated by disability bias. Also, one of the more noteworthy elements of this data is that if these figures are correct, there were NO crimes against property (robbery, burglary, larceny-theft, motor vehicle theft, arson, destruction, damage, vandalism) motivated by disability bias in 1997. The relative percentages of these types of crimes is presented in Figure Three below. It illustrates that damage, destruction and vandalism constitute the majority of crimes against property by disability bias motivation – 48% of the total. Larceny-theft were the next most common form of crimes against property (18%), followed by burglary (13%), robbery (10%), crimes against society (5%), arson (3%) and other crimes (3%).

Figure Three:

Crimes Against Property by Disability Bias Motivation, 1997-2001.

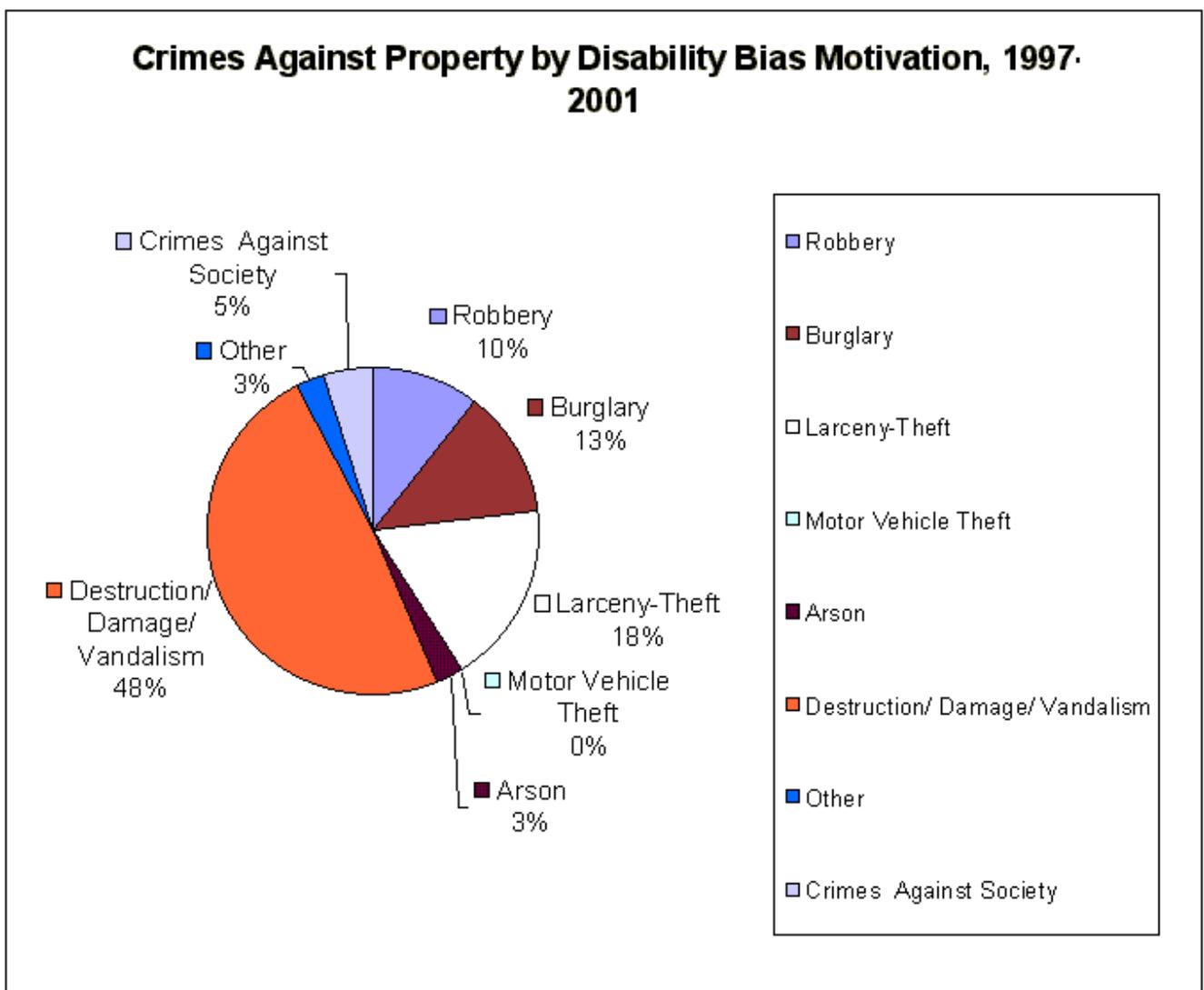


Table Four summarizes the location of disability hate crimes.

Table Four:

Locations of Crimes Disability Bias Motivation, 1997-2001

Location	2001	2002	1999	1998	1997
Air/bus/train terminal	1				
Bank/savings and loan	-	-	1	-	-
Church/Synagogue/Temple	1	-	-	-	-
Commercial office building	-	2	1	-	-
Convenience Store	1	1	-	1	-
Department/Discount store	1	-	-	-	-
Drug Store/ Doctor's office/ Hospital	-	-	-	2	-
Government/ public building	2	-	-	-	1
Grocery Store	0	-	-	-	1
Highway/road/alley/street	5	4	1	9	-
Jail/ Prison	0	-	-	-	1
Parking lot/garage	2	5	3	-	2
Residence/home	15	17	6	7	2
Restaurant	0	2	3	-	1
School/college	3	2	2	2	3
Service Station	0	-	-	1	-
Specialty Store (TV, fur, etc)	1	-	-	-	1
Other/unknown	5	3	2	3	-
TOTAL	35	36	19	25	12

This Table indicates that the most common location of disability bias crimes is a private residence or home [2] (47 of the total 127 reported hate crime locations). The next most common location was a highway/alley/road/street (19 locations), parking lots and garages (12 locations) and school and colleges (12 locations). The location of disability bias crimes, expressed in percentages, is presented in Figure Four.

Figure Four:

Locations of Crimes by Disability Bias Motivation, 1997-2001

Locations of Crimes Disability Bias Motivation, 1997-2001

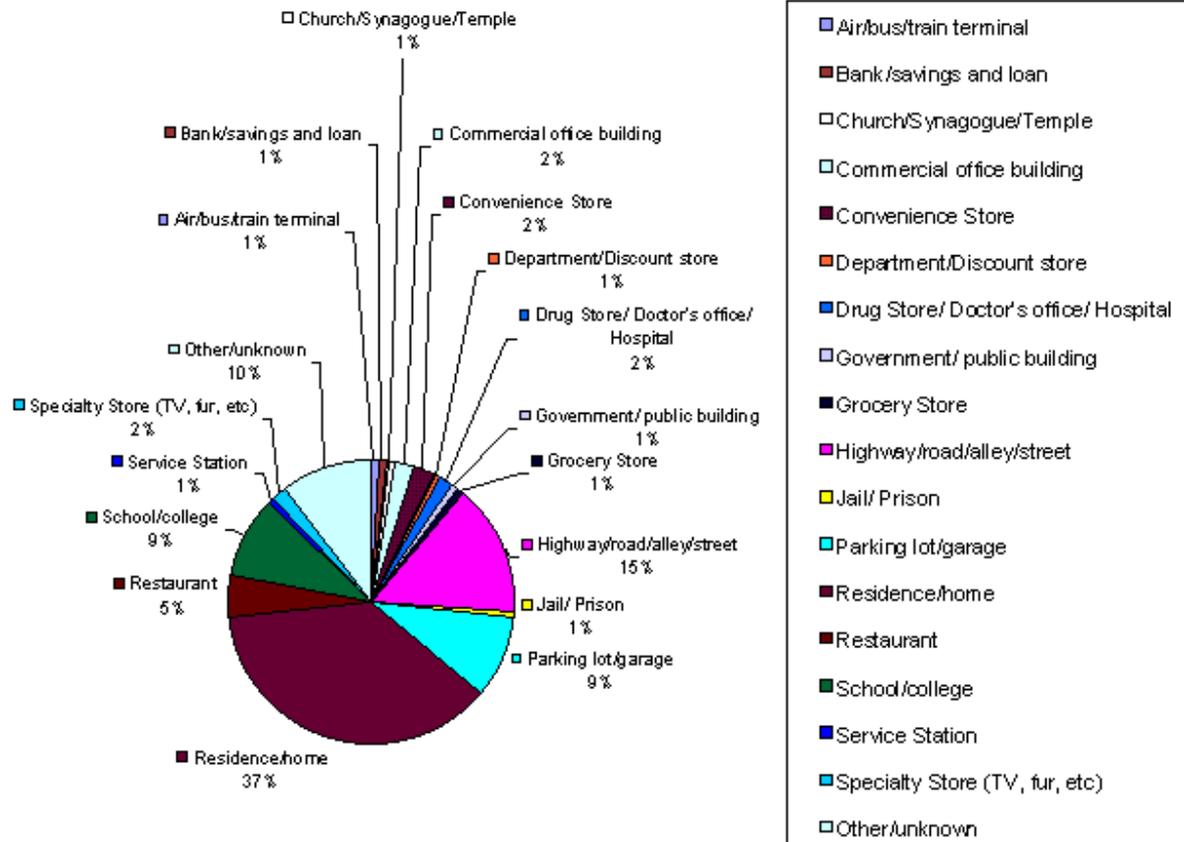


Figure Four clearly shows that more than half of all recorded disability bias crimes were either committed outside a residence or home (which occurred in 37% of cases), or in a highway, road, alley or street (15%). In the other cases, the most common locations were parking lots and garages (9%), schools or colleges (9%) and restaurants (5%).

Table Five:

Disability Bias Crimes by Suspected Offender's Race, 1997-2001

Year	Total offences	White	Black	American Indian/ Alaskan Native	Asian/ Pacific Islander	Multi-Racial Group	Unknown Race	Unknown offender
2001	37	11	8	0	0	4	3	11

2000	36	12	11	0	0	1	8	4
1999	21	11	2	0	0	1	7	0
1998	27	11	4	0	0	2	10	0
1997	12	9	1	0	0	1	1	0
TOTAL	133	54	26	0	0	9	29	15

Table Five indicates the suspected offender's race: 54 of the suspected offenders were White, 26 were Black, 29 were from an unknown race, 9 were from a Multi-racial group, and there were 15 unknown offenders.

Figure Five:

Disability Bias Crimes by Suspected Offender's Race, 1997-2001

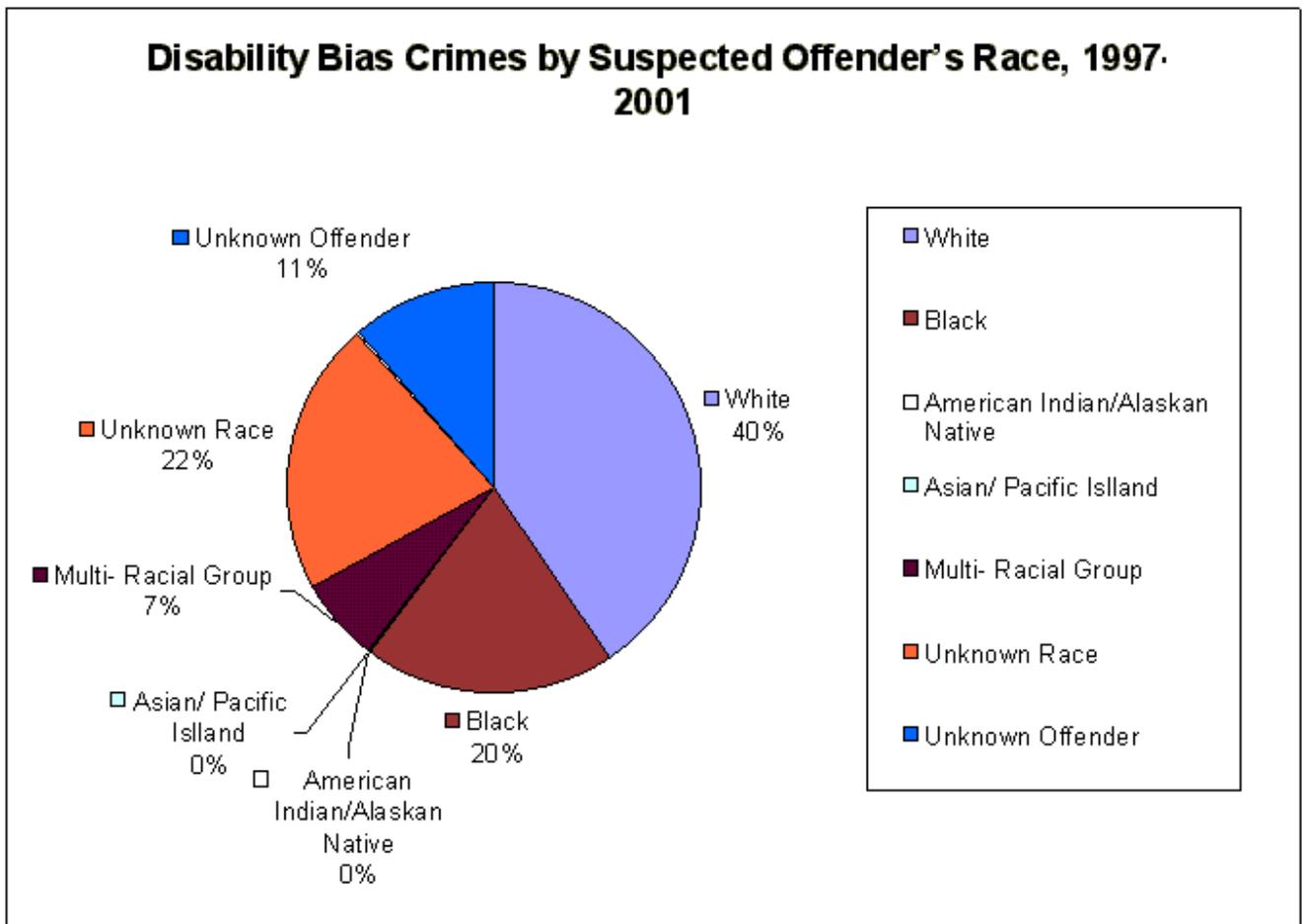


Figure Five suggests in 45% of cases, the suspected offender's race was White, in 19% it was Black, in 27% the race was unknown, and in 4% the offender was unknown. Interestingly, the race of the victim was not published by the FBI. This is disappointing, because such data could provide a useful compliment to the figures on the suspected race of the offenders.

MAKING SENSE OF THIS DATA

There are four possible hypotheses about this FBI data which I would now like to explore:

1. It correctly measures disability hate crimes.
2. It measures “disability” correctly, but “hate crimes” wrongly.
3. It measures “hate crimes” correctly, but “disability” wrongly.
4. It measures both “disability” and “hate crimes” wrongly.

Hypothesis One: Correctly Measures Disability Hate Crimes.

If this hypothesis is correct, there is a very low incidence of disability hate crimes. This data suggests that less than one in a million disabled people can expect to be the victim of a disability hate crime in any year. The implication of this hypothesis is that disabled people are rarely the victims of hate crimes, and when they are, these crimes are reported and recorded. If this hypothesis is true, then all of the following processes (identified as critical steps in hate crime reporting) are occurring. These are the seven steps identified by Balboni and McDevitt (2001) as essential for accurate hate crime reporting.

Seven Critical Steps in Hate Crime Reporting

1. The victim understands that a crime has been committed.
2. The victim recognizes the bias motivation of the crime.
3. Someone seeks law enforcement intervention.
4. Law enforcement officers are told of the bias motivation.
5. Law enforcement officers recognize the elements of bias crime.
6. Law enforcement officers document the bias element and file appropriate charges.
7. The incident is reported as a hate crime.

(Adapted from Balboni and McDevitt, 2001)

However, I would suggest that this is the least likely of all four hypotheses. The reason why I would dismiss this data as not being representative or accurate is that numerous studies from the fields of disability studies and criminology indicate both a very high crime rate against disabled people as well as a very high level of disability discrimination. The Office for Victims of Crime (1998:1) has commented that “many crime victims with disabilities have never participated in the criminal justice process, even those who have been repeatedly and brutally victimized”. The literature on disability consistently reports the fact that disabled children and adults experience much greater risk of sexual abuse and assault (e.g. Sobsey and Mansell 1990; Sobsey and Doe, 1991; Sobsey, 1994; Sobsey, Randall and Parilla, 1997; Sullivan and Knutson, 2000; Sullivan, Vernon and Scanlan, 1987; Chenoweth, 1995; Chenoweth 1996; Chenoweth, 1999; Carmody and Bratel, 1992). This FBI data is not consistent with such studies.

Hypothesis Two: Measures Disability Correctly, But Hate Crimes Wrongly

If this hypothesis is correct, the “hate crime” elements of the issues have not been recognized correctly. Possible explanations for this situation could include:

a) The Incidents Are Not Reported To Law Enforcement Agencies

In this scenario, hate crimes against disabled people are unreported to police. Reasons for the failure to report a hate crime could include the victim’s shame, fear of retaliation, or fear of not being believed. Some of the literature on homophobic hate crimes suggests victims may be unwilling to report their experiences because of a

fear of publicizing their sexual orientation (for instance, Green et al, 2001). There is an obvious parallel with the shame reported by some disabled people about disclosing their experience of disability. Also, the victim may not wish to believe that the victimization was motivated by bias, and may consciously or unconsciously ignore evidence to the contrary. Another distinct barrier, which disabled people commonly experience, is reliance on third parties to report the crime. Under reporting of hate crimes is a clearly a significant issue. For instance, a review of higher education in November 2001 estimated at least one million bias motivated instances occur in American college campuses every year, but the vast majority of these are not reported. Another study suggested that hate crimes occur once every 14 minutes (Center for the Study of Ethic and Racial Violence, cited in Craig, 1999).

b) Bureaucratic And Administrative Resistance

For a range of bureaucratic reasons, those agencies responsible for reporting hate crimes may not have reported all crimes in their jurisdictions. This is a problem generally with hate crime statistics, and not just disability hate crimes. One of the serious misgivings which has to be voiced about this data is that less than 2,000 of the eligible 17,000 law enforcement agencies have ever filed a report of any sort of hate crime – whether by racial, religious, gender, sexuality, nationality, disability, or other bias (Center for Criminal Justice Policy Research and Justice Research and Statistics Association, 2000). In this regard, it is bitterly disappointing to see that even the most famous disability bias crime in history, involving the victimization of Eric Krochmaluk, was not reported in the FBI data. The problems with this data stem from the fact that submitting hate crimes reports is voluntary, not all jurisdictions within states submit reports, and time frames for reporting are uneven – ranging from one month to one year (American Psychological Association, 1998). Another problem is that there is a great deal of inconsistency in the location of hate crime units, the nature and amount of training received by responsible officers, in procedures for screening and handling cases, and in record keeping systems (Martin, 1995). Balboni and McDevitt (2001) suggest that lack of departmental infrastructure, lack of training and supervision, communication breakdowns between line officers and those responsible for reporting the crimes may inhibit accurate reporting of hate crimes. Green et al (2001:295) comment “One cannot compare jurisdictions that use different reporting standards or have different levels of commitment to the monitoring of hate crime”. Potok (2001) argues that the process is riddled with errors, failures to pass along information, misunderstanding of what constitutes a hate crime, and even falsification of data.

Despite these misgivings, it must be acknowledged that many police departments are making significant efforts to implement hate crime policies and to monitor the incidence of hate crimes in their jurisdiction. Other factors may contribute to the failure to report hate crimes in such circumstances (Haider-Markel, 2001).

c) The Bias Dimensions Of A Crime Are Recognized, but Not Prosecuted

An example of this problem would be where offenders are charged for their first crime, but not for the parallel bias crime. Officers may believe that it is harder to prove the motivation (and thus establish the parallel bias crime) and may instead focus on the first crime. Susan Martin (1995:312) has discussed the complexities of bias in relation to crimes: “... in some cases the crime is an expression of bias; in others, bias is expressed during the crime; in yet others, the crime is the reaction to the expression of bias”.

d) The Bias Dimensions Of A Crime Are Not Recognized

One example of this problem could be that initial reports from the police-investigating officer are not accurate, and omit such issues as previous contact between the two parties and discriminatory language used in the incident. Another explanation for this problem could be that police do not recognize a certain place is a common location for bias crime because many previous crimes have been unreported. An issue which may compound this problem is that the investigating officers may not have significant disability awareness and may not recognize that there is disability discrimination occurring. Police may share the bias of the perpetrator and may underestimate the significance of the crime. Their lack of disability awareness may also mean that they overlook evidence, which indicates the bias element of the crime. For instance, the organization Consortium for Citizens with Disabilities (1999) has reported the case of a man living with AIDS who was attacked on a New York subway by a group of young men and women who screamed abuse at him, kicked him in the face, and left him

with serious injuries. A law enforcement officer with limited disability awareness may not realize that AIDS is a disability, and may not report such a case as a disability bias crime.

e) Bias Crimes Are Mislabeled As “Abuse”

Abuse is a ubiquitous metaphor for experiences of disability oppression. Sometimes, serious crimes (including rape, theft, assault, vandalism and so on) are labeled “abuse”. For instance, the schoolmates of an 18 year old North Carolina high school student with a developmental disability soaked his lunch in cleaning fluid and watched him eat it. He experienced life threatening poisoning and had to be taken to intensive care (Consortium for Citizens With Disabilities, 1999). This example suggests to me that it is not useful to label every crime against a disabled person “abuse”. These acts are crimes, and they need to be punished as such. The sexual harassment of Deaf people by nuisance callers sending obscene and malicious messages via textphones is also a unique form of disability hate crime which may be mislabeled as “abuse” (Shakespeare, Gillespie-Sells and Davies, 1996).

f) Ambiguities Arise In The Investigation Process

Police may believe that it is difficult to prove or infer that the perpetrator was motivated by bias, or there were elements of ambiguity in the commission of the crime, which led to confusion as to whether the crime was actually a hate crime. Dealing with provocation may be another difficult issue for investigators (Martin, 1995). The investigating officers may also find that the victim or perpetrator has criminal history and that may taint their view of the individual’s credibility, or the officers may find that there is a pre-existing relationship between the victim and the perpetrator leading them to dismiss potentially legitimate cases.

g) Community Resistance Impedes Investigations

Community resistance may mean that witnesses are not prepared to provide supportive evidence and the case cannot be substantiated. The literature on racist and anti-gay hate crimes is replete with examples of community resistance to police investigations (for instance, Bell, 2002; Golden, Jackson and Crum, 1999; Perry, 2001). Where communities support the victimization process, witnesses can refuse to come forward and can sabotage the investigative process.

h) The Perpetrator and the Victim Share An Identity So “Bias” is Not Recognized

Jeannine Bell’s study of the enforcement of hate crime laws suggest that frequently, law enforcement officers deny the possibility that someone who shares an identity with the victim could be motivated by hate. The worrying implication of this belief for disability hate crimes is that hate crimes perpetrated by someone who is disabled will not necessarily be recognized as such. The literature on abuse shows that disabled people are a significant proportion of the perpetrators of crimes against other disabled people. And there is no logical reason to automatically assume that someone who has experienced one type of impairment (for instance, mental illness) may not possess hatred towards people with another form of impairment (such as mental retardation, cerebral palsy, or so on). Furthermore, Bell (2002:142) comments that “the practice of dismissing cases when individuals had similar identities meant that detectives were often unable to appreciate the fact that victims and perpetrators had multiple identities and myriad perspectives on their identities”.

Hypothesis Three: Measures Hate Crime Correctly, But Disability Wrongly

If this hypothesis is correct, the disability status of some victims may have not been recognized. There are a number of possible explanations for such a situation:

a) There Is No Reporting Of The Disability Status Of The Victim

Some of the reasons why there may be problems with the reporting of disability hate crimes can be that the victim has an invisible impairment which they do not report, or the victim does not recognize the bias motivation or fully report abusive language which indicates a bias motivation. There may also be unique disability-related forms of victimization which have not been recognised as “hate crimes”, such as overmedication, withholding medications, and so on. Also, there are unique disability-related barriers which minimise the reporting of disability hate crimes – such as the inaccessibility of certain buildings or reporting procedures. A number of blind people who I have interviewed have commented that their complaints to police have not been fully prosecuted because the police believe they cannot identify a perpetrator they did not see. And in those where the disability status of the victim is recorded, there may be barriers in the reporting of disability status by law enforcement officers. Disability is a controversial and contested category, to the extent where Harlan Hahn, a leading disability scholar has written that “Fundamentally, disability is defined by public policy. In other words, disability is whatever policy says it is”. Because of the fact that there is no consistency in the definitions of disability used, the reporting of disability may be inconsistent. Another problem in reporting disability is that some populations (for instance, homeless people) have high numbers of disabled people, which are often not recognized. In their study of police officer training on disability issues, McAfee and Musso (cited in Petersilia, Foote and Crowell, 2001:48) found that the only impairment consistently receiving significant attention was mental illness. However, they did note that a small number of states included a more diverse range of impairments in their training. Not all impairments are visible, and the officers investigating an incident may not have high levels of disability awareness, so they may not be able to recognise certain invisible impairments and may not fully investigate some possible cases of disability discrimination.

b) The Disability Identity Is Not Considered As Significant As Other Identities

In the context of multiple identities, an individual’s disability identity may not be considered important in the victimisation process. This is an issue which has been addressed by Lennard Davis (2002:147) with respect to the vicious murder of James Byrd, a black disabled man who was chained to a truck in Jasper, Texas, dragged two miles and dismembered. Davis argues that in the case of violent hate crimes which combine racism and disability, it is commonly assumed that the violence:

...is primarily the result of color and much less the result of the disability... ethnicity tends to be considered so much the ‘stronger’ category that disability disappears altogether.

I call this argument the “inverse master status thesis”. There is a large body of literature which assumes that disability is the master status of all disabled people, regardless of gender, sexuality, ethnicity, class and so on. This argument has been criticized by many disabled writers (for instance, Asch and Fine, 1988). But Davis is arguing the opposite to this: that in the context of hate crimes, a disability identity may be incorrectly assumed to be completely irrelevant to the victimization process.

c) A Medical, Rather Than Social, Model Of Disability Is Used

The definitions of disability used in the hate crime reporting process reflect a medical rather than a social model of disability. This is a significant limitation, from a disability studies perspective. The medical model defines disability as an individual trait, but the social model defines disability as a form of oppression similar to racism, sexism or homophobia. The significance of this distinction is that different populations are identified by the medical and social models. Someone who carries the label of a psychiatric system survivor may continue to experience disability (that is prejudice or discrimination) long after they have recovered from the mental health

issues which caused a loss of daily functional activities. This is precisely the sort of case which may be ignored in the identification of disability hate crimes under a medical model.

d) A Pre-Existing Relationship Exists Between The Victim And The Perpetrator

Although the concept of hate crimes emerged from the experience of crimes committed by strangers, some disability hate crimes seems to depart from this expectation. For instance, the literature on sexual assaults and other forms of violence against disabled people is replete with examples of perpetrators who are in some “care giving” capacity with the victim. The reliance of the disabled person on the perpetrator may mean that they feel unable to report the crime. The difficulties disabled people may experience in reporting and leaving violence has been summarized in the phrase used by Marsha Saxton et al (2001): “Bring my scooter so I can leave you”. It seems that there is a pattern of recidivism among certain care providers which entails repeated predatory behavior to disabled people under their care. For instance, Dick Sobsey (1994) cites one study where ten percent of disability caregivers were known to have criminal histories for sexual assault, molestation, child abuse, and so on. A recent case illustrates some of the problems with automatically assuming that caregivers cannot be motivated by hate. In Billings, Montana, Floyd “Todd” Tapson is currently awaiting retrial over the attempted murder of a disabled woman. He is alleged to have abducted the woman, sexually assaulted her, driven her to a remote location, and shot her in the face. The woman survived the shooting and was able to identify her alleged attacker. It was subsequently revealed that he had worked in a number of group homes in North Dakota, Minnesota, and Maryland where disabled people have vanished (The Association of Severe Handicaps, 2002). I do not want to enter into the details of this alleged case, but simply to remark that it is very similar to many cases examined in the literature on disability and abuse where repeat offenders situate themselves in positions of power over disabled people and exploit this dynamic in order to perpetrate criminal behavior (Sobsey, 1994). What interests me in this regard is that this repeated victimization of disabled people is never seen as a form of hate crime. And yet such characteristics as repeat offenders against multiple victims, use of derogatory language, and a high level of violence (all commonly found in hate crimes) suggest to me is that there may be unique dynamics which certain types of offenders exploit in committing disability hate crimes.

Hypothesis Four

This is the hypothesis which I think is most likely. It acknowledges that some of the issues raised in both hypothesis two and hypothesis three have some validity, and suggests that conceptualisations of both disability and hate crime need to be revised in order to more accurately represent the level of disability hate crime. It may also imply that additional resources need to be utilized in addressing the problem.

CONCLUSION

This paper has suggested that the problem of disability hate crimes needs to be explored in far more detail. There may be unique dynamics involved in disability hate crimes which have not been explored in previous studies and further research into this topic is clearly required. Disability hate crimes need to be acknowledged, reported, investigated thoroughly, and victims need appropriate support. It is my hope that this paper contributes in a small way to the unmaking of disability hate crimes as “cellophane crimes”.

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[1] Given this small number of recorded disability hate crimes, it is not possible to perform detailed regression and correlation analysis.

[2] Some disability hate bias crimes were committed at the same locations, hence the number of locations is less than the number of incidents.