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M.A. THESIS

The Criminalization of Hate: A Social Constructionist Analysis

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To Cedric Nicholas George Janhevich

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ABSTRACT

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The concept of "hate" within the criminal justice system is one that has recently come under much scrutiny by academics, lawyers, the media, law enforcement, public policy, lobbyists, and other affected groups. This thesis is a study on the social construction of "hate" - as it pertains to the criminal justice system. The theoretical framework guiding this thesis is rooted in social constructionism as espoused in the works of Joel Best and Malcolm Spector and John Kitsuse. Two central themes are typification and claimsmaking. Essentially, the focus is on the different ways in which hate has been typified since its inception in the criminal justice system more than thirty years ago, and how different claimsmakers have brought the issue to the fore. Three major phases are described with three different typifications of hate: (1) Hate Propaganda; (2) Hate-motivated Violence; and (3) Hate Crimes.

The methodology is eclectic but primarily qualitative. First, I examine the texts of various academics in the literature review. The context of the problem is also discussed at length. Second, I examine the frequency of articles dealing with "hate" which appear in various news and academic indexes. This captures a pattern of when the articles surfaced and what was being said. Third, I conduct in depth interviews with a police officer and a humanitarian lobbyist, both of whom have staked a claim in addressing the issue of "hate" in the criminal justice system. Issues surrounding the definition of hate crimes are also examined.

The thesis demonstrates how advocacy groups, academia, the police, and the media have all played a fundamental role in problematizing and criminalizing "hate".

The thesis ends with a discussion on future research recommendations as well as some personal insight into the subject matter. Here, I break frame from my objective role as researcher and take on the role of "researcher as claimsmaker".

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INTRODUCTION

INTRODUCTION

As our society progresses through times of massive social changes, new issues enter the ever expanding repertoire of social problems. One such issue is hate crime - an issue that was once grouped under the banner of racism, prejudice, discrimination, and so forth. Hate crimes can be simply defined as "crimes in which the offender is motivated by a characteristic of the victim that identifies the victim as a member of a group towards which the offender feels some animosity" (Roberts, 1995: ix). Violence and discrimination against Jews, Chinese-Canadians, Japanese-Canadians, other ethnic minorities, homosexuals, etc., has existed for a long period of time; however at the present moment, there appears to be a heightened level of such racially and discriminatory motivated violent acts. Take for instance the case of former Eckville, Alberta high school social studies teacher Jim Keegstra, who taught his students that Jews are evil and that the Holocaust was a hoax. Another case is that of Alain Brousseau - a young waiter who worked at the Chateau Laurier Hotel in Ottawa - who was beaten, robbed, thrown over the Inter-provincial Bridge, and eventually killed - by a group of young thugs - because he was thought to be a homosexual. These are just two well known cases of hate crimes in Canada. When one considers the numerous desecrations of Jewish cemeteries, gay bashings, beatings of ethnic minorities, etc., the issue appears to be a serious problem and a threat to a multicultural and tolerant society.

The objective of this thesis is to examine how a particular issue (i.e. hate crimes) has secured a place in the social problems repertoire. The specific question to be answered is: What events have helped in the construction of "hate" as a social problem? The research will be conducted within an interpretive paradigm, more specifically, theories of interactionism and social constructionism. Much of the research will focus on how hate crime is manifested in legal texts, the media, lobbying efforts, and policing, all of which

are institutions which contribute to the problematizing of a particular social issue. Most of the analysis will be based on material appearing in various academic journals (social science and legal), newspapers, government publications, as well as two interviews conducted with the police and a particular interest group¹.

Since a social constructionist framework is key to the overall argument, most of the theoretical portion of the thesis will be borrowed from arguments outlined by authors such as Cohen & Young (1981), Berger & Luckmann (1966), Best (1989;1995), Spector & Kitsuse (1987), Ericson, Baranek & Chan (1987).

The methodology utilized in this report is largely qualitative and somewhat eclectic. As well as a literature review and focused interviews, I use various news and academic indexes in a sort of qualitative content analysis to map out when and how "hate" began to invade academic and public discourse. I will also analyze a few of the articles found in the indexes, which will provide a more in-depth perspective. More of these methodological considerations will be reserved for chapter 2.

The thesis consists of five main chapters. The first is an examination of the key objectives as well as some theoretical considerations. The second chapter is reserved for a discussion of methodology. Following the methodology is a thorough literature review highlighting some key notions regarding hate crimes. The fourth chapter is a preamble to the analysis in which definitional issues are examined. The fifth and final chapter is reserved for an analysis of the data. Here the focus will be on findings generated from the reviewed indexes as well as the relevant interviews. Furthermore, a link between theory and findings will be made, hence answering the pertinent question of the thesis. Finally, a

¹ For a somewhat similar study to my thesis, it would be worthwhile referring to Crelinsten, R.D. (1989) "Images of Terrorism in the Media: 1966-1985", Terrorism, vol. 12:167-198. In this study, Crelinsten examines the classification and emergence of terrorism as a topic which was worth watching and how it began to dominate public discourse.

conclusion will recap theoretical and practical issues highlighted throughout the research project.

CHAPTER ONE

1.0 STATEMENT OF OBJECTIVES

1.1 OBJECTIVES OF THE THESIS

The focus of this thesis is essentially an examination of hate crimes and the discourse that surrounds it. Although part of the thesis will be devoted to the study of the crime itself², the major research question pertains to the study of the problematization of hate crime. Too often, sociological research has ignored the problematization of social problems, and has taken such issues for granted (Davis & Anderson, 1983; Spector & Kitsuse, 1987; Hulsman, 1986). The main object of this thesis is not to propose any type of solution or a quick fix to the problem of hate crimes and racism. Rather, the task is to try and understand how "hate" was problematized and furthermore criminalized. Although the aim is not to propose solutions, I argue that understanding how the issue was problematized could help to better tackle it. Racism and discrimination have always existed, but why has there been a relatively recent need to problematize an issue that remained dormant for centuries?

The theoretical perspective of *Social Constructionism* will be the chosen one for this thesis. This perspective, rooted in the pragmatist (G.H. Mead) and phenomenological (A. Schutz) schools of philosophy, "Chicago School" Symbolic Interactionism (Blumer), and ethnomethodology (Garfinkel), contends that "social objects are not given 'in the world' but constructed, negotiated, reformed, fashioned, and organized by human beings in their efforts to make sense of happenings in the world" (Sarbin & Kitsuse, 1994: 3). The application of such a framework is not new to the study of social problems, deviance, and crime, however utilizing such a framework to study hate crime is something that remains to

² The bulk of such analysis is discussed in chapter 3, which serves as a basic review of the literature, and some more practical definitional issues are addressed in the second part of chapter four. The rest of the thesis is reserved for theoretical discussions (chapter 1 and 4) and the bridging of theory to the findings (chapter 5).

be seen in legal and academic discourse³. This will be performed through a review of the literature, as well as through a content analysis of texts of claimsmakers such as the mass media; legal discourse; academic (sociological/criminological) discourse; public policy (politics); lobby groups; and police initiatives. All of these claimsmakers have helped to "institutionalize" and "typify"⁴ the phenomenon of hate crime. Essentially, the focus is to examine when and how "hate" emerged on the agenda of the above mentioned "agents" and to follow the problematization/criminalization path. More discussion on the entire methodological question will be reserved for the next chapter. For now, theoretical notions and concrete examples of the study of social problems will be examined - this will better serve to conceptualize the implied theoretical model.

In order to effectively utilize a constructionist perspective, some key notions must be elaborated. The notions of claims and claimsmakers (Spector & Kitsuse, 1977; Best, 1989) as well as typification and institutionalization [of a social problem] (Berger & Luckmann, 1967) are crucial themes that enhance understanding of how an issue becomes problematized and criminalized. A model (primarily rooted in the work of Spector & Kitsuse (1977) and Witte (1994)) of how issues and conditions emerge as legitimated social problems will be proposed. But before the examination of a conceptual model is made and in order to better conceptualize the related efforts of this study, some high profile examples of constructed social problems will be examined.

³ Only two studies that I have encountered utilize a social constructionist paradigm to examine hate crimes. In one, Jenness (1995) examines the transformation and expansion of the categorization of the hate crime victim; and in the other, Jacobs & Henry (1996) talk about the recent creation of a hate crimes epidemic.

⁴ The notion of institutionalization and typification is examined very closely by Berger & Luckmann (1966) in their study on the sociology of knowledge. This notion will be discussed in more detail in a subsequent section of this chapter.

Before describing some concrete examples of social problems, a fundamental question that must be asked is why are some issues regarded as social problems and others are not? What makes "something" a social problem? In addressing the issue of crime, Spector & Kitsuse (1987) note that of all the sociological studies done on crime, none "require the definition of crime as a social problem, and none specifically use this in their analysis of crime". They further ask the following question: "Is crime a social problem, and if so, what constitutes the social problem of crime?" (1987:2). It is along this avenue that my thesis will be driven. The main issue is the sociology of the problem of hate crime.

1.2 THEORETICAL FRAME: SOCIAL CONSTRUCTIONISM - CONSTRUCTING SOCIAL PROBLEMS

1.2.1 Berger & Luckmann (1966): Issues Regarding Typification, Institutionalization, and Legitimation

In their ground-breaking treatise on the sociology of knowledge, Berger and Luckmann (1966) contend that the realities of the world as we experience them are socially constructed through a process of interactions and interpretation. A full length discussion of their work would definitely go beyond the limits of my study, and could even be the focus of an entire thesis. However, some of their notions are very relevant to the context of this research and merit some examination.

Our continued interactions (whether they be with one another, in the workplace, or with a dominant social institution such as the media or agents of social control) constantly shape how we perceive others. This continued interaction will eventually shape how we interpret and react to different events because of the commonality that we have built up. As a result, typificatory schemes of reaction are made (Berger & Luckmann, 1966:45). Through these interactions,

The social reality of everyday life is [...] apprehended in a continuum of typifications, which are progressively anonymous as they are removed from

the 'here and now' of the face-to-face situation (Berger & Luckmann, 1966:48).

In essence, social relations, events, and reactions become habitualized and take a life of their own since they become encrusted in the way we perceive these events.

Institutions also affect the way we interpret the world around us. The institutional order is beset:

in the typification of one's own and others' performances. This implies that one shares with others specific goals and interlocking phases of performance, and, further, that not only specific actions but forms of action are typified" (Berger & Luckmann, 1966:89).

Hence roles become identified, and it is these roles that represent the institutional order (1966:92). These roles are important not because they represent specific institutions, but rather "the integration of all institutions in a meaningful world" (Berger & Luckmann, 1966:93). Institutionalization occurs when everyday social interactions and things take on a life of their own which is taken for granted and not questioned by the social order.

Although this is a simplistic overview of Berger & Luckmann's theory, it applies generally to all constructionist thought, and it is sufficient for the purposes of this study. It is there to theoretically guide the reader to understand how the subject matter in question (hate-motivated behaviour/incidents) has come to be typified (and furthermore, institutionalized) as a matter requiring criminal justice intervention. As will be demonstrated, it is the roles of institutions like the media, lobby groups, police, academics, etc., that have rendered this typification possible.

1.2.2 Spector & Kitsuse (1977) and Best (1989): Claims and Claims Makers

Why has there been the sudden need for a social control mechanism (i.e., the criminal justice system) to deal with *certain* forms of racism and discrimination? That such

initiatives have been taken certainly lends some legitimacy to the issue, however, how was it that such an issue was legitimated as a social problem? Why has racism (in the form of "hate"⁵) taken the criminalized path? One way to study this is through the examination of definitions and "the specific vocabularies that are used to describe and classify a condition" (Spector & Kitsuse, 1987: 8). Definitions are produced by those who have some vested interest in an issue, and groups will often vie for control of the definition of a problem. When a group wins this control, the issue may become institutionalized (Spector & Kitsuse, 1987:8) and thus legitimated as a social problem. Those who have vested interest in a specific issue are known as *claimsmakers* (Best, 1989: Spector & Kitsuse, 1977), and it is these claims that may legitimate an issue as a problem. Claimsmakers are made up of numerous groups. Images portrayed by the media, lawyers, academics, politicians, lobby groups, and other social control groups (such as the police) are all forms of claims. It is for this reason that these agents have been targeted as the key "players" for the analysis of this thesis.

These agents or claimsmakers have helped in problematizing the issue of overt and outspoken racism into that of hate propaganda and more recently into hate crimes. The two main social ills (i.e., hate propaganda, hate crimes) stem from the same source (racism), however over time the definition has changed. What is noted in the changing of the definition, is the path toward criminalization⁶. Regarding the problematization and criminalization of "hate", Jenness (1995:224) notes that the problem of hate crime was rendered more apparent and clearly defined after the adoption of criminal justice

⁵ In order to facilitate the discussion of the subject matter, the term "hate" in quotations is utilized throughout the thesis. This is done in order to avoid confusion between the general issue of "hate" in the criminal justice system with that of the newly created label of "hate crimes". When "hate" is utilized it refers to the phenomenon within the criminal justice system before it took on the label of "hate crimes".

⁶ For an interesting examination of criminalization, refer to Cohen (1988) "The Object of Criminology: Reflections on the New Criminalization" in S. Cohen Against Criminology.

legislation⁷. However, this does not necessarily imply that policy implementation is the final stage of the problem (Spector & Kitsuse, 1987:142).

In their discussion of "The Natural History of Social Problems", Spector & Kitsuse (1987:139-140) highlight Blumer's (1971) model of the stages of the natural history of social problems. Blumer emphasizes five main stages that a collectively defined condition goes through: 1. The emergence of a social problem; 2. The legitimation of the problem; 3. The mobilization of action; 4. The formation of an official plan; 5. The implementation of the official plan. A key point that Blumer makes is that the progression from one stage to the next is highly problematic, and some "social problems" may fail to go on to the next stage (This key point raised by Blumer is somewhat similar to some of the arguments raised by Witte (1994) in his "comparative model of state response to racist violence" which will be examined later). According to Spector & Kitsuse (1987:142), what seems problematic in Blumer's model is the final step. There is no description of what happens after legislation has been passed. Their critique calls for a subsequent step - one in which **the social problem goes through a " 'second generation' [...] in which the solutions to previous problems (the response to the previous demands) become the basis for renewed claims and demands"**.

Once some sort of a policy response is called for, this further legitimates the issue as a social problem. A prerequisite to the establishment of a social problem is when some sort of action or solution is being sought out; "if no response or 'solution' is being looked for, there is no problem" (Spicker, 1995:35).

Many writers on social problems have said that the *belief* (emphasis added) that something could be done about a condition is a prerequisite to its becoming a social problem. [...] Every experience of displeasure and dissatisfaction has its origins in the availability, if not promise, of remedies,

⁷ Refer to chapter 3 of this thesis for a more elaborate discussion of Jenness' point.

cures, reforms, and solutions for such troubles [...] By defining, giving a name to, and developing a theory to account for this trouble, they make it possible for others to experience as unsatisfactory some aspect of their environment that previously they had been unaware of (Spector & Kitsuse, 1987:84-85).

Once the policy that is called for is implemented, does this mean that the problem no longer exists? The problem - which is now recognized - still exists, and because of this new recognition more people will become aware of it. This awareness can be influenced by any one of those previously mentioned agents (of social control). Certainly, more interactions and shared beliefs will alter the perceptions of the demanded response, hence new claims and demands will emerge (Spector & Kitsuse, 1987:142). This is the basis of Spector and Kitsuse's model of how social problems emerge and re-emerge. Their model can be summed up by the following:

Stage 1: Group(s) attempt to assert the existence of some condition, define it as offensive, harmful, or otherwise undesirable, publicize these assertions, stimulate controversy, and create a public or political issue over the matter.

Stage 2: Recognition of the legitimacy of these group(s) by some official organization, agency, or institution. This may lead to an official investigation, proposals for reform, and the establishment of an agency to respond to those claims and demands.

Stage 3: Reemergence of claims and demands by the original group(s); or by others, expressing dissatisfaction with the established procedures for dealing with the imputed conditions, the bureaucratic handling of complaints, the failure to generate a condition of trust and confidence in the procedures and the lack of sympathy for the complaints.

Stage 4: Rejection by the complainant group(s) of the agency's or institution's response, or lack of response to their claims and demands, and the development of activities to create alternative, parallel, or counter-institutions as responses to the established procedures (1987:142).

This model demonstrates how claimsmakers typify issues as social problems. It further notes some sort of a claimsmaking cycle, where the responses to the problems do not always lead to resolution, but to enhanced and renewed claims (Best, 1989:139). These new claims may even re-typify the problem. For instance, "hate" is now seen as a problem located within the realm of the criminal justice system, but before they were ever labeled as "hate crimes", racism, racial discrimination, prejudice, etc., were seen more as moral

issues, and other social control mechanism were sought after to deal with them. Even with the creation of the hate propaganda laws - s. 318-320 CC - (based on the recommendations of the Cohen Commission - 1965), only certain forms of hatred are dealt with by the criminal justice system. With renewed interest in "hate", Bill C-41 provides the establishment of enhanced penalties for those who commit crimes "motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim" (Bill C-41, S. 718.2 (a) (i).). Hence, the problem has been *almost* fully criminalized⁸. The same sort of argument applies to abortion. Take for instance the following question: what changes led to the transformation of abortion from a crime to a civil right? (Davis & Anderson, 1983:4).

Thus far, issues regarding process, cycles (through Spector and Kitsuse's model) and certain aspects of social policy (Best, 1985) have been examined, however more description regarding claims and claimismaking (and makers) must be discussed in order to get a full appreciation of this notion within the social constructionist framework.

The first thing that can be said about claimismaking, is that it is an activity that requires interaction and communication (Best, 1995:13; Spector & Kitsuse, 1987:78). Claimsmakers make claims, complaints, and demands about some putative condition (Spector & Kitsuse, 1987:78). They attempt to persuade (through some sort of rhetorical activity - activity that requires persuasion) and convince that X is a social problem, or that Y offers a solution to the problem (Best, 1995:13). As a result they not only declare what the problem is, but they also typify what type of a problem X is or what type of a solution Y offers:

Typification occurs when claims-makers characterize a problem's nature.
Typification can take many forms. One of the most common forms is to give an orientation toward a problem, arguing that a problem is best

⁸ The reason I stress *almost*, is because full fledged criminalization would mean the creation of a specific hate crimes offence within the *Criminal Code*. Such an initiative *has* been proposed - see Appendix 2.

understood from a particular perspective. Thus, claims-makers assert that x is really a ____ (moral, medical, criminal, political, etc.) problem. Each orientation emphasizes different aspects of X. Typically, an orientation locates the problem's cause and recommends a solution (Best, 1989: xx).

For example, a recommended solution for hate crimes entails a criminal justice response calling for harsher sanctions (Bill C-41).

In their quest to expose an issue, claimsmakers address different audiences (Best, 1995:13):

Some hope to identify and organize the people directly harmed by the conditions described in their claims; others try to educate the general public; and still others approach the policy makers who can do something about the conditions. While some meet their audiences face-to-face, many contemporary claimsmakers use the mass media to reach their audiences. If the press can be convinced that their claims are newsworthy⁹, the mass media will help spread their message.

Other groups - who incidentally participate in the process of defining social problems (Spector & Kitsuse, 1987:79) - to which the claims are directed may include:

"[...] commissions of inquiry; legislative bodies and executive or administrative agencies that respond to claimsmaking constituents; members of the helping professions, such as physicians, psychiatrists, social workers; and sometimes, *social scientists who contribute to the definition and development of social problems* [emphasis added] (Spector & Kitsuse, 1987:79).

But why do claims emerge? Although this question may seem irrelevant to the constructionist study of social problems - the common view would be to address the question in terms of *how* rather than *why*, since *why* implies the search for some objective antecedent - some pertinent points can be brought out that would fit in perfectly with the constructionist framework. Fuller and Myers (1941) note that causal claims about conditions are rooted in value judgments. In explaining this idea, Spector & Kitsuse (1987:86) highlight that social problems and the activities associated with problematizing an

⁹ Since the media (specifically news and tabloid coverage of hate crimes) are the focus of a large portion of the analysis, the concept of newsworthiness is a crucial one that will be discussed later in this chapter.

issue are grounded in morality and values. The claims enunciated are statements about conditions that ought not to exist and that something should be done to improve the conditions. This does not mean that values are the cause of social problems, but rather they are a constituent feature of social problems activities (Spector & Kitsuse, 1987:93) which are used to legitimate the issue as a problem. "Whose value?" one may ask. To this one may answer, the values that are socially constructed, reified and taken for granted (Berger & Luckmann, 1967). Whether the claims come from the *traditional claimsmaker* (i.e., muckrakers, conservative moral entrepreneurs, purity reformers, nativists, prohibitionists, symbolic crusaders) - which formed the original focus for studies done by Chambliss (1964), Becker (1963, 1969), Gusfield (1963), Conrad & Schneider (1980) - or the claims come from *leftist humanitarians* (e.g., anti-racists, environmentalists) that seek a better vision of the world, values are not the causes but rather path provided for problematization and criminalization (Cohen, 1988:260-266; Spector & Kitsuse, 1987:87-93).

Although strict constructionism is not usually concerned with the objective conditions of the social problem, this thesis will examine some of those conditions in order to put into context the process of how "hate" entered the social problems domain. This is what Best (1995) refers to as contextual constructionism as opposed to strict constructionism¹⁰. The context of the problem must be examined in order to understand why claims are being made about a certain issue. Best notes the example of increasing crime rates:

A strict constructionist might note claimsmakers' references to higher crime rates or rising fear of crime. But the strict constructionist would view these statements as claims, without making any effort to assess whether there really were increases in crime or the fear of crime. In contrast, a contextual

¹⁰ Strict constructionism attempts to avoid assumptions about the objective status of the conditions underlying certain claims. It argues that social scientists should not be concerned with the validity (truth or falsity) of claims, but rather their viability (the when, where, how, and by whom claims were made). Contextual constructionism differs in that it maintains that we are partially determined by the contexts within which we work, thus making it impossible not to make the assumptions about the objective status of the conditions underlying particular claims (Hicks & Petrunik, 1997).

constructionist might also look at official crime statistics or polls measuring the fear of crime (1995:347).

An alternative way of understanding why claims emerge is to examine the origins of claims. The functionalist more common sense approach would argue that claims are made because a situation has gotten so bad that something needs to be done about it (Spector & Kitsuse, 1987:127). By adopting such a way of thinking, one neglects to understand how the problem emerged, thus the original question of why is never addressed¹¹. Previously, I noted that social problems are actually definitions of our perceptions and images of issues. The way we view things is a result of how we typify and legitimate certain issues. This enters our common stock of knowledge and subsequently we (as a society) share these perceptions (Berger & Luckmann, 1967). We take things for granted and fail to examine the more subjective underpinnings of these issues. A perfect illustration is how we view poverty as a social problem. Spector & Kitsuse (1987:128) note:

Poverty as a social problem is the traditional case in point here. The resurgence of poverty as a social problem in the United States was not due to a dramatic increase in poverty, or a dramatic decline in the quality of life. Quite the contrary, the quality of life is improving by all measures produced by social researchers, but that increase is apparently not sufficient to meet the more rapidly rising expectations, indignation, and demands that poverty be reduced, if not altogether eliminated.

The same can be said about hate crimes (Kelly, Maghan & Tennant, 1993), crime in general (Davis & Anderson, 1983; Hulsman, 1986), or any other social condition. In the sociology of the study of social problems, context is key, and the demands made by society (and claimsmakers), rising expectations, and value oriented positions, are all part of the context of the social problem (Spector & Kitsuse, 1987:129; Best, 1995:344-348).

¹¹ The point here is not to enter a full scale debate between objective/positivist notions and more subjective oriented research - as exemplified in a social constructionist framework. Of necessity, I do make some "objective" statements about hate crimes, particularly in chapter 3 which is a review of the literature, most of which examines hate crimes via the functionalist normative lens. As a result, in certain areas, I will be "breaking frame" from the constructionist point of view.

Thus it becomes somewhat revealing as to who constitutes the claimsmaking groups. Since the implied putative condition and its solution are of direct interest to some groups (interest groups) (Spector & Kitsuse, 1987:87), victims would seem to be the most obvious type of claimsmakers (Best, 1995:103). For example, watchdog organizations such as The League for Human Rights of B'nai Brith of Canada, its American counterpart The Anti-Defamation League of B'nai Brith, and The National Gay and Lesbian Task Force (of the United States) all constitute the representation of victims of hate-motivated incidents (Jenness, 1995). Such groups have subsequently pushed for: changes in public policy - especially criminal justice legislation - designed to combat racist, anti-Semitic, and discriminatory violence; increased media exposure of hate-motivated incidents; and the establishment of educational programs. Furthermore, the work of groups such as The Anti-Defamation League "continually underscores the victim status of those harmed by violence *because* of race and/or religion. In effect, they have created a new type of crime (i.e., hate crimes) and attendant victims (i.e., of racial bias) (Jenness, 1995:218).

As an emerging social problem receives more attention, more groups are affected by it. Despite their distance from original claims of the "cause", groups such as the media, professionals and policy makers share some interest in promoting or dampening the issue. If the issue is newsworthy, the media will continue to expose it (Best, 1995; Ericson, Baranek & Chan, 1987; Fishman, 1980). By lending their authority to the condition, professionals (such as scientists, social scientists, lawyers) may stand to gain recognition and increase their status (Best, 1995:103; Conrad & Schneider, 1980). Therefore, groups that may seem somewhat removed from the social problem actually have some vested interest in engaging in the claimsmaking activity.

But not all groups that join in on the venture do so to defend some interest; their impetus may be altruistic (Spector & Kitsuse, 1987:88). A campaign that calls attention to a

problem oriented issue may actually inspire other claimsmakers to borrow ideas that would seem beneficial for their own campaigns (Best, 1995:189). This is what Best (1995) refers to as *connections*. "Value groups may find that as they raise a condition as a social problem, they gain as allies other groups who have a vested interest in their claim" (Spector & Kitsuse, 1987:88).

It seems likely that connections are especially common among claimsmakers who see themselves as somehow allied. For example, those active in "progressive" movements, such as the peace movement, probably know something about and favor other progressive causes (e.g., campaigns for racial equality and women's rights). Information flows relatively freely among such allies, and they exchange rhetoric, ideologies, tactics, personnel, mailing lists, and other resources (Best, 1995:189).

A related hate crimes example of such connections stems from the intensive lobbying of various groups that helped pass the House version of the United States Hate Crimes Statistics Bill. The bill - originally lobbied for by The Anti-Defamation League and the National Gay and Lesbian Task Force (Herek & Berril, 1992:5) - passed by a 383-29 margin. This was largely due to lobbying tactics by a coalition of civil rights, religious, professional and law enforcement groups that included: the American Civil Liberties Union, American Jewish Committee, American Jewish Congress, American Psychological Association, Center for Democratic Renewal, National Association for the Advancement of Colored People (NAACP), People for the American Way, and the Police Executive Research Forum (Herek & Berril, 1992(a):6,9).

Claims and claimsmakers are a crucial element to the study of how issues and conditions are problematized. These claims further influence the actions of social control agents such as the media, policy makers, professionals, and the police, all of whom have some interest in adopting the problem under their wing. Consequently these agents may themselves become claimsmakers. Thus far, only theoretical notions of the problematization process have been highlighted. The next section will serve as a more

practical explanation of the social constructionist model, since a brief discussion of well documented examples will be given.

1.3 NOTED EXAMPLES

One of the key objectives of this thesis is to establish when it was that hate crimes came to the fore. Before "hate" was ever criminalized, it had been previously problematized, but under different terms. Issues such as racial violence, discrimination, anti-Semitism and racism, were all terms that now fall under the hate crime label. By examining various activities of those previously noted key agents (through indexes, government documents, and interviews) a trend of when "hate" was criminalized will be mapped out. Furthermore, the analysis of the whole process will reveal *how* the condition was further problematized. Such issues will be demonstrated in chapters 3 and 4, and a more detailed analysis in chapter 5. All will demonstrate how a typified issue of racism and prejudice changed to a more dramatic meaning in the form of hate propaganda to an even more pejorative label of hate crimes. What is essential to note is that the issue itself need never change, but the image of the issue often does. A social problem (as was noted earlier) is the product of definitions. The definition over time changes, and as a result the characteristic of the problem also changes and so do our perceptions¹². Before an intensive discussion on the changing patterns of the definition of racial discrimination and prejudice is made, it would be worthwhile to briefly examine some well known work within the interactionist and constructionist literature.

1.3.1 Politics of Definition - Gusfield (1964) and Becker (1963): Moral Entrepreneurs, Hidden Agendas, and Interest Politics

Deviance definition is crucial to the understanding of social problems. Often these definitions are produced via a political process of decision making (Conrad & Schneider,

¹² Chapter 4 will provide a more detailed discussion of definitions.

1980:22)¹³. Certain groups define and legitimate definitions of deviance. These are referred to as moral entrepreneurs, who crusade for the creation of new rules, and impose their self righteous ideas upon others. Often these groups react because of some ulterior reason or a hidden agenda. In examining the influence of moral entrepreneurs and their hidden agendas in the 1937 Marijuana Tax Act, Becker (1963: 135-146) argues that the consumption of marijuana was a moral threat, however according to Dickson (1968: 143-157), the reason marijuana was banned was to widen the Narcotics Bureau's political jurisdiction, and thus enhance bureaucratic survival. Whether moral or bureaucratic, the designation of deviance is "a product of enterprise legitimated through the political process" (Conrad & Schneider, 1980:23). The same process can be applied to any "problem out there". Such is the case in medicine, where the physician is dubbed the moral entrepreneur. Medicine can thus create new boundaries, expanding its "jurisdiction". This phenomenon will be discussed when highlighting the creation of "hyperactivity".

Moral entrepreneurship is one form of the politics of definition. Interest politics is another form, where interest groups in conflict with other groups have the power to create new designations (Conrad & Schneider, 1980:24). This is well illustrated by Gusfield's (1963) study of the Women's Christian Temperance Movement (WCTU) and their quest for prohibition. Although the membership of this organization was primarily rural, middle class, and white anglo-saxon protestant, and although alcohol consumption was not a significant problem in rural areas, the WCTU saw their life style as endangered by urbanization, and had a strong role and stake in the lobbying for alcohol prohibition.

¹³ This idea was briefly noted in the section on claims makers, however more discussion will be reserved in a later section of this chapter in which I propose some sort of conceptual model (rooted in Spector and Kitsuse (1977), Witte (1994), Fishman (1980), and Ericson, Baranek & Chan (1987)).

The politics of definition is the process whereby definitions of deviance are socially constructed by powerful individuals and groups through a political process and legitimated in various avenues such as legal statutes, medical rhetoric, and religious doctrine (Conrad & Schneider, 1980:25).

1.3.2 The Discovery of Child Abuse - Pfohl (1977)

Child abuse is a social ill that seems to pervade the reality of everyday life: it is legitimated as a social problem, and it has been internalized and reified by society thus entering our common stock of knowledge (Berger & Luckmann, 1967). Although "child abuse" and the beating of children has existed throughout the ages, the "discovery" and subsequently the criminalization of it, is a fairly recent phenomenon (Pfohl, 1977:25). It was not until 1962 that specific laws against child abuse were enacted. Within four years, all fifty states in the United States had passed legislation calling for the control of child abuse. But how and why did this occur at that particular point in time?

Violence against children is as old as the earliest of our nation's legal statutes. In actuality there were several attempts to draw attention to this problem during the nineteenth and early twentieth centuries. None, however, had the backing of groups powerful enough to break the legal hold that parents had over children. Rather than deviantizing violent parents, early efforts to fight child abuse generally resulted in the institutionalization of beaten children (Pfohl, 1994:373).

Medical professionals were actually unaware of the issue, and claims were brought about by pediatric radiologists - who were considered to be subordinate to regular medical practitioners. Medical doctors were also reluctant to claim the issue, fearing that the medical profession would subordinate itself to other professions such as law and social work (Pfohl, 1994:374). Pfohl (1977) suggests four main reasons why medical doctors shied away from recognizing serious injuries resulting from "child abuse": (1) No clear diagnosis was available; (2) Physicians may have been unwilling to accept the fact that parents could harm their children; (3) Medical practitioners were reluctant to report these cases for fear of legal repercussions as well as the violation of the norm of confidentiality;

(4) Reporting such issues would require that doctors engage in the lengthy process of the criminal justice system, and also the diagnosis would be taken out of their hands and enter the legal discourse.

On the other hand, pediatric radiologists had a particular interest in claiming the issue: "they had more to professionally gain than lose" (Pfohl, 1995:374). By claiming the issue, they could "participate in the higher-status, life-or-death work of their more clinically oriented colleagues" (Pfohl, 1994:374). For numbers of years pediatric radiologists published articles in medical journals trying to establish some sort of diagnosis based on x-ray studies (Conrad & Schneider, 1980:163). Definitions of their findings were changing over time. Cases of "unspecific trauma" were being redefined as "misconduct and deliberate injury" (Caffey, 1957, as cited in Conrad & Schneider, 1980:163). Once the media got hold of the issue, public concern began to develop (Radbill, 1968:16, as cited in Conrad & Schneider, 1980).

The radiologists and those who supported their venture were trying to establish a medical label, rather than a socio-legal one (Pfohl, 1977:32). The key to defining, typifying, and legitimizing "child abuse" as a *medical* problem was found in a 1962 article - published in the *Journal of the American Medical Association* - entitled "The Battered Child Syndrome" (Pfohl, 1977:33). Ascribing a medical label - as well as the fact that the article was published in a very prestigious medical journal - gave widespread legitimacy (Conrad & Schneider, 1980:163) to typify "child abuse" as a medical problem.

The opportunity of generating a medical, rather than socio-legal label for abuse provided the radiologists and their *allies* [emphasis added] with a situation in which they could both reap the rewards associated with the diagnosis and avoid the infringement of extra-medical controls. What was *discovered* [emphasis added] was no ordinary behaviour but a "syndrome" (Pfohl, 1977:33).

The example provided by Pfohl (1977) demonstrates many of the theoretical notions discussed in the previous sections. The radiologists had a vested interest in making a claim about a certain condition, and it was in their best interest to typify and label the condition as a clinical one, thus improving the chances of legitimating it as a medical problem. It was noted earlier that claimsmaking is a process of using rhetoric. Radiologists utilized the rhetoric of science to typify the issue as a medical one. As soon as child abuse was labeled as deviant activity, criminal justice legislation was introduced. As a result, the condition which was originally typified as a sickness was also criminalized. Debates on whether sanctions should be oriented towards treatment or punishment ensued (Conrad & Schneider, 1980:167). As a result, changes in definitions were occurring. The idea here is not to engage in a lengthy discussion of the changing characteristic of the definition of child abuse. What is crucial to note is that definitions were changing and various groups such as The National Center of Child Abuse and Neglect - that called for more comprehensive definitions of child abuse - were created (Conrad & Schneider, 1980:168). Although more lobby groups got involved in making claims regarding child abuse, and although child abuse has been institutionalized as a social problem, the medical discourse continues to prevail in the problematization of child abuse (Conrad & Schneider, 1980:168).

1.3.3 Crimes Against the Elderly: The Role of the Media - Fishman (1980)

The main thrust behind this example is to note how the media can shape our perceptions and beliefs about certain situations. Although other studies have examined the social construction of "elder abuse", this example specifically deals with the creation of a crime wave - the surge of violence against elderly people in New York City in 1976 (Fishman, 1980). The problem was typified like any other "ordinary" crime with its typical victims, offenders and circumstances (99).

Between November and December 1976, journalists reported incident after incident of brutal attacks against the elderly. Subsequently, the definition of a new/old problem was emerging through some sort of a political process that was inherently influenced by the media. The Mayor of New York (who was up for re-election) got involved by laying blame on the lax juvenile justice system; the police department's Senior Citizen Robbery Unit (SCRU) was given more manpower; and New York State Legislators introduced bills to toughen up sentences for youths who committed acts against the elderly (Fishman, 1980:99).

One of the methods that Fishman utilized in his study was to examine news stories relating to elder abuse in two major newspapers and one television station. This enabled him to locate the emergence of the "crime wave" and to determine when it started, ended, and what type of coverage the "problem" received after the crime wave was "over" (100). This type of research will also be utilized in my analysis on hate crimes.

Why had crimes against the elderly, an issue (just like any other social problem) that had always existed, been the focus of the media and subsequently experts and politicians? The news media, more specifically journalists, have a stake and vested interest in promoting values. They are essentially claimsmakers, however since they appeal to the public at large (and not just certain interest groups), their vested interest is much larger than any other "normal" claimsmaker. They are key agents in defining what is a problem and what is not.

In effect, journalists join with other agents of control as a kind of "deviance-defining elite" . using the news media to provide an ongoing articulation of the proper bounds to behaviour in all organized spheres of life. Moreover, journalists do not merely reflect others' efforts to designate deviance and effect control, but are actively involved themselves as social-control agents. As such, journalists play a key role in constituting visions of order, stability, and change, and in influencing the control practices that accord with these visions. In sum, journalists are central agents in the reproduction of order (Ericson, Baranek & Chan, 1987:3).

The reason why crimes against the elderly were a highly focused topic by the media was because of their newsworthy nature. How an issue becomes newsworthy is based on many elements (Ericson, Baranek & Chan, 1987:141). Ericson, Baranek & Chan (1987:140-149) explain these elements. Simply put some of these elements include: (1) *Simplification* - how simplified the nature of the problem is may have some effect on whether an issue is newsworthy or not. This is not to say that the issue will not be covered. it merely states that more coverage will be given if it is more simplified and understandable. For example, street crime is covered more extensively than corporate crime because it is more recognizable and congruent with popular conceptions of crime; (2) *Dramatization* - an issue may be deemed more newsworthy than another based on the dramatic effect it has on people; (3) *Personalization* - this personalization may occur at any level. Coverage of a public figure is one example of how personalization can affect the newsworthy nature of the event. Another example is the status of the victim. Problems that victims (as a potential target group) encounter may generate sympathy from the public, thus rendering the issue as newsworthy. The case of crimes against the elderly is a perfect illustration; (4) *Themes and Continuity* - newsworthiness requires the establishment of a flowing set of images that people can visualize. What is deemed newsworthy is that which fits into a familiar frame "or into the existing knowledge of news discourse" (1987:144). The serious nature of a problem or an issue is thus established inside the news room (Fishman, 1980:105). *Thus it becomes evident how the media has the power to construct images and typify various issues.*

The reason that crimes against the elderly emerged into a full blown crime wave was due to a common theme that was floating around in various news rooms. A crime wave cannot exist without the *a priori* existence of a common crime theme (Fishman, 1980:105).

At this point, when a crime theme is beginning to spread through more media organizations, the 'reality' of the theme is confirmed for the media organizations who first reported it. They now see others using the theme. Moreover, as the theme persists, news organizations already using the theme will not hesitate to report new instances, because they confirm a past news judgment that 'this thing really is a type of crime happening now'. Thus, each use of the theme confirms and justifies its prior use (Fishman, 1980:107).

If the process continues long enough, a crime wave may emerge. In order that the theme develop into a crime wave, there must be a continuous flow of new incidents. In Fishman's study, it was the police wire that provided the supply of new incidents. Incidentally, it is the police that decide which events get reported to the wire and which ones do not. For example, incidents of corporate crime and wife abuse were not reported.

Once the wave has been established, the next step that reporters elevate to, is the reaction and responses of authorities: i.e., politicians, the police, and other officials (Fishman, 1980:111). These reactions may subsequently expand the crime wave, since official action is taken and "expert" opinions are given. Hence, the authorities make the crime wave appear more real.

The entire wave was bolstered throughout its seven-week course by coverage of official statements, possible reforms of the criminal justice system, legislative debate and action, the formation of new police programmes, and community conferences on the problem (Fishman, 1980:111).

Once the crime wave *per se*, was fading, attention shifted from 'what the problem actually entailed', to 'what was being done about the problem' (Fishman, 1980:112).

Just as crime themes emerge into crime waves, some crime themes may be stopped from advancing to the wave stage. Such was the case when a 'crimes on the subway' theme was emerging in the media. Following quick official statements by the New York Police Department (NYPD) the issue subsided. Fishman notes that the issue of subway

crime was an 'unwanted crime wave' whereas crime against the elderly may have been internally promoted by the Senior Citizens Robbery Unit of the NYPD (Fishman, 1980:112), which may have had a vested interest to make some claims in order to promote the unit.

Some key questions arising out of Fishman's study which pertain to my research object are:

- Is hate crime a newsworthy topic?
- If so, has it been exposed as a sort of crime wave?
- Have there been some interest groups that have tried to promote the issue as a crime wave?

These questions will be addressed in the subsequent chapters.

How do these examples relate to the research question of the thesis? The three noted examples have demonstrated how claims were made to problematize issues; how issues were typified as representative of a particular domain; and how officials and the media helped shape our images of certain issues and problems. Each of the provided examples have element(s) that are key to my research question. Furthermore, the above examples have provided some concrete demonstrations of how those theoretical notions - highlighted in the previous sections - can be practically applied.

1.4 TOWARD A CONCEPTUAL MODEL

To reiterate, the main objective of the thesis is to examine the social construction of hate crime, and to follow the progression of how the "hate" was criminalized. In the section on 'claims and claimsmakers', Spector and Kitsuse's model was discussed. In their model, the authors outline that conditions pass through various stages. It is through these stages

that issues are defined, problematized, redefined, and re-problematized (see page 11). Since hate crime is a fairly new social problem/crime, stages three and four may be of less importance. However this does not preclude these stages for an overall discussion on how the problem has re-emerged over the years. In the literature review, it will be noted that efforts to deal with incidents of racial discrimination in Canada have gone through different phases. The first of these were the claims made by various affected groups that led to the creation of the Cohen Committee (1965) - a commission that examined the extent of hate propaganda and which led to the creation of the hate propaganda laws in the *Criminal Code*. These actions neatly fit in stages one and two of the above model. Renewed interest in "hate" has promulgated various police bias crime units, as well as the passage of Bill C-41¹⁴ - calling for enhanced penalties on those judged to commit bias motivated acts. Although new claims were made about hate-motivated activities¹⁵, the renewed claims called for more criminal justice initiatives, and not necessarily for alternative actions. As a result, certain nuances may keep the renewed claims from fitting in perfectly with stages three and four of Spector & Kitsuse's model.

In his comparative study of how racist violence has emerged as a political issue in Europe, Witte (1994) utilizes many of the theoretical concepts of social constructionism. The idea of how an issue reaches the political agenda is crucial to the understanding of how hate crimes have emerged as a political issue, and furthermore as a public and social problem. Witte (1994:94) notes that specific and shocking social events attract broad public attention, hence people develop demands and initiatives. These demands are largely value oriented, and may subsequently affect other groups.

¹⁴ Bill C-41 became law in September of 1996.

¹⁵ Incidentally, much of the renewed interest was a result of publicized cases (e.g., Keegstra, Zundel, Ross), as well as a dissatisfaction with the existing hate propaganda laws. This renewed interest and dissatisfaction seems to fit in perfectly with stages three and four of Spector & Kitsuse's model. For a more detailed discussion on the critique of the laws, refer to Ross (1994).

This may be motivated by the idea that racism in general and racist violence in particular threaten the value system of society. Another motive may be that a certain definition of racist violence and the demands to combat this violence may bring other comparable phenomena to the forefront, for instance anti-homosexual violence and rape (Witte, 1994:94).

Witte's explanation of how the issue reaches the public and political agenda is somewhat the same as any social constructionist argument. His model is specifically oriented to the issue of recognition. Although the issue may reach the political agenda, this does not necessarily mean that it will attain a social problem status. Alternative measures may be implemented, and no formal state action taken. If the issue (racist violence) is recognized as a social problem by the state, two options can be entertained: (1) a policy of *including recognition* - measures aimed at the perpetrators; or (2) a policy of *excluding recognition* - "where measures are directed against assumed causes of the violence lying within the presence of the groups of potential victims" (Witte, 1994:101). An example would be some sort of reduced immigration.

Furthermore, notions of the media and newsworthiness - as purported by Fishman and Ericson, Baranek & Chan - will also serve some practicality in the analysis section of this study, since images of "hate" portrayed by the press will be discussed.

The analysis portion of the thesis will rely heavily on these three models. A somewhat simplified version of Witte's model has been presented, however more details are given in the subsequent chapters. These three models have been utilized to demonstrate

- (1) how the problem emerges and re-emerges (through the use of Spector & Kitsuse);
- (2) how the problem is dealt with via the political process (through the work of Witte);
- (3) how the media get a hold of the issue and influence the above two.

CHAPTER TWO

2.0 METHODOLOGICAL CONCERNS

Again, the main thrust behind the research is the social construction of the hate crimes problem. Through the examination of various claimsmaking agents (i.e., the press/media; legal and academic discourse; advocacy groups; police initiatives) the intention is to explain when and why "hate" hit the public agenda. What remains before any type of analysis can be made is a statement and description of the methodology to be utilized. The method utilized in this study is for the most part a qualitative approach - as opposed to a purely quantitative research project. The focus of this chapter is not to provide a differentiation of the two methods, but to explain the reasoning behind the reliance on the qualitative approach. Three main methods were relied upon for the preparation of this thesis.

The first is the overall review of the literature. This chapter as well as the following one which examines definitional issues consumes a large portion of the research. It is a qualitative examination of much of the relevant literature at the height of the creation of the problem, as well as antedated related works. Since academics are claimsmakers, it was deemed necessary to include this in the methodology.

The second method is similar to a *content analysis* of articles appearing in the press, news magazines, as well as scholarly journals. This was achieved by examining five current indexes: (1) *The Reader's Guide to Periodical Literature* (1981-1995); (2) *The Canadian Periodical Index* (1962-1995); (3) *The Canadian Business and Current Affairs Index* (1981-1995); (4) *The Criminal Justice Abstracts* (1968-1995); and, the *LEGAL TRAC* (1980-1995). Although some charts and graphs are provided (which are normally associated with a more quantitative genre of research), they are there to demonstrate the past and present trends of coverage of literature dealing with "hate" and hate-motivated

incidents. What is important to retain from these graphs is the general content espoused by the indexed articles, as well as their frequency during times when hate-motivated activities are being typified as a social problem.

Since this research is framed by a social constructionist perspective, it would be wise to include some phenomenological aspect since this perspective is rooted in the interactionist/phenomenological paradigm. Consequently, two interviews were conducted - one with the head of the Ottawa Carleton Regional Police Bias Crime Unit, the other with the director of a well known and powerful advocacy group. These interviews were conducted in order to examine the roles that each member has played in the process of bringing hate crimes to the public fore.

2.1 QUALITATIVE RESEARCH

Unlike quantitative research which seeks to test a hypothesis, qualitative research is not concerned with the notion of a hypothesis. Hypotheses, strangely enough, are only formulated towards the end of the research project (Bertaux, 1981:35). Variables are not key to the overall discussion, since qualitative research examines social relations, and it is these social relations that render social "sciences" distinctive from other types of "sciences" (Bertaux, 1981).

As its name suggests, qualitative research is in the business of describing events, people, attitudes, etc. The purpose of the description, as Patton (1980:36) would contend "is to take the reader into the setting". The data do not suggest judgments, or appropriateness, but simply describe a social setting, and the overall purpose is to understand the experiences and points of view of other persons (Patton, 1980:36). This frame of thought fits in perfectly with the overall object of the research project, since it is

the description of those affected by hate crimes, those who have exposed the issue as a problem, as well as those who have pushed for formal reaction to the problem.

John Lofland (1971) suggests that there are four key elements regarding the collection of qualitative data: (1) getting close to the social setting, in order to get details and in-depth understanding of what goes on (2) capturing perceived facts, people's accounts of what they perceive to take place; (3) describing activities and interactions as a participant observer; (4) getting direct quotations from people. All of these issues will enable the researcher to discover certain things about the social setting:

A major methodological consequence of these commitments is that the qualitative study *in situation* is a *process of discovery*. It is of necessity a process of learning what is happening. Since a major part of what is happening is provided by people in their own terms, one must find out about those terms rather than impose upon them a preconceived or outsider's scheme of what they are about. It is the observer's task to find out what is fundamental or central to the people or world under observation (Lofland, 1971:4).

Furthermore, from the above quote, it becomes quite obvious why the notion of a hypothesis is dropped when considering a qualitative research methodology. Briefly, it is this idea on which the notion of "grounded theory" is based. To put in very simple terms, the theory is generated from the data, and hypotheses are worked out from the data as well as through the course of research (Glaser & Strauss, 1967:6).

Considering what has been provided so far regarding qualitative research, it may become evident that this methodology seeks to understand situations and phenomena as a whole. The notion of understanding the *whole* situation may be referred to as the *holistic view*. As Patton (1980:40) notes, "...the holistic approach to research design is open to gathering data on any number of aspects of the setting under study in order to put together a complete picture of the social dynamic of a particular situation...".

This holistic approach is crucial to retain upon examining the object of the research project. Since the overall object is to examine responses to "hate", then examining those who have affected and been affected by the issue would obviously seem appropriate. As Patton (1980:78) would further contend, the experiences of individuals are key in any qualitative evaluation.

In qualitative research, observation is crucial and there are many ways in which it can be done. One such method is the research interview. Since it would be impossible to get at the experience of all those agents involved in making claims about hate-motivated activity and hate crimes, understanding certain aspects of their work would certainly lend some credibility. A focus on these agents is to examine and observe the imagery of hate crimes that they construct. One way to examine this imagery is through "traditional content analysis in which vocabulary counts are made to see which terms appear the most often. Many researchers use indexes to find articles to analyze in this way" (Crelinsten, 1989b:170).

2.2 THE USE OF INDEXES

Since claims make up a large portion of the constructionist perspective (Best, 1995), it is necessary that they be examined in order to understand what people are saying about a particular issue. This requires more than just examining the claims, but also examining the claimsmakers and the claimsmaking process (Best, 1995:349). In its entirety, this thesis will examine the whole claimsmaking process. The first step in doing qualitative constructionist research is to examine the claims made by the press, scholarly books and periodical articles, popular treatments, etc. (Best, 1995:350). Evidently the literature review will address this first step. Locating these claims and understanding when they emerge is another task required, and this can be done by utilizing indexes. Once the

claims are located some more qualitative questions such as: "What is being said about the problem?" and "How is the problem typified?" (Best, 1995:350), can be addressed.

Numerous terms were examined for each index. Often all articles could be located under a single key subject or key index term such as PROMOTION OF HATRED¹⁶.

Besides the literature review and index analysis, interviewing claimsmakers is a very good way to try and understand what is being said about the issue (Best, 1995).

2.3 THE QUALITATIVE INTERVIEW

In his 1942 publication entitled *The Use of Personal Documents in Psychological Science*, G.W. Allport noted that if one wants to know something about people's activities, then the best way is to ask them (Brenner, Brown, & Canter, 1985:2). This is the idea behind the use of the research interview in social science research. The purpose of the interview is to find out what is going on in someone else's mind. It allows the researcher to enter into another's perspective; it allows one to capture the perspective of the social setting (Patton, 1980:196).

Denzin (1970:188) points out that the interview is "...a conversational production, anticipated in the investigator's mind and imagination, but realized only in the world of the conversational interaction." It is this interaction that captures the essence of sociological knowledge. Bertaux (1981) notes that since sociology is based on social relations (*les rapports sociaux*) then the best way to get to "sociological knowledge" is through the study of these social relations. He describes something known as the life history approach, which is essentially the notion of social relations captured through some type of interview setting.

¹⁶ Chapter 5 presents a more in depth discussion of the terms that were searched. The intention here is simply to introduce the more theoretical underpinnings of the research methods.

The central tenet or value of the interview is that it provides an opportunity for the interviewer and interviewee to explore the meanings of questions and answers involved. There is an ongoing negotiation between the two parties. Because of this negotiation, answers are immediate, and the respondent speaks from the mind and from experience (Brenner, Brown & Canter, 1985:3).

Some disadvantages to the interview are that techniques may be "misused"; they are costly regarding time and effort; and various biases may occur (Brenner, Brown & Canter, 1985:4). Despite some of these disadvantages, the use of interviews as well as the fruits of the literature review, should provide enough material to permit valid conclusions.

As noted previously, qualitative research with its emphasis on grounded theory is in the business of discovering. Congruently, intensive interviewing follows the same plane:

Its object is to find out what kinds of things are happening, rather than to determine the frequency of predetermined kinds of things that the researcher already believes can happen." (Lofland, 1971:76).

In order to obtain valid information from the interview, the social situation of the interview must be conducive to circumstances that will provide valid and informative responses. The most crucial of these is the interview technique. The interview technique must ensure two things: (1) it must avoid as much bias as possible; (2) it must provide for an atmosphere that is conducive to effective social interaction (Brenner, 1985:151).

To minimize bias, the interview is best done non-directively (Brenner, 1985; Patton 1980; Bertaux, 1981; Cunningham-Burley, 1985). That is, open ended questions are asked in a manner which is not leading so as to avoid putting pressure on the interviewee (Brenner, 1985:151). The researcher plays a neutral role during the interview, so as to let the "subject" recite his/her experiences, views, perspectives, etc., without interruption. For

example, Sarah Cunningham-Burley (1985:70-71) notes the following about her experiences with an interview that was too structured:

I noted that those interviews which were most formal, ordered, and based on the schedule actually seemed disordered conversationally... The more informal interviews actually seemed to contain more ordered talk...topics emerged from prior talk, and different subjects became merged...

An effective manner to let the respondent speak freely is through the use of an interview guide (*la consigne*), which guides the interview while at the same time letting the respondent talk freely (Brown & Sime, 1981:164).

For example, in an interview with a police officer that was conducted for *this* research project, a specific guide was utilized. In it I stated the following:

What I want to do is have you tell me about hate crime and bias crime. The main questions/issues that I wish to examine are: **What is the Ottawa Police Bias Crime Unit; What are its overall functions; and your experiences with the Ottawa Police Bias Crime Unit.**

Upon stating this to my interviewee, we commenced the interview. When pauses were attained, other open ended questions were asked in a quasi ad hoc manner (i.e. some sub-questions and themes were already preconceived, which renders the whole interview process a semi-non-directive one).

The information that each interviewee provides is what will be analyzed. The research interview method operates like regular document analysis, in that once the transcription is complete various themes are examined that prove to be fruitful for the overall research project.

2.4 SAMPLING AND REPRESENTATIVITY

In speaking of qualitative research, it must be understood that the notions of sampling and representativeness are often negated, whereas in a quantitative research method the idea of a representative sample is crucial. According to Michelat (1975), in qualitative research only a small number of persons need to be examined. Furthermore, this number is not arrived at through any criteria of statistical probability. Nonetheless, common sense applications must be arrived at to ensure that an appropriate population and size are selected (Mostyn, 1985:133).

Bertaux (1981:36-38) notes that the choice of population does not necessitate a certain number, so long as the research examines a set of social relations. Furthermore he contends that sociological research must not be confused with strong notions of positivism. Truth, in its purest scientific sense, has pervaded the social "sciences". Too often, students of social "sciences" have been confounded with the problem of reaching the truth. Patton argues that we need to remove ourselves from positivism. Rather than seeking truth, one should "...do the best he [can] in describing the patterns that appear to him to be present in the data, and that he present those patterns as his *perspective*..." (1980:269).

Rather than speaking of representativeness, we speak of the notion of the *saturation of knowledge*. That is, if a pattern begins to emerge after so much observation, then some sort of "representativeness", can be claimed (Bertaux, 1981:37).

CHAPTER THREE

3.0 LITERATURE REVIEW

3.1 INTRODUCTION

This chapter will examine the context of the "hate" issue in the criminal justice system.

In addressing the primordial question(s) of the research project, a brief overview of the literature is required. It would thus seem important to define what is meant by hate crime, as well as to establish what elements within the constitution of hate crime will be eventually discussed. For now, simple generic definitions will be examined, since a more in-depth discussion of definitions will be the focus of a later chapter.

What exactly are hate crimes? This is a question that remains problematic and rather difficult to answer since there exists a plethora of varying definitions. Although there is no definition of hate crime where any consensus exists, it is significant that all definitions incorporate the symbolic status of the victim; however "...calling attention to the key role of a victim's symbolic status is but a first step in conceptualizing and understanding hate crimes." (Berk, 1994:v). Berk (1994:vi) further contends that in order to have an adequate understanding of hate crimes, three dimensions must be examined. First, is the role of governments in criminalizing the act; second, is the relationship between perpetrator and victim; and third, is the distinction between the role of three differing audiences: the individual perpetrator, members of the perpetrator's reference group, and the victim's symbolic status. If we consider hate crimes to be crimes motivated by prejudice, ethnicity, religion, or sexual orientation (Bensinger, 1992:114) where the motive is the defining characteristic of a hate crime (Berk, 1994:vi), can we include physical acts against property? Would this definition include acts of desecration and vandalism? Where would

gestures, expression of hatred, and hate literature fit in? What about violent rhetoric? As one can obviously note, an ambiguity in the definition of the act itself is quite apparent.

Crelinsten (1989a:253) discusses this ambiguous notion as it applies to terrorism and political crime. Regarding "hate" and hate crimes, this model provides a useful example of how a continuum is established and how different categories of acts are linked and not distinctively separate. At one end of the spectrum is the notion of dissent, and at the other end is actual "crime":

Dissent-----Crime		
Legal Dissent -opposition of a certain group - radical politics -expression	Illegal Dissent -propaganda -violent rhetoric - literature	Violence -vandalism -desecration -hate-motivated violence

Hence a gray zone exists between legal expression and violent action: violent rhetoric. Crelinsten argues that violence per se, requires a physical act - whether directed against property or against the person. This act represents the most dramatic and severe of all conduct. Contrary to this argument, the Australian Human Rights and Equal Opportunity Commission (1991) defines "racist violence" as that which goes beyond physical attacks and which includes verbal and non-verbal intimidation, as well as harassment and incitement to racial hatred. Examples would include threatening insults and gestures. Crelinsten would place these in the gray zone of violent rhetoric.

Given these explanations, hate crime incorporates all of the described examples mentioned above. How they have come to be constructed as a "hate crime" is an issue that will be briefly illustrated when outlining more theoretical issues. There are other ambiguities as to the definition of hate crime, such as pornography, misogyny, and anti-

abortion, however, these as well as other related matters will be left undiscussed in order to limit the scope of discussion.

The focus of this section is to provide some pertinent information on what has been written regarding hate crime. Many journal articles have focused on the civil rights issues and the freedom of speech debate, yet few academic studies have examined the whole social dynamics and the construction of the problem.

We know for a fact that hate has always been a part of our society. From the writings of Dante, to Milton, to Yeats, hate has been a common theme. Hate has been an evident fact in wars, gang violence, rape, religious riots, gay bashing, and overall racism - whether it be through overt violence or more subtle bureaucratic activities such as (restrictive) immigration policies. As Richard Berk (1994:v) further notes, it comes as no surprise that the notion of "hate" is a function of local politics and local norms: "One country's act of ethnic cleansing is another country's effort to secure defensible borders."

In an attempt to study the phenomenon of hate crime, one must first locate where or how the "problem" originated. Why all of a sudden an interest in studying something that has always existed? In order to properly address this question, one needs to fragment hate crimes into three components: (1) Hate Propaganda; (2) Hate-motivated Violence; and (3) An Examination of the Legislative Response. It is mainly these three themes that consume a large majority of the discussion by the various discourses and claimsmakers.

3.2 PHASE ONE: HATE PROPAGANDA

In Canada, the notion of "hate" as a social policy concern emerged following the 1965 *Report to the Minister of Justice of the Special Committee on Hate Propaganda* in

Canada (Cohen Committee). However, this does not mean that Canada was free of any hatred prior to the events that led to the creation of the Cohen Committee. While racial conflicts and hatred can be traced to the first contacts between Europeans and Native "Americans", (Karmen, 1990:261), Canada, through legislation, policy and isolated (individual/group) acts has continued throughout its history to manifest racial hatred (Foster, 1991). Winks (1980:288) notes that slavery actually lasted longer in Canada than in the northern United States and that many fugitive slaves escaped from Canada to settle in New England. The country that prides itself in winning the Nansen Medal for humanitarian work, is also the country where: innocent blacks have been shot by the police in Montreal; racial taunts hurled at Sikhs who simply wanted to wear their religious symbols; in the 1970's, subway attacks against members of the South Asian community in Toronto occurred; and when even as late as 1975, Windsor still practiced racial segregation of some public facilities (Foster, 1991:3-4; Gilmour, 1994:8). These constitute a mere fraction of the overt forms of racism that have occurred and continue to flourish in Canadian society. More dramatic is that we brush off incidents of blatant racism and blame them on the product of deviant individuals or on some temporary social crisis (Barret, 1987:307). Based on such a hard-hearted way of thinking, what can we conclude about Canada? Barret sums it up quite well:

No matter whether the dimension is time, place, or social class, racism has been endemic in Canada. [...] the degree, scope, and persistence of the phenomenon lead to a single conclusion: racism in Canada has been institutionalized. Some writers give the impression that institutional racism means covert racism, and remark that in recent years blatant racism has gone underground or become 'institutionalized'. But this is wrong. Institutional racism means racism that is intrinsic to the structure of society. It may be overt or covert, expressed formally in the laws of the land, or less visibly in patterns of employment and the content of school textbooks (1987: 307-308).

Despite these forms of institutionalized racism, it was the acts of various racist groups¹⁷ and the apparent increase in the number of neo-Nazi organizations distributing contentious literature that led to the creation of the Cohen Committee (Rosen, 1994:1; Ross, 1994:152). One must ask the question why did hate propaganda gather such a plethora of interest then, and why there has been such emphasis on hate crimes in the last two or three years? Perhaps the answer lies in the socio-political and economic contexts of both eras.

In examining "hate" in Canada, three phases can be located¹⁸. The first occurred in the mid 1960's, whereupon certain events led to the formation of the Cohen Committee, "upon whose recommendations to the Minister of Justice were based the 1970 amendments to the *Criminal Code* (s.318-320) adopted by Parliament." (Rosen, 1994:1). Although the Cohen Committee based its recommendations on certain hate activities that occurred in the 1960's, it made it clear that such an issue was not a new problem and that hate propaganda occurred in the latter 1930's:

Without treating the pre-1960 period in great detail, it should be pointed out that during the period 1937 to 1939 a good deal of hate-materials were distributed across Canada. Most of the propaganda at that time was anti-Semitic in nature, stressing such themes as "Communism is Jewish", and much of the activity centered on two individuals, Adrien Arcand and John Ross Taylor. Arcand was the founder and leading figure of the "National Unity Party" in the Province of Quebec, and Taylor operated at that time in the Toronto area. (Cohen Report, 1966:12).

Despite the presence of such anti-Semitic activity, nothing was done and the status quo in criminal law was maintained, until the first demands for legislative reaction suppressing hate propaganda against religious and ethnic groups were voiced in March, 1953. Although

¹⁷ Based on what Barrett (1987) has highlighted in the above passage - on institutional racism - it becomes quite apparent why racist groups (or the organized right wing - as Barrett refers to them in his book, Is God a Racist?) have been able to flourish. The intention here was not to dichotomize the notions of institutional racism and so called blatant racism.

¹⁸ The reader must be cautioned that each phase is not entirely separate from the other. Overlapping during time may occur. Important to retain are the labels that each phase ascribes to the phenomenon of "hate" in the criminal justice system. The first is the issue of hate propaganda, the second relates more closely to hate motivated violence and notorious cases, and the third phase refers to the last few years whereupon the label of "hate crime" was coined.

certain traditional minority groups had voiced their concerns before a Joint Committee of the House of Commons which studied the revision of the *Criminal Code*, nothing was done and hate activity continued to flourish until the Cohen Committee was finally established (Law Reform Commission of Canada (LRCC), 1986:6).

On its agenda, the Cohen Committee was to ascertain the nature and scope of hate propaganda in Canada. It was intended to serve an advisory function, outlining the appropriate responses to hate propaganda. In its examination of the issue at hand, the committee launched a series of interviews with public officials, police officers, and senior civil servants. Among other priorities on its list, it also examined: the distribution of hate material between 1963-1965, the social-psychological effects of hate propaganda and the role that education must play, as well as a survey of responses in other jurisdictions. Some of the findings of the Cohen Committee concluded that although the extent of the problem in Canada is limited to a small number of persons, it must be stressed that such activity creates a climate of malice and destructiveness to the values of our society. That such activity was able to prosper in other countries in the 1930's (namely Germany) is an issue that must not be neglected (Cohen Committee, 1966:24).

Despite the limited scope of the problem, the Committee ascertained that

"...the individuals and groups promoting hate in Canada constitute 'a clear and present danger' to the functioning of a democratic society. For in times of social stress such "hate" could mushroom into a real and monstrous threat to our way of life. Nor does giving some of these hate promoters a radio or television platform serve any valid debating purpose...

In the Committee's view the "hate" situation in Canada, although not alarming, clearly is serious enough to require action." (Cohen Committee, 1966:24-25).

Furthermore, two in depth studies appear as appendices to the *Report of the Special Committee on Hate Propaganda in Canada*.. The first is a legal and historic examination of

related sedition offences in Canada, the United States, and the United Kingdom prepared by Professor Mark R. MacGuigan - Associate Professor of Law at the University of Toronto. The second supplement is a report researched by Dr. Harry Kaufmann (Associate Professor of Psychology at the University of Toronto), which is a social/psychological analysis of hate propaganda. It could be argued by Spector & Kitsuse - as well as other social constructionists - that these "knowledgeable knowers" were in fact claimsmakers that helped provide expert advice to the hate propaganda issue in Canada¹⁹.

Given these overall efforts, the Cohen Commission recommended that amendments be made to the Criminal Code dealing with the advocacy of genocide and the defamation of identifiable racial groups. Within these recommendations, consent of the provincial Attorneys General would be required for a prosecution of such crimes (House of Commons, 1984:69). Following these recommendations:

on 14 April 1966, Senator Connolly tabled Bill S-49, which received first reading on 6 November 1966 and proceeded no further. On 9 May 1967, Senator Deschatelets tabled Bill S-5, which received first reading that day. On 21 November 1967 the bill received second reading and was referred to the Special Senate Committee on the *Criminal Code* (Hate Propaganda). The Committee held hearings but did not report.

Senator Martin introduced Bill S-21 on 9 December 1968, when it received first reading; it subsequently died on the Order Paper. On 27 October 1969 the Minister of Justice (Mr. Turner) introduced Bill C-53, which, after the Committee study in both Houses, received Royal Assent on 11 June 1970.

Since the Cohen Committee's priority was to concern itself with the distribution of hate propaganda within the last two to three years of its inception, the report also summarizes the leading instances of hate propaganda disseminated in Canada as well as all known C.B.C radio and television broadcasts dealing with hate "literature", from 1963 to 1965²⁰.

¹⁹ For a more detailed examination of who and what was involved in the committee's work, as well as the supplementary research, refer to pgs. 1-9 and Appendix I and II of *The Report of the Special Committee on Hate Propaganda in Canada* (1966).

²⁰ Refer to appendix 6.

In its agenda for legislative action, the Committee wanted to ensure that the fundamental principles of the *International Convention on the Elimination of All forms of Racial Discrimination*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, and the *Canadian Bill of Rights* were all addressed. As a result, in 1970 Parliament undertook the effort to amend the *Criminal Code*, thus rendering hate propaganda as a punishable offence (LRCC, 1986:7). Under the new provisions it was now illegal to espouse religious, racial, and ethnic hatred. The new hate propaganda laws prohibited the advocating of genocide, the public incitement of hatred, and the willful promotion of hatred (Ross, 1994:153; LRCC, 1986:7).

These laws were incorporated into the *Code* as sections 281.1, 281.2, 281.3 (Ross, 1994:152), however because of the revision to the *Code* they now fall under sections 318-320 (Rosen, 1994:4). The main sections are as follows:

281.1(1) [now s.318] Everyone who advocates or promotes genocide is guilty of an indictable offence and is liable to imprisonment for five years...

281.2(1) [now s.319(1)] Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty...

281.2(2) [now s.319(2)] Everyone who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group...

281.3(1) [now s.320] A judge who is satisfied by information upon that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda, shall issue a warrant under his hand authorizing seizure of the copies...

(as cited in Ross, 1994:152-153)

3.3 PHASE TWO: HATE-MOTIVATED VIOLENCE

Highlighted so far, has been the first phase of "hate" in Canada, and the claimsmaking process toward some sort of legislative response (i.e. the path toward

criminalization). However, not unlike any other piece of legislation, numerous problems were located within hate propaganda laws. Before any attempt can be made to examine such problems²¹, one must first of all review the second phase of "hate" activity, since this may have had some sort of influence on the emergence of criticisms to the legislative response. These criticisms are important because they correspond neatly with what Spector and Kitsuse highlight in stages three and four of their model (see page 11).

The second phase of racist activity and hate propaganda seems to have started in the mid 1970's. "Hate" was no longer manifested only against Black and Jewish communities, but there was an agenda for hate to be directed at East Indians, Catholics, Francophones, and Natives²². During this second wave, debate over legislative change began to emerge in the early 1980's (Rosen, 1994:2). Associated with this second phase were popular cases which gave notorious status to holocaust deniers such as Jim Keegstra, Malcolm Ross, and Ernst Zundel²³.

What also appeared to emerge out of the second phase was the increased presence of violence. Perpetrators utilized any form of hostility in acts of violence in order to get certain points across. As a result, there was increased pressure for legislative changes in terms of taking steps to understand the issue and to determine and define the scope of the problem. Emphasis was now placed on measuring the frequency of the problem in order to improve the response by the criminal justice system (Karmen, 1990:262). At the time, this

²¹ These criticisms are important to examine since they relate to Spector and Kitsuse's final two stages of their model. In these two stages, the authors outline that dissatisfaction and criticisms with current efforts to deal with a problem lead to renewed claims and renewed interest in the problem at hand.

²² It is worth noting that, at this point, no literature has mentioned gay bashing or any form of discrimination against gays and lesbians, perhaps because homosexuals at the time were widely viewed as deviants and not a minority group. Homosexual rights advocates began to use the concept of minority group only after racial and ethnic groups seeking to affirm their civil rights began using the notion (Cory & LeRoy, 1971).

²³ Numerous texts and journal articles have been written regarding these cases. For an in depth discussion refer to Barrett (1987); Ross (1994); Weimann & Winn (1986); Elman, (1989).

was far more evident in the United States, however Canada would soon join in on the venture.

Previously mentioned was the supposition that a possible answer to heightened forms of hate propaganda (in the late 1960's) and hate-motivated violence (starting in the mid 1980's) was to be found in the socio-political and economic contexts of both times. Building on this notion, Stanley Barrett (1987) - in his riveting exploration of the right-wing in Canada - stresses that more overt forms of racism, such as aggravated hate-motivated violence, are the consequence of the institutionalized racism that is endemic to the country. "Organized racism, in other words, would appear to represent a more overt and extreme version of weaker impulses beating within the heart of the larger social organism." (Barrett, 1987:325). Moreover, he asserts that racism, in all its forms, is the result of power and prestige. Although it may be arguably stated that racism (as a general phenomenon) is not an instrumental result of power, it is an indirect consequence of the structural arrangements in our society. But why has Canada - in the past and to some extent in the present - maintained a reputation for tolerance? Perhaps greater political and economic control by the state to belie history has had some profound influence (Barrett, 1987:326). Coupled with the earlier questions posed is why the image of violent racial hostility now and not then? Perhaps our tolerance wasn't really tested. Third World immigration was minimal before 1967, foreign policy was always kept low key, and thirdly, many victims of racial harassment acted like many victims of rape frequently act - they remained silent (Barret, 1987:327). A possible question to examine for future research is to ascertain if the Charter of Rights and Freedoms has increased or decreased our level of tolerance.

The context of racism may be understood, but why the expression of extremism and aggravated forms of violence and hatred? Lipset and Raab (1970:484) outline that:

Extremist movements are not primarily the product of extremists. The critical ranks in extremist movements are not composed of evil-structured

types called "extremists", but rather of ordinary people caught in certain kinds of stresses. (as cited in Barret, 1987:345).

What the authors are claiming is that people with right-wing views - who are primarily middle class - are protesting against changing times. "with its accompanying ambiguity and relative or absolute status deprivation" (Barret, 1987:345). Wolfe (1981:9) further contends that the right-wing actually strengthens as economic growth and prosperity deteriorate²⁴. Evidently, the ever changing social and economic climate has had some drastic implications on the "birth" of "hate crimes"; and clearly, related anomie and strain theories can be closely associated with the so-called hate crime "wave"²⁵.

3.4 PHASE THREE: "HATE CRIME"

Following the second phase, the issue definitely became more public, and "hate" was viewed as a global phenomenon. This is exemplified in more recent and extensive international media coverage displaying anti-Semitic propaganda in France, extreme right-wing violence launched at immigrants in Germany (Aronowitz, 1994) and in Scandinavia (Bjorgo, 1994), ethnic cleansing occurring in the former Yugoslavia (Hamm, 1994b), and Skinhead and other Aryan group violence targeted at gays and minorities in the United States (Hamm, 1993; 1994a; 1994b), all of which are now referred to as hate crimes. Although in Canada the problems reported to the media are much less dramatic, they are still insidious (Roberts, 1995).

In his examination of xenophobic violence in Germany, Alexis Aronowitz (1994:48) makes some comparable remarks to those enunciated by Barret, Lipset & Raab, Wolfe, and Durkheim. In citing Heitmeyer (1992), he notes that growing right-wing

²⁴ Perpetrators of hate crimes are associated with the right wing extremist groups (e.g. neo-Nazi skinheads), however as it will be explained later not all offenders are linked to the extreme right.

²⁵ For a more in-depth discussion on anomie theory, refer to Durkheim's original formulation (1952) and Merton's "strain theory" version (1938).

extremism [and racial violence] is not an accident, "but can be explained as the result of dramatic societal disintegration leading to individualization." (Aronowitz, 1994:48). The crumbling of the "East" which brought much uncertainty, and radical, violent behaviour by youth, is attributable to the political, social and economic changes. Hamm (1993;1994a;1994b) also explains this development as it applies to the American Skinhead experience, and Witte (1994:91) asserts that in the 1970's and 1980's xenophobia has increased in Western Europe and since the major socioeconomic changes in the late 1980's, overt racism has become a fact of life in Eastern Europe as well. Witte further contends that although many countries have experienced such drastic forms of behaviour, each country's "specific history, circumstances, developments, and discourses" (Witte, 1994:92) must be examined individually in order to truly understand the problem. For example, although the United States and Germany have experienced skinhead violence, each context must be examined separately.

Associated with the third phase is the identification of hate crime with that of terrorism, specifically domestic terrorism (Hamm, 1993;1994a;1994b; Mullins, 1992; Kaplan, 1995, Sprinzak, 1995)²⁶. Since many right-wing groups are perpetrators of hate-motivated violence, some authors categorize such activity as terrorism.

In his work on hate crimes encountered thus far, Mark Hamm (1993;1994a;1994b) locates such crimes within the spectrum of terrorism. He notes that in its most violent form, hate crime is always ideological, and because of this ideological nature, it satisfies the standard requirement for most definitions of domestic terrorism (1994b: 176, 178). Hamm utilizes two definitions to substantiate his argument. First, he incorporates the FBI's working definition which maintains that a terrorist incident is, "a violent act or an act

²⁶ A multitude of definitions of terrorism exist. Although some of them will be highlighted in the following discussion, the essence is not to create a debate on which definition of terrorism is adequate - a host of academic studies debate this. The point is to demonstrate how some authors would categorize *some* forms of hate crime as terrorist activity.

dangerous to human life in violation of the criminal laws...to intimidate or coerce a government, the civilian population, or any segment thereof. in the furtherance of political or social objectives" (quoted from Gurr, 1989:203, as cited in Hamm, 1993:107).

Secondly, he resorts to Jack Gibbs' (1989) definition which stipulates that

In all instances...terrorism is illegal violence or threatened violence directed against human or non human objects provided that such violence or attempted violence meet five criteria.

1. It was undertaken with a view to maintaining a putative norm in at least one particular territorial unit.
2. It had secretive, furtive, and/or clandestine features that were expected by the participant to conceal their personal identity.
3. It was not undertaken to further the permanent defense of some area.
4. It was not conventional warfare.
5. It was perceived by the participant as contributing to the normative putative goal (described in point "1") by inculcating fear of violence in persons other than the immediate target of the actual or threatened violence and/or by publicizing some cause.

(as cited in Hamm, 1994b: 178-179).

Literally thousands of examples of neo-Nazi skinhead violence would fall within the parameters of the above mentioned definitions (Hamm, 1994b:179). However, it must be noted that since not all terrorist acts can be considered as hate crimes, not all hate crimes can be located on the terrorism pedestal, unless the implicated racial and prejudicial violence has some political and social underpinning (Hamm, 1993:107). Based on the information provided from such authors as Barret (1987), Lipset and Raab (1970), Aronowitz (1994), who maintain that causes of hate may be associated with resistance to social, political and economic changes, it becomes a bit clearer as to how and why acts of domestic terrorism and hate crimes can be pooled into the same pocket.

Regarding the objective condition of hate crimes, Kelly, Maghan, and Tennant (1993:42-43) maintain that "hate crimes" have been a problem for quite a long time, and

that focused interest on the issue was not incited by any sort of increase. Furthermore, they assert that such crimes may have actually experienced a decline in real numbers.

The attention to these [hate crimes] has intensified, because of the harmony between the rhetoric of militant civil rights activist groups and the ways in which public problems are now conceived. There is a clearer relationship between the focus on the prejudicial motives of the offender and the political rhetoric of racism, primarily because victim groups have taken pains to document this phenomena. (Kelly, Maghan, & Tennant, 1993:42).

They conclude by noting that hate crimes are not simply a law enforcement problem, but one that encompasses the larger economic, social and political aspects that go beyond the faculties of law enforcement.

Although for some it may be difficult to accept Kelly, Maghan, and Tennant's argument that hate crimes may have actually decreased. I agree with them that such crimes have been around for a much longer period than their recent (and not so immaculate) conception.

3.5 LEGISLATIVE RESPONSES: GENERAL OVERVIEW

Before any attempts are made regarding broader definitional issues, a review of what has been written regarding hate crime legislation should be examined. This is done since the legislative reactions and bureaucratic handling of an issue affect how it (the issue or problem) is shaped. Again, this is well documented in Spector and Kitsuse's model of how social problems emerge.

In Canada, responses associated with the third phase of "hate" activity are primarily located in the establishment of various police bias crime units, as well as in two legislative initiatives. One is Bill C-455, the Bias Incidents Statistics Act, which calls for the collection of national hate crime statistics. The second is found within the parameters of Bill C-41, the

Sentencing Reform Bill, which ultimately renders hate as an aggravating factor thus imposing a harsher sanction on the offender.(Roberts, 1995).

Before examining these other responses to hate crime in Canada, it would seem fit to look at some responses in the United States. In the United States, the *Hate Crime Statistics Act* (1990) was created in order to retrieve data on crimes "that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate, the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property."²⁷ (Gilmour, 1993:52). This piece of legislation was first advocated in 1985 by B'Nai Brith and the National Gay and Lesbian Task Force (NGLTF), which argued the need for gathering national statistics on hate crimes. For years the NGLTF - represented by Kevin Berril - and the American Psychological Association (APA) - represented by Bill Bailey -, had arduously lobbied to include sexual orientation within the *Hate Crime Statistics Act*. This condition was not addressed in the original proposed bill. Also included within this provision was the guarantee to protection and confidentiality of gay men and women who would report hate crimes (Berril & Herek, 1992:5).

The House version of the Bill passed by a 383-29 margin, mainly due to intensive lobbying by a joint venture of various "civil rights, religious, professional and law enforcement groups" (Berril & Herek, 1992:6). However, the move to enact such concern was delayed due to opposition by "right-wing" conservatives, notably Senator Jesse Helms (Berril & Herek, 1992:6) who saw it unfit to include statistics on violence against gays and lesbians (Gilmour, 1993:51-52). Nonetheless, the senate approved the act, and on April 23, 1990, President Bush signed the *Hate Crime Statistics Act*.

²⁷ This Act is closely linked with police activity, since it is the FBI that is in charge of gathering all crime statistics (including hate crimes) and all such statistics come from individual police forces..

Some states have also enacted legislation requiring the reporting of such incidents. For example, in 1989, Florida passed its *Hate Crimes Reporting Act* and its first full year of recording was in 1990, when 259 incidents of racially motivated crimes were reported. An analysis shows that from the data provided, a typical hate crime consisted of the following: racially motivated; adult white male offender; adult white male victim; directed at the person (assault); where words (racial slurs) are most frequent indicators. However, more studies need to confirm whether whites are slightly more victimized by blacks than blacks by whites. Florida presents a good area to study, due to the dense population and the heterogeneous mixture of various "cultures" (Czajkowski, 1992).

Nonetheless, claimsmakers within academia maintain that many problems are associated with the gathering of such statistics. Roberts (1995) notes that due to the large dark figure of crime, it would be difficult to paint an accurate picture of such crime, or of any crimes at that. Also many victims of such crimes do not share a particularly favorable impression of the police and may therefore not report such incidents (Gordon, 1990). (e.g. minority groups - especially blacks in the south). I also find it difficult to believe that only 259 incidents occurred in Florida; especially when areas like Jacksonville_g and Miami are taken into consideration. Furthermore, in many of the cases (40%) the race of the offender was unknown (Czajkowski, 1992:38). A question that one might pose is: "How can this paint a vivid and accurate picture of the problem?".

In recent years, "hate" has become a central focus of policing. The rise of the ultra right has forced secret services and special policing (in the US and in Canada) to obtain information in an intelligence gathering capacity. The rise of right-wing groups and concern by certain at risk groups has also led "regular" policing to confront the problem. As a result, some cities have opted to create specific police bias crime units in order to attempt to better serve those who would be prone to victimization of hate-motivated crime.

The move toward a community based policing approach has had some drastic implications on the drafting of ways to deal with bias/hate crime. The only major reaction to hate crime in Canada was found in the hate propaganda sections of the *Criminal Code*, until a select few police forces created special units to deal with bias and hate crimes. One such pioneer is the Ottawa Carleton Regional Police Bias Crime Unit²⁸.

The Ottawa Carleton Regional Police Bias Crime Unit²⁹ was set up in response to concerns raised by the lesbian and gay community, as well as the result of work carried out by the Youth Services Section regarding certain youth gangs that had extreme right-wing political ideologies. In response to concerns raised by the gay community and the Jewish community of Ottawa, as well as the concerns raised by the black community [of Ontario] documented in the Stephen Lewis Report³⁰, the Ottawa Police developed close ties with all these communities. What began to surface was a common thread of hate-motivated crime within each community (Ottawa Police, 1994). In the fall of 1992, the Ottawa Police became aware of the Boston Police Department's Community Disorders Unit, and sent delegates to study the unit in order to establish such action in Ottawa. Incidentally, the Boston unit was set up in 1978, as a result of a busing issue:

It was originally implemented as a "bean counter unit", whereby the officers assigned to the Unit were detailed with collecting data in order to identify the numbers of crimes committed against people as a result of a bias or racial issue. (Dunlop & Carrol, 1993:3).

It is further contended that because of the unit, no major sparks blew up in Boston in 1991, in the wake of the Rodney King verdict, which caused havoc in many major US cities (Dunlop & Carrol, 1993:3). Whether this can be justified, is without a doubt debatable.

²⁸ Other such units can be found in Metro Toronto, Halifax, Winnipeg, Montreal, OPP, and the RCMP. An examination of their definitions of hate crime will be discussed in a later chapter.

²⁹ Most of the information on the Ottawa Carleton Regional Police Bias Crime Unit was gathered from an interview conducted with Sgt. Dan Dunlop - head of the unit - in March of 1995. More details of the interview are provided in chapter 5.

³⁰ In the Stephen Lewis Report (commissioned by the Ontario Government), particular concerns were raised by the Black community in relation to the lack of commitment from police and other criminal justice agencies regarding anti-Black crimes.

Nonetheless, the Ottawa delegation was sold on the Boston unit, and upon interviewing members of the community to whom the unit catered to, it was revealed that despite skepticism toward the Boston Police as a whole, the one "shining light" was the Community Disorders Unit. With this in mind, the Ottawa Police modeled its Bias Crime Unit upon the Boston model.

The Ottawa unit has three mandates: (1) Operational - consisting of specialized investigations done by four officers; (2) Educational - which takes place through networking with schools in order to raise community awareness; and (3) Intelligence - which consists of monitoring ultra right-wing groups in an "intelligence gathering capacity". It was created in November of 1992, and by January of 1993 it was running in "full force". From this time to March 1995, the Ottawa Carleton Regional Police Bias Crime Unit (OPBCU) examined over 400 incidents and laid 112 charges. It is unknown, however, what the reasons are for those uncharged incidents, as well as the follow up on the 112 charges³¹.

The unit has promulgated some movement at both the federal level and at the provincial level. First at the federal level, it seems to have influenced movement with respect to Bill C-41 regarding sentencing enhancement for hate-motivated crimes. Secondly, at the provincial level, "...police services boards [are required] to develop and adopt a policy on the investigation of hate/bias motivated crimes and hate propaganda offences in consultation with their communities." (Ministry of the Solicitor General and Correctional Services, 1994). Appropriate resources and standards are to be issued, and in communities of 100,000 population or more, consideration may be given to the creation of specific bias crime units (see appendix 1).

³¹ This information was obtained in March 1995.

Sgt. Dan Dunlop (head of the OPBCU) stated that the unit is not there to serve special interest groups, but was put in place to serve the community as a whole. With this in mind, a list of corresponding goals and objectives were set up (refer to appendix 2). Evidently there is some close link with this philosophy and that of community policing. In a paper written by the OPBCU, it states the following:

We believe that policing is a client-based service and it is essential that we deliver a quality product to all of our clients. It is with this philosophy that we can begin to build bridges with communities that for too long have been inaccessible...

The Bias Crime Unit fits in naturally with the movement toward community-based policing and increased emphasis on crime prevention. (Ottawa Police. 1994: 3, 8).

Despite the agenda of the unit catering to the whole community, it was the gay and Jewish communities that provided effective claimsmaking strategies to create such a "task force". Furthermore, three groups are the main "clients" of the OPBCU - i.e., the black community, the Jewish community, and the gay community.

Given the brief³² description of the OPBCU provided above, one can certainly find a "shining light" that was attributed to the Boston Community Disorders Unit; however, many critical concerns can be raised when closely examining the Bias Crime Unit.

Other legislative responses are examined in Glenn Gilmour's working paper entitled *Hate-motivated Violence* (1994). In it he outlines fifteen different responses that could be espoused by the criminal law. Some of the responses that he mentions deal directly with the sentencing enhancement option as outlined in Bill C-41³³.

³² I do mean brief, since so much information was provided to me during the course of my interview with Sgt. Dunlop, however given some obvious limitations, description of the unit had to be cut. What was provided, (in my view), are the pertinent descriptions of the unit. For more details on the interview, refer to chapter 5.

³³ For a complete examination of Gilmour's proposals, refer to appendix 2.

3.6 LEGISLATIVE RESPONSES: A CRITIQUE

Despite the efforts of the criminal justice system to confront the issue, numerous criticisms have emerged. Although some academic and government publications have examined the topic of hate crime, most are legally and constitutionally oriented (which incidentally does not fall within the scope of this research project). This is definitely due to a lack of comprehensive statistics (Roberts, 1995). Although certain agencies such as B'nai Brith and local police departments have made attempts to collect statistics, grasping the scope of the problem remains weak since each organization has no consensual definition of what constitutes a hate crime. Due to the paucity of social science research, there is a lack of intellectual input which ultimately affects the coherence and effectiveness of community action and public policy; moreover, the overall dimensions and scope of the problem are misrepresented.

3.6.1 Hate Propaganda Laws

Most academic criticisms of past, present and proposed legislation have also been pooled into the legality and constitutionality debate, however some scant studies do provide some relevant social scientific analysis. The first has been mentioned above - without a conceptual definition, nothing effective nor efficient can be accomplished.

Efforts by the Cohen Commission certainly had good intentions to amend the *Criminal Code* by making it illegal to espouse racial, religious, and ethnic hatred, as well as prohibiting the advocacy of genocide, the public incitement of hatred, and the willful promotion of hatred. However, sections 318-320 (formerly sections 281.1, 281.2, 281.3) of the *Canadian Criminal Code* were by no means free of any scrutiny. Numerous private and public organizations opposed the laws, claiming that they were either too strict or too

slack (Ross, 1994:153). Some of the arguments against the legislation included the following:

- The *Code* does not need to be amended because other criminal sanctions, such as section 177 - which makes it an offence to "willfully publish a statement, news, or tale that he knows is false and that causes or is likely to cause injury or mischief to a public interest" - are remedies that already combat "so-called" hate crimes (Ross, 1994:153);
- Such legal remedies unintentionally infringe upon fundamental freedoms of expression, speech, and press (Ross, 1994:154);
- The defences included in the new laws (i.e., believing that statements enunciated by that person are true; said on good faith, relevant and, reasonably believed to be true) make it almost impossible to secure a conviction (Sher, 1984:21);
- Based on arguments provided by various minority, religious and ethnic groups, the law is unworkable because without the approval of a province's attorney general, no charges can be laid (Elman, 1989:75; Ross, 1994:154). This view was further supported by many attorneys general across the country "who were reluctant to commence prosecutions which they believed had little chance of succeeding" (Elman, 1989:75);
- Crown attorneys have been reluctant to use the laws because of the enormous difficulty in establishing intent (Bercuson & Wertheimer, 1985; Ross, 1994:154).

Groups continue to question the constitutionality of such hate propaganda laws, and the unenforceable nature of the law is reflected in the number of convicted cases. Only a handful of individuals have been charged under the Canadian hate laws, and only one successful conviction exists to date (Ross, 1994:159). Because of the unworkable composition of the above described hate laws, cases which garnered vast media attention,³⁺⁴

³⁺⁴ Three notable examples are Malcolm Ross, a New Brunswick school teacher who wrote a series of books promoting Holocaust denial and the Zionist conspiracy to undermine Christianity; John Ross Taylor, leader of the Western Guard (a neo-fascist group) who [among other things] ran a telephone line which played racist messages; and Ernst Zundel, who gained notoriety as a publisher of hate propaganda.

have been handled by alternative laws. In the cases of Zundel, Taylor, and Ross, section 177 of the *Code* (Spreading False News) was applied "which was a lot easier to investigate, charge, and get a conviction from, under provincial or federal human rights legislation, than would have been under the hate crime law." (Ross, 1994:162). All of these cases led to some sort of conviction, which indicates that it is much easier to impose non-hate crime statutes for hate crime offences.

Furthermore, in its efforts to police "hate", the Ottawa-Carleton Bias Crime Unit has met with far more success by utilizing tactics which are fundamental to *all* policing practices. McCaffery (1995) argues that rather than trying to enforce existing laws, which seem too perplexing to enforce, why not target potential offenders (and consequently hate mongers) via the use of minor traffic offenses and other minor criminal code violations? (McCaffery, 1995).

This common policing attitude of settling for a smaller victory is by no means the solution to the grander social dynamics, however it does address the issue much more proficiently than existing hate laws. Such insight leads one to wonder about broader questions regarding law. Some would argue that legislation must not be removed from the social reality, and it must not be utilized as any type of quick fix (Giese, 1995). Hate propaganda laws were enacted because of the threat that hate posed to society, however more damage seems to have been generated by their mere symbolic status. Broader and more theoretical notions of law and social control could be examined in order to develop sound social science research that is devoid of legal, political, and so-called human rights rhetoric³⁵.

³⁵ Although some of these notions are examined in part of this chapter and in the first portion of chapter 4, future research could incorporate the works of Foucault, Black, and Cohen.

3.6.2 Sentencing Enhancement: Bill C-41

It has already been established that during its second phase, "hate" in Canada appeared to take on a more volatile demeanor with the increased presence of violence at the core of each incident. As a result, "more improved" legislative measures were introduced. Such action is exemplified in sentencing reform Bill C-41, Canada's hate-crimes law. This bill, which has passed in both houses, allows prosecutors to seek enhanced penalties for criminal acts motivated by hatred toward recognizable groups. These acts would include assault, harassment, hate propaganda, threats, mischief, robbery, and murder (Giese, 1995:8).

The rationale behind such legislative response is plentiful (Garafalo & Martin, 1991; Sanderson, 1991; Tomaso, 1991; Marovitz, 1991; Roberts, 1995). Roberts (1995) notes that a hate crime carries with it a level of disproportionate harm, since "[t]he harm [inflicted] is not restricted to just the victims involved. Hate crimes convey a message of fear to all members of the community to which the specific individual belongs...[t]he harm lies in the atmosphere of fear and apprehension to which all hate crimes contribute." They are not like ordinary crimes which consist of isolated attacks upon a particular individual. Tomaso (1991:99-100) indicates that they are even *more* serious than crimes targeted against community groups and should be regarded as a local and national tragedy. Any effective response to such incidents must recognize the fear, anger, and sense of isolation that they incur. Furthermore, data from the Boston Police Department indicate that assaults motivated by hatred result in greater physical injury, and victims experience "two to three times more negative psychological and behavioural sequelae than victims of violence not motivated by racial or ethnic hatred" (Levin, 1993 as cited in Roberts, 1995). Despite the aforementioned arguments regarding special legislation, Marovitz (1991:53) suggests that legislation alone cannot stop the prejudice, hatred, and bigotry:

[t]he most thoughtful agency guidelines and the best trained officers and prosecutors will not stop criminal activity motivated by prejudice, [however

he does suggest that] we can make the treatment of these crimes a greater priority. Penalties for those who get caught can be made much more severe. It would send the unmistakable message to the communities affected and the individuals victimized that these crimes are not pranks and that they are going to be treated seriously (Marovitz, 1991:53).

But how rhetorical is Marovitz's point? He first suggests that nothing can be done, but then highlights the need for the sort of deterrent measures that have been the focus of classical criminological thinking since the 18th century and also of present day conservative criminal justice initiatives - both of which have arguable been failures. Such measures are often more symbolic than instrumental. They do nothing to address the social circumstances of the problem, but they do enhance recognition of the problem, which is incidentally a major facet of the constructionist paradigm. Nonetheless, Marovitz hints that methods must be located within the criminal justice system. But long before any action can be taken (such as those initiatives outlined in Bill C-41), statutes that prioritize the dissemination of information regarding hate crimes must be put in place. Without such statistical information (i.e., information on the offenders, the victims, and the overall nature of each act), and to reiterate, without a conceptual definition, no effective nor efficient solutions can be proposed.

Just like many other forms of criminal justice legislation, Bill C-41 is reactive (i.e., it only comes into effect after a hate incident has occurred) and ignores the root causes of the problem (McCaffery, 1995). Bill C-41 also feeds into the concepts of retribution and deterrence espoused by archaic classical and neo-conservative criminological theories. Why then, does Bill C-41 enter the same agenda of creating tougher penalties, an attitude that has traditionally been the purview of the "right"? Although Statistics Canada reported that the crime rate decreased for the third consecutive year (Hendrick, 1995:1), a fear of crime and an appetite for tougher sanctions is increasingly becoming a national obsession (Giese, 1995:8). The public wants to see things getting better, and a criminal justice policy that is

set on quick fixes - which is the essence behind the "getting tough on crime" disposition - creates the illusion that something is actually being done³⁶.

Will increasing penalties *really* stop hate? Marovitz certainly had some thoughtful insight on this question. Symbolically, the answer is yes. However in practice, it seems a bit more confusing. The answer to the question *why the need for increased penalties for hate crimes?*, was partly answered when issues regarding the disproportionate harm element were examined. But why follow into the path of the powerful and destructive leviathan of the new right? The new right has created the dramatic image that crime is on the increase, however there doesn't seem to be any hard evidence that crime has hitched a ride on the runaway train. By this rationale, the same applies to hate crimes. It has only been since its immaculate conception and through the use of terms such as "hate crime", "bias crime", "racist violence", etc., that *hate crimes* have been on the increase. Statistics have only recently begun to be collected, and no clear patterns have been established. Although some police departments have recorded some increases since the establishment of various bias crime units, much of the increase can be attributed to public awareness of such units, increased reporting, and increased intolerance (Giese, 1995:8) by various targeted groups.

Petersen (1991) argues that hate crime legislation, specifically enhanced sanctions, are not an effective response to the "epidemic" of hate-motivated violence. Despite some of her seemingly contradictory arguments over the efficacy of retributive justice and deterrence, she notes the symbolic importance of sentencing enhancement. Nonetheless, hate crime legislation, such as C-41, only affects the small minority of cases that survive the funneling attrition process of the criminal justice system. Petersen further notes the following:

³⁶ For a more in-depth discussion on these issues, refer to Cohen (1988), Black (1984), or Christie (1993). For further information, refer to a recent segment (June, 1996) on CBC radio's *IDEAS* - hosted by Lister Sinclair - which broadcast a 7 part series on similar issues. Moreover, the program broadcast a similar 3 part series in March, 1993.

Hate crimes laws are activated only after the violence has been committed; they do not even begin to address the source of the problem. Moreover, certain aspects of these laws are open to manipulation and may ultimately be used against the interests of lesbian and gay communities and other communities targeted by bias-motivated crimes (1991:244).

In this view, strict law enforcement risks too much manipulation by the criminal justice system. Vengeance should not be the key behind "fighting" discrimination and hatred. Vigorous criminal justice practices may actually cause the problem and danger to worsen, creating tensions between various groups; and ironically enough, "[t]he first casualty in these confrontations is justice itself" (Kelly, 1993:17). Vis-à-vis the offender, C-41 might actually result in increased hatred in the future, since increased punishment might bring the onslaught of increased hatred. Regarding the general population, many may feel negative attitudes towards members of an identifiable group (which leads to the question of whom to protect) because they may be viewed as being treated in a more favourable manner. Such laws may actually disempower minority groups, implying that they are incapable of dealing with problems without special attention needed (Gerstenfeld, 1992:280-285; Gilmour, 1994:20).

These are all issues and criticisms raised by various academics, public officials, and even some law enforcers - all of whom are claimsmakers. Kelly (1993:15) further argues that assigning priorities raises some questions, and linked with selective law enforcement is the politicization of crime. All of these criticisms fit neatly in stage three of Spector and Kitsuse's model. Following stages one and two (i.e. the demand for special laws and special law enforcement units) dissatisfaction is raised and new claims have re-surfaced. As a result, the problem appears to take on a life of its own, hence the politicization of "hate".

As Giese (1995:8) contends, another problem with Bill-C41 is that it does not create any new offences. A perfectly legitimate rebuttal to this is that creating a new offence was not the intention behind C-41. Nonetheless, those who don't see any progress in the

initiatives outlined in Bill C-41 argue that hate crimes continue to remain hidden under the proposed legislation. There is no way for police to distinguish a hate crime from a non-hate crime since motive is at the heart of all hate crimes. It seems that police initiatives and C-41 would not operate on the same level. Traditional policing identifies crimes based on the severity of damages caused to a person or property, not on the motive; however, C-41 only increases the penalty based on the perpetrator's motive. How can an ordinary patrol officer (and perhaps even an officer who is part of a specialized unit dealing with bias crime) properly determine the motive of the offender? According to some policing experts, this raises some serious legal and moral issues (McCaffery, 1995). Take for example a discussion between two Jewish neighbours over a land dispute. In an effort to get back at the other, one neighbour spray paints a swastika on the first neighbour's garage door. Another case would be a drug sale between a Black and a White that goes sour, and racial insults are used in the ensuing fight (Berk, Boyd, & Hamner, 1992:125). Were such incidents hate-motivated?

If all law enforcers knew exactly what they were dealing with, then they could deal with hate crimes more effectively³⁷. Another issue concerning police activity and C-41 is the tendency of law enforcement officers to utilize a strict interpretation of the law. Roberts (1995:17) supports such arguments, maintaining that "[p]olice officers are understandably reluctant to undertake a decision about the motivation of the suspect. Or, failing to appreciate the importance of determining whether the crime was motivated by hate, officers may simply ignore the issue, assuming that an assault is an assault, whatever the reason for the attack." Consider the two examples highlighted above.

Although these issues seem perfectly reasonable criticisms of Bill C-41, the difficulty with a police officer's determination of motive is not required. It is up to the

³⁷ This idea touches on the notion of arriving at consensual definition of hate crimes, an issue that will be elaborated in a later chapter.

courts to determine the intent behind the act. In the police officer's report, a description of the event will be provided in which the court will determine if "hate" was an aggravating factor in the crime.

Legal experts maintain that motivation continues to be one of the nagging problems of a sentencing enhancement policy. If prosecutors were not willing to utilize the hate propaganda laws because *it would be difficult to secure convictions for the willful promotion of hatred*, what difference would C-41 make? The motivation is still arduous to determine. According to Bill C-41 (S. 718.2 (a) (i)), a hate crime is one which "was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim".

All of these re-emerging claims and criticisms alter the path of problematization and new reactions are proposed. Take for instance the role of the police.

3.6.3 Specialized Policing: Hate Crime Units

According to police, the use of specialized units to specifically deal with hate crimes³⁸ is being heralded as one of the most appropriate responses to such crime, since it is deemed to fit perfectly with modern community policing practices. Unlike other responses, this approach claims to address root causes. One of the functions of these bias crime units, is to gather statistics³⁹. A benefit of gathering such statistical data is the role it plays in upholding the community policing objective. Statistics gathered by hate crime units have "initiated consultations with educators, community groups as well as other police officers in order to establish additional partnerships aimed at preventing and responding to crimes motivated by hate or bias" (Roberts, 1995).

³⁸ I chose to deal mainly with the Ottawa Carleton Regional Police Bias Crime Unit because of the close geographic proximity, and because it was the first unit implemented in Canada.

³⁹ Refer to appendix 3 which highlights the goals and the mandate of the Ottawa Bias Crime Unit.

Despite its glorifying image, many critical issues can be raised when closely examining the OPBCU. The notion of the community policing rhetoric is a crucial theme⁴⁰. While the Unit was set up to deal with the concerns of the whole community, and not for special interest groups, it is these "special" interest groups that lobbied for the creation of the unit, and it is they who are primarily being "served". Some of these groups were instrumental in making claims during the first and second phases of "hate". Also, the police stand nothing to lose by providing their own "expertise" to an issue that can only help improve their image. These activities by the police and by the lobby groups resemble very much Spector and Kitsuse's stages one and three of the claimsmaking process, as well as Pfohl's study on the "Discovery of Child Abuse". One need only to replace radiologists with the police in order to make a valid comparison with Pfohl's study.

Although the Unit constantly advocates a community policing agenda - with the provision of an educational mandate - a major criticism is that most of the policing done within the bias crime unit is purely reactionary. The unit specifically deals with calls by complainants, and their statistics are based on such. Thus, there appears to be an evident contradiction with a community policing philosophy.

Another major problem with the Unit has to do with the dark figure of reporting. While outreach has worked with some groups (notably the gay community and the Jewish community), many other ethnic groups are not willing to cooperate with the police due to a mistrust of the system (Bolaria & Li, 1985; Czajkowski, 1992; Petersen, 1991). Furthermore, many victims may be reluctant to report a hate crime incident, for fear of possible secondary victimization, a problem that the criminal system is notorious for.

⁴⁰ The notion of a community policing rhetoric is well documented in Leighton (1991) "Visions of Community Policing: Rhetoric and Reality in Canada." Canadian Journal of Criminology, vol. 33, no. 3-4: 485-522. In this article, Leighton examines the promises and pitfalls of community policing; the practical implementation problems; and the atheoretical position of community policing.

Skeptics of "hate" crime legislation note that passing laws and setting up various tools to collect hate crime statistics may not be enough. Coldren (1993:170) contends that all officers need to be properly trained on how to detect hate crimes, how to respond, and how to accurately and completely report them. Dunlop (1995) further notes that while the Unit has been created as a unit, many officers within the Ottawa Police have no idea as to what constitutes a hate crime. Because of this situation, making hate crime training a part of basic training must be considered (Roberts, 1995). Other problems have to do with determining what constitutes a motivation of hate. Although some specific criteria are examined in order to determine hateful motivation (see appendix 4), the issue remains highly subjective and very problematic. One comment that I have heard from colleagues is: "If a member of a right-wing groups commits a 'normal crime', will hateful motivation be prescribed?'".

To reiterate, the Bias Crime Unit has taken a reactive position to deal with "hate" within the overall context of the criminal justice system. Although education is at the heart of their mandate, most work seems to concentrate on "pure policing". What about alternatives and the use of their discretion, and their role as social workers? These issues, as well as many other unmentioned ones all put into question the use of a specific bias crime unit. If it was reaction by special interest groups that led to the creation of the unit, then why do the Police claim that such a unit is there for the whole community? Leighton (1991) contends that the problem with a community policing agenda is too often an illusion of voice is being created. It is not the whole police department that caters to the needs of hate crime victims. Ordinary patrol officers haven't the proper tools to deal with hate crimes. As a result, the whole community policing and inter-agency liaison agenda remains highly dubious.

3.6.4 Hate Crime Statistics & Bill C-445

Bill C-41 and police hate crime units both imply the importance of sound statistical data. This relies heavily on successful hate incident reporting, which will aid in identifying the nature of such acts. In a publication sponsored by the Office of International Criminal Justice (a law enforcement oriented body), Cook (1993) outlines that a thorough report should help capture many of the social elements, as well as determine some existing trends:

To be successful we must have reliable information about who was involved, what happened, what it looks like, where it was happening, how often, how many victims, and by whom. The data will define the problem, will define the target and the causes, and will help law enforcement develop a course of action. Answers to these questions are important in assessing the needs of the victim and the community as well as in determining the appropriate police response (Cook, 1993:145).

Roberts (1995) notes three related reasons for the collection of such data: first, to determine the magnitude of the problem which has yet to be fully acknowledged, in part because of the vast amount of under reporting; the second (and closely tied to Cook's above quote), to understand the social dynamics of the victims in order to allocate criminal justice resources in an efficient manner; third, to evaluate the efficacy of criminal justice, as well as community based responses.

But how reliable is quantitative data and how can one grasp the true nature of the act from mere numbers? Few qualitative analyses of hate crimes exist (see Hamm 1993; Barret, 1987; Kinsella, 1994) and this is perhaps due to their sensitive (and maybe even dangerous) nature. Quantitative research may be the only avenue to analyze hate crimes for now, however it should not be that difficult to bring out the qualitative and subjective social phenomenological aspects. Such data can be easily brought back into their real life context when one considers their truly insidious nature and the harm that they pose to certain communities (McCaffery, 1995). The argument that McCaffery makes subtly points to Spector and Kitsuse's last stage, however McCaffery's point is not a total rejection of a

particular criminal justice response. Nonetheless, he does argue for an *alternative* way of utilising current research methods and statistics.

In the United States, the Hate Crimes Statistics Act has been put into place in order to try and quantify the issue of hate crimes. This has been accomplished with some relative success. However in Canada, there is no such guiding legislation, and statistics continue to be gathered by independent agencies such as the Anti Defamation League of B'nai Brith. or by individual police departments which do not all share a common definition of what constitutes a hate crime. This is perhaps one of the greatest drawbacks to properly address hate crimes. Noted previously was the need for some sort of guiding legislation for C-41 and the various hate crime units. Such an initiative is exemplified in Bill C-445, the proposed Canadian Hate Crime Statistics Act (see appendix 5). However, Roberts (1995) - as a claimmaker - notes that "no plans exist to review it in the near future". Roberts (1995) further contends that such an act would be necessary only if "police forces show little sign of consensus, or little interest in co-ordinating efforts of data collection and offence definition". Although most police forces are willing to disseminate information on hate crimes, there still remains the issue of utilizing a consensual definition, something that could be accomplished if a hate crimes statistics statute is passed.

Numerous other advantages of collecting national data on hate crimes could be mentioned, however given certain limitations, the most obvious ones have been highlighted. Furthermore, it would be safe to assert that advantages for a national statistics strategy on hate crimes outweighs its disadvantages. Nonetheless, a thorough review must point out some of the dilemmas.

Underreporting by minority members who may have a distrust toward the system may be one of the major drawbacks in relying on hate crime statistics. Underreporting is

estimated to be between 90-95% (Roberts, 1995; Bowling, 1994). The fear of secondary victimization by certain groups such as gay men and lesbians, is the main reason for not reporting. Comstock (1989, as cited in Berril & Herek, 1992:294) found that 67% of those who hadn't reported had experienced or perceived the police to be anti-gay, 14% feared abuse from the police, and 40% feared public disclosure of their sexual orientation. Petersen (1991:245) maintains that although the collection of statistics may help in terms of policy decisions, they will only be beneficial if they are accurate. Underreporting could potentially create an artificially low official statistic, thus justifying the further dismissal of pertinent and legitimate concerns. Although it was the gay community that helped set up the OPBCU and the American Hate Crimes Statistics Act, this does not negate the presence of a justice system that operates on differential treatment. A certain bias crime unit may adhere to the needs of various target groups, however these bias crime units still rely heavily on ordinary policing practices which may not be fully sensitized to the issue of hate crime.

Conceptual problems also arise when trying to determine the motivation behind the act. Officers are ill equipped to determine whether a crime was motivated by hate, and this will consequently affect the overall statistics. In order for legislation (such as C-41) to outperform its symbolic role, increased systematic investigation relating to the motivation of the offender is required (Roberts, 1995)⁺¹. Since a common definition is crucial to address such an issue, more guidelines are needed in order to classify these perplexing acts. Although a hate crimes statistics act might bring about more consistency in the collection of data (Roberts, 1995), a consensual definition is still required. Responses by the criminal justice system, local governments, schools, social workers, etc., require a common

⁺¹ However, as mentioned earlier, this symbolic role (within a constructionist argument) is the first step to understanding the problem, that is problem recognition. Nonetheless, numerous critiques over legislative efforts continue; and denying their close examination would render this thesis short of a thorough constructionist argument.

working definition of hate crimes. Without a common agreed upon definition, any further action remains moot.

3.7 CONCLUSION

Although more is required to paint a vivid illustration of "hate", the information provided thus far *has* sketched out what some authors and academics have written on the subject. Within the overall context of the literature review, it may become apparent to the reader that I have made some claims regarding the problem of "hate" as a phenomenon. Although strict constructionist research is not supposed to engage in such activity, I have taken a contextual approach in order to demonstrate the context in which the "problem" is being considered.

A review of the literature has demonstrated that studying the criminalization of "hate" is a tricky task since there are numerous definitional and operational problems. Existing studies have no consensus on how to classify hate crimes, and different academic disciplines incorporate hate crimes differently in their respective discourses. Some authors would classify such actions as domestic right-wing terrorism, (e.g., Hamm, 1993, 1994a, 1994b) while others maintain that such a definition is too encompassing and that we must be prudent when classifying right-wing terrorism (e.g., Bjorgo, 1994). Studies by researchers such as Hamm have examined extremist groups, however not all hate crimes can be attributed to such groups. Hamm argues that hate crime *needs* a common and conceptual definition, and he (1994b) even suggests a global definition. However problems with a global definition exist - i.e., hate crimes in the European context may be somewhat different from those of the United States or Canada. For instance, the German problem cannot be juxtaposed with the Canadian one. Nonetheless, we must be made aware that the potentiality of a German style problem *is* possible.

Although symbolically sound, the penalty enhancement and retributive justice argument will do nothing to address root causes of hate crime. This is the argument raised by such people as Petersen (1991) and Giese (1995) who feel that alternative measures or more radical ones should be attempted (see stage four of Spector and Kitsuse's model). If the argument is that increasing penalties will aid in the suppression of hate crimes, the same logic can be deployed for *all* crimes (Kelly, 1993:14). One need only examine the American experience of prison expansion and increasing penalties of the 1970's and 1980's to dispute the deterrence and retributive justice argument. Furthermore, Kelly notes that increasing the use of legislation may actually have some unintended consequences. A prime example is drug laws in the United States:

A cursory examination of drug law legislation suggests that the growth of laws themselves are insufficient to contain and control drug abuse; similarly, criminal behaviors stimulated by prejudice may not respond in the desired way simply because no specific statutes against them exist (1993:15).

Although some problems exist with the provision of a global definition of hate crimes, the need for a common national definition of hate crimes can never be overemphasized. However, a national initiative is not the only solution to the problem. Kelly (1993:18) outlines that "[b]ecause most of these problems erupt in local communities, they need to be addressed initially at that level". Interagency cooperation is key. In its *1994 Audit of Anti-Semitic Incidents*, the League for Human Rights of B'Nai Brith Canada notes the following:

This year, legislation providing for sentencing enhancement for hate-motivated crimes will be adopted by the federal government. But law-making is only part of the battle against hatred in Canada. It is also critical to promote multicultural anti-racist education to heighten the awareness of racism among our young people and provide practical skills to counteract it. As well, coalition building and community action is essential to insure that all Canadians work together to refute the hate mongers and to promote the diversity that has made Canada the great nation it is today (1995:30).

Clearly, the League (a strong claimsmaker) insists that education and systematic reform must work hand in hand with police initiatives and other legislative proposals. They highlight an obvious need to move beyond the pure rhetoric that is too often present in initiatives aimed at reducing racial inequality and prejudice of all kind.

Understanding the extent of the issue is certainly key, however keeping within a constructionist perspective of how the problem emerged is crucial since too often one gets lost with the perceived objective conditions of the problem, without understanding the more subjective underpinnings. In this chapter I have done this.

The next chapter will examine some other relevant social dynamics of "hate" (i.e. hate crime), especially earlier forms, and how over time the definition has evolved.

CHAPTER FOUR

4.0 DEFINING HATE CRIME - PHASE THREE

4.1 INTRODUCTION

This chapter will serve as a preamble to the final analysis by beginning to explain how hate crimes have come to be defined. "Hate crime" is very difficult to study because it is a relatively "new" phenomenon. The primordial question to examine before any definitional analysis can be made is how did "hate crime" become a social problem; that is, how and why did it take on such a label? Defining the problem is certainly an arduous task in itself, but before this can be accomplished, one must understand how the issue entered the spotlight - how it became defined as a social problem. This chapter will describe the process of how "hate" came ultimately to be defined as "hate crimes". Then various proposed and current definitional themes will be highlighted. The last portion of this section will be reserved for the discussion of current definitions of hate crimes.

In the previous chapter I, noted that "hate" as a social policy issue in Canada has taken on three major developmental phases. The first was located during the wake of massive social changes in the early and mid 1960's. Hate propaganda was the main issue and it wasn't until the early 1980's that such propaganda transformed and was typified into violent behaviour (phase two). As the perceived violence continued, so did the efforts to rectify this social ill; hence the third phase took arose and the term "hate crimes" emerged. But why such a sudden increase in an issue/phenomenon that had always existed? Canada's history is by no means free of any racial and prejudicial conflict. Hate-motivated violence has pervaded our society for centuries, and because the "Americas" emerged out of colonialism, the first documented cases of victimization can be traced back to the Native

Amerindians (Barret, 1987:312)⁴². What events led to the construction of "hate" as a social problem? Although the Cohen Committee (1966:11-12) outlines that "hate activity extends back prior to 1960 and probably antedates even the distribution of hate propaganda that occurred in the latter nineteen thirties", what made the 1960's a landmark era to coin "hate" as a problem, when it has demonstrably existed forever? First, some theoretical notions on the construction of social problems will be revisited.

4.2 A BRIEF RETURN TO THE THEORETICAL FRAME - CONSTRUCTING SOCIAL PROBLEMS: HATE CRIMES

4.2.1 Background

Although various social problems such as child abuse, spousal abuse, discrimination against minorities (cf. Pfohl, 1977; Spector & Kitsuse, 1977; Davis and Anderson, 1983), have existed for decades, how they come to be classified as problems is important to understand. In order that social science research be thorough, a clear understanding of how social problems are defined as such is crucial.

In modern society, crime and deviance have come to be typified as the most serious of all problems, however, given other historical contexts we seem to be much safer today than ever (Davis & Anderson, 1982:10). A possible reply to the above is that collective definitions and typifications have legitimated the proportion of the problem. When something is typified as a social problem (specifically crime), this means that its presence jeopardizes beliefs, values, and norms (Davis & Anderson, 1982:12,19). In their short book entitled, Constructing Social Problems (1977), Malcolm Spector and John Kitsuse outline that problems are socially constructed through social activities; i.e. when reporters

⁴² Literally thousands of other pre-War and pre-Confederation examples can be given, however limitations must be set. The issue at hand is not to provide a historical account of racial discrimination in Canada and the United States, but to highlight how hate crime took on its own public discourse and how it was socially created into a problem. For further discussion on the history of Racial Oppression in North America, refer to Newton & Newton (1991), Bolaria and Li (1985), Barret (1987).

publish and expose new issues; when activists hold demonstrations; or when legislators introduce bills to do something about a condition. For constructionists, social problems and their emergence involve claims-making activities (Best, 1989:xviii) as well as a notion of typification which results from such claims (Best, 1989:xx). The claims enunciated will either typify the issue as criminal, moral, political, medical, etc. It will be demonstrated in this chapter as well as in chapter 5 that in the case of "hate" and hate propaganda, criminalization was the chosen typificatory scheme, hence hate crimes emerged.

Before they were ever known as *hate propaganda*, *hate-motivated violence*, or ultimately *hate crimes*, other "non-criminalized" terms such as racial discrimination, racism, and prejudice, were utilized. "Social problems are what people view as social problems" (Best, 1995:4). This is not to suggest that the conditions or events designated as social problems do not exist. In fact, they are very real. How they come to be defined as problems, however, entails some more subjective underpinnings. Take for example the case of the women's movement in the early 1970's. Feminists and lobbyists (claimsmakers) brought issues such as sexism, wife abuse, sexual harassment, pay equity, and so on, to the foreground. These objective conditions were undoubtedly not new, and in fact they had been around forever (Best, 1995:4). However, they were only constructed as problems when the women's movement made certain claims. It was only after this period that such issues were included in academic and public discourse. Thus, it may become apparent that social problems are pretty much dependent on values and ideology. Problems may originally emerge as a set of distinct meanings, however over time they take on some dramatic transformations. The same process can be applied to hate crimes.

[Problems] have one identity at one point and get absorbed into different definitions and institutional processes in a later period, reemerging with still different forms at another time period. For instance, abortion, racial discrimination and poverty take on distinct and multiple meanings as we follow their histories in post-World War II America (Davis & Anderson, 1983:33)

If one examines "hate", the original issue was prejudice of some sort which then took on a more dramatic meaning in the form of *hate literature* and *hate propaganda*, followed by *hate-motivated violence*, to what is now coined as "hate crime". Although the issue always existed, the definition over time changed, as a result changing the understanding (and for some, the objective characteristics) of the problem.

The same process can be noted when examining who was to be included in the category of victims of hate crime. Jenness (1995:214) notes that "[t]hroughout the 1980's and into the 1990's, 'hate crimes' emerged to secure a place in the social problems marketplace." Her study is primarily concerned with why hate crimes have only *recently* come to the fore as an identifiable social problem, and why some constituencies have been accepted into the victim repertoire and others have not. Jenness (1995:217) also makes the argument that "violence directed at individuals because of their real or imagined social characteristics and group membership has a long history". However, what is new and different from "hate crimes of the past": "is the proliferation of organizations whose *raison d'être* is to monitor and publicize specific types of conduct as 'bias-' or 'hate-motivated' violence and to attach attributions of psychological and physical harm to them". In other words, lobby groups or claimsmakers have helped promulgate a movement to make a specific category of crime - hate crimes - more visible, as well as demanding public policy changes (especially legal ones) to deal with that new category.

One such group is the National Gay and Lesbian Task Force (NGLTF) which lobbied for the *Hate Crimes Statistics Act*. (1990). Another such organization is the Anti-Defamation League of B'nai Brith (ADL) and its Canadian counterpart, The League for Human Rights of B'Nai Brith Canada (The League). The ADL has tracked anti-Semitic incidents since 1979 (Jenness, 1995:217) and the League has done so since 1982 (League

for Human Rights of B'Nai Brith Canada, 1995). Both have been a strong force in lobbying for hate crime legislation in Canada and in the United States.

4.2.2 Media & Politics: Theoretical issues on bringing hate to the public and political agenda

Jenness notes that

the law has played a major role in defining hate crimes as a social problem. Indeed, it is only through the adoption of legislation that hate crimes became a meaningful term and the victimization associated with the problem of hate crimes was rendered apparent and clearly defined (1995:224)⁺³.

If one juxtaposes this statement with media coverage of hate propaganda and hate crime, some interesting patterns can be noted.

Just around the time that the Hate propaganda sections of the *Criminal Code* were first being utilized against James Keegstra, a newsworthy problem was in creation. Although Justice Minister Guy Favreau had commissioned Maxwell Cohen to examine hate propaganda in 1965, the issue had never *actually* entered the "social problem" stage until the early 1980's. A quick examination at *The Canadian Periodical Index* demonstrates that terms such as hate and hate mongering made their first appearance in the media spotlight just around the time that Favreau appointed the Cohen Commission. In the "Editorial" of the April 4th, 1964 edition of *Macleans*, comments are made regarding the recent proposals for laws to deal with hate mongering. The author notes that hate mongering must be addressed, however censorship is not the answer. Few articles existed in the 1960's and early 1970's, and of those that dealt with hate propaganda and hate mongering, most examined the issues of censorship and freedom of speech. Of the hate material located in *The Canadian Periodical Index* many articles written during the 1980's specifically dealt with the Keegstra, Zundel, and Ross affairs⁺⁴. Evidently, because of the notoriety and

⁺³ However as it will be highlighted later, the definition is still lacking and not yet complete.

⁺⁴ More elaborate findings are discussed in chapter 5.

newsworthy nature of such cases, the hate propaganda issue became more visible. As a result of this "second phase" of hate activity (which was incidentally more violent as well) reaction was widespread. Rosen (1994:2) notes the following:

This second [phase] of hate propaganda and racist group activity gave rise to a flurry of reaction and a wide-ranging debate. Proposals for legislative change came from a 1982 Vancouver Symposium on Race Relations and the Law, the 1984 Report of the Special House of Commons Committee on Visible Minorities (*Equality Now!*), the 1984 Report of the Canadian Bar Association's Special Committee on Racial and Religious Hatred, the 1985 Report of the Special Committee on Pornography and Prostitution in Canada (Fraser Committee) and the Law Reform Commission of Canada's 1988 *Report on the Recodification of the Criminal Law*.

The attention that hate propaganda was receiving at the government level certainly typified the issue as a problem that went beyond the realm of racism and prejudice. As noted above, issues such as pornography and prostitution were affected. Evidently, this also coincides very strongly with Jenness' statement that law plays an important role in defining the boundaries of a particular problem.

Recently "hate" has climbed another step on the social problem ladder and has been typified as "hate crime". More articles about hate crimes were appearing in various newspapers as well as contemporary news magazines. Some of the headlines read as follows:

- "Hate crimes rise to record levels: economic hardships, racial tensions responsible, watchdog group reports" *Globe and Mail*, Feb. 25, 1992 pg. A14.
- "Special unit urged to probe hate crimes in Metro" *Toronto Star*, Nov. 29, 1992 pg. A4.
- "Rights activists ask police to start hate-crimes unit" *Montreal Gazette*, Dec. 5, 1992 pg. A3.
- "Hate crimes unit begun in Ottawa" *Canadian Jewish News*, Jan. 21, 1993 pg. 3.

More recent articles indicate how the problem is increasing, and in 1995, the media spotlight has been put on Bill C-41 - which passed in both the House and the Senate in late

1995. More than ever, hate crimes are pervading media headlines and with increased pressure for legal reactions, a third phase has emerged.

To reiterate, hate crimes in themselves may have existed as "hate crimes" for a much longer period than we think. Take for instance the emergence of the skinhead youth culture in Britain in the 1970's. This subculture which is now associated with a very politically motivated racist ideology began not as a racist group but ironically "[t]he skinhead value system began by mixing two seemingly incompatible sources, the culture of the black Jamaican immigrant and the white working-class worker" (Hebdige, 1979, as cited in Hamm, 1993:24). In the beginning, their reliance on symbols such as the swastika, was one that had no attachment to right-wing ideologies, and was in fact borrowed from the Punk subculture which also had not associated the symbol with any extremist intentions. Style was at the center of not only the Skinheads but also of other groups such as the Teddy Boys, Mods, Rockers, Hippies, and Punks - youth subcultures that emerged prior and during the wake of the Skinhead movement (Cohen, 1980:ix-x; Hamm, 1993). As Cohen (1980:x) suggests, two themes are brought about by such groups: "...first that style - whatever else it is - is essentially a type of *resistance* to subordination: [and] secondly, that the form taken by this resistance is somehow *symbolic* or *magical*, in the sense of not being an actual, successful solution to whatever is the problem. The phrase 'resistance through ritual' clearly announces these two themes."

The racist ideology commenced when the Skinheads began to polarize themselves against the Hippies. They engaged in activities such as Hippie Bashing, Paki-Bashing, and Queer Bashing (Hamm, 1993:25-26). These groups supposedly represented the antithesis of what the skinheads sought - a white, heterosexual, working class ideal. By 1972, Scotland Yard had waged laws against the youth subculture that victimized innocent people, and their presence dissipated for about four years (Coplan, 1989; Laing, 1985; as

cited in Hamm, 1993:27). By the late 1970's and early 1980's the Skinheads resurfaced, now borrowing many of the Nazi symbols from the Punk style. However unlike the Punks, the Skinheads had adopted the ideology denoted by such regalia. Alongside the renewed emphasis of conservatism espoused by Thatcher, a rhetoric of nationalism was surfacing, "thus facilitating a commonsense form of racist logic into mainstream political thought" (Hamm, 1993:31). This sense of neo-conservatism coupled with a European right-wing recruitment movement and the British National Front laid the foundation for an international Skinhead youth movement⁴⁵. The campaign for racism and prejudice had extended to include anti-immigration, anti-communism, anti-Semitism, anti-gay, and anti-IRA sentiments (Hamm, 1993:33). Racial violence in England was on the increase and this warranted the Home Office to release a report which indicated that the problem was mostly attributable to the "skinhead fraternity" (Joint Committee Against Racism, 1981:1 as cited in Hamm, 1993:33).

Long before "hate" was problematized as hate crimes, Skinheads in London were committing acts such as Paki-Bashing and Queer Bashing, both of which are "types" of hate crimes recognized today. Nowadays, hate crimes are not only attributable to Skinheads and extremists⁴⁶, however there is the misconception that such groups are the only perpetrators. The result could be the creation of a moral panic. Hamm (1993:7) notes that this moral panic is dangerous in that "a social imagery of the skinheads is built on research that is often misinformed", which could result in a "bandwagon" effect where "everybody [including social control agents] loves to hate the skinheads, but nobody wants to spend the time, energy, or money to figure out why these youths have turned out to be so

⁴⁵ This international skinhead movement is present in countries such as Germany, the United States, and Canada. Although the movement in Canada is less serious than in the United States and Germany, it *is* present. For a more in depth account of Skinheads in North America, refer to Hamm (1993); Kinsella (1994); and Ross (1991).

⁴⁶ Hate crime perpetrators are not only those associated with extreme groups, however research in other jurisdictions as well as the limited data available in Canada suggests that offenders are younger than general offenders, and are exclusively male. They also seem to have links with gangs (Roberts, 1995:50).

magnificently deviant to begin with". This is definitely influenced by media exposure which often shapes our perceptions and our understanding of the world around us. As a result, the body of information that we ingest is received at second hand. As Cohen writes:

That is, it arrives already processed by the mass media and this means that the information has been subject to alternative definitions of what constitutes 'news' and how it should be gathered and presented. The information is further structured by the various commercial and political constraints in which newspapers, radio, and television operate. (1980:16).

Furthermore, the mass media operates within the boundaries of what is deemed to be newsworthy, and often this does not infer that the item in question is actually new (Cohen, 1980:45-46). Take for instance hate crimes and skinheads. When did these images appear to be problematic? The brief analysis of the emergence of the skinhead subculture indicates that they've been around for a long period of time, however we've only been bombarded by their presence in the last five years⁴⁷. Cohen (1980:46) notes the same as it applies to the Mods and the Rockers: "The Mods and the Rockers didn't become news because they were new: they were presented as new to justify their creation as news". Although the media have a duty to report events that are deemed *newsworthy*, if this task is not performed responsibly, there is the risk of deviance amplification.

The key to this phenomenon is how "societal reaction may in fact *increase* rather than decrease or keep in check the amount of deviance" (Cohen, 1980:18). Instead of well documented and researched accounts on hate crimes, too often the public is blasted with sensational, sanitized, and highly contradictory information (McCaffery, 1995: 10; Hamm, 1993:4). Tabloid talk shows such as *Oprah* and *Geraldo* fall victim to such careless reporting, as a result giving a platform to people like Tom Metzger and groups like the Skinheads. Similarly, without the media, David Duke would not have been given the chance to succeed in his quest for a seat in the Louisiana House of Representatives in 1990.

⁴⁷ For more detail refer to chapter 5.

Furthermore, people such as Geraldo Rivera, Phil Donahue, and Oprah Winfrey should not be the ones researching hate crimes. Their business is to sell products, and they should not dabble with such risky topics (McCaffery, 1995:10). Despite some violent conflicts that occurred on episodes of Oprah and *Geraldo*, people like Metzger are re-invited to appear on television:

Because Metzger had contributed so much to Oprah's television ratings, she invited the former Klansman back for a second visit in September of 1989...

Moreover, Tom Metzger had gained an audience far beyond the idiots of Haight-Ashbury [where the second wave of American Skinheads emerged]. In a period when most American neo-Nazis were turning away from public appearances, Metzger and his mean-spirited band of skinheads had, in fact, become racist celebrities of national stature. (Hamm, 1993:56).

Not all media coverage is bad. The issue at hand here is the impact that the media *may* have on deviance amplification. In the case of the Ernst Zundel trial in Canada, one of the variables that Weimann & Winn (1986) examine is the whole impact that the media had on public opinion. Most experts had warned that publicizing the Zundel affair was unnecessary and potentially harmful in giving Zundel a platform to spread his racist message, however their study concludes that the media behaved in a responsible manner when covering the story. Furthermore, those who were more likely to be influenced by Zundel's views were actually less aware that he was on trial (Weimann & Winn, 1986:163,108). In his documentary on hate-motivated activity in Canada entitled, *Hearts of Hate*, film producer Peter Raymont was leery about showing the film, fearing that some groups such as the Heritage Front would be given a platform to propagate their "evil" messages. Nonetheless, Raymont showed the film arguing that we must not turn a blind eye to such issues. Incidentally, it was stated in the documentary that right-wing groups such as the Heritage Front seek any type of publicity - bad or good.

In discussing an abolitionist agenda, Louk Hulsman (1986:64) outlines that we take for granted the role of the criminal justice system as a viable role or way to address social

issues, and we assume that its goals are designed to meet the needs of the community. In his critique of contemporary and critical criminology, Hulsman outlines the notions of primary and secondary criminalization.

Primary criminalization simply refers to the notion that a legal discourse pervades in our society, and it is this legal discourse that defines what is to be criminal and what not to be criminal. Simply put, it refers to the creation of an act by the criminal law.

Secondary criminalization refers to the distorted image that we receive from the mass media:

The type of information however which the mass media portray, is what is 'newsworthy'. In brief, it selects events which are atypical, present them in a stereotypical fashion, contrast them against a black cloth of normality which is over-typical. This brings about mystification about the world which is in contact with criminal justice. It is to this mystification that criminologists submit when they continue to use the concept of crime (Hulsman, 1980:70).

What is important to retain from Hulsman is not his agenda for an abolitionist view, but of his reliance on constructionism to view how it is that we create a certain social reality of crime. He pin points this idea upon stating that:

Crime has no ontological reality. Crime is not the object but the product of a criminal policy. Criminalization is one of the many ways to construct social reality." (1986:71).

Even in its most critical frame of thought, criminology has been dependent on viewing crime as ontological reality. That this notion of crime is taken for granted continues to feed the way we react to certain problematic issues. Take for example the bulk of those articles in legal journals written on hate crime. Hate-motivated behaviour is seen and constructed as a criminal situation which is taken for granted. This must not be distorted with the idea that we should ignore the issue, however hardly any literature (as previously mentioned) explicates how the problem came into being. If we could understand this, then

maybe better tactics to handle the issue could develop. Nonetheless, solutions and reactions to deal with this problem continue to rely heavily on the criminal justice system responses - i.e. the requirement for tougher penalties and the 'need' to develop specific laws to address the situation.

For Davis & Anderson (1983) and Jenness (1995), it is the legal claims that problematize the issue. Once legislation has been introduced or at least proposed, it is then that the issue is constructed and defined as a problem. This position is related to Witte's (1994) idea of *Including* and *Excluding Recognition* in the political process that was highlighted previously. Although many problems such as racist violence have always existed, it was not until recently that they were transformed into political issues and policies were formulated and measures were taken to address the issue. Power positions of those who have vested interest in a particular issue is crucial in determining whether the issue will reach the political playing field (Witte, 1994:94). The ADL and the League of Human Rights certainly had a favourable power position and vested interest in staking hate crimes as a "social problem". Witte (1994:94-95) also notes that certain "social events" are often necessary for the furtherance and development of initiatives and also for the attraction of broader public attention. This may be the desecration of cemeteries, a violent riot (as was the case in Ottawa in 1994 - when anti-racists protested a Heritage Front rally on Parliament Hill), or any newsworthy event. In Canada, the landmark James Keegstra, Ernst Zundel, and Malcolm Ross affairs are definitely newsworthy cases that triggered some action. As a result, the media play a large role in bringing an issue to the public as well as the political foreground (Witte, 1994; Cohen, 1980; Hartman & Husband, 1973; Anderson & Davis, 1983).

The intention here is not to persuade the reader that hate crimes are not a problem. Indeed hate and racism are real, however the idea is to demonstrate how something is

problematized through various tools such as the media, lobbyists and claimsmakers, and finally policy. All social problems are constructions⁴⁸ "that involve professional organizations, clients, constituents, the public and decisions makers in complex interactions." (Davis & Anderson, 1983:155). In the case of hate crimes, it was more or less, the efforts of the gay community and the Jewish community that brought "hate crimes" to the fore. Thus to assume that hate crimes are a reflection of an objective state of affairs (Jenness, 1995:231) would be erroneous. It becomes rather obvious that the issue at hand is the "product of collective definitions developed by watchdog organizations and then institutionalized in law" (Jenness, 1995:231).

Problem pregnancies, discrimination against minorities and women [emphasis added], mental troubles, heavy drinking, child and spouse abuse have always existed, but they became social problems, matters for societal concern and action, through coordinated and complex politics.... A concern in modern society becomes a legitimate social problem when it has become part of public policy, that is, when the state through some agency has made it part of its agenda. (Davis & Anderson, 1983:155).

Once the issue enters the political agenda, many groups may join in on the venture to promote their own vested interests. In the case of racial violence and discrimination, various gay rights groups (such as the NGLTF) supported the cause, thus advocating their own positions. Definitional boundaries are thus removed and the problem explores new territories.

Not all supporters have to experience the violence themselves. They may share different motives to support the demands. This may be motivated by the idea that racism in general and racist violence in particular threaten the value system of society. Another motive may be that a certain definition of racist violence and the demands to combat this violence may bring other comparable phenomena to the forefront, for instance anti-homosexual violence and rape (Witte, 1994:94).

As a result, the definition is always changing, however as noted previously, this definition is never clearly established until legislation is adopted. In the United States, race, religion,

⁴⁸ For a further discussion of the notion of constructions refer to Berger and Luckmann (1966), The Social Construction of Reality. The authors provide a ground breaking treatise on the sociology of knowledge, which suggests that all reality is socially constructed.

and ethnicity were all legitimate grounds upon which to speak about hate-motivated violence, and this set up discussions to include sexual orientation. Through some struggles that were highlighted in a previous chapter, violence against gays and lesbians entered the legal definition of hate crime. "Since the law formally defines what is a crime, as changes in society produce changes in the law, new crimes emerge" (Jenness, 1995:216). More recently, action to include violence against women, the aged, mental and physical handicap, as well as political affiliation, has been raised. Although violence against women is gaining strong support to be included in the hate crimes repertoire (Jenness, 1995:225-231), this category (as was mentioned in the introduction of the thesis) as well as the others mentioned above, have been left undiscussed.

This leads me to a discussion of where hate crime definitions currently stand.

4.3 DEFINITIONS OF HATE CRIME

4.3.1 Can Hate Crimes be Defined?

The *Webster's New World Dictionary* defines hate as "a strong feeling of dislike or ill will" and notes that "hate implies a feeling of great dislike or aversion, and with persons [emphasis added] as the object, connotes the bearing of malice". Although this simple definition seems all encompassing, it neglects these insidious acts aimed at property. Is it possible to find an all encompassing and common definition of hate crimes? In Canada, there is no guiding definition of hate crimes, and as noted in the previous chapter, this has proven to be problematic.

Thus far, this chapter has highlighted how an issue - specifically, "hate" - comes to be defined as a problem. In order to deal with hate, the criminal justice system has appropriated the problem and some initiatives have been implemented and newer ones

proposed. A major drawback to such initiatives has been the outstanding lack of a common definition. Although it may seem easy to critique current efforts dealing with hate crime because of the absence of a consensual definition, arriving at such a definition is a problematic task.

First of all, there is the overall argument that hate should not be criminalized, rendering the discussion of the definition of hate crimes moot. Some critics argue that hate crime legislation is unconstitutional (Dority, 1994) or highlight the serious problems in defining the motive (Jacobs, 1993). Others argue that you cannot punish or police one's thoughts and feelings. However, if one acts on those feelings and thoughts, this becomes more serious. The abstract has been transformed into something concrete - racism or prejudice. The intention here is not to get into a legal debate over whether hate should be criminalized or not. Arguments presented in a previous chapter indicate some strong critiques of legislating against hate. Legal and constitutional debate continues to be disregarded and sociological underpinnings remain key. The purpose of the remainder of this section is to examine problems associated with some of the existing definitions of hate crimes.

4.3.2 Existing Definitions of Hate Crime

Because the problem in Canada is not as widespread as in other jurisdictions, we have yet to reach a consensual definition of hate crimes (Hamm, 1994b: 174). Hamm (1994b:174) further notes that crimes motivated by a victim's race, ethnicity, or religion are defined at least nine different ways in seven different nations. Whether he is correct in suggesting that a common global definition is required is an issue that will be discussed a bit later; nonetheless, it can never be stressed enough that in order to properly deal with hate crimes, a common definition in Canada is required. Some police forces as well as

federal and provincial departments have come up with some clear definitions of hate crime.

The following are some definitions currently being used in Canada:

- Metropolitan Toronto Police Force

A hate crime is a criminal offence committed against a person or property that is based solely upon the victim's race, religion, nationality, ethnic origin, sexual orientation, gender or disability.

- Halifax Police Department

A hate crime is a criminal offence committed against a person or property, the motive for which is based in whole or in part upon the victim's race, religion, nationality, ethnic origin, gender, disability or sexual orientation.

- Edmonton Police Service

Bias Crime: A criminal offence committed against a person or property, that is based solely upon the victim's race, religion, nationality, ethnic origin or sexual characteristic.

- Ottawa-Carleton Regional Police

A criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, religious, ethnic, sexual orientation or disability group.

- Winnipeg Police Department

Hate crimes are traditional offenses motivated by an offender's bias as a result of religion, race, nationality, or sexual orientation [a "whole or in part" definition is now used by the Winnipeg police, and the unit investigates incidents based on actual or perceived group status].

- Montreal Urban Community Police Service

The Montreal police force uses the same definition that is used in Toronto (see above).

- Ministry of the Solicitor General / Correctional Services of Canada

Crime was motivated because of hate/bias toward the victim's racial, religious, ethnic [status] or sexual orientation.

- Policing Standards Manual, Province of Ontario

A Criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, religious, ethnic [status], sexual orientation or disability group.

- Ontario Provincial Police

A criminal act against a person(s) or property that is based solely, or in part, upon the victim's race, religion, ethnicity, sexual orientation or disability.

- Bill C-41

Bill C-41 defines a hate crime as one which was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim.⁴⁹

(as cited in Roberts, 1995:8-10).

Other comparable definitions include:

- The Anti defamation League of B'nai Brith:

any act to cause physical injury, emotional suffering, or property damage which appears to have been motivated, all or in part, by race, ethnicity, religion, or sexual orientation (as cited in Pepper, 1993:35).

- The United States Hate Crimes Statistics Act:

[C]rimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property (as cited in Roberts, 1995:77).

4.3.3 Differences in the Definitions

These definitions should be sufficient to get an overall view of the definitions available. Although the definitions may seem somewhat similar, some are more stringent than others. For instance, if one compares the definition from the Halifax Police Department to the Metro Toronto one, the latter utilizes a more restrictive definition that is based "solely" on the victim's implied characteristics, while the former notes that hate crimes are offenses motivated "in whole or in part" by the victim's characteristics (Roberts, 1995:10). Hence, disproportionate statistics will be noted since the Toronto definition is less likely to report as many "forms" of hate crimes. Roberts (1995) refers to these two

⁴⁹ Bill C-41, S. 718.2.(a) (i), as cited in Roberts (1995:13).

types of definitions as *Inclusive* (as utilized by the Halifax Police) and *Exclusive* (as utilized by the Toronto Police).

Another thing worthwhile noting is whether or not property is automatically implied in the definition. Most of the definitions specifically indicate if property is part of the definition. However, a jurisdiction like Winnipeg does not include property in its definition. Does this mean that property as a category is implied, or totally excluded? Another classification difference has to do with whom to include. For instance, Ottawa-Carleton and the Ontario Provincial Police both include disability. Why would other agencies exclude this category? Other groups are joining in on the venture to include themselves as possible victims of hate crimes. For instance, feminist anti-violence campaigns are lobbying to transform violence against women into a hate crime (Jenness, 1995).

4.3.4 Defining Hate Crimes: A Complicated and Problematic Task

So the question remains, how do we define hate crimes? Many problems exist in arriving at a consensual definition of hate crimes. As it was briefly mentioned in the previous chapter, Berk (1994:v) notes that at their core, all definitions would have to include the symbolic status of the hate crime victim. By examining the above provided definitions, it seems somewhat apparent that the status of the victim *is* included. However, one major problem is whom to include. Where do we draw the line? Do we include women; the aged; disabled persons? What about those associated with some political affiliation - do we include them or group them under the political crime and terrorism banner? Berk's comment also seems a bit fuzzy since he mentions the *symbolic* status of the victim. What exactly is meant by the *symbolic* status? This becomes an issue of what to classify as a hate crime. Berk (1995:v) further argues that a hate crime is an illegal act

perpetrated because of what the victim represents. A short list of symbolic statuses includes the following: race or ethnicity; nationality; membership in political organizations; religion; sexual orientation; and even gender. Berk's definition of whom to include by far exceeds those groups included in the definitions provided by the aforementioned state agencies.

In relation to the symbolic status of the victim, Grimshaw (1969:254) speaks of hate-motivated violence (and this symbolic attribute) as something "social" "when it is directed against an individual or his property *solely or primarily* [emphasis added] because of his membership in a social category" (as cited in Berk, Boyd, & Hamner, 1992:127). Furthermore, this "social category is defined by one or more attributes that a set of individuals share, which have implications for how the individuals are *perceived* [emphasis added] or treated" (Berk, Boyd, & Hamner, 1992:127). These two statements can be closely associated to the notions of *Inclusive* and *Exclusive* definitions of hate crimes.

First, Grimshaw speaks of violence that is directed at someone or something solely or primarily because of one's membership to a social category. This social category can include anyone of those highlighted in the definitions provided or of the different symbolic statuses provided by Berk. This definition would certainly fall under the exclusive category of hate crimes definitions. The major problem with relying on a definition that requires the criminal act to be solely based on the victim's status is that the use of the word solely severely limits the operational usefulness of the hate crime definition, thus creating something that is too narrow in scope (McCaffery, 1995:8). Roberts (1995:11) further contends that:

To rely on an exclusive motivation definition is likely to have the effect of seriously underestimating the incidence of hate crimes. Many hate crimes will not be classified as such if such an exclusive definition is used.

Furthermore, few crimes are actually attributable to one single factor (McCaffery, 1995:8).

The other point that Grimshaw and Berk, Boyd & Hamner bring out, is the notion of the perceived status of the victim. If one takes into account the perceived status of the victim into a hate crimes definition, it then resembles more an inclusive type definition. Inclusive definitions are characterized by the criminal act being motivated "in whole or in part" based on the victim's symbolic status. The problem with using a definition that is too inclusive is that it could result in the over-classification of incidents of hate crimes, which in turn could result in inflated statistics, thus creating some sort of a deviance amplification and a moral panic (McCaffery, 1995:9). The consequence of such inflated statistics could result in increased media exposure that would serve the interests of various hate groups. But would the utilization of a perceived status of the victim amplify the scope of the problem? If a man is attacked because he is thought or perceived to be gay, should this be included in a hate crimes report? The Ottawa-Carleton Regional Police would definitely say yes. This was the case in the summer of 1989 when Alain Brousseau was walking through Major Hill Park on his way to the Inter-Provincial Bridge. Brousseau did not realize that this park was a target for gay bashers. A group of young men proceeded to rob, beat, and throw Brousseau over the bridge, ultimately killing him (Ottawa Police, 1994:1). Although Brousseau was not gay, the crime was motivated on Brousseau's perceived (and symbolic) status, thus making it a hate crime. But where do we draw a line?

Very closely related to the notion of the victim's symbolic status is the victim's "actuarial status" (Berk, Boyd & Hamner, 1992:128). Actuarial status is defined by a person's individual and social attributes that do not directly motivate a crime, but serve "as markers revealing some *other* attribute making that person a desirable crime target" (Berk, 1994:vii). For example: "a group of street thugs may mug a man not because of what his sexual orientation represents to them but because they apply a stereotype to him implying an upper-middle-class income and a disinclination to fight back" (Berk, Boyd & Hamner,

1992:128). In this case it is not the symbolic status that motivates the attack, but it is the "factual" information about him that leads to the attack (Berk, Boyd & Hamner, 1992:128). The fact that he is gay was not included in the motivation of the crime. Although a social category (wealthy man with disinclination to retaliate) was ascribed to the victim, there was no symbolic end to the crime being committed. There was no hateful motivation on the person's symbolic or perceived status. This example is somewhat different from the Brousseau case, since in this incident it *was* the fact that he was thought to be gay that motivated the incident. Noting the differences between symbolic status, perceived status, and actuarial status is not an easy task, nor is it intended to be. The idea here is to note the tremendous heterogeneity in hate crimes and that the symbolic status of the victim is but a first step in conceptualizing and understanding them (Berk, 1994:v).

Whatever the hate crime may be, motive is the defining characteristic, but as noted above, motive is not an easy thing to decipher (Berk, 1994:vi). Do we opt for a definition that makes hate of one's perceived and symbolic status the sole criteria, thus making it easier to define hate crimes, yet risking an underestimation of the problem; or do we opt for more of an inclusive type definition? This is a problem that remains very difficult to answer. Berk, Boyd & Hamner (1992:130) suggest some sort of a "but for" criterion is applied: "But for the hate motivation, the crime would not have occurred". Here it would not matter when the hateful motivation entered the act, so long as it was present.

To summarize, Berk, Boyd & Hamner provide somewhat of a promising definition that would address many of the classification problems:

perhaps the essential feature of hate-motivated crimes is their symbolic content. Crimes motivated solely by the victim's actuarial status would seem best included in another category. In addition, the hate motivation should probably be a necessary condition for the crime, whether the motivation stems from firmly held beliefs or substantial uncertainty about the victim's group. Finally, the degree of premeditation or instrumentality should not matter (1992:131).

This still does not answer who we should include, what acts should be included, and so forth. In a law enforcement training manual for the state of California, Brian Levin provides a concrete definition of bias crime that appears to be very promising:

Bias Crime Definition

An act of: Intimidation, harassment, physical force, or threat of physical, against a: person, family, property, supporter, motivated in whole or in part by hostility based on: race/color, ethnicity, nationality, ancestry, religion, sexual orientation, gender, disability, where the purpose is to deter the exercise of any right or privilege provided under the laws and or constitution of the United States or California.

This definition is all encompassing. However, ancestry and gender seem to go beyond a decent definition of hate crimes. The major problem with ancestry is how far back does one go to determine ancestry. If a third generation white Canadian is harassed because of his/her background is of Serbian descent, should this be included as a hate crime? Since many incidents of violence against women resemble such crimes, it would make perfect moral and philosophical sense to include gender as a bias/hate crime; however, other legal and grassroots measures dealing with violence against women have been put into place. Piggy-backing on the hate crimes "bandwagon" is not the solution to end violence against women (Center for Democratic Renewal, nd:36) in a patriarchal society⁵⁰. Furthermore, gender would imply that violence against men is also a valid category.

4.4 CONCLUSION

The issues examined in the first part of the chapter are intended to be more of a preamble to the next and final section. The intention was to discuss how well the theory can be applied and how hate has come to be typified and institutionalized as a criminal justice

⁵⁰ My intention here is not to get involved into a lengthy argument of whether or not gender should be included, however the arguments of not including gender in the hate crimes categories seems to outweigh those that favour its inclusion (refer to Center for Democratic Renewal, *When Hate Groups Come to Town*, pgs. 36-37). Furthermore, it remains highly dubious whether hate crimes legislation can effectively deal with racism alone.

issue. Although all the claimsmaking campaigns wish to examine the problem of "hate" under the criminal justice telescope, each agency or institution presents a different perspective. More of these practical considerations will be discussed in chapter 5.

The second part of chapter 4 examines the problems in defining hate crimes. Although a blitz of attention is rushing the hate crime problem in Canada (and on the international level) a sound and conceptual definition remains. The purpose of the second section was to demonstrate how - despite an intense campaign to expose and address the issue - those affected by and responding to "hate", have been unable to arrive at a common legal definition. This continues to be the most important obstacle to tackle in order to effectively and efficiently address the "problem". Again, the purpose was not to propose any definitions since this would evidently go beyond the realm of this thesis. Contrary to strict constructionist research which is not supposed to examine the conditions of the social problem, as part of my contextual constructionist approach I included a discussion of conditions in my analysis to illustrate how various claimsmaking agencies are divided on arriving at a common legal definition.

CHAPTER FIVE

5.0 ANALYSIS: A PRACTICAL APPLICATION OF THE THEORETICAL MODEL

5.1 INTRODUCTION

Thus far, this research project has predominantly remained aloof of any practical considerations regarding hate crime since most of the discussion has focused on the theoretical and abstract issues concerning the problematization and criminalization of "hate". Given the relatively deep theoretical underpinnings of the chosen academic framework, (i.e., social constructionism) such consequences have been inevitable. The essence of the research project *is* intended to be more academic than practical, however: without deep inquiry into the social constructionist perspective, the fundamental issue of understanding how and why an issue becomes "criminalized" would remain foreign to the reader. Despite these deep theoretical underpinnings, an empirical analysis of the various findings is required in order to make the thesis a veritable piece of research.

Although social constructionism surfs a more abstract and theoretical wave than other paradigms, this does not make it "a dry, academic, ivory-tower perspective of little practical value" (Best, 1995:348). If one refers back to the methodology chapter, it becomes more apparent how the social constructionist perspective can be utilized as a valid tool for social problems analysis (or any social science analysis). Best (1995:349) contends that:

constructionism remains most useful as an analytic tool. Constructionism is a stance, an orientation, a perspective we can apply to better understand the world around us. We live in a world where claimsmaking has become a routine. The front page of a typical morning newspaper probably features three or four examples of claimsmaking. Claims account for large shares of the material presented in news magazines, on news broadcasts, before Congressional hearings, on radio and television talk shows and so on.

It is exactly the analysis of some of these media forms that will make up some of the empirical and final portion of this thesis. One method used for this empirical part closely resembles a study conducted by Crelinsten (1989b) who examined the classification of terrorism in two newspaper indexes and two periodical indexes over a 20-year period (1966-1985). This 20-year period was chosen in order to examine those years "before terrorism began to dominate public discourse, so as to capture the emergence of terrorism as a phenomenon worth watching" (Crelinsten, 1989b:167). A secondary and more qualitatively oriented method will rely on two interviews conducted with certain claimsmakers.

The primary focus of the analysis is concentrated on those sources in which claims regarding "hate" were made. Best (1995:350) notes that a primary task in constructionist analysis is to locate the claims being made in sources which include: (1) press coverage; (2) scholarly and professional books and periodical articles; (3) popular treatments; (4) testimony before congressional hearings; (5) public opinion polls; and (6) interviews with claimsmakers. The chosen sources utilized for this research project included newspaper indexes, periodical indexes (legal, criminological, and sociological), as well as interviews with: a member of an advocacy group, and a police officer. The primary essence behind the information gathered from these sources is to map out a trend of when "hate" came to public attention, as well as to qualitatively understand why such an issue emerged at the time that it did and what different typifications it took at different times.

So when did "hate" first begin to dominate academic, legal, public, media, and policing discourse? In order to answer this question, a term search was conducted to establish when hate and hate crimes first emerged as newsworthy topics. Racial harassment, discrimination, racism, etc., have always been part of media coverage,

however typifications (such as hate propaganda and hate crimes) arose at particular times, driven by specific incidents or legislative responses.

5.2 IMAGES AND SOCIAL CONSTRUCTION OF HATE: AN EMPIRICAL OVERVIEW

As previously noted, a useful way to examine the emergence and shifting level of interest of a particular issue or social problem is by measuring its frequency in various news and periodical indexes (Crelinsten, 1989b; Best, 1995; Jacobs & Henry, 1996). When exactly did hate, hate propaganda, or hate crime, as a category (i.e. typification), become newsworthy? It is interesting to note that it was exactly during the time of the Cohen Commission that "hate" as an index category in the *Canadian Periodical Index* first appeared. Given this dimension, it becomes more clear as to how the issue was problematized and furthermore criminalized. Hate activity had reached proportions which were deemed problematic, hence certain groups voiced their concerns before a Parliamentary Committee. Although no immediate actions were taken, a special review committee was created in the following years. As a result, legislative changes were proposed and the issue had now become a newsworthy topic which garnered public interest on those who sought protection from hatred under the law versus those who sought the ultimate right to freedom of expression. For example, a search of the *Canadian Periodical Index* reveals that "Hate" as a heading which pertains specifically to hate propaganda first appeared in 1964. Two opposing editorials in that year specifically dealt with the question of democracy and hate. One, which appeared in an April edition of *Saturday Night* read as follows: "How democratic caviling serves the hatemongers": the other which appeared in the April 4th edition of *Maclean's* had the following title: "Of course hate-mongering should be stamped out. But not by passing censorship laws". Although these two editorials were made a year before the Cohen Committee was tabled, the issue had already attracted

public inquires and more news articles were written that questioned the possibility of anti-hate legislation:

"Can we squelch homemade Nazis and still have freedom of speech?"; *Financial Post* , August 21, 1965.

"Minorities who want anti-hate laws are a threat to everybody's freedom."; *Maclean's Magazine* , January 2, 1965.

"Hate literature may be outlawed in Canada"; *Maclean's Magazine* , October 1, 1966.

(extracted from *Canadian Periodical Index*)

5.3 INDEXES⁵¹

The role that interest groups, media workers, legal and medical professionals, social scientists, and other categories of "experts" play is a crucial one to examine when studying the sociology of a particular problem. One way to study their role would be to examine some of their published works. A previous section has already provided an in depth literature review of such materials. A second possibility would be to interview some of these actors. This is an option that will be entertained in a subsequent section to this chapter. Another tool to analyze how these agents have contributed to the problematization of "hate" would be to conduct a chronological search of news, academic, and legal articles that have been published.

The analysis of indexes is a useful tool in order to measure the frequency of claims being made about a particular subject or social problem. Crelinsten (1989b:170) supports this by noting that "[o]ne common way to measure media imagery is traditional content analysis in which vocabulary counts are made to see which terms appear the most often". My purpose in using this technique of research is to map out a trend of when "Hate" (in the context of this thesis) as a topic first entered the media, public, legal and academic spotlight. Mapping out a trend of when hate propaganda (and subsequently hate-motivated

⁵¹ A printed sample of each index utilized is provided in appendix 7.

violence and then hate crimes) entered the above mentioned discourses is but one of the ways that renders this type of research tool a valid one. Merely mapping out the chronology and frequency of "Hate" and hate crimes does not provide much analytical substance. As a result more in depth analysis regarding the categorization of the indexed articles will be carried out.

The indexes utilized are: *The Readers' Guide to Periodical Literature* (1981 - 1995); *Canadian Periodical Index* (1962 - 1995); *Canadian Business and Current Affairs* (1981 - 1995); *Criminal Justice Abstracts* (1968 - 1995); and *LEGAL TRAC* (1980 - 1995). Although each index is intended to examine a different medium, there has been some overlap in the articles.

5.3.1 The Media: The Canadian Periodical Index, The Readers' Guide to Periodical Literature & The Canadian Business and Current Affairs Index

These three indexes were consulted because together they cover print media published in Canada and the United States⁵².

The Readers' Guide to Periodical Literature

In the *RGPL* the years 1984 to 1995 were selected, and the main term searched was *Hate*. The main heading of *Hate* was traced back to 1978, however no entries could be located that specifically dealt with "hate" in the context outlined for this piece of thesis. In numerous instances, when *Hate* was located, a reference was made to "see misogyny". Although from a feminist perspective, one might argue that misogyny is a *type* of hate crime⁵³, it was established in the introductory chapter that misogyny, pornography, etc.,

⁵² The reader should simply refer back to the literature review and note that most of the materials published on hate crimes are non-Canadian. The *Readers' Guide to Periodical Literature* (*RGPL*) is an American index and although this thesis centres around the hate crime situation in Canada, because of our very close proximity to the United States, we are very much influenced by newsworthy issues as defined by the U.S. media. Our reliance on American television programming is a prime example of this.

⁵³ For a more detailed discussion on the inclusion of violence against women as a hate crime, refer to Jenness (1995).

would not be examined. Furthermore, when the term *misogyny* was identified, it did not correspond to the "hate" context. Other related terms such as, *Neo-Nazis*, and *Skinheads*⁵⁴ were also examined. This was done in order to trace back when it was that alternate and related terms were incorporated into the context of "hate".

It was not until 1984 that the "hate" banner was located under the alternate term of *Neo-Nazis*. In that year, one article in the December 24th issue of *Newsweek* read as follows: "High-tech hatred [Aryan Nation's electronic bulletin board]". The years 1985–1986 continued to record related entries of "hate" under the main heading of *Skinheads* or *Neo-Nazis*. In 1987, *Hate Mail* appeared as a main heading and in 1989 *Hate Crimes* was indexed as a main heading. In that year, one article pertaining to hate crimes legislation was reported in the *U.S. News & World Report* (October 9, 1989): "The politics of hate [laws dealing with bias-related crimes]". Following 1989, *Neo-Nazis* and *Skinheads* still recorded an abundance of hate-related entries, however these headings were now found under the main heading of *Hate Groups* or *Hate Crimes*. Furthermore, by 1992, newer main headings such as *Hate in Radio* and *Hate in Cable T.V.* appeared in the *RGPL*.

Table 5.1 and Figure 5.1 indicate that reporting practices of issues related to skinheads and neo-nazis fluctuated between 1984 and 1991, however in 1992 and 1993, a surprising number of articles were noted. This shift comes in at the same time when increased coverage on *Hate Crimes* are apparent. Of those numerous articles written about skinheads and neo-nazis in 1992 and 1993, the majority are all related to the German experience. This can be attributed to the fall of the Iron Curtain, the rise of immigration in Germany, the rise of the ultra right, and a threatened German youth core⁵⁵. Because of Germany's history, it is understandable why coverage of right-wing extremism is under so much scrutiny. Regarding the coverage under the *Hate...*⁵⁶ heading, article content is

⁵⁴ These two specific terms were examined because they appeared as alternate headings that were referred to under the main heading of *Hate*, *Hate Groups*, or *Hate Crimes*.

⁵⁵ For a more elaborate discussion on the European experience, refer to Aronowitz (1995); Hamm (1995) and Witte (1995).

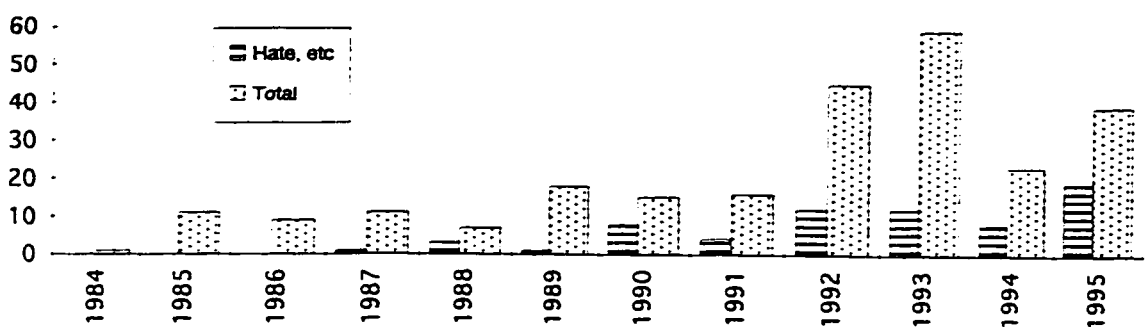
⁵⁶ *Hate...* refers to those specific headings dealing with "hate": i.e., *hate groups*, *hate in T.V. and Radio*, *hate crimes*, etc.

scattered, dealing with all issues surrounding hate crimes: i.e., hate crimes legislation, the debate over free speech, characteristics of hate groups, hate and communications - T.V. , radio, internet -, increase in reported hate crimes; and the accent seems to be placed on all these surrounding issues.

Table 5.1: Related "Hate" Articles - RGPL, 1984-1995					
Year	Neo-Nazis	Skinheads	Gay bashing	Hate, Hate Crimes, etc.	Total*
1984	1				1
1985	11				11
1986	7				7
1987	8	2		1	11
1988	2	2		3	7
1989	9	7		1	17
1990	8		1	8	15
1991	9	1	2	4	16
1992	27	16	6	12	45
1993	38	13	9	12	59
1994	15	4		8	23
1995	14	5	1	19	39

* Total may not add up due to duplication in categories such as skinheads and neo-nazis.

Figure 5.1 Total hate articles - RGPL, 1984-1995



Entries dealing with hate (including the neo-nazis and skinhead sub headings) in the *RGPL* have drastically increased, and evidently the rise of the ultra-right, the rise in hate crimes, and the debate over the constitutionality of criminalizing hate have all become newsworthy issues.

The Canadian Periodical Index

An examination of the *Canadian Periodical Index (CPI)*, reveals that the contextualized heading of *Hate* dates back to 1964. Prior to 1964, two entries were located under *Hate*, however the context of the term was not one that was related to prejudice, racial motivation, hate propaganda, etc. For instance the context dealt with issues such as hating one's mother. As a result, the years 1964-1995 were examined and the terms *Hate*, *Hate Literature*, *Skinheads*, and *Neo-Nazis* ⁵⁶ were searched. It is interesting to note that *Hate* was indexed in the *CPI* long before its American counterpart. This is definitely due to the efforts announced by the 1965 Canadian Minister of Justice as well as the Cohen Committee.

An interesting research question that would certainly go beyond the limits of this thesis, would be to ask why there wasn't much coverage of hate related issues in the United States when much of the hate materials were disseminated from our neighbours. Furthermore, why hadn't "hate" - a newsworthy topic - been scrutinized by the media during an epoch in which the country was amidst a civil rights revolution? Perhaps the strong "freedom of speech" discourse took precedence, or likewise, other antedated and related topics such as racial discrimination and racism (which would now fall under the hate crimes banner) were examined. Certainly the push for hate crimes legislation (by those same groups that took part in the civil rights movement of the 1960's) in the latter part of the 1980's helped recognize the link between topics such as racism and racial

⁵⁶ The terms searched were the same ones as the *RGPL*. This was done in order to keep some consistency in two very similar periodical indexes.

discrimination to that of hate crimes. Hence it becomes more apparent that groups who make claims have a strong say on what gets publicized and what does not.

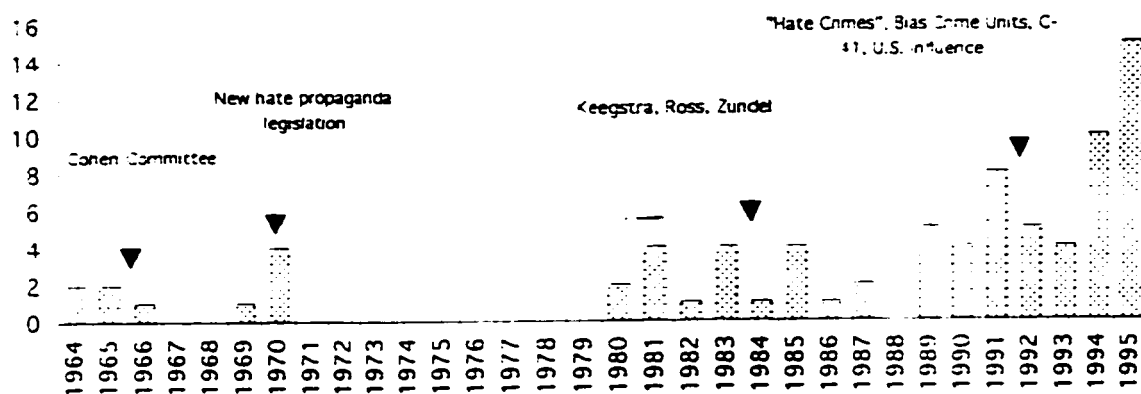
Figure 5.2 highlights the frequency of entries located under the heading of *Hate* in the CPI. In the earlier years (1964-1966), articles focused on the freedom of speech debate, and these were directly linked to the events of the Cohen Commission. The next wave of entries occurred during the years that the hate propaganda sections of the *Criminal Code* were being tabled. Again, articles dealt with the free speech debate as well as with legislation itself. No articles appeared in the 1970's, since there were no newsworthy stories associated with the subject matter. The early and late eighties were highlighted by the Keegstra, Ross, and Zundel affairs, hence more articles appeared⁵⁷. During these years, articles written about the prevalence of skinheads, neo-nazis and more violent forms of "hate" were also noted. The largest rise in coverage of hate-related topics occurred in 1994 and 1995. This is largely due to the introduction of Bill C-41, the issue of hate on the internet, more coverage of hate by popular culture (e.g., CTV documentary entitled "Hearts of Hate", Warren Kinsella's book: "Web of Hate"), as well as the continuation of the freedom of speech debate. It is these latest years that are associated with the third phase of "hate".

Unlike the *RGPL*, the *CPI* did not index a category heading of *Hate Crime* or other related *Hate...* topics. All entries fell under the category heading of *Hate* or *Hate Literature*. However, a similarity is drawn between the *RGPL* and the *CPI*. In both, it is interesting to note the progression that "hate" has taken from issues initially dealing with the freedom of speech debate, to notorious cases, to proposed sentencing enhancement legislation, to technological advancements. This indicates how hate as a newsworthy topic

⁵⁷ More elaborate details regarding these three characters will be discussed when the *Canadian Business and Current Affairs* Index is examined. Furthermore, some details highlighted by Weermann & Winn (1987) will be supplemented.

has changed and garnered more intense coverage by the media. This also relates to the notion of typification as well as different legislative responses and claims (as outlined in Spector and Kitsuse's first three stages).

Figure 5.2 Frequency of hate related articles - CPI, 1964-1995



The Canadian Business and Current Affairs Index

In the *Canadian Business and Current Affairs Index*, the years 1981-1995 were examined, since these were the years that this index provided. Like the *RGPL* and the *CPI*, the *Canadian Business and Current Affairs (CBCA)* Index is a searching tool that covers numerous news magazines, newspapers, and special news publications. Incorporated in the *CBCA* is the *Canadian News Index (CNI)* which covers Canada's major newspapers and news magazines. Unlike the other two indexes already examined, the *CBCA* is an on-line computer (CD ROM) searching tool which covers much more descriptive information as well as materials relevant to this study.

An index of key terms is provided by the computer program, thus facilitating the searching task. For instance, "HATE" was a key index term provided by the data base. Despite the availability of key index terms, subsequent subject terms and links⁵⁸ had to be inputted by the searcher. For instance, the number of entries linked to a category such as "HATE" went well into the thousands since not all entries were relevant to criminal justice issues. As a result, other related subjects were searched (e.g., HATEMONGERING, HATE CRIMES) or two key index terms were linked (e.g., HATE and CRIME), thus reducing the scope of the search and making it more relevant to the subject matter in question.

Although most of the key index terms, subjects, and links searched⁵⁹ contained a list of entries, the searches that were deemed the most appropriate and fruitful were the following: PROMOTION OF HATRED; HATE & PROPAGANDA; HATE & CRIME; Hate Crimes; HATE & LITERATURE⁶⁰. PROMOTION OF HATRED was by far the most elaborate of all searches, containing 1139 entries, from 1986 to 1995⁶¹. Figure 5.3 demonstrates the breakdown per year. Although no apparent pattern is established, there are peaks in certain years. Similar to the *RGPL*, the *CBCA* identifies the "hate" issue at a later date than does the CPI. This is also due to the fact that nothing prior to 1980 was available in the *CBCA*. It is only around 1986 that the *CBCA* "picks up" the issue at hand.

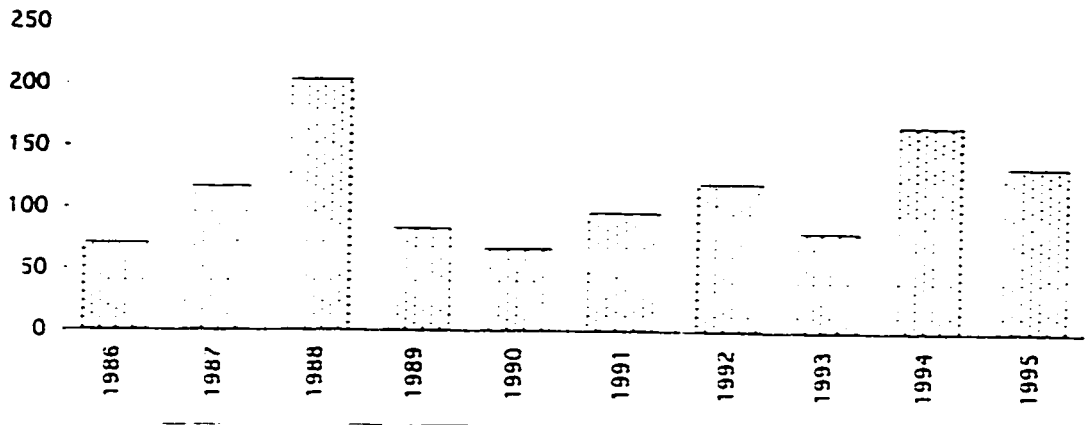
⁵⁸ I refer to key index terms as those provided by the searching program, subject terms as those which do not appear in the provided key index, and links, as a combination of the subject or key index terms.

⁵⁹ The terms searched were the following: HATE & CRIME; BIAS & CRIME; HATE & PROPAGANDA; HATE & LITERATURE; PROMOTION OF HATRED; hate crime; hate crimes; hate propaganda; HATE LITERATURE; hate group; hate groups; hate violence; hate monger; hate mongers; hate mongering; HATEMONGERING; hate motivated violence; bias crime; bias crimes (terms in upper case refer to key index terms; "&" denotes a link).

⁶⁰ Linked key terms such as HATE & PROPAGANDA were chosen over the subject "hate propaganda" because more information and entries were displayed.

⁶¹ The explanation for this is because the key index term PROMOTION OF HATRED is also a Descriptor. For each *CBCA* article listed, a title, year, title of newspaper/magazine/affiliation, and a descriptor is highlighted. A descriptor is similar to the key index term, however the former is a more general category. Sometimes the two are matched and in the case of promotion of hatred, they are all matched. More than one descriptor can be assigned to each listed article.

Figure 5.3 Articles under descriptor: PROMOTION OF HATRED, CBCA, 1986-1995



A closer examination of the graphs reveals that although promotion of hatred is the most elaborate categorization of the subject matter in question, other headings preceded it. For instance, although occurring at a reduced frequency, "hate literature" and "hate propaganda" appeared in 1983 and 1984 respectively. Within these earlier identified articles, different key descriptors were assigned. Prior to 1986, hate literature was categorized under numerous descriptors, some of which included the following: Racial Discrimination; Human Rights; Canada - Law and legislation; Minorities; Jews. For obvious limitation reasons already explained in the discussion on the *RGPL*, these headings were left unsearched. After 1986, most (but not all) articles dealing with hate-related issues were categorized under the promotion of hatred descriptor. This further demonstrates how over time a relatively similar issue is ascribed differing labels.

It was briefly noted that in Figure 5.3, no apparent pattern is established. Although promotion of hatred seems to have gotten some constant press coverage, there are distinct

years where peaks are noted. The years 1987, 1988, 1992, 1994, and 1995, all surpass the 100 article mark. Although the deviations are not that drastic, a deeper inquiry into the content of the prevailing articles would explain why there are some odd peaks. Before explaining these odd peaks, some inquiry as to why 1986 marks the first year in which promotion of hatred is indexed as a category would be worthwhile.

Although figures 5.4 and 5.5 demonstrate the presence of articles dealing with hate propaganda and hate literature prior to 1986, the frequency is not as high as those first articles describing instances of promotion of hatred. Why wasn't there any literature pertaining to promotion of hatred prior to 1986? A possible explanation could be that certain events in that year marked the beginning of the creation of a new phenomenon. It was around this time that increased press coverage surrounded the notorious Keegstra, Ross, and Zundel affairs. Zundel's trial was held in Toronto in early 1985, and less than six weeks after the Zundel trial was over, James Keegstra was also brought to trial (Weimann & Winn, 1986:17). Although Malcolm Ross had been publishing hate literature (including his most controversial "holocaust-denying" book entitled *Web of Deceit*) since the 1970's it was not "until 1988 that a New Brunswick Human Rights Commission board of inquiry was formed to investigate whether Ross 'should be fired by his school board'" (Ross, 1995:165). Incidentally, Zundel was convicted under section 177 of the Criminal Code - willfully spreading false news - while Keegstra was charged under the hate propaganda sections.

Figure 5.4 Articles with subject links of Hate & Propaganda- CBCA, 1984-1995

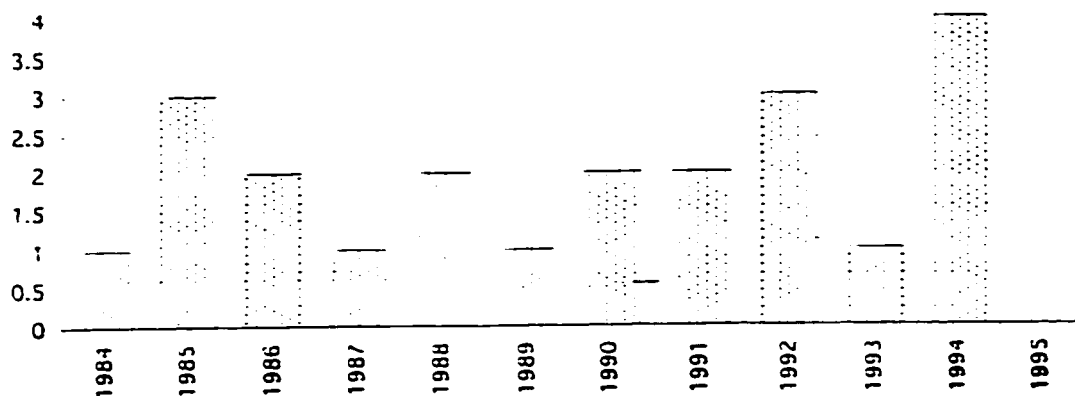
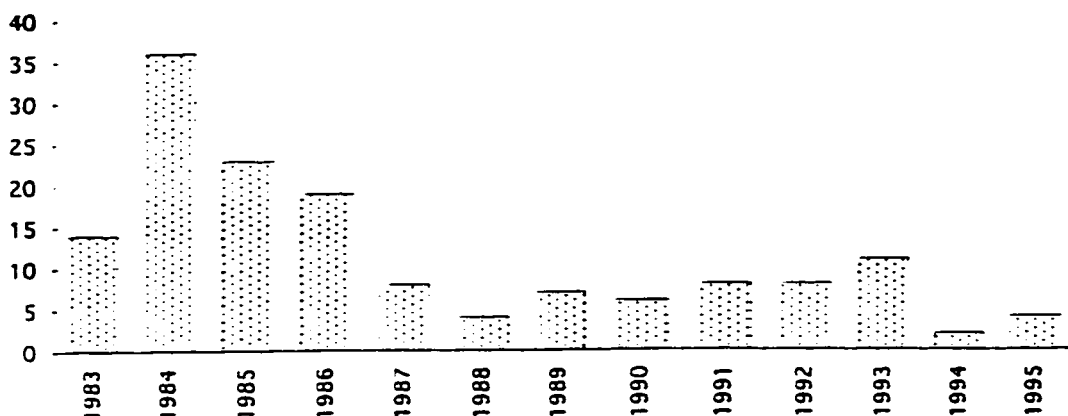


Figure 5.5 Articles with subject links of Hate & Literature - CBCA, 1983-1995



In their study on the Zundel affair, Weimann & Winn (1986) examine press coverage of the trial and the role of the media on public opinion. Although the details of their research surpasses the limits of *this* present research, they note the following:

The English-language big city media led in coverage of the affair. The English-language CBC's prime news period, 10-11 p.m., carried a total of 30 stories on Zundel from January 1st until the end of April with an almost daily diet in February. Toronto's *Globe and Mail*, Vancouver's *Sun*, and Calgary's *Herald* each provided their readers with 25 or more stories on the trial between January 1st and March 15th. The *Globe* provided the greatest exposure - 6 of its 31 stories appeared on page one. Radio Canada television did not provide as much coverage as CBC television but it did offer a total of 8 stories. During February, the *Téléjournal* and *Le Point*, counter-parts of the *National* and *Journal*, gave their viewers one Zundel story every four days (Weimann & Winn, 1986:83).

The Zundel, Ross, and Keegstra affairs make up a large proportion of all articles dealing with the promotion of hatred. Of the 1139 entries shown in the *CBCA* index (1986-1995), over 38% dealt specifically with the names Ernst Zundel, Jim Keegstra, or Malcolm Ross. Of those years where peaks are noted, the findings are even more astounding. Moreover, from 1986 to 1988 an even larger percentage (63%) of the articles indexed featured stories on these three notorious cases. Table 5.2 demonstrates the total number of "promotion of hatred" articles, as well as the proportion of those articles that exclusively covered stories on Zundel, Keegstra, and Ross.

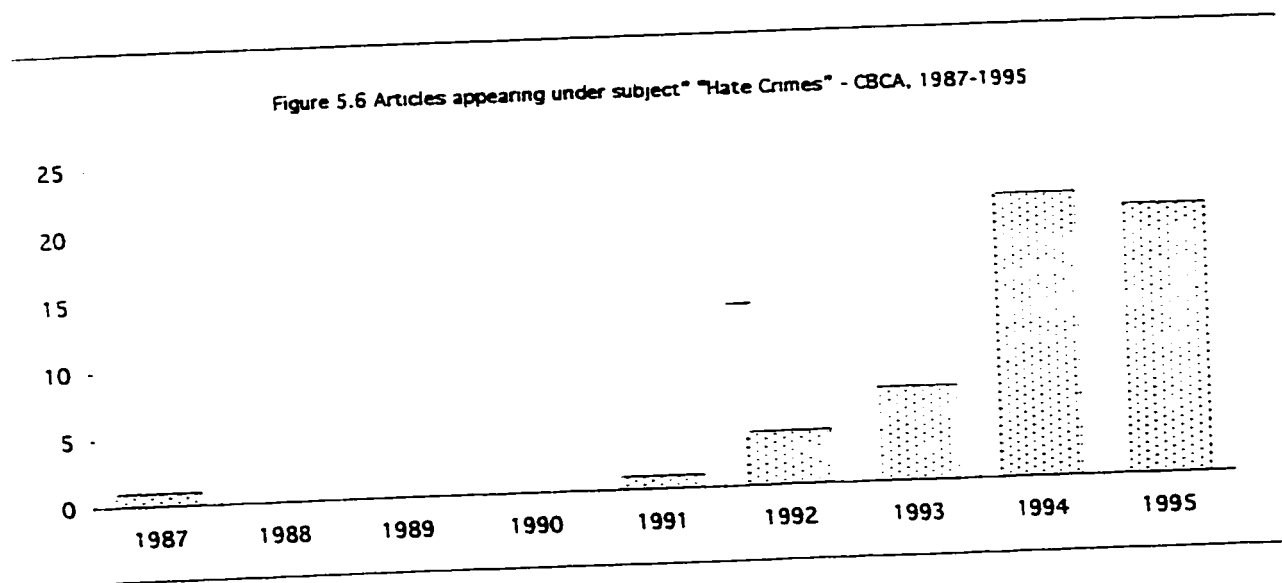
In 1988, 148 of the 203 (73%) articles indexed under promotion of hatred dealt with the above mentioned three names; and of those, 106 (71%) specifically focused on Zundel. This demonstrates that a mere three cases have played a major role in the publicizing of the "hate" phenomenon.

Table 5.2 CBCA Articles indexed under Promotion of Hatred					
Year	Total		Articles with Keegstra, Zundel, and/or Ross		Percentage
1986	71		43		61%
1987	117		56		48%
1988	203		148		73%
1989	83		24		29%
1990	67		16		24%
1991	96		33		34%
1992	120		57		48%
1993	81		10		12%
1994	167		26		16%
1995	134		6		4%

The year 1989 indicates a substantial drop in articles indexed under promotion of hatred (Table. 5.2). Despite this drop, 3 out of every 10 articles still focused on the notorious three. For the most part, the remainder of the articles attended to the constitutionality of the hate provisions in the Criminal Code. The same trend is apparent in 1990 and 1991, but something interesting is noted in 1991. A significant proportion of the articles cover issues related to the Ku Klux Klan (KKK). Well over 60% of the reported articles in 1991 either examine the aforementioned hatemongers and the KKK. Again, the remainder focused on the [un]constitutional nature of the hate laws in Canada. Up to this point in time, very few articles had examined "hate crimes" as an independent issue (refer to Figure 5.6).

In 1992 another large proportion (over 48%) of articles under the descriptor "Promotion of Hatred" is attributed to the ever lasting interest in the Ross, Zundel, and Keegstra affairs. Although more stories include the heading "hate crimes" in their titles, proportions remain quite low. The vast majority of the other literature indicates the

perceived presence of right-wing groups in Canada - particularly examples of hate propaganda (i.e., defamation of synagogues, hate telephone lines, distribution of hate pamphlets) - as well as the ever so prevalent freedom of expression/speech issue.



Nineteen ninety-three marks the year where the river of "hate" related topics changes its flow. Although a remarkable drop in total coverage is apparent, a significantly lower proportion of articles allotted to Zundel, Keegstra, or Ross is shown. Other independent cases of actual incidents are examined, and more attention is paid to the hate phenomenon itself. That is, a wider array of matters linking hatred to the criminal justice system (c.j.s) are noted. These include: the role that lobby groups are playing in their push for policy changes regarding hate-motivated activity; the implementation of hate crime units in various police agencies across Canada; as well as the presence of a right-wing extremist

wave in Canada. In essence, newsworthy claims about the harm that hate poses indicates that a problem is apparent. Consequently, media exposure about the issue itself further intensifies the construction of a problem, hence the path toward problematization and criminalization (since the problem is referred to as one which the c.j.s. is responsible for) continues.

Therefore we go from an issue that received little coverage prior to the early eighties, to one that gets weekly coverage. Although some of the content and the images change - whether it is hate-motivated crime, promotion of hatred, hate literature, or simply racial discrimination - the problem (phenomenon) has always been the same. The media construct reality by specifying which aspects or components of an issue merit coverage and which do not. If something is deemed to be of importance, then the media will recognize it as so (Weimann & Winn, 1986:84). Newsrooms have the power to thematically choose what is to be portrayed and what is not. This was noted earlier in a previous chapter (cf. Fishman, 1980; Ericson, Baranek & Chan, 1987). This is certainly true for the subject matter in question. One need only to refer to Figure 5.5 and 5.6. It is interesting to note how coverage on "hate literature" has dwindled and reporting on "hate crimes" have increased. Hate crimes provide a newsworthy and simplified picture of: victimized minorities, an increasingly violent society, and a target group that we can blame these instances on (i.e., skinheads, white supremacists, etc.). Distinct events certainly make an issue more newsworthy than another and this has been evidenced in the Zundel, Ross, and Keegstra cases, as well as the Grant Bristow affair, and the recent interest on the information super highway.

The years 1994 and 1995 represent a resurgence in press coverage of matters related to hate. Mention of the Keegstra, Zundel, and Ross affairs is at a relative stand still and the newer issues emerge. Coverage of issues related to hate on the internet are prevalent, and proposals for hate crimes legislation is now extensively covered. Newer

cases are replacing the likes of Zundel (although Keegstra and Zundel continue to make headlines to this day) and the Grant Bristow affair is taking on a newsworthy characteristic of its own. Moreover, more mention of hate crimes are made, hence recognizing the issue as a problem on its own and thus breaking the barrier from its parent categories. Figure 5.6 highlights how hate crimes have only been a real concern in the last three years.

In order to clearly map out when hate crimes - as category on its own - first appeared in the *CBCA* index, the subject "hate crimes" was searched⁶². Figure 5.6 reveals that "hate crimes" only made a significant impression in 1992, and more drastically in 1994 and 1995. It is of interest to note that although the *CPI* demonstrated that "hate" as a term relevant to c.j.s. antedated the American experience, the term "hate crimes" (as researched in the *CBCA*) only appeared in the Canadian press in 1987⁶³. Interestingly enough, the context of the article was American since the subject matter dealt with the passing of the hate crimes bill:

"Hate crimes bill passes in US" *Canadian Jewish News* v.28 Oct. 15, 1987 pg. 1 (as highlighted in the *CBCA*).

Although "hate crimes" was searched as an independent subject category, the Descriptor PROMOTION OF HATRED was located in 80% of the articles. This demonstrates that PROMOTION OF HATRED is the best term in order to examine any issues relevant to hate and the c.j.s. Of the articles appearing under the "hate crimes" subject search, an overwhelming majority (77%) were associated with either policing initiatives (i.e., hate crime units) or with legislative responses to hate crimes (i.e., Bill C-41). The remainder mostly documented the rise in reported hate crimes statistics.

As mentioned above, the majority of the related terms could be located under the PROMOTION OF HATRED index search. A quick look at Figure 5.3 doesn't capture the true qualitative meaning behind the data. According to the figure, promotion of hatred is an

⁶² Another search utilizing the key index terms of HATE & CRIME was performed, however most of the entries appeared in the search under "hate crimes".

issue that seems to have remained relatively constant since 1986. However, more in-depth analysis has revealed why 1986 was the beginning to an issue that has been around forever. Certain newsworthy events have led to peaking coverage of hate-related issues in the c.j.s. Recently, there have been more news stories specifically focusing on the hate crime problem (Figure 5.6). It has been argued time and time again that issues surrounding hate in the c.j.s. have existed forever. Recent efforts by certain lobby groups have helped publicize the issue hence letting the public know that a problem exists. Furthermore, academics and affected criminal justice professionals (i.e., police) have keyed in on the issue, and their own efforts have increased the perception of the problem. These efforts have in turn been captured by the press and the media since the matter represents newsworthy elements. Through collaborating labour, lobbyists, news persons, academics, lawyers, and social control agencies have all helped typify hate, hate-motivated activity, and the promotion of hatred as a problem which warrants the careful attention of criminal justice.

5.3.2 Legal and Academic Discourse: The Criminal Justice Abstracts & LEGAL TRAC

Like the *CBCA*, *The Criminal Justice Abstracts* and *LEGAL TRAC* are computer indexes. Articles and entries referenced in the *Criminal Justice Abstracts* stem mostly from Sociology and Criminology journals, as well as various books and government documents⁶³, while those referenced in the *LEGAL TRAC* are mostly legal journals. Consequently, the *Criminal Justice Abstracts* (*CJA*) and *LEGAL TRAC* are indexing tools

⁶³ The *Criminal Justice Abstracts* and the *SOCIOFILE* are comprised mostly of criminological and sociological publications, while the *LEGAL TRAC* is concerned more with Law oriented journals. As a consequence, the differences in academic discourse between Criminology/Sociology and Law is evident. These indexes do not stem from hard copies, but from online CD ROMs similar to the *CBCA*. Furthermore, the same searched terms in the *CBCA* were utilized for these more academically inclined indexes. Incidentally, the term PROMOTION OF HATRED did not appear in the two academic indexing tools.

which, unlike the *RGPL*, *CPI*, and the *CBCA*, are more academically inclined. This section will demonstrate the trend of how academic discourse has treated hate crime⁶⁵.

The Criminal Justice Abstracts

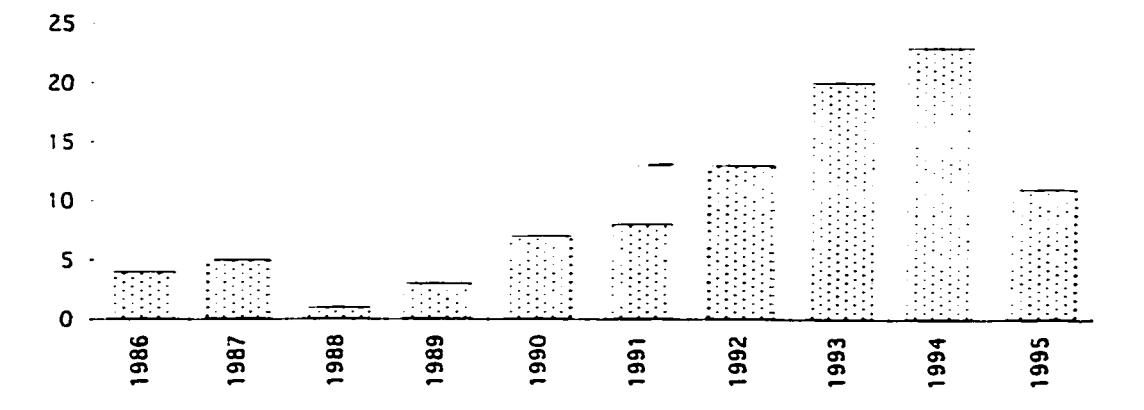
The main term searched in the *CJA* (1968-1995) was "HATE", and 123 entries were revealed. Other terms and headings such as: HATE CRIME, HATE and CRIME, HATE PROPAGANDA, HATE GROUPS, HATE-MOTIVATED VIOLENCE, HATE MONGERS, HATE LITERATURE, BIAS CRIMES, etc., were all subsequently examined: however, a close examination of the searches reveals that all sub-headings and terms fell under the general category of "HATE". Working with the *CJA* made the task of typifying hate-motivated incidents as criminal a much easier task than the *RGPL* or the *CPI*, since this index is one that deals specifically with the criminal justice system. Nonetheless, not all of the hate related entries could swim in the hate-motivated crime pool. Of the 123 hate related entries, over 77% (95) dealt with hate-motivated behavior. The other articles referenced under "HATE" dealt with hate in the criminal justice system, but under a different context. For instance, one book is entitled: *The hate factory; the story of the New Mexico Penitentiary riot*. Other articles examine the clinical and psychological aspect of hate and crime, but none feature it under the guise of a hate-motivated crime discourse.

It is worth noting that articles dealing with hate against identifiable groups or persons, first appeared in 1986. Figure 5.7 reveals the progression of exposure that "hate" in the c.j.s. has received since 1986. This matches the same type of trend noted in the *RGPL*, the *CPI*, and the *CBCA*. Even though three antedated articles had the term "hate crime" in their title, it was in a 1989 article dealing with gay issues that HATE CRIMES was first referenced as a descriptor index term. Of the earlier articles that contained "hate

⁶⁵ Chapter 3 and 4 provided much more detail regarding academic perspectives, however the aim here is to examine the established trends.

crime" in their title, one dealt with the creation of a hate crime unit in New York City, while the other two pertained to Hate Crime Legislation. This point strongly coincides with the constructionist framework, since it demonstrates how indexers themselves have only recently categorized an issue that had always existed, and how some issues are more closely related to the hate crimes topic (i.e., gay and lesbian issues) than others.

Figure 5.7 Entries indexed under "Hate" - CJA, 1986-1995



Although a paucity of literature related to "hate" existed prior to 1990, those early articles referenced in the *CJA* examined the presence of right-wing groups and the presence of hate-motivated violence against minority groups. This is a slight difference from the previous materials (covering the same early dates) identified in those periodical indexes pertaining to news literature. There, a substantial amount of coverage on the issue over freedom of speech made up a large portion of early coverage on hate-motivated activity. Reporting practices over the perceived increased presence of skinheads and neo-nazis (a highly graphic and newsworthy aspect of hate crime) was also disseminated, but at later dates. This indicates that early criminological coverage of hate-motivated crimes

differs from the news-oriented approach; however overall, most of the same issues are covered. One area that the media covered more extensively than academia was in specific legal cases (such as Keegstra or Zundel). These specific cases are evidently catchy and newsworthy instances.

Thus it becomes somewhat apparent that academic discourse plays a similar claimsmaking role as the media. Although such a discourse may not reach as wide an audience as the media, the expertise that academia possesses, and the depth that the published research addresses is certainly an added bonus toward typifying hate as a criminal justice issue. A re-examination of Figure 5.7 demonstrates how criminology has increased its coverage of literature addressing "hate" incidents. Furthermore, the academic literature is not excluded to ivory tower type professionals. Government sponsored research by the Canadian and United States Departments of Justice, as well as interest groups such as B'nai Brith, The National Gay and Lesbian Task Force, and police agencies, have all contributed as "knowledgeable knowers".

Since much information regarding "hate" was available in the *CJA*, I was able to ascertain what *type* of coverage hate got - that is, if the issue got primary or secondary coverage. I refer to primary coverage as those articles [books or publications] that directly deal with hate type crimes, and secondary coverage as those where hate is an added feature in the published works⁶⁵. The evaluation of a newly created community based policing initiative which deals with all related aspects of law enforcement - including race relations and hate crimes - would be regarded as secondary coverage. For example, one article which appeared in *Justice Professional* is entitled "Assessing police training curricula:

⁶⁵ The categorization was done at a subjective level, however each abstract was carefully read in order to determine whether the book or article dealt directly or indirectly with hate motivated issue. For example most of the materials related to hate groups and organizations such as the KKK were grouped as primary type articles. It is interesting to note that one 1995 book in particular - which was originally published in 1965 - had been ascribed a key index descriptor of HATE CRIMES. Again this demonstrates how indexers have now come to utilize hate crime as a common category.

'consumer reports'. Although this article did not receive a key descriptor term of HATE CRIMES or BIAS CRIMES, etc., it did appear as one of those 95 contextualized articles dealing with hate. This study assessed the utility and comprehensiveness of state mandated police academy training, and one of the supplementary issues examined was training and instruction on "gangs/cults/hate crimes". This simple typification demonstrates how hate crimes have been incorporated into the older categorization of "gangs and cults".

A mere examination of the title as well as the provided abstract easily revealed what type of coverage was warranted. Furthermore, the majority of the more recent articles and books on "hate" included "Descriptor" words (e.g. HATE CRIMES; CULTS; HOMOSEXUALITY; BIAS CRIMES; POLICE AGENCIES AND PROGRAMS⁶⁶) which rendered the classification task easier.

Despite the relatively easy task of breaking down hate crime exposure into primary and secondary coverage, certain qualitative nuances have made it difficult to quantify this fragmentation. For instance, it would appear obvious to categorize those articles which have a key descriptor term of HATE CRIMES or BIAS CRIMES as a primary type; however, some articles which specifically deal with hate crime units and hate crime legislation (such as those previously mentioned) do not have these key descriptors. Although it has already been made apparent that this is a consequence of the index term only appearing after 1989, other more recent instances have been noted, as well as the reverse situation. For example, one article which deals with gay and lesbian issues touches the problem of hate crimes, however, HATE CRIMES is assigned as a key indexed term. Incidentally, in this case, HOMOSEXUALITY is also referenced as a key descriptor; hence this further demonstrates how an issue such as homosexuality which was once (and still is)

⁶⁶ Numerous descriptors were highlighted for each articles, thus linking the subject matter. For instance one article dealing with the KKK, linked the descriptors CULTS; DISCRIMINATION; HATE CRIMES; HISTORICAL STUDIES.

defined as a deviant category (Pfohl, 1995; Herek & Berril, 1992; Kelly, 1993) is now one that is incorporated in the hate crimes discourse (Jenness, 1995).

Despite these nuances, the instances of such occurrences only show up in a few entries, and furthermore, the *CJA* categorizes them all as articles which are relative to hate activity as it pertains to this thesis. Figure 5.8 shows the dichotomy between primary and secondary articles, while 5.9 demonstrates the frequency of HATE CRIMES and/or BIAS CRIMES as an index descriptor over time. A closer examination of the related indexed articles reveals that all categories under the helm of the hate crimes banner were covered fairly equally (Figure 5.10). As noted earlier, the only issue that received less attention was that of freedom of speech and constitutional issues.

Figure 5.8 Primary and secondary "hate" articles - CJA, 1986-1995

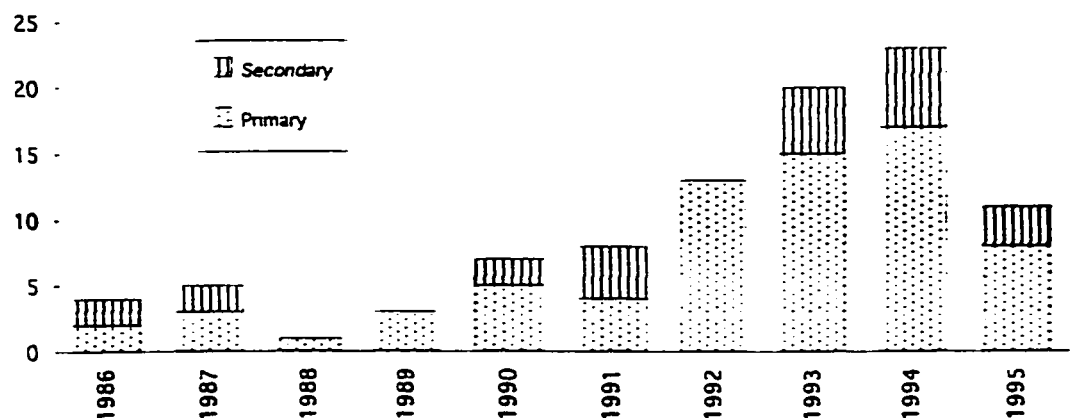
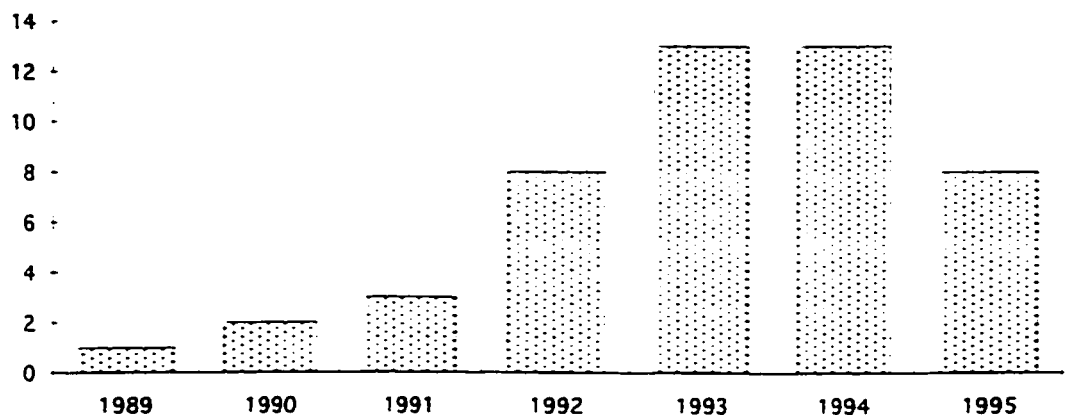


Figure 5.9 Articles with HATE CRIMES/BIAS CRIMES as key descriptor - CJA, 1989-1995



LEGAL TRAC

The *LEGAL TRAC* (*LT*) is an index guide to legal periodicals which for the most part contains American publications, however some Canadian journals are highlighted. The data base dates back to 1980 and provides articles related to the subject matter up to 1995. Although information is available as far back as 1981, it is only in 1988 that *LT* highlights "hate crimes" as an indexed term. The same terms were searched as were in the *CBCA* and the *CJA*, and the most fruitful search contained the subject "hate crimes". The majority of the other searched topics are incidentally located under the "hate crimes" subject search. Although a vast majority of the related articles appear under the key subject "hate crimes", two articles which antedated the 1988 mark were located under the other searched headings: one was found under "hate violence" (dealing with the need for tougher hate laws - 1986) and the other was indexed under "hate group" (pertaining to Skokie, Illinois and the freedom of speech debate - 1985).

Figure 5.11 outlines the same type of pattern noted in the previous periodical indexes; however, in proportion to the other indexes, there appears to be relatively greater decrease in the amount of coverage for the year 1995. Unfortunately, an explanation to this greater decrease cannot be substantiated at the present moment.

Figure 5.10 Categorization of articles - CJA, 1986-1995

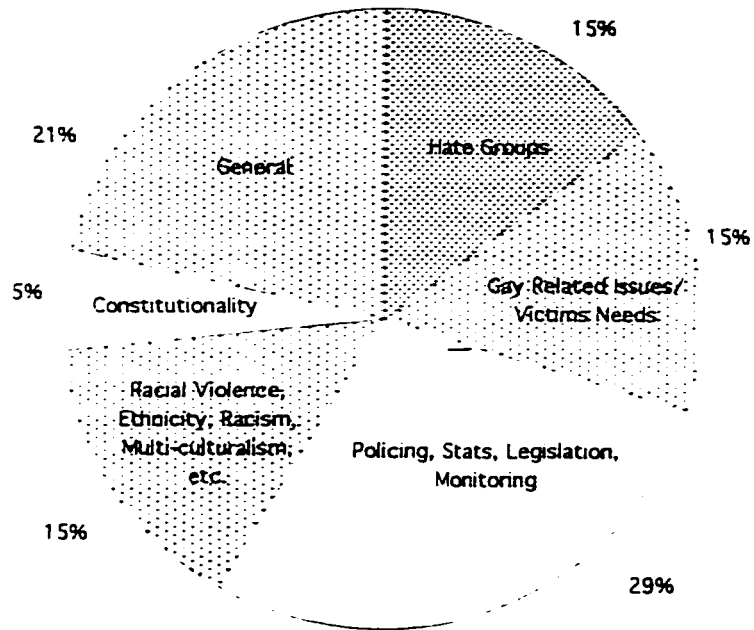
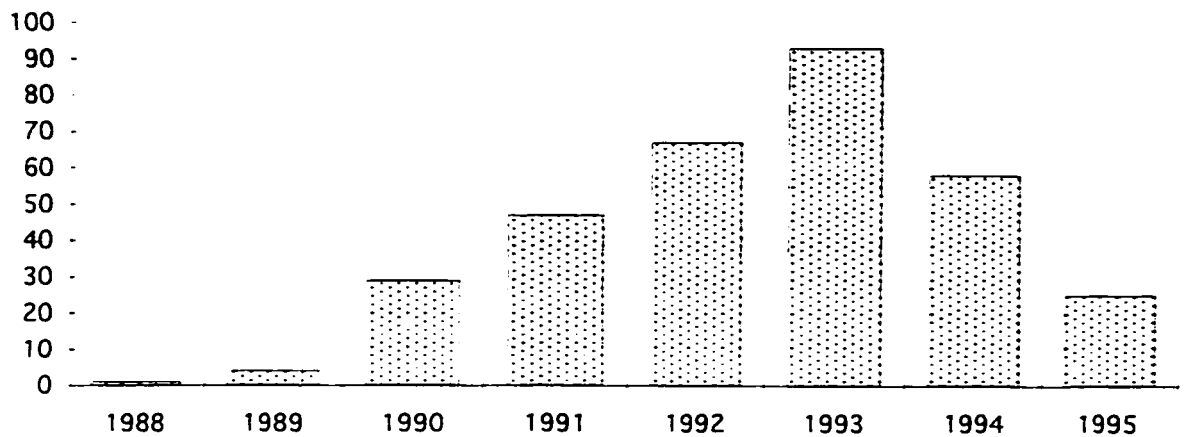


Figure 5.11 Articles indexed under "Hate Crimes" - LEGAL TRAC, 1988-1995



It would seem inevitable that a large majority of the articles outlined in the *LEGAL TRAC* would cover issues more relevant to the legality and constitutionality of hate crimes and hate crimes legislation. Incidentally this was the case. Unlike the *CJA* , *LEGAL TRAC* placed less emphasis on the social dynamics that surround hate-motivated activities. A breakdown of articles indexed under "hate crimes" in the *LEGAL TRAC* reveals the following:

Analysis	32	Investigations	3
Attitudes	1	Laws, regulations, etc.	120
Cases	34	Litigation	81
Comparative method	1	Personal narratives	1
Conferences,		Political aspects	5
meetings, seminars	1	Prevention	7
Constitutional law	3	Remedies	22
Demographic aspect	1	Reports	3
Evidence	1	Research	3
International aspect	1	Social aspects	6
Interpretation &		Surveys	1
construction	1		

(as categorized by *LEGAL TRAC*).

Based on the findings of the indexed articles, it has been established that articles dealing with "hate" have not reached sensational proportions; however, some sort of trend *is* established. Generally, there is an overwhelming amount of coverage in the last two or three years, and this is the consequence of a new typification. Incidentally, hate crime units have been established, more legislative initiatives have been proposed, lobby groups continue to advocate for a remedy to the situation, conferences are held (refer to appendix 8), and a National Action Network on Hate Crime has been proposed. This type of reaction resembles very much the inclusive type of political reaction as described by Witte (1994).

All of these proceedings play upon each other, hence the issue is constantly getting coverage. However, causal links are difficult to establish. The presence of a linear progression cannot be established. That is, all are responsible for the expansion of the hate crimes "domain". It is not only media coverage that has promulgated action, or police initiatives that have led to more intense media coverage. A simple analysis of the articles reveals that all issues pertaining to "hate" activity is covered - from the establishment of bias crime units, to Bill C-41, to lobbying efforts by claimsmaking groups. However, what *is* identified in the coverage of "hate" in journals, newspapers, magazines, etc., is by whom the claims are being made.

Vested interest by lobby groups has led to more intense coverage by newspapers and furthermore by special publications such as the *Canadian Jewish News*. Although it would appear that news publications such as the *Canadian Jewish News* would be credited with a large majority of the articles indexed under the promotion of hatred and hate crimes, this was not the case. The proportion was not significantly higher than any other newspaper or magazine, albeit, the *Canadian Jewish News* often reported the matters first. Lawyers in numerous legal journals have stressed the constitutionality of hate-motivated behaviour, which has typified the issue as a legal one. As a result of lobbying efforts by certain groups, how to control the issue via policing practices has expanded the community policing discourse and typified the issue as one which requires special policing practices. Above and beyond this, hate-motivated activity *has* become typified as an issue which requires a special criminal justice response. Despite the absence of a linear projection, the last few statements do in fact point to the origins of how the issue came to the fore. It was established in the section on hate propaganda that certain minority groups mobilized the establishment of the Cohen Commission. In chapter 2, it was highlighted that the Gay community had some considerable input on the establishment of the United States Hate Crimes Statistics Act (1990). Furthermore, it was the Lesbian, Gay, and Jewish

communities that pushed for the establishment of a specialized unit to deal with hate crimes in Ottawa.

This indicates that lobby groups and claimsmakers have a strong say on how an issue will be typified and, furthermore, what type of reaction is warranted from this typification. It seems that it is the claimsmakers that "get the ball rolling". Once the ball is in motion, all of the other agents come together and the path to "problematization" begins. These agents have already been analyzed through the examination of various indexes that relate to each discourse. To further enhance the content of the thesis, a supplementary examination of two claimsmakers will be analyzed. These two characters are the head of the Bias Crime Unit in Ottawa, and a member of the League for Human Rights of B'nai Brith.

5.4 INTERVIEWS

The essence behind the interview is to provide a phenomenological supplement to the literature review and the index data. The formal interviews conducted were done in an open fashion (i.e., asking open ended questions) and a quasi-guide was utilized. Two interviews were conducted, and because of the different groups that each interviewee represented, two different guides (or pre-empted set of questions) were utilized⁶⁸. The interview attempts to capture the role that each member played in the criminalization of hate. The two individuals interviewed were Sgt. Dan Dunlop - head of the Ottawa-Carleton Regional Police Bias Crime Unit, and Dr. Karen Mock - National Director of the League for Human Rights of B'nai Brith Canada. Both these individuals present examples of claimsmakers.

⁶⁸ Refer to appendix 9 for a sample of these guides.

5.4.1 The Bias Crime Unit

The first interview was conducted in March 1995. A section in chapter two highlights how and why the bias crime unit was created in Ottawa. I will examine some of the claims enunciated by Dunlop and the unit itself.

The unit was created in response to concerns raised by the Gay and Jewish communities. The reason that Dunlop got involved with the unit was a consequence of what he saw while working in the special gangs unit. There was an increased presence of skinheads and extreme right-wing gangs, and monitoring these events became a priority. It was during that same time that the two aforementioned communities came to the Ottawa Police and raised some demands. As a result, the Ottawa police created a unit that was based on a known unit in Boston. It is interesting to note how the U.S. experience directly influenced one of Canada's police agencies to act accordingly. Dunlop further contends that had it not been for the Jewish and Gay communities:

I don't think that we'd have a Bias Crime Unit.

This demonstrates the necessity of connections between agencies in order to bring an issue to the fore.

In terms of the physical makeup of the unit, most officers are not representative of any particular minority groups. Dunlop contends that investigators are there because they are truly interested in the problem, and this is probably the most important aspect:

We certainly encourage a more visible face, but I think the most important thing here is good investigations skills and a passion for the work.

When asked what he thought about the current hate propaganda laws, Dunlop's response was mixed. He does believe that the laws are needed, however he contends that the requirement of the provincial Attorney General's consent to prosecute must be removed. The unit itself does not deal with numerous instances of hate propaganda. The

removed. The unit itself does not deal with numerous instances of hate propaganda. The crimes that Dunlop and his colleagues address are conventional crimes with an added hate motivation. He takes a strong stance against those who promote hatred and characterizes their actions as politically motivated and refers to numerous perpetrators as terrorist groups.

According to Dunlop, federal legislation such as the hate propaganda sections of the criminal. Bill C-41 - sentencing enhancement, and other initiatives such as an agenda for multiculturalism are crucial. However he claims that without a supporting education program, none of these initiatives will prove to be fruitful. He questions the education and the level of multicultural education that exists in schools and in the workplace. Dunlop also questions the level of cooperation and inter-agency interaction that the federal government claims it is doing.

Regarding the role of the media, Dunlop contends that the issue must be exposed:

It's a real ethical question with the media. I think it has to be exposed but it has to be exposed in a certain sense that ... that you're not promoting it. There's a fine line between reporting and promotion.

Turning a blind eye to it, I think is very dangerous.

Although some groups believe that bad publicity is good publicity, Dunlop further contends that he's seen cases where groups have gone awry because of an intense media campaign. He argues that groups must be exposed in order to understand what they really stand for.

For Dunlop and the Bias Crime Unit, these right-wing groups operate like cults and the youths must be warned what these groups stand for, because it is them (the youths) that they are after. Reference is continually made to the terrorist inclination of these groups.

We know that there is a presence of weapons and we know they have an agenda. We know they have a political agenda. And what do you have when you have people that are criminally motivated for a political purpose?

It's called terrorism. And this is what we have ... domestic terrorism ... We are talking about some serious domestic terrorism.

These groups are not only made up of persons wearing jack boots and shaving their heads, contends Dunlop. They include persons and professionals from all walks of life.

Regarding the operations and effectiveness of the Bias Crime Unit, there appear to be some promising aspects as well as some intense action. Although mistrust of the police by certain groups is a common problem to enacting an effective community policing type program, the unit seems to be reacting by bridging the gaps and creating liaisons with members of various communities. The essence behind the unit is that policing should be tailored to fit the needs of the community. A critical question to ask is how much of this represents pure rhetoric? Whether these hurdles are effectively being crossed is a matter for some other research project. However, the essence behind the claims is that interagency cooperation is key, and with recent legislative efforts, the creation of more bias crime units, and increased media exposure, cooperation appears very active.

The main problem with the unit is tracking. Because of a mistrust in the system, and furthermore a mistrust of the police, some minority groups are not as apt to report incidents of bias and hate. This is another area where education is deemed very necessary. A further problem has to do with determining motivation. As outlined in a previous chapter, motivation is definitely the biggest hurdle in conceptualizing hate crime. Nonetheless, the unit offers some guidelines to address this issue.

In relation to training, the response that Ottawa has taken against hate has provoked the Ontario Police College setting up courses dealing with issues sensitive to hate crime. Dunlop notes that the unit acts as a student and as teacher:

We look to the United States for some of our stuff. We are networking with various groups; with training videos. We've attended a number of conferences and symposiums. We've networked with a number of experts

in the field. So we feel that the Bias Crime Unit is up on the issue. Thus we've been dispatched as an educator in all of the different areas.

According to Dunlop:

[It's an] issue that is very hot politically. It is also one that is very hot in the media, so people are being educated as to what is going on. Everyone is aware of the Bias Crime Unit.

5.4.2 The League for Human Rights of B'nai Brith Canada - Dr. Karen Mock

Karen Mock is the National Director of the League for Human Rights of B'nai Brith Canada. B'nai Brith has been coordinating activities to battle anti-Semitism, racism and bigotry for more than a century. Since 1982, through the *League for Human Rights*, it has been monitoring activities of hate groups and incidents of anti-Semitism which are documented in its *Audit of Anti-Semitic Incidents* (League for Human Rights of B'nai Brith, 1996:1). Although the Audit of Anti-Semitic incidents was first published in 1982, the League has been monitoring and documenting the activities of hate groups for thirty years (i.e., anti-Semitic incidents, hate literature, hate propaganda, discrimination, hate mongers etc.). In order to get a more "personal" insight on what B'nai Brith does, and in order to examine the role that a specific lobby group has played in the criminalization of hate, Dr. Mock was interviewed in June, 1996. The essential purpose of interviewing Dr. Mock was to examine the role of an advocacy group member (examining the role of a claimsmaker).

The central matter guiding Mocks' perspective was that of increased cooperation by various grass roots and governmental (all levels) agencies. In her own consultative and academic research on racism, Dr. Mock began to experience increased instances of anti-Semitism in the mid and late 1980's. Mock was part of numerous initiatives dealing with racism (e.g., Urban Alliance of Race Relations, *Equality Now*, Employment Equity

Commission), and in her battle to advocate equality for all groups⁶⁸ she noticed a definite unconnectedness of various affected groups.

To not be sensitive to what was going on, and to not be sensitive to the systemic anti-Semitism and other forms of systemic discrimination, to me meant that some people hadn't really got it, and what this was about was not breaking down the barriers to equality and sharing the power, but was more about grabbing power, and the old thing of the oppressed becoming the oppressor.

There was a definite compartmentalization of whose victimization was the worse.

[an example is].. it was not uncommon to hear that Jews have wealth and power therefore cannot be victims of oppression, so anti-semitism should not be on the agenda.

It was in 1989 that Dr. Mock had decided to "put on a community hat " and get involved with the *League for Human Rights* (League).

In order to better understand the League it would be worthy to engage in some short historical notes. B'nai Brith was created over 150 years ago as a social organization for Jews who were incidentally barred from other social clubs such as Rotary, Optimist, Knights of Columbus, etc. The American counterpart to the League - the Anti Defamation League of B'nai Brith (ADL) - was created in 1932 "*when there was a lynching of a Jew, basically because of mob psychology*". The overall mandate of the ADL was to counter anti-defamation of all kinds, or anything that would violate anyone's civil rights. It entered the Canadian spectrum as an ADL office, and it took on an independent Canadian name thirty years ago; hence the League for Human Rights of B'nai Brith was created. The mandate of the League is the following:

THE LEAGUE FOR HUMAN RIGHTS, an agency of B'nai Brith Canada, is a national volunteer association dedicated to combating racism, bigotry and anti-Semitism. The objectives of the League include human rights for all Canadians, building inter-community relations and the elimination of racial discrimination and anti-Semitism. The League accomplishes these goals

⁶⁸ Although B'nai Brith is a Jewish organization, it was constantly noted by Dr. Mock that *The League for Human Rights* is concerned with discrimination, racism, and hate crimes that affect all groups, and not solely those of the Jewish Community.

through educational programmes, community action and the provision of legal/legislative interventions (The League, 1995).

The League therefore, (unlike B'nai Brith) is an association that caters to all Canadians. Because B'nai Brith funds a large portion of the League, it falls under the Umbrella of B'nai Brith Canada.

Implementation of the League's efforts is accomplished via three different avenues. The first and most important is **education and training**. This refers to education at all levels: educating the public, education in schools, educating the police as well other levels in the criminal justice system. It was Dan Dunlop that contacted the League in order to acquire information on what to do and how to implement the Bias Crime Unit. Education in schools is centred around the multiculturalism theme, as well as understanding what hate crime is and what hate groups are all about. Education of the media - on how to responsibly cover issues related to hate - is another important component that the League offers.

The second is **community liaison and community action**. As Mock notes, this refers to "*intercultural, inter-racial activities, coalition building and mounting rallies*". Different minority groups are encouraged to dialogue and express what their needs entail:

Intercultural dialogue, community partnerships and co-operation reduce stereotypes and promote harmonious race relations. But these partnerships must be REAL. Those who pay lip service to community involvement and consultation soon find that the community feels betrayed when they see their concerns are not heard and their participation not genuine. Outreach is essential in time of conflict and tension, but should not be restricted to it (Mock, n.d.: 10).

The partnerships must remain constant because too often coalitions become temporary claimsmaking activities that do not materialize. Many matters dissipate, many campaigns never flourish, and one role that the League plays is to try and better organize these coalitions so that they avoid the inevitable:

These things come and go, but then again that is the nature of coalitions. They are usually Ad Hoc and you need to come together around an issue, take action, and then perhaps agree to disagree on some other things.

This is directly related to Best's (1995:350) characterization of the nature of the claimsmaking process:

Claims evoke varying responses. Some claims are ignored - the claimsmakers choose not to pursue their campaign and the matter is quickly forgotten. Occasional claimsmakers have dramatic success stories: people listen to the claims and respond quickly by adopting whatever policies the claimsmakers recommend. Most often, of course, campaigns have mixed success: only prolonged claimsmaking produces results, or the claimsmakers manage to organize an active social movement, but have difficulty changing social policy, or it becomes necessary to mount a series of campaigns, each leading to small policy changes.

He further notes that a good way to apply the constructionist framework to understand how issues emerge is to study the claimsmakers and the process itself. Some common questions to ask are whom the claimsmakers address?: what concerns are they raising?: and what response has the claim produced? (Best, 1995:351). The claims that the League (and other minority groups) make are addressed to all affected groups: the media, the police, other levels of criminal justice, affected government departments, and other grass roots organizations of the like. The results of the claims are pretty obvious: Hate Crime Units, a yearly audit on anti-Semitic incidents, Bill C-41, actual examples of coalitions being set up.

At the height of the Gulf War, certain instances of anti-Muslim and anti-Jewish attacks were noted. The League was subsequently called upon and referred to in order to figure out what to do and how to deal with the situation. As a result they provided guidelines to these two affected groups on how to deal with the situation. One of the ways that the League suggested to deal with these matters was to integrate both groups so as to form a coalition, hence the Jewish/Muslim Dialogue group was created. Another concrete example of how a good claimsmaking campaign can yield results and exposure of an issue is the recent report written by the League for Metro Toronto, highlighting the nature and extent of hate activity. Dr. Mock remarks:

This report was done very cooperatively with the 519 community centre, which services the gay and lesbian community, and with the police, as well as other organizations. We are also putting out a manual "Taking Action Against Hate: Guidelines for Community Action" - a Canadian based

manual, and we have a community advisor consisting of police, Muslim community, Chinese community, Somali community, etc.

Another way that action is occurring is by providing guides for youths not to retaliate but to react to racism in a diplomatic manner without resorting to violence:

We tell the kids that if you wanna be an activist, you be a smart activist and here's how you run a rally that won't turn into a riot.

Legal/Legislative intervention is the third way that the League fulfills its mandate. Although Dr. Mock hadn't provided any concrete examples, it becomes apparent from the issues discussed above, that legislative efforts are a key component of the League. It was the League that had in fact drafted some proposals for sentencing enhancement in 1991-1992, which eventually evolved into some of the provisions outlined in Bill C-41.

One of the issues that I wanted to examine in my interview with Dr. Mock was her overall opinion of the current laws and legislative responses. Recently a proposal to establish a National Action Network on Hate Crime (refer to appendix 10) was put forth by members of the Ottawa Bias Crime Unit, and the League was consulted in order to get some input. I also wanted to get her reaction to this latest effort on the hate crimes agenda.

Regarding the hate propaganda laws (s. 318-320), Mock outlined that the problem is not in the law itself, but rather in its sporadic use. The League supports the notion that there should be provincial Attorney General's consent on laying a charge. This view is somewhat different from that espoused by Dunlop and the Bias Crime Unit, which contends that a major problem with the hate laws is their infrequent use which is attributable to the Attorney General provision. Understanding why the two are opposed to this issue is not of key concern, however it could be rooted in the ideology of each agency. The League is a firm believer in legislative responses to hate (as it is firmly outlined in its mandate). It maintains that: Crown Attorneys should be better prepared and educated on the

matter; police should all be trained the way the hate crimes units are supposed to train them; and charging under the hate propaganda provisions should take precedence over charging under mischief or other provisions. However, with the introduction of C-41, charging under other sections of the Criminal Code may serve a purpose. Given this, the League further contends that all existing forms of legislation should be put into practice:

We do know that there are civil remedies ... there's the human rights commissions that need to be used more often. There's a whole range of remedies that are appropriate. Schools could implement their own policies.

In Canada, we have some of the most advanced legislation in the world that should be able to counter this insidious hate and bias motivated activity. We have international conventions, we have multiculturalism policies, we have human rights codes for every province, almost all school boards have policies on racial and cultural equality. You name it we have it!

Another problem that Mock outlines is at the level of implementation. When asked her opinion on the proposed National Action Network on Hate Crime, she stressed the notion that it must act as a network and not just another organization. Further, many of the ideas highlighted in the proposal are not new. For instance, the League had conceived of the idea of creating a 1-800 number⁶⁹ to monitor hate crime and harassment long before the Action Network had proposed it. Mock notes that had better liaisons been created, the number would have been set up a long time ago. The issue, argues Mock, is not to try and claim credit first, but to try and establish tighter links to facilitate implementation thus addressing the issue more efficiently and effectively.

I want to see the resources put into that. I don't think we need another round table [or more research]. And when it comes to the National Action initiative, it must be a network and not another organization or agency. And yes, we need common definitions and a common way of reporting - so that we are speaking the same language.

Support is the key, and with the recent developments in technology and the internet, this support can easily be put together [at all levels].

⁶⁹ In November of 1995, the League set up this number to cater to all Canadians.

On the role of the media, the League believes exposure of the issue is crucial:

We have always said that you should be speaking out, you should be exposing the hate mongers, and you should take them to the justice that they deserve.

The central theme behind all of this exposure is that it be carried out in a responsible fashion. During the heavily publicized Zundel trial, many experts on the media claimed that exposure of the case would have been harmful and given Zundel a platform to propagate his racist messages (Weimann & Winn, 1986). However, the study carried out by Weimann and Winn (1986:108) suggests:

that the media were moderately powerful and behaved in a responsible fashion. The fact that heavy consumers of television and press news did not become more anti-Jewish in spite of the publicity for Zundel suggests that the media generally acted in a constructive and non injurious fashion. The fact that increased exposure to TV news was associated with increased sympathy for Jews suggests that television broadcasters behaved in a responsible way and also exercised some degree of power or influence over the formation of public opinion.

If the issue is exposed in a responsible fashion and the counter claims that the hatemongers make are kept at a lower level than the promotion for anti-racism, a successful media campaign will be reached. Mock notes that the decision to expose should not give them a platform if these guidelines are followed. The key is to not present the counter claims or "the other side" - as she refers to it. Unfortunately, violence, racism, and hate sells. Hence it is beyond newsworthy and becomes pure sensationalism; and this is the dangerous trap that exposure could fall into. According to Mock, the decision to give the racists a platform is not the courts', not the Attorney Generals', not the League's, but the decision of newsroom editors, or tabloid television show producers. This is what I refer to as the "Geraldo-ization" process, which superficially exposes an issue, gives the chance for committed racists to speak their mind, and turns a newsworthy problem into a sensationalist entertaining scheme - all done of course at the helm of money and television ratings.

how does the League respond to this? Mock explains that racism, violence, and hate have been constructed as newsworthy issues, so can anti-racism, anti-violence, and anti-hate. Efforts must be made to allow the press and the mass media to cover issues of this genre. Further, the League has a media watch to make sure that things are not reported out of context, and it even holds a media awards dinner commemorating those who promote human rights in Canada and those who expose human rights violations.

The final issue that was examined was whether *the problem has gotten worse or is there simply more awareness and more intolerance toward racism*. Mock's contention is that the problem *has* gotten worse. Although she understands that more awareness may have created a boost in reporting practices, this does not deny the fact that the problem exists. She further notes:

It has gotten worse. There is a swing to the right with a small 'r' that is allowing the hatemongers to be more bold.

Mock notes that in the paper that the League was getting ready to release (some time after my interview), instances of hate in Metro Toronto were indeed increasing. Whether the incidents were criminal or non-criminal, the League certainly believes that an upward trend is being witnessed. This trend is outlined every year in the annual audit. Furthermore, the League believes that all incidents (criminal or non-criminal) should be reported to the police, since the events suggest a trend.

From the preceding discussion of the League, it becomes somewhat more apparent how hate is typified (by a claimsmaking group) as a criminal justice matter. Although education is stressed as being the primary way to combat hate, the majority of all initiatives are done in coordination with some agency or level of the criminal justice system. With all of its claimsmaking activities, its coalition building, its lobbying for increased use of criminal laws and legislation, its continued support for newer legislative initiatives, and its constant quest for anti-racist education, the League is unquestionably the largest and most

influential claimsmaking group that has expanded the hate crimes domain. In its most recent *Audit of Anti-Semitic Incidents*, the League describes its efforts on shedding some light on the Canadian peacekeeping forces, revealing the presence of white supremacist activity and taking part in the Somalia inquiry (The League, 1996:27). Hence the birth of a new typification for hate is apparent.

Without question, the League's efforts as well as those of the Ottawa Bias Crime Unit have not only helped typify hate as a criminal justice problem, but to legitimate and institutionalize it as such.

5.5 CONCLUSION

This final chapter has provided a more practical application of a constructionist framework. The early examination of hate propaganda laws and the events leading to the Cohen Commission demonstrate stage one and two of Spector & Kitsuse's model. Specific examples of hate materials were noticed and it was ascertained that such activity threatened the integrity of a democratic society. It also highlights some important features of Witte's model since it took over 12 years for the Cohen Commission to respond to the original claims laid down by the Canadian Jewish Congress. No formal actions had been taken, and the issue was not labeled as a problem until the Committee had done its own content analysis on the distribution of hate materials and the exposure of it on the CBC for the years 1963 to 1965. Furthermore, the implementation of the hate propaganda laws demonstrates the inclusive genre of reaction described by Witte. The measures were aimed at a specific group - promoters of hatred - and the legislative initiative was not one that vicariously tried to address other issues such as immigration.

It could be argued that the second and third phases of "hate" and the subsequent reaction to the increased presence of violence in hate activity represents the "reemergence of claims by the original groups" (Spector & Kitsuse, 1987:142). Hate crimes were now the issue, and newer claims emerged. This is very well illustrated in the analysis of those indexed articles in various academic journals and news publications. An old/new problem reemerges under the hate crimes banner, and some affected groups feel that past legislative initiatives were insufficient and that new ones are needed. Through efforts by the Gay and Jewish communities, policing issues were addressed, hence the creation of bias crime units and a provincial mandate to ensure that all police services enact similar units. Furthermore, the academic sphere as well as the efforts pronounced by the policing community and the League for Human Rights of B'nai Brith Canada typified the issue as a criminal one since much of their work resorts to the criminal justice system as an avenue to make liaisons and promote some action.

The claimsmaking process as exemplified in the events leading to the Cohen Commission, the intense coverage of hate related topics in the press, the recent exposure of hate in academic and legal spheres, and the efforts espoused by policing initiatives and by a powerful human rights advocacy group, all demonstrate how an issue is problematized and moreover criminalized. Furthermore, the information gathered from the interviews and the indexes fits in neatly with the models and theoretical assumptions outlined in chapter 1 and chapter 3.

CONCLUSION AND DISCUSSION

CONCLUSION AND DISCUSSION

This whole thesis has been concerned with the social construction of "hate" and particularly its criminalization. The main objective was to demonstrate how claimsmakers typified hate as a social problem that belongs under the realm of the criminal justice system.

The methodology was an eclectic one since three main tools were utilized: (1) a review of pertinent scholarly literature; (2) various indexes; and (3) qualitative interviews. All provided some insight on what claimsmakers have been saying about "hate". Although the first method does not initially come across as one that would be associated with the theoretical framework in question, authors of materials related to "hate" are in fact claimsmakers just as are reporters, the lobbyists, and the social control agent. This does not suggest that a putative label should be ascribed to claimsmakers. As noted by Cohen (1988), all persons (the conservative "righty" or the humanitarian "lefty") can become claimsmakers. When social constructionism and the study of claims and claimsmakers first appeared on the sociological spectrum, it was issues such as the Women's Temperance Movement, Nativism, and the agenda to label anything non-conforming as deviant, that students of this perspective examined (Pfohl, 1994; Best, 1995). Like other sociological paradigms, social constructionism and the study of claims is merely a way of examining a social issue (Spector & Kitsuse, 1987). It is a way of noting how issues are turned into problems via a process of complex interactions. Even in *my* own academic efforts as a graduate student writing a thesis about "hate", *I* have become a claimsmaker.

Trying to understand why and how issues emerge as problems does not negate the notion that a problem exists. Whether it be typified as a criminal matter or not, racism and hate are serious issues that must be addressed. Furthermore, whether criminalizing the problem will have any positive consequence is a question that future research could

possibly examine. Although I constantly stress that "hate crimes" have been around forever, this is not to suggest that publicizing them is necessarily harmful. The main thrust behind the thesis was to try and understand why "hate" became such a grand issue today and why it hadn't received so much attention at other points in time.

Certainly "hate" and hate crimes have gained some legitimacy as a phenomenon worth studying, however should we continue to only examine hate? By only examining the newsworthy element of hate (such as hate groups, skinheads, etc.) are we neglecting other issues? The Geraldo-ization process that I talk about in my final chapter is a clear indication of this. People get distorted images of the problem, and as Karen Mock contends, they are presented with the "other side" when in fact this other side should not even be presented on an equal footing.

Is the problem bigger than it is claimed to be? If it has always existed, who is to say that an increase in such incidents is occurring? Certainly efforts made by claimsmaking have publicized the issue and more people are aware; and with the establishment of various criminal justice policies, more people may be coming out to report such instances. But this only indicates an artificial increase in "hate" and hate crimes. As a society, are we really becoming more intolerant to other cultures or are we just more intolerant toward racism?

Recently we seem to be inundated with more extreme issues of hatred: Oklahoma City, World Exchange Plaza, Heritage Front, TWA flight 800, church burnings in the southern United States - the list is long. Arguably some of these could be classified as instances of a different issue (i.e., terrorism) and this demonstrates the connectedness between two issues. The hate crimes and the terrorism discourse could be utilized to analyze these events. This further demonstrates the expansion of definitions and of the "hate" domain.

Intense work by all claimsmakers has certainly made us more aware, but as demonstrated above, this does not necessarily mean that we are experiencing a real increase. Certainly we should be more concerned and more responsible reaction such as proactive education, well thought out legislation, etc., should be made. Consequently, acting in accordance will inevitably problematize the issue even more; however, this is by no means harmful.

The purpose of this thesis (indeed the very rationale for the application of a constructionist framework) requires that the study of the condition itself be put aside in favour of understanding how and why the issue came to the public fore. Some deviation to this fundamental law of social constructionism is apparent in certain areas of this thesis (i.e., Review of Literature); however this is a consequence of studying the content of a claimsmaking population's writings. Furthermore, the theoretical approach taken was not one of strict constructionism, but rather of contextualized constructionism which argues for the inevitability of examining *some* objective conditions of a problem.

It is at this point that I would like to completely disengage from my role as constructionist researcher and make some subjective statements (as a claimsmaker) about my research and the overall issue of hate crime.

Although hate has not been solely typified as a criminal justice problem, the response to it has. Consequently, this has left other alternatives by the wayside. Although lobby groups and experts continue to promote an agenda for multiculturalism and culturally sensitive education, constructionism asks: "How much of this is rhetoric?". In accordance with this question/statement, my two interviewees provided some thoughtful insight. First,

Sgt. Dunlop questions the level of action that such initiatives have taken; secondly, Dr. Mock argues that more interagency cooperation must be acted upon. More research and more organizations will only let the rhetoric continue to pervade the bureaucracy and the political process. I myself even question the promise that more networking will serve. In my own research for this thesis, I experienced some reluctant cooperation by a certain organization which is deeply involved in the hate crimes agenda. Now I ask again: "How much of this is rhetoric?"

Perhaps more research *is* needed. The issues addressed in this discussion alone provide a plethora of ideas for future research. Although this thesis did not address these concerns, *it did* provide the avenue for such concerns to be raised. Constructionist research must not be regarded as that which is purely theoretical and non-practical. In fact constructionist research - as presented in this thesis - could even help claimsmakers better understand numerous issues regarding hate crimes that they have left out:

Constructionist research offers valuable lessons for would-be claimsmakers. Claimsmakers face practical obstacles: they must attract attention, enlist support, and shape policy. Constructionist research shows how other claimsmakers have dealt with these obstacles (Best, 1995:349).

Conditions or events designated as social problems do in fact exist and they are very real. Understanding how they emerge into problems has given me the ability to critically assess ways to address these social ills. In retrospect, this research has equipped me with a "critical" edge that policy makers, legal professionals, and other claimsmakers affected by racism and "hate" in the criminal justice system could also utilize in their struggles to deal with this very real problem. The lobbying, the committees, the networking, the interagency cooperation, and all other claimsmaking activity will inevitably continue. These efforts are definitely required. However, in my own evaluation of these claims making activities, I have come up with one strong conclusion: action is needed.

Hopefully, aspects of this research will follow me into future endeavors and help me think, act, and evaluate in a "critical" demeanor.

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APPENDICES

APPENDIX 1

**Ministry of the
Solicitor General and
Correctional Services**

**Ministère du
Solliciteur général et des
Services correctionnels**

FOR IMMEDIATE RELEASE

**Standards on Hate/Bias Motivated Crimes and
Hate Propaganda Offences Issued to Police Services**

January 19, 1994, TORONTO -- The Honourable David Christopherson announced today that the Ministry of the Solicitor General and Correctional Services (MSGCS) has issued two standards to Ontario's police services to assist them in responding effectively to hate-bias motivated crimes and hate propaganda offences in their communities.

Building on guidelines issued by the ministry last July, the new standards require police services boards to develop and adopt a policy on the investigation of hate/bias motivated crimes and hate propaganda offences in consultation with their communities.

"Crimes that are solely committed against individuals or their groups because of their race, religion, ethnicity, sexual orientation or disability strike at the heart of our communities, poison relations between individuals and groups," said Mr. Christopherson. "The public must have confidence that when complaints of hate crimes are encountered, such complaints will be given priority by police and the justice system."

Police services are required to establish written procedures for the investigation and assessment of hate/bias motivated crimes and hate propaganda offences. Police intelligence units are required to keep a database of hate/bias crime and hate propaganda offences to undertake trends analysis.

To implement the standards effectively, police services will ensure that appropriate resources are assigned to conduct a thorough investigation and to meet the needs of the communities they serve. Also, the name of a designated police officer(s) will be provided to individuals and organizations within the community to aid the public in reporting hate/bias motivated crimes and hate propaganda offences. In communities of 100,000 or more people, consideration may be given to the establishment of a dedicated unit to investigate hate/bias motivated crimes and hate propaganda offences.

"As part of the ministry's public safety and violent crimes initiatives, these standards demonstrate our respect for and commitment to a diverse society—a respect that is based upon valuing the equality and dignity of every person," said Mr. Christopherson.

As with all standards issued by the Ministry of the Solicitor General and Correctional Services, these mandatory procedures will be subject to audit and inspection by the ministry's Policing Services Division.

Under the Criminal Code of Canada, it is not a separate criminal offence to commit a crime because of hate/bias motivation. The term "hate crime" is a generic term used to describe any criminal offence in which the motivation to commit the offence by the offender is because of hate/bias toward the victim's race, religion, ethnic group, sexual orientation or disability.

Hate propaganda offences are outlined in sections 318 and 319 of the Criminal Code. They include advocating or promoting genocide against any identifiable group (distinguished by colour, race, religion or ethnic origin); inciting hatred against any identifiable groups where such incitement is likely to lead to a breach of the peace; and communicating statements, other than in private conversations, that wilfully promote hatred against any identifiable group.

The hate/bias motivated crimes and the hate propaganda offences standards will assist police officers, investigative personnel, intelligence, supervisory and senior officers in determining whether a criminal incident was motivated by hate and what information should be retained and highlighted in reports to the crown attorney. In such cases, the motivation for an offence will be a factor to be used by judges in determining the appropriate sentence for an offender.

"By responding to hate/bias motivated crimes and hate propaganda offences in an effective, coordinated manner, the police and community will show the perpetrators of these crimes, and the supporters of hate groups, that their actions will not be tolerated," Mr. Christopherson said.

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Ce document est aussi disponible en français.

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Ministry of the
Solicitor General and
Correctional Services

Ministère du
Solliciteur général et des
Services correctionnels

January 19, 1994

POLICE STANDARDS ON HATE/BIAS MOTIVATED CRIMES AND HATE PROPAGANDA OFFENCES

Introduction

As part of the Ministry of the Solicitor General and Correctional Services public safety and violence crimes initiatives, hate/bias motivated crimes and hate propaganda offences standards have been issued to all police services.

The standards demonstrate the government's respect for and commitment to a diverse society. A respect that is based upon valuing the equality and dignity of every person regardless of race, religion, ethnicity, sexual orientation or disability.

Definitions

A hate/bias motivated crime is a criminal offence committed against a person or property which is motivated by the suspect's/offender's hate/bias against a racial, religious, ethnic, or disability group or their sexual orientation. Although not a specific offence under the Criminal Code of Canada, individuals charged with an offence may find that the motivation for the offence is a factor to be used by judges in determining the appropriate sentence.

Hate propaganda offences are defined under sections 313 and 319 of the Criminal Code of Canada. They include advocating or promoting genocide against any identifiable group (distinguished by colour, race, religion); inciting hatred against any identifiable groups where such incitement is likely to lead to a breach of the peace; and communicating statements, other than in private conversation, that wilfully promote hatred against any identifiable group.

Highlights of The Standards

The standards will assist police in playing a leadership role in their communities by requiring the proactive development of policies and procedures to effectively respond to hate crimes. The standards will also build and strengthen community ties and will enhance the delivery of community-oriented police services.

Both the hate/bias motivated crimes and hate propaganda offences standards require the local police services board or the MSGCS, in the case of the Ontario Provincial Police, to:

1. adopt a policy statement on the investigation that includes:
 - a statement of concern about the occurrence or potential occurrence of such crimes and their impact on the community,
 - recognizes such investigations as a priority for the local police service,
 - makes a commitment that the police service will assume a leadership role in coordinating an effective response, and
 - keeps victims of such crimes and concerned community groups informed of the investigations.
2. consult with community groups in the development of the policy, especially organizations representing racial minorities, Aboriginal Peoples, gays and lesbians, persons with disabilities, and religious and ethnic minorities;
3. give appropriate consideration to the feasibility and costing of establishing a dedicated unit to investigate such crimes in municipalities of 100,000 or more persons;
4. direct the Chief of Police/Commissioner of the OPP to:
 - write procedures for the investigations of such crimes,
 - ensure all police officers are familiar with the procedures,
 - provide the names of the designated police officer(s) that individuals or organizations in the community can contact to report hate/bias crimes,
 - share information with other police services and government agencies,
 - work with local organizations to prevent hate/bias motivated crimes and hate propaganda offences in the community.
5. ensure that the policing procedures include:
 - the responsibilities of investigative officers,
 - requiring the collection and securing evidence and the maintenance of appropriate records so that information about the hate crimes may be highlighted in reports to the Crown attorney,
 - requiring that the notation of either "hate/bias motivation" or "hate propaganda" be made on all reports used to document the complaint.

In hate/bias motivated crimes, often no single factor will be sufficient to determine that an incident is motivated by hate/bias toward the victim. Various pieces of information will have to be assessed. Police officers will consider factors including:

- statements made by the suspect that would indicate a hate/bias motivation;
- the use or display of symbols, graffiti, gestures commonly associated with hate/bias towards the victim's group or are known to be used by organized hate groups;
- the perception of any witnesses to the offence;
- whether several occurrences have taken place in the community with victims from the same group and by the same manner; and
- previous involvement in similar incidences.

In the investigations of hate propaganda complaints, police responsibilities include:

- researching possible linkages of the complaint with activities by known hate groups;
- consulting and sharing information with other police services, such as the OPP's Project P/H; and
- maintaining appropriate community liaison and participating in educational events on hate propaganda.

Benefits to Police and Community

A strong response to hate/bias motivated crimes and hate propaganda offences will be beneficial to police/community relations, reinforcing a partnership that is essential for the public safety of Ontarians.

The Standards have been designed so that police services will be able to meet both their own organizational structure and community needs. The policies and procedures that are developed by individual police services boards and their police services for the investigation of these crimes and appropriate dissemination of information and analysis will assist police in fulfilling their law enforcement mandate.

PROVINCE OF ONTARIO
MINISTRY OF THE ATTORNEY GENERAL

CROWN POLICY MANUAL

Policy #	Original Date	Up
G-1	January 15, 1994	

**Gay Bashing/Racially
Motivated Assaults**

CROSS REFERENCE:

Physical and Sexual Child Abuse
Spouse/Partner Assault
Victims of Crime
Bail Hearings
Victim/Witness with special needs

RACIALLY MOTIVATED OFFENCES

When assaults are racially motivated, Crown counsel should bring this aggravating factor to the attention of the trial judge on sentencing and request that the offences be dealt with severely.

The Ontario Court of Appeal declared in 1977 (*R. v. Ingram*, 35 C.C.C. (2d) 376) "an assault which is racially motivated renders the offence more heinous" and that sentence imposed must be one which expresses the public abhorrence for such conduct and their refusal to countenance it".

GAY BASHING

"Gay bashing" is a problem particularly in large urban centres. Crown counsel and officers of the Crown must take effective action against harmful and intolerable conduct of this nature. The Ontario Court of Appeal determined in 1978 (*R. v. Atkinson*, 5 C.R. (S-30) that the same principles apply to deliberate assaults against homosexuals as to racially motivated assaults. The Court held that the motive for the assaults should have been considered by the trial judge as an aggravating factor in imposing sentence.

You are directed to ensure that these principles of law are upheld on the prosecution of assaults motivated by homophobia.

original directive issued February 4,

MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES
GUIDELINES ON
HATE CRIMES AND HATE PROPAGANDA

**Standards and New Programs Branch
Ministry of the Solicitor General
and Correctional Services**

July, 1993

By responding to these crimes in an effective and coordinated manner, police services can build bridges with different groups in their communities, thereby improving community relations, and will reinforce the partnership between the police and the community that is essential for the public safety and security of all Ontarians.

In addition, over the last several months there has been heightened media awareness respect to hate crimes, as well as the activities of organized 'white supremacist' groups. These groups have been identified as recruiting youth and distributing material that many members of the community find offensive. As these incidents continue to occur, many police services are finding members of the media and community turning to the police to find out how they are responding. Police services can play an important leadership role in their communities by developing a proactive response to this issue and building important linkages with the community that will enhance the delivery of community-oriented police services.

III. Suggested procedures for the investigation of hate crimes

The suggested procedures outlined below can be modified by police services to meet their own particular organizational needs and structure. The approach being suggested is similar to that used by the Metro Toronto Police, but with the recognition that some police services may wish to follow the approach being used by the Ottawa Police where hate crimes are investigated by a special bias crime unit.

Step One: Develop written procedures for the investigation of the hate crimes

These procedures could contain the following:

1. An outline of the responsibilities of police officers attending the scene of a crime where it is suspected that the crime was motivated by hate towards the victim or victims of his or her race, religion, ethnicity or sexual orientation, such as:

- a) apprehending suspects at the scene (if applicable);
- b) providing assistance to the victim or victims;
- c) protecting the crime scene for the gathering of evidence;
- d) contacting a supervisor to notify him or her of a suspected hate crime and to make an appropriate request for his or her attendance at the scene;
- e) conducting any preliminary investigations (where appropriate); and
- f) completing the appropriate reports/forms used by the police.

appropriate information is shared with other police services and government agencies (federal/provincial) on the occurrence of hate motivated crimes.

d) where appropriate, ensuring that the police service works with other organizations (such as school boards) to prevent the repetition of the offence or to coordinate activities of organized hate groups in the community (ie. recruitment efforts in schools/colleges).

4. An outline of the responsibilities of investigative personnel or hate crime officers assigned to investigate the occurrence of a suspected hate motivated crime, keeping the appropriate supervisory, intelligence and senior officers informed of significant aspects of the investigation.

5. Requiring police officers involved in the investigation of hate motivated crimes to maintain appropriate records and to ensure that information on the hate motivated crime be incorporated into any briefs prepared for the Crown as part of the investigation.

6. If the police service has an intelligence unit/officer, an outline of the responsibilities of the intelligence unit/officer, such as:

a) ensuring that a records bank or database is kept of all information received regarding criminal offences that are motivated by hate;

b) providing investigative support and specialized skills, as required, to police officers conducting investigations into hate motivated crimes;

c) sharing appropriate information with other police services and government agencies (federal/provincial) on the occurrence of hate motivated crimes;

d) providing specialized knowledge and support, as required, to Crown prosecutors prosecuting hate motivated crimes.

Step Two: Include information in the procedures on identifying hate crimes

To assist police officers in determining whether a criminal occurrence can be classified as a hate motivated crime, the following information should be provided to police officers, investigative personnel, and supervisory and senior officers. Police services must attach this information to their written procedures.

- **Definition of hate motivated crime:** A criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, ethnic or sexual orientation group.

Step Three: Implement the procedures

In implementing the procedures, ensure that sufficient time is provided so that officers, investigative personnel, and supervisory and senior officers have an opportunity to review the procedures, and familiarize themselves with the factors to be considered in determining whether a hate crime has occurred. It is also important to emphasize the need for sensitivity to the victim's concerns. Insensitivity to the victims of hate crimes has had a significant detrimental impact on relations between the police and the community, including raising tensions between the police and community members.

IV. Suggested procedures for the investigation of hate propaganda

Under sections 318 and 319 of the Criminal Code advocating or promoting genocide against any identifiable group; communicating statements in a public place that incite hatred against any identifiable group where such incitement is likely to lead to a breach of the peace; and communicating statements, other than in private conversation, that wilfully promote hatred against any identifiable group, are all classified as hate propaganda offences. The Criminal Code defines "identifiable group" as any section of the public distinguished by colour, race, religion or ethnic origin. No proceeding for an offence under these sections can be commenced without the consent of the Attorney General.

To assist police services in developing procedures for the investigation of hate propaganda, the following procedures are being suggested. These procedures can be modified by police services to meet their own particular organizational needs and structure.

Step One: Develop written procedures for the investigation of hate propaganda

These procedures could contain the following:

1. For police services without an intelligence unit/intelligence officer, a hate propaganda unit, an outline of the responsibilities of officers who receive complaints of hate propaganda such as:
 - a) consulting with investigators from the O.P.P.'s Project P/H and where appropriate, requesting appropriate investigative support or assistance from the O.P.P.;
 - b) undertaking an investigation of the matter; and
 - c) consulting with Crown Counsel to determine if such statements or actions constitute hate propaganda, and where appropriate, seek the Attorney General's consent to prosecute.

POLICING STANDARDS MANUAL

PROVINCE OF ONTARIO

HATE PROPAGANDA

HATE BIAS MOTIVATED CRIME

Rationale

Legislation prohibiting hate propaganda (sections 318 and 319 of the Criminal Code) is one element in our society's efforts to prevent and eliminate the spread of racism against religious, racial and ethnic minorities. Similar initiatives have been adopted in other countries such as the United Kingdom, Germany, Sweden, New Zealand and India.

Hate propaganda has a harmful impact on the community. It causes emotional trauma to the identified groups that are victimized by hate propaganda, and it results in serious friction between different groups in our society. An appropriate law enforcement response to hate propaganda conveys a strong message of our respect for and commitment to, a diverse society - a respect that is based upon values of the equality and dignity of every person, regardless of race, colour, religion or ethnicity.

Police services need to work closely with their communities, and Crown Attorneys, to ensure that they respond effectively to and receiving complaints about activities that may constitute a hate propaganda offence under sections 318 or 319 of the Criminal Code.

The implementation of policies and procedures for the investigation of hate propaganda offences will help reassure the community that individuals or groups in our society who promote hatred will be investigated. A strong police and community response to hate propaganda shows the perpetrators of hate propaganda, and supporters of hate groups, that their actions will not be tolerated, and will build police services in building positive relations with their communities that will strengthen the police-community partnership.

Prescribed Standards

Not developed

Guidelines

0218.01

The Governing Authority shall:

1. Adopt a policy statement on the investigation of hate propaganda offences which includes:

a) a statement of concern over the occurrence of propaganda offences in the community and the impact on victims, groups and the well-being of the community;

b) recognition that the investigation of complaints of propaganda is a priority for the police service;

c) a commitment that the police service will assume a leadership role in coordinating police and community response to hate propaganda; and

d) a commitment that the police service will keep the community appropriately informed on the occurrence of propaganda offences and status of police investigations of such occurrences.

2. (a) Consult with members of the community, and in particular organizations representing racial minorities, Aboriginal Peoples, religious and ethnic minorities during the development of policy.

(b) If the population of the police service's municipality or regional municipality is 100,000 or greater, consult with the community on the need for, feasibility, and cost of establishing a unit to investigate hate propaganda offences, and if necessary, feasible, and affordable shall direct that such unit be established.

3. Direct the Chief of Police to establish written procedures for the investigation of hate propaganda offences.

4. Direct the Chief of Police to ensure that all members of police service receive appropriate information on the Government's policy statement and the written procedures for investigation of hate propaganda offences.
5. Direct the Chief of Police to ensure that organizations within the community, school boards, youth organizations, victim organizations, social service agencies, and the media are made aware of the police service's procedures for investigating hate propaganda offences, and provided with the name of an officer or officers that individuals or organizations can contact to file complaints concerning hate propaganda.

0218.02

1. The Chief of Police/Commissioner of the O.P.P. shall ensure that written procedures for the investigation of offences under sections 318 and 319 of the Criminal Code (hate propaganda offences) are developed and distributed to every member of police service.
2. The procedures shall provide that:
 - a) officers will respond to all complaints of hate propaganda;
 - b) assistance is to be provided to the victim or victim of hate propaganda offences in accordance with the police service's procedures for victims assistance;
 - c) the complainant is to be assured that the police service will thoroughly investigate the hate propaganda complaint;
 - d) all evidence relating to the hate propaganda complaint is to be searched for, protected, gathered, and secured in accordance with the police service's procedures for the searching, protecting, gathering, and securing of evidence (including pamphlets, literature, and photographing graffiti and other symbols);

- e) all complaints of hate propaganda are to be thoroughly investigated in accordance with the police service's procedures for criminal investigations, and hate propaganda complaints are to be given a priority for investigation;
 - f) the unit/officer designated to investigate hate propaganda complaints is to be informed of all complaints of hate propaganda and forwarded a copy of all relevant documentation and evidence;
 - g) where the unit/officer designated to investigate hate propaganda complaints is not the intelligence unit/officer, the intelligence unit/officer is to be informed of all hate propaganda complaints;
 - h) the Chief is to be notified as soon as possible when a hate propaganda complaint is received, except where the Chief has indicated that it is a Deputy Chief or Senior Officer that should be notified of the complaint;
 - i) the notation "hate propaganda" is to be made on all reports/forms used to document the complaint.
3. The procedures shall indicate which unit/officer has been designated to undertake investigations of hate propaganda complaints.
 4. The procedures shall indicate who is responsible for informing the designated unit/investigator of the hate propaganda complaints.
 5. If the police service has an intelligence unit/officer, the procedures shall indicate who is responsible for informing the intelligence unit/officer of the hate propaganda complaints.
 6. The procedures shall outline the responsibilities of the unit/officer designated to investigate hate propaganda complaints, such as:

- i) undertaking an investigation of the complaint;
- ii) consulting, where appropriate, with investigators from the O.P.P.'s Project P/H on hate propaganda;
- iii) conducting research and analysis to determine if a similar subject matter has previously been reported to the police and possible linkages with known hate groups operating in that community;
- iv) working with the intelligence unit/officer to ensure that relevant information is shared with other police services and federal/provincial government agencies through an organization such as C.I.S.O.;
- v) consulting the local Crown Attorney with respect to sections 318 and 319(2) to determine whether the matter falls within the parameters of those sections, and where appropriate, seek the Attorney-General's consent to prosecute;
- vi) keeping appropriate supervisory and senior officers informed of significant aspects of the investigation; and
- vii) maintaining appropriate community liaison, including participating in educational events on hate propaganda.

7. The procedures shall outline the responsibilities of the Chief (or Deputy Chief/Senior Officer) upon being notified of a hate propaganda complaint, such as:

- i) ensuring that appropriate resources are assigned to the investigation so that a thorough investigation of the complaint takes place;

- ii) assuring members of the community that complaint is being fully investigated;
- iii) ensuring that where the police service does have an intelligence unit/officer, that relevant information on the hate propaganda complaint is shared with other police services, federal/provincial government agencies through an organization such as C.I.S.O.; and
- iv) where appropriate, ensuring that the police service works with other organizations (such as school boards, community groups) to respond to the distribution of hate propaganda in the community.

Rationale

An effective response to hate/bias motivated crimes should be a priority for every community. While all crime is a cause for concern, crimes that are solely committed against individuals or their groups because of their race, religion, ethnicity, sexual orientation or disability are particularly offensive. Such crimes strike at the heart of our communities, poisoning relations between individuals and groups.

The impact of such crimes is far-reaching, extending beyond the physical and emotional trauma to the victim, to encompass the lives of members of the group and broader community. Such crimes heighten the isolation and vulnerability of the victim's group and create stress for all members of the community. If unchecked, these crimes can result in an escalation in social tensions between different groups that can destroy communities, thereby furthering the aims and objectives of those in our society who promote hatred and intolerance.

Police services need to take a lead role in coordinating the response to hate/bias motivated crimes in their communities, in cooperation with other police services and governmental agencies. Together, a strong police and community response to hate/bias motivated crimes will show the perpetrators of these crimes and supporters of hate groups, that their actions will not be tolerated.

Further, by responding to these crimes in an effective and coordinated manner, police services will build bridges with different groups and communities, thereby improving police-community relations and reinforcing the partnership between the police and the community. This is essential for the public safety and security of all Ontarians.

Prescribed Standards

Not developed

Guidelines

0219.01

- The Governing Authority shall:

1. Adopt a policy statement on the investigation of hate/bias motivated crimes which includes:

a) a statement of concern over the occurrence or potential occurrence of hate/bias motivated crimes in the community, the impact on victims, groups and the well-being of the community;

b) recognition that the investigation of hate/bias motivated crimes is a priority for the police service;

c) a commitment that the police service will assume a leadership role in coordinating police and community responses to hate/bias motivated crimes; and

d) a commitment that the police service will keep victims of hate/bias motivated crimes, their groups and community members appropriately informed on the occurrence of these crimes and the status of police investigations into such occurrences.

2. (a) Consult with members of the community, and in particular organizations representing racial minorities, Aboriginal Peoples, religious and ethnic minorities, gays and lesbians, and persons with disabilities during the development of the policy.

(b) If the population of the police service's municipal or regional municipality is 100,000 or greater, consult with the community on the need for, feasibility, and cost of establishing a dedicated unit to investigate hate/bias motivated crimes. If necessary, feasible, and affordable shall direct that such a unit be established.

3. Direct the Chief of Police to establish written procedures for the investigation and assessment of hate/bias motivated crimes.

4. Direct the Chief of Police to ensure that all members of police service receive appropriate information on the Government's policy statement and the written procedures for investigation of hate/bias motivated crimes.
5. Direct the Chief of Police to ensure that organizations within the community, school boards, youth organizations, victim organizations, social services, and the media are made aware of the police service's procedures for investigating hate/bias motivated crimes, and provided with the name of an officer or officers that individuals or organizations can contact to report hate/bias crimes.

0219.02

1. The Chief of Police/Commissioner of the O.P.P. shall ensure that written procedures for the investigation of hate/bias motivated crimes are developed and distributed to every member of the police service.
2. The procedures shall provide, regardless of the type of offense, that:
 - a) officers will respond to all incidents or reports of incidents of hate/bias motivated crimes;
 - b) assistance is to be provided to the victim or victim's family in hate/bias motivated crimes in accordance with the police service's procedures for victims assistance;
 - c) all evidence from a hate/bias crime scene is to be protected, gathered and secured in accordance with the police service's procedures for the protecting, gathering, and securing of evidence (including pamphlets, literature, and photographing graffiti and other symbols at the scene);
 - d) all incidents or reported incidents of a hate/bias crime are to be thoroughly investigated in accordance with the police service's procedures for criminal investigations, and investigative officers are to be informed of the high priority to be attached to such incidents.

investigation of hate/bias motivated crimes;

e) if the police service has an intelligence unit/office that the unit/officer is to be informed of all hate/bias motivated crimes;

f) the Chief is to be notified as soon as possible after occurrence of a hate/bias motivated crime, except where the Chief has indicated that it is a Deputy Chief or Senior Officer that should be notified of the occurrence and

g) the notation "hate/bias crime" is to be made on reports/forms used to document the occurrence of a hate/bias motivated crime.

3. The procedures shall indicate who is responsible for requesting that investigative personnel, or the hate/bias crimes unit undertake the investigation of a hate/bias motivated crime.
4. The procedures shall outline the responsibilities of investigative officers or hate/bias crimes unit assigned to investigate the occurrence of a hate/bias motivated crime, including the priority to be attached to such investigations, the need to keep the appropriate supervisory, intelligence and senior officers informed of significant aspects of the investigation.
5. The procedures shall require officers involved in the investigation of hate/bias motivated crimes to maintain appropriate records and to ensure that information on the hate/bias aspect of the crime is highlighted in the Crown Prosecution File.
6. If the police service has an intelligence unit/office, the procedures shall indicate who is responsible for informing the intelligence unit/officer that a hate/bias motivated crime has occurred.
7. If the police service has an intelligence unit/office, the procedures shall outline the responsibilities of the intelligence unit/officer.

unit/officer, such as:

- a) ensuring that a records bank or database is kept of information relevant to criminal offences that motivated by hate/bias;
- b) providing investigative support and specialized services as required, to officers/units conducting investigations into hate/bias motivated crimes;
- c) sharing appropriate information on the occurrence of hate/bias motivated crimes with other police services and government agencies (federal/provincial) through an organization such as C.I.S.O.; and
- d) providing specialized knowledge and support as required, to Crown counsel prosecuting hate/bias motivated crimes.

8. The procedures shall outline the responsibilities of the Chief (or Deputy Chief/Senior Officer) upon being notified of a hate/bias motivated crime, such as:

- a) ensuring that appropriate resources are assigned to the investigation so that a thorough investigation of the crime takes place;
- b) meeting with the victim or group affected to answer their questions and reassure the community by informing them of the police service's activities to investigate the crime and prevent any repetition;
- c) ensuring that where the police service does not have an intelligence unit/officer, that appropriate information on a hate/bias motivated crime is shared with other police services and government agencies (federal/provincial) through an organization such as C.I.S.O.; and

- d) where appropriate, ensuring that the police works with other organizations (such as school boards, community groups) to prevent the repetition of the offence or to counter the activities of organized groups in the community (ie. recruitment efforts at schools/colleges).

9. The procedures shall include the following information to police officers in determining whether a criminal occurrence can be classified as a hate/bias motivated crime:

- Definition of hate/bias motivated crime: A criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, religious, ethnic, sexual orientation or disability group.
- Often no single factor will be sufficient to determine that a criminal occurrence is motivated by hate/bias toward the victim because of his or her race, religion, ethnicity, sexual orientation, or disability. Officers have to assess various pieces of information.
- A distinction exists between an offender being motivated against his or her victim, and an offender whose motivation to commit the offence is because of hate/bias toward the victim's racial, religious, ethnic, sexual orientation, or disability group. The latter should be classified as a hate/bias motivated crime. As such, hate/bias crimes are different from other types of crime because a person is victimized solely because of his or her race, religion, ethnicity, sexual orientation, or disability. For this factor, the person would not be the victim of the crime.
- Determining the motivation of a suspect is often difficult. Before an incident should be classified as a hate/bias motivated crime, police officers should consider the following:

- i) if a suspect has been arrested, any statements made by the suspect that would indicate that the crime was motivated because of hate/bias toward the victim's racial, religious, ethnic, sexual orientation or disability group;
- ii) the absence of any apparent motive for the offence;
- iii) the use or display of any symbols, graffiti, or comments, acts or gestures that are commonly associated with hate/bias towards the victim's group or are known to be used by organized hate groups (ie. swastika);
- iv) whether the offence coincided with a holiday, event or date of significance (religious, historical) to the victim's or suspect's group;
- v) the perception of the victim or victim's community of the motivation behind the offence;
- vi) the perception of any witnesses to the offence;
- vii) any historical animosity that exists between the victim's group and the suspect's group;
- viii) whether the suspect has been previously involved in similar incidents, or is a member of an organized hate group or an organization which is known for its hate/bias/animosity towards members of the victim's group;
- ix) whether several occurrences have occurred in the community with victims from the same group and in a similar manner and means for each offence;
- x) whether the offence occurred at the same time or shortly after, a hate group was active in the community (ie. distribution of hate literature).

APPENDIX 2

EXECUTIVE SUMMARY

The Study

The purpose of this study is to examine how Canada's *Criminal Code* should address what is often referred to as racially motivated violence. Thus, this paper is restricted to considering various responses by the criminal law to the problem: it does not address other remedies that lie outside the domain of the criminal law, such as creating a civil damages action relating to hate-motivated violence, or using various human rights commissions to combat this problem more effectively.

Methodology

The study relied for its analysis on an examination of legal periodicals on the topic of racially motivated violence in several jurisdictions. As well, additional information on the topic was provided by reports from government organizations (e.g., in England, reports from the Home Office), reform-minded organizations (e.g., the Australian Law Reform Commission) and private organizations (e.g., in Canada, the League for Human Rights of B'nai Brith, and in the United States, the American Anti-Defamation League). Also, a selective, albeit not systematic, examination was made of newspapers and magazines, both Canadian and foreign, to obtain information on specific examples of racially motivated violence. The criminal law of certain foreign jurisdictions was also examined to see how they respond to the problem of racially motivated violence. These were the United States, England, Australia, New Zealand, France, Germany and Sweden. These countries, it was felt, would provide a useful overview of possible directions for reform in this area.

Findings

Given the purpose of the study — to explore how the criminal law should combat the problem of racially motivated violence — a number of options present themselves.

The first option is to have the criminal law do nothing to respond to the problem of hate-motivated violence. This would mean that evidence of hatred of a person's actual or perceived race, colour, religion, ethnic origin, et cetera, should in no way be used to increase the penalty for committing the basic crime, and so would be a change from the present criminal law. The one advantage of this option is that, for those who believe strongly in freedom of expression, it protects a person's most repugnant beliefs. Its disadvantage is that it rejects the use of the criminal law to denounce hate-motivated violence and would weaken the protection that the criminal law now affords to minority groups.

The second option is to immediately create a federal hate crime statistics act to provide more information on the incidence of hate-motivated violence in Canada. The advantage of this option is that it would provide a national picture of hate crime activity in Canada and would enable Canadians to obtain needed information about these crimes and who commits them. Also, it might help spur the development of collecting such data at the local level. The disadvantage of this option is that it might be, at this point in time, an inefficient use of federal resources; that is, until more collection of such data is carried out at the municipal and provincial levels.

The third option is that the present law be maintained: that the only response to criminal law to hate-motivated conduct should continue to be use of evidence of hate-motivated conduct as an aggravating factor to increase the penalty for the basic crime, which is normally imposed through the application of judge-made sentencing principles. This option's advantage is that it views hateful motivation as part of a series of aggravating factors used to enhance the penalty for committing a basic crime that is capable of being applied; also, it offers the familiarity that comes with present practice. Its disadvantages are that the role of aggravating factor has had to be determined by appeal courts for cases where a lesser sentence had been imposed at trial, and that it is not the most effective way to publicly denounce such conduct.

The fourth option is to set out specifically, in sentencing guidelines or in the *Code*, that the fact that a person has committed a crime by reason of hatred of another person's actual or perceived race, colour, religion, ethnic origin, et cetera, should increase the penalty for committing the basic crime. This could be done as part of a scheme for setting out aggravating factors generally, or by having a specific *Code* provision that enhances the penalty for a crime when it is hate-motivated. The advantage of this option is that it better denounces such conduct by setting it down publicly, especially if the *Code* were amended for this purpose. Its disadvantage is that this approach arguably does not fully denote the distinct harm caused by such conduct.

The fifth option would build into the actual definitions of certain crimes, such as assault and mischief, provisions providing for an automatic penalty enhancement when a crime is hate-motivated. Its advantage would be to strongly denounce certain criminal conduct. However, this approach depends on selection of only a few basic crimes for this purpose; otherwise, the definitions of several crimes would have to be so amended that they would lead to lengthy repetition. Moreover, like the preceding option, it assumes that hate-motivated conduct is merely a more serious instance of the basic crime, rather than something harmful in its own right.

The sixth option is to create a specific crime of institutional or religious harassment and another crime of bias intimidation that would have as part of its definition the commission of certain general crimes, such as mischief, assault, or threatening harm, on the basis of reason of a person's actual or perceived race, colour, religion, ethnic origin, et cetera.

which would be more severely punished than the general crime. Its advantage is that it would recognize the distinct harm of hate-motivated crimes and denounce them with the maximum possible impact of the criminal law. Its disadvantage would be, on the one hand, to duplicate existing law and, on the other hand, to adopt an ad hoc approach to the criminalization of hate-motivated conduct by only singling out some criminal conduct for penalty enhancement.

The seventh option argues for the creation of a general crime of hate-motivated violence. Its advantage is that it would create a principled approach to the issue, so that criminal conduct that is hate-motivated could be prosecuted pursuant to this general crime. Its disadvantage is its vagueness, that it might have to be further defined by the use of a schedule to identify specific offences that would fall under it, that the broader it is the more it could stretch the bounds of credulity, and that it might result in the creation of a parallel criminal code relating to hate-motivated violence that would destroy the cohesion and unity of the present *Criminal Code*.

The eighth option calls for an amendment to the definition of the crime of first-degree murder so that hate-motivated murder would fall within that definition. Its advantage is that it would denounce the worst kind of hate-motivated violence — hate-motivated murder. There does not appear to be any disadvantage to this proposal.

The ninth option is that, should a crime or crimes of bias-motivated violence be created, incitement to commit such violence would be caught by the criminal law. No special crime need be created, given that the general rules governing incitement, et cetera, to commit a crime would apply once a specific crime (or crimes) of hate-motivated conduct is created. There does not appear to be a disadvantage to this option.

The tenth option is that, if a crime (or crimes) of hate-motivated behaviour is created, a principled approach to determining the penalty for the crime should preferably be adopted, such as having the maximum penalty for the crime equal one and one-half times that for committing the basic crime. A disadvantage of this option is that this range may be viewed as being too high, and that a better approach may be to raise the penalty closer to the maximum penalty range existing in the present law.

The eleventh option would set out the *mens rea* component for any hate-motivated crime. It argues that the preferable *mens rea* component should be that of purposely or recklessly harming a victim or vandalizing property by reason of hatred of the victim's or perceived race, colour, religion, ethnic origin, et cetera. The advantage of this proposal is its focus on the hateful motivation of the accused. As an alternative, it is argued that the *mens rea* component could include the concept of negligence, but the disadvantage of this approach is that it could criminalize acts of unconscious racism. A crime of hate-motivated violence so defined would arguably have a minimal denunciatory and educative impact.

The twelfth option argues that the definition of an "identifiable group" should include the members of a group identifiable on the basis of race, national or ethnic origin, religion, sex, age, mental or physical disability, or sexual orientation. The advantage of this option is that it would extend the protection of the criminal law as regards hate-motivated violence to the same groups protected from discriminatory treatment set out in subsection 15(1) of the *Canadian Charter of Rights and Freedoms*. Its disadvantage might be that it would extend such protection to groups not at risk of hateful violence because of their belonging to such groups — for example, the aged. Whatever list of criteria is chosen, it is strongly argued that "sexual orientation" be added to the list, given the fact that many people have been victims of violence because of their sexual orientation.

The thirteenth option generally argues that the definition of any sentencing provision for or of a specific crime or crimes of hate-motivated behaviour should include those crimes committed against members of identifiable groups. The advantage of this proposal is that it would ensure that the criminal law denounce all hate-motivated behaviour, whether or not the victims belong to the identifiable group so hated. It does not appear to be any disadvantage to this option.

The fourteenth option would have consideration given, ancillary to the creation of a crime or crimes of hate-motivated violence, to creating a damages provision that would require the criminal court, on completion of a trial, to award punitive damages to the victim of such violence. The advantage of this proposal is that it would add to the public condemnation of such activity, as well as provide some limited recompense to the victim. The disadvantage is that it might be viewed as not being in pith and substance criminal law.

The fifteenth option, in light of the Rodney King case in the United States, argues that consideration be given to the creation of a crime of violating a person's constitutional rights. The advantage of this option would be to emphasize the importance of the freedoms set out in the *Charter*. Its disadvantages, however, are numerous. They include the difficulty of defining the crime, and the fact that the limits on double jeopardy in the United States do not apply in Canada.

APPENDIX 3

Goals and Objectives

When the Bias Crime Unit was established in January 1993, a number of goals were identified which would support the mandate of the Unit to address criminal activity motivated by a bias against one's race, religion, ethnicity/nationality, or sexual orientation. In order to ensure that we achieved our stated goals, a set of objectives were developed to accompany each goal.

Ottawa Police Bias Crime Unit

The goals, in highlighted type and their respective objectives are outlined below.

- 1. To statistically track and identify incidents of hate/bias motivated crime in the Ottawa area by way of race, religion, ethnicity/nationality, sexual orientation, or disability.**
 - 1.1 Receive reports that are flagged as hate/bias crimes.
 - 1.2 Enter the occurrences into a data base by number, type of bias, location, officer assigned, and disposition.
 - 1.3 Keep contact with affected communities so as to keep abreast of incidents that may have occurred but have not been reported to the police.
 - 1.4 Scan daily activity sheets to identify incidents that may not have been initially identified as a bias incident.
- 2. To provide specialty investigation in the area of hate motivated violence and organized hate groups.**
 - 2.1 Keep abreast of developments in the area of hate/bias violence, trends, and changing legislation.
 - 2.2 Liaise with experts in the area so as to broaden the knowledge of the Unit.
 - 2.3 Liaise with the Crown Attorney assigned to the prosecution of hate crimes.
 - 2.4 Assist, educate, and avail resources to other sections of the Ottawa Police in the investigation of hate/bias motivated violence.
 - 2.5 Conduct thorough follow-up investigations assigned to the Unit.
- 3. To educate the community at large, including educational facilities, in and around the issue of bias crime and issues of prejudicial intolerance, particularly in areas where such could lead to criminal acts.**
 - 3.1 Develop a package with the area school boards highlighting the dynamics of hate/bias crime. A committee has presently been formed to address this objective.
 - 3.2 Respond to requests for presentations from the community at large.
 - 3.3 Assist in the development of a video on hate/bias motivated violence applicable for both schools and police training.

- 4. To monitor and track organized hate groups in an intelligence capacity and to network with other agencies involved in the same type of work.**
 - 4.1 Attend and host meetings with agencies involved in the tracking of hate groups.
 - 4.2 Work in conjunction with the officer assigned to tracking hate groups in the Ottawa Police Intelligence Section.
 - 4.3 Receive incoming intelligence from the network of communities in the Ottawa area that deal with the Bias Crime Unit.
 - 4.4 Maintain a partnership in community committees, such as the Ottawa-Carleton Anti-Racism Network, that address the issues of bias crime and work towards a cohesive community strategy and response.
- 5. To build community-based partnerships, fostering community confidence in police services, particularly in those communities that have historically been anti-police.**
 - 5.1 Liaise with various affected communities in a proactive fashion, highlighting the existence of the Bias Crime Unit.
 - 5.2 Conduct community "cold calling" and make approaches in geographical hot spots to de-escalate tensions which may be mounting and explore options for resolving the issues in those areas.
 - 5.3 Develop and identify community point persons who would work jointly with the Bias Crime Unit in de-escalating tensions as they arise in communities with respect to bias incidents.

APPENDIX 4

BIAS CRIME GUIDELINES

The following are guidelines with respect to bias and hate crime and their classifications. The following has been researched using the of the FBI Uniform Crime Reporting system with respect to Hate crime data collection.

WHAT IS A BIAS CRIME?

Bias crimes are not separate distinct crimes, but rather traditional offenses motivated by the offender's bias. For example, an offender may commit an assault or arson as a result of his or her racial bias. The determination of whether or not a crime is bias will, in most cases, be determined by the motivation of the offence.

There are many kinds of bias. Some of the more common kinds are those against race, religion, ethnicity/nationality or sexual orientation. Society has many types of biases, such as a bias against smokers, drinkers, people with long hair etc.. The mandate of the Bias Crime Unit is to solely concentrate on bias as a result of religion, race, nationality or sexual orientation.

BIAS MOTIVATION

It is important to note whether the offender was motivated to commit the offence because of one of the mandate indicators. Because of the difficulty in ascertaining the offender's subjective motivation, bias is to be reported only if the investigation reveals sufficient objective facts to conclude that the offenders actions were motivated, in whole or in part, by a bias. The specific types of bias are identified below.

RACIAL BIAS

Anti-Black
Anti-White
Anti-Aboriginal
Anti-Asian
Anti-Multi-Racial group

RELIGIOUS BIAS

Anti-Semitic
Anti-Catholic
Anti-Protestant
Anti-Moslem/Islamic
Other Religion (Buddhism, Hinduism, Shintoism, etc)
Anti-Multi Religious group
Anti-Atheist/Agnostic

NATIONALITY BIAS

Anti-Arab
Anti-Hispanic
Etc..

SEXUAL ORIENTATION

Anti-Gay (male)
Anti-Lesbian (female)
Anti- Heterosexual
Anti-Bisexual

OBJECTIVE EVIDENCE THAT CRIME WAS MOTIVATED BY BIAS

It is important that certain criteria are present before incident is classified as a bias offence. The fact that the offender is biased against the victim's race, religion, nationality or sexual orientation, does not mean that a bias crime was involved. Rather, the offender's criminal act must be motivated, in whole or in part, by his/her bias.

Because motivation is subjective, it is difficult to know with certainty whether a crime was the result of the offender's bias. Therefore, before an incident can be classified as a bias crime, sufficient objective facts must be present to conclude that the actions of the offender were motivated, by whole or in part, by bias. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias.

- 1) The offender and the victim were of different racial, religious, national or sexual orientation groups. For example, the victim was Black and the offenders were White.
- 2) Bias related oral comments, written statements or gestures made by the offender which indicate his/her bias. For example, the offender shouted a racial epithet at the victim.
- 3) Bias related drawings, markings, symbols or graffiti were found at the crime scene. Example, a swastika was painted on a synagogue.
- 4) Items that indicate a bias. Example, offender wearing white sheets or hoods, or leave behind a burning cross etc..
- 5) The victim is a member of a racial, religious, national or sexual orientation group, which is overwhelming outnumbered by members of another group in the same area or neighborhood where the victim lives and the incident took place. This factor loses significance with the passage of time, though it would be most significant when the victim first moves into the neighborhood.
- 6) Several incidents have taken place in the same locality about the same time, for example, gay bashing at Major Hill.

- 7) The victim is engaged in activities promoting his or her racial, religious, national or sexual orientation group. For example, an individual is assaulted during a parade or demonstration in honor of the above.
- 8) The incident coincides with a specific holiday or date of specific significance, for example, Rosh Hashanah, Martin Luther King Day etc..
- 9) The offender is a member of a hate group or has been involved in bias crime in the past.
- 10) A historical animosity between the victims group and the offender's group.
- 11) The victim, although not a member of the specific group, is however a member of an advocacy group supporting the precepts of the victim group.

Indicators to be cautious of:

-Need for a case by case assessment of the facts. The aforementioned factors are not all inclusive of the types of objective facts which evidence bias motivation. Officers should examine each case for facts which clearly indicate that the offender's bias motivated him/her to commit the crime.

-Misleading facts. The offender used an epithet to refer to the victim's race, however they are both from the same race.

-Feigned Facts. Officers should be careful that the incident was not staged by the victim group so as to give notoriety to their cause.

-Offender's Mistaken Perception. Even if the offender is mistaken in his or her belief that a victim is a member of one of the mentioned groups, the offence is still a bias crime as long as the motivation was against that particular group in question. An example of this would be the recent murder at Major Hill Park where the victim, a local waiter, walking home through an area frequented at night by gay men, was attacked. The waiter, although not homosexual, was robbed and thrown off the Interprovincial Bridge because the offenders felt that he belonged to the gay community.

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APPENDIX 5

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BILL C-445

An Act to provide for the collection of statistics respecting

incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Bias Incidents Statistics Act*.

INTERPRETATION

2. In this Act,

"Force" means the Royal Canadian Mounted Police;

"identifiable group" means any section of the public distinguished by colour, race, religion, sexual orientation or ethnic origin and includes any person belonging to that group;

"Minister" means the Solicitor General of Canada.

CLASSIFICATION OF INCIDENTS AND COLLECTION OF STATISTICS

3. (1) The Commissioner of the Royal Canadian Mounted Police shall establish a unit within the Force that shall, for each year following the coming into force of this Act,

(a) classify as a bias incident, any incident investigated in that year by the Force that the unit is satisfied, after applying the criteria referred to in subsection (2), was wholly or partly motivated by bias against an identifiable group; and

(b) collect and compile statistics that indicate the number of incidents classified in that year as bias incidents and that identify which identifiable group was the target of bias in each such incident.

- (2) The Minister shall establish and publish criteria for the purposes of paragraph (1)(a).

(3) Subject to subsection (4), the Commissioner of the Force shall collect and compile pursuant to subsection (1) to the Minister on February 1 in the year next following the year to which the statistics

(4) No statistics submitted to the Minister pursuant to subsection (3) shall reveal the identity of any individual involved, either directly or indirectly, in an incident that is classified as a bias incident pursuant to this Act.

AGREEMENT WITH A PROVINCE OR MUNICIPALITY

4. (1) Subject to this section, the Minister may enter into an agreement with the government of a province or a municipality to acquire, for each year covered by the agreement, statistics that indicate the number of incidents investigated in that year that are classified as bias incidents by that force and that in each such incident an identifiable group was the target of bias.

(2) The Minister shall not enter into an agreement referred to in subsection (1) unless the Minister is satisfied that any classification referred to in that subsection shall be made after the application of criteria similar to those established by section 3.

(3) The Minister shall not acquire any statistics pursuant to an agreement referred to in subsection (1) that reveal the identity of any individual involved, either directly or indirectly, in an incident that is classified as a bias incident by a police force.

(4) In this section,

"bias incident" means an incident that a police force is satisfied, after investigation, was motivated by bias against an identifiable group;

"police force" means any police force under the jurisdiction of the government of a province or a municipality and includes the Force where the Force is acting pursuant to an arrangement made with either of those governments pursuant to an arrangement made with the government of Canada under section 20 of the *Royal Canadian Mounted Police Act*.

REPORT TO THE HOUSE OF COMMONS

5. The Minister shall annually cause a copy of the statistics submitted pursuant to section 3 or acquired pursuant to an agreement made under section 4 to be laid before the House of Commons on or before March 1 in the year next following the year to which the statistics relate or, if that House is not then sitting, on the first day next thereafter that the House of Commons is sitting.

COMING INTO FORCE

6. This Act shall come into force on a day to be fixed by order of the Governor in Council.

APPENDIX 6

APPENDIX III

HATE PROPAGANDA IN CANADA

A. A List of "Hate" Literature known to be distributed in Canada.

<i>Name of Pamphlet</i>	<i>Publisher</i>
"Action On a War Crime"	Boniface Press, 444 E. Tulpehocken Street, Philadelphia, Pa.
"American Nazi Party California Report"	Box 738, Glendale, California.
"American Program"	Unknown
"Anti-Semitism, A Phoney Bogey"	Boniface Press, Philadelphia, Pa.
"Big Lie, Who Told It"	American Nazi Party, Box 1381, Arlington, Virginia
"Bombing Atrocity of Dresden"	Boniface Press, Philadelphia, Pa.
"Brotherhood Nigger-Talk Dictionary"	American Nazi Party, Box 738, Glendale, California.
"Canada Awake — Your Nation is at Stake"	World Service, Box 3848, Fairview Stn., Birmingham, Alabama.
"Canada Awake — Your Nation is at Stake"	Box 431, Scarborough, Ontario.
"Christians, For Heaven's Sake Wake Up"	Christian Educational Association, Union, New Jersey.
"Communism is Jewish"	World Service, Box 3848, Fairview Stn., Birmingham, Alabama.
"Cotswold Agreements"	World Union of National Socialists (WUNS), 928 N. Randolph Street, Arlington 3, Virginia.
"Curse of Anglo-American Political Power"	Boniface Press. Philadelphia, Pa.

"Danger Ahead! !"	Christian Nationalist Crusade, Box 27895, Los Angeles 27, Calif.
"Dispatch"	Pioneer News Service, Box 435, Chicago 90, Ill.
"E A — The Truth to the People"	Einar ABERG, Norrsviken, Sweden.
"Falsehood About the Six Million Jews Said to be Gassed by Hitler Exposed"	Einar ABERG, Norrsviken, Sweden, (Distributed by Canadian Publications, Gooderham, Ontario).
"From Here to Eternity"	Thunderbolt, Box 783, Birmingham, Alabama.
"Hitler Was Right — Communism is Jewish"	American Nazi Party, Box 1381, Arlington, Virginia.
"I Am an American Nazi"	American Nazi Party, 928 N. Randolph St., Arlington, Virginia.
"Is Communism Jewish?"	Unknown
"Jew Communists Behind Race Mixing"	National White Americans Party, Box 2013, Atlanta 1, Ga.
"Key to the Mystery" (Compiled by Adrian ARCAND 1937)	Canadian Publications, Gooderham, Ontario.
"Let's Fight Against Communism"	Joseph DILYS, 714 West 30th Street, Chicago 16, Ill.
"Lincoln Favoured Segregation"	Christian Nationalist Crusade, Box 27895, Los Angeles 27, Calif.
"Look Sharp"	Einar ABERG, Norrsviken, Sweden.
"Mind Twisters"	Unknown
"Money Creators"	Canadian Publications, Gooderham, Ontario.

- "Munich Pact of 1938 Was Belated Justice, Not Appeasement"**
Boniface Press,
5353 Magnolia St.,
Philadelphia, Pa.
- "National Jewish Post"**
Christian Nationalist
Crusade,
Box 27895,
Los Angeles 27, Calif.
- "National Socialist"**
National Socialist
Movement,
74 Prncedale Road,
London W. 11
(Colin JORDAN, John TYNDAL)
- "Natural Order"**
Canadian Publications,
Gooderham, Ontario.
- "No Gas Chambers"**
Einar ABERG,
Norrviken, Sweden.
- "Peace Creeps"**
Unknown
- "Personal News Letter"**
National States Rights
Party,
Box 783,
Birmingham, Alabama.
- "Program of the World Union of National Socialists"**
American Nazi Party,
926 North Randolph St.,
Arlington, Virginia.
- "Raise the Banner"**
Western Report of the American
Nazi Party.
American Nazi Party,
Box 738,
Glendale, California.
- "Ravishing the Women of Conquered Europe"**
Austin J. APP,
2615 W. Craig Place,
San Antonio 1, Texas.
- "Red Rabbi"**
by David STANLEY
Canadian Publications,
Gooderham, Ontario.
- "Rockwell Report"**
American Nazi Party,
928 N. Randolph St.,
Arlington, Virginia.
- "Storm Trooper"**
American Nazi Party,
928 N. Randolph St.,
Arlington, Virginia.

**"This Summer Could Bring
Red Uprisings"**

**National States Rights
Party,
Birmingham, Alabama.**

"Treason Treaty"

**Christian Nationalist
Crusade,
Box 27895,
Los Angeles 27, Calif.**

"U.S.S.R. Under Jewish Rule"

**Ivan PETROV,
Box 927,
Union, New Jersey.**

"We Shall Overcome"

**American Nazi Party,
Arlington, Virginia.**

**"We Shall Smash Them With Our
Clenched Fist"**

**Christian Nationalist Crusade,
Los Angeles 27, Calif.**

"White Man's Mission"

**White Man's Mission,
Box 731,
Adelaide St.,
Toronto 1, Ontario.**

"Who Belongs to Hate Groups"

**I. PETROV,
Box 927,
Union, New Jersey.**

"World Service"

**World Service,
Box 3848,
Fairview Station
Birmingham, Alabama.**

**"World Service — Special Bulletin —
White Men Awake"**

**World Service,
Birmingham, Alabama.**

**"World Service — Special Bulletin —
Communism is Jewish"**

**World Service,
Birmingham, Alabama.**

"World Union of National Socialists"

**World Union of National Socialists,
928 N. Randolph St.,
Arlington, Virginia.**

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"Canada Awake — Your Nation is at Stake"	World Service, Box 3848, Fairview Stn., Birmingham, Alabama.
"Canada Awake — Your Nation is at Stake"	Box 431, Scarborough, Ontario.
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"Cotswold Agreements"	World Union of National Socialists (WUNS), 928 N. Randolph Street, Arlington 3, Virginia.
"Curse of Anglo-American Political Power"	Boniface Press. Philadelphia, Pa.

discussion was pegged to the Canadian Jewish Congress proposals for more legislation in this area, and so the question was asked: Are present laws adequate protection against people who preach prejudice and hatred?

Participants:	Sydney Harris, Harry Wolfson, John Rich, Peter Cory,	Joint Community Relations Committee, Canadian Jewish Congress Consulting Economist Psychiatrist Chairman, Civil Liberties Section, Canadian Bar Association.
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This Hour Has Seven Days – October 25

Interview with George Lincoln Rockwell, of the American Nazi Party, conducted in Washington by Douglas Leiterman and Robert Hoyt (about 15 minutes).

Viewpoint – March 12

Glen How, Toronto lawyer on "Hate Literature and the Criminal Code"

1965

Radio

Aujourd'hui – January 8

Panel with Hertel Larocque discussing his book, said to be fairly anti-semitic.

Speaking Personally, March 8

Russell Doern, social science teacher in Winnipeg on "The Question of Hate Literature" (9 min.)

In Canada This Week – April 24

Prof. Harry Arthurs, Osgoode Hall on "The Toronto Nazi Party" (4 min.)

Television

This Hour Has Seven Days – January 17 – "Hate Literature" 1 hour

David Stanley, interviewed on street by Larry Zolf

Dr. Karl Stern explained "group hatred"

Justice Minister Guy Favreau talked about the Committee his Department is setting up to investigate hate literature and possible legislation.

John Ross Taylor, Canadian fascist and distributor of hate literature interviewed by Tom Koch at his farm in Gooderham, Ont.

This Hour Has Seven Days – January 24 – “Hate Literature” 1 hour

Glen How, Q.C. against legislation to curb hate literature

Sydney Harris, Q.C. in favour of it. Both interviewed by Larry Zolf, followed by discussion of the ramifications of the laws of free speech.

Rabbi Abraham Feinberg, interviewed by Pat Watson about David Stanley's hate literature pamphlet directed against him (Rabbi Feinberg), with a discussion about people who distribute hate literature.

Viewpoint – June 3

Val Sears, *Toronto Star*, on “Allan Gardens Free Speech”, relating to a Nazi meeting broken up within seconds of its beginning by hostile local citizens.

APPENDIX 7

Hate crime laws after *Wisconsin v. Mitchell*. (Demise of the First Amendment? Focus on RICO and Hate Crime Litigation) Susan Gellman. Ohio Northern University Law Review, Spring 1995 21 n3 p863-870.

Free speech and the thought we hate. (Demise of the First Amendment? Focus on RICO and Hate Crime Litigation) Richard Cordray. Ohio Northern University Law Review, Spring 1995 21 n3 p871-895.

Punishing the politically incorrect offender through "bias motive" enhancements: compelling necessity or First Amendment folly? (Demise of the First Amendment? Focus on RICO and Hate Crime Litigation) Robert R. Riggs. Ohio Northern University Law Review, Spring 1995 21 n3 p945-957.

Bias violence: advocating for victims. (part 2) Elizabeth Shuman-Moore, Darren B. Watts and Michele M. Giffels. Clearinghouse Review, March 1995 28 n11 p1228-1247.

Resurrecting free speech. Kathleen M. Sullivan. Fordham Law Review, March 1995 63 n4 p971-987.

Hate crime wave. (from Augusta, Georgia Chronicle) (Editorial) The Los Angeles Daily Journal, Feb 9, 1995 v108 n27 p6 col 1 (2 col in).

Taking hate groups to court. (Victims and Violence) Morris Dees and Ellen Bowden. Trial, Feb 1995 31 n2 p20(9).
 AA Abstract Available AA

Racial hatred: a comparative analysis of the hate crime laws of the United States and Germany. Charles Lewis Nier III. Dickinson Journal of International Law, Wntr 1995 13 n2 p241-279.

Hate crime sentences can now be enhanced under a new federal law. Samuel R. Cacas. Human Rights, Wntr 1995 22 n1 p32(2).
 AA Abstract Available AA

Punishable conduct v. protected thought. (Case Note) Rosemarie A. Micacci. New England Journal on Criminal & Civil Confinement, Wntr 1995 21 n1 p131-170.

Legislating against hate in New York: bias crimes and the lesbian and gay community. Martin S. Zwerling. Touro Law Review, Wntr 1995 11 n2 p529-578.

CRIMINAL JUSTICE ABSTRACTS

1 of 123

TI: The Ku Klux Klan in the southwest

AU: Alexander-Charles-C

PY: 1995

PB: Norman, OK: University of Oklahoma Press

PD: 288p.

AB: A book, originally published in 1965, describes the history and operations of the Ku Klux Klan in the southwestern United States. The author argues that its growth in Texas, Louisiana, Oklahoma and Arkansas during the 1920s was stimulated by the emphasis on the moral status quo; and that it appealed to a disillusioned middle-class society.

DE: CULTS-; DISCRIMINATION-; HATE-CRIMES; HISTORICAL-STUDIES

AN: 65205

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TI: Victims of anti-gay/lesbian violence

AU: Comstock-Gary-David

JN: Journal-of-interpersonal-violence, 4, (1), pp. 101-106.

PY: 1989

AB: In total, 294 lesbians and gay men responded to a national survey about their experiences of anti-gay/lesbian violence. Rates for various kinds of assaults and settings in which violence occurs are reported by gender and race of respondents. Rates of reporting to and experiences with the police are discussed and compared with those of victims of criminal violence in general. The impact of surveys on legislators and policymakers is indicated.

DE: HATE-CRIMES; HOMOSEXUALITY-; VIOLENCE-

AN: 65114

3 of 123

TI: The price we pay: the case against racist speech, hate propaganda, and pornography

AU: Lederer-Laura; Delgado-Richard (eds.)

PY: 1995

PB: New York, NY: Hill and Wang

PD: 375p.

AB: An anthology of essays, many previously presented at a 1993 conference at the University of Chicago Law School, examines the connections among freedom of speech, equality, and harm. Sections address harm, including experiencing hate, how hate harms and conceptualizing harm; and remedies including developing strategies under current law, and new legal paradigms.

DE: DISCRIMINATION-; PORNOGRAPHY-

AN: 64892

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TI: Some didn't call it hate: multiple accounts of the Zimmerman library incident

AU: Hood-Jane-C; Rollins-Stephen

JN: Violence-Against-Women... 1, (3), pp. 228-240.

PY: 1995

AB: A feminist scholar at the University of New Mexico (UNM) combines official and unofficial, firsthand and secondary observations of the "Zimmerman Library heist," and its aftermath, to determine what it can teach us about gender-based hate crime and the strategies that might be developed to best address it. This 1984 incident of theft of gender and gay studies journals and bias-related

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03468651

Hate material growing on the 'Net

Calgary Herald August 9, 1995 pg A4

Special Features: Photograph

Descriptors: Promotion of hatred; Internet network

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03468138

Lawlessness on the Internet: policing the Net bombs and flames

Montreal Gazette August 5, 1995 pg B6

Special Features: Photograph

Descriptors: Internet network; Promotion of hatred

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03460074

Anti-racist groups berate mail bombers: reign of terror not over: militia

Winnipeg Free Press July 21, 1995 pg A3

Special Features: CNI Clips; Graphic

Descriptors: Bombings; Promotion of hatred

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03452059

Hate groups invade Internet

Toronto Star July 22, 1995 pg B4

Descriptors: Internet network; Promotion of hatred

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03451861

Skinhead gangs: the ugly other side of the shaven-headed world

Vancouver Sun July 15, 1995 pg D13

Special Features: Photograph

Descriptors: Racism; Promotion of hatred

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03446937

COMPANY: Table de Concertation des Gais & Lesbiennes du Grand Montreal

Quebec's plans to fight gay-bashing put on hold

Montreal Gazette July 5, 1995 pg A4

Special Features: CNI Clips

Descriptors: Homosexuals and homosexuality; Promotion of hatred

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03445017

Computers help racists bypass law, officer says (Ron Oliver)

Winnipeg Free Press June 7, 1995 pg A3

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Pacific Affairs 64 no 2 (summer '91): p279-80

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Screenful of venom: anti-Semitic notes on an on-line bulletin board force Prodigy to confront questions of free speech. John Schwartz. *Newsweek* 118 no 19 (N 4 '91): p48

Boeing up the 'hate law': A-Gs may remove protection for religious debate. Celeste McGovern. *il Alberta (Western) Report* 18 no 30 (Ag 5 '91): p50-1

Curbing James Keegstra: the notorious ex-teacher loses his case in the Supreme Court of Canada. Greg Heaton. port. *BC Report* 2 no 17 (D 24 '90): p22

Curbing Keegstra's tongue: Libertarians slam the Supreme Court's long-awaited decision. Greg Heaton. *il Alberta (Western) Report* 18 no 2 (D 24 '90): p34-5

Suits and claims

Donnybrook in Moncton: an Alberta prof puts a B.C. lawyer in his place. Christopher Jukes. *il BC Report* 2 no 36 (My 6 '91): p42

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Leaving early: short story. *Our Times* 10 no 1 (Ja '91): p32-6

IIATFIELD, Keith

Magical Christmas market (of Nuremberg). *il Canadian* 5 no 8 (D '91): p24-6, 29-31

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IIATFIELD, Leonard F.

Sammy the prince: book review. *Anglican Journal* 117 no 3 (Mr '91): p12
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 Passionate Canadian: Richard Hatfield succumbs to cancer at 60; obituary. John DeMont. port. *Maclean's* 104 no 18 (My 6 '91): p18

IIATFIELD-LYON, Jennie

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Elegant hate. *il Good Times* 2 no 3 (Mr '91): p46-8

Sammy Taft (l'homme qu'on surnommait le «chapelier des écoliers»). Anthony Jenkins. port. *enRoute* 19 no 7 (juill '91): p13

Sammy Taft (the man renowned as 'Hatter to the Stars'). Anthony Jenkins. port. *enRoute* 19 no 7 (Jl '91): p13

Tête en folie (Mireille Racine, chapelière). Odile Tremblay. port. *Châtelaine (Fr)* 32 no 2 (f '91): p92

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European VATs prompt grey-market economy. *Profil* 10 no 6 (S '91): p13

Minivans come of age. *il Financial Times* 80 no 22 (N 11 '91): A4

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Appeal court gets tough: two manslaughter convicts get life sentences. *il Alberta (Western) Report* 18 no 35 (S 23 '91): p37

Appealing divorce: a 'bankrupt' husband must still pay his ex-wife. *il Alberta (Western) Report* 18 no 43 (N 18 '91): p33-4

As the mud flies: Ralph Klein wins an apology, maybe. *il port. Alberta (Western) Report* 18 no 16 (Ap 1 '91): p10

Beating the board: parents thwart the closure of a rural school. *il Alberta (Western) Report* 18 no 34 (S 16 '91): p42-3

Big flap over Fil's folly: fembos fret over women being called 'uppity'. port. *il Alberta (Western) Report* 18 no 37 (O 7 '91): p20-1

Dealing delicately with ethics: a new radio game snow nannies morality in true CBC style. *il Alberta (Western) Report* 18 no 30 (Ag 5 '91): p51

Déjà vu in Legal: fifteen students are enough to warrant a new francophone school. *il Alberta (Western) Report* 18 no 27 (Je 24 '91): p36-7

Don't feed the elk: wardens say starvation is

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Fired by 'mutual agreement': a taste of political expediency wafts from the dismissal of Ammon Aclroyd. *il Alberta (Western) Report* 18 no 24 (My 27 '91): p16-18

Gambling on 'green' commitment: Superwood (Western Ltd) produces its high-priced recycled substitute. *il Alberta (Western) Report* 18 no 26 (Je 10 '91): p20-1

Games groupies play: hanging it out with hangers-on can be risky. *il BC Report* 2 no 22 (Ja 28 '91): p41

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Growing need for sanctuary: family shelter lobbyists demand more tax dollars. *il Alberta (Western) Report* 18 no 8 (F 4 '91): p25-6

Joe where? Rumour has Joe Clark quitting Yellowhead for Edmonton. port. *il Alberta (Western) Report* 18 no 15 (Mr 25 '91): p12

Less is better: Drayton Valley's mayor proposes a radical consolidation. *il Alberta (Western) Report* 18 no 31 (Ag 19 '91): p22

Little log house in a forest of lies: beware the fate that befell us, an Alberta family advises. *il Alberta (Western) Report* 18 no 22 (My 13 '91): p24

Moderate Reform party: the media says the movement has shifted, its leadership say it hasn't. *il Alberta (Western) Report* 18 no 20 (Ap 29 '91): p15-17

More than semantics: Minister Oldring says gay couples aren't a family. *il Alberta (Western) Report* 18 no 44 (N 25 '91): p7

New Hollywood Indians: Coen's prairie epic (*Dances with wolves*) features two Alberta native actors. *il Alberta (Western) Report* 18 no 1 (D 17 '90): p54-5, 57

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Oil-patch nationalist: Bruce Wilson, a singular energy executive, dies at 71; obituary. port. *il Alberta (Western) Report* 18 no 10 (F 18 '91): p45

One big pricey family: the ND's plan demands more intrusion and more money. *il Alberta (Western) Report* 18 no 15 (Mr 25 '91): p6

Opposites can attract, even when green: a national alliance follows Alberta's lead in creating eco-business harmony. *il Alberta (Western) Report* 18 no 39 (O 21 '91): p45

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Pruning the parks department: privatization, fee hikes and decentralization. *il Alberta (Western) Report* 18 no 23 (My 20 '91): p16-17

Raising crops and kids: farm women launch a new child-care scheme. *il Alberta (Western) Report* 18 no 45 (D 2 '91): p38, 40

Reform: big change or no change? The media and the Tories say the RPC has shifted; its leaders deny it. *il BC Report* 2 no 35 (Ap 29 '91): p10-12

Resurrecting a vanished reserve: the Callihoo Iroquois win their status and land resumed. *il Alberta (Western) Report* 18 no 32 (S 2 '91): p40-1

Rounding up the strays: tax-beating acreage owners will soon get a rude shock. *il Alberta (Western) Report* 18 no 9 (F 11 '91): p20

Smell of success: Daishowa's rotten egg odour descends on Peace River. *il Alberta (Western) Report* 18 no 12 (Mr 4 '91): p29

Thy farmers' keeper: a guilty verdict against the CCC sets a costly precedent. *il Alberta (Western) Report* 18 no 27 (Je 24 '91): p29

Too little, too late? Edmonton's making little progress in the war on waste. graph. *il Alberta (Western) Report* 18 no 10 (F 18 '91): p18

Tough job, but — the U of A's dean of science takes the academic helm during tough times (as vice-president academic). port. *il Alberta (Western) Report* 18 no 28 (Jl 8 '91): p40

Trouble with the Junior: the kid's encyclopedia fails to deliver the cash. *il Alberta (Western) Report* 18 no 7 (Ja 28 '91): p26

Water, water everywhere —: St. Paul residents are afraid of what comes out of their taps. *il Alberta (Western) Report* 18 no 41 (N 4 '91): p20-1

Weaning Lambs: a Calgary trade province's lamb slaughterhouse. *(Western) Report* 18 no 25 (Je 3 '91): p21

Welland win: the bulldozers get post-bog-lovers. *il Alberta (Western) Report* 18 no 24 (F 4 '91): p23

Who were those masked men? Unidentified are ordered to stop harassing Christians. *il Alberta (Western) Report* 18 no 1 (D 17 '90): p21

Wily coyote or shy hyena? A mystic roaming the countryside. *il Alberta (Western) Report* 18 no 33 (S 9 '91): p24-5

Womankind's farm revolution: agriculture has inspired a growing wave of management. *il tab. Alberta (Western) Report* 18 no 14 (Mr 18 '91): cover, 22-5

Women on the fast track: a government boost women managers is not for Alberta. *il Alberta (Western) Report* 18 no 23 (Jl 17 '90): p17

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Voices from around the world: select annual proceedings of the Association of School Librarians review. Philomena Hauck, ed. *Emergency Librarian* 18 no 4 (Mr-Apr '91): p8-9

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Dynamic and distributed: ... automated tools. Carl Manson and J. Scott Haug. *il tab. Libr. Sci.* 16 no 3 (Mr '91): p167-8, 170-2

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Center (Hastings-on-Hudson, N.Y.)

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See also
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Center (Hastings-on-Hudson, N.Y.)

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Birds—Hawaii
Bombing and gunnery ranges—Hawaii
Ecology—Hawaii
Environmental policy—Hawaii
Fish—Hawaii
Geology—Hawaii
Golf courses—Hawaii
Honolulu (Hawaii)
Insurance. Health—Hawaii
Kahoolawe (Hawaii)
Kauai (Hawaii)
Kilauea (Hawaii: Volcano)
Lanai (Hawaii)
Maui (Hawaii)
Mauna Loa (Hawaii)
Medical policy—Hawaii
Molokai (Hawaii)
Newspapers—Hawaii
Oahu (Hawaii)
Paleobotany—Hawaii
Paleontology—Hawaii

APPENDIX 8

INTERVIEW GUIDE - CONSIGNE

What I want to do is have you tell me about hate crime and bias crime. The main questions/issues that I wish to examine are: **What is the Ottawa Bias Crime Unit; What are its overall functions; And your experiences with the Ottawa Bias Crime Unit.**

What is hate crime or bias crime (according to the police officer)?

- Would his defn. go beyond physical acts?
- What constitutes physical from his perspective?
- Where would something like hate lit. or violent rhetoric fit?
- What about porn., misogyny, anti-abortion?

What is the Ottawa Bias Crime Unit?

- operational aspect:
- structure:
- make up (visible minorities? [This I can note by simple observation])
- mandate:
- officers receive special training?
- Liaison with other police force?
- Are they the first police force? What other forces.

Kenn Mark. **What is his view on the current legislation in Canada?**

- Hate propaganda laws;
- Bias crime units.

Within the context of the Bias Crime Unit, what type of hate motivated activity occurs?

- scale the types. in order. if possible.
- violent physical? violent speech? symbolic violent? etc.

Kenn Mark. **What does he think the justice minister should do?**

- more repressive?
- less repressive?
- status quo?
- etc.

Kenn Mark. **Who make up perpetrators of hate?**

Who are the victims?

What was it or who was it that helped set up the Ottawa Bias Crime Unit?

- lobby groups (gays, Jews, blacks, etc.)
- notion of lack of confidence in the law;
- notion of lack of confidence with the "regular" police.

To whom does the Bias Crime Unit cater?

- gays, Jews, blacks, etc.
- is there a certain group that is neglected?
- are there groups within the unit that are seen as unfavourable?

What are some of the problems with the Ottawa Bias Crime Unit?

- are some minorities excluded from the mandate?

What is the attitude towards Bias/Hate Crime, and the Bias Crime Unit by the police department?

- are there any concerns of fear, homophobia, racism?
- is it viewed as a "real" crime?

What is his attitude on the role of the media and the overall notion of hate crime?

- secondary criminalization;
- does it give hate groups a platform;
- does it create more or less sympathy for victims.

What about the internet?

On the notion of effectiveness?

- achieving a significant impact?
- Is the OBCU being noticed?
- What are the responses like [calls - people call and for what reason?
- We know that various minorities distrust the police, is this bias crime unit bridging gaps?

Production of statistics?

Police journals?

Where should criminal justice go in order to further deal with hate crime?

What about alternatives?



Start off
is this
↓
how she
got involved.

This is intended to be an open style interview. I'll prompt you with some issues and questions, but essentially what I want are your views on B'Nai Brith's views on hate crimes. I want to examine your role as a member of an advocacy group. Explain the focus of the thesis: To examine how it was that hate crimes came to the fore, i.e., how the issue was first problematized, and furthermore, criminalized. Examining various agencies that have been involved in constructing the hate crimes issue: ie legal discourse, media discourse, academic discourse, policing discourse, and finally interviews with some key players or claims makers. These three have been Police Officer, Member of an advocacy group, and member of the national initiative on hate crimes. The idea behind the interview is to provide a phenomenological supplement to the literature review and empirical data.

- ✓ Need to know a bit about B'Nai Brith;
- ✓ When they got involved in collecting stats on anti semitic incidents;
- ✓ When they got involved with the hate crimes issue; 30 yrs.
- ✓ With whom have they collaborated their efforts (connections);
- Her opinion on how widespread the problem is;
- ✓ What other groups in Canada have helped initiate hate crimes legislation?;
- ✓ Opinion on hate propaganda laws; current legislative efforts (C-41) police initiatives (Bias Crime Units) ; National Initiative on hate crime;
- ✓ What about the issue of rival claims; ↳ Don Dunlop
- ✓ When exactly did B'nai Brith acknowledge the HATE CRIMES issue outside of their own efforts (ie outside the Jewish community);

Possible question to ask: HAS THE PROBLEM GOTTEN WORSE? OR IS THERE SIMPLY MORE AWARENESS AND MORE INTOLERANCE TOWARD RACISM??

5/26/1 ← 7/2/1 - 3712 0170

- ✓ How does B'nai Brith deal with other views and concerns from other targeted groups;

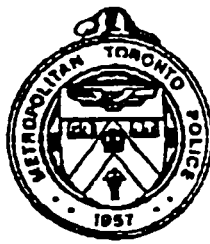
- DEFINITION?? ✓ - what are

- NEEDS OF VICTIMS.

Media coverage - via B'nai.

4/15/1

APPENDIX 9



**INTERNATIONAL HATE/BIAS MOTIVATED CRIME SYMPOSIUM
DURHAM REGIONAL POLICE SERVICE LEARNING CENTRE
DURHAM COLLEGE**

2000 Simcoe Street North, Oshawa, Ont. L1H 7L7

APRIL 22, 23 and 24, 1996

The Durham Regional Police Service in conjunction with the Metropolitan Toronto Police Service and Provincial Police Service are hosting the above "International Hate/Bias Motivated Crime Symposium" to be held at the Durham Regional Police Learning Centre located at Durham College in Oshawa, Ontario. The focus of the symposium is to enhance the education and awareness of police officers of the various aspects of this type of criminal activity.

The symposium will cover numerous topics relating to Hate/ Bias Motivated crime. Such as

- The impact on the community
- Initial response
- Investigative strategies
- Pro-active Programmes
- Training Initiative
- Emerging trends - Hate on the Inter-net
- Intelligence Overview - Militias
- Victim and community resources

This symposium will also include an informal information sharing session the first evening and a banquet the second evening. The registration cost for the three days is \$65.00 per person which includes the banquet. To register by mail send cheque or money order payable to "Durham College" and quote course code "SAFE 1906".

Mailing Address

Durham College
2000 Simcoe Street North
Oshawa, Ontario L1H 7L7
(905) 721-2000

To register by telephone using Visa or Mastercard:
call

1-800-461-3260

(905) 721-3113

Quote course code "SAFE 1906"

Arrangements have also been made with Holiday Inn, Oshawa for accommodations at a cost of \$79.00 per night. To contact the Holiday Inn directly at (905) 576-5101 Fax (905) 576-3296 to make your reservations. To obtain symposium rates advise the hotel that you are registering for the Hate Crime Symposium. Transportation between Durham College and the Holiday Inn will be provided each morning and afternoon.

HOTEL RESERVATIONS MUST BE MADE NO LATER THAN MARCH 4, 1996 TO ENSURE SPECIAL RATES.

If you will be arriving by air and require transportation from the airport please contact Detective John Constable Bob Roche at (905) 579-1520 Ext 427 with your flight number and arrival time.

Registration will be limited to 250 so register early.

**INTERNATIONAL
HATE/BIAS MOTIVATED CRIME SYMPOSIUM
APRIL 22,23,24 AND 25TH, 1996
DURHAM REGIONAL POLICE LEARNING CENTER
DURHAM COLLEGE, OSHAWA ONTARIO**

MONDAY APRIL 22, 1996

0815-0830	Orientation	Inspector Greg Reid Durham Police Learning Center
	Introductions Opening Remarks	Chief Trevor McCagherty
0830-1000	Nature of the Problem History/Precent Definition(s) (Standard) Recognition Elements	Det.Dino Doria, Cadre, H.B.C.P., F.I. Intelligence Services, Hate Crimes Un Metropolitan Toronto Police Service John Hollands, Program Specialist, Ha Bias Crime Programs, H.B.C.P. Train Trainer, Federal Law Enforcement Training Centre, New Mexico
1000-1030	COFFEE	
1030-1115	Continued	Plenary Questions
1115-1200	Initial Response Reporting	Mr Brian Levin, Ass't Director Southern Poverty Law Center - K Watch, Cadre, H.B.C.P., FLETC, Montgomery, Alabama
1200-1300	LUNCH	
1300-1430	Impact, Reaction, Consequences in the Community	Mr Brian Levin, Asst. Director Southern Poverty Law Center - K Watch, Cadre, H.B.C.P., FLETC, Montgomery, Alabama
1430-1500	COFFEE	

1500-1545	Role of the Supervisor	Detective John Munro Intelligence Services Hate Crimes Metropolitan Toronto Police
1545-1630	Investigative Strategies	Detective Constable David Malcolm Intelligence Services Anti Terrorism Section Metropolitan Toronto Police Service
1830	Proactive Policing Initiatives Informal Information Sharing session, Harmony Hall, Holiday Inn, Oshawa	Detective Dino Doria, Cadre, I.L.B. FLETC Informal Information Sharing Metropolitan Toronto Police, Intelligence Services Hate Crimes

TUESDAY APRIL 23RD, 1996

0815-0900	Victims Needs	Dr. Karen Mock, National Director League for Human Rights - B'Nai
0900-1000	Legal Considerations	Mark Sandler, Lawyer Cooper, Sandler, West & Skurka Firm, Toronto
1000-1030	COFFEE	
1030-1200	Legal Considerations (Cont'd) Mock Cross Examination, Justice Panel	Mark Sandler, Lawyer Cooper, Sandler, West & Skurka Law Firm, Toronto His Honour, Judge Hugh Campbell Crown Attorney
1200-1300	LUNCH	
1300-1400	Christian Identity Movement and Militias	Detective Gary Johns, Cadre, H.B. Federal Law Enforcement Training Centre, Coeur D'Alene, Idaho.
1400-1500	Victim/Community Resources and Role of the ADL	Morris Casuto, Cadre, I.L.B.C.P., FLETC, Anti Defamation League San Diego, California

1500-1530	COFFEE	
1530-1630	Bill C41 Federal Legislation	Mr. Michael Bernstein Deputy Director, Crown Law Office Attorney General, Province of Ontario
1800-	EVENING DINNER Holiday Inn, Guild Hall	Keynote Speaker Honourable Robert Runciman Solicitor General Province of Ontario Guest Speakers Chief Trevor McCagherty Chief David Boothby Commissioner Tom O'Grady

WEDNESDAY APRIL 24TH, 1996

0815-0900	Emerging Trends: Hate on the InterNet	Detective Tom Whittaker Ontario Provincial Police Hate Crimes Unit
0900-1000	Training Initiatives Training Trainers	Ms. Gail Stern, Cadre, H.B.C.P., F. Senior Project Coordinator University of Illinois, Chicago, US
1000-1030	COFFEE	
1030-1200	Training Initiatives (Cont'd)	Ms. Gail Stern, Cadre, H.B.C.P., F. Senior Project Coordinator University of Illinois, Chicago, US
1200-1300	LUNCH	
1300-1330	Intelligence Overview	Mr. Al Treddenick Canadian Security Intelligence Service
1300-1530	Pro-Active Alternatives "Chill Power"	Detective Dino Doria, Cadre, H.B. FLETC, Intelligence Services, Hate Crimes, Unit, Metropolitan Toronto Police

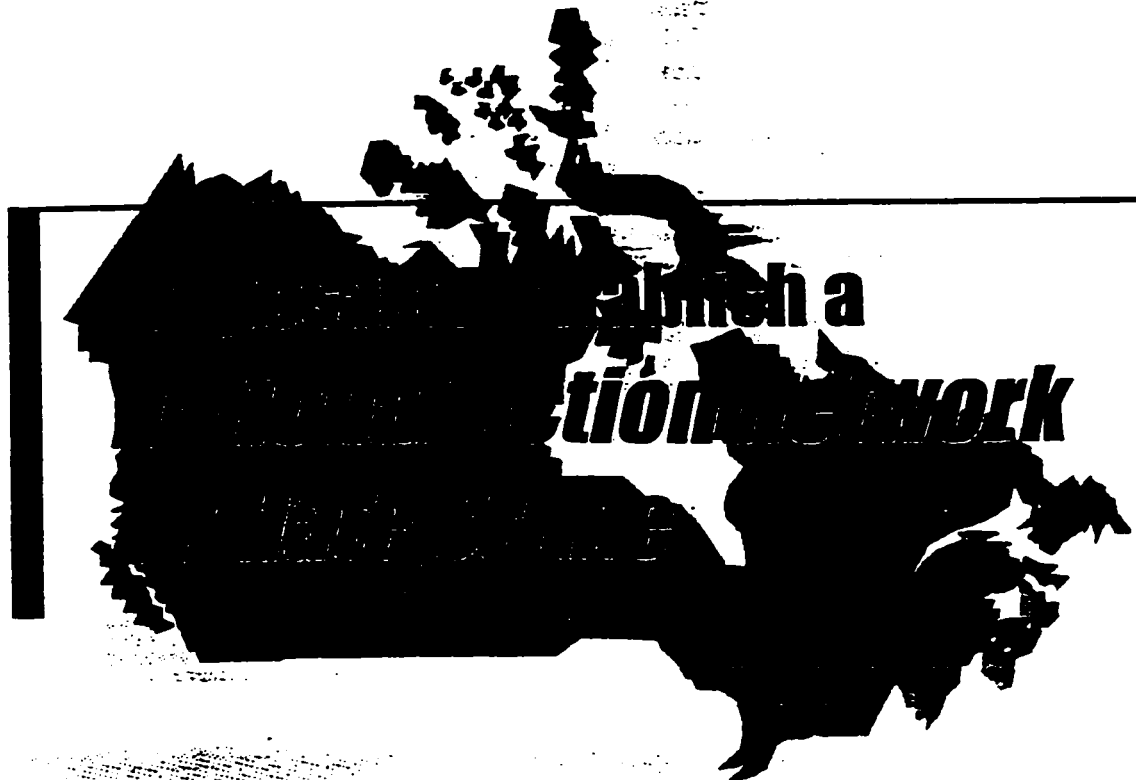
1530-1545

Closing Remarks

Detective John McLean
Constable Bob Roche
Durham Regional Police
Street Crime Unit

APPENDIX 10

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S/Sgt. Dan Du
Sgt. Pat McCa
Dr. Jo Von S

DRAFT PRELIMINARY ACTION NETWORK

The National Action Network on Hate Crime will focus on distilling unity out of diversity

- ◆ In cooperation with stake holders, establish provincial linkages.
- ◆ Increase the visibility and awareness of hate crime and the responses which can be harnessed.
- ◆ Obtain community direction and involvement in the formation of metropolitan Hate Crime Units.
- ◆ Develop a resource manual on strategies outlining what can be done about hate motivated activities / incidents and the appearance of hate groups in the community.
- ◆ As a resource, supply on-going support and expertise to community members.

The National Action Network on Hate Crime will focus on legal matters

- ◆ In cooperation with stake holders, develop a national definition of hate crime with accompanying guidelines to ensure its consistent application.
- ◆ Increase the visibility of the justice response to hate crime.
- ◆ Move towards the creation of new criminal code offences which better reflect the disproportionate harm of hate crime.
- ◆ Develop a resource manual on prosecution of hate crime.
- ◆ As a resource, supply on-going support and expertise to crown prosecutors.



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The National Action Network on Hate Crime will focus on police

- ◆ Increase awareness and visibility of police responses to hate crime.
- ◆ Aid in the development of metropolitan Hate Crime Units with guidelines for consistency and performance indicators to measure success.
- ◆ Aid in the development of appropriate training at police academies, police colleges and municipal police services.
- ◆ Document and publish a biannual article on hate crime in various communities.
- ◆ Create a 1-800 number to afford national access on issues of hate crime.
- ◆ With the cooperation of the Centre for Justice Statistics, compile empirical evidence on the frequency and type of hate crimes in Canada.
- ◆ Develop a resource manual on policing hate crime.
- ◆ As a resource, supply on going support and expertise to investigators.

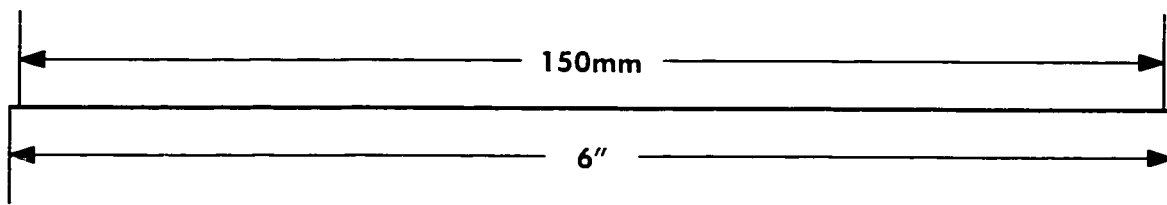
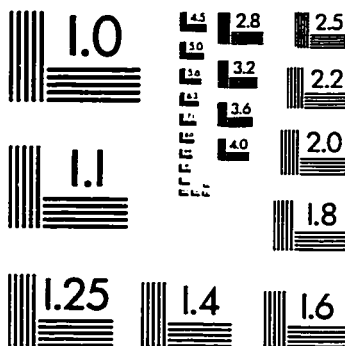
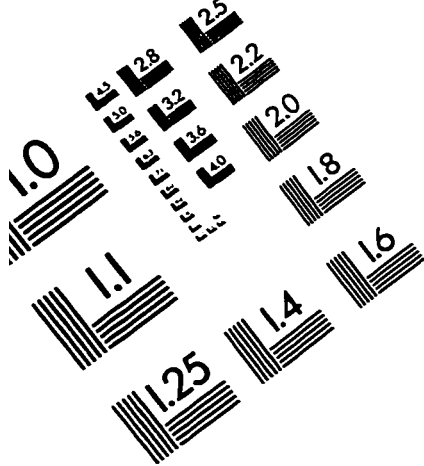
The National Action Network on Hate Crime will focus on education

- ◆ Establish links with universities and encourage research into hate crime in Canada.
- ◆ Create strategic partnerships with Provincial Departments of Education.
- ◆ Assist school administrators in recognising hate motivated incidents and how to deal with them.
- ◆ Develop a resource manual for teachers on hate crimes in Canada outlining the resources available to them to protect their students.
- ◆ As a resource, supply on-going support and expertise to educators.

**Overview of Recommendations contained in
Disproportionate Harm: Hate Crime in Canada
- by Julian Roberts 1995**

- ◆ *Consideration to carrying forward on the Hate Crime Statistics Act (Bill C-455)*
- ◆ *Development of a uniform hate crime definition across Canada. This definition should capture motivation and reflect the actual or perceived group status of the victim.*
- ◆ *Uniform guidelines should be developed for consistent application of hate crime definition*
- ◆ *The Canadian Centre for Justice Statistics should make the collection of hate crime material a priority.*
- ◆ *The Uniform Crime Reporting survey should be amended to capture hate motivation*
- ◆ *The General Social Survey should also be amended to help make hate crime more visible*
- ◆ *Increase in resource commitment dedicated to hate crime research should be considered*
- ◆ *Consideration to the development of new criminal code offences which better reflect the disproportionate harm of hate crimes*
- ◆ *Greater effort needs to be made to increase visibility of criminal justice response to hate crime and creating linkages with targeted groups*
- ◆ *The development of Hate Crime Units in all major urban police forces across Canada*
- ◆ *Hate crime units in police agencies should have constant contact with those populations most at risk*
- ◆ *A principal focus of any hate crime strategy should be upon the gay/lesbian communities in Toronto, Montreal and Vancouver*
- ◆ *The news media should be harnessed to communicate important hate crime information*
- ◆ *Sentencing for hate crime offenses (Bill C-41) should become part of the offender information system*
- ◆ *An interdisciplinary approach to hate crime is recommended. A greater effort to educate the public about this form of criminal behaviour should begin with a focus directed at schools*
- ◆ *Community groups should be encouraged to take an active role in educating their members various ways to respond to hate crimes*
- ◆ *Community surveys should be conducted to determine the level of confidence that targeted groups have in the criminal justice system*
- ◆ *Consideration to a national police training workshop on responding and investigating hate crime is warranted*

TEST TARGET (QA-3)



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