

# **Prosecution of Federal Hate Crimes**



**JEWISH COMMUNITY CENTER  
ASSOCIATION**

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# What is a Hate Crime



**HATE + CRIME**

# “Hate”



- “*Bias Motivation*”
  - Not Rage or Anger
- Type of Bias Motivation
  - Different in each federal statute
  - All statutes include Race and Religion.

# “Hate”



- Need not show “hatred” of persons with characteristic.
- Recognition that hate crimes affect more than the victim; they target an entire community.

# “Crime”



- You also need a crime.
- People have a right to hold biased beliefs --and even to act upon those beliefs -- up to the point at which they commit crimes.
- Many actions that may be sufficient for civil suits do not constitute crimes.

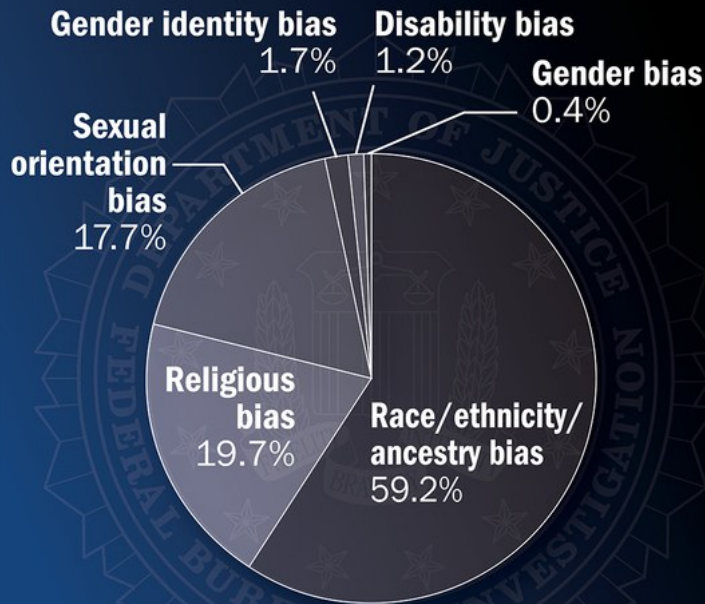


# 2015 HATE CRIME STATISTICS

U.S. DEPARTMENT OF JUSTICE • FEDERAL BUREAU OF INVESTIGATION • CRIMINAL JUSTICE INFORMATION SERVICES DIVISION

## Hate in 2015

Here's a breakdown, by category, of why the 7,121 victims of the 5,818 single-bias incidents were targeted:



### ***Race/Ethnicity bias (59.2%)***

- 53 % anti-Black
- 18 % anti-White
- 9 % anti-Hispanic or Latino

### ***Religious bias (19.7%)***

- 51 % anti-Jewish
- 22 % anti-Islamic
- 4 % anti-Catholic

### ***Sexual Orientation bias (17.7%)***

\*From *Hate Crime Statistics, 2015*

# Three Kinds of Federal Hate Crimes



- Assaults (including deadly assaults)
- Property Damage
- Threats



## **INTERFERENCE WITH FEDERALLY PROTECTED RIGHTS 18 U.S.C. § 245(b)(2)**

- Enacted in 1968
- Designed to protect the exercise of certain federally protected rights that were at the core of the Civil Rights Acts of the 1960's



# 18 USC § 245(b)(2): Elements



- Used force or *threatened* to use force
- Acted willfully
- Acted because of a person's race, color, religion or national origin
- Acted because the person is or has been engaged in one of the following enumerated protected activities:

# 18 USC § 245(b)(2): Protected Activities



Enrolling in or attending public school/college



Using a state facility



Enjoying benefit of employment/labor



Serving on a jury



Using a facility of interstate transportation



Enjoying public accommodations

# **Interference with Employment**

## **United States v. Furrow (C.D. Cal.)**

- Aryan Nations member Buford Furrow, killed a security guard and wounded five others in a 1999 bias-motivated shooting at a Jewish Community Center in Los Angeles.



# **CRIMINAL FAIR HOUSING ACT**

## **42 U.S.C. § 3631**

- Enacted in 1968
- Protects the right to:
- Sell, rent, purchase, finance, or occupy a dwelling
- Contracting or negotiating to do so
- Helping others to do so
- Associating with persons of another race in a dwelling (under the case law)



# **Church Arson Prevention Act**

## **18 U.S.C. § 247**

- Enacted in 1996
- Protects religious real property  
Remember: statute covers more than just churches and arsons

# 18 U.S.C. § 247 Elements



- Criminalizes defacing, damaging, or destroying religious real property
- Threatening or assaulting a person for exercising religious beliefs
- Crime in or affected interstate/foreign commerce
- Separate provision includes acts based on the **racial characteristics** of the religious institution (Dylann Roof case)

# Interstate Commerce: Why?



13<sup>th</sup> Amendment empowers congress to eradicate “badges and incidents of slavery”



Congress can legislate to prohibit non-race based bias crimes through the Commerce Clause



Non-race-based bias crimes require proof of interstate commerce



- Enacted in 2009
- For the first time, sexual orientation and gender identity are protected by federal hate crime laws
- Also covers disability, gender protections, race, color, national origin, and religion
- Does not require link to a federally protected right

## **Matthew Shepard-James Byrd Jr. Hate Crimes Prevention Act 18 U.S.C. § 249**



# Threats



- All the statutes we just discussed—except the Shepard/Byrd Act—penalize using a “Threat of Force” as well as force itself.
- Recognition that a threat can be very injurious and disruptive to the lives of victims, as seen in the JCC incidents.

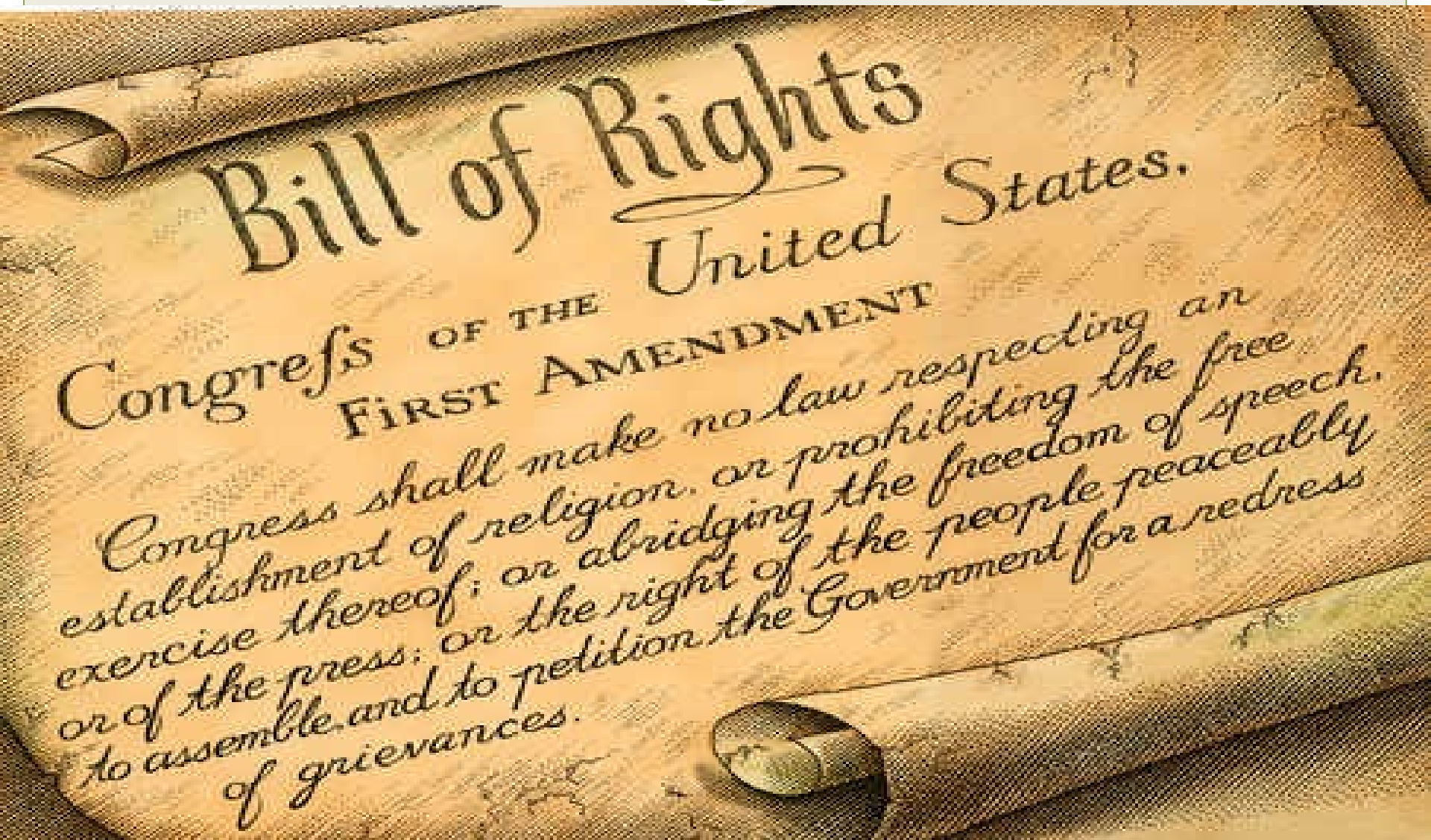
# General Threats Law

- Regardless of bias motivation --
- IF
- The threat is made in interstate/foreign commerce.



- Mail
- Internet
- Telephone

# Hate Speech and the First Amendment



# First Amendment Protections



Under the First Amendment, no one can be punished for:

- Having abstract beliefs;
- Expressing such beliefs;
- Peacefully advocating for the advancement or implementation of such beliefs;
- Being a member of a group that has, expresses, or advocates for such beliefs.

But violent acts and true threats are not protected by the First Amendment.

# What makes a threat a “true threat”?



- A true threat is
  - a serious communication of
  - an intent to commit an act of unlawful violence against a particular individual or group of individuals
- It does not include
  - genuine jokes
  - expressions of anger
  - political hyperbole

# Hate Crimes Data



There are two approaches to Hate Crime data collection

- *Incident Based Reporting from Law Enforcement*
- *Victimization Reports from statistical sample of population*



# FBI Uniform Crime Reporting Program



## **Uniform Crime Reporting Program (UCR)**

**Voluntary reporting by state, local, tribal, educational law enforcement in all 50 states**



# Hate Crime Statistics Act Reporting



- Hate Crimes Statistics Act of 1990
  - ✦ Race, religion, sexual orientation, or ethnicity
  - ✦ Disability added in 1992
  - ✦ Gender, gender identity and juveniles added in 2009



# Keys to Hate Crimes Uniform Crime Reports

- Built on existing system – added bias motivation to information already reported on current crimes
- Train key personnel to identify and code hate crimes

# Is it a Hate Crime ?



- Bias is reported *only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias.*
- Data is coded according to motivation of attacker, not the identity of the victim.

# Bias Categories



- **Race/Ethnicity/Ancestry:**

- 11 = Anti-White
- 12 = Anti-Black or African American
- 13 = Anti-American Indian or Alaska Native
- 14 = Anti-Asian
- 31= Anti-Arab
- 32 = Anti-Hispanic or Latino
- 33 = Anti-Not Hispanic or Latino

- **Religion:**

- 21 = Anti-Jewish
- 22 = Anti-Catholic
- 23 = Anti-Protestant
- 24 = Anti-Islamic (Muslim)
- 81=Anti-Eastern Orthodox
- 83=Anti-Buddhist
- 84=Anti-Hindu
- 29=Anti-Jehovah's Witness
- 28=Anti-Mormon
- 85=Anti-Sikh
- 25 = Anti-Other Religion
- 26 = Anti-Multiple Religions, Group1
- 27 = Anti-Atheism/Agnosticism



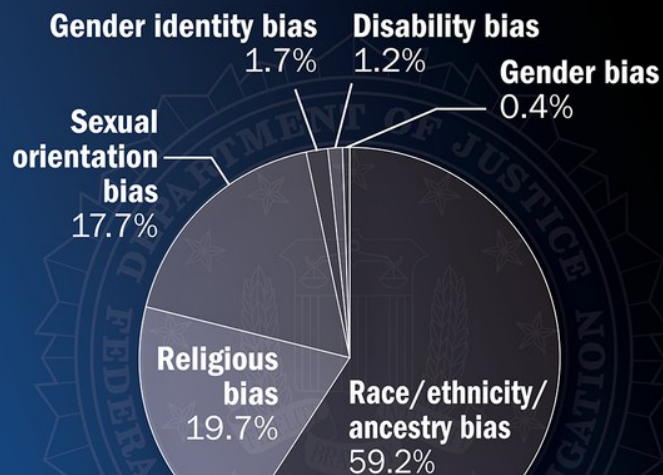
# 2015

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## HATE CRIME STATISTICS

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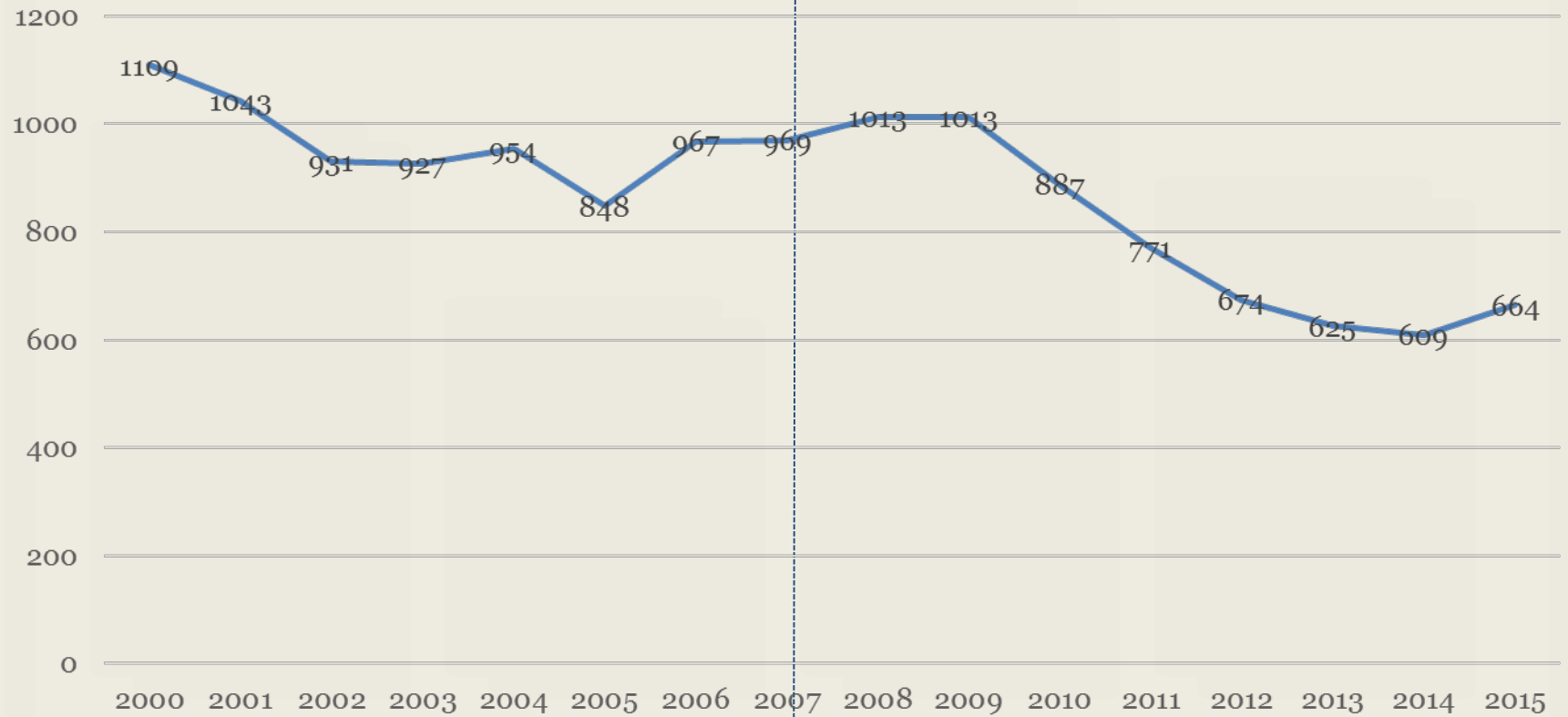
Table 1

Incidents, Offenses, Victims, and Known Offenders  
by Bias Motivation, 2014

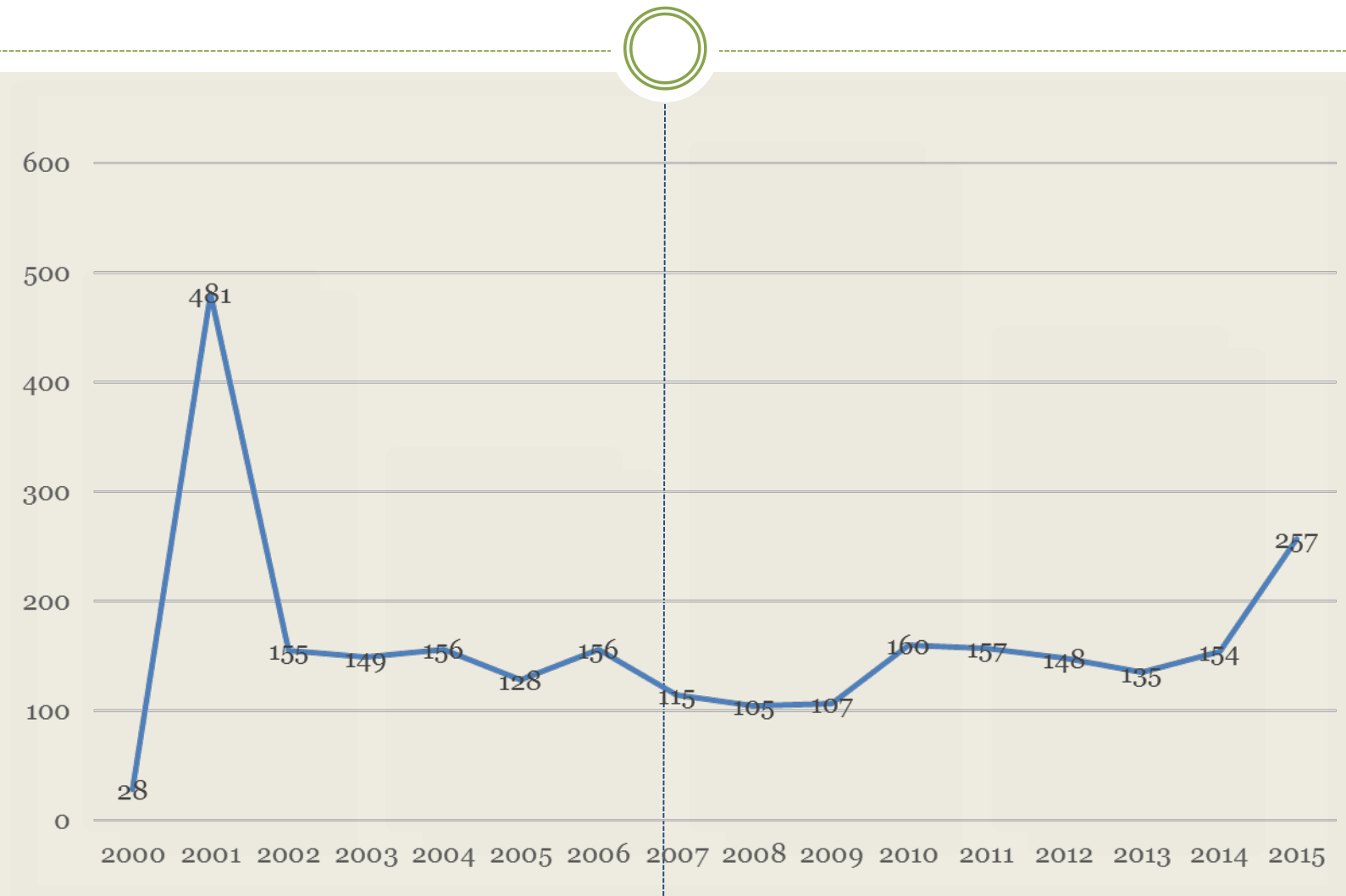
Data Declaration Download Excel

Bias motivation	Incidents	Offenses	Victims <sup>1</sup>	Known offenders <sup>2</sup>
Total	5,479	6,418	6,727	5,192
Single-Bias Incidents	5,462	6,395	6,681	5,176
Race:	2,568	3,081	3,227	2,431
Anti-White	593	701	734	635
Anti-Black or African American	1,621	1,955	2,022	1,442
Anti-American Indian or Alaska Native	130	142	148	108
Anti-Asian	140	168	201	187
Anti-Native Hawaiian or Other Pacific Islander	3	4	4	3
Anti-Multiple Races, Group	81	111	118	66
Religion:	1,014	1,092	1,140	687
Anti-Jewish	609	635	648	380
Anti-Catholic	64	67	70	35
Anti-Protestant	25	28	28	12
Anti-Islamic (Muslim)	154	178	184	148
Anti-Other Religion	107	120	125	70
Anti-Multiple Religions, Group	44	51	71	29
Anti-Atheism/Agnosticism/etc.	11	13	14	13

# Hate crimes against Jews in the U.S. 2000-2015



# Hate crimes against Muslims in the U.S. 2000-2015



# National Crime Victimization Survey

- 2013 Report
  - Majority of crimes based on anti-racial bias
  - Religious hate crimes doubled from 2007-2011 compared to 2003-2007
  - Nearly 2/3 of hate crimes went unreported to the police

U.S. Department of Justice  
Office of Justice Programs  
Bureau of Justice Statistics

MARCH 2013

## SPECIAL REPORT



NCJ 241291

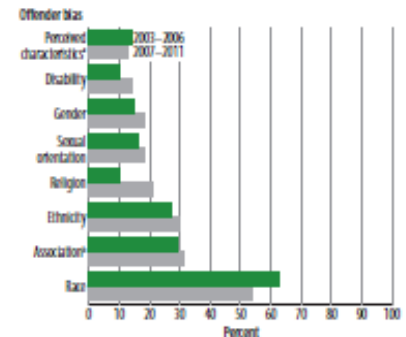
## Hate Crime Victimization, 2003-2011

Nathan Sandholtz, *BJS Intern*, Lynn Langton, Ph.D., and Michael Planty, Ph.D., *BJS Statisticians*

From 2007 to 2011, an estimated annual average of 259,700 nonfatal violent and property hate crime victimizations occurred against persons age 12 or older residing in U.S. households. Of these hate crimes, victims perceived that the offender was motivated by bias against the victim's religion in 21% of victimizations. The percentage of hate crimes motivated by religious bias more than doubled in 2007-11, compared to the 10% motivated by religious bias in 2003-06 (figure 1). In comparison, the percentage of hate crimes motivated by racial bias was slightly lower in 2007-11 (54%) than in 2003-06 (63%).

The findings from this report came primarily from the Bureau of Justice Statistics' (BJS) National Crime Victimization Survey (NCVS), which has been collecting data on crimes motivated by hate since 2003. The NCVS and the FBI's Uniform Crime Reports (UCR) Hate Crime Statistics Program, which are the principal sources of annual information on hate crime in the United States, use the definition of hate crime provided in the Hate Crime Statistics Act (28 U.S.C. § 534). The act defines hate crimes as "crimes that manifest evidence of prejudice based on race, gender or gender identity, religion, disability, sexual orientation, or ethnicity." The NCVS measures crimes perceived by victims to be motivated by an offender's bias against them for belonging to or being associated with a group largely identified by these characteristics.

**FIGURE 1**  
Victim perceptions of offender bias in hate crime, 2003-2006 and 2007-2011



Note: Hate crime includes incidents confirmed by police as bias motivated and incidents perceived by victims to be bias motivated because the offender used hate language or left behind hate symbols. Detail does not sum to 100% due to victims reporting more than one type of bias motivating the hate-related victimizations. See appendix table 2 for standard errors.

<sup>1</sup>Motivated by offender's perception of victim's characteristics.

<sup>2</sup>Motivated by victim's association with people having certain characteristics. Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2003-2011.

# JCC Threats Case



- On April 21, 2017 the DOJ charged Michael Kadar, a dual U.S. and Israeli citizen, with making threats against JCCs and other places in Florida and Georgia between January 4 and March 7, 2017.
- According to the Complaints and accompanying Affidavits, during the relevant time period Kadar was 18 years old and resided in Ashkelon, Israel.
- Kadar was not initially charged with a “hate crime” as that portion of the investigation is ongoing.



# The Georgia Affidavit



- In the Affidavit accompanying the Georgia Complaint it is alleged that Kadar began his campaign of terror on August 12, 2015 by making a call to an elementary school using a “computer-generated sounding voice [that] stated ‘we are in the school, we see children, we have guns, there will be a bloodbath, and something will detonate.’”
- Similar “swatting” calls were made over subsequent days to 7 other schools in Georgia and Tennessee as well as a private residence that alleged a “hostage” situation.

# The Georgia Affidavit



- According to the Affidavit, when traced, the calls were found to be computer generated and placed using a “VoIP service through proxy IPs and paid for [ ] exclusively with virtual currency.”
- The calls were eventually traced to Israel, and Israel opened a “parallel investigation.”
- On January 3, 2017, another “swatting” call was made to the University of Georgia and traced to the same e-mail addresses in Israel.

# The Florida Affidavit



- In the Affidavit accompanying the Florida Complaint it is alleged that “[b]eginning on January 4, 2017, and continuing until March 7, 2017, an individual, later identified as KADAR, made at least 245 threatening telephone calls involving bomb threats and active shooter threats. A significant portion of the threats targeted Jewish Community Centers (“JCCs”) and other historically Jewish institutions such as Jewish schools and Anti-Defamation League offices.”

# The Florida Threats



- “In the calls KADAR usually stated either that a bomb was located in the building, or that someone was coming to commit a mass shooting at the facility.”
- “KADAR placed similar threatening calls to locations throughout the United States and abroad on at least 15 different dates.”
- He used a “Spoofing Company’s service using multiple Google Voice accounts ... [and] paid for the Spoofing Company’s service using Bitcoin.”

# The Arrest in Israel



- According to the Affidavits, when the Israeli National Police executed a search warrant at Kadar's home, they found:
  - “A large parabolic antenna ... to enable long-distance outdoor directional connections;”
  - “handwritten note containing SWATting EMAIL ADDRESS #1 and ... the account's password;”
  - A “USB flash drive attached to the laptop in Michael Kadar's bedroom [that] revealed hundreds of recorded swatting calls, organized by date and geographic location, as well as media reports covering those calls;”
  - “what appear to be advertisements offering swatting services for sale.”

# The Arrest in Israel



- When Kadar was taken into custody “KADAR spontaneously said he ‘did not do it’” and “[w]hen asked what he did not do, KADAR stated ‘the threats.’” “Prior to this statement, officers had not made any mention of JCC threats.”
- A folder found on Kadar’s computer “contained sub-folders for January, February, and March 2017. These folders contained sub-folders for the United States, Canada, Denmark, the United Kingdom, and other countries. These country specific subfolders contained recordings of the threatening calls to Jewish institutions and other locations.”

# Charges/Penalties



- Kadar has initially been charged with 15 violations of 18 U.S.C. § 875(c) for making threats to injure the person of another, and each violation carries “a maximum sentence of 5 years’ imprisonment which can be imposed consecutively with other violations.”
- He has also been charged with 13 violations of 18 U.S.C. § 844(e) for making threats to “kill, injure and intimidate any individual and unlawfully do damage and destroy any building.” These carry “a maximum sentence of 10 years’ imprisonment which can be imposed consecutively with other violations.”

# Hate Crimes Subcommittee



## **Purpose of the Committee**

1. Ascertain the extent of the recent increase in hate crimes.
2. Develop a plan to appropriately address hate crimes.
3. Provide guidance for federal, state and local law enforcement agencies and prosecutors on how to effectively investigate and prosecute hate crimes.



# Hate Crime Summit



**June 29, 2017**

- **Data** – How do “fix” the gaps in data?
- **Investigation** – How do we educate & encourage state & local law enforcement to investigate & report incidents as potential hate crimes.
- **Prosecution** – How do we increase state prosecution of hate crimes and what is needed to fill “gaps” in the patchwork of hate crimes legislation.