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The Real Story of U.S. Hate Crimes Statistics:
An Empirical Analysis

William B. Rubenstein

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The Real Story of U.S. Hate Crimes Statistics: An Empirical Analysis

William B. Rubenstein*

Since 1990, the federal government has collected data on hate crimes reported throughout the United States. To date, the conventional account of that data has simply been to report that racial hate crimes are the most frequently reported type, followed by religious hate crimes, and sexual orientation hate crimes. While this conventional story is not technically wrong, Professor Rubenstein argues in this Article that it is not the real story the data tell.

Undertaking the first comprehensive empirical analysis of this data, Professor Rubenstein develops a new account of hate crimes in the United States. First, the Article pierces the neutral categories (race, religion, sexual orientation) to demonstrate that three sub-groups—blacks, Jewish people, and gay people—report, by far, the most hate crimes. Second, Professor Rubenstein adjusts the raw data to account for the differing population sizes of targeted groups: per capita, gay people report the greatest number of hate crimes, followed by Jewish people and blacks, these three groups reporting hate crimes at greater per capita rates than all other groups. Third, gay people are especially like to report personal—as opposed to property-based—hate crimes.

A final Part of the Article presents the first scholarly analysis of the staggering growth of anti-Islamic and anti-Arab hate crimes after September 11, 2001. The methodology of this Article enables a per capita perspective on this increase, showing that Muslims and Arabs reported hate crimes in 2001 at rates even greater than those at which gay people, Jewish people, and blacks have reported hate crimes over the past half-decade. While this post-9/11 spike leveled off in 2002, Muslims and Arabs are still reporting hate crimes at very high rates.

As Congress intended hate crimes data to assist in designing public policy initiatives, Professor Rubenstein concludes by calling on Congress to respond to what the data actually demonstrate.

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* Professor of Law, UCLA School of Law; Faculty Chair, Charles R. Williams Project on Sexual Orientation Law. I am very grateful to Brad Sears for his keen insights as to the framing of this project, the analysis of the data, and the composition of the Article. My research assistant Kimberly Svendsen did an excellent job gathering the data and assisting me with its analysis. Farrell Rubenstein and Robert Sockloskie provided terrific assistance crunching the numbers. For helpful comments on earlier drafts, I am indebted to Joseph Doherty, Mark Kleiman, Gia Lee, Edward Stein, Eugene Volokh, Lu-in Wang, and Jonathan Zasloff. Additionally, I thank my colleagues at the UCLA School of Law for the advice and ideas they supplied when I presented an earlier version of this Article at a workshop on August 25, 2003. I received financial support for this project from the UCLA Academic Senate and the UCLA School of Law Dean's Fund.

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I. INTRODUCTION

For more than a decade, the federal government has collected and published data on hate crimes. At least since the mid-1990s, the number of hate crimes reported has been remarkably consistent: each year, throughout the United States, there are about 4,600 reported incidents of racial hate crimes, 1,400 religious hate crimes, and 1,250 sexual orientation hate crimes.¹ The story told about these numbers also has been remarkably consistent. Government officials, researchers, advocates, and the media all regularly announce that racial hate crimes are the most frequently reported, followed by religious hate crimes, and sexual orientation hate crimes.

As is evident from the numbers provided above, this “conventional story” is not, technically speaking, wrong. But it is neither the whole story that the data present, nor a particularly insightful one. There are at least three problems with this conventional account. First, the conventional story is told in the neutral language of

1. See *infra* tbl. 2. The numerical consistency of these seemingly random events is similar to the ways in which accidents reoccur with statistical consistency in a country as large as the United States. For example, the number of Americans per 100,000 who die accidentally is quite stable from year to year. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2001, at 79 (2002) (reporting 37 accidental deaths per 100,000 in 1990, 35.5 in 1995, 35.7 in 1997, and 36.2 in 1998), available at http://www.census.gov/prod/www/statisticalabstract_03.html. See generally ANDREW TOBIAS, THE INVISIBLE BANKERS: EVERYTHING THE INSURANCE INDUSTRY NEVER WANTED YOU TO KNOW 65-66 (1982). That said, some of the statistical consistency in the hate crimes data is extraordinary: in three of five consecutive years (1996, 1999, and 2000), the exact same number of hate crimes against Jewish people—1,109—were reported throughout the United States. See *infra* tbl. 3.

American antidiscrimination discourse—“racial” hate crimes, or “sexual orientation” hate crimes. This language obscures the specific minority groups that are the actual targets of most hate crimes. Second, the hierarchy of hate crimes constituted by the conventional story fails to account for population disparities among the targeted groups: it expresses hate crime reports only in total counts and not on a per capita basis. Finally, the composite data mask important distinctions between crimes against property and crimes against people.

Taking each of these points in turn, I construct a different, more nuanced, story about the hate crimes data. The vast majority (about two-thirds) of racial hate crimes are reported by blacks; an overwhelming portion (about three-fourths) of the religious hate crimes are reported by Jewish people; and almost all of the sexual orientation hate crimes are reported by gay people.² What’s more, two of these groups, Jewish people and gay people, constitute a remarkably small portion of the total population. When the data are adjusted for the prevalence of a group in the population, they suggest that gay people report hate crimes at per capita rates that are higher than any other group, followed by Jewish people and blacks. Per capita, these three groups’ hate crime reports far exceed the reporting rates of other groups. These two points alone comprise a new story.

But even that new story has another twist. A significant proportion of the anti-Semitic hate crimes are property-related, typically hate crimes defiling synagogues or cemeteries. Per capita, Jewish “places” report hate crimes more often than any other covered group’s places.³ Yet what this also means is that if property crimes are extracted from the per capita counts, the chances that a gay person’s *body* will be the subject of a hate crime report become even that much greater, indeed remarkably greater than the risks faced—at least before September 11, 2001—by any other group.

This Article provides a statistical demonstration of this new story. In so doing, the Article also provides a new context in which to analyze the post-September 11 rise in hate crimes against Muslims and Arabs. Currently, federal data are only available through the end of 2001. These data provide some sense of the remarkable spike in these hate crimes in the immediate aftermath of September 11. And placed in population context, the data show that Arabs in America reported hate

2. See *infra* tbl. 3.

3. See *infra* tbl. 7.

crimes in late 2001 at rates similar to, or beyond those, of the regular reporting rates of the gay and Jewish populations. Standing alone, however, the 2001 data do not enable an evaluation of whether this was a momentary spike, or a new form of recurring hate crime.⁴ Nonetheless, this Article's empirical analysis of hate crimes helps provide a needed framework—never provided in general media accounts—in which to consider the post-September 11th anti-Arab hate crime epidemic.

Finally, by unveiling the real story behind the hate crimes statistics, this Article answers the call Congress issued when it authorized the federal government to collect hate crimes statistics. Congress specifically asserted that these data would help frame future legislative action. Now that the data demonstrate which groups are most likely to report hate crimes, Congress has a special responsibility to act so as to ensure protection for these groups. This is especially true in the case of gay people, who are not currently protected against discrimination by federal law.

II. HATE CRIMES AND HATE CRIME STATISTICS

Hate crimes refer to criminal acts that are motivated by particular types of bias or prejudice.⁵ Although age old, hate crimes have developed as a special category of American criminal law in the past quarter century.⁶ Most states have adopted laws explicitly

4. An advocacy group has released information suggesting that anti-Arab hate crimes surged post-September 11 and then subsided in 2002, though not to pre-September 11 levels. See discussion *infra* note 69.

5. The Federal Bureau of Investigation (FBI) defines a hate crime as a “criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.” FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 1998: UNIFORM CRIME REPORTS 57 (1999). The federal enhancement statute, see discussion *infra* note 12, states that

‘hate crime’ means a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

28 U.S.C. § 994 (1994).

6. For interesting accounts of this development, see VALERIE JENNESS & RYKEN GRATTET, MAKING HATE A CRIME: FROM SOCIAL MOVEMENT TO LAW ENFORCEMENT 17-41 (2001); Terry A. Maroney, Note, *The Struggle Against Hate Crime: Movement at a Crossroads*, 73 N.Y.U. L. REV. 564, 564-620 (1998).

criminalizing hate crimes or enhancing penalties for underlying crimes where bias is a motivating factor (or both).⁷

Congress entered the field with its 1990 adoption of the Hate Crimes Statistics Act (HCSA).⁸ HCSA seeks to “address heightened concern over the bias crime problem,” but does so only by attempting “to provide trustworthy statistics for bias crime observers.”⁹ HCSA defines hate crimes in terms of twelve predicate offenses¹⁰ and five types of bias.¹¹ HCSA neither criminalizes hate crimes nor enhances penalties for them (though a later federal law does provide for

7. See generally LU-IN WANG, HATE CRIMES LAW § 9:1, at 9-2 (2001) (stating that “all but a few state legislatures” have enacted some form of hate crime law); *id.* app. B, at 9-2 (identifying state laws); JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS 29-44 (1998) (delineating state hate crime laws).

Hate crime laws have engendered significant constitutional scrutiny, primarily based on the argument that they penalize ideas in violation of the First Amendment or penalize only selected forms of bias in violation of the Equal Protection Clause. Compare, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) (striking down a St. Paul ordinance as violative of the First Amendment), with, e.g., Wisconsin v. Mitchell, 508 U.S. 476 (1993) (upholding a Wisconsin statute as not violative of the First and Fourteenth Amendments). The Court’s endorsement of Wisconsin’s law in *Mitchell* has somewhat quelled this debate.

8. Pub. L. No. 101-275, 104 Stat. 140 (1990) (codified at 28 U.S.C. § 534 (2000)). Congress reauthorized the Act in 1996. Church Arson Prevention Act of 1996, Pub. L. No. 104-155, § 7, 110 Stat. 1392, 1394 (1996) (codified at 28 U.S.C. § 534).

9. FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW 22 (1999) (citing S. REP. NO. 101-21, at 2 (1989), reprinted in 1990 U.S.C.C.A.N. 158, 158).

10. The Act originally referenced eight crimes: “murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage or vandalism of property.” S. REP. NO. 101-21, at 6, reprinted in 1990 U.S.C.C.A.N. at 162. The FBI now collects data on four additional property crimes: robbery, burglary, larceny-theft, and motor vehicle theft. FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT: HATE CRIME STATISTICS 2000, at 3 (2001), available at <http://www.fbi.gov/ucr/01hate.pdf>.

11. The Act originally referenced four types of bias: race, religion, sexual orientation, and ethnicity. See S. REP. NO. 101-21, at 6, reprinted in 1990 U.S.C.C.A.N. at 158. Congress added disability as a fifth covered category in 1994. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 320926, 108 Stat. 1796, 2131 (1994). The 1990 enactment of HCSA marked the first time that Congress recognized “sexual orientation” as a protected category. In so doing, however, Congress was careful to note that HCSA was not intended to “promote or encourage homosexuality.” Hate Crimes Statistics Act of 1990, § 2(b), 104 Stat. at 141.

Many commentators criticized Congress for neglecting to recognize “gender” bias as a form of hate crime. See, e.g., Marguerite Angelari, *Hate Crimes Statutes: A Promising Tool for Fighting Violence Against Women*, 2 AM. U. J. GENDER & L. 63, 66 (1994); Elizabeth A. Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act*, 17 HARV. WOMEN’S L.J. 157, 157-58 (1994); Eric Rothschild, *Recognizing Another Face of Hate Crimes: Rape as a Gender-Bias Crime*, 4 MD. J. CONTEMP. LEGAL ISSUES 231, 231-33 (1993). Congress later enacted the Violence Against Women Act, 42 U.S.C. § 13981 (1994), although the United States Supreme Court declared a portion of it unconstitutional in *United States v. Morrison*, 529 U.S. 598 (2000).

enhanced penalties).¹² HCSA simply requires the Justice Department to collect information about hate crimes as part of its regular information-gathering function.¹³ The Justice Department's data, collected by the Federal Bureau of Investigation (FBI) through the Uniform Crime Reporting Program (UCRP), nonetheless provide a unique resource for investigating the nature and prevalence of bias crimes.¹⁴

Yet, as is evident, the Justice Department's data collection and publication efforts arose in the context of a limited, federal criminal regime. Not surprisingly, these efforts were launched rather slowly and remain widely criticized for a number of reasons.¹⁵ To understand the limitations of this reporting regime, it is helpful to follow a hate crime from commission to the possibility of its appearance in the *Uniform Crime Report (UCR)*. First, HCSA covers only a limited number of crimes and biases. Thus a hate crime perpetrated on the basis of sexual orientation, but taking the form of blackmail, would not be a HCSA-covered crime.¹⁶ Relatedly, the murder of a union

12. The Violent Crime Control and Law Enforcement Act of 1994, § 280003, 108 Stat. at 2096 (codified as amended at 28 U.S.C. § 994 (1994)), directed the United States Sentencing Commission to revise its guidelines so as to provide for enhancements in cases of hate crimes.

13. The legislative history suggests at least four purposes will be served by data collection. See S. REP. NO. 101-21, at 3-5, *reprinted in* 1990 U.S.C.C.A.N. at 160-62. As summarized by one commentator, these purposes are to:

- (1) Help law makers, law enforcement agencies, and community groups to shape and focus their responses to hate crime by providing information on the extent of the problem, as well as identifying the frequency, location, and other patterns of hate crime;
- (2) Help law enforcement officers to better respond to instances of hate crime by heightening their awareness of and sensitivity to hate-motivated violence;
- (3) Raise public awareness of hate crime; and
- (4) Send a message that the federal government is concerned about this type of crime.

WANG, *supra* note 7, § 2.19, at 2-42 to 2-43 (footnotes omitted).

14. This is not to suggest that the UCRP data are comprehensive. See *infra* text accompanying notes 15-31. However, most other studies of bias-related violence also have significant methodological problems. See generally GARY DAVID COMSTOCK, VIOLENCE AGAINST LESBIANS AND GAY MEN 31-34 (1991) (discussing methodological issues in gathering data from lesbians and gay men).

15. See, e.g., BARBARA PERRY, IN THE NAME OF HATE: UNDERSTANDING HATE CRIMES 12 (2001) (discussing problems with HCSA reporting).

16. See, e.g., United States v. Lallemand, 989 F.2d 936 (7th Cir. 1993). In a fascinating analysis of gay-related hate crimes, Lu-in Wang argues that gay men are "particularly susceptible to certain categories of property crimes." Lu-in Wang, *The Complexities of "Hate"*, 60 OHIO ST. L.J. 799, 884 (1999). These crimes include "'shakedown' or 'fairy shaking' by police officers or persons posing as police officers, blackmail by friends or acquaintances, and robbery or 'fag-bashing' by strangers." *Id.* at 884-

organizer would not fall within the categories of prohibited bias.¹⁷ Second, even if a HCSA-covered crime is committed, the victim must report the crime. There are a variety of reasons that hate crime victims might not report. An individual who is assaulted upon leaving a gay bar, for example, might worry that reporting the crime will bring unwanted public attention to his or her sexual orientation,¹⁸ or that police officers to whom the crime is reported may be unsympathetic,¹⁹ or that a jury is ultimately unlikely to convict the defendant in a gay-related assault.²⁰ Similarly, people of color may significantly distrust the police and be hesitant to report hate crimes for that reason.²¹

85 (footnotes omitted). Perpetrators target closeted gay men for these crimes because, Professor Wang argues, they perceive such a person to be especially “reluctant to take protective action (such as calling police) if such action might reveal [his sexual orientation], thereby exposing him to violence or discrimination from others, or because he fears he will not receive full legal protection when he seeks it.” *Id.* at 885 (footnotes omitted). Such crimes are unlikely to be counted as hate crimes, then, both because they may not be classifiable as such and because they are unlikely to be reported. As to the latter point, see *infra* text accompanying notes 18-21.

17. These two points indicate the limits of the federal government’s hate crime categories. More globally, the very issue of what gets characterized as a “hate crime” is also contested. I have already noted that rape is generally not considered a hate crime against women. See discussion *supra* note 11. I am indebted to Mark Kleiman for pointing out that male-male prison rape often has a racial component to it, see, e.g., Cindy Struckman-Johnson & David Struckman-Johnson, *Sexual Coercion Rates in Seven Midwestern Prisons for Men*, 80 PRISON J. 379, 387 (2000) (reporting that 72% of the incidents in one facility involved white victims and 71% involved black perpetrators, and reporting that such rapes are caused, inter alia, by “racial conflicts”), yet is generally not characterized as a racial hate crime, nor are simple muggings, although these too are overwhelmingly black-on-white crimes.

18. See PERRY, *supra* note 15, at 12. See generally Anthony S. Winer, *Hate Crimes, Homosexuals, and the Constitution*, 29 HARV. C.R.-C.L. L. REV. 387, 413-15 (1994) (discussing the secondary victimization that can occur to those reporting hate crimes); Teresa Eileen Kibelstis, Note, *Preventing Violence Against Gay Men and Lesbians: Should Enhanced Penalties at Sentencing Extend to Bias Crimes Based on Victims’ Sexual Orientation?*, 9 NOTRE DAME J.L. ETHICS & PUB. POL’Y 309, 316-21 (1995) (examining reasons why bias crime is underreported).

19. See PERRY, *supra* note 15, at 12; see also Kevin T. Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview*, in HATE CRIMES: CONFRONTING VIOLENCE AGAINST LESBIANS AND GAY MEN 19, 31-32 (Gregory M. Herek & Kevin T. Berrill eds., 1992) (reporting that in various studies, “the median proportion of lesbians and gay men who reported some form of victimization by police because of their sexual orientation was 20%”). One study of anti-gay violence devotes an entire appendix to the topic of the “police as perpetrators of anti-gay/lesbian violence.” See COMSTOCK, *supra* note 14, app. C at 152-62.

20. See Kibelstis, *supra* note 18, at 322-25.

21. See, e.g., PERRY, *supra* note 15, at 12 (citing, inter alia, the Abner Louima case); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 ASIAN L.J. 69, 75-76 (2000):

[T]here is widespread underreporting of hate crimes against Asian Americans because of linguistic barriers between victims and police and the lack of bilingual law enforcement personnel, a lack of knowledge on the part of Asian Americans regarding hate crime laws and civil rights protections, a mistrust of the police and

Third, assuming a hate crime covered by HCSA is reported, the police must nonetheless characterize the crime as such.²² There are a number of reasons that the police might not do so.²³ For starters, a state might have a legal regime that covers hate crimes in different ways than HCSA, so the police might want to avoid the complexities involved even in merely reporting a hate crime.²⁴ Categorizing a crime as a hate crime also requires additional investigation to prove the hate-based nature of the crime.²⁵ Such an investigation might not be one that the police are well-trained to undertake²⁶ nor one upon which they particularly want to expend resources.²⁷ Moreover, police officers

thus a reluctance to report hate crimes, and finally, shame or embarrassment of being a victim.

22. JEANNINE BELL, *POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIME* 12 (2002).

23. For rich discussions, see generally *id.* (describing the process and implications of hate crime investigations); Elizabeth A. Boyd, Richard A. Berk & Karl M. Hamner, "Motivated By Hatred or Prejudice": *Categorization of Hate-Motivated Crimes in Two Police Divisions*, 30 *LAW & SOC'Y REV.* 819 (1996) (examining "the situated decisionmaking practices of police detectives" in the context of hate crimes).

24. On the variations between federal and state laws, and among state laws, see JACOBS & POTTER, *supra* note 7, at 41-42; LAWRENCE, *supra* note 9, at 178-89. These variations among legal regimes caution against comparing HCSA data across jurisdictions. See *infra* text accompanying note 32.

25. See BELL, *supra* note 22, at 48-82.

26. See H.R. 188, 105th Cong. § 1(6) (1997) (finding that "Federal, State, and local law enforcement officials have indicated that training in the area of bias crimes is inconsistent and officials repeatedly cite the need for uniform training of officers in the investigation and prevention of bias crime"); Naftali Bendavid, *U.S. Seeks to Widen Fight on Hate Crimes: Justice Officials Cite Underreporting*, CHI. TRIB., Jan. 9, 1998, at 4 (explaining that some "police are reluctant to report hate crimes because they dislike trying to determine whether a crime was motivated by bigotry or some other factor").

27. It is worth noting in this context that hate crimes constitute a very small percentage of all crimes, about .07%, or seven of every 10,000 crimes, nationwide. According to the FBI, there were about 11,606,000 crimes in the United States in 2000. See U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2002*, at 183 (2003), available at <http://www.census.gov/prod/2003pubs/02statab/pop.pdf>. There were 8,063 total hate crimes. See Fed. Bureau Investigation, *Uniform Crime Reports: Hate Crime Statistics 5*, available at http://www.fbi.gov/ucr/cius_00/hate00.pdf. For commentary on these figures, see also John S. Baker, Jr., *United States v. Morrison and Other Arguments Against Federal "Hate Crime" Legislation*, 80 *B.U. L. REV.* 1191, 1202 (2000) (charting percentages). This fact presents another reason police may be reluctant to expend substantial resources on such crimes. Proponents of increased attention to hate crimes argue that such crimes have collateral consequences that make a bias-related burglary, for example, more socially problematic than a garden-variety burglary. See, e.g., 135 *CONG. REC.* S2378 (daily ed. Mar. 8, 1989) (statement of Sen. Simon) (recognizing "a unique emotional and psychological impact on the victim and the community" that are the result of hate crimes (quoting Jess N. Hordes & Michael Lieberman, *Time to Target Hate Crimes*, WASH. JEWISH WK. Mar. 2, 1989)); Frederick M. Lawrence, *The Punishment of Hate: Toward a Normative Theory of Bias-Motivated Crimes*, 93 *MICH. L. REV.* 320, 342-48 (1994). In this sense, the small percentage of bias crimes may understate the actual problem they present. Nonetheless,

might be hesitant to acknowledge the existence of bias, in addition to crime, in their precincts. Fourth, even if a hate crime is covered, reported, and classified by the local law enforcement agency, it must nonetheless be reported to the FBI to show up in the *UCR*.²⁸ HCSA does not require local law enforcement officers to report data to the FBI nor provide funding to assist in the effort.²⁹ Local jurisdictions have been lax in doing so, perhaps, again, for either resource or reputational reasons.³⁰ Even where jurisdictions have reported to HCSA, the data they report tend to be significantly less than the data collected by advocacy groups in the same geographical location for the same years.³¹

All of these problems with HCSA limit the usefulness of the resulting *UCR* data. Researchers cannot, for example, make reliable

critics maintain that the relatively small number of bias crimes undermines the claim that there is an epidemic of such hatred. See, e.g., Baker, *supra*, at 1201-02; James B. Jacobs & Jessica S. Henry, *The Social Construction of a Hate Crime Epidemic*, 86 J. CRIM. L. & CRIMINOLOGY 366, 386 (1996) (asking “Does it make sense to say that 4,588 reported hate crimes constitutes an epidemic when more than 14,872,883 index crimes were reported to the FBI in 1991?”); Christopher Chorba, Note, *The Danger of Federalizing Hate Crimes: Congressional Misconceptions and the Unintended Consequences of the Hate Crimes Prevention Act*, 87 VA. L. REV. 319, 339-43 (2001).

28. See Jacobs & Henry, *supra* note 27, at 382.

29. See Chorba, *supra* note 27, at 339.

30. See JACOBS & POTTER, *supra* note 7, at 56-59 (providing data on the low numbers of reporting states, especially in the HCSA’s early years). Professor Frederick Lawrence makes the point nicely by pointing out that for several years no hate crimes at all were reported from Alabama and Mississippi. See Symposium, *Civil Rights Law in Transition: The Forty-Fifth Anniversary of the New York City Commission on Human Rights*, 27 FORD. URB. L.J. 1105, 1178 (2000) (statement of Professor Frederick Lawrence):

The incident levels, measured by the Federal Government under the Hate Crime Statistics Act, tell us anywhere from 8,000 to 9,000 hate crimes per year. Alabama and Mississippi each reported zero hate crimes. Now, it could be they had a very good year in Alabama and Mississippi; that is possible. I have another theory, and that suggests that those numbers are conservative, if not low.

31. See, e.g., PERRY, *supra* note 15, at 13 (documenting that advocacy group numbers are generally twice that of the UCR data); NAT’L COALITION OF ANTI-VIOLENCE PROGRAMS, ANTI-LESBIAN, GAY, BISEXUAL AND TRANSGENDER VIOLENCE IN 2001, at 7 (prelim. ed. 2002), available at <http://www.lambda.org/2001ncavpbiasrpt.pdf>:

[T]he FBI identified just two anti-LGBT murders nationally in 2000 . . . while in the same year, in a much smaller portion of the country, [this report] documented 17, including five in New York City alone. During the same period, the FBI tracked a mere 1,486 anti-LGBT incidents nationally, as opposed to the 2,135 incidents reported [to these groups] in twelve locations.

One commentator suggests that HCSA data might be over-reported, due to false hate crime reports. See Chorba, *supra* note 27, at 319, 338 n.90; cf. Tim Bakken, *The Effects of Hate Crimes Legislation: Unproven Benefits and Unintended Consequences*, 5 INT’L J. DISCRIMINATION & L. 231, 234 (2002) (arguing that hate crimes “reports” are not synonymous with hate “crimes” since the latter must be proven, not just reported).

estimates of temporal trends nor easily compare different jurisdictions to one another.³² Despite these limitations, the *UCR* data are “the most comprehensive and representative data currently available.”³³ To date, scholars have undertaken only a few limited analyses of the data.³⁴ Most often, the data are used simply to support the recurring claim that racial hate crimes constitute the largest number of such crimes each year, followed by religious hate crimes and sexual orientation hate crimes. The FBI,³⁵ advocates,³⁶ law professors,³⁷ law students,³⁸ and the

32. See, e.g., FED. BUREAU OF INVESTIGATION, HATE CRIME STATISTICS: 1998, at 4 (1999) (stating that “[c]aution should be exercised in attempting direct comparisons of hate crime totals among agencies due to the many variables affecting the volume and type of crime from place to place”), available at <http://www.fbi.gov/ucr/98hate.pdf>; LAWRENCE, *supra* note 9, at 23; Baker, *supra* note 27, at 1200 n.52.

33. Chorba, *supra* note 27, at 339; accord Baker, *supra* note 27, at 1200 n.52 (stating that “[d]espite the flawed nature of the FBI statistics, they are still the most comprehensive available”).

34. Professor Frederick Lawrence has used the available data to investigate the so-called “disproportionate-enforcement critique,” namely, the argument that bias crime laws are more likely to be enforced against, rather than to help, minorities; while wary of the available data, Lawrence uses them to demonstrate the lack of any empirical bases for the disproportionate-enforcement critique. See Frederick M. Lawrence, *Enforcing Bias-Crime Laws Without Bias: Evaluating the Disproportionate-Enforcement Critique*, 66 LAW & CONTEMP. PROBS. 49, 49-69 (2003). Several other authors have used available data in an attempt to demonstrate that hate crimes do not constitute a significant social problem, see generally Baker, *supra* note 27; Chorba, *supra* note 27, or are not on the rise, see Bakken, *supra* note 31, at 238-39. Several lawyers have made limited use of the data in a legal brief to demonstrate the relatively high level of anti-gay violence. Jennifer C. Pizer & Doreena P. Wong, *Arresting “The Plague of Violence”: California’s Unruh Act Requires School Officials to Act Against Anti-Gay Peer Abuse*, 12 STAN. L. & POL’Y REV. 63, 81 n.90, 85 app. B (2001).

35. See, e.g., FED. BUREAU OF INVESTIGATION, *supra* note 10, at i (stating that from 1992-2000, “incidents motivated by racial bias comprised the largest portion of reported hate crime incidents followed by incidents motivated by a religious bias and those motivated by bias against sexual orientation”).

36. See, e.g., Corrine Yu, *FBI Hate Crimes Data Released*, at <http://www.civilrights.org/issues/hate/details.cfm?id=10532> (Nov. 4, 2002) (reporting that “in 2001, . . . [r]acial bias again represented the largest percentage of bias-motivated incidents (44.9%), followed by Ethnic/National Origin Bias (21.6%), Religious Bias (18.8%), Sexual Orientation Bias (14.3%), and Disability Bias (0.3%)”).

37. See, e.g., PERRY, *supra* note 15, at 16 (listing, in descending order, race, religion, and sexual orientation); WANG, *supra* note 7, § 1:2, at 1-4 to 1-6 (same); David M. Skover & Kellye Y. Testy, *LesBiGay Identity as Commodity*, 90 CAL. L. REV. 223, 230 n.32 (2002) (stating that “[f]or 1999, hate crimes based on sexual orientation ranked third as a category, following race and religion”).

38. See, e.g., Murad Kalam, *Hate Crime Prevention*, 37 HARV. J. ON LEGIS. 593, 595 (2000) (“Although race and religious bias remain the principal motivations of American hate crimes, many hate crimes are also based on the victim’s sexual orientation.” (footnotes omitted)); Scott Kelly, Note, *Scouts’ (Dis)Honor: The Supreme Court Allows the Boy Scouts of America to Discriminate Against Homosexuals in Boy Scouts of America v. Dale*, 39 HOUS. L. REV. 243, 267 (2002) (stating that “FBI statistics indicate that hate crimes motivated

media³⁹ all report this. These reports tend not to break down the categories into particular groups,⁴⁰ nor adjust reporting data for population size,⁴¹ nor probe distinctions between property and personal crimes.

The specific purpose of this study is to examine the HCSA data, and in turn the conventional story told about them, with more attention to these nuances.

III. METHODOLOGY

All of the data in this study, unless otherwise noted, are taken from the FBI's annual *UCR*. These data supply the number of total

by sexual orientation ranked third in number of reported incidences for the year 2000, behind only those motivated by race and religion”).

39. See, e.g., *Most Hate Crimes Racial*, *FBI Reports*, JET, Dec. 6, 1999, at 12, available at 1999 WL 9748230 (stating that roughly 57% of the hate crimes reported in 1998 were motivated by racial bias, roughly 18% of the crimes were motivated by religious bias, roughly 16% were motivated by sexual orientation bias, approximately 9% were motivated by ethnic or national origin bias, and less than 1% were motivated by disability bias).

40. To be fair, a few commentators have pierced the neutral categories to recognize this point. See, e.g., Louren Oliveros, Comment, *Sacrificing People, Protecting Hate: An Analysis of Anti-Militia Statutes and the Incitement to Violence Exception to Freedom of Speech as Legal Protections for Members of Groups Targeted by Hate-Motivated Violence*, 30 N.M. L. REV. 253, 282 (2000) (“As a result of the Hate Crime Statistics Act, the FBI Uniform Crime Reporting system has identified people of color, Jewish people, and homosexuals as being disproportionately impacted or injured by hate-motivated incidents.”); *Reported Hate Crimes on the Rise: Blacks Are Targeted Most, Records Show*, WASH. POST, Aug. 7, 1999, at A10 (reporting that “[a] review of federal crime records indicates that from 1991 to 1997, 40 percent of hate crimes were committed against African-Americans, 15 to 20 percent involved religious targets, 9 to 14 percent gays, 5 percent Asians or Latinos, and less than 1 percent Native Americans or the disabled”).

Nonetheless, those that do pierce the neutral anti-discrimination categories still fail to make more nuanced analyses adjusting for population density. At best, commentators make mere gestures in this direction. See, e.g., Sally J. Greenberg, *The Massachusetts Hate Crime Reporting Act of 1990: Great Expectations Yet Unfulfilled?*, 31 NEW ENG. L. REV. 103, 143-44 (1996) (writing of Pennsylvania statistics that “African-Americans are the most frequently targeted racial group (46%), Latinos, the most victimized ethnic group (8%), and Jews, the most targeted religious group (6%). These numbers far exceed the victim groups’ proportion of the population, which are 9%, 2%, and 3% respectively” (footnotes omitted)).

41. This mistake can lead to completely misleading statements. For example, a newspaper article reported that approximately equal numbers of blacks and whites are victims of hate crimes, without acknowledging that there are about seven times as many whites as blacks in the United States. See Maureen O’Donnell, *Race Leading Factor in Hate Crimes Increase*, CHI. SUN-TIMES, Mar. 12, 1995, at 11. What this means is that the equal number of reports reflects a per capita incidence of hate crime seven times greater for blacks than whites. (My own analysis shows that the figure is about twenty-one, not seven, times as great. See *infra* tbl. 6.)

reports of hate crimes, as well as the numbers broken down by group and by type of crime (personal vs. property).⁴²

The only complicated methodological issue in analyzing this data arose from my project of adjusting the *UCR* data for relative population sizes. To do so, I needed to take the *UCR* data as a numerator for each subgroup (blacks, Jewish people, gay people, etc.) and divide that data by the total population of that group. The total racial populations in the Article are taken from the 2000 Census. The rest of the population data are remarkably more problematic. The total Jewish population is taken from the U.S. Census Bureau's *Statistical Abstract of the United States 2000*, which sounds like a good source, but actually only provides the number of religious adherents reported by the religious groups themselves.⁴³ There are obvious problems with such a number—there is no stable concept of what constitutes a Jewish person; the religious groups probably have incentives to overreport their numbers; what gets reported as a member may vary significantly from religion to religion—yet no real alternative is available. This methodological limitation also infects the data on Muslim Americans.⁴⁴

A similar, though perhaps even trickier, methodological hurdle came in estimating the total number of gay people in the population to utilize as the denominator for the sexual orientation hate crime reports. This is complicated because there is no precise way of measuring the gay population. Sexual orientation is not visually identifiable. Nor is there even one meaning for sexual orientation: an individual's sexual orientation can be established by reference to desires, behaviors, identities, or combinations of these, and all three can fluctuate over the course of an individual's life. Yet the method of the study required some meaningful way around these epistemological and practical counting problems.

The U.S. Census is not helpful in identifying gay people as it does not ask respondents their sexual orientation. Researchers who study sexuality, however, often *do* ask people to identify their sexual

42. The *UCR* distinguishes hate crime “incidents” from hate crime “offenses,” noting that “[c]riminal incidents can involve more than one offense, victim, and/or offender.” FED. BUREAU OF INVESTIGATION, *supra* note 10, at 3. Some of the analysis that follows uses “incident” data while others use “offenses” data, due to the way the FBI reports available information. The data presented here are clearly labeled as to which counting mechanism is employed.

43. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2000, at 61 (2001). The Jewish population of 6,041,000 is from the American Jewish Committee. See *id.* at 61 n.3 (citing AMERICAN JEWISH COMMITTEE, AMERICAN JEWISH YEARBOOK 1999, at 214 (David Singer & Ruth R. Seldin eds., 1999)).

44. This is discussed in more detail in the text accompanying notes 59-64.

practices and identities. The most widely accepted study of sexual practices in the United States is the National Health and Social Life Survey (NHSLs).⁴⁵ The NHSLs found that 2.8% of the male, and 1.4% of the female, population identify themselves as gay, lesbian, or bisexual.⁴⁶ This amounts to nearly four million men who identify as gay and two million women who identify as lesbians—or six million gay people—in the United States; this is 2.1% of the total population (Table 1).

Table 1
Estimate of Total Gay Population
in the United States

	MALES	FEMALES	TOTAL
TOTAL US POPULATION	138,053,563	143,368,343	281,421,906
GAY-IDENTIFIED	2.8% all males= 3,865,500	1.4% all females= 2,007,157	5,872,657

45. The NHSLs is considered methodologically strong for a number of reasons: it was conducted by highly-regarded researchers; it carefully developed a random and statistically-significant data set; and it carefully trained its researchers about how to question people concerning their sexual practices. All these aspects of the study are explained in its published report. EDWARD O. LAUMANN, JOHN H. GAGNON, ROBERT T. MICHAEL & STUART MICHAELS, *THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES* 3-73 (1994).

The primary shortcoming of the NHSLs data is that the study is now more than a decade old. Given advances in gay rights during the past decade, these numbers from the early 1990s possibly underreport the percentages of people who would today identify themselves as gay. Nonetheless, it is unlikely that this would have dramatic consequences for the analysis done here. *See* discussion *infra* note 46.

46. The NHSLs identified three components of sexuality: sexual desires, sexual behaviors, and sexual identities. The Survey found that while about 3.8% of the women and 7.1% of the men had had at least one same-sex sexual experience since puberty, only 1.4% of females and 2.8% of males identify themselves as gay. LAUMANN, GAGNON, MICHAEL & MICHAELS, *supra* note 45, at 293, 297.

These numbers help explain why the possible increase in gay openness during the decade since the NHSLs study was conducted would be unlikely to affect significantly the conclusions reached here. Roughly 40% of the men and women who have had some sexual experience with members of their own sex identify themselves as gay. Even if that number went up 50% (which seems unlikely)—so that 60% of the men and women with sexual experiences would identify themselves as gay—openly gay people would still constitute a small percentage of the total population: about 2.3% of the female population and 4.3% of the male population. This would change my conclusions only slightly. *See* discussion *infra* Part VI. Of course, if the claim is that gay openness in the past decade has encouraged more people to engage in same-sex sex, as well as to come out, that would alter the analysis in this paragraph; it would still, I suspect, not alter my ultimate conclusions significantly.

In calculating population adjusted reporting rates for the national sexual orientation data, I used this number—5,872,657—as the total population of gay people in the United States.

It is true that a victim does not have to *be* gay (or Jewish) to be the target of an anti-gay (or anti-Semitic) hate crime, whereas it is probably more likely that the victim of an anti-black hate crime would identify him- or herself as black. Still, it seems appropriate to estimate the level of anti-gay hate crimes with reference to some estimate of the gay population. Although this does not perfectly capture all of the individuals who might be at risk of such attacks, it does approximate the size of the group meant to be targeted, in that hate crimes, as noted, are conceptualized as crimes with group-based ramifications.⁴⁷

Using the data collected according to the methods described above, I generated “Population-Adjusted [Hate Crime] Reporting Rates,” or PARRs, on a national basis. I calculated PARRs for 1996-2001, the years for which the most complete data exist. The 1996 report marked the beginning of more widespread reporting by the states to the FBI, and the 2001 report was the most recent report published.

Within each category, I averaged the available data to generate annual complaint rates. I did this because I was interested in taking a snapshot and because the data did not support longitudinal analysis. Accordingly, I aggregated the number of hate crime reports for all six years covered in the study and divided that by six to come up with average annual complaint rates.

I then divided these annual complaint rates by the presence of each group in the population to yield PARRs. As set forth below, the PARRs are the number of hate crimes reported for each 100,000 group members in the population. The group-based PARR is the bottom-line figure that is the key to the analysis that follows.

One further aspect of this methodology should be clarified at the outset. Calculating PARRs for “gay people,” “Jewish people,” “blacks,” or “Hispanics” can be misleading because it obscures the extent to which these groups overlap.⁴⁸ I have used the formulations as shorthands: “gay people” as those reporting anti-gay violence, blacks reporting racist violence, etc. Of course, anti-gay hate crimes are

47. See Lawrence, *supra* note 27, at 342-49.

48. United States Census data demonstrate that the gay community’s racial makeup mirrors almost precisely that of the total adult population. See William B. Rubenstein, R. Bradley Sears & Robert J. Sockloskie, *Some Demographic Characteristics of the Gay Community in the United States* 16 (2003), at <http://www.law.ucla.edu/~erg/gaydata.html>.

reported by people of color and whites,⁴⁹ just as racist hate crimes are reported by gay and straight people of color. Further, gay people of color, or perhaps gay Jews, might face particular types of hate crimes not easily measured by the single categories offered in HCSA.⁵⁰

In sum, my hypothesis in undertaking the research was that the conventional story—race, religion, sexual orientation, in that order—could be scrutinized, and perhaps upset, through analysis of the PARRs of particularly targeted subgroups, as opposed to the category-wide raw data upon which it is based.

IV. FINDINGS

Empirical analysis of the federal government's hate crimes data demonstrates that gay people report hate crimes more frequently than any other group, followed by Jewish people and African-Americans. These three groups report hate crimes at rates significantly greater than any other group.⁵¹ Among these high-reporting groups, gay people report *person-based* hate crimes at heightened rates.

A. *Piercing the Neutral Categories*

Since at least 1996, the hate crimes data reported in the *UCR* have been remarkably consistent (Table 2).

Table 2
Annual Hate Crime Reports (Incidents)
by Category

	Race	Religion	Sexual Orientation
1996	5,396	1,401	1,016
1997	4,710	1,385	1,102
1998	4,321	1,390	1,260

49. For example, the National Coalition of Anti-Violence Programs reported that, in 2001, about 16% of the victims of anti-gay hate crimes were Latina/o and 15% were African-American in the cities it surveyed. See NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS, *supra* note 31, at 19-20. Some studies have also suggested that gay people of color are at greater risk of anti-gay hate crimes than are white gay people. See, e.g., COMSTOCK, *supra* note 14, at 40-44; Berrill, *supra* note 19, at 29.

50. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1299 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 598-601, 604 (1990).

51. Or did, until September 11, 2001. See discussion *infra* Part V.

	Race	Religion	Sexual Orientation
1999	4,295	1,411	1,317
2000	4,337	1,472	1,299
2001	4,367	1,828	1,393

There are, annually, about 4,600 racial hate crimes reported, 1,400 religious hate crimes,⁵² and 1,250 sexual orientation hate crimes. These data provide support for the conventional story—that racial hate crimes are the most reported in the United States, followed (far behind) by religious hate crimes and sexual orientation hate crimes.

My first objection to such reports is that they obscure the extent to which specific subgroups within each category bear the significant brunt of these attacks. The racial hate crimes are not randomly distributed among various racial groups, nor are the religious or sexual orientation hate crimes (Table 3).

Table 3
Percentage of Annual Hate Crime Reports (Incidents)
by Specific Subgroup

	Percentage of all racial hate crimes reported by blacks	Percentage of all religious hate crimes reported by Jewish people	Percentage of all sexual orientation hate crimes reported by gay people
1996	68%	79%	99%
1997	66%	78%	99%
1998	67%	78%	99%
1999	69%	79%	99%
2000	66%	75%	98%
2001	66%	57% ⁵³	99%

Roughly two-thirds of the racially motivated hate crimes are reported by blacks. Blacks alone (on average) report more than 3,000 racially motivated hate crimes each year. More than 75% of the

52. There was a significant spike in religion-based hate crimes after September 11, 2001, as Muslims throughout the country reported hate-related incidents. This spike makes the annual average closer to 1,500, though it is not characteristic of the rest of the period. This spike also doubled the number of ethnic-based hate crimes (anti-Arab crimes), making that category the second largest in raw numbers. *See, e.g.*, FED. BUREAU OF INVESTIGATION, *supra* note 10, at i. For a full discussion of these events, *see infra* Part V.

53. The Jewish percentage dropped due to the large number of anti-Muslim hate crimes after September 11, 2001. *See* discussion *supra* note 52; discussion *infra* Part V.

religiously motivated hate crimes are reported by Jewish people, meaning that in an average year, about 1,100 incidents of anti-Semitic hate are reported. And about 99% of the sexual orientation hate crimes are reported each year by gay people, amounting to more than 1,200 of these types of incidents nationwide. By focusing in on the particular subgroups alone, one can see that hate crimes reported by gay people actually exceed in raw numbers those reported by Jewish people, suggesting, already, a subtle shifting of the conventional category ordering (Table 4).

Table 4
Average Annual Hate Crime Reports (Incidents)
by Subgroup

Black	Gay	Jewish
3,073	1,216	1,090

Yet even a cursory glance at these numbers raises a further concern: while blacks represent about 12% of the population, Jewish people and gay people are far less present in the population. The data need to be placed in the context of each group's population size.

B. Adjusting for Population Size

Consider how much further the conventional story shifts when the data are adjusted for population size. While blacks report about three times as many hate crimes each year as do Jewish people and gay people, African-Americans constitute about six times as large a portion of the general population. Population-adjusted data show that about nine African-Americans per 100,000 report a hate crime each year, compared with about eighteen Jewish people and twenty gay people (Table 5). Placed in this population-adjusted perspective, gay people report the greatest number of hate crimes of any group in the population.

Table 5
Population-Adjusted Reporting Rates (PARR)
by Subgroup

	AVG. ANNUAL INCIDENTS (1996-2001)	SUBGROUP POPULATION	PARR (reports per 100,000)
Black	3,073	34,658,190	8.87
Jewish	1,090	6,041,000	18.04
Gay	1,216	5,872,657	20.71

This population-adjusted form of analysis not only enables cross-category analysis, it also helps identify relative risks within a given category. Thus, although blacks report lower rates of hate crimes than do Jewish people or gay people, they report being the victims of racially motivated violence at far higher rates than any other racial group in the United States. This again may not be immediately apparent from the raw data: while blacks report about 3,000 hate crimes per year, whites report about 1,000, Hispanics about 500 (ethnicity-based hate crimes), and Asians and Pacific Islanders about 300 hate crimes. Thus, the raw data suggest that anti-white hate crimes are the second most frequent (about one-third the frequency of anti-black hate crimes), anti-Hispanic hate crimes are about one-sixth as frequent as hate crimes against blacks, and anti-Asian hate crimes about one-tenth as frequent. But when corrected for relative population size, the relationships change dramatically (Table 6).

Table 6
Population-Adjusted Reporting Rates (PARR)
by Racial Subgroup

	AVG. ANNUAL INCIDENTS (1996-2001)	SUBGROUP POPULATION	PARR (reports per 100,000)
Black	3,073	34,657,190	8.87
Asian- Pacific Islander	309	10,641,833	2.90
Hispanic	526	35,505,818	1.48
White	906	211,460,626	.43

Blacks report hate crimes about three times more often than Asian-Americans, about six times more often than Hispanics, and nearly 21 times more frequently than whites.

In sum, adjusting for population size suggests that gay people and Jewish people report far higher rates of hate crimes (around 20 reports per 100,000 people) than any other group. Among people of color, blacks report at far higher rates—close to 9 incidents per 100,000—than other groups, indeed about three times as high as the closest other racial group.⁵⁴

C. *Distinguishing Property Crimes from Crimes Against People*

A third refinement of the data considers the prevalence of different types of hate crimes by group. The *UCR* distinguishes between crimes against property and crimes against persons. Crimes against persons include murder and non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, and other. Crimes against property include robbery, burglary, larceny-theft, motor vehicle theft, arson, destruction/damage/vandalism, and other.

The raw data themselves present an interesting story (Table 7).

Table 7
Hate Crime Reports by Crime Type

	AVG. ANNUAL OFFENSES ⁵⁵ (1996-2001)	PROPERTY	PERSON
Anti-Black	3,716	1,023 (28%)	2,693 (72%)
Anti-Jewish	1,160	715 (62%)	445 (38%)
Anti-Gay	1,416	374 (26%)	1,042 (74%)

54. The post-September 11 data discussed in Part V suggest that *before* September 11, the regular annual reporting rate for Muslims was probably about 0.68 and for Arabs somewhere between 2.28-5.26. *See infra* tbls. 11, 13. The latter number suggests that Arabs reported hate crimes before September 11 at rates higher than Hispanics, somewhat similar to Asian-Americans, but less frequently than African-Americans. As discussed in Part V, however, this is all very speculative because the HCSA data do not identify anti-Arab attacks specifically and because estimates of the Arab population vary widely. *See discussion infra* Part V.B.

55. The numbers in this table are slightly different than in earlier tables because the crimes in this table are based on FBI data reported by “offense,” while the earlier tables were based on data reported by “incidents.” *See discussion supra* note 42.

For both blacks and gay people, about three-fourths of reported hate crimes involve crimes against people, not property.⁵⁶ For Jewish victims, the numbers flip—about two-thirds of hate crimes against Jewish people are against property, not people.

While this makes Jewish places (largely synagogues and cemeteries) likely victims of property-related hate crimes, it simultaneously significantly increases the disproportionate rate at which gay people find themselves reporting hate crimes against the person. Adjusting the third column above—crimes against the person—for population size, yields the per capita data (Table 8).

Table 8
Population-Adjusted Reporting Rates (PARR) of
Person-Targeted Hate Crimes by Subgroup

	AVG. ANNUAL PERSON- BASED OFFENSES (1996-2001)	SUB-GROUP POPULATION	PARR (reports per 100,000)
Black	2,693	34,658,190	7.77
Jewish	445	6,041,000	7.37
Gay	1,042	5,872,657	17.74

Table 8 demonstrates the remarkable rate of violence against their persons that gay people report. Extracting the property-related crimes shifts Jewish people closer to African-Americans in total reporting, leaving gay people the extraordinary outliers. Close to 18 gay people in 100,000 report person-related hate crimes, while blacks and Jews, the next most victimized groups, report between seven and eight such hate crimes per 100,000. In short, gay people are about two and one-half times more likely to report a hate-based attack on their selves than are members of other minority groups—and of course many, many times more likely than the general population.⁵⁷ These data seem

56. Gay people may actually be at high risk of property related crimes, but ones that may not be classified as hate crimes or that do not get reported. See discussion *supra* note 16. See generally Wang, *supra* note 16, at 883-92 (examining hate-motivated property crimes committed against gay people).

57. Even if a reader believes that my estimate of the gay population is low, see discussion *infra* Part VI, it is interesting to note that doubling that population still leaves gay people—at about 8.87 reports per 100,000—with the highest per capita rate of personal hate crimes.

consistent with other demonstrations that crimes against gay persons are particularly virulent in nature, as well as frequent in number.⁵⁸

It is possible that property-based hate crimes (e.g., arson) can be more virulent than some person-based hate crimes (e.g., some instances of intimidation). Yet it is impossible to tell from the reported data whether the person-based hate crimes gay people report are of the more violent (murder, manslaughter, assault) or less violent (intimidation) type, nor whether the property-based hate crimes reported by other groups are violent arsons, or less immediately violent incidents, such as graffiti. Therefore my assumption in this Part—that the person-based hate crimes gay people report are more virulent than property-based hate crimes—is just that, an assumption. While it may call for further empirical investigation, it seems, generally speaking, nonetheless supportable and worthy of note.

D. *Placing the Risks In Context*

A final measure that brings home the inordinate risks of hate crimes faced by gay people, Jewish people, and African-Americans is to consider the rates at which individuals in these groups report hate crimes compared to the reporting rates of the rest of the population. Such a calculation can provide a measure that, for example, gay people are “x” times more likely to report a hate crime than non-gay people.

To take this measure, I simply subtracted from the total average annual number of hate crimes (1996-2001) the average annual number of hate crimes faced by a particular group. I then expressed the hate crimes of the subgroup on a per capita basis—and compared it to the per capita risks faced by the remaining population (Table 9).

Table 9
Reporting Rates of Subgroups
Compared to Rest of Population

		Group Reporting Hate Crime		
		Gay	Jewish	Black
Group	Avg. Annual Group Incidents (1996-2001)	1,216	1,090	3,073
	Population	5,872,657	6,041,000	34,658,190
	Group PARR	20.70	18.04	8.87

58. See, e.g., Wang, *supra* note 16, at 869 (“[A]nti-gay attacks often involve extreme brutality, including ‘torture, cutting, mutilation, and beating.’”); Winer, *supra* note 18, at 410-14.

Reference	Avg. Annual Reference Incidents (1996-2001)	7,149	7,276	5,293
	Population Not in Group	275,549,249	275,380,906	246,763,716
	Non-Group PARR	2.59	2.64	2.14
Increased Risk		7.99	6.83	4.14

Table 9 shows that about 21 gay people per 100,000 report a hate crime annually compared to about 2.6 non-gay people; gay people are therefore about eight times more likely to report a hate crime than are non-gay persons. Similar computations reveal that Jewish people are about seven times more likely than non-Jews to report a hate crime, while blacks are more than four times more likely than all non-blacks to do so. Comparing these subgroup reporting rates to those of the general population yet again emphasizes the heightened level at which gay people report hate crimes.

The conventional story—race, religion, sexual orientation—is refined, indeed reversed, through a more careful empirical analysis. Gay people report hate crimes at per capita rates more frequently than any group in the population, followed by Jewish people and African-Americans. These three subgroups report hate crimes at rates far greater than any other group in the country.

V. POST-SEPTEMBER 11 DATA

Since September 11, 2001, the media have reported on a rash of hate-related crimes targeting Muslims or Arabs.⁵⁹ While there are many difficulties in analyzing the prevalence of anti-Arab and anti-Islamic hate crimes both pre- and post-September 11, one fact is certain: hate crime reports by these groups increased at astonishing rates after September 11.⁶⁰ Despite a host of analytical hurdles described below, it is nonetheless helpful in comprehending the current media reports to attempt to place this rash of hate crimes in some larger perspective. The analysis provided so far in this Article assists in two regards: (1) it introduces the concept of adjusting reporting data for population size; and, (2) by providing data on other groups, it supplies a context in which to consider the population-adjusted

59. I use the words "Islamic" and "Muslim" interchangeably to refer to a religious identity; I use the word "Arab" to refer to an ethnic identity and/or national origin.

60. See FED. BUREAU OF INVESTIGATION, *supra* note 10, at i.

reporting rates of Islamic and Arab-Americans (pre- and) post-September 11.

A. Anti-Islamic/Muslim Hate Crimes

Anti-Muslim hate crimes are somewhat simpler to measure (than anti-Arab hate crimes) because the HCSA reports of religiously based hate crimes list anti-Islamic as a specific category. Accordingly, there are reported data on the quantity of such attacks (Table 10). These data demonstrate a consistent pattern of about 27 reports of such attacks per year throughout the United States, until 2001, when the number jumps to 481, or about 18 times as many reports as the previous annual average. It is likely that the vast majority of those nearly 500 reports came in the last four months of the year (i.e., after September 11).

Table 10
Annual Anti-Islamic Hate Crime Reports

1996	27
1997	28
1998	21
1999	32
2000	28
2001	481

To place this data in the context of the subgroup's population requires an estimate of the Muslim population. This proves surprisingly difficult for several reasons, especially if the point is to tie the data to September 11. First, the Muslim population in the United States consists of many Muslims (perhaps even a majority) without any link to Arabic countries. Even if we accept this hitch in the relevance of the population size, a second problem is that there is no apparent consensus on that population size. A highly respected scholarly analysis places the number somewhere between 1,000,000 and 3,000,000.⁶¹ This analysis appears so respected that the U.S. Census Bureau uses it in the *Statistical Abstract of the United States*

61. Barry A. Kosmin & Egon Mayer, *Profile of the U.S. Muslim Population*, AMERICAN RELIGIOUS IDENTIFICATION SURVEY 2001, at http://www.gc.cuny.edu/studies/aris_part_two.htm.

2000.⁶² Yet, following September 11, the U.S. State Department issued a fact sheet estimating the number of American Muslims at 6,000,000, with ranges from 4,000,000 to 8,000,000.⁶³ A third respected source uses the number 4,175,000.⁶⁴ The different population estimates create different PARRs for anti-Muslim hate crimes, both pre- and post-2001 (Table 11).

Table 11
Population-Adjusted Reporting Rates (PARR)
Anti-Islamic Hate Crimes

	Pre-2001 PARR (Reports per 100,000)	2001 PARR (Reports per 100,000)
2 million Muslims	1.36	24.05
3 million Muslims	.91	16.03
4 million Muslims	.68	12.03
5 million Muslims	.54	9.62
6 million Muslims	.45	8.02

What is evident from this data is that anti-Islamic hate crimes were a relatively unreported form of hate crime before September 11, but since then, depending upon the size of the Muslim population, they could be among the most prevalent forms of hate crimes in the country. Assuming a midrange estimate of the Islamic population (4,000,000), the PARR of 12.03 places such crimes somewhere between the reporting rate of African-Americans (8.87) and the reporting rates of Jewish people (18.04) and gay people (20.70).

But hate crimes recorded as being anti-Islamic tell only part of the story. The other part of the story is hate crimes reported by Arab-Americans and other Arabs.

B. Anti-Arab Hate Crimes

Counting anti-Arab hate crimes presents data problems not only with a denominator (how many Arab-Americans are there?), but with

62. See U.S. CENSUS BUREAU, *supra* note 43, at 61 n.2. The 2000 *Abstract* uses the 1990 work of these researchers.

63. Int'l Information Programs, U.S. Dep't of State, *Fact Sheet: Islam in the United States* (citing M.M. Ali, *Muslims in America: The Nation's Fastest Growing Religion*, WASH. REP. ON MIDDLE E. AFF., May-June 1996, at 13), available at <http://www.islamfortoday.com/historyusa4.htm>.

64. See Encyclopedia Britannica, *Religious Adherents in the United States of America*, at <http://www.britannica.com/>.

the numerator (how many anti-Arab hate crimes are there?) as well. HCSA traces ethnic hate crimes in only two categories: anti-Hispanic and “all other.” It is difficult to know how many of these “all other” constitute anti-Arab hate crimes. This is especially true because the category of ethnic bias encompasses so many possibilities: anti-Irish, anti-Italian, anti-Serb or Croatian, anti-Armenian, anti-Greek, anti-Russian, anti-Slav, etc. My own estimate is that about 20% of the non-Hispanic ethnic based hate crimes, before September 11, are ascribable to anti-Arab bias.⁶⁵ Based on that assumption, the data again demonstrate the effect of September 11 (Table 12).

Table 12
Estimated Annual Anti-Arab Hate Crime Reports

1996	75
1997	69
1998	54
1999	73
2000	71
2001	1,231

With the exception of 1998, the pre-2001 annual reports are fairly consistent, at an annual average (including 1998) of 68.4. The 2001 data is 18 times greater, at 1,231.

To place this in context, we need to know the size of the Arab population. Here again there is significant dispute, especially if the point is to tie the data to September 11. First, many, if not most, Arab-

65. I arrive at that estimate in two independent ways, both of which converge on a similar number, which suggests the plausibility of this number. First, I use local Los Angeles county data as a template because those data *do* break down hate crimes into anti-Latino and anti-Mid-East. Between 1999 and September 11, 2001, there were about 8.25 times more anti-Hispanic than anti-Mid-East hate crimes reported in Los Angeles. Taking national data on anti-Hispanic hate crimes during the same period, and dividing by 8.25, yields about 65 anti-Arab hate crimes per year nationally. (Arabs may be more highly concentrated in the Los Angeles area, as compared with the rest of the country, and thus the number of Arab hate crimes reported in Los Angeles might not be consistent with the rest of the country. Yet I am confined to available data sources in attempting to make this analysis, and interestingly, the second method employed, described below, which uses nationwide data, yields a relatively similar outcome.)

The second way of estimating the anti-Arab sub-total is to start by assuming that anti-Arab hate crimes increased after September 11 at the same pace as anti-Islamic hate crimes increased. As described above, that pace is a multiple of 18. If one assumes that *all* of the 2001 increase in “other ethnic” hate crimes are anti-Arab, that makes the pre-2001 anti-Arab raw data about 68 reports per year, which is, again, relatively similar to the number arrived at with the Los Angeles methodology. I use this higher number (68) in the ensuing analysis.

Americans are not Muslim. Even if we accept this hitch in the relevance of the population size, a second problem is that there is no apparent consensus on that population size. The Arab-American Institute states rather unequivocally that the number is 3,000,000,⁶⁶ while the U.S. Census accounts for about 1,300,000 Americans of Arab descent.⁶⁷ The population-adjusted reporting rates using these two figures help place this level of anti-Arab hate crime reporting in context (Table 13).

Table 13
Population-Adjusted Reporting Rate (PARR)
Anti-Arab Hate Crimes

	Pre-2001 (Avg. Annual Reports per 100,000)	2001 (Reports per 100,000)
1.3 million Arab-Americans	5.26	94.69
3 million Arab-Americans	2.28	41.03

What Table 13 demonstrates is that using either number, the post-September 11 level of hate crime reporting by Arab-Americans is extraordinarily high; the midpoint of the range would be 67.86 reports per 100,000 Arab-Americans.⁶⁸ This makes this form of report the most prevalent in the United States, even more so if anti-Arab and anti-Muslim figures are combined to capture the full effect of post-September 11 hate crimes (Table 14).

66. Arab-American Institute, *Arab-American Demographics*, at <http://www.aaiusa.org/demographics.htm> (last visited Jan. 16, 2004).

67. U.S. Census Bureau, *Census 2000 Summary File 3:PCT16. Ancestry (First Ancestry Reported)*, available at http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=01000US&-ds_name=DEC_2000_SF3_U&-lang=en&-mt_name=DEC_2000_SF3_U_PCT016&-format=&-CONTEXT=dt (last visited Jan. 25, 2004). This sample counts 1,022,092 Americans reporting Arab ancestry, of 225,310,411 total reporters. If adjusted to the total population (281,421,906), that calculates out to 1,276,635. This is probably low because the Census Bureau does *not* include as Arab those of Afghan (52,107), Iranian (317,970), or Turkish descent (99,190); one suspects that hate crime perpetrators may not draw these distinctions as finely.

68. Even the pre-2001 level, assuming a small Arab-American population, is high relative to all groups other than gay people, Jewish people, and blacks. See *infra* tbl. 14; *supra* tbl. 6.

Table 14
Population-Adjusted Reporting Rates (PARR) by Subgroup

Arab-American & Muslim Combined (post-Sept. 11)	79.89
Arab-American (post-Sept. 11)	67.86
Gay	20.71
Jewish	18.04
Muslim (post-Sept. 11)	12.03
Black	8.87
Arab-American & Muslim Combined (pre-Sept. 11)	4.45
Arab-American (pre-Sept. 11)	3.77
Asian-Pacific Islander	2.90
Hispanic	1.48
Muslim (pre-Sept. 11)	.68
White	.43

It is even more staggering to remember that these crimes took place in only about three months; assuming this level kept up, it would be reasonable to multiply the PARR by four to achieve some better annualized estimate.

C. September 11 Data Problems

There are several problems with drawing numeric conclusions from this analysis. First, it is difficult to know how sound it is to attribute 20% of the non-Hispanic ethnic hate crimes to the anti-Arab category. Second, estimating the Islamic, and/or Arab, populations is problematic. Third, and perhaps most importantly, the 2001 data standing alone do not reveal whether this is a temporary spike in anti-Arab hate crimes, or a large new type that will remain this consistently high over time. Once released, the FBI's 2002 data will help shed light on this question.⁶⁹

69. See discussion *infra* Part VIII. In the meantime, a report issued by the American-Arab Anti-Discrimination Committee in 2003 suggests that hate crimes spiked extraordinarily in the immediate aftermath of September 11 (“[O]ver 700 violent incidents targeting Arab-Americans, or those perceived to be Arab-Americans, Arabs, and Muslims in the first nine weeks following the attacks.”), but then decreased throughout 2002 (“165 violent incidents from January 1-October 11, 2002”). See AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, REPORT ON HATE CRIMES AND DISCRIMINATION AGAINST ARAB AMERICANS: THE POST-SEPTEMBER 11 BACKLASH 7 (Hussein Ibish ed., 2003). This report's summaries of many of these cases provide a chilling narrative complement to the cold data. *Id.* at 47-84.

These caveats notwithstanding, the method of this Article helps place the remarkable surge in 2001 anti-Muslim and anti-Arab hate crimes in some perspective, not only per capita, but across groups. Put simply, anti-Arab hate crimes in late 2001 reached levels well beyond those reported for any other group in any year since 1996.⁷⁰

VI. LIMITATIONS

A. *Estimating the Population Sizes*

The most significant limitation of this study is that it relies upon estimates of the size of the gay community and of various religious group populations. Since I especially emphasize the findings concerning gay people, the number I use to calculate this group's size (2.1% of the total population)⁷¹ emerges as particularly salient. This 2.1% number may seem low, especially because self-identification rates are higher in most major cities.⁷² It is important to emphasize, however, that the hate crimes data I use throughout this Article are *nationwide* data, so a nationwide estimate of the gay population is what is required. Across all nearly 300,000,000 Americans, the 2.1% rate seems defensible. Perhaps more problematic than the city/nation distinction is the fact that the 2.1% figure is based on a study now

If the report's data are relatively accurate, the 2002 number (165 incidents) would still outpace the annual average reports of anti-Arab and anti-Muslim hate crimes between 1996-2000, which I estimate to be slightly less than 100 altogether. *See supra* tbls. 10 & 12. Yet the 2002 data are much more modest than the September 11 spike. There is reason to trust the report's data since its post-September 11 figure (700) is lower than the FBI's data, which shows roughly 1,500 reports in that time period. AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, *supra*, at 7.

70. The only numbers that are even close are numbers of anti-gay hate crimes reported in particular cities between 1996 and 2001. An analysis of such crimes in 18 major cities throughout the U.S. reveals that gay people in these cities report at about 42 per 100,000 (and this assumes a much higher gay population in each city than the 2.1% nationwide figure); in three cities (Boston, Phoenix, and San Francisco) my analysis shows reporting rates around 80 per 100,000.

It may seem surprising that gay people in large cities report at greater rates, even considering their population density; this defies the adage that there is "safety in numbers." I suspect that this is explained by the presence of strong anti-violence groups in these cities. Such groups encourage reporting and support victims through that process. Perhaps the adage should be recast to reflect that gay victims experience safety—in reporting—among large numbers of other gay people, a safety in reporting they might not experience in non-metropolitan areas. It is, of course, possible that the incidents of hate crimes themselves, not just reporting, increases in places gay people congregate. That hypothesis requires investigation beyond the scope of this study.

71. *See supra* tbl. 1.

72. *See* LAUMANN, GAGNON, MICHAEL & MICHAELS, *supra* note 45, at 307 (identifying New York, San Francisco, Los Angeles, and Chicago).

more than a decade old. Yet the hate crimes data I am analyzing also date back to 1996 (only a few years after the 2.1% figure was established), so even if the percentage of openly gay people has increased, it probably did so incrementally throughout these years and not all at once in 1994. Nonetheless, it would be reasonable to consider softening the claims I make in the Article to account for a larger percentage of openly gay people.

It is interesting to consider how far one has to go in doing so to undermine the ultimate conclusions drawn here, though. Consider these two data points. Table 8 shows that about 18 gay people per 100,000 report hate crimes against their person; the next largest groups—blacks and Jews—report about eight per 100,000. If my estimate of the gay population is low, the per 100,000 number is high. Accordingly, if we raise the estimate of the gay population, the per 100,000 number decreases. Yet to even reach the reporting rate of blacks and Jews—the highest reporting rates in the country after gay people—one would have to more than double the size of the gay population. Few people would claim that 5% of the American public, nationwide, is openly gay. But, again, even if that were the case, then gay people would still report person-related hate crimes at the highest rates of any group in the country, comparable to the reporting rates of blacks and Jews.

The same point can be brought home by considering Table 9. There I demonstrate that gay people are about eight times more likely than non-gay people to report hate crimes. If, again, we double the size of the gay population estimate, the conclusion is now that gay people are about four times more likely than non-gay people to report hate crimes. This conclusion is less dramatic, to be sure, but significant nonetheless.

In sum, I am comfortable with the population estimate used in the Article. I am also comfortable with other researchers using higher numbers to estimate the size of the gay population. In either case, the claims made here, though diluted, will remain significant.

B. Reports vs. Crimes

It is important to bear in mind what I am not claiming in this study. The data should not be read to represent the actual incidence of hate crimes. They reflect only the reporting of hate crimes to local police agencies, and, even then, only the portion thereof that such local agencies actually proceed to report to the federal government. While the latter may be an indication of the former, the data cannot fully

substitute for actual incidences of hate crime. What I have been able to assess with the data I collected from the FBI's *Uniform Crime Reports* is simply the rate of reporting to police agencies.

The data almost definitely underreport the actual incidents of hate crimes. There are many reasons that people who are victims of hate crime may not report this to police.⁷³ The data may also be skewed—there may be more underreporting for some groups who are victims of hate crimes than others.⁷⁴ It is difficult to know, for example, whether a person's fear of being identified as gay leads to greater underreporting of anti-gay incidents than do people of color's distrust of the criminal justice system, much less whether a gay person of color is, for example, less likely to report a racist, or anti-gay, hate crime than a straight person of color or white gay person might. Moreover, some groups in some places have highly organized networks of assistance available for hate crime victims; this is particularly true of gay and Jewish groups in certain large cities. These organizations probably make reporting more likely and would therefore veer the data in those cities closer to full reporting than would otherwise be expected. It is possible that some of what this study concludes is a consequence of such fuller reporting. At the same time, these groups are truly active in only a limited number of cities, and the disincentives to reporting—especially for victims of anti-gay bias—remain so great, it is difficult to calculate the full extent of this mismeasure, if any. Further study of this effect is important and could lead to some refinement of my conclusions.

C. *Other*

As noted above, some less significant, but nonetheless important limitations of the study include the facts that HCSA data cannot really be compared across jurisdictions nor over time.⁷⁵

VII. CONCLUSION

In 1990, Congress enacted HCSA, a statistics-collection law, so as to encourage public policy initiatives to be built on actual empirical data. The data, Congress stated, "can help law enforcement agencies

73. See *supra* text accompanying notes 15-31.

74. See, e.g., Richard H. Sander, *The Comparative Dynamics of Latino and African-American Housing Discrimination* (2000) (unpublished manuscript, on file with author) (showing that blacks and Hispanics in Los Angeles County demonstrate different patterns of filing housing discrimination complaints).

75. See *supra* note 32 and accompanying text.

and local communities combat hate crimes more effectively by identifying their frequency, location, and other patterns over time.”⁷⁶ More specifically, Congress hoped that HCSA would provide an answer to the question: “What groups are most frequently victimized?”⁷⁷

I have demonstrated in this Article that HCSA does answer that question, though in a way never previously highlighted. Before September 11, 2001, three groups—gay people, Jewish people, and African-Americans—reported by far the greatest number of hate crimes. Indeed, gay people reported person-based hate crimes at rates astonishingly higher than any other group. The post-September 11 surge of hate crimes against Muslims and Arabs is staggering, suggesting high reporting rates by Muslims and record level reporting rates by Arabs. Data from 2002 should clarify whether this was a temporary spike, or whether Muslims and Arabs now will regularly report hate crimes at levels similar to those of gay people, Jews, and African-Americans.

As the HCSA data are meant to inform public policy, the new story this Article tells about that data requires a fresh look at appropriate public policy expenditures. In enacting HCSA, Congress stated that the data “would be useful not only to law enforcement agencies to know where and how to focus their resources, but to policy makers at every level of government to better gauge the extent of the problem, and to local community groups to direct their educational and similar efforts.”⁷⁸ One response to this new story would be to strengthen the enforcement of criminal laws meant to deter hate crimes against these particularly targeted groups; there is some debate in the legal literature about whether enhanced criminalization will actually accomplish this deterrent purpose.⁷⁹ Less controversial is Congress’s endorsement of “long-term, nonreactive strategies,” such as educational programs.⁸⁰ Similarly, enactment of laws prohibiting discrimination on the basis of sexual orientation would also send a signal that anti-gay bias is unacceptable. If Congress sincerely intended HCSA’s data to be taken seriously as a basis for legislative

76. S. REP. NO. 101-21, at 2 (1989), *reprinted in* 1990 U.S.C.C.A.N. 158, 158.

77. *Id.* at 3, *reprinted in* 1990 U.S.C.C.A.N. at 160.

78. *Id.*

79. *Compare, e.g.,* Lawrence, *supra* note 34, at 68-69, *with, e.g.,* Sally Kohn, *Greasing the Wheel: How the Criminal Justice System Hurts Gay, Lesbian, Bisexual and Transgendered People and Why Hate Crime Laws Won’t Save Them*, 27 N.Y.U. REV. L. & SOC. CHANGE 257, 260, 278-79 (2001).

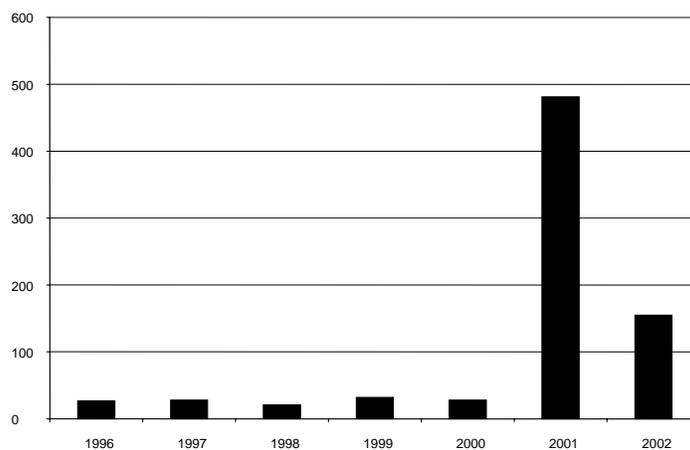
80. S. REP. NO. 101-21 at 4, *reprinted in* 1990 U.S.C.C.A.N. at 160.

action in public policy discussions, it now has a responsibility to do just that.

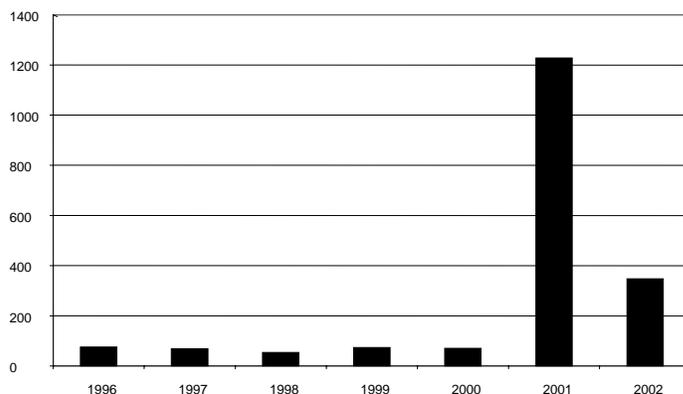
VIII. POSTSCRIPT

The FBI released its 2002 Hate Crimes Report as this Article was going to press. These data show that anti-Islamic and anti-Arab hate crime reports subsided in 2002 from their extraordinary peaks in (late) 2001. However, the 2002 numbers for both groups remain significantly higher than pre-2001 data. The data thus show that hate crimes against these groups spiked remarkably in 2001, receded in 2002, but have not declined to their pre-9/11 levels. The following charts capture the point:

ANNUAL ANTI-ISLAMIC HATE CRIME REPORTS



ANNUAL ANTI-ARAB HATE CRIME REPORTS



The population-adjusted reporting rates (PARRs) for 2002 help place these numbers in a broader context.⁸¹

Population-Adjusted Reporting Rates (PARR)
by 9/11-Target Groups
(Reports Per 100,000 Group Members)

	Pre-2001	2001	2002
Islamic	.68	11.28	3.88
Arab	3.18	57.07	16.18

The 2002 data situate anti-Islamic hate crime reports at about the level of anti-Asian reports (2.9 per 100,000) and the anti-Arab reports at about the level of anti-Jewish reports (18.04 per 100,000). Together, the anti-Islamic and anti-Arab hate crime reports in 2002 (20.06 per 100,000) are at levels roughly similar to the level at which gay people have reported hate crimes annually since 1996 (20.71 per 100,000). As demonstrated in the Article, this is the highest group reporting level (followed by Jewish people at 18.04 and blacks at 8.87).

The Article concluded by reiterating Congress's assertion that hate crimes data collection is undertaken specifically to inform public policy decisions. Though the 2002 data alone may not themselves

81. These PARRs are based on mid-level population estimates of 4 million Muslims, and 2.15 million Arab-Americans. See *supra* Part IV.

mark continuing trends, if anti-Islamic and anti-Arab hate crime reports continue at this level, these crimes—along with the already-high levels of anti-gay hate crimes—deserve heightened attention through future policy initiatives.