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## **Bias Violence: Advocating for Victims (Part II)**

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## **Bias Violence: Advocating for Victims (Part II)**

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*[Editor's note: This is the second part of a two-part article on bias violence. The first part appeared in Clearinghouse Review Special Issue 1994, published in August 1994. This updates an article originally published by Cynthia Wilson, Elizabeth Shuman-Moore, and Susan R. Gzesh.]*

Bias violence is a destructive and insidious social ill. /1/ It has been addressed by both Congress and the legislatures of many states, the latter having enacted criminal statutes and created civil remedies aimed at curbing acts of bias violence. /2/ In addition, courts have interpreted specially crafted bias-violence claims and previously existing federal and state claims to provide relief to victims of bias violence.

This article describes federal and state claims that may be available to a victim of bias violence. Part I, which appeared in Clearinghouse Review Special Issue 1994, examined what is known about the nature of bias violence and described the Project to Combat Bias Violence created in 1989 by the Chicago Lawyers' Committee for Civil Rights Under Law. Part II reviews the federal civil remedies that may be available to victims of bias violence. It also reviews the state law provisions applicable to bias violence. Finally, the article includes two appendices: appendix A, which provides a catalogue of the state civil provisions available, and appendix B, which is a case study of a bias-violence lawsuit.

### **I. Federal Civil Remedies**

Although no comprehensive federal legislation has yet been enacted to address bias violence specifically, existing statutes have been interpreted to provide a civil remedy for the victims of bias violence.

#### **A. 42 U.S.C. Sec. 1985(3)**

The statutory provisions of what is commonly referred to as the Ku Klux Klan Act of 1871, now codified at 42 U.S.C. Sec. 1985(3), may be applicable when at least two

perpetrators of bias violence have entered into a private conspiracy to deprive a plaintiff of a federal constitutional or statutory right. However, the scope of section 1985(3) is limited because it provides no substantive rights; rather "it merely provides a remedy for violation of the rights it designates." /3/ In *Bray v. Alexandria Women's Health Clinic*, the Supreme Court's most recent pronouncement on the scope of section 1985(3), the Court appears to have circumscribed the reach of the "deprivation clause" of the statute. /4/

Section 1985(3) provides:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. /5/

The present codification of section 1985(3) has its antecedents in section 2 of the Civil Rights Act of 1871. /6/ Congress' primary purpose in enacting the Civil Rights Act of 1871 was to "combat the prevalent animus against Negroes and their supporters." /7/ In fact, the statutory reference to persons who "go in disguise on the highway" is directed toward the practice of Klan riders donning hoods as they terrorized former slaves who had been freed or those who might assist them. Since its enactment, section 1985(3) has been a source of conflicting Supreme Court decisions. As one circuit court of appeals has observed "[c]hanging interpretation has been the only constant about Sec. 1985(3)." /8/

## 1. Elements of a Claim

Section 1985(3) is comprised of two discrete clauses, the "deprivation clause" and the "hindrance clause." The elements for stating a cause of action under the deprivation clause require (1) a conspiracy; (2) for the purpose of depriving a person or class of persons of the equal protection of the laws, or the equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy; and (4) an injury to the plaintiff's person or property, or a deprivation of a right or privilege of a citizen of the United States. /9/ More specifically, the Supreme Court recently held that

in order to prove a private conspiracy in violation of the first clause of Sec. 1985(3), a

plaintiff must show, inter alia, (1) that "some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action," and (2) that the conspiracy "aimed at interfering with rights" that are "protected against private, as well as official, encroachment." /10/

The elements for stating a cause of action under the hindrance clause are not settled. However, the Supreme Court reiterated that the hindrance clause "covers conspiracies for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws." /11/ Since the Bray decision, more plaintiffs have relied on the hindrance clause of section 1985(3) and the courts have had to outline the elements of a hindrance claim. /12/

#### a. Conspiracy

A civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means." /13/ The elements of a civil conspiracy are readily ascertainable in the case law of each of the federal circuits. Significant for victims of bias violence is the requirement that the participants in a conspiracy share the same general objective, although the participants need not know all the details of the conspiratorial plan. /14/

#### b. Depriving Plaintiff of Equal Protection

There are two subparts of the requirement that the conspiracy be for the purpose of depriving the victim of equal protection of the laws: (1) a discriminatory purpose and (2) an underlying constitutional or statutory violation.

Regarding the first subpart, the Supreme Court emphasized that a plaintiff must show that the defendant was motivated by some discriminatory purpose. This requirement has been at the core of the shifting interpretations of section 1985(3). In *Griffin v. Breckenridge*, for example, the Supreme Court interpreted section 1985(3) to require "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." /15/ In so ruling, the Court left open the question of whether a discriminatory animus based on motives other than race would be covered as "otherwise class-based."

In 1983, the Court signaled its reluctance to include other groups within the scope of section 1985(3). Relying on the legislative history of the statute, the Court observed that "it is a close question whether Sec. 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their cause." /16/ In spite of this observation, the circuit courts prior to the Bray decision had extended section 1985(3) to additional classes, including ethnicity, /17/ gender, /18/ political association, /19/ and religion. /20/ The courts also made clear that section 1985(3) protects persons

who are subject to attack because of their association with African Americans. /21/  
Individuals with disabilities may also constitute a cognizable class under an expansive view of section 1985(3). /22/

In *Bray*, the Supreme Court limited the scope of the deprivation clause of section 1985(3), especially regarding its extension to discrimination based on gender. /23/ In *Bray*, several abortion clinics and supporting associations sued to enjoin an association and several individuals responsible for organizing antiabortion demonstration. The plaintiffs sought to prevent these defendants from conducting demonstrations at clinics in the Washington, D.C., metropolitan area. In its decision the Supreme Court held that opposition to abortion does not qualify as an "otherwise class-based invidiously discriminatory animus" for purposes of proving a private conspiracy in violation of section 1985(3). The Court determined that a class for purposes of section 1983(3) must be

something more than a group of individuals who share a desire to engage in conduct that the Sec. 1985(3) defendant disfavors. Otherwise, innumerable tort plaintiffs would be able to assert causes of action under Sec. 1985(3) by simply defining the aggrieved class as those seeking to engage in the activity the defendant has interfered with. This definitional ploy would convert the statute into the "general federal tort law" it was the very purpose of the animus requirement to avoid. /24/

*Bray* also heightened the second requirement of the statute, that the plaintiff must establish that the defendants conspired for the purpose of depriving the plaintiff of the equal protection of the laws or of equal privileges and immunities. In other words, the plaintiff must allege an underlying constitutional (or perhaps statutory) violation. This element arises because section 1985(3) is purely a remedial statute that creates no substantive rights itself. In *Bray*, the Supreme Court held that, under the purpose requirement, it is sufficient for application of section 1985(3) "that a protected right be incidentally affected. A conspiracy is not 'for the purpose' of denying equal protection simply because it has an effect upon a protected right. The right must be 'aimed at,' its impairment must be a conscious objective of the enterprise." /25/

Clearly, federal constitutional rights are protected under section 1985(3). /26/ In addition to the right to travel and rights under the Thirteenth Amendment, which are enforceable against private actors, section 1985(3) claims based on violations of the First or Fourteenth Amendments may be brought, but only if state action is involved. /27/

The Supreme Court has not definitively decided whether the rights protected by section 1985(3) include federal and state statutory rights. A number of circuits have held that such claims are actionable. Courts have upheld section 1985(3) claims based on violations of 42 U.S.C. Sec. 1981 /28/ and 42 U.S.C. Sec. 1982. /29/ A violation of the Fair Housing Act may also be the basis of a claim under section 1985(3). /30/ However, the Supreme Court has held that a violation of Title VII may not be used as a basis for a section 1985(3) claim. /31/

Neither has the Supreme Court explicitly decided whether the violation of a state law may be the basis of a section 1985(3) claim. Certain courts have held that a section 1985(3) claim may be based on the violation of a state law. /32/ However, other courts have reached the opposite conclusion. /33/ Some courts have held that a violation of a state law may not provide the basis for a section 1985(3) claim when the state law, like Title VII, provides a detailed administrative process for handling claims. /34/

### c. Acts in Furtherance of Conspiracy and Injury

The last two elements of the plaintiff's prima facie case under section 1985(3) are clear. The defendant must have taken steps in furtherance of the conspiracy. /35/ The final element is that the plaintiff must be injured in his or her person or property or deprived of a right protected by section 1985(3). Generally, this element will be satisfied when some type of physical or emotional injury to the plaintiff can be established.

## 2. Bias-Violence Cases Involving Section 1985(3) Claims

Section 1985(3) has been successfully used in several published bias-violence decisions. /36/ The plaintiff in *Fisher v. Shamburg* was an African American man who was attacked by three white men in the parking lot of a cafe. /37/ As the plaintiff entered the cafe, the defendants were leaving. One of them directed a racial slur at the plaintiff, who became concerned about the safety of his car and left the cafe several minutes later. The defendants stood in the parking lot and made insulting racial remarks as the plaintiff passed. Then one defendant hit the plaintiff. A fight began between the plaintiff and the three defendants. The plaintiff received minor injuries and was treated at a local hospital. One defendant was subsequently convicted of criminal assault.

The plaintiff filed under section 1985(3) a civil action alleging that the defendants had conspired to violate his rights under the Thirteenth Amendment. In reviewing the plaintiff's claim, the court noted that one of the "privileges and immunities" referred to in section 1985(3) is the right to be free from the badges and incidents of slavery. /38/ "Section 2 of the Thirteenth Amendment authorizes Congress 'to determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation.'" /39/ The court found that Congress, in Title II of the Civil Rights Act of 1964, had declared its intention that a racially motivated interference with one's right to enjoy places of public accommodation constitutes a badge of slavery. /40/ Concluding that "a racially motivated conspiracy to interfere with one's enjoyment of a place of public accommodation constitutes a badge of slavery which is a deprivation of equal privileges and immunities under 42 U.S.C. Sec. 1985(3)," /41/ the court upheld plaintiff's section 1985(3) claim.

In *Stirgus v. Benoit* the district court addressed claims involving a racially motivated firebombing of an African American woman's house by four white men. The court held

that the plaintiff's claim under section 1982 provided a basis for her section 1985(3) claim. /42/

In *Johnson v. Smith*, the defendants' act of burning a cross on the plaintiffs' lawn was held to be "precisely the type of conduct that led to [section 1985's] enactment." /43/ As in *Stirgus*, the section 1985(3) claim was based on the plaintiffs' section 1982 claim.

Section 1985(3) may be applicable in bias-violence cases when two or more defendants acted together. Although defendants usually do not admit that they conspired, a conspiracy may be proved by circumstantial evidence, and credibility decisions are left to the trier of fact. In many cases, the challenge to a plaintiff's attorney will be in determining the underlying constitutional or statutory violation that supports the claim. Violation of a state bias-violence law might be accepted in some circuits but not in others. If the attack occurred on the plaintiff's property, section 1982 or the Fair Housing Act might provide the basis for the section 1985(3) claim. If the victim was traveling when the attack occurred, or the attack happened when the victim was visiting away from home, the constitutional right to travel might provide a basis for the claim. If the victim is African American, a claim may perhaps be fashioned around the Thirteenth Amendment's protection against the badges and incidents of slavery. Any claim against a private actor under section 1985(3) must be based on an underlying statute or constitutional provision that prohibits discrimination by private actors.

## **B. 42 U.S.C. Sec. 1982**

In cases involving bias violence that interferes with the property rights of the victim, a claim under 42 U.S.C. Sec. 1982 may be available. Section 1982, which has its antecedents in section 1 of the Civil Rights Act of 1866, provides that "[a]ll citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." /44/ The statute was enacted by the 39th Congress after ratification of the Thirteenth Amendment prohibiting slavery and reenacted as part of the Civil Rights Act of 1870 following the adoption of the Fourteenth Amendment. /45/

### **1. Elements of a Claim**

The Supreme Court has held that section 1982 applies to private parties. /46/ By its terms, section 1982 reaches racial and ethnic violence when the victim's home or property is damaged, or the victim is injured while on his or her property.

The elements of a claim under section 1982 include (1) that the defendant discriminated (2) against the plaintiff on account of the plaintiff's race, and (3) the plaintiff was thereby deprived of his or her right to inherit, purchase, lease, sell, hold, or convey real or personal property. The Supreme Court has left open the issue of whether section 1982 requires proof of a specific unlawful purpose. /47/ Some circuits have held that proof of intentional discrimination is an essential element of a claim under section 1982. /48/

## 2. Racial Discrimination Defined

The text of section 1982 does not use the word "race." Nevertheless, the courts have construed the statute to forbid racial discrimination in matters affecting property rights. The scope of the statute as it bears upon "racial discrimination" has been broadly interpreted. Specifically, in *Shaare Tefila Congregation v. Cobb*, the Supreme Court held that section 1982 applied to discrimination against Jews because, at the time Congress enacted the predecessor to section 1982, Jews were considered a separate race. /49/ The Court reached that conclusion by drawing upon the test set forth in its companion decision in *St. Francis College v. Al-Khazraji*. /50/ In *St. Francis College*, the Court held that, in determining when a group would be considered a separate race for purposes of sections 1981 and 1982, courts must consider whether the group was understood to be a separate race in the 1860s when Congress originally enacted these statutes. /51/ Among the groups that the Court in *St. Francis College* recognized as separate races included Arabs, Swedes, Norwegians, Germans, Greeks, Finns, Italians, Spaniards, Mongolians, Russians, Jews, Hungarians, Chinese, Anglo-Saxons, Mexicans, and gypsies. /52/

Under *Shaare Tefila Congregation*, "a distinctive physiognomy is not essential" to qualify for protection under section 1982. Nevertheless, section 1982 does not apply to discrimination on the basis of national origin. /53/ In that respect, the courts distinguish between race as the Supreme Court has defined it and the plaintiff's country of origin. Frequently, this difference is merely semantic. Neither does section 1982 apply to discrimination on the basis of religion. /54/

## 3. Property Rights Protected

The courts have interpreted section 1982 to apply to a variety of situations involving racial discrimination bearing upon property rights. Property rights protected under section 1982 include the right to lease, the right to purchase, and the right to hold property. /55/ Although no court decisions have interpreted the provision, the statute explicitly protects rights with respect to personal, as well as real, property.

In order to effectuate the remedial purposes of section 1982, the Supreme Court has broadly construed the language of the section "to protect not merely the enforceability of property interests acquired by black citizens but also their right to acquire and use property on an equal basis with white citizens." /56/ Nevertheless, the Court has pointed out that section 1982 "is not a comprehensive open housing law." /57/ In that respect, a district court in *Stackhouse v. DeSitter* held that the defendant's racially motivated firebombing of the plaintiff's car, which was parked near his apartment, did not constitute a violation of section 1982, even considering the plaintiff's allegations that the defendant's acts were an attempt to drive him out of the neighborhood. /58/



#### 4. Statute of Limitations and Available Relief

Congress has not specified a limitations period for suits brought under section 1982. Courts have applied the most analogous statute of limitations of the state where the deprivation of rights occurred. /59/

Section 1982 provides for relief in the form of damages as well as injunctive and declaratory relief. /60/ In the Seventh Circuit, a victim may recover damages for emotional harm, including humiliation. /61/ Humiliation can be inferred from the circumstances and from the victim's testimony, without need for medical evidence of mental or emotional impairment. /62/

Punitive damages are also recoverable under section 1982. The Seventh Circuit has held that "there is no limit on the amount of punitive damages that can be awarded under 42 U.S.C. Sec. 1982." /63/ In addition, under 42 U.S.C. Sec. 1988, attorney fees are available to a plaintiff who prevails on a section 1982 claim.

#### 5. Bias-Violence Cases Involving Section 1982 Claims

A number of victims of bias violence have brought successful claims under section 1982. In *Stirgus v. Benoit*, for example, an African American woman alleged that four white men firebombed her recently purchased house in a predominantly white neighborhood. /64/ Holding that "the firebombing of [the plaintiff's] house is precisely the type of discriminatory conduct that section 1982 is designed to remedy," /65/ the court denied the defendants' motion to dismiss.

Another example of a section 1982 claim in a bias-violence case is *Waheed v. Kalafut*. /66/ An African American family alleged that a white man firebombed their house because they were black. On the plaintiffs' motion for summary judgment, the court found that the plaintiffs had submitted sufficient evidence to prevail under section 1982. However, the court reserved ruling on the motion and gave the defendant additional time to file counteraffidavits.

In *Johnson v. Smith* the district court found that the plaintiffs stated a claim under section 1982 based on the defendants' conduct of cross burning and window breaking in an effort to terrorize the plaintiffs in their home. /67/ A fourth case is *Pina v. Abington*. /68/ The plaintiffs, African Americans, alleged acts of harassment, terrorism and violence against their homes and their property by the defendants on account of the plaintiffs' race. The defendants included private citizens and public officials. Holding that the plaintiffs had stated a claim for deprivation of their right to hold real property, the court denied the defendants' motion to dismiss the section 1982 claim.

Section 1982 has been successfully applied to bias-violence cases when the victim's real property was damaged or the victim was injured while on his or her property. It is particularly useful in cases involving firebombing, cross burning, or other acts of

violence intended to drive the victims out of their home.

### **C. Fair Housing Act**

The provisions of the Fair Housing Act may be applicable to bias-violence cases when the victim's property is damaged or victims are injured while on their property. /69/ The Fair Housing Act prohibits discrimination in the sale, purchase, or rental of property on the basis of race, color, religion, sex, familial status, handicap, and national origin. /70/ In addition, section 3617 of the Act prohibits attempts to coerce, intimidate, threaten, or interfere with persons in exercising such rights.

Section 3617 provides:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Secs. 3603, 3604 (sale or rental of housing), 3605 (financing of housing), or 3606 (provision of brokerage services) of this title. /71/

The Fair Housing Act is part of Title VIII of the Civil Rights Act of 1968, and is based on the Thirteenth Amendment. The Act may be enforced through private civil action. /72/ As a remedial statute, the Act is to be interpreted broadly and is designed to ensure that individuals are not denied the right to live where they choose because of discriminatory conduct. /73/

#### **1. Elements of a Claim**

A plaintiff states a claim under section 3617 by establishing that the defendant coerced, intimidated, threatened, or interfered with the plaintiff's housing rights. Certain courts have held that the plaintiffs may establish a violation of section 3617 absent a violation of section 3604 or the other subsections enumerated in section 3617. /74/ Under this interpretation, third parties that do not have a contractual relationship with the victim may be liable for interfering with housing rights. Most acts of bias violence involve some level of intimidation or threat.

In order to prove a prima facie case of discrimination under section 3617, a plaintiff must establish that the defendant directly interfered with the plaintiff's exercise of the plaintiff's housing rights, or intimidated the plaintiff after the plaintiff exercised his or her housing rights, or coerced or intimidated persons who aided or encouraged the plaintiff in exercising his or her housing rights. The plaintiff must also prove that the defendant acted on account of the plaintiff's race, color, religion, sex, familial status, handicap, or national origin. The statute of limitations for a civil action under the Fair Housing Act is two years. /75/

## 2. Available Relief

Relief available under the Fair Housing Act includes compensatory damages, punitive damages, and injunctive relief. /76/ The plaintiff may request a jury trial under section 3617 if money damages are sought. /77/ Compensatory damages may include damages for emotional distress and humiliation. /78/ One court has held that a claimant under section 3617 may seek "any available remedy to make good the wrong done." /79/ The court, in its discretion, may allow reasonable attorney fees to prevailing parties. /80/

## 3. Bias-Violence Cases Using the Fair Housing Act

Several cases have upheld the use of section 3617 claims in bias-violence cases. /81/ In *Seaphus v. Lilly*, the district court held that violence and property damage aimed at inducing black residents to move out of their home may be prohibited by section 3617. /82/ Similarly, in *Stackhouse v. DeSitter* the court held that the firebombing of a black family's car parked near their apartment in an attempt to frighten them away from the neighborhood is within the range of activities prohibited by section 3617. /83/

If a defendant's bias violence interferes with the plaintiff's housing rights, a section 3617 claim should be included in the plaintiff's complaint. Usually, a section 3617 claim is brought together with a claim under 42 U.S.C. Sec. 1982.

## II. State Law Provisions

Virtually every state has enacted some form of anti-bias-violence statute. The provisions of these statutes vary widely. They include criminal and civil bias-violence provisions, prohibitions against institutional vandalism, bias-violence statistics collection provisions, and law enforcement training requirements. /84/ Many state bias-violence statutes are based on model legislation developed in the early 1980s by the Anti-Defamation League. The Anti-Defamation League and its legislative allies must be commended for drafting and pressing for the enactment of these important laws.

This section reviews the criminal and civil provisions most significant to victims. While general criminal and civil laws can be applied to these situations, the specific bias-violence laws name the conduct for what it is. Full utilization of these laws not only punishes and deters offenders, it also empowers victims and affected communities and educates law enforcement officials, the bar, the judiciary, and the public.

Bias-violence laws have been subjected to serious constitutional challenges in recent years. However, with the 1993 *Wisconsin v. Mitchell* decision upholding Wisconsin's penalty-enhancement law, the Supreme Court made clear that carefully crafted anti-bias-violence laws would be upheld. /85/

## **A. State Criminal Laws**

Most bias-violence statutes are criminal laws that fall into several different categories. The majority of state legislatures have created separate crimes usually called "hate crime" or "ethnic intimidation." The new crime is defined as (1) the commission of an enumerated "predicate" crime (e.g., assault or criminal trespass) (2) because of a protected class, also specified. For instance, in Illinois, hate crime is defined as committing assault, battery, or nine other crimes by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals. /86/

Another group of laws create a crime called malicious or aggravated harassment in which the perpetrator commits a defined criminal act with the intent of intimidating or harassing a member of a protected group. An example of this form is the New York crime of aggravated harassment in the second degree, which occurs when a person with intent to harass, annoy, threaten, or alarm another person strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of the race, color, religion, or national origin of such person. /87/

Yet another prevalent type of law is a sentencing provision in which the penalty for the underlying crime, such as arson, is one or more degrees more severe than it otherwise would be when found to be motivated by hatred as defined in the law. /88/ A further variation makes the bias motivation an aggravating factor that may be considered by the judge in imposing a more severe sentence upon conviction of another crime. For example, the California Penal Code provides that when a person commits a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, that person shall receive an additional term of one, two, or three years in the state prison at the court's discretion. /89/

A further category of criminal bias-violence laws prohibits actions that, by force or threat of force, interfere with or intimidate others in the exercise of civil rights. An illustration of this is the Massachusetts law which makes it a criminal civil rights violation to injure, intimidate or interfere with, or oppress or threaten, by force or threat of force, any person in the free exercise or enjoyment of any right or privilege secured to that person by the constitution or laws of the commonwealth or the United States. /90/ Some of these statutes criminalize only conspiracies to deprive people of their civil rights, as opposed to acts of individuals; these laws are modeled after the federal criminal provision outlawing conspiracies to deprive civil rights. /91/

Finally, 37 states have institutional vandalism statutes that single out for enhanced punishment those who damage buildings used for religious worship, cemeteries, schools, or the grounds adjacent to or personal property contained in any such institution. /92/

## **B. State Civil Statutes**

Although many states have enacted criminal statutes to address bias violence, only 23

states and the District of Columbia create a civil claim for victims of bias violence. /93/ These civil damages provisions, which create a discrete private right of action for victims of bias violence, are often found in state penal codes because they were passed in legislative packages with criminal provisions. /94/

These civil laws often explicitly state that the private right of action is wholly independent from the outcome of any criminal case. /95/ Therefore, if the elements of a bias-violence claim are present, suit may be brought although no prosecution was ever initiated, or the defendants were prosecuted and acquitted. Because the standard of proof in a criminal case, beyond a reasonable doubt, is much stricter than the preponderance-of-the-evidence standard applying to civil cases, filing suit in a case in which the defendants were acquitted criminally may be justifiable.

Statutory remedies often consist of actual damages, including damages for emotional distress, punitive damages, injunctive relief, and attorney fees, much of which may be difficult or impossible to obtain under state tort law. Some laws limit punitive damages. The California law allows the recovery of actual damages, exemplary damages, and a civil penalty of \$25,000 to be awarded to the victim. /96/ Michigan law provides for the greater of treble damages or \$2,000 in lieu of punitive damages and contains no civil-fine provision. /97/

Comprehensive statutory remedies can be powerful tools in the hands of litigators. The remedies available under the Illinois Hate Crime Act have allowed attorneys working with the Chicago Lawyers' Committee for Civil Rights to file lawsuits resulting in substantial awards of damages or creative negotiated settlements that attract substantial media attention. Since 1990, juries and judges have responded to these suits with awards of substantial actual and punitive damages and have thus sent a strong public message. /98/

### **C. Constitutional Challenges to Bias-Violence Laws**

In the past several years, there has been a flurry of constitutional challenges to state bias-violence statutes, probably due to their increased enforcement. The grounds for these challenges are (1) that the statutes are overbroad, infringing on activity protected by the first amendment, and (2) that they are vague, not giving fair warning about what conduct is prohibited and encouraging arbitrary or discriminatory enforcement. In opinions in two cases, *R.A.V. v. St. Paul* in 1992 and *Wisconsin v. Mitchell* in 1993, the U.S. Supreme Court made pronouncements on what would, and would not, be permissible under the Constitution. /99/

The St. Paul, Minnesota, bias-violence ordinance challenged in *R.A.V. v. St. Paul* made it a misdemeanor to place on public or private property "a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The juvenile defendant in the case was charged and convicted under the ordinance with burning a cross in an

African American family's yard.

The Supreme Court, in a 5-4 opinion by Justice Scalia, reversed the Minnesota Supreme Court and struck down the ordinance on First Amendment grounds. The Court held that the law was overbroad, even when construed as limited to "fighting words." The Court found that the St. Paul ordinance's fatal flaw was criminalizing some but not all fighting words, namely, those on the "disfavored" subjects of race, color, creed, religion, or gender. This, the Court determined, was impermissible discrimination based on content and viewpoint. It said that the city's compelling interest in ensuring human rights did not justify the law because (unspecified) content-neutral alternatives existed.

All the justices agreed that the ordinance was fatally overbroad. However, the four concurring justices said that the majority went too far, appearing to renounce First Amendment strict scrutiny analysis. They expressed concern that the opinion would confuse the lower courts. /100/ Justice Blackmun said he feared that the Court had been "distracted from its proper mission by the temptation to decide the issue over 'politically correct speech' and 'cultural diversity,'" issues not presented in the case. /101/ Interpreting this decision, the state supreme courts of Ohio and Wisconsin struck down their quite different penalty-enhancement statutes. /102/

The cloud that the R.A.V. opinion left over bias-violence statutes was largely lifted a year later when the Court unanimously reversed the Wisconsin Supreme Court and upheld Wisconsin's bias-violence penalty-enhancement law in *Wisconsin v. Mitchell*. The defendant in this case, an African American man, was convicted of inciting a group of young men and boys to beat severely a white man who happened to walk by them. After a jury convicted Mitchell of aggravated battery, the trial judge, considering the jury's finding that the defendant "intentionally selected" the victim because of race, increased his sentence from two to seven years under the state law.

The Supreme Court, in a lucid opinion by Chief Justice Rehnquist, explained that defendants' motives are regularly considered by judges in setting sentences. For instance, penalties may be more severe if defendants act for monetary gain or other bad motives. It further said that defendants' statements are frequently used against them in criminal trials. It declared that motive plays the same part in the bias-crime law as it does in other antidiscrimination laws, such as Title VII, which the Court previously upheld against constitutional challenges. Finally, it found that any "chilling effect" was too attenuated and unlikely to make the law impermissibly overbroad.

The Court used just two paragraphs to hold the R.A.V. analysis inapplicable to the Wisconsin statute. It said that, in contrast to the St. Paul ordinance, the Wisconsin law was directed at conduct, not expression. It found that Wisconsin's desire to redress the greater harms that are caused by bias-inspired crimes, namely, that they are "more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest," /103/ provided sufficient basis for the law beyond mere disagreement with offenders' viewpoints.

Two opinions from the circuit courts of appeal after *R.A.V. and Wisconsin v. Mitchell* bear mention. Both involved cross burning, but they were prosecuted under different statutes.

In *United States v. Hayward*, four men burned two crosses on the property of a white family who had African American guests at their home in Keeneyville, a small, semirural town in Illinois. /104/ The government charged them under 18 U.S.C. Sec. 844(h)(1), which prohibits the use of fire to commit a felony, and 42 U.S.C. Sec. 3631, a criminal provision of the Fair Housing Act that prohibits interference with housing rights based on race, inter alia, by force or threat of force.

The defendants argued that section 3631 was content-based regulation not narrowly tailored to achieve a compelling governmental purpose. The Seventh Circuit disagreed, holding that while cross burning is expressive conduct, section 3631(b) is aimed at protecting the right of people to associate freely in their homes regardless of race, not at curtailing speech. After the court determined the law to be content neutral, it found that the law furthered an important governmental interest, namely, protecting a person's right to occupy a dwelling without fear of racially based threats or intimidation, and that it was narrowly tailored to achieve that result.

The Eighth Circuit, sitting en banc, had a harder time with a similar fact situation in *United States v. Lee*, decided two days after *Hayward*. /105/ In this case, the defendant burned a cross outside the apartment complex where his girlfriend lived; approximately 15 black families lived there. He was charged under the same two statutes that were used in *Hayward*, along with 18 U.S.C. Sec. 241. The jury acquitted Lee of the criminal fair housing charges but convicted him under section 241, which makes it illegal to injure, oppress, threaten, or intimidate a person in the free exercise or enjoyment of any right or privilege secured by the U.S. Constitution or laws.

The majority of the court found that section 241, as applied to the facts and through the jury instructions given, violated the First Amendment by punishing the expressive act of cross burning. The jury had been instructed that, in order to convict, the defendant must have acted with specific intent to intimidate or interfere with the residents' right to hold an apartment free from threats or intimidation because of race. The court found that the jury instruction related to the communicative and emotive impact of speech on its audience and relied on the subjective reactions of the residents who witnessed the cross burning. Therefore, it found that the law as applied was not content neutral. Although it had an important governmental interest, the court said it was related to the suppression of free expression and so was impermissible.

The court reversed the conviction under section 241 but remanded the case for a new trial. The majority held that in the new trial the jury should be instructed that, in order to convict the defendant, his actions must have been taken with the intent to advocate the use of force or violence and have been likely to produce such action, or he must have intended to threaten the residents or cause them reasonably to fear the use of imminent force or violence. Four judges felt that the conviction should be reversed and the

defendant acquitted; four judges would have affirmed the conviction. In April 1994, the Supreme Court declined to review the decision. /106/

A number of state courts, including the Ohio Supreme Court, have upheld bias-violence penalty-enhancement laws after *Wisconsin v. Mitchell*. /107/ These decisions, along with *Hayward* and *Lee*, indicate that statutes that define bias crime as a criminal act motivated by bias are most likely to be upheld. Laws that clearly focus on conduct, as opposed to expression, are much more likely to survive examination. /108/

#### ***D. Proving Motivation in Bias-Violence Cases***

The bulk of case law interpreting state and federal bias-crime statutes relates to their constitutionality. One important additional subject on which there is some guidance is proof of motive.

Proving that the offender was motivated by bias against one of the protected groups is an essential element under most laws, in both criminal prosecutions and civil suits. Factors that may indicate whether a crime is a bias crime are (1) language or symbols used by the perpetrator, such as epithets; (2) common sense, such as the presence of a swastika; (3) severity of the attack; (4) previous history of similar incidents in the same area; (5) lack of provocation; and (6) absence of any other apparent motive, such as battery without robbery. /109/ The authors add the following factors: (7) the demographics of the community in which the crime occurred, including whether the victim recently moved to the area; (8) whether the offender is affiliated with a hate group; (9) whether the offender has a history of committing acts of bias violence; (10) whether the crime appears to be timed to coincide with a holiday or observance significant to the targeted group or community; and (11) whether the victim or the victim's group has been involved in recent public or political activity that might have made the group a target.

Further, the focus should be on what the perpetrator believed about the victim's status, not the actual status. For instance, if the attacker erroneously believed that the victim was gay and used an antigay epithet, the bias motivation is present. The Anti-Defamation League model legislation uses the words "actual or perceived" before the list of protected classes to make clear that such a mistake will not exonerate the offender.

A consensus in state and federal courts is developing that bias must have been a "significant motivating factor" for the crime, but need not have been the sole motivator, similar to the rule for employment and housing discrimination. For example, in *United States v. Bledsoe*, the defendant was charged with a violation of a federal law prohibiting interference with federally protected activities by force or threat of force, 18 U.S.C. Sec. 245(b)(2)(B), for killing a black male in a public park. /110/ The defendant claimed that, if anything, the evidence illustrated that he killed the man because of sexual orientation, which is not a protected class under the law. The district court judge instructed the jury that the prosecution must prove, beyond a reasonable doubt, that the defendant attacked the victim because he was black and that the presence of motives other than race, such as personal anger or a hatred for gay men, did not remove the defendant's conduct from the



purview of the law. Affirming the conviction, the Eighth Circuit held that the instructions clearly indicated that conviction was inappropriate unless race was a substantial motivating factor in the defendant's actions. /111/

Perhaps setting the threshold even lower are the appellate courts in Oregon and Massachusetts, which have held that, for criminal liability to attach, the prohibited factor must have played a role but need not have been the "predominant purpose." In a Massachusetts case, *Commonwealth v. Stephens*, the evidence showed that the defendant attacked the victims because of their ethnic origin, which was Cambodian, but possibly also because a victim had hit the attacker's friend with a marble earlier that day. /112/ Holding that the deprivation of civil rights under the Massachusetts statute did not have to be the "predominant purpose" of the defendant's acts, the court affirmed the conviction. /113/ The Oregon courts concur. The court in *Oregon v. Hendrix* disagreed that the state had to prove that the defendants were motivated solely or principally because of the protected group. /114/ It held that the intimidation law imposes criminal liability when unlawful motive plays any role in the proscribed conduct. /115/

### ***E. Parental-Liability Laws***

All states have parental-responsibility laws that allow injured parties to recover on a strict liability basis from the custodial parents of a minor for their child's tortious acts. For instance, the Illinois Parental Responsibility Law holds parents liable for actual damages for the willful acts of their minor children that cause personal injury or property damage. /116/ These laws are not limited to liability for bias violence. The legislative purposes of the laws are "(1) to compensate victims of juvenile conduct that is willful or malicious; and (2) to place upon the parents the obligation to control a minor child so as to prevent intentional harm to others." /117/ These aims seem particularly applicable here. However, while some states provide for unlimited parental liability, some states allow only recovery for property damage, and most states limit such liability to a few thousand dollars, apparently out of concern about the hardship caused parents or guardians by this liability. This severely limits the usefulness of these statutes.

### ***F. Torts***

State common law provides victims of bias violence with a range of tort remedies that may fit the facts of bias-violence incidents. These include: assault, battery, intentional infliction of emotional distress, trespass to land and personal property, nuisance, and invasion of privacy. While they usually do not offer the full relief contained in many bias-violence laws, these claims can be added to a state court complaint or as pendent claims in a federal complaint.

### ***G. Crime-Victim-Compensation Laws***

Finally, a supplemental remedy available in many states is the state crime-victim-compensation fund. Claims are particularly advisable in cases with likely judgment-proof defendants and in cases when the perpetrator cannot be found. While compensation often

depends on actual physical injury or death and is limited to out-of-pocket losses and expenses, the damages provisions of these statutes can be generous.

#### Footnotes

/1/ The term "bias violence" is used throughout this article to include not only acts of personal violence motivated by the perpetrator's perception that the victim is a member of a particular group but also other crimes, such as criminal trespass and damage to property. The shorthand "bias violence" is believed to be a more accurate term for the phenomenon than the commonly used phrase "hate crime."

/2/ See app. A of this article, which briefly outlines 23 states' and the District of Columbia's statutes that provide a civil claim for victims of bias violence. See also Anti-Defamation League of B'nai B'rith, *Hate Crimes Laws: A Comprehensive Guide* (1994) [hereinafter ADL Comprehensive Guide]. The ADL Comprehensive Guide is an invaluable resource, cataloging each state's criminal and civil laws directed at bias violence.

/3/ *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366 (1979).

/4/ *Bray v. Alexandria Women's Health Clinic*, 113 S. Ct. 753 (1993).

/5/ 42 U.S.C. Sec. 1985(3).

/6/ Civil Rights Act of 1871, Act of April 20, 1871, ch.22, 17 Stat. 13.

/7/ *United Bhd. of Carpenters & Joiners of Am. v. Scott*, 463 U.S. 825 (1983).

/8/ *Stevens v. Tillman*, 855 F.2d 394 (7th Cir. 1988), cert. denied, 489 U.S. 1065 (1989).

/9/ *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

/10/ *Bray*, 113 S. Ct. 764 (quoting *Griffin*, 403 U.S. at 102, and *Scott*, 463 U.S. at 825).

/11/ *Id.*

/12/ *National Abortions Fed'n v. Operation Rescue*, 8 F.3d 680 (9th Cir. 1993) (hindrance claim sufficiently stated in abortion protest context). Compare *Upper Hudson Planned Parenthood v. Doe*, 836 F. Supp. 939 (N.D.N.Y. 1993), *aff'd*, 29 F.3d 620 (2d Cir. 1994).

/13/ *Bell v. City of Milwaukee*, 746 F.2d 1205 (7th Cir. 1984).

/14/ *Id.*

/15/ *Griffin*, 403 U.S. at 102.

/16/ Scott, 463 U.S. at 825.

/17/ See e.g., *New York Nat'l Org. for Women v. Terry*, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990).

/18/ *Id.* Even subsequent to *Bray*, some courts have held that gender-based animus is encompassed by section 1985(3). See *Larson v. School Bd. of Pinellas County, Fla.*, 820 F. Supp. 596 (M.D. Fla. 1993); *Saville v. Houston County Healthcare Auth.*, 852 F. Supp. 1512 (M.D. Ala. 1994).

/19/ See, e.g., *Terry*, 886 F.2d at 1339 (political views); *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984), cert. denied, 470 U.S. 1084 (1985) (political affiliations with racial overtones). But see *Grimes v. Smith*, 776 F.2d 1359 (7th Cir. 1985) (section 1985(3) "does not reach nonracial political conspiracies").

/20/ See, e.g., *Volk v. Coler*, 845 F.2d 1422 (7th Cir. 1988); *Trerice v. Summons*, 755 F.2d 1081 (4th Cir. 1985); *Taylor v. Gilmartin*, 686 F.2d 1346 (10th Cir. 1982), cert. denied, 459 U.S. 1147 (1983) (Roman Catholic); *Ward v. Connor*, 657 F.2d 45 (4th Cir. 1981), cert. denied sub nom. *Mandelkorn v. Ward*, 455 U.S. 907 (1982) (member of the Unification Church).

/21/ See, e.g., *Quinones v. Szorc*, 771 F.2d 289 (7th Cir. 1985) (attack on Hispanic supporter of black mayoral candidate).

/22/ *People v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), vacated on other grounds, 718 F.2d 22 (2d Cir. 1983); *Trautz v. Weisman*, 819 F. Supp. 282 (S.D.N.Y. 1993). Compare *D'Amato v. Wisconsin Gas Co.*, 780 F.2d 1474 (7th Cir. 1985), and *Wilhelm v. Continental Title Co.*, 720 F.2d 1173 (10th Cir.), cert. denied, 104 S. Ct. 1601 (1984).

/23/ *Bray*, 113 S. Ct. at 759, reversing *Bray v. Alexandria Women's Health Clinic*, 914 F.2d 582 (4th Cir. 1990).

/24/ *Bray*, 113 S. Ct. at 759.

/25/ *Id.* at 786.

/26/ See *Scott*, 463 U.S. at 825 (right to travel); *Griffin*, 403 U.S. at 105 (Thirteenth Amendment); *Terry*, 886 F.2d at 1360 (right to travel); *Baker v. McDonald's Corp.*, 686 F. Supp. 1474 (S.D. Fla. 1987) (Thirteenth Amendment). But see *Dombrowski v. Dowling*, 459 F.2d 190, 195 (7th Cir. 1972) (a white plaintiff may not claim a cause of action under section 1985(3) based on the Thirteenth Amendment).

/27/ *Scott*, 463 U.S. at 832 ("[A] conspiracy to violate First Amendment rights is not made without proof of state involvement."); *Williams v. St. Joseph Hosp.*, 629 F.2d 448 (7th Cir. 1980) (section 1985(3) claim based on violation of Fourteenth Amendment

requires state action).

/28/ See, e.g., *Baker*, 686 F. Supp. at 1481; *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 518 F. Supp. 993 (S.D. Tex. 1981); *Clark v. Universal Builders, Inc.*, 409 F. Supp. 1274 (N.D. Ill. 1976). To the extent that Section 1981 may still be used in bias-crime cases after *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989) (limiting Section 1981 actions to discrimination in the making of contracts), such a claim may also provide a cause of action under section 1985(3). See, e.g., *Daniels v. Pipefitters' Ass'n Local Union*, 945 F.2d 906 (7th Cir. 1991), cert. denied, 112 S. Ct. 1514 (1992).

/29/ See, e.g., *Jennings v. Patterson*, 488 F.2d 436 (5th Cir. 1974); *Stirgus v. Benoit*, 720 F. Supp. 119 (N.D. Ill. 1989) (Clearinghouse No. 50,358).

/30/ See, e.g., *Williams v. Matthews Co.*, 499 F.2d 819 (8th Cir.), cert. denied, 419 U.S. 1021 (1974).

/31/ *Novotny*, 442 U.S. at 366 (use of section 1985(3) to enforce a Title VII claim is barred because the plaintiff thereby avoids the comprehensive administrative and judicial process established by Title VII).

/32/ See, e.g., *People v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), vacated on other grounds, 718 F.2d 22 (2d Cir. 1983) (en banc); *Life Ins. Co. of N. Am. v. Reichardt*, 591 F.2d 499 (9th Cir. 1979); *McLellan v. Mississippi Power & Light Co.*, 545 F.2d 919 (5th Cir. 1977) (en banc).

/33/ See, e.g., *Cohen v. Illinois Inst. of Tech.*, 524 F.2d 818 (7th Cir. 1975), cert. denied, 425 U.S. 943 (1976); *Nieto v. UAW Local 598*, 672 F. Supp. 987 (E.D. Mich. 1987); *Thompson v. International Ass'n of Machinists*, 580 F. Supp. 662 (D.D.C. 1984).

/34/ See, e.g., *Traggis v. St. Barbara's Greek Orthodox Church*, 851 F.2d 584 (2d Cir. 1988) (Connecticut Human Rights and Opportunities Act).

/35/ See, e.g., *Griffin*, 403 U.S. at 103 ("The claims of detention, threats, and battery amply satisfy the requirements of acts done in furtherance of the conspiracy."); *Stirgus*, 720 F. Supp. at 122 ("allegedly acts taken in furtherance of the conspiracy -- namely, the purchase and preparation of incendiary materials and the firebombing of her house -- which resulted in the destruction of her property" are sufficient facts to state a claim under section 1985(3)).

/36/ For an unpublished decision, see *Cotton v. Duncan*, No. 93 C 3875, 1993 WL 473622 (N.D. Ill. Nov. 15, 1993).

/37/ *Fisher v. Shamburg*, 624 F.2d 156 (10th Cir. 1980).

/38/ *Id.* at 159.

/39/ *Id.* (quoting *Jones v. Alfred Mayer Co.*, 392 U.S. 409 (1968)).

/40/ *Id.*

/41/ *Id.* at 166.

/42/ *Stirgus*, 720 F. Supp. at 122. For a thorough discussion of this case, see app. B.

/43/ *Johnson v. Smith*, 819 F. Supp. 235 (N.D. Ill. 1992).

/44/ 42 U.S.C. Sec. 1982.

/45/ See *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375 (1982), for a thorough discussion of the legislative history of section 1982.

/46/ *City of Memphis v. Greene*, 451 U.S. 100 (1981).

/47/ See *id.* at 120.

/48/ See, e.g., *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184 (7th Cir. 1982).

/49/ *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1982).

/50/ *St. Francis College v. Al-Khazraji*, 481 U.S. 604 (1987).

/51/ *Id.* at 610 -- 13.

/52/ *Id.* at 611 -- 12.

/53/ *Id.* at 613.

/54/ *Jones*, 392 U.S. at 409.

/55/ *Sullivan v. Little Hunting Park Inc.*, 396 U.S. 229 (1969) (right to lease); *Jones*, 392 U.S. at 441 (right to purchase).

/56/ *Greene*, 451 U.S. at 100.

/57/ *Jones*, 392 U.S. at 413.

/58/ *Stackhouse v. DeSitter*, 566 F. Supp. 856 (N.D. Ill. 1983), reconsidered and *aff'd* in part by 620 F. Supp. 208 (1985).

/59/ The Supreme Court has held that claims brought under 42 U.S.C. Secs. 1981 and 1983 are governed by the state statute of limitations for personal injury suits. *Wilson v. Garcia*, 471 U.S. 261 (1985) (section 1983 claims); *Goodman v. Lukens Steel Co.*, 482

U.S. 656 (1987) (section 1981 claims). Based on the same reasoning, some circuit courts have held that local statute of limitations for personal injury suits also govern claims brought under 42 U.S.C. Sec. 1982. *Scheerer v. Rose State College*, 950 F.2d 661 (10th Cir. 1991), cert. denied, 112 S. Ct. 2995 (1992); *Wolf v. City of Chicago Heights*, 828 F. Supp. 520 (N.D. Ill. 1993).

/60/ See 28 U.S.C. Sec. 1343(4) (creating federal jurisdiction for "damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights").

/61/ *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974).

/62/ *Id.* at 636.

/63/ *Phillips*, 685 F.2d at 191 (upholding punitive damages of \$100,000 against each of two defendants).

/64/ *Stirgus*, 720 F. Supp. at 122. For a thorough discussion of this case, see app. B.

/65/ *Id.*

/66/ *Waheed v. Kalafut*, No. 86 C 6674, 1988 U.S. Dist. LEXIS 964 (N.D. Ill. Feb. 1, 1988).

/67/ *Johnson v. Smith*, 810 F. Supp. 235 (N.D. Ill. 1992).

/68/ *Pina v. Abington*, Eq. Opp. Hous. Rep. (P-H) Para. 15,257 (E.D. Pa. May 22, 1978).

/69/ Fair Housing Act, 42 U.S.C. Secs. 3601 et seq.

/70/ 42 U.S.C. Sec. 3604.

/71/ *Id.* Sec. 3617.

/72/ 42 U.S.C. Sec. 3613(a).

/73/ *Southend Neighborhood Improvement Ass'n. v. St. Clair County*, 743 F.2d 1207 (7th Cir. 1984). For legislative history, see 1968 U.S.C.C.A.N. 1837.

/74/ See, e.g., *Stirgus*, 720 F. Supp. at 123. See also *Crumble v. Blumthal*, 549 F.2d 462 (7th Cir. 1977); *Stackhouse*, 620 F. Supp. at 208.

/75/ 42 U.S.C. Sec. 3613(a).

/76/ *Id.* Sec. 3613(c)(1).

/77/ *Curtis v. Loether*, 415 U.S. 189 (1974).

/78/ *Saunders v. General Serv. Corp.*, 659 F. Supp. 1042 (E.D. Va. 1987) (emotional distress and humiliation). See also *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974).

/79/ *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975) (citation omitted).

/80/ 42 U.S.C. Sec. 3612(c)(2).

/81/ *Stirgus*, 720 F. Supp. at 122; *Waheed*, 1988 U.S. Dist. LEXIS 964; *Sofarelli v. Pinellas County*, 931 F.2d 718 (11th Cir. 1991).

/82/ *Seaphus v. Lilly*, 691 F. Supp. 127 (N.D. Ill. 1988).

/83/ *Stackhouse*, 620 F. Supp. at 211.

/84/ See ADL Comprehensive Guide, *supra* note 2.

/85/ *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993).

/86/ 720 ILCS 5/12-7.1 (1993).

/87/ N.Y. Penal Law Sec. 240.30.

/88/ See, e.g., Wisconsin statute discussed below.

/89/ Cal. Penal Code Sec. 422.75.

/90/ Mass. Gen. L. ch. 265 Sec. 37.

/91/ 18 U.S.C. Sec. 241.

/92/ See, e.g., Ind. Code Ann. Sec. 35-43-1-2(b).

/93/ A summary of existing state statutes found by the authors as of January 1995 appears in app. A.

/94/ See, e.g., Mich. Comp. Laws Sec. 750.147b(3).

/95/ *Id.*

/96/ Cal. Civil Code, Sec. 52(b).

/97/ Mich. Comp. Laws Sec. 750.147b(3).

/98/ See Selected Success Stories of the Project to Combat Bias Violence in pt. I of this article.

/99/ *R.A.V. v. St. Paul*, 112 S. Ct. 2538 (1992); *Mitchell*, 113 S. Ct. at 2194.

/100/ *R.A.V.*, 112 S. Ct. at 2560.

/101/ *Id.* at 2561.

/102/ *State v. Wyant*, 597 N.E.2d 450 (Ohio 1992), vacated and remanded sub nom *Ohio v. Wyant*, 113 S. Ct. 2954 (1993), on remand, 624 N.E.2d 722 (statute upheld), cert. denied, 115 S. Ct. 132; and *Mitchell*, 485 N.W.2d 807 (Wis. 1993), rev'd, 113 S. Ct. at 2194.

/103/ *Mitchell*, 113 S. Ct. at 2201.

/104/ *United States v. Hayward*, 6 F.3d 1241 (7th Cir. 1993), cert. denied, 114 S. Ct. 1369 (1994).

/105/ *United States v. Lee*, 6 F.3d 1297 (8th Cir. 1993), cert. denied, 114 S. Ct. 1550 (1994).

/106/ *Lee v. United States*, 114 S. Ct. 1550 (1994).

/107/ See, e.g., *State v. Talley*, 858 P.2d 217 (Wash. 1993); *Stalder v. State*, 630 So.2d 1072 (Fla. 1994); *State v. Mortimer*, 641 A.2d 257 (N.J. 1994); *State v. Johnston*, 641 N.E.2d 89 (Ill. App. Ct. 1994).

/108/ For a thorough, up-to-date review of constitutional challenges of state bias-violence laws after *Mitchell*, see ADL Comprehensive Guide, *supra* note 2.

/109/ Peter Finn, *Bias Crime: A Special Target for Prosecutors*, *Prosecutor*, at 13 -- 14 (1988). The Center for Women Policy Studies, in its *Violence Against Women as Bias Motivated Hate Crime: Defining the Issues* (1991), states that these guidelines have been adopted by the National Institute of Justice.

/110/ *United States v. Bledsoe*, 728 F.2d 1094 (8th Cir.), cert. denied, 469 U.S. 838 (1984).

/111/ See also *United States v. Ebens*, 800 F.2d 1422 (6th Cir. 1986), involving the federal civil rights prosecution in the infamous Vincent Chin killing, in which the court held that a specific intent to violate the victim's civil rights "need not have been the first among several evil intents."

/112/ *Commonwealth v. Stephens*, 515 N.E.2d 606 (Mass. App. Ct. 1987).



/113/ Id. at 610.

/114/ State v. Hendrix, 813 P.2d 1115 (Or. Ct. App. 1991), aff'd, 838 P.2d 566 (Or. 1992).

/115/ Id. at 1118.

/116/ 740 ILCS 115/1 et seq.

/117/ Vanthournout v. Burge, 387 N.E.2d 341 (Ill. App. Ct. 1979).

\*This appendix does not review any of the applicable criminal laws of the states, their "institutional vandalism" statutes, or any local human rights ordinances (with the exception of the District of Columbia). See generally Anti-Defamation League of B'nai B'rith, Hate Crimes Laws: A Comprehensive Guide (1994).

\*Stirgus v. Benoit, 720 F. Supp. 119 (N.D. Ill. 1989).

## APPENDIX A

### State Civil Provisions for Victims of Bias Violence

The following is a survey of the 23 states and District of Columbia that have enacted provisions for civil claims for victims of bias violence. In each instance, the statute is described according to (1) the conduct or acts of bias violence that exposes a perpetrator to civil liability; (2) the prohibited motivation of the perpetrator and the status or groups protected, and (3) the remedies provided.\*

Arkansas, Arkansas Civil Rights Act of 1993, Ark. Code Ann. Sec. 16-123-106. Hate Offenses.

- (1) Imposes liability for bias-motivated intimidation or harassment, violence, or vandalism.
- (2) Protected categories include race, religion, and ethnicity.
- (3) Allows injunctive relief or civil damages, or both. Monetary compensation can include punitive damages, costs of litigation, and reasonable attorney fees.

California, Cal. Civ. Code Secs. 51.7, 52. Freedom from violence or intimidation; Denial of civil rights or discrimination; damages, civil action.

- (1) Imposes liability on a defendant who denies, aids, conspires in, or incites the denial of civil rights, discrimination, or restriction of the exercise of civil rights.
- (2) Categories covered include violence motivated by the actual or perceived sex, color, race, religion, ancestry, national origin, political affiliation, sexual orientation, age,

disability, and position in a labor dispute.

(3) Provides for injunctive relief and the recovery of actual damages, exemplary damages, an additional civil penalty of \$25,000 to be awarded to the victim, and attorney fees.

Colorado, Colo. Rev. Stat. Sec. 13-21-106.5, Sec. 18-9-121. Civil damages for destruction or bodily injury cause by ethnic intimidation.

(1) Imposes liability for "ethnic intimidation," which includes bias-motivated bodily injury, use of words or conduct to place another person in fear of "imminent lawless action" against that person or that person's property (so long as the words or conduct are indeed likely to cause harm), and damage to property.

(2) Categories covered include race, color, religion, ancestry, and national origin.

(3) Allows recovery for actual damages, punitive damages, costs and expenses.

Connecticut, Conn. Gen. Stat. Ann. Secs. 52-251b, 46a-82 -- 46a-96. Discriminatory practice complaint procedure.

(1) Imposes liability for depriving persons of their civil rights, desecrating a religious structure, and wearing a hood or disguise with the intent to deprive others of their civil rights.

(2) Categories covered include religion, national origin, alienage, color, race, sex, blindness, and physical disability.

(3) Directs complainants to the administrative proceedings before the state Commission on Human Rights and Opportunities, which allow for damages, injunctive relief, and attorney fees and costs.

District of Columbia, D.C. Code Ann. Sec. 22-4004. Bias related crime, civil action.

(1) Imposes liability for "an intentional act that demonstrates the accused's prejudice."

(2) Categories of prejudice covered include actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, and political affiliation.

(3) Allows injunctive relief and the recovery of actual or nominal damages, including damages for emotional distress; punitive damages; attorney fees and costs.

Florida, Fla. Stat. Ann. Sec.S 775.085(2), 874.06. Street terrorism enforcement and prevention: civil cause of action.

- (1) Imposes liability for coercion, intimidation, threats, and harm.
- (2) Categories protected include race, color, ancestry, ethnicity, religion, national origin, and sexual orientation.
- (3) Allows injunctive relief, treble damages, "any other appropriate relief in law or equity," attorney fees, and costs.

Idaho, Idaho Code Secs. 18-7901, -7902, -7903, -7904. Malicious harassment.

- (1) Imposes liability for threats, intimidation, harassment, physical injury, or damage to property.
- (2) Protected categories include race, color, religion, ancestry, or national origin.
- (3) Allows special and general damages, including but not limited to damages for emotional distress, punitive damages, and reasonable attorney fees and costs.

Illinois, 720 ILCS 5/12-7.1. Hate crime.

- (1) Imposes liability for injury to person or property damage resulting from an assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, and harassment by telephone.
- (2) Protected categories include actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, and national origin.
- (3) Actual damages, including damages for emotional distress; punitive damages; attorney fees and costs.

Iowa, Iowa Code Secs. 729A.1, 729A.5. Violations of an individual's rights prohibited; civil remedies.

- (1) Imposes liability for physical, emotional, or financial harm resulting from "commission of a hate crime."
- (2) Protected categories include race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, and disability.
- (3) Provides for injunctive relief, general and special damages, reasonable attorney fees, and costs.

Louisiana, La. Rev. Stat. Ann. Sec. 9:2799.2. Civil action for institutional vandalism.

- (1) Imposes civil liability for institutional vandalism.
- (2) The crime of institutional vandalism, and the delineation of protected facilities under Sec. 14:225.
- (3) Recovery for general or special compensatory damages, including damages for emotional distress, plus costs.

Massachusetts, Mass. Gen. Laws ch. 266, Sec.S 127A, 127B, ch. 265 S 39. Actions for civil rights violations; liability.

- (1) Imposes liability for personal injury or damage or loss to property.
- (2) Protected categories include race, color, religion, national origin; places of worship, religious schools or community centers, cemeteries.
- (3) Provides for injunctive relief, special and general damages, reasonable attorney fees and costs.

Michigan, Mich. Comp. Laws Sec. 750.147b. Ethnic intimidation.

- (1) Imposes liability for physical contact, damage or defacing of personal or real property, or threats, if done maliciously and with specific intent to intimidate or harass.
- (2) Protected categories include race, color, religion, gender, and national origin.
- (3) Injunctive relief, actual damages including emotional distress, the greater of \$2,000 or treble damages, and reasonable attorney fees and costs.

Missouri, Mo. Rev. Stat. Sec. 537.523. Institutional vandalism and ethnic intimidation, civil actions for damages, injunction, attorney fees, and costs.

- (1) Imposes liability for personal injury or damage or loss to property.
- (2) Protected categories include race, color, religion and national origin; provisions for religious institutions.
- (3) Provides for injunctive relief, special and general damages, reasonable attorney fees and costs, and "other appropriate relief in law or in equity."

New Jersey, N.J. Stat Ann. Sec. 2A:53A-21. Civil liability for bias crime.

- (1) Imposes civil liability for commission of a criminal offense with the purpose of bias-motivated intimidation.
- (2) Protected categories include race, color, religion, gender, handicap, sexual

orientation, and ethnicity.

- (3) Provides for award of actual damages, including emotional distress, along with punitive damages, attorney fees, and costs.

New York, N.Y. Civ. Rights Law Sec. 40-d. Penalty for violation.

- (1) Imposes liability for violation of civil rights law, aggravated harassment (as defined in sections 240.30(3) and 240.31 of the Penal Code), and aiding or inciting to violate an individual's civil rights.
- (2) Protected categories include race, color, creed, national origin, sex, marital status, religion, and disability.
- (3) Damages limited to civil penalty of \$100 -- \$500 to be paid to person aggrieved.

Ohio, Ohio Rev. Code Ann. Sec. 2307.70. Damages recoverable for vandalism, desecration, or ethnic intimidation.

- (1) Imposes liability for personal injury or loss to person or property.
- (2) Protected categories include race, color, religion, and national origin.
- (3) Provides for recovery for "full damages," including, but not limited to, punitive damages and damages for emotional distress; reasonable attorney fees, and costs.

Oklahoma, Okla. Stat. Ann. tit. 21, Sec. 850. Malicious intimidation or harassment because of race, etc.

- (1) Imposes liability for assault, battery, damaging or defacing personal or real property, or threats if done maliciously and with the specific intent to intimidate or harass because victim belongs to protected class; also includes telephonic harassment or incitement, and broadcasting or publishing of material intended to incite hate crimes.
- (2) Protected categories include race, color, religion, ancestry, national origin, and disability;
- (3) Recovery for "any damages."

Oregon, Or. Rev. Stat. Sec. 30.190. Civil action for intimidation; remedies, etc.

- (1) Imposes liability for offensive physical contact, injury, threat of injury, property damage, or threat of property damage under section 166.155.
- (2) Protected categories include actual or perceived race, color, religion, national origin, and sexual orientation.

(3) Provides for injunction, recovery of special and general damages, including emotional distress, punitive damages, reasonable attorney fees, and costs.

Pennsylvania, 42 Pa. Cons. Stat. Ann. tit. 42, Sec. 8309(a). Civil rights violations.

(1) Imposes liability for injury to person or property due to "ethnic intimidation" or "institutional vandalism."

(2) Protected categories include race, color, religion, and national origin.

(3) Recovery for general and special damages including damages for emotional distress, punitive damages, attorney fees and costs, "injunctive and other equitable relief," and "such other relief which the court deems necessary and proper."

Rhode Island, R.I. Gen. Laws Sec. 9-1-35. Civil action for ethnic or religious intimidation and/or vandalism.

(1) Imposes liability for "an act or acts which could be reasonably construed as intended to harass or intimidate" persons because of their membership in a protected group.

(2) Protected groups include race, religion, and national origin.

(3) Recovery for compensatory damages including emotional distress; injunctive relief within discretion of the court.

Vermont, Vt. Stat. Ann. tit. 13, Sec. 1457. Civil liability and enforcement.

(1) Imposes civil liability for any crime motivated by victim's perceived membership in a protected category.

(2) Protected categories include race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap, and sexual orientation.

(3) Provides for injunctive relief, compensatory and punitive damages, attorney fees, costs, and "other appropriate relief."

Virginia, Va. Code Ann. Sec. 8.01-42.1. Civil action for racial, religious, or ethnic harassment, violence or vandalism.

(1) Imposes liability for acts of intimidation or harassment, and violence directed against person or property.

(2) Actionable motives include race, religion, and ethnicity.

(3) Recovery includes injunctive relief, damages, punitive damages, discretionary costs, and reasonable attorney fees.

Washington, Wash. Rev. Code Ann. Secs. 9A.36.080, 9A.36.083 Malicious harassment definition and criminal penalty.

(1) Imposes liability for malicious and intentional injury to person or property based upon the victim's perceived membership in one of the protected categories, and for threats to cause such injury. Permits rebuttable inferences of intent from the burning of a cross or the displaying of a swastika, depending upon the perceived heritage of the victim.

(2) Protected categories include race, color, religion, ancestry, national origin, gender, sexual orientation, and mental, physical, or sensory handicap.

(3) Recovery allowed for actual damages; punitive damages up to \$10,000; costs, and reasonable attorney fees.

Wisconsin, Wis. Stat. Sec. 895.75. Physical injury, emotional distress, loss or damage suffered by members of certain groups.

(1) Imposes liability for physical injury, emotional distress, and property damage or loss because of conduct in violation of section 943.012 or 939.645.

(2) The intentional selection of a victim due to his/her actual or perceived race, religion, color, disability, sexual orientation, national origin, or ancestry.

(3) Recovery allowed for special and general damages including damages for emotional distress, punitive damages, reasonable attorney fees, and costs.

## APPENDIX B

Case Study: Stirgus v. Benoit

The Stirgus case mentioned in this article is a good example of the possible course of a bias-violence case. The criminal and civil proceedings ran concurrently, while the civil case raised both federal and state claims against four defendants -- one who defaulted early in the litigation, two who eventually settled, and a fourth who contested liability to the end.

### The Background

Dorothy Stirgus, an African American teacher in the Chicago public schools, had saved for years to buy her first house. In December 1986, she purchased a home in a

predominantly white neighborhood on the southwest side of Chicago. On the evening of February 17, 1987, ten days after moving into her new house, Ms. Stirgus heard the sound of breaking glass coming from her kitchen. She opened her bedroom door to find her kitchen engulfed in flames. Dressed in only her pajamas, she escaped through the front door. Her house was extensively damaged by smoke and water.

Several days later, four men who lived in the neighborhood were arrested and charged with arson, aggravated arson, and conspiracy to those crimes. The evidence revealed that, on the evening of February 17th, the defendants decided to bomb the house of a black person. They did not know Ms. Stirgus; they knew only that her house was owned by a black person. The four men gathered the materials needed to make "Molotov cocktails." They purchased gasoline and tore up a pillowcase for the wicks. On their way to Ms. Stirgus' house, they tested one of the Molotov cocktails.

They approached Ms. Stirgus' house from the rear through the alley. One of the men threw a piece of cement block through Ms. Stirgus' kitchen window to make a hole so that the Molotov cocktails would land inside the house. They then threw two firebombs through the broken window. As the kitchen burst into flames, they ran through the alley to a getaway car.

A few months after the firebombing, Ms. Stirgus filed her first civil rights complaint against the four defendants. However, the assistant state's attorney assigned to the criminal case convinced her to drop her civil suit because he believed that the defendants were using the more generous discovery available in the civil proceeding to gather evidence to defend the criminal charges.

Nearly two years after the fire, however, the criminal case had not yet gone to trial. Frustrated by this slow progress, Ms. Stirgus discussed her civil claims with attorneys at the Chicago Lawyers' Committee and volunteer attorneys from the law firm of Sachnoff & Weaver, Ltd., who agreed to represent her in a civil suit for damages.

### Complaint

Ms. Stirgus filed her second civil complaint in federal court in February 1989, just before the statute of limitations ran on many of her claims. The gravamen of the complaint was that the defendants' acts were racially motivated and intended to drive Ms. Stirgus out of the neighborhood. The original complaint alleged claims under the Civil Rights Act of 1866, 42 U.S.C. Secs. 1981, 1982; the Ku Klux Klan Act, 42 U.S.C. Sec. 1985(3); the Fair Housing Act, 42 U.S.C. Secs. 3604, 3617; the Illinois Ethnic Intimidation Act (later renamed the Illinois Hate Crime Act); and under Illinois common law for intentional infliction of emotional distress. The complaint requested \$150,000 in compensatory damages and \$450,000 in punitive damages.

### Motions to Dismiss

In response to the complaint, two of the defendants filed motions to dismiss. They



claimed that the section 1982 claim should be dismissed because there was no state action. They also argued that firebombing is not the type of activity that is prohibited by section 1982. The defendants asserted that Stirgus had not alleged a violation of federal law for which section 1985(3) provides a remedy. They contended that the section 3617 claim under the Housing Act must be dismissed because there was no connection between that claim and the prohibition on discrimination in the sale of property found in 42 U.S.C. Sec. 3604. The defendants asked the court to dismiss the pendent state claims on the grounds that the plaintiff had not stated a federal claim.

After the plaintiff's lawyers submitted a response brief, the court issued an opinion upholding all of the claims.\* The court held, as the Supreme Court had previously, that no state action was required for a violation of section 1982. It also held that "the firebombing of Stirgus' house is precisely the type of discriminatory conduct that section 1982 is designed to remedy." The court determined that the claim under section 1982 was a violation of federal law for which a remedial claim under section 1985(3) could be brought. The attorneys had also argued that the section 3617 claim and the Thirteenth Amendment provided grounds for the section 1985(3) claim, but the court did not reach these issues. The court further held that section 3617 of the Fair Housing Act may be violated absent a violation of any other section of the Act and that "this brutal act falls squarely within the parameters of section 3617." Having found that Stirgus had stated several federal claims, the court exercised pendent jurisdiction over the state claims.

## Discovery

The assistant state's attorney wanted the plaintiff's attorneys to prevent the defendants from taking discovery until after the criminal trial so that the defendants could not use the civil case as a vehicle for getting discovery for the criminal case. After the district court judge denied the defendants' motion to dismiss, at the court's request the lawyers agreed to transfer the case to a magistrate judge for all purposes. This transfer also slowed down the discovery process. Then, because the date for the criminal trial was not far in the future, Stirgus' lawyers asked the magistrate judge to stay discovery until the completion of the criminal trial. They argued that after the criminal trial there would be little, if any, discovery needed. The magistrate judge granted the request over the defendants' objections.

## Criminal Case

At several times during the course of the litigation, the defendants offered to pay Ms. Stirgus a substantial amount in settlement if she would agree to drop the criminal case. Obviously, it was the state's case and not Ms. Stirgus's, and in either event neither Ms. Stirgus nor the state was interested in such a deal.

A total of 44 continuances were granted in the criminal case. Although the plaintiff's lawyers pressed the assistant state's attorneys to proceed with the trial as quickly as possible, the case was plagued by many delays, caused by a change of prosecutors, repeated motions to suppress and other motions by the defendants, and lawyers on both

sides who were not prepared to go to trial. These delays were very frustrating for Ms. Stirgus.

The criminal trial for three of the defendants took place in March 1990, over three years after the firebombing. One of the defendants had previously pled guilty in connection with this case and other unrelated charges. The defendants had all given oral and written confessions after they were arrested. Certain of these confessions were allowed into evidence over the defendants' objections. The primary issue in the criminal case was whether the defendants were guilty of arson or aggravated arson, which is a class X felony with a minimum sentence of six years. Aggravated arson occurs when the defendant knew or reasonably should have known that a person was inside the building. Two of the defendants admitted that they had committed the arson but testified that they did not know that anyone was inside the house. Ms. Stirgus testified that lights were on in the house. The jury found all three defendants guilty of aggravated arson and of the other three charges. Two defendants were sentenced to seven years, and the third defendant, who stayed in the getaway car, was sentenced to six years in prison.

#### Settlement with Two Defendants

After the criminal trial, Ms. Stirgus settled with two of the defendants. She was in the position of having an extremely strong, high-damages case against the defendants who had no money. Three of the defendants were in high school when they committed the arson, and they had earned little money since their arrests. Their families were also of limited means. After the defendants were sentenced, they started to serve their terms. Given how unlikely it was that the defendants would generate high incomes after they got out of jail, Ms. Stirgus settled with two of the defendants for \$11,250 each. The defendants' parents put up the money, payable in two installments.

#### Summary Judgment in Civil Case

The third defendant had defaulted at the beginning of the case, and the fourth refused to settle. Ms. Stirgus' attorneys moved for summary judgment against the nonsettling defendant without doing any discovery. They used the defendant's statements to the police, his criminal trial testimony, and the criminal conviction. The defendant had admitted all the elements of the case, including the racial motivation, in his criminal testimony. The contested issue in the criminal case, whether the defendants knew or had reason to know that Ms. Stirgus was in the house when they firebombed it, was not an element of the civil case. However, since the jury had found that the defendants knew or reasonably should have known that someone was in the house, the egregious nature of their actions was clear. The nonsettling defendant did not respond to the motion for summary judgment, and the court issued an opinion granting summary judgment on all claims.

#### Damages Claims and Hearing

Ms. Stirgus's lawyers filed a memorandum of law in support of their request for

compensatory and punitive damages on every claim. Given that the damages were going to be decided by the magistrate judge and not a jury, and that in the Seventh Circuit the defendant's financial status is one element the courts consider in awarding punitive damages, they requested \$100,000 in compensatory damages and \$200,000 in punitive damages. The property damage to the house had been covered by insurance, so they requested only compensatory damages for humiliation and emotional harm.

In the damages hearing, Ms. Stirgus was the only witness. She described the firebombing and how it affected her life. She testified that immediately after the fire she lost weight and had trouble sleeping. She was also initially afraid to be in her house alone. She further testified that she thought about the fire and relived some of the terror almost every day. The defendant's attorney emphasized that she had never sought assistance from a psychologist or a psychiatrist. He also argued that the damages should be in line with the amount for which two of the defendants had settled. After hearing the testimony and argument from counsel, the magistrate judge ruled that the nonsettling defendant and the defaulted defendant were jointly and severally liable to Ms. Stirgus for \$300,000, the full amount that her attorneys had requested.

Although Ms. Stirgus's lawyers have not been able to collect any of the award because the defendants have no assets and are in jail, the judgment did encourage the settling defendants to pay timely the remaining amount of the settlements.

The Stirgus case was one of the first cases brought by the Project to Combat Bias Violence and one of the first to be completed. The plaintiff's attorneys were able to make good law in the area of bias violence and to obtain some money for Ms. Stirgus. They were also successful in obtaining publicity regarding the case, both after the criminal convictions and after the civil judgment.

## Defendants Required to Move Out of Neighborhood

### Under Unprecedented Settlement Agreement

In *Ramos v. Kraft*, No. 94 C 6031 (E.D. Ill. Nov. 17, 1994) (Clearinghouse No. 50,351), a Puerto Rican family sought over \$10 million in a complaint alleging a nine-year racially motivated conspiracy by the defendants to drive the plaintiffs out of their home. The complaint alleged violations of the Fair Housing Act, the Civil Rights Acts of 1866 and 1871, and the Illinois Hate Crime Act, and common law governing assault and intentional infliction of emotional distress.

Less than a month after the complaint was filed, the defendants agreed to settle the

lawsuit. Under the terms of the consent decree, the defendants were required to sell their home promptly under court supervision and move out of the neighborhood. The defendants were also permanently enjoined from harassing or threatening the plaintiffs, required to make a statement in open court to the plaintiffs' children, and required to pay the costs plaintiffs' incurred in bringing the lawsuit.