Respect

Fighting Against Hate *by Maria Wood*

According to statistics compiled by the Federal Bureau of Investigation (FBI), in 2018, there were more than 7,100 reported hate crime incidents nationwide. The bulk of those hate crimes, nearly 2,000, were against African Americans.

The Bureau of Justice Statistics (BJS), an agency under the umbrella of the U.S. Department of Justice, however, claims that the majority of hate crimes go unreported. In June 2017, BJS revealed that according to their data, each year from 2004 to 2015 there was an estimated 250,000 hate crime victimizations.

Today, Asian Americans face an increased threat of racism and violence due to the Coronavirus, which began in China. Some people wrongly believe that all

Attacks Against Asians in the time of Coronavirus
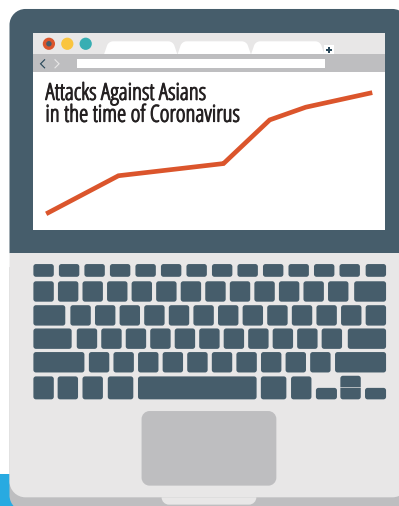
Asians have the disease and will infect them. That notion is reinforced by some officials who call the virus, "the Chinese virus," despite guidance from the World Health Organization, who advises against using geographic locations to describe any virus because of backlash in the past against immigrants from those areas.
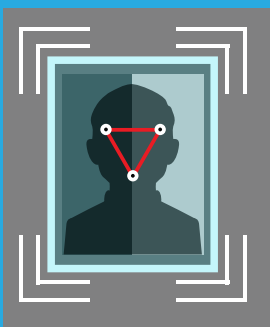
In March 2020, a professor of Asian American Studies at San Francisco State University launched a

Does Technology Discriminate? *by Michael Barbella*

We all come into contact with facial recognition software everyday, sometimes without even knowing it. The technology is used in everything from unlocking iPhones to opening doors to paying for purchases.

Facial recognition technology has grown in popularity in recent years, becoming the preferred surveillance tool for police departments, airports, schools, retail outlets, sports venues, churches and government offices. Some airlines are using the technology to replace boarding passes and three arenas, including Madison Square Garden in Manhattan, are testing the use of face-scanning intelligence.

What is facial recognition?

Facial identification technology dates back to the 1960s and is based on research conducted by Woodrow Wilson "Woody" Bledsoe, a mathematician, computer scientist, and artificial intelligence pioneer. Intent on creating a "computer person," Bledsoe developed facial identification technology through pattern recognition and facial feature coordinates. He essentially taught machines to divide a face into features, compare distances between those attributes, and then process the measurements to recognize a specific face.

Today's technology uses the same theory, mapping such facial geometry as distance between the eyes and forehead-to-chin measurements to

Can Hate Be Banned From Social Media? *by Phyllis Raybin Emert*

Freedom of speech is the foundation of the United States. Social media has changed the landscape of free speech but essentially the same rules apply.

The First Amendment to the U.S. Constitution states: "Congress shall make no law...abridging the freedom of speech, or of the press..." Free speech on the Internet receives the same First Amendment protection as traditional print and broadcast media.

The U.S. government cannot ban Internet speech through congressional legislation since it would be a violation of the First Amendment. Some European countries can make their own laws regulating online speech, but in America, it is up to the social media platforms to regulate themselves.

Lata Nott, an attorney and executive director of the First Amendment Center of the Freedom Forum Institute in Washington DC, explains that the First Amendment prevents the government from censoring or punishing anyone for speech and that speech is not limited to what someone says out loud, or is printed in books or newspapers. Freedom of speech also includes freedom of expression, which promotes ideas and different points of view through symbolic meaning, such as artwork or films. Nott points out that the First Amendment right to free speech does not apply to organizations or companies.

"Social media platforms [like Facebook, Twitter, Instagram, and YouTube] are private companies, so they don't have to comply with the First Amendment," Nott says.

"They get to set their own rules and policies about what speech they'll allow on their sites. That's actually their First Amendment right."

Fighting hate speech

Several violent and racist events have taken place in recent years. In August 2017 in Charlottesville, Virginia, a neo-Nazi supporter purposely smashed his car into peaceful civil rights protesters, killing one and injuring more than a dozen. In October 2018, 11 Jewish worshipers at a synagogue in Pittsburgh were killed while worshipping. In March 2019, gunmen at two Muslim mosques in New Zealand killed 51 and injured dozens while streaming the shootings live on Facebook. Weeks after the incidents in New Zealand, the U.S. House of Representatives Judiciary Committee held a hearing to explore the spread of white nationalism through social media.

House Judiciary Chairman Gerald Nadler, who oversaw the hearing, told legislators that online hate speech and the rise of white supremacists is "an urgent crisis in our country," despite one witness who gave testimony at the hearing and accused Congress of "fear mongering."

The hearing was live streamed on YouTube with a live chat posted along side it. Approximately 30 minutes into the hearing YouTube had to disable the comments section because users were posting **anti-Semitic** commentaries, claiming that white nationalism is not a form of racism. Some of these comments were read aloud during the hearing as evidence of the problem's scope. One comment from someone with the screen name Fight White Genocide said, "Anti-hate is a code word for anti-white."

"Hate speech, whether it's online or out loud, is protected by the First Amendment, unless it's a truly threatening statement," Nott says. "That means that the government can't arrest or otherwise punish someone for making a hateful post online, but the online platform is still free to remove that post or ban the user if it chooses to."

Tech companies take action

Over the last few years, tech companies and social media sites have slowly begun to curb Internet access to extremist groups. Facebook and its subsidiary, Instagram, banned white supremacist content on its sites. In March 2019, the company expanded that ban to include white nationalist and white separatist content.

In a post titled, Standing Against Hate, Facebook stated: "...[W]hite nationalism and separatism cannot be meaningfully separated from white supremacy and organized hate groups. Our own review of hate figures and organizations— as defined by our Dangerous Individuals & Organizations policy—further revealed the overlap between white nationalism and separatism and white supremacy. Going forward, while people will
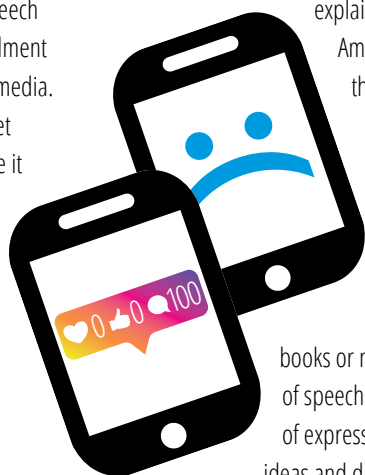
Social Media CONTINUED FROM PAGE TWO

still be able to demonstrate pride in their ethnic heritage, we will not tolerate praise or support for white nationalism and separatism."

In May 2019, Facebook and Instagram banned seven of its most divisive and controversial users under its Dangerous Individuals policy, including noted conspiracy theorist Alex Jones and Nation of Islam leader Louis Farrakhan, who is known for his anti-Semitic remarks. In a statement, Facebook said: "We've always banned individuals or organizations that promote or engage in violence and hate, regardless of **ideology**. The process for evaluating potential violators is extensive and it is what led us to our decision to remove these accounts today."

In June 2019, YouTube removed thousands of videos and channels from its site that advocated **bigoted** ideologies and instituted a policy that bans "videos alleging that a group is superior in order to justify discrimination, segregation or exclusion."

While some have called the bans discriminatory, Paul Barrett, the deputy director of New York University's Stern Center for Business and Human Rights told *The New York Times*, "The social media companies not only have the right but an ethical responsibility to remove disinformation and hate speech and those who spread it from their platforms."

Not responsible

Section 230 of the Communications Decency Act protects social media platforms like Facebook from being sued for what third parties post on their site. As an example, suppose a customer leaves a scathing, even **libelous**, restaurant review on Yelp.

According to Nott, the restaurant owner can sue the customer, but according to Section 230, the owner can't sue Yelp. The rationale behind the protection, Nott says, is that Yelp cannot be expected to fact-check all of the reviews posted on its platform and shouldn't be responsible for its users' actions.

"If you took away its Section 230 protection," Nott says, "the likely outcomes are that: 1) Yelp would be sued out of existence; 2) Yelp would remove any remotely negative reviews from its site to avoid being sued out of existence; and 3) Yelp would only allow a small and specific group of users to write content for its site, like a newspaper or magazine."

Social media platforms are in the same category as Yelp. For instance, YouTube estimates that more than 500 hours of new content is uploaded to its site every minute. The company uses **algorithms** to search for offensive videos but they can't catch all of them.

"Without Section 230," explains Nott, "no company could afford to provide a platform where anyone and everyone could freely express their views." She also notes that Section 230 doesn't just protect the big media platforms but also small bloggers "from being liable for the comments posted by visitors."

Responsibility concerns

The fact that the First Amendment doesn't apply to private companies like Facebook, meaning they are allowed to set their own rules about who can and can't use their platforms, does raise concerns for Nott.

"It means that a small group of private companies have a lot of power over what speech gets heard and what speech doesn't," Nott says. "While that might not violate the First Amendment, it is something that people who value free speech should pay attention to [in the future]." •

1 Should all speech be allowed online, even hate speech? Explain your reasoning.

2 The article talks about Section 230 of the Communications Decency Act. Do you agree or disagree with Section 230? Who do you think should be held responsible for comments made on social media platforms?

3 Should Facebook and other social media platforms be able to decide what is and is not hate speech? Why or why not?

Fighting CONTINUED FROM PAGE ONE

website to track attacks against Asians. In the site's first eight days, it received more than 650 reports of discrimination against Asian Americans, ranging from verbal attacks to **vandalism** to physical attacks.

What is a hate crime?

The FBI's definition of a hate crime is "a criminal offense against a person or property, motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity." Federal hate crime laws, also known as bias crime laws, grew out of the Civil Rights Movement in the 1960s.

The first law enacted was the Civil Rights Act of 1968. The Act allowed for the federal

prosecution of anyone "who willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with...any person because of his race, color, religion or national origin." The law was somewhat narrow in scope, as the victims of the intimidation or injury had to be engaging in one of these federally protected activities: attending school;

patronizing a public place or facility; applying for employment; acting as a juror; or voting.

Groups covered by hate crime legislation are included because they are considered to be in what is known as a protected class due to historical discrimination and mistreatment. In 2009, protected classes for federal hate crimes were expanded to include a victim's actual or perceived gender, sexual orientation, gender identity, or disability. In addition, the requirement that a victim had to be engaging in one of the federally protected activities was dropped.

"The laws grew out of an unfortunate history we have in this country related to racial and religious terror," explains Kami Chavis, a

Hate in the Garden State

According to 2018 data from the Federal Bureau of Investigation, 172 towns, representing all 21 counties in New Jersey, reported hate crimes. In April 2019, New Jersey Attorney General Gurbir S. Grewal announced a new set of standards to update and strengthen hate crime reporting and prosecution in the Garden State.

Among the updated standards are the inclusion of new protected classes (gender, disability, gender identity or expression and national origin) and updated educational programs for law enforcement agencies to recognize bias crimes. Other enhancements include a streamlined reporting system for bias crimes and an expanded definition of a bias incident.

A bias incident differs from a hate crime. Bias incidents don't necessarily involve criminal activity, but they are motivated by racism, religious intolerance or some other prejudice. These acts can be verbal, nonverbal or written.

Data shows there were 569 reported bias incidents in New Jersey in 2018. Twenty-five percent of those incidents took place on college and university campuses and nearly half of the offenders were minors.

To address this problem, in August 2019 New Jersey created the Interagency Task Force to Combat Youth Bias. The task force consists of representatives from eight state agencies and will be led by New Jersey's Division on Civil Rights. It will investigate incidents of "hate, bias, and intolerance" at the state's schools and universities. The task force will also review current programs

to battle bias and examine more measures to reduce incidents.

Preliminary numbers for 2019, released in January 2020, revealed that bias incidents increased by 65 percent in New Jersey, with 944 incidents reported to law enforcement.

Not without consequence

While bias incidents may not rise to the level of a crime, according to Attorney General Grewal, such actions when occurring in schools need to be addressed and used as teachable moments.

"Comments do lead to conduct," Attorney General Grewal wrote in an opinion piece for nj.com. "Law enforcement must re-examine how we respond to bias incidents in our schools. The ordinary slap on the wrist and warning to not engage in such conduct again is insufficient. We need to couple the response with a mandatory education component. For example, the student who paints a swastika on a school wall must receive Holocaust education and learn why that symbol has no place in any society."

In his piece, Attorney General Grewal quoted Nelson Mandela, who said: "People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite."

Let's hope that's true. •

Fighting CONTINUED FROM PAGE FOUR

professor at Wake Forest University Law School and director of its Criminal Justice Program. "When you think about people who have been targeted because of their race or religion, and the much needed expansion for gender and gender identity, we're traditionally talking about vulnerable populations."

Under federal law, violators may face harsher penalties if convicted of a hate crime. If the victim is physically injured, a defendant could face a 10-year sentence. If a victim is killed, the defendant could face the death penalty.

It is important to note that not every crime committed against someone in one of the protected classes is necessarily a hate crime. It only becomes a hate or bias crime if it was committed because of who that person is. For instance, say a store owned by an African American is **vandalized** with graffiti. That is a crime, but not necessarily a hate crime. A prosecutor would need to prove that the defendant committed the crime because the victim was African American. If, for example, a racial slur was used in the graffiti, that would be an indication of a hate crime.

Symbolic meaning

Hate crime laws have a larger implication beyond just punishing a crime. By committing a crime against a person in a protected class, the assailant is symbolically attacking all people in that group.

"These laws are largely symbolic to emphasize how these crimes are in opposition to our democratic values," Professor Chavis says. "The [penalty] enhancements also provide for greater deterrence of these crimes."

In a 1993 opinion, former U.S. Supreme Court Chief Justice William Rehnquist wrote about the justification for harsher penalties for hate crimes. "This conduct is thought to inflict greater individual and societal harm," he wrote. "Bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest."

More categories?

The states may also have their own hate crime laws, although the strength of these laws and whom they cover varies from state-to-state. Four states—

Looking for Lesson Plans While Teaching Remotely?

Check out the New Jersey State Bar Foundation's New Mock Trial & Civics Online Content Page

Adapting to meet the needs of New Jersey teachers during this difficult time, the NJSBF has launched a webpage containing online content perfect for distance learning.

MOCK TRIAL & CIVICS Online Content

What You'll Find on the Page

- Mock trial lessons for elementary and middle school students
- NJSBF civics resources
- Blogs packed with relevant civics content
- A bonus lesson on the U.S. citizenship test for middle and high school students

Access the page from our website (njsbf.org). Just hover over the "School-Based Programs" tab on the navigation bar and click on "Mock Trial & Civics Online Content."

Technology CONTINUED FROM PAGE ONE

create a "facial signature." The resulting mathematical formula is then compared to a database of known faces for a match. In a January 2020 Congressional hearing, Daniel Castro, vice president of the Information Technology and Innovation Foundation, explained how the technology works.

"The technology compares faces automatically, either by searching for similar faces in a database (one-to-many matching) or by verifying the degree to which two faces match (one-to-one matching)," said Castro. "In the former case, facial recognition tries to answer the question, 'who is this person?' and in the latter, it tries to answer the question 'is this person who they say they are?'"

While the technology has proven useful in catching criminals and finding missing people, it has also brought up privacy issues and reports of bias baked into the tech.

Bias baked in

So, can facial recognition software show bias? A 2019 report from the National Institute of Science and Technology (NIST) revealed that it can. NIST tested approximately 200 facial recognition systems on a total of eight million photos. Their report revealed that African Americans and Asian Americans are between 10 and 100 times more likely to be misidentified by facial recognition technology than white people. In addition, women are more likely to be misidentified than men. This phenomenon is called "algorithmic bias." Essentially, it means that because humans create **algorithms**, they are flawed and can carry the biases of the humans that created them.

"The bias is generally due to a lack of diversity in the training data," says Ellen P. Goodman, a professor at Rutgers Law School—Camden who specializes in information policy law. "This is a rampant problem in algorithmic processes and needs to be addressed through self-regulation, ethics, audits, reporting and possibly regulation."

In 2018, using photos of Congress members, the American Civil Liberties Union (ACLU) used Rekognition, facial recognition software developed by Amazon, to search a database of 25,000 mug shots. The software made 28 misidentifications, meaning the software came up with false positives and labeled the misidentified Congress members as criminals. Among the misidentifications were six members of the Congressional Black Caucus. Amazon contends that the ACLU set the confidence level on the software too low. The company recommends law enforcement set the level of confidence threshold to 99 percent. Critics of the software point out that Amazon could set the confidence threshold to that number and not allow it to be changed, but they don't.

It's not just Amazon. Studies have revealed flaws in facial recognition algorithms developed by IBM and Microsoft as well. Joy Buolamwini, a computer scientist and founder of the Algorithmic Justice League, evaluated artificial intelligence (AI) systems for *Time* magazine.

"The companies I evaluated had error rates of no more than one percent for lighter-skinned men. For darker-skinned women, the errors soared to 35 percent," Buolamwini wrote. "AI systems from leading companies have failed to correctly classify the faces of Oprah Winfrey, Michelle Obama and Serena Williams. When technology denigrates even these iconic women, it is time to re-examine how these systems are built and who they truly serve."

Dr. Donnetrice Allison, a professor of Africana Studies at Stockton University, compares AI misidentifications to false eyewitness testimony. "The bias will likely cause false recognitions, just as witness testimony has been found to be flawed when it comes to people of color." Dr. Allison says she isn't making a judgment on whether the technology should or shouldn't be used, but she contends that "the criminal justice system is flawed and people of color endure the greatest miscarriages of justice as a result. I suspect this will only add to that fact rather than fix it."

Outlawed in some states

The large variation in results—particularly among women and darker-skinned people—is fueling support for facial recognition regulations. Some states like California, New Hampshire and Oregon ban the use of face scanning and other biometric tracking technology in police body cameras. The cities of Oakland and San Francisco have banned the innovation outright within their respective city limits.

Michigan outlawed facial recognition technology in December 2019 and there is a statewide ban pending before the Massachusetts State Senate Committee on Public Safety and Homeland Security. Currently, four Massachusetts municipalities bar state government use of facial recognition technology.

Utah lawmakers have concerns about the technology as well, but they are not proposing to ban it. Instead, state officials want to limit its use to the state's Department of Public Safety, which was criticized last year for employing facial recognition software (without warrants) on behalf of the Federal Bureau of Investigation and the U.S. Immigration and Customs Enforcement. The bill would regulate the Department's use of face-scanning software by requiring police to submit a written request that includes a case number, a statement of the crime and a narrative to support that the subject in question is connected to the crime. In addition, police would not be allowed to use the technology for civil immigration violations.

Here in the Garden State, like many other law enforcement agencies nationwide, police officers were using the Clearview AI app, which accesses a
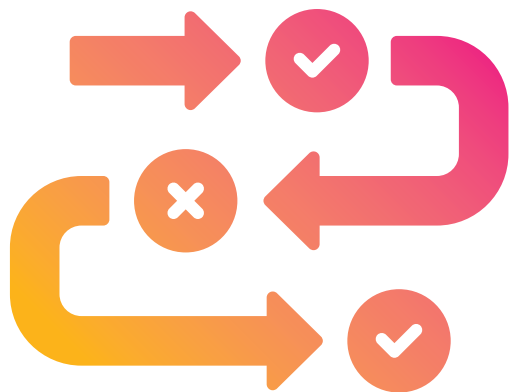
Technology   CONTINUED FROM PAGE SIX

database containing three billion photos collected from websites like Facebook, YouTube, Twitter and Venmo. In January 2020, New Jersey Attorney General Gurbir S. Grewal advised law enforcement to stop using the app.
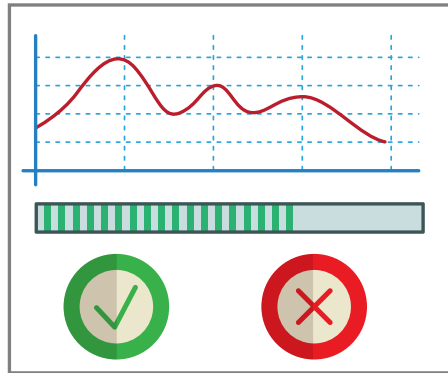
"I'm not categorically opposed to using any of these types of tools or technologies that make it easier for us to solve crimes, and to catch child predators or other dangerous criminals," Grewal told *The New York Times*. "But we need to have a full understanding of what is happening here and ensure there are appropriate safeguards."

Within days of New Jersey's order, New York State Senator Brad Hoylman introduced legislation to prohibit law enforcement officers from using facial recognition and other biometric surveillance technology in the course of their duties. The bill would also create a Task Force to study the issue and recommend standards for possible future use of the tool.

"The jurisdictions that ban the technology are acting in accordance with the 'precautionary principle' to slow things down until we know more about its uses and abuses," says Professor Goodman. "However, I don't think the bans will hold. The technology will be used and we need to put guardrails around it."

On the federal level, the U.S. House of Representatives Algorithmic Accountability Act of 2019 stalled in the Energy and Commerce Committee. U.S. Senators Cory Booker (D-NJ) and Ron Wyden (D-OR), and U.S. Representative Yvette D. Clarke (D-NY) drafted the legislation. The Act would have required companies to study and fix flawed computer algorithms that produce inaccurate, unfair, biased or discriminatory decisions.

"Computers are increasingly involved in the most important decisions affecting Americans' lives—whether or not someone can buy a home, get a job or even go to jail. But instead of eliminating bias, too often these algorithms depend on biased assumptions or data that can actually reinforce discrimination against women and people of color," Senator Wyden said when the legislation was introduced. "Our bill requires companies to study the algorithms they use, identify bias in these systems and fix any discrimination or bias they find."

There is currently no word on whether the legislation will be re-introduced at some point. The House's Oversight and Reform Committee is hoping to introduce facial recognition legislation in the "near future." •

1. How do you feel about facial recognition software in general? Do you view it as an invasion of privacy? Why or why not?

2 What do you think of prohibiting the use of AI technology when investigating crimes? What are the benefits? What are the downfalls? Should its use be unlimited?

3 When facial recognition software contains bias, what potential problems do you see since the use of it is so widespread?

Fighting CONTINUED FROM PAGE FIVE

Arkansas, Georgia, South Carolina and Wyoming—don't have any hate crime laws on the books. Meanwhile, 15 states that do have hate crime laws exclude gender or sexual orientation as a protected class. If a state doesn't have a hate crime law on the books or doesn't cover a federally-protected class, the federal government can step in and prosecute the case.

In recent years, some state lawmakers across the country have pushed to add more protected classes under hate crime laws, including police officers and the homeless. Professor Chavis says support for more inclusion depends upon the classes being considered.

"The danger is you could dilute the purpose on which these hate crime laws were traditionally enacted," she says. "When we think about someone who has been traditionally disadvantaged there are certain categories that don't fit."

On that basis, Professor Chavis contends police officers should not be among protected classes. "We already have penalty enhancements if you assault a police officer or interfere with the duties of a police officer," she says. "The Supreme Court has made a lot of decisions for us in terms of determining what groups pass strict scrutiny and those that don't."

In an opinion piece for *Time* magazine, James B. Jacobs, a professor at New York University School of Law, argued that by including certain groups and excluding others, hate crime laws may be a form of discrimination and noted that these laws "re-criminalize conduct that is already criminal," creating a "hierarchy of victims."

"From the beginning, hate crime laws have simply given us something else to argue about: whose victimization should be punished more severely," Professor Jacobs wrote. "So many crimes will be eligible for hate crime treatment that those victims who are not covered will, perhaps rightly, feel discriminated against."

Many don't support including the homeless as a protected class. The argument is that a homeless person's status is not "**immutable**," in other words, that status can change. A homeless person can find a home; African Americans can't change the color of their skin. Proponents of including the homeless argue that a person's religious affiliation is also changeable and that is considered a protected class.

Why the rise?

So, why this rise in hate crimes? Professor Chavis says many factors may contribute to the spike in hate crimes. While she couldn't pinpoint any one definitive reason, she acknowledges that current political **rhetoric** may be one factor.

"There are a lot of things that could be causing it, but I don't know if any have been empirically linked," Professor Chavis says. "It could be that [minority] groups feel more empowered to report these [crimes]."

Another reason, she says, might be that police departments are reporting more hate crimes than in the past. Once reported, such cases place an additional burden on prosecutors to establish a motive stemming from hate. Simply expressing hateful views on social media may not be enough to prove a suspect committed a criminal act due to prejudice, Professor Chavis explains.

Rather, to qualify as a hate crime, suspects typically need to express their bias during the commission of the crime. The use of racial slurs or, as in one case Professor Chavis recalled, a swastika carved into the victim's skin would elevate the offense to a hate crime.

"Usually there are circumstances and evidence in these cases to support the bias motivation," Professor Chavis says. •

FOOD DONATIONS FOR THE HOMELESS

1. Do you think crimes motivated by bias or hate should be punished more severely? Why or why not?

2 Consider the protected classes. What makes certain members of society "protected?" Do you believe there should be protected classes? Why or why not?

3. Do you agree or disagree that only an "immutable" status should be considered a protected class? Why?

Glossary

algorithm — a process or set of rules to be followed in calculations or other problem-solving operations.   **anti-Semitic** — hostile or prejudiced against Jewish people.   **bigoted** — prejudiced.   **ideology** — principles or a way of thinking that is characteristic of a political system.   **immutable** — unchangeable.   **libelous** — defamatory or insulting.   **rhetoric** — language designed to persuade but often regarded as lacking in honest.   **vandalize** — to deliberately destroy property.