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# A Novel Twist for the Prosecution of Hate Crimes

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In the public's imagination, the classic hate crime is an assault born of animus against a particular ethnicity or sexual orientation, like the case of the Long Island man [convicted in April](#) of killing an Ecuadorean immigrant after hunting for Hispanics to beat up.

But in Queens since 2005, at least five people have been convicted of, or pleaded guilty to, committing a very different kind of hate crime — singling out elderly victims for nonviolent crimes like mortgage fraud because they believed older people would be easy to deceive and might have substantial savings or home equity.

And this month, Queens prosecutors charged two women with stealing more than \$31,000 from three elderly men they had befriended separately. The women, Gina L. Miller, 39, and Sylvia Johns, 23, of Flushing, were charged with grand larceny as a hate crime.

This approach, which is being closely watched by prosecutors across New York State, has won Queens prosecutors stiffer sentences, including prison for criminals who could otherwise go free, even after draining an elderly person's savings. Without a hate crime, theft of less than \$1 million carries no mandatory prison time; with it, the thief must serve for a year and may face 25.

The legal thinking behind the novel method is that New York's hate crimes statute does not require prosecutors to prove defendants "hate" the group the victim belongs to, merely that they commit the crime because of some belief, correct or not, they hold about the group.

"Criminals that prey on the elderly, they love the elderly — this is their source of wealth," said Kristen A. Kane, a Queens assistant district attorney.

Led by Ms. Kane, who runs a specialized [elder fraud unit](#), the efforts have made the Queens district attorney, [Richard A. Brown](#), a leader in finding new uses for hate crime laws, prosecutors in other jurisdictions say. Scott Burns, executive director of the National District Attorneys' Association, said he had not heard of another office using hate crimes as Queens does.

Neither had Kathleen B. Hogan, president of the State District Attorneys Association. But she looked into the efforts after hearing about it from a reporter, called it "an epiphany" and said she would suggest it to the group's committee on best practices. Some New York

prosecutors, who asked not to be named because they did not intend to criticize colleagues, said that while the approach intrigued them, they were waiting to see if convictions were overturned on appeal before considering it.

The strategy has never been tested in appellate court; many of those charged have pleaded guilty, waiving their right to appeal. But Queens trial judges have allowed it against defense lawyers who argue that the hate crime charges are inappropriate.

Some people concerned about the prevalence of more classically understood bigotry say that new uses of the hate crime law could ultimately dilute its power. The main purpose of the law, said Steven Freeman, legal affairs director at the [Anti-Defamation League](#), is to stiffen penalties for crimes that inflict additional fear on marginalized groups like ethnic or religious minorities or gays.

[New York's law](#) is ambiguous. It says prosecutors must prove only a crime was committed "because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person."

But the language that opens the legislation clearly focuses on hate: "Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs."

For Ms. Kane, there is no debate. "We don't have a whole lot of tools," she said. "We should utilize what the legislature has given us."

It all started with Sunshine. That was the nickname of Nancy Jace, who bilked five elderly men out of \$250,000, [pretending to romance them](#) and persuading them to pay for fictitious family emergencies. Ms. Kane was frustrated when Ms. Jace, 37, pleaded guilty in 2004 and served just six months in jail.

When a similar defendant came along, Ms. Kane had an idea. Shirley Miller, 43, who hoodwinked four elderly men out of \$500,000, became the first New Yorker charged with grand larceny as a hate crime against the elderly. She pleaded guilty and served four months, but would have faced one to three years if she had not paid \$175,000 in restitution. In 2006, Sherry Kaslov, 30, pleaded guilty to [similar charges](#); she served four months and was hit with 10 years of probation.

Those sentences may not sound huge, Ms. Kane said, but the hate charge gave her extra leverage in plea bargaining. By winning felony pleas and probation, prosecutors ensured that repeat offenders would receive strong sentences.

The cases kept coming. In 2006, [Natasha Marks](#), 20, was convicted of swindling more than \$1 million from an 86-year-old man as a hate crime, including taking out a \$550,000 mortgage on his house; a fugitive, she faces two to six years. Wando Delmaro was sentenced to 10 years after pleading guilty to a hate crime: [posing as a water-company employee](#) and distracting elderly people while accomplices burglarized them.

The next year in Brooklyn, a high-profile case bolstered Ms. Kane. Michael Sandy, a gay man, died after robbers chased him into traffic. One defendant [testified that he was gay](#). The judge ruled that he could still be charged with a hate crime since prosecutors said he went after Mr. Sandy believing gay men were easier to rob. Jurors convicted him [but later complained](#) that they did not think the hate crime applied.

Then there was Alexandra Gilmore, 37, who took \$800,000 from Artee McKoy, 93, a retired barber and old friend of her late father who had Alzheimer's disease. She [stole his house](#) and tricked him into refinancing another. She pleaded guilty last year and is serving two to six years.

Maria Thompson, Mr. McKoy's daughter, wanted Ms. Gilmore to get even more time. Her father died in 2008, and she is still struggling in court to get control of his estate. In the meantime, the house where she grew up is foreclosed and padlocked. She cannot enter to sort her father's possessions or find a photograph to remember him by. She has no idea if she and her four siblings will ultimately inherit any equity in the home, which had been fully paid off before the scheme.

Mr. McKoy's own kindness inspired the scheme, said Ms. Thompson, 69, who works as a greeter at Wal-Mart. When Ms. Gilmore's father died, he lent her money to avoid foreclosure of her own house, revealing that he had savings, "and then she ripped him off," Ms. Thompson said.

Ms. Kane got another crack at Ms. Jace. She is now serving 8 to 24 years for defrauding a series of landlords, a sentence stiffened by her plea to the earlier hate crime. Ms. Kane did not charge one this time.

"Most victims were elderly," she said a bit ruefully, "but not all."

