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## “Motivated by Hatred or Prejudice”: Categorization of Hate-motivated Crimes in Two Police Divisions

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Recent legislative responses to a perceived increase in hate crimes have resulted in efforts to quantify the rates of occurrence of such crimes. However, there remains little understanding of the processes by which statutory requirements are implemented at the level of front-line personnel like the police. This article examines the situated decisionmaking practices of police detectives in two divisions of a large urban police department charged with collecting official hate crime data. The authors argue that police detectives engage in certain routine practices in order to determine the hate-related status of an incident and that these practices are inflected by the particular institutional arrangements of the divisions and the department in which they operate. They describe in detail the various categorization practices employed in these two divisions and the ways that a seemingly common orientation to the prevalence of hate crimes have differential consequences for the reporting of hate crimes in each division.

**S**ince the 1988 murder of an African American teenager by a group of young white men in Howard Beach, New York, public, media, and legal attention have increasingly focused on the perceived problem of so-called bias or hate-motivated crimes—crimes committed against persons or property that are motivated by the perpetrator’s hatred of or prejudice against the racial, ethnic, religious, or sexual identity of the victim. Increasing numbers of hate-related incidents have been reported each year since 1988 by a range of special interest and government groups, including the Anti-Defamation League (1991), the National Gay and Lesbian Task Force (1989), the Los Angeles County Commission on Human Relations (1989), the National Criminal Justice Association (Finn & McNeil 1988), and the California and

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This report is part of a larger project to study the conceptual and empirical foundations of hate-motivated crimes. The first author thanks Andrew Roth, John Heritage, Robert Emerson, Melvin Pollner, and Chris Santas for their support and valuable comments on earlier drafts. Research for this report was completed under grant No. 1 RO1 MH44704-01 from the Violence and Antisocial Behavior branch of the National Institute of Mental Health. Direct all correspondence to Elizabeth Boyd, Department of Sociology, University of California, Los Angeles, CA 90095-1551; e-mail eboyd@ucla.edu.

U.S. departments of justice. Attributed to such factors as rapid demographic change, growing intergroup tensions, entrenched bigotry, and worsening economic conditions (Los Angeles County Commission on Human Relations 1989; California Department of Justice 1986), hate-motivated violence is often taken as an index of the state of relations between various social groups.<sup>1</sup>

As a type of crime, bias crimes are considered particularly vile because of their potentially far-reaching symbolic threat—inspiring fear and intimidation not only in the victim and the victim's immediate contacts but also in members of the same and similar ethnic, racial, or other social groups (Martin 1995; Gerstenfeld 1992; Berk 1990; Finn 1988). Furthermore, as Finn (1988) observes, "bias crimes tear at the very fabric of our society," threatening deeply held beliefs in principles of individual liberty.

Given these concerns, state and federal legislatures have recently begun implementing statutes prohibiting, or enhancing the punishment of, crimes motivated by hatred or prejudice. Many of these statutes also require the collection of statewide or national data regarding the incidence, prevalence, and characteristics of hate-related crimes.<sup>2</sup> In 1989, California passed legislation requiring the Department of Justice to gather data on "any crime or attempted crime which causes physical injury, or property damage, which is, or appears to be, motivated by the race, religion, sexual orientation, or ethnicity of the victim" (Berk, Boyd, & Hamner 1992:123). In 1990, the U.S. Congress passed the Hate Crimes Statistics Act, which provides for the acquisition and publication of data about "crimes that manifest prejudice based on race, religion, sexual orientation, or ethnicity." Many local police departments, including the New York, Boston, Baltimore County, Los Angeles, and San Francisco police departments, also responded to increasing public pressure by establishing specialized antibias or hate crime units to offer immediate and focused response to reported hate incidents (Finn 1988).

Despite the widespread response, however, a number of commentators have pointed to a range of theoretical and legal problems with existing hate crime legislation, including the Hate Crimes Statistics Act (see, e.g., Gellman 1991; Gerstenfeld 1992; Morsch 1991; Jacobs & Eisler 1993). Most of these criticisms sug-

<sup>1</sup> Newspaper accounts, in particular, emphasize increasing racial and ethnic conflict. For instance, the *Boston Globe*, 29 July 1990, in a front-page article headlined, "Hate Crimes on Rise in US: Racial Attacks, Gay Bashings Burgeon," described the reported growing number of hate-related incidents as "the melting pot . . . apparently boiling over." Similarly, in "As Bias Crime Seems to Rise, Scientists Study the Roots of Racism," the *New York Times*, 29 May 1990, p. B5, described hate-motivated incidents as a reflection of "the primal emotions aroused by love of one's own group . . . [which are] particularly vivid in times of economic and political uncertainty."

<sup>2</sup> According to Gerstenfeld (1992), some 46 states have passed some form of hate crime legislation, although acts considered punishable as hate crimes vary in range and scope.

gest three fundamental problems for prosecutors and law enforcement personnel who must implement such statutes: (1) problems in identifying hate crimes, (2) problems in assessing motive, and (3) problems with vague terminology (Gerstenfeld 1992). Although they are often discussed as separate issues, each of these problems is rooted in what are described as ambiguities of language that prohibit (or at least seriously inhibit) the interpretation and categorization of specific incidents as hate motivated or not. Thus, identification problems are centered on anticipated difficulties in detecting and recognizing hate crimes; motive assessment problems refer to the difficulty in inferring and/or proving that a perpetrator was motivated to act by hatred or prejudice and with reconciling partial or mixed motives; and issues of vague terminology concern the exact definition of terms like “race” and “intimidation,” as well as problems in assigning victims to particular group categories (see esp. Gerstenfeld 1992; Gellman 1991 for thorough discussions of these concerns). Note that, ultimately, legal criticisms go to the constitutionality of hate crime statutes; in particular, whether punishing someone for their words or thoughts (that is, their motive) violates First and Fourteenth Amendment rights (Gellman 1991; Gerstenfeld 1992).

Yet, however theoretically forceful these arguments are, and however consequential they might ultimately prove to be in deciding the constitutionality of various statutes, they remain largely unexplicated in terms of the day-to-day, practical considerations facing law officers charged with detecting, classifying, and prosecuting particular incidents. Issues of “linguistic ambiguity” are anything but theoretical for police personnel; on the contrary, these issues are of immediate, practical concern.<sup>3</sup> Decisions, interpretations, and categorizations must be—and are—made as a matter of course in the routine work of police officers. Theoretical problems aside then, the question remains: How do police personnel recognize, identify, and categorize certain crimes as hate motivated?

This study examines the situated decisionmaking practices of police detectives in a large urban police department who have been charged with the investigation and classification of hate-motivated incidents. We argue that, far from finding it problematic to interpret and classify specific incidents, police detectives engage in certain routine practices in order to determine the hate-related status of an incident. Specifically, police detectives rely on typifications and commonsense reasoning (Garfinkel 1967) regarding the constituent attributes of hate crimes and estimations of the proper role of the police as a basis for their interpretive

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<sup>3</sup> These issues are also relevant for such other legal personnel as prosecuting and defending attorneys or judges.

decisions. These reasoning practices are inflected by the particular institutional arrangements of the division and department in which the detectives operate.

After a brief summary of the existing studies of hate crimes and an overview of the organizational and historical context of the police department, we consider some of the characteristics of a “normal” or “typical” hate crime as articulated by officers and detectives as well as some generic issues regarding the categorization of crimes. The heart of our discussion focuses on the decisionmaking practices of police detectives in two divisions and on the ways that a seemingly common orientation to the prevalence of hate crimes has differential consequences for the reporting of hate crimes in each division.

To date, most sociological studies of hate-motivated crimes have failed to address the methods and practices by which certain incidents are identified as hate motivated (but see Martin 1995; Walker & Katz forthcoming). Most existing studies of hate crimes focus on the prevention of and/or response to reported incidents (see, e.g., Weiss & Ephross 1986; Wexler & Marx 1986) or tend to rely on unexplicated official data to suggest social and psychological characteristics of victims or perpetrators (e.g., Herek & Berrill 1992). Studies of collective violence have been primarily concerned with very serious, infrequent acts of extreme violence, such as lynchings and race riots (Berk 1990) and not the statistically more common assault and vandalism cases typically handled by local police departments. And studies of interracial crimes, particularly homicide and robbery, suggest that cross-race crimes are infrequent (O’Brien 1987), but these studies do not speak to the unique feature of hate crimes—the motive of the perpetrator.

Martin’s (1995) recent study of the investigation and verification of hate crimes by the Baltimore County Police Department is one of the first attempts to consider the practical issues of implementing hate-crime policies for police personnel. Outlining the various ways in which hate-crime guidelines are ambiguous, Martin describes the “subjective judgments” made by various police personnel in the social construction of hate crimes (p. 310). These subjective judgments are necessitated, she argues, by the recurrent problems facing decisionmakers: reconciling partial versus sole motives, assessing conflicting reports, identifying the intended target, separating multiple statuses, and understanding provocation (pp. 317–21). Martin’s analysis provides an important first look at the implementation of hate-crime policies; the present study contributes additional evidence regarding some of the interpretive issues faced by police and describes some of the actual processes by which initial, front-line categorization decisions are made. In doing so, this article also extends earlier ethnomethodological work examining the production of official

statistics (Kitsuse & Cicourel 1963) and applies Sacks's (1972) description of membership categorization devices to the context of police decisionmaking.

In the three decades since Kitsuse and Cicourel (1963) explicated the variety of decisions, accommodations, and organizational contingencies that contribute to the production of criminal statistics, several notable studies of public defenders (Sudnow 1964), coroners (Atkinson 1978; Douglas 1967), juvenile delinquency case workers (Cicourel 1968), and police detectives (Sanders 1977) have provided detailed case studies revealing the inseparability of the official classification of a crime or death from the defining, recording, and classifying activities that produced it in the first place. We draw considerably on the pioneering work of Sudnow (1964), Atkinson (1978), and Sanders (1977), both in terms of theoretical perspective and methodological approach: In particular, Sudnow's examination of the processes by which public defenders define crimes and suspects as "normal" or typical and Sanders's examination of how burglary and juvenile detectives establish "what really happened" inform this investigation of the processes whereby hate crimes are distinguished from other crimes. We also employ Sacks's (1972) description of the rules for categorizing persons—"membership categorization devices"—in our discussion of police detectives' categorization practices. As Sacks explained, one rule for deciding what category, social or otherwise, some individual belongs to is to examine that individual's actions for possible correspondence to the constituent activities of some category. If those actions can be seen as consistent with or the same as the constituent activities, then the individual may be seen as a member of that category. This orientation, to both the category (hate crimes) and its corresponding activities (as defined by police detectives), is foundational for our understanding of police categorization of specific incidents.

## **I. The Metropolitan Police Department—Organization and Context**

This study is part of a larger project to explore the conceptual and empirical foundations of hate-motivated crime. It is based on nine months of observation and interviews in eight divisions of a large metropolitan police department.<sup>4</sup> The Metropolitan Police Department (a pseudonym for the police department,

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<sup>4</sup> The project on which this report is based was divided into three parts: the first, roughly three months, was spent accompanying patrol sergeants in various divisions on ride-alongs; the second, almost six months, was spent with the hate crime detectives chiefly in three divisions; the third involved the assembly and analysis of cumulative data gathered from the 18 divisions over three years. We chose to focus here on the reporting period 1990 through the first quarter of 1991 because the data were the most recent and the most stable.

hereafter referred to as MPD) is organized into 18 administratively distinct units or “divisions.” Management is decentralized, with a great deal of administrative control in the hands of the division and area commanding officers. Policies are formulated and monitored at the departmental level, but implementation is largely left up to the individual division commanding officers.

In 1987, in response to growing publicity and pressure from local interest groups, the Metropolitan PD implemented an official hate crime policy, defining a hate crime as “any malicious or offensive act directed against an individual or group based upon their race, religion, ethnic background, culture or lifestyle, including criminal and non-criminal acts.” Noncriminal acts included “activities which would cause individuals or members of such groups to feel threatened or intimidated” (from the Metropolitan City Code).<sup>5</sup> To reassure the public that “the MPD takes hate crime seriously” (assistant chief of police, in discussion, 19 June 1990), the department mandated that investigative priority be given to any reported hate incident, whether or not that incident is legally a crime.

The designation of an incident as possibly hate motivated significantly altered the procedure and timing of its subsequent investigation. In practical terms, the policy directive required (1) that the responding patrol officer note on the initial crime report filed on all incidents to which a car responds (the “Preliminary Investigative Report”) that the incident appeared to be hate motivated, (2) that a designated “hate crime detective” be charged with the investigation of all possible hate crimes, and (3) that the case receive “Category 1” priority, regardless of the seriousness of the crime or the available leads or information. A Category 1 designation is usually reserved for cases in which there is a firm lead—a suspect name or license plate number, for instance—or a particularly serious crime, such as homicide or rape.<sup>6</sup> Practically, the designation requires that the initial investigation be completed within 10 working days. In contrast, a Category 2 designation, requiring a followup in 30 calendar days, may contain a possible lead but nothing so tangible as a name or license plate number. A Category 3 case has no leads and does not require a followup investigation.

Under normal circumstances, a non-hate-related incident will be investigated by one of the detectives assigned to the type-appropriate desk—vandalism, burglary, crimes against persons (CAPS), homicide, etc. However, incidents suspected to be hate

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<sup>5</sup> For instance, the distribution of Neo-Nazi leaflets, advocating white supremacy, is not legally a crime; however, the incident would be consistent with the MPD’s hate crime policy as a noncriminal, though offensive act. See Jacobs & Eisler 1993:104 n.29 for a similar example under Maryland’s hate crime statute.

<sup>6</sup> Due to their extreme seriousness, homicides and rapes receive a Category 1 classification regardless of the amount or quality of information available to the police.



related are, according to the requirements of the policy directive, assigned to a designated detective in each division. Once the preliminary investigative report has been filed with the watch commander, the matter is investigated by detectives, not patrol officers. Prior to implementation of the hate crime policy, many hate crimes as crimes against property (i.e., vandalism) would have been designated Category 3 and, therefore, not investigated beyond the responding patrol unit.

The new hate crime reporting procedures thus not only elaborated existing reporting procedures, they reordered investigative priorities and intradivisional responsibilities. Also, the policy required the institutionalization of new training procedures at the police academy as well as increased awareness and participation by division and area commanding officers. In particular, commanding officers or hate crime detectives were required to contact either by phone or in person victims of hate crimes and to notify the chief of police if unusual circumstances were noticed (i.e., a victim targeted for a second time; the victimization of new immigrants to the area; an attack receiving public or media attention). Finally, under the new hate crime policy, all divisions were required to track and distribute quarterly and annual summaries of hate-related activity in the department's jurisdiction. These figures—based on the practices implemented in response to this policy—constitute the official measure of hate crimes in the area.<sup>7</sup>

For the reporting period January 1990–March 1991, some 318 hate-related incidents were classified by the MPD, or about 0.1% of the total number of crimes counted by the department. Of those incidents, 59.1% were racially or ethnically motivated,<sup>8</sup> 33.0% were motivated by the religious identity of the victim, and 7.8% were motivated by the sexual orientation of the victim.<sup>9</sup> Some 55.3% of the incidents were categorized as crimes against persons; 44.7% were categorized as property crimes.

Because of the unique bureaucratic constraints imposed by the police department's hate crime policy, requiring one detec-

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<sup>7</sup> Once an incident has been investigated and a suspect arrested, the case is filed with either the city attorney or the district attorney, who then decides if there is sufficient evidence on which to prosecute. Many states have laws that enhance the penalty for hate crimes (Cleary 1994). For instance, according to the California Penal Code (sec. 1170.75), "the fact that a person committed a felony or attempted to commit a felony because of the victim's race, color, religion, nationality or country of origin, shall be considered a circumstance in aggravation of the crime in imposing a term." The California Civil Code recognizes hate motivation similarly as an aggravating circumstance.

<sup>8</sup> The department's summary profiles maintain distinctions between types of crime as well as victim identities. For instance, victim categories include Jewish, White, Black, Asian, Hispanic, Gay, and Other. Those categories have been collapsed here.

<sup>9</sup> The MPD recognizes a probable underreporting problem, particularly among members of the gay and lesbian community. By comparison, the county human relations commission reported 86 hate crimes against gay and lesbians for the same time period (versus the 25 reported to the MPD); the local gay and lesbian community services center reported nearly 200 such crimes.

tive in each division to be responsible for not only the investigation and classification of all possibly hate-related incidents but also for the compilation of the division's quarterly and year-end summary totals as well, we were able to focus our observations on the classification process in an uncommonly detailed way. We report here the classification process in the two most active divisions, where roughly half of the city's reported hate incidents occurred. The incidents described here occurred in 1990 and the first quarter of 1991. We primarily focus on the interpretation and classification of hate-motivated incidents at the secondary investigative level—at the level of the investigating detective. During the three months spent in the field with patrol officers, we did not witness initial response to possible hate-related incidents. The following discussion of patrol procedure is based on interviews with patrol officers and their commanders and accounts by investigating detectives.

## II. Some Characteristics of a “Normal” Hate Crime

Departmental response to the new policy was mixed at best, reflecting not only some officers' dislike of new orders requiring additional paperwork (see Reuss-Ianni 1983 for a thorough discussion of the views of street patrol officers on orders issued from above, and Ericson 1981 for a discussion of the incorporation of new rules by detectives) but also a commonly held view on the legitimacy of hate crimes as a special crime category and of the social significance of hate crimes in general. Many officers reported concerns that their time would soon be overwhelmed by persons complaining of “trivial” crimes, compromising their ability to respond promptly to more “serious” crimes.

A substantive concern centered on the difficulty of determining motive, especially at the level of the street patrol. One 20-year veteran sergeant complained that he still finds the concept of a hate crime so confusing as to render it essentially irrelevant for his patrol officers.

“The motive of a crime may be masked. It may, in fact, be motivated by race or whatever, but there's no way to prove or disprove that. Certain crimes are obvious, like cross burnings, but those crimes are not prevalent here. If there's a fight between a Mexican family and a Salvadorean family, is that a hate crime? I'd say no. It's a conflict between two cultures. We see lots of cultural conflicts here—the Vietnamese and the Chinese or Japanese; the Mexicans and the Salvadoreans or the Cubans. You could call some of those hate crimes, but only if the sole cause of the fight was that. Usually you'll see that it is masking another motive like drugs or gangs or some other thing. So how do you know? We don't have time to



psychoanalyze people. What weights do you give to race, dope, territory? These things are 90% gray—there are no black-and-white incidents. So hate crimes are a low priority for us [on the street].”<sup>10</sup>

The general perception among the majority of officers and detectives interviewed—that there are only a few crimes which can “really” be called hate motivated, such as a cross burning on the lawn of an African American family or the organized activities of the KKK or Aryan Nation—may reflect a pervasive feeling that hate crimes are not a very meaningful category of crime to begin with, either from a law enforcement perspective or as a social problem. According to many officers interviewed, hate crimes either happen quite infrequently in the area (and so do not deserve investigative priority) or the incidents called hate crimes are either trivial or not really crimes at all. Many officers and detectives echoed variations on the theme that increasing diversity within the city leads not to greater conflict but to less. “There are too many different people living in the city for hate crimes to be on the rise,” said one hate crime detective. “We all have to live together. That mixing pot, melting pot isn’t going to produce a lot of prejudice; it’s going to reduce it.”

A few officers expressed the belief that hate crimes should not be considered crimes at all. They are just “human nature” or the normal expression of hostility among people living in crowded conditions. “Hate crimes? What are you interested in hate crimes for?” said one street patrol officer. “A couple of fruits get bashed—that’s not a crime. That’s normal. There are just two kinds of crime—dope and cars. The rest is just stupidity. I say dope and stolen cars are the only crimes worth my time. Not fruit bashing and not these domestic calls. That’s just too bad.”

Although this officer’s outspoken dismissal of hate crimes as “normal” was not often echoed, many interviewed officers, detectives, and commanding officers expressed resentment over the demands placed on them by the new policy, seeing it as another bureaucratic imposition that takes officers away from their “real” crime-solving duties. Hate crimes were dismissed as “overkill,” “mostly bull,” “a pain in the ass,” “media hype,” “a giant cluster fuck.” Even among detectives who believed that hate crimes pose a significant social problem, there was resentment and frustration over the bureaucratic requirements.

“The problem is this: The hate crime issue is just one of our problems. It’s just another burning house in a row of burning houses, and I’ve only got one hose. What fire should I put out? Hate threats are Priority 1 crimes. That means I’ve

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<sup>10</sup> This and succeeding indented passages are taken from the field notes and quotations from officers gathered during our study in Divisions A and B of the MPD.

got to solve them before I can solve other crimes. Right now I've got one I'm working on. It's kind of a funny one. This guy parks his car, a brand new convertible Mustang, with the top down in front of a gay bar and goes in. When he comes out 20 minutes later, someone has filled his car up completely with shit. The crime is pretty trivial. I mean, it was probably very big to the victim, but no one got hurt and the car can be cleaned. But I still have to deal with it before I can get to my other cases. At the same time I've got two hot-prowl burglaries. On the same night, in two different houses, an Asian woman wakes up to see a man dressed all in black in her room going through her stuff. It's just a matter of time before this guy's gonna rape or kill somebody. And I have to deal with the dog shit before I can spend time on them."

In their accounts of and reactions to the department's hate crime policy, many officers point to the aspects of the policy's requirements that are most immediately relevant for the practical concerns of routine police work—that is, the additional bureaucratic requirements and their consequences for officers' daily workload and demands. But also in their accounts are suggestions about the nature of "real" hate crimes and the proper role of the police. Thus, "true" hate crimes, such as cross burnings and KKK-sponsored attacks, are infrequent, extraordinary events, easily recognizable, obvious to anyone. They involve offenses that are violent or dramatically out of the ordinary; they are often committed by members of political or other organized groups. "Trivial" events, like graffiti, vandalism, or verbal harassment, however threatening to the victim(s), do not demand police intervention; more serious "everyday" problems like burglary, car theft, and rape do.

In appealing to "obvious" or typical features of certain incidents as indicative of their true nature as hate motivated, officers' accounts begin to suggest certain categorical distinctions that may be attended to in distinguishing hate crimes from other crimes. Hate crimes, then, at least initially, seem to be oriented to as another "normal" crime (Sudnow 1964), an occurrence whose typical features are known and attended to by police officers (p. 260). As Sudnow demonstrated in his study of the public defender's office, public defenders gained knowledge regarding the typical manner in which offenses of given classes of crime are committed, the social characteristics of persons who regularly commit them, the features of the settings in which they occur, and the types of victims often involved (p. 259). These features were then invoked and used as the basis for evaluating new incidents, regardless of their correspondence to the statutory requirements of the law.

Of course, most of the incidents routinely encountered by the police are not cross burnings or lynchings; rather, the police most often are called to investigate burglaries, simple assaults, harassment, and graffiti—incidents which, on their face, would appear to fall outside the definition of a “normal” hate crime. How, then, do police officers recognize such incidents as possibly hate motivated?

### III. Problems of Interpretation

The primary task of any police officer—from street patrol to investigating detective—is to determine what happened at the scene to which the police were summoned: Did a crime occur? Is there any evidence to suggest who might have committed the crime? Are there witnesses to the crime? Establishing the facts of the case requires a series of interpretive decisions at many stages of the investigative process, regardless of the incident’s status as hate-related or not. Deciding “what really happened” (Sanders 1977) and how to classify that information is rarely easy, even in the most seemingly mundane situations. As Ericson (1981:8) has suggested, “the decision on whether or not to constitute [an incident] as a crime in the first place has as many shades as a chameleon in a crayon box.” Understanding this interpretive work is nontrivial for, during its course, crimes come to be recognized, classified, and recorded as official occurrences. The following examples suggest just a few of the interpretive issues routinely encountered by the police in their attempts to arrive at an estimate of “what really happened” and to make their estimations compatible with practical, legal, and personal concerns.

A female patrol officer approached two male officers and asked for help in determining just how she should classify her case. Unknown suspects had climbed over a chain-link fence surrounding several small businesses and smashed in the doors. They then entered an enclosed area covered with chicken wire and vandalized the inner area, spraypainting the walls and destroying some equipment stored there.

“If there’s a roof over the area, then you’ve got a burglary,” said one of the male officers.

The female officer agreed, but said she could not decide if the chicken wire constituted a proper roof. The second male officer said he did not know how to tell if it was a roof or not.

A fourth officer entered the room and was asked for his opinion.

“It’s not a burglary if the area is enclosed with a fence, like a parking area, but I don’t know if chicken wire can be considered a roof.”

On the basis of the openness of the wire and a commonsense understanding of what constitutes a “roof,” the debate was eventually settled and the case filed as a simple vandalism. But the example suggests one of the difficulties with which officers are often faced—reconciling their estimate of the facts in a manner consistent with the language of the penal code as well as a practical understanding of the organization of the routine world. Repeatedly, as we will see, reaching such decisions requires more than a cognitive, individual interpretation; rather, decisions are reached through *social* processes—in discussion with other officers, with victims or suspects, in the context of the division or the city. The character of decisionmaking must therefore be understood as fundamentally social.

Other incidents suggest further possible interpretive ambiguities—not only in appropriately classifying a crime but also in making sense of an incident in the first place and then determining an appropriate course of action.

The hate crime detective in one division received a preliminary investigative report describing an attack on a local Iranian businessman. The report noted that the victim was approached as he left work by a man wearing a ski mask. In a heavily accented voice, the masked man said, “Son of a bitch,” and then shot the victim with a small handgun. When the victim tried to run away, the man pistol-whipped him in the face and then jumped in a car and ran over the victim as he lay on the ground.

The detective expressed his concern that he was not the appropriate detective to investigate the case. “This doesn’t sound like a hate crime to me.” Still, he took the case, saying, “This [attack] is bad enough. We’d better make sure what happened.”

After interviewing the victim several times, the detective was still unsure how to classify the crime. He had discovered that the victim was an Iranian newspaper editor who had been publishing pro-U.S. editorials during the early days of the Gulf war. The victim had received many death threats and had had his residence ransacked several times prior to the attack. The victim believed he was being targeted by pro-Arab supporters who disliked his political stance. The detective said he was inclined to call the attack hate motivated, but he was still unable to make a final decision. The case was marked “Investigation Continuing” while the detective placed additional calls to the victim, family members, and business associates.

Several days later, the commanding officer of the division received information that the victim was wanted in Iraq for war crimes during the Iran-Iraq war and in the U.S. for at-

tempting to arrange the assassination of an Iraqi living in the U.S. The grand jury was interested in hearing the case, which, in the eyes of the commanding officer, changed the nature of the investigation again. They were now looking at a case in which the victim was apparently a wanted criminal.

The case had yet to be decided while we were in the field—it remained categorized as “Investigation Continuing” in the police files—but the decisions made along the way significantly altered the way the case was investigated and its possible outcome. Indeed, the very nature of the crime itself changed as the case was recontextualized over the course of the investigation. Had the victim not believed he was being targeted for his political views, the hate crime detective would probably not have investigated the case (since there was nothing explicit in the actions of the perpetrator to suggest his/her motivation for the attack). Had the hate crime detective initially decided that there was nothing to warrant its investigation as a hate crime, the case would probably have been designated category 3 since there were no witnesses, no license plate numbers, and no suspect to identify. The chances that a category 3 case will be solved are quite slim—most likely the case would not have been pursued and the victim’s past might never have been uncovered. Had the grand jury not become involved, the hate crime detective would have continued pursuing the case as a hate crime and would have probably left it as unsolvable or “Investigation Continuing.” The new evidence regarding the victim’s possible criminal past not only took the case out of the hate crime detective’s hands but also changed the focus of the investigation to the victim himself. The search for his attacker had been preempted by the victim’s own alleged crimes.

Hate-related incidents embody many of the ambiguities and conflicts seen above, yet a hate crime, by virtue of its definition (and its departmental bureaucratic requirements), places additional interpretive “burdens” on the investigating detective: Its special definitional character, centered on the motive of the perpetrator, seemingly requires the detective to assume an active role in determining the perpetrator’s motive for acting. Though police officers are often faced with interpreting or implementing laws with some *mens rea* (“guilty mind”) requirement, such as purpose, knowledge, recklessness, or criminal negligence (Morsch 1991), hate crimes require, at least definitionally, a determination of *motive*—that is, determining *why* the perpetrator acted, not for what purpose or with what intent (*ibid.*).<sup>11</sup>

<sup>11</sup> As Morsch (1991) explains, there are important legal differences between the meanings of intent, purpose, and motive. Intent is defined as the purpose to use a particular means to achieve some definite result; purpose is defined as an explicitly aimed at rational goal; motive is defined as the cause or moving power that impels action to achieve a result. An example makes these differences clear: A person is apprehended for breaking into a bank. The intent is to steal money. The purpose is to give it to a needy

Despite these additional and largely unparalleled requirements, detectives do readily make decisions regarding the hate-related status of an incident by taking into account and using as criterial attributes particular observable features of the incident itself. How MPD officers and detectives conceptualize hate crimes and how they decide and account for their decisions reflect not only their individual inclinations but also the practical realities of functioning within a particular division, each with its own organizational structure and institutionally relevant demands and procedures. The following examples, based on observations in two divisions quite similar in terms of populations served and workload demands, provide insight into these conceptualizations, how they are used as a basis for making categorical distinctions and decisions, and what they may mean for the production and understanding of official hate crime data.

#### **Division A: Focus on Motive**

Division A covers one section of the city's expansive suburban areas. What used to be a predominantly Anglo and Jewish middle- to upper-middle-class residential area has in the past two decades become mixed both ethnically and economically. As with much of the city, a recent influx of Asian and Latino immigrants has turned largely homogeneous neighborhoods into areas of cultural and ethnic diversity.<sup>12</sup> The Division A hate crime detective cites these changing demographics as the reason behind the high proportion of hate-related incidents investigated in the division. In 1990 and the first quarter of 1991, 56 such incidents were investigated and 20 were classified as hate crimes.

Given the local control over policy implementation, the division's commanding officer was able to modify the organizational structure of Division A to make explicit the department's stated interest in hate crime detection. The commanding officer stated a personal interest in hate crimes, was familiar with each case under investigation, and appointed one senior detective to handle all hate crime investigations. The detective had investigated all hate crimes occurring in Division A since 1988 when the departmental policy was implemented. Both the hate crime detective and his commanding officer emphasized that hate crimes are conceptually different from all other crimes. To that end, they adopted a narrow definition that focuses on methods of motive assessment as the critical factor in distinguishing hate crimes

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friend. The motive is friendship or beneficence. Motive, Morsch argues, is inherently subjective, entirely within the contents of an individual's mind. For the detectives in the MPD, the determination of motive is a differentially relevant action.

<sup>12</sup> Based on an estimate of the population of the division, some 81.5% of the population is white, 2.5% is black, 7.2% is Asian, 16% is Hispanic, and 8.5% is other. These estimates are based on 1990 Census data of population characteristics for the congressional district that roughly corresponds to the boundaries of the division.



from other crimes. Their expressed desire was to eliminate all other possible explanations before categorizing an incident as hate motivated, thereby helping to deflate what they believed to be the “inflated statistics” regarding hate crimes in the area. Correspondingly, the detective predicted that the number of hate crimes in the state would slowly decline as patrol officers became more skilled at recognizing them and as detectives became more adept at determining motive.<sup>13</sup>

Additional procedural changes were implemented in the division to help eliminate some of the anticipated ambiguity faced by patrol officers at the scene of a reported crime. Periodic meetings during roll call sessions were held to remind patrol of the departmental interest in hate crimes and to give officers a mental checklist for identifying possible hate crimes. Officers were instructed to take note of victims or witnesses who indicated that racial, ethnic, religious, or sexual slurs were made during the attack, to notice graffiti or symbols that resembled swastikas, KKK, SWP (“Supreme White Power”), or other hateful tags, to record any victim’s belief or opinion that he or she was singled out for racial or other reasons. Officers were instructed to “err on the side of caution” and note any incident whatsoever which might possibly have been motivated by hatred or prejudice.

Clearly, the patrol car arriving on the scene plays a critical front-line role in detecting possible hate crimes, and this practical, “checklist” approach emphasizes the patrol officers’ need to sum up a situation quickly by focusing on what can be immediately ascertained. Still, patrol officers are likely to experience problems that may compromise their ability to produce an accurate or complete initial report. Patrol officers are often juggling three calls simultaneously—responding to the most urgent calls first and others later (in busier divisions, officers are routinely responsible for as many as five calls at once). Their efforts at the scene focus on the apprehension of suspects and recording pieces of information solicited from the victim and any witnesses to be included in their official preliminary reports.

But contrary to official policy, preliminary reports are seldom completed at the scene—most officers must wait for a lull in the calls to fill out their reports in the car or back at the station. The chances of forgetting, misrecording, or ignoring information are significant and directly determine the number of potential hate crime cases the division investigates. On a busy night, when officers are forced to move from one “hot call” to another, only the most serious crimes may be given thorough attention in the written report, with detailed statements from the victim or witnesses, a description of the scene and/or physical evidence. Other cases, such as vandalism or annoying phone call cases, considered rela-

<sup>13</sup> This perspective was echoed at the departmental headquarters level as well.

tively trivial by most officers, may receive cursory attention and include minimal detail: “Vandalism: Broken window in school. ‘KKK’ ‘SWP’ and swastika written in chalk on blackboard”; “Threatening phone calls: Numerous calls made to V’s business, calling him ‘Nazi swine.’”

The structure of the preliminary investigative report (PIR) itself (the initial written report required for incidents to which a patrol car responds) can cause difficulties for officers attempting to fill out reports “in the heat of the moment” or when they are uncertain of what the department or the division means by the term “hate crime.” On the post-1988 PIR forms, the “Motivated by Hatred or Prejudice” box is located immediately adjacent to the box for domestic violence. Not only may officers accidentally mark one or the other, they occasionally mark both. As one hate crime detective explained:

We have guys who get it wrong all the time, especially with those boxes right next to each other. One for hate motivated and the other for domestic disputes. The officer has just separated a guy and his wife who have been trying to kill each other, and he sees the hate-motivated box when he’s doing his report and thinks, “Yep, they hate each other!” and checks off the box.

But the PIR is crucial to the detective’s ability to investigate a case. Any information available at the scene (such as a witness, a license plate number, graffiti) but not included in the PIR may not be recovered by the detective after the fact. If officers do not include any evidence suggesting a hate crime in the narrative portion of their reports, the case will most likely not be investigated as such.

To counteract such errors at the patrol level, the Division A detective was given sole responsibility in the division for reviewing each day’s PIRs and assigning them to the appropriate detective desk (i.e., burglary, crimes against persons, juveniles). This position is critically important since it affords him the opportunity to catch any possible hate crime inadvertently marked otherwise or any crime he believes has been mistakenly labeled a hate crime (which could then be “unfounded as a hate crime” on the spot and rerouted to the appropriate desk for followup). It is precisely this modified bureaucratic structure that permits the detective to exert his authority in the classification of hate crimes.

### **Determining “What Really Happened”**

Once the detective has a case in hand, how exactly does he decide if it is “really” a hate crime? The information in the PIR may be extremely sketchy (as seen above) or even incorrect. The task of assessing motive—the key to distinguishing hate crimes—

is the detective's alone, and by his own account, this detective developed a narrow working definition to help him sort hate crimes from other crimes. Rather than officially categorize as hate crimes any incidents brought to his attention, only those incidents which could be shown to be motivated solely and unambiguously by hatred were counted as hate crimes in the division's quarterly and year-end summary reports. To assess that motive, the detective relied on a set of criteria against which he measured each case. In accounting for his decisions, he appealed to the "obvious," "clear," "easy to see" characteristics of the case he believed rendered his decisions reasonable by almost anyone's standards. An example of what the detective considered "classic" cases point to the more formal criteria necessary for meeting his definition of a true hate crime.

A young male on a motorcycle was stopped at a red light. A white man described by the victim as a "skinhead" approached him on foot, pointed a gun at him and said, "There aren't any faggots allowed in this area. Get out or I'll kill you."

The suspect was identified and interviewed by the detective. He explained that he was tired of seeing gays cruising his neighborhood. According to the Division A detective, this was clearly a hate crime. "This guy comes out and pulls a gun and says, 'I hate faggots. Get out.' No other reason but the guy hates fags. Hates seeing fags in his nice neighborhood. It's very clear."

This incident contains all the elements of what the detective considered a "true" hate crime: no provocation by the victim, no prior encounters between the victim and the perpetrator, a specific target, and accompanying derogatory insults. The first three elements suggest that the perpetrator is reacting to the victim solely on the basis of his perceived racial, ethnic, religious, or sexual identity and the accompanying slurs reveal the nature of the perpetrator's feelings—and hatred as his motive.

The Division A hate crime detective began each investigation by reading the PIR "for a general sense of what happened" and for what he considered to be clues into the perpetrator's psychological state. By his own account, he began all of his investigations by asking what motivated the perpetrator to act in the first place. Did the suspect attack the victim for no discernable reason other than his dislike for the victim's racial/ethnic/religious/sexual identity? Or was there some exchange that angered or frustrated the suspect, motivating him to act out against the person? Did the victim (perhaps unknowingly) cut off the suspect in traffic? Did the victim react rudely or in anger to an ambiguous comment made by the suspect? Do the parties have a history of personal or business disputes? The PIR, incorrect or incomplete as it may be, was assumed by the detective to be a fair first repre-

sentation of the facts immediately available at the scene. Based on this initial take on the case, the detective looked for visible evidence that would support his early interpretations. Interviewing the victim first allowed the detective to fulfill a bureaucratic requirement (that the victim of a possible hate-related incident be contacted in person within 48 hours) while at the same time allowing him to establish a context in which to understand the incident. Particularly when the information in the PIR is sketchy, the victim interview is an important source of information which the detective must have in order to reconstruct the incident and find evidence to support his final assessment.

According to the PIR, the victim, identified as a “West Indian, middle-aged pool cleaner,” was driving his truck en route to a client’s house. Five suspects, white males and females in their teens, pulled alongside him and began calling him names. The victim ignored them, but they followed him to his client’s house. After he left his truck, the suspects then surrounded the victim and began taunting him, saying, “Indian, go home. Get out of here before we kick your ass.” One female suspect moved in close and said, “Come on, Indian, you want to hit a girl, go ahead.” As she distracted the victim, another suspect hit him in the knees with a steering wheel lock. The suspects then fled.

The account of the incident in the PIR could certainly be interpreted as a hate crime—the victim appeared to have been set upon by the teenagers on the basis of his ethnic identity. Their remarks to him could be seen as indicative of their hatred of or prejudice against Indian immigrants. When the victim was interviewed, the detective focused his questions on possible prior encounters between the victim and the perpetrators: Did the victim recall any near-misses in his truck or any parking disputes? Might he have accidentally cut off the other driver in traffic or at a light? With prompting, the victim said he may have inadvertently cut off the suspects’ car when he swerved to avoid a truck blocking his lane, since immediately after the traffic incident, the suspects began harassing him. The detective classified the case as “unfounded as a hate crime” on the basis of the described traffic dispute. According to the detective, the victim had unintentionally provoked his own attack. In this case, the detective noted that the sequence of events leading up to the confrontation revealed the true nature of the incident. As there were no suspects to interview, the detective’s estimate of the truth was based entirely on the victim’s account, which the detective had helped reconstruct.

When there were suspects available for interview, the detective often faced reconciling conflicting accounts. As in the previous examples, he assessed the validity of information according

to his interpretation of departmental policy and what he understood a hate crime to be—an unprovoked incident between strangers motivated solely by one's hatred of the other. In the following example, the detective was faced with two accounts, not of the sequence of events, but of the motive behind the initial exchange.

According to the PIR, a 24-year-old black male was approached in a bowling alley by a white male. The white suspect looked at the victim and said, "Hey, you look like Arsenio Hall." The victim responded by saying, "Fuck you." The suspect then said, "Take your Arsenio Hall glasses off. I don't like niggers, and I'm going to kick your ass." A scuffle ensued between the suspect and the victim.

In his reading of the initial report, the detective noted the nature of the first exchange between the two men. The detective interpreted the first comment about Arsenio Hall as ambiguous—it could have been an insult; it could have been an attempt at a joke. The detective interpreted the victim's reaction as an indication that he considered the words an insult. He interviewed the victim, who said he strongly believed that the remarks and the attack had been racially motivated. However, on interviewing the suspect, the detective decided that this incident was not really a hate crime. Noting the suspect's apologetic manner during questioning and confession that he had been drunk at the time of the incident, the detective decided that the initial comment was not motivated by hatred or prejudice; rather, this was a case of a joke gone bad. According to the detective, it was "obvious" that the suspect's words were motivated by anger, not hatred. Implicit in his decision is the assumption that a true racist would not later apologize for his actions. The events and corresponding actions he reconstructed from both men's accounts were inconsistent with his view of what constitutes a true hate crime. The detective unfounded this case as a hate crime on the basis of the sequence of events—the racial comments were made after the initial incident, not before—along with what he considered to be the suspect's apologetic manner and "legitimate" account. The suspect was arrested and charged with simple assault, but because the detective ruled out the possibility that the attack was hate motivated, there were no increased penalties attached.

Suspects' apparent "hate motives" may be discounted for other reasons as well. Juveniles, for example, were treated categorically as immune from hate motives; rather, their actions were most often dismissed as acts of irresponsibility—for instance, a group of teenagers who happened on a synagogue parking lot filled with people emerging from a religious service and clicked their heels together and shouted "Sieg Hiel" were scolded by the police and dismissed as "just screwing around." Here, as in the

previous case, where the detective ruled out a hate motive on the basis of his understanding that apologies are inconsistent activities for perpetrators of hate crimes, it is the category-relevant activities (Sacks 1972) that are invoked as a basis for decisionmaking practices. Actions seen as inconsistent with particular categories of activity—such as the commission of a hate crime—are treated as evidence against the appropriateness of the category for that instance. The boundaries of a “normal” hate crime, thus, extend beyond the type of incident to include features such as the actions of a perceived typical perpetrator.

Several factors, rooted in both individual concerns and organizational opportunities, appear to contribute to the definition of hate crimes adopted by the Division A detective. The first may reflect a recognition of the nature and ambiguity of police work in general. By focusing his investigation on the motive of the perpetrator and piecing together an account of the “truth” that refers to the relatively “objective” characteristics of the case (such as sequential order, presence or absence of past disputes or provocation), the detective is able to rule out as hate crimes incidents that are particularly ambiguous. That is, his assumption that there is only one “true” motive for an action allows him to exclude crimes that appear to be complicated by partial motivation of racial or other hatred, and frees him from having to infer what might have happened if things had been different—a degree of uncertainty and speculation that is perceived to be incompatible with the practical demands of police work and the need to establish a case on evidence that can be summoned in court as objective, reproducible, and not subject to individual whim. Though this is a seemingly individualistic orientation, the detective’s ability to implement these understandings are provided for by the structural arrangement of the division.

The classification process in Division A can also be seen as one manifestation of the pervasive view among many of the officers in the division (and the department) that hate crimes are rare. Although the division commanding officer modified his office to accommodate the departmental policy and allowed the detective the time and resources to reduce patrol oversight and error—and presumably increase the number of incidents to be investigated—the explicit goal in the division was to deflate the summary statistics to reflect what they believed to be the real rate of hate crimes. The detective estimated that only a handful of true hate crimes occurred in the division in three years; others that were officially counted as such “were really not hate crimes,” but, despite his stringent criteria, he could not find enough evidence to unfound them. The bureaucratic requirement that he call these incidents hate crimes anyway only continues to mask what every officer knows—that “hate crimes never happen here.” In this light, holding the position that “hate crimes never happen



here” begins to take on the character of an incorrigible proposition (Pollner 1987; Gasking 1965). As Pollner (1987) explains, an incorrigible proposition “is immune to discrediting: it is compatible with every observed and conceivable state of affairs” (p. 57). Thus, regardless of the final number of hate crimes investigated or classified, the assertion that “they do not happen” remains unchallengeable precisely because of the specific interpretive practices used to classify them in the first place.

In practical terms, the detective’s conceptualization of hate crimes may also reflect the attitudes of the local city and district attorneys toward such cases. On several occasions, the detective expressed reluctance to file cases with the city attorney (CA) or the district attorney (DA) unless the case was “a good one.” Although CA or DA responses to hate crime cases were not observed, the detective indicated that he considered filing ambiguous or questionable cases a “waste of time” because of the CA/DAs’ orientation to them. Thus, his emphasis on the more “visible” characteristics of motive may reflect his desire to file only cases which he believes stand a chance of success in the courts.

In summary, then, the initial recognition of hate-motivated incidents is achieved largely through the observation or description (on the PIR) of the presence of particular attributes: reported racial (or other) slurs, observed graffiti or other hateful words or epithets, recognizable signs of known, organized hate groups, victims’ fears or beliefs. Although, at a practical level, these are perhaps the most easily discernable characteristics, they also closely correspond to the attributes of a “normal” hate crime. In other words, racial epithets, symbols of hate, and recognized hate groups are the constituent features of a typical or “normal” hate crime as described by many police officers and detectives. Thus, at least initially, a first-level categorization decision seems warranted not on the “objective” facts of the case or of the requirements of the department’s hate crime policy (which does not detail such attributes) but rather on the correspondence of particular features of the incident with the attributes of a “normal” hate crime.

During the second-level investigation by the detective, the focus is on determining motive. Motive assessment is achieved through the invocation of certain actions (or their absence) seen to stand on behalf of, indicate, or be consistent with hate as a motive for behavior. Provocation by the victim, prior encounters between victim and perpetrator, or a lack of accompanying derogatory remarks are seen as inconsistent with hate as a motive; no provocation, no prior encounters, and racial or ethnic slurs, on the other hand, are seen as indicative of or consistent with a hate motive. The second-level (and, within the police department, the final level) decision, then, invokes particular categories of action and the activities associated with them.

As Sacks (1972) argued, the rules for categorizing persons (or here, categorizing crimes) involve seeing the correspondence between some activity and the category (or categories) to which it belongs. In the case of hate crime categorization, a victim who provokes an attack, for instance, is seen by the detective as acting in a way that is inconsistent with the category of hate crimes—the motive of the attack is not hatred but the provoking activity. Although this may blur the legal distinctions between motive and intent, as a matter of practical decisionmaking, particular categories and their commonly understood corresponding actions are invoked by the detective as relevant in determining a hate motive.

But the categorization practices employed by the detective in Division A are by no means universal. By comparison, the practices of the detective in Division B are based on a set of different institutional relevancies and understandings, resulting in a very different categorization process and year-end summary totals.

#### **Division B—The Facts of the Crime**

Division B, located on the edges of what might be called the “city proper,” has also seen a recent shift in its demographic makeup, from predominantly middle- and upper-middle-class residential and small business areas to a contained sprawl of ethnically and economically diverse interests.<sup>14</sup> Though the area was once dominated by small, individually owned businesses, it now houses both high-rise financial services and industrial and warehouse outlets. Single-family dwellings and small apartment buildings have, in the last 20 years, been replaced by multiunit condominiums and high-rise apartment complexes. The division covers some 60 square miles of territory, and its boundaries border on what the police consider to be two of their most active divisions in terms of violent crimes against persons. In 1990, there were 12 hate crimes investigated and 12 hate crimes reported by Division B on the year-end summary report.<sup>15</sup> Again, within the division, from the commanding officer to the patrol officers, the general perception is that “hate crimes just aren’t a problem in Division B.”

Although the detectives’ commanding officer was one of the original authors of the departmental hate crime policy, there were minimal changes in the structure of the division to accommodate those requirements (perhaps reflecting the CO’s stated belief that his division is unlikely to encounter many hate

<sup>14</sup> The racial and ethnic makeup of the division boundaries are 83% white, 3.33% black, 8.5% Asian, 14% Hispanic, 5% other. These estimates are also based on 1990 Census data of population characteristics for the congressional district that roughly corresponds to the boundaries of the division.

<sup>15</sup> The figures for the first quarter of 1991 were unavailable during our time in the field.

crimes). Rather than appoint one detective to conduct hate crime investigations exclusively, Division B's commanding officer had given the responsibility to as many as four different detectives in 16 months. At the time of this study, the detective responsible for hate crime investigations had been on the job for less than four months. As a burglary detective, her primary responsibility was the investigation of burglaries; her hate crime duties were an additional obligation.

The critical role of the patrol unit in bringing possible hate crimes to the attention of the detective in the first place was not treated as problematic in Division B. Patrol officers received no special training or instruction in recognizing hate crimes (outside of their academy training), nor were they reminded at regular intervals of the departmental interest in hate crimes. The potential for oversight, error, and misrepresentation of facts at the scene was thus not treated as a problem for or by the hate crime detective. Consequently, there were no institutionalized oversight procedures in place. Both the CO and the detective indicated that patrol officers would be able to recognize a hate crime should one actually occur. Any information obviously relevant to a hate crime investigation (such as racial slurs or graffiti) would be recorded at the scene; if not, either the detective would discover it in her followup investigation or it would be discovered by the prosecutor should the case be pursued.

So, in contrast to Division A, where the substantive screening of cases was explicitly the responsibility of the desk detective and the hate crime detective—one and the same person—in Division B at least some of that responsibility was shared by the desk detective, who stated no particular interest in performing oversight functions. Consequently, there were no institutionalized checks in place to catch potentially misidentified cases. The desk detective in Division B, responsible for routing PIRs to the appropriate detective desk (i.e., burglary, crimes against persons, homicide), examined each PIR for the "Motivated by Hatred" box—those which had been checked were sent to the hate crime detective for investigation; those which had not been checked were sent to the appropriate crime desk. The desk detective did not "unfound" cases on the spot nor did he recategorize crimes on the basis of the narrative. For all practical purposes, the screening process began and ended with the responding patrol unit since PIRs not originally identified as hate motivated were not likely to end up being investigated as such, and cases investigated as hate crimes ended up classified as such in the summary reports.

### **Establishing the Facts**

According to the Division B detective, hate crimes are “really not that different” from other crimes and, therefore, do not warrant special attempts on the part of the detective to ferret out the motive behind the attack—that job, if necessary, is best left to the city attorney or the district attorney. The first concern for the detective was to establish whether a crime occurred and what type of crime it was (i.e., a vandalism, assault with deadly weapon, verbal threats), not to determine its underlying nature.

The subsequent investigation in Division B was thus shaped by a substantially different conceptualization of hate crimes, although the basic sequence of that investigation appeared quite similar between the two divisions. The hate crime detective in Division B began her investigation when the PIR filed by the responding patrol unit arrived on her desk and she read the narrative portion of the PIR “to see what happened,” assuming that it represented a fair estimation of the facts immediately available at the scene of the incident. But, because her orienting question was concerned not with the perpetrator’s motive but with the occurrence of a crime, she focused her attention on details relevant to that judgment. So, where the Division A detective looked for possible signs of provocation, prior encounters, and accompanying derogatory statements, the Division B detective looked for identifying signs of the crime—if the case was marked “Vandalism,” she looked for evidence contained in the PIR to support that claim (i.e., was property damaged and in what manner?); if the case was marked “Assault with a Deadly Weapon,” she looked for evidence pointing to the type of weapon, the extent and nature of the injuries to the victim, the presence of witnesses, etc.

At this stage, determining whether the incident could also be classified a hate crime was not a primary concern. According to the detective, even a single element suggesting possible racism or prejudice would be sufficient for the case to be classified a hate crime. So any incident during which racial, ethnic, or religious epithets were hurled, regardless of how peripheral to the crime, would be counted by the division as a hate crime.

According to the PIR, artwork hanging in the lobby of an apartment building had been moved and then found in the building’s garbage bin. A video camera installed in the lobby recorded one of the residents removing a large vase from the lobby; later he reappeared carrying the broken pieces of what appeared to be the same vase. The next day, another resident observed the same man riding up and down one of the elevators. Later, a swastika was found scratched into the wood panel of that elevator.

The detective questioned the complainant regarding the original artwork: Where had it been? Where was it found? What condition was it in? How long had it been missing? The detective then inspected the swastika-scratched elevator wall.

The man observed in the video was interviewed. He said he had written letters complaining about the depressing nature of the artwork, asking that more cheerful art be displayed. His requests were repeatedly denied. The suspect denied scratching the swastika in the elevator (saying that he was Jewish himself) but confessed to taking one of the “offensive” vases off his floor. He said he dropped it when he was startled by someone coming.

The suspect was charged with vandalism. The case was classified as a hate crime in the division’s records.

The detective’s investigation focused on whether she could locate enough evidence to charge a suspect with vandalism. Her first questions to the complainant were concerned with establishing the fact of a crime; the video provided her with physical evidence and the resident’s confession with a probable suspect. The swastika, though she asked to see it, was not the focus of her questioning; its mere presence and its possible link to the suspect was, according to her interpretation of the departmental policy, sufficient to justify classifying this incident as a hate crime.

With the only apparent criteria for distinguishing between hate crimes and other crimes the existence of a single element suggesting racial, ethnic, religious, or sexual prejudice, the perceptions of the victim are elevated to a position of critical importance. Since the detective was not concerned with producing evidence to show motive, the victim’s belief that an incident was motivated by hatred was sufficient to classify the case as a hate crime, even in the absence of any corroborating evidence.

The detective received a PIR regarding the vandalism of a local country club/golf course. According to the initial report, an unknown suspect or suspects drove a ball cart onto the 14th fairway, damaging the cart’s clutch, engine, and front axle. The suspect(s) also drove an electric golf cart across the 18th fairway and crashed it into a hedge, damaging the cart and the landscaping. The “Motivated by Hatred or Prejudice” box had been checked by the patrol unit.

The detective contacted the complainant and verified the account of the damage. She also explained that the case had been identified as a hate crime and asked him if he had reason to suspect that the crime was motivated by hatred or prejudice. The complainant said that the incident was almost identical to an incident that, like this one, had happened two years ago on the eve of Rosh Hashanah.

The detective noted in her followup report that there was no evidence to lead to a conclusion of hatred except the complainant's belief. The case remained categorized as a hate crime and was eventually counted as such in the year-end summary report.

In this case, the complainant's account was not taken as believable, but it was not discounted either—rather it was considered sufficient evidence to support a hate crime classification. The detective's recognition that there was no evidence to suggest a hate crime and the availability of an alternative explanation (i.e., kids joyriding in golf carts) were not enough to unfound the case as a hate crime. Rather, they were considered indicators of the possibility of a hate crime (however remote) and thus consistent with the departmental policy. Logically consistent with the department's policy, this understanding results in a category that is particularly sensitive to partial motives and victim perceptions of racial (or other) prejudice.

In the rare instance that a suspect was identified and located, the focus of the detective's investigation was, again, on the commission of the crime itself, not the perpetrator's motive. For example, in the vase incident described earlier, the detective's questions established that the man had indeed taken the art objects without authorization and had damaged them in the process. The likelihood that he had also scratched the swastika into the elevator as some kind of threatening gesture was not considered. His proffered "alibi," the fact of his Jewishness, was not pursued as relevant to the case. For the Division B detective, there was no need to unfound hate crimes on the basis of the suspect's account, demeanor, or inferred motive because motive was not an issue in the investigation.

The Division B detective's practices can also be seen as a manifestation of the pervasive view that "hate crimes do not happen here," albeit one that appears quite different from the version embodied by Detective A's practices. From the commanding officer down to the rookie patrol officer, there was a persistent belief that "true" hate crimes, such as cross burnings and synagogue bombings, are infrequent occurrences. The department's preoccupation with what many saw as essentially a nonissue was considered another order from above, something that has little, if anything, to do with "real" police work. Thus, the minimal organizational changes within the department and the detective's focus on the "fact of the crime" and not the nature of the crime can be seen as an acknowledgment of the departmental policy, as well as an implicit recognition of the practical demands and limits on police officers. There was no stated interest in the division to deflate citywide statistics or to develop a set of criteria to sift out the "real" hate crimes from the others. Within this context,



the detective's actions and decisions can be seen as a reasonable balance between bureaucratic responsibility and situational demands.

This detective's conceptualization of hate crimes as a non-issue can also be seen as an implicit statement regarding the proper role of the police. The detective's refusal to infer motive, instead relying on the city attorney (CA) or the district attorney (DA) to determine what motivated the perpetrator's actions, reveals what she and many officers considered to be the boundaries of police work. Establishing the fact that a crime occurred (at least within the terms of the penal code) and arresting a suspect are considered proper functions for the police; "trying to figure out why someone committed a crime," inferring motive, is not. A cooperative CA, who was expressly interested in pursuing hate crime cases, added outside support to this view. Where the Division A detective believed that the CA in his division was not interested in a case that could not substantiate claims of hate motivation, the Division B detective was able to pass along cases to the CA that may or may not be shown to be hate motivated. Thus there was a clear distinction between what is necessary for the functioning of the police bureaucracy and what is necessary for the successful prosecution of a case in Division B. Hate crimes are considered fundamentally matters of relevance to the departmental bureaucracy and largely irrelevant to the practical demands of the investigation and detective work.

Unlike the detective in Division A, who invoked the activities consistent with hate as a motive to determine his final classification, the detective in Division B invoked a different set of relevant categories and activities. Thus, her concern was to seek elements or features of an incident that corresponded to the crime itself; motive was not oriented to as relevant for her determination. Since the perceived likelihood of a hate crime happening in the division was low, there were no additional bureaucratic modifications implemented in the department, except for the designation of a hate crime detective. The proposition that "hate crimes do not happen here" was therefore embodied in and enacted through both the detectives' decisionmaking practices and the bureaucratic structure of the division.

### **Policy Implications and Conclusions**

We have shown how the social phenomenon of hate crimes and, especially, the rates of their incidence are the products of both individual decisions (by police personnel) and the institutions in which those decisions are made. Our findings raise several implications for the understanding of hate crime policies as they are implemented by the police and subsequently interpreted by policymakers.

First, we have addressed recent concerns appearing in the legal literature regarding the untenability of hate crime legislation and, in particular, the inherent problems of “linguistic ambiguity” argued to face police (and court) personnel (e.g., Gellman 1991; Gerstenfeld 1992; Morsch 1991; Jacobs & Eisler 1993). But, as we have shown, these concerns appear to have little relevance for the police detectives’ day-to-day decisionmaking practices. Like all crimes, hate crimes require that police detectives determine the “true” nature or definition of an incident: Is it burglary or vandalism? Is it hate motivated or not? Thus, we may ask, by what warrant do police detectives make such decisions? In the case of hate crimes, we have seen that detectives base their decisions on a range of factors: the extent to which the observable features of an incident can be seen to correspond to the features of a “normal” hate crime; the extent to which certain activities can be seen as consistent with a particular category invoked (e.g., a motive of hate, or a burglary); and a practical understanding of the role of the police vis-à-vis the city attorney or the district attorney. Hate crimes are not oriented to by the police detectives that we observed as any more problematic than any other type of crime, despite their unique definitional and bureaucratic features. Fundamental to the decisionmaking process are the various institutional arrangements of the divisions, for it is in and through the organizational structure of the division and the department that particular decisions are produced.

We have also demonstrated differences in categorization practices between two divisions of the MPD—differences that result from institutional and interpretive factors and the interaction between them. Although the perpetrator’s motive is central to the definition of a hate crime, the assessment of that motive and its relevance to a decision is variable across divisions within the police department. Thus, in Division A, a “true” hate crime must meet certain criteria: no provocation by the victim, no prior encounters between the victim and the perpetrator, a specific target, and accompanying derogatory insults. The sequential context of the incident is of critical importance in assessing motive (and classifying the incident), regardless of the victim’s own beliefs or orientations. In Division B, by contrast, an incident is classified as a hate crime on the basis of the presence of a possibly prejudiced action or its suggestion. The definition of a hate crime is reducible to a single suggestive feature, regardless of its proximity to the initiation of the incident. Although these differences between Division A and B represent, in some sense, two extreme opposites, they are generalizable to other divisions in

the department<sup>16</sup> as well as to other police departments in the country (Martin 1995; Walker & Katz forthcoming).

As a matter of practical concern, these differences raise issues about the reliability and validity of official hate crime data. That is, the differential criteria invoked as relevant in making categorical distinctions may mean that the final “pool” of hate crimes for any given year or departmental jurisdiction is composed of arguably incomparable incidents. As Jacobs and Eisler (1993:116) suggest, one outcome of differential categorization practices is that departments end up “aggregating apples and oranges.” These issues are of clear concern to those who hope that increased data collection efforts will produce a better understanding of the incidence and prevalence of hate-motivated crime.

Relatedly, for those who advocate increased statutory limitations on and punishment of hate crimes (see Gellman 1991 for a description of such arguments), this study suggests a possible outcome of the two categorization practices described here. Division A’s structure and practices, which allow the detective to expressly rule out partial motives for an attack and categorize only those cases that can be shown to be solely and unambiguously motivated by hatred, greatly reduce the number of hate crimes reported for the division; in the period we observed, more than half the cases investigated in Division A were unfounded as hate crimes. To be sure, there were four times as many investigated incidents in Division A, which may partly account for the relatively high number of unfounded cases, but the stringent criteria adopted by the Division A detective arguably excluded cases that would be included as hate crimes by other definitions. On the other hand, Division B’s more inclusive categorization practices allowed the detective to count any and all potential hate crimes as real ones and were, arguably, much more sensitive to possible variations in the occurrence of hate crimes, including incidents having multiple or ambiguous motives and accommodating victims’ perceptions and fears. And yet, it is likely that Division A’s practices result in a higher rate of successful prosecution and punishment than Division B’s. Given the Division A detective’s interest in only filing cases with a “good chance” of being pursued by the CA or DA—that is, cases in which there is “clear” evidence of a hate motivation—Detective A’s more selective practices may, ultimately, better serve the interests of policymakers who seek increased punishment of hate crime perpetrators. Although this observation is speculative, additional empirical work would ascertain the subsequent trajectory and outcome of specific cases as they pass through the justice system.

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<sup>16</sup> We observed six additional divisions and found similar differences among them, particularly with regard to the institutional arrangements in the division and the interpretive practices employed.

Finally, drawing together these previous points, our study demonstrates the ways in which the official articulation of a policy and the outcome achieved through its actual implementation may deviate. Implicit in the descriptions and accounts offered by police detectives (and other police officers) are the relevant attributes or features of a "true" hate crime and the types of actions that exemplify or fit that crime category. However, those "relevant" attributes may or may not correspond with policy or legislative understandings or definitions of the problem. For instance, at the heart of most hate crime legislation is a recognition of the symbolic threat inherent in an attack on one member of a racial or ethnic group. As Berk (1990:339) has observed, "the violence itself may take on a symbolic character with messages for the victim, members of the victim's social or actuarial category, other prospective assailants, public officials, and the public at large." Yet, the attributes attended to by detectives may minimize or ignore altogether the symbolic status of the victim. Victims' claims or suspicions regarding the hate motive behind the crime may be subordinated to issues of sequential context or prior history, as observed in Division A, or they may be included but substantively ignored and subordinated to aspects of the crime itself, as in Division B. Thus, the features deemed relevant for making a hate crime determination in practice may contradict or undermine the very spirit of the formal or abstract policy aims.

As Martin (1995) observed in the Baltimore County police department, "a jurisdiction's hate crime statistics depend on what is reported to the police and how officers at various decision points actually address the ambiguities that arise in applying detailed policy guidelines to specific cases" (p. 323). We have shown that "what gets reported to the police" in the first place is the result of specific institutional arrangements and that the seemingly individualistic decisions made regarding specific cases cannot be separated from those arrangements. From the initial response of the patrol unit to the institutional structure of the division to the individual determinations made by the detectives, the constitution of an incident as a hate crime is deeply intertwined with the social context in which its detection, investigation, and classification occurs. Without an understanding of these social processes, our understanding of hate crimes as a *social problem* will remain incomplete.

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### **Statute**

Hate Crimes Statistics Act, Pub. Law No. 101-275, 104 Stat. 140 (1991).