

A Prosecutor's Stand

Hate Crimes: Important Facts for Officers Leading Discussions of the Film

Definition of a hate crime

The FBI defines hate crimes as “criminal offenses motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”¹ This is the definition used nationwide for the purpose of recognizing, reporting, and tracking hate crimes.

The importance of recognizing hate crimes

While all crimes by their very nature are harmful, hate crimes tend to have an especially devastating effect. When a victim is attacked because of race, ethnicity, religion, sexual orientation, disability, gender, or gender identity, the attack is not just upon the specific person but also upon everyone who belongs to that demographic group. Hate crimes spread fear to all who recognize they could have been a target. For this reason it makes sense that hate crimes receive distinct attention from law enforcement.

Hate crimes are message crimes

The message of a hate crime is that “people like you” are not welcome here and are not safe here. Even acts of vandalism or crimes against a person that involve only threats or minimal violence can send powerful shockwaves of fear through the targeted community.

Communities cannot thrive when some members are afraid

Fear caused by hate crimes degrades the quality of life for people in the targeted group and drives decisions about where to live and work and how much to participate in the

“When you have a crime that is clearly motivated by hate, and everybody knows that it’s motivated by hate, what you have is basically an act of terrorism. It’s an act of terrorism against that community.”

– **George Gascón**

District Attorney of the City and County of San Francisco

community. It is also important to understand the potential for hate crimes to increase community tensions. Vulnerable groups that look to law enforcement officials to protect them and to provide a sense of security can become distrustful and even hostile to law enforcement when groups do not feel safe.

Recognizing hate crimes in your community

Every criminal statute that addresses hate crimes includes a central element of bias motivation. As a result, law enforcement officers need to look for “sufficient objective facts to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias.”²

A law enforcement officer should look for and note “bias indicators,” facts that suggest the possibility of a bias motive. It may be the strength of one or more particular

1. *Hate Crime Data Collection Guidelines and Training Manual, Version 1.0* (Washington, DC: Federal Bureau of Investigation, 2012).

2. *Ibid.*

indicators, or the particular combination of indicators, that ultimately leads to the determination that an event is likely a hate crime.

Bias indicators include

- whether the perpetrator and the victim were members of different racial or ethnic groups. This alone would probably never be enough to support a conclusion that an event was a hate crime; however, under the right circumstances and coupled with other indicators, such as a complete and surprising absence of any other apparent or likely motive for a crime, this factor may become weighty;
- historical animosity between the two groups;
- comments, statements, or gestures made by the perpetrator before, during, or after the crime;
- particular drawings, markings, symbols, or graffiti associated with the crime. These various forms of expression can be direct evidence of a bias motive on the part of the perpetrator, particularly when they are present in the commission of the crime itself.

Particular objects can also be bias indicators. Few would mistake the significance of a cross burned in a yard (bias indicator 1) and in the yard of an African-American family (bias indicator 2) These indicators “lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias.” But other objects, less universally associated with hate, might also be keys to recognizing the bias motive in a particular crime.

One must be careful not to draw conclusions about bias motives too quickly or too simply. The analysis should always be done on a case-by-case basis. Statements made by a perpetrator before, during, or after the incident are sometimes the clearest evidence of the existence of a bias motive. But a bias motive can sometimes be discerned from the evidence even in the absence of such statements or other clear symbolic evidence. As Victor Hwang notes, “If there’s really dedicated police work to the case,” it can make the critical difference.

“I remember watching them punch and kick him, and he wasn’t moving. And then I just saw him being repeatedly kicked in the face. I mean, I’ve seen fights, but I’ve never seen anything like this.”

– *Courtroom witness*
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How hate crimes are reported

Two of the main sources for national hate crime data collection are the FBI and BJS, but these agencies have different approaches. The BJS National Crime Victimization Survey³ (NCVS) is collected from a nationally representative sample of households that are interviewed twice a year about criminal victimization. The instrument collects data on frequency, characteristics and consequences of rape, sexual assault, assault, theft, motor vehicle theft, and household burglary. This information is based on nonfatal crimes, and it does not matter whether they were reported to the police.

The FBI Uniform Crime Report⁴ (UCR) *Hate Crime Statistics* are reported by law enforcement directly to the FBI. This data provides the number of incidents, victims, and offenders in hate and bias-related crimes whether the crime is fully or partially motivated by the bias.

The hate crime reporting gap

As Victor Hwang says in the film, “The vast majority of hate crimes are never reported to the police.” Hate crimes in the United States are seriously underreported and underdocumented, hindering accurate assessment of the problem. A recent BJS report found that nearly two-thirds of hate crimes go unreported to law enforcement.⁵ This is because of the unfortunate belief by many victims that

3. “Data Collection: National Crime Victimization Survey (NCVS),” Bureau of Justice Statistics, <http://bjs.gov/index.cfm?ty=dcdetail&iid=245>.

4. “Uniform Crime Reports,” Federal Bureau of Investigation, <http://www.fbi.gov/about-us/cjis/ucr>.

5. Meagan Meuchel Wilson, *Hate Crime Victimization, 2004–2012: Statistical Tables* (Washington, DC: Bureau of Justice Statistics, 2014), <http://www.bjs.gov/content/pub/pdf/hcv0412st.pdf>.

“Immigrant communities are reluctant to approach law enforcement; they feel like there will be retaliation if they do report incidents to the police. There are frequently language barriers. They may see the hate but they’re not able to express it in the same words and identify them as hate crimes.”

– Victor Hwang

Hate Crimes Prosecutor, San Francisco District Attorney’s Office

law enforcement will be unable or unwilling to address the problem. Such a breakdown in trust completely undermines the ability of law enforcement agents to perform their jobs.

It is imperative that law enforcement, prosecutors, and victim advocates do everything they can to build bridges of trust in the community to facilitate victim reporting and cooperation. First, it is essential that leadership make it clear that accurate reporting is a priority for the agency. Training is an effective means for accomplishing comprehensive hate crime recognition. Reaching out to victims and to witnesses and encouraging them to report is very important. In addition, intra-agency review of reports can enhance the accuracy of reporting.

Victims of hate crimes need support

One of the most important features of hate crimes is the heightened vulnerability of the victims, both the individual victim and the class of victims who belong to the same demographic group. Victims of hate crimes are often members of diverse groups already coping with a degree of discrimination and separation to which a hate crime can add further fear and insecurity. FBI statistics indicate that hate crimes are most often motivated by race, with religion and sexual orientation being the second and third most common motivations.⁶ Sometimes the targeted groups are in the center of social controversy and conflict, sometimes with political or religious implications. This is certainly the case for some victims featured in the documentary. These individuals are naturally going to have a more difficult time reaching out to law enforcement, and they may be distrustful and have low expectations of prosecutors.

Law enforcement, victim advocates, and prosecutors should make special efforts to reach out to hate crime victims. Their vulnerability is related to the unique trauma they suffer, beyond any physical, mental, or economic injury; it is related to the shockwaves of fear that tend to permeate the targeted community in the aftermath.

Another characteristic of many hate crimes is the extra degree of violence and cruelty not as common in, for instance, economic crimes. Even though a bias-motivated crime does not require extreme violence to cause fear within a vulnerable community, research has shown that attacks motivated by bias tend to be more violent than attacks that arise out of other circumstances. A 2013 BJS report revealed that while violent non-hate crime victimizations decreased between 2007 and 2011, the percentage of hate crimes that were violent victimizations increased.⁷ For all of these reasons, the special vulnerability of hate crime victims is a feature to which law enforcement must be especially attentive.

It is important to note that understanding and good community relations do not involve “taking sides” on political controversies that may surround some groups. The focus for law enforcement should be on protecting members of the community, regardless of who they are, and the task is to pursue a positive working relationship that will make it possible to do this effectively.

Effective law enforcement response

All hate crimes deserve focused attention and good law enforcement work. In the film, Victor Hwang repeatedly points out how thorough investigative work made the difference in his cases. The ultimate objectives are

6. Ibid.

7. Nathan Sandholtz, Lynn Langton, and Michael Planty, *Hate Crime Victimization, 2003–2011* (Washington, DC: Bureau of Justice Statistics, 2013), <http://bjs.gov/content/pub/pdf/hcv0311.pdf>.

preventing crime and enhancing public safety. Keep in mind that these objectives can be furthered even if catching and prosecuting every offender proves impossible. Vigorous response to hate crimes by law enforcement

- will be noticed and appreciated in the community;
- sends a message to the perpetrators and would-be perpetrators that hate crimes will not be tolerated;
- enhances security for the public and helps prevent future hate crimes.

Some jurisdictions have specialized hate crime investigation and prosecution units, but most do not. This does not mean hate crimes should not be taken seriously; they should be successfully investigated and prosecuted wherever they occur. Where specialized resources are lacking, it may take extra diligence on the part of officers and investigators, and experts from outside of the agency may need to be consulted.

The importance of prosecuting hate crimes as hate crimes

When hate crimes occur, it is important that they be recognized for what they are. This is why crimes motivated by bias should always be reported as hate crimes and why prosecution for hate crimes should be pursued wherever possible. When law enforcement and public officials recognize such an act for what it is, and when they name it and treat it as what it is, they acknowledge and validate the experience of the victim and affirm the status of the victim as a full member of the community.

From a legal point of view, the essential feature of a hate crime is the bias element. As Victor Hwang notes in the film, this is “a unique element, which is not found in other parts of criminal law.” When this element is written into a criminal statute, it can make the crime more complicated to prove, and for this reason, some prosecutors are reluctant to charge perpetrators with hate crimes. However, a conviction under such statutes typically comes with harsher penalties. Convictions under these statutes have the added benefit of

“It’s hard to tell what a motive is in an individual assault. To do that, it requires a more extensive investigation into the person’s background, who they associate with, what kind of literature they’re reading, what websites they’re visiting, the overall motivation for why they’re doing what they’re doing.”

– **Victor Hwang**

*Hate Crimes Prosecutor, San Francisco
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giving the jury the opportunity to name the crime for what it is. For this reason, prosecutors should bring hate crime charges where the evidence and the available statutes make this possible.⁸

Working with your community

Law enforcement-community relations are especially important when it comes to hate crimes. Because victims of hate crimes are often more vulnerable members of society, they are sometimes reluctant to contact law enforcement and report that they have been the victim of a crime. However, because law enforcement officials need community cooperation to effectively carry out their responsibilities, encouraging and achieving this cooperation is an important part of their work. Good community relations

- increase the likelihood that hate crimes will be reported by victims to law enforcement;
- increase cooperation by witnesses;
- increase the support for law enforcement officials as they perform their jobs.

8. To understand the details of the criminal statutes related to hate crimes that are applicable in your state, consult your local prosecuting attorney or your state attorney general. Summary material on the hate crime laws of the various states may be found at http://www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws.pdf and http://archive.adl.org/learn/hate_crimes_laws/map_frameset.html.

Law enforcement agencies should be working to establish good community relations well before they need to rely on them in a particular criminal investigation. It is important to consistently maintain and strengthen law enforcement-community relations.

Because hate crimes grow out of a social climate that breeds or abides intolerance, the real key to preventing hate crime lies not only with law enforcement but also with the larger community. Members of the community, including

educators, faith leaders, civic leaders, labor groups, media, and citizens of every age, are in a position to contribute much more to the prevention of hate crimes than mere cooperation with law enforcement. Communities that actively work to include all groups in community issues and activities and work to build social bridges to otherwise isolated groups are less vulnerable to those who would sow fear and division through committing hate crimes. Law enforcement can play an important role in calling forth this positive involvement from the community.

This project was supported by cooperative agreement number 2012-CK-WX-K021 awarded by the Office of Community Oriented Policing Services, U.S. Department of Justice.

Recommended citation:

Sheridan, Paul, Libby McInerney, and Michelle Gahee Kloss. 2015. *A Prosecutor's Stand: Hate Crimes—Important Facts for Officers Leading Discussions of the Film*. Washington, DC: Office of Community Oriented Policing Services.

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