

Transforming Symbolic Law into Organizational Action: Hate Crime Policy and Law Enforcement Practice

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For decades sociologists, criminologists, political scientists and socio-legal scholars alike have focused on the symbolic and instrumental dimensions of law in examinations of the effects of social reform and policy implementation. Following in this tradition, we focus on the relationship between hate crime policy and hate crime reporting to identify the conditions under which a symbolic law is accompanied by instrumental effects at the initial phase of the law enforcement process – the official recording of a hate crime event. Using data on California police and sheriff’s agencies we estimate hierarchical Poisson models to determine how agency-level enforcement efforts, chiefly the creation of a formal policy on hate crime, affect official hate crime reporting. We also examine how community and agency attributes influence the effects of policy on the reporting of hate crime. We find that agency characteristics, in this case measures of the integration of the local agency within the community, shape the degree to which agency policies affect the official reporting of hate crime. Our findings reveal that while symbolic law is not intrinsically incapable of producing changes in enforcement patterns such effects are contingent upon agency and community processes. Thus, we conclude by conceptualizing the varied enforcement contexts within which a body of symbolic law is rendered instrumental.

The characterization of law as “symbolic” is a recurring theme in American political discourse and scholarship on law and public policy (Calavita 1983, 1996; Edelman 1964; Gusfield 1963; Jenness 2004). Court cases are cast as “symbolic victories” when plaintiffs receive only minimal

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financial compensation or when no changes in behavior result from a ruling. Legislation is seen as symbolic when legislators support laws that they have no expectation will be enforced, but nonetheless allow lawmakers to portray themselves favorably to the public. Such legislation is said to be symbolic when it gives legitimacy to lawmakers, but does not have demonstrable law enforcement effects. For some, laws are “merely” or “purely” symbolic when they communicate positions on ideological battles and affirm or change values, but nonetheless have only superficial application. That is, they are gestures that communicate consequential meaning, but nonetheless have no real, material, enforcement-related impacts. Others, however, have reclaimed and, indeed, hailed the symbolic effects of law. Promoting powerful symbols of what should be valued and what should be derided in society is no small thing – even when a particular court case or specific statute does not immediately change behavior (McCann 1994; Zeegers, Witteveen and van Klink 2005).

Often commentators and scholars distinguish between the symbolic dimensions and the “instrumental” impacts of law (Rosenberg 1991; Howard 1999; Hawkins 2002). Laws are declared to have instrumental effects when court rulings, legislation and public policy results in changes in the behavior of officials, organizational entities or citizens, presumably to ameliorate a purported public problem. With regard to the instrumental effects of criminal law enforcement in particular, scholars have focused empirical attention on a continuum of police behavior – detection, reporting, investigation, arrest and conviction – that constitute the larger process of law enforcement (Goldstein 1977).

The symbolic and instrumental conceptions of how law, legal rules and policy functions in society belies a more complicated picture. Sociologists, as well as those studying politics, organizations and social control, have argued that symbolic and instrumental law are essentially ideal types. As such, laws can have both symbolic and instrumental effects – or neither (Zeegers et al. 2005). Moreover, the same law can be mostly symbolic in one context and both symbolic and instrumental in another context. In this article, we advance this understanding of the varying ways in which the symbolic and instrumental dimensions of law can relate. To do so, we present an investigation of an area of law that many have characterized as exclusively symbolic – hate crime law – to determine the conditions under which a necessary first step in the process of enforcement is commenced – the recording of a “hate crime” event.¹ It is difficult to contest that one of the purposes of hate crime law is to recode – symbolically – the meaning of certain kinds of bias-motivated criminal acts (Beale 2000; Jacobs and Potter 1998; Jenness and Grattet 2001). However, it is important to question how and when this body of law also has produced instrumental effects. Accordingly, in this article we examine the degree to which hate

crime law and attendant policy has influenced the work of officials charged with detecting and reporting bias-motivated violence as type of criminal conduct. We focus our attention on hate crime reporting as a discernable outcome of the law enforcement response because it constitutes a key moment in which bureaucratic recognition of a problem – in this case hate crime – is evident (Cicourel and Kitsuse 1963; Spector and Kitsuse 1973).

The charge that hate crime laws are merely “symbolic” has been most prominently made by James Jacobs and Kimberly Potter in their book *Hate Crime: Criminal Law and Identity Politics* (1998) in which they criticized hate crime laws for being rooted in “identity politics.” In their words, “Fundamentally, hate crime laws are symbolic statements requested by advocacy groups for material and symbolic reasons and provided by politicians for political reasons.” (Jacobs and Potter 1998:65) They argue that hate crime laws are a contemporary example of legislators ceding the policymaking process to interest groups. As a result, hate crime laws merely represent an exercise in symbolic politics. Others have followed with similar criticisms (Beale 2000; Bell 2002; Haider-Markel 1998: 69).

Despite these critical appraisals, law enforcement officials nationwide have begun to direct explicit attention to the challenge of enforcing hate crime law. Many state attorneys general, governors, state level commissions and task forces, as well as social movement organizations and citizen groups, have also called for enhanced efforts to enforce the law. Model policing policies have emerged and diffused (Grattet and Jenness 2005; Jenness and Grattet 2005). Policing conferences on the subject have been convened, training manuals authored, curriculum developed and certified, and “experts” sanctified. In short, considerable organizational work has been stimulated by hate crime laws. At the same time, there is accumulating evidence suggesting that under some circumstances law enforcement officials are taking steps to enforce hate crime law; the result is variation in reporting of hate crime across jurisdictions (Bell 2002; Balboni and McDevitt 2001; Haider-Markel 1998, 2002; Grattet and Jenness 2005; Jenness and Grattet 2005; King, Messner and Baller 2006; McVeigh, Welch and Bjarnason 2003; Nolan, Akiyama and Berhanu 2002; Wilson and Ruback 2003).

It remains to be seen, however, what factors explain the differential enforcement of hate crime law and, in particular, whether the development of policies that codify support for the enforcement of hate crime legislation results in increased attention to hate crime among law enforcement organizations and first responders (for exceptions, see Haider-Markel 2002; King 2007, 2008). Specifically, it is unknown whether policies adopted at the law enforcement organization level (i.e., police and sheriff’s departments) result in more reporting of hate crime, recognizing that reporting is a necessary step toward arrests and conviction – what Haider-

Markel (2004:491) deemed “aggressive action” in light of the propensity of law enforcement to underreport hate crime. As legislative reform at the federal, state and local levels are translated into initiatives inside law enforcement agencies, policies constitute concrete operational plans for responding to hate crime; as such, they are a primary venue through which law can become something more than symbolic – it can become instrumental.

In this article, we investigate the effects of law enforcement agency hate crime policies on the official reporting of hate crime. At least two possibilities exist. First, department policies may have no effect on what law enforcement officers actually do. If this is the case, one could argue that hate crime laws and attendant policies are exclusively symbolic. In contrast, a policy might sensitize officers to the problem of bias-motivated violence, provide them with a new conceptual tool to define the parameters of the problem, and result in increased reporting of hate crime (Haider-Markel 1998). If so, one would be hard-pressed to argue that hate crime policies – as well as the laws they operationalize – are merely symbolic when observable consequences are evident.

In the next section, we draw on a broader literature on the analytic and empirical distinction between symbolic and instrumental law to situate our analysis of the relationship between policy and the enforcement of hate crime law. Thereafter, we introduce our research site, data and method of analysis. In the fourth section, we present an empirical analysis of the effects of policy on reporting. Finally, we conclude with a discussion of the implications of our findings for both the particular issue at hand – the policing of hate crime – and the broader theoretical concern with the conditions under which symbolic criminal law is rendered instrumental at the local level.

Symbolic and Instrumental Effects

Social scientists have written about the formation and implementation of diverse types of law for half a century (for a recent review, see Jenness 2004). A common theme running through this literature is the delineation of symbolic and instrumental dimensions of law. One of the lasting contributions of Gusfield’s (1963) classic work on “symbolic politics” and the law it produces is the identification of the symbolic and instrumental dimensions of law. For Gusfield (1967), symbolic legislation serves to affirm some values and lifestyles, but does not depend upon actual law enforcement for its effect. Instrumental law, on the other hand, actually controls behavior through law enforcement practices (Gusfield 1967). Following Gusfield, numerous studies have employed the conceptualization of symbolic and instrumental law to analyze a variety of legal and policy

issues (Edelman 1964; Helmer 1975; Howard 1999; Musto 1973; Platt 1969 [1977]). Increasingly, scholarship has examined the simultaneity of symbolic *and* instrumental dimensions of law, with a focus on accounting for their interrelationship (Calavita 1996). Hawkins (2002:5) argues that law “can serve both instrumental and expressive purposes, or symbolic and organizational ones.” Beyond recognizing the possibility that the two aspects of law can occur simultaneously, however, the question is under what circumstances does the transformation between symbolic law and enforcement action take place?

To that end, we examine the relationship between the creation of enforcement policies within local law enforcement agencies and the initiation of the hate crime law enforcement process. Taking a crime report constitutes law enforcement’s first significant and consequential response to hate crime precisely because it serves to express law enforcement’s commitment to invoke hate crime law beyond merely promulgating policies or expressing concern. Taking a hate crime report signals the expenditure of bureaucratic resources and the mobilization of law. As King’s (2008) work suggests, a commitment by the police to enforce hate crime initiatives can be reflected in official reporting. More to the point for the purposes of this article, hate crime reporting initiates other enforcement effects, such as arrest, prosecution and conviction (even as not all reports lead to arrest, not all arrests led to prosecution, and not all prosecutions lead to conviction) (Black 1970, 1971). In short, hate crime reporting is a discernable law enforcement effect in and of itself as well as a necessary precondition to any other enforcement effects (for further discussion of the importance of hate crime reporting, see Haider-Markel 2004; King, Messner and Baller 2006; King 2008; McVeigh et al. 2003; Wilson and Ruback 2003).

Agencies, Policies and Implementation

Law enforcement agencies can support the enforcement of a law or, alternatively, they can actively discourage it (Bell 2002; Bitner 1980; Black 1970; Boyd, Berk and Hamner 1996; Goldstein 1977; Hawkins 2002; Hawkins and Thomas 1984; Skolnick and Bayley 1986). Work specifically on hate crime shows that informal policies or routines that develop within police departments contribute to variation in enforcement of the law (Bell 2002; Boyd, Berk and Hamner 1996; Martin 1993, 1996); however, no work has examined the effects of formal policies. To understand the relationship between the presence of an enforcement policy and the actual implementation of policy – in this case hate crime policy in local law enforcement agencies and reporting practices by law enforcement agents – requires examining three types of effects. Described below, we

hypothesize that temporal effects, agency effects and community effects play a role in determining the conditions under which symbolic law is effectively rendered instrumental.

Temporal Effects

Policies can have different effects over time. The simplest policy effect would be an increase in enforcement after the creation of a policy that persists in the following years. An alternative response builds more gradually over time through a process of organizational learning. This timing pattern signals a slower cumulative instrumental impact of the policy on enforcement. Also, a new policy may start out having instrumental effects, changing behavior in the immediate aftermath of its creation. Later, however, the policy may assume a symbolic function and become less determinative of enforcement behaviors as other issues arise to displace the attention once given to the subject of the policy. This pattern indicates pronounced decay in an instrumental effect of policy. These various patterns suggest that the degree to which policies have effects on enforcement may be time dependent and the mathematical form of the relationship between time and the effects of policy can be revealing about how instrumental effects are manifest in relation to policy creation.

Agency Effects

The decentralized system of American policing ensures law enforcement agencies are rooted in and accountable to local communities (i.e., jurisdictions) (Bitner 1980; Sherman 1978; Skolnick and Bayley 1986). Although law enforcement agencies share common federal and state laws, each agency is autonomous in terms of how it orients to the law, develops policy to enforce the law, and actually enforces the law. Such autonomy grants the agency significant freedom to develop and implement (or not) its own approach to crime control based upon its assessment of the nature of its specific community problems and its organizational commitments to addressing such problems (Crank 2003). Given this decentralized structure, it is useful to examine the degree to which agency characteristics affect whether an agency policy has an effect on implementation of law (Boyd, Berk and Hamner 1996; Black 1971; Fyfe 1979).

We hypothesize that the degree of integration of the agency with its environment affects whether policy has an instrumental effect. Specifically, agencies that are more integrated with their communities create organizational structures to facilitate outside influence and input and agencies that have interest groups poised to take advantage of those structures would be more likely to see gains from policies. Put in opposite

terms, agencies that have tightly controlled organizational boundaries that seal off the internal activities from external observation and influence are more likely to use policies purely for symbolic gains. Such organizations are less susceptible to external influences and thus have greater capacity to decouple policy from practice.

Law enforcement's commitment to community policing as a measure of agency-community integration is well-accepted in the literature devoted to understanding whether/how the structure and practices of law-enforcement agencies play a role in the variability of hate crime enforcement. For example, drawing on their research on the variability of reporting, Balboni and McDevitt (2001:23) argued that departments could overcome barriers to reporting "through enhanced community interaction." Jenness and Grattet (2005) found that an agency's commitment to community policing, predicted the likelihood that an agency would have a hate crime policy in place and King (2007) found that the degree to which agencies embrace community policing increases compliance with hate crime laws because it enhances communication between the agency and the community.²

Community Effects

We also examine the degree to which hate crime reporting is contingent upon community characteristics that may affect the influence of policy. Thus, we consider several other factors that previous research and theory have suggested as community level predictors of hate crime reporting (Green, Strolovitch and Wong 1998; Levin and McDevitt 2002; Messner, McHugh and Felson 2004; McVeigh et al. 2003).

Three perspectives on the community factors that affect hate crime and hate crime reporting are examined. First, an argument that has received substantial attention from the media and social scientists alike is the notion that hate crime perpetration and, more importantly for our purposes here, crime control efforts directed at hate crime are both associated with poor socioeconomic conditions. That is, racial and ethnic differences become most pronounced in contexts of economic strain and alienation. In this context, groups retreat to longstanding group divisions as vehicles for pursuing collective interests (Jackson 1989; Jacobs, Carmichael and Kent 2005; King et al. 2006). Some of the most vivid cases of hate crime have been of this sort (Levin and McDevitt 2002; Levin and Rabrenovic 2004), although it should be noted that Green et al. (1998) found little empirical support for this argument.

A second argument is that the use of law enforcement to control hate crime is similar to the use of law enforcement to control other kinds of crimes, thus the same sorts of factors that predict crime reporting in general in communities may also predict hate crime reporting (Messner

et al. 2004; Grattet forthcoming; Perry 2001). Socioeconomic conditions fit with this line of argument; indeed, a long line of criminological research has focused on poverty as a correlate of both criminal behavior and crime control efforts, especially related to detection. Ethnic heterogeneity, which is a cornerstone of social disorganization theory and ecological theories of how community characteristics affect crime rates, also has relevance to predicting hate crime. More heterogeneous communities are more likely to experience tensions along racial and ethnic lines than homogeneous ones. We can also simply use the crime rate as a proxy for more or less criminogenic environments, thus controlling for all of the characteristics that cause high crime in order to isolate the factors that uniquely affect hate crime reporting in particular.

A third argument is that hate crime reporting is a product of local social movement pressure. McVeigh et al. (2003) demonstrated that the presence of a civil rights organization positively influences hate crime reporting. We sharpen this argument by focusing on human rights/human relations commissions. These organizations operate as community watchdogs and are specifically involved in issues related to community relations and the role of the police in hate crime and intergroup conflicts.³ Thus, we hypothesize that the presence of human relations commissions should increase the reporting of hate crime by amplifying the effect of policies.

Research Site, Data and Method of Analysis

Research Site

We chose California as the site for this research because California's state legislature has been at the forefront of hate crime policymaking for the past two decades and, as a result, the State of California arguably has the most comprehensive, complex and demanding system of criminal hate crime laws in the nation. California also has nearly 400 law enforcement agencies that have varied in their response to the law and the extent of hate crime they report. Thus, while California is a leader in the area of hate crime law at the state level, its law enforcement agencies have varied in both the creation of hate crime enforcement policies and in the volume of hate crime they report.

Hate Crime Reports

It is unknown whether legislative and state-level policy efforts in California have been or will be successful in altering the behavior of frontline officers.⁴ As has been emphasized in the literature on hate crime, measuring the successful enforcement of hate crime law is not easy precisely because it is impossible to gauge the true level of hate

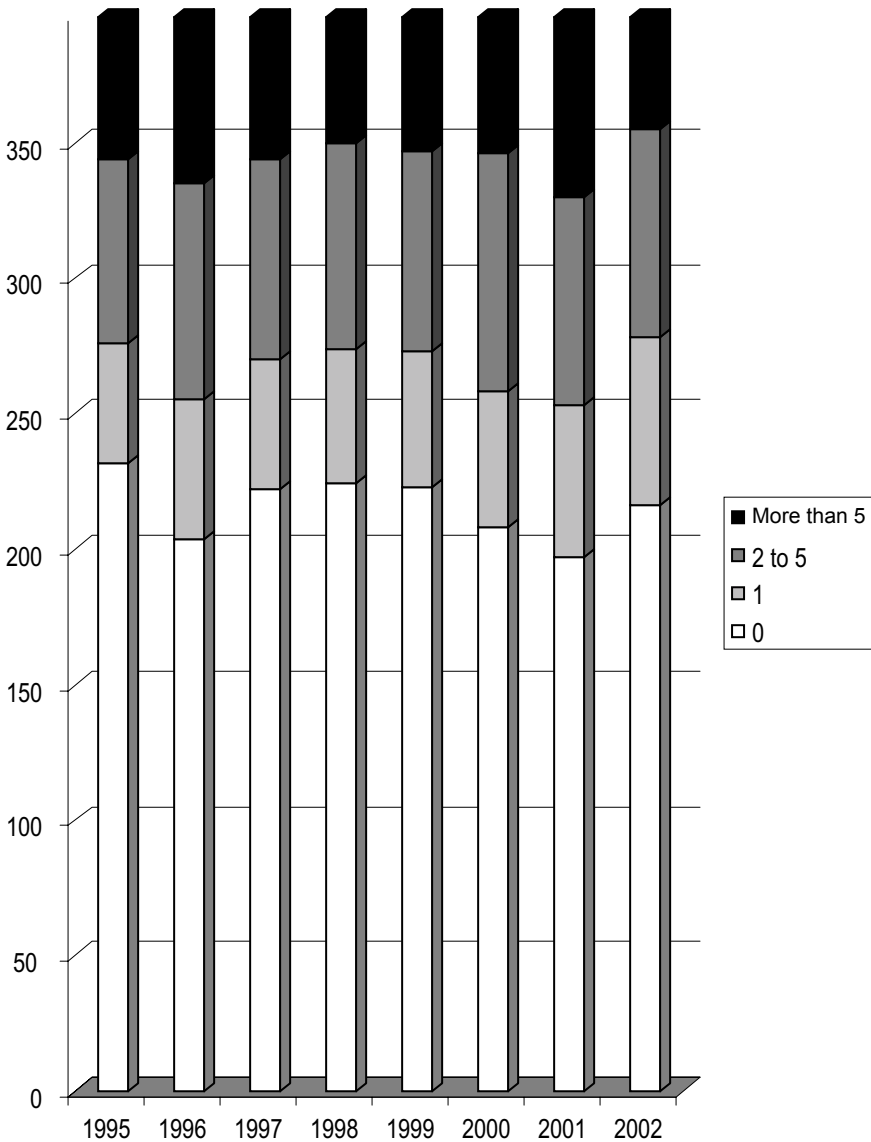
crime, as opposed to the detected and reported level of hate crime. In other words, it is impossible to know the degree to which some acts of bias-motivated crime are undetected by citizens, unreported by police, or misclassified by both (Balboni and McDevitt 2001; Haider-Markel 2002; King et al. 2006; Perry 2001). Nonetheless, official reports of hate crime represent the most proximate indicator to the enforcement of hate crime law – the moment when an officer officially classifies some conduct as hate-motivated. While others have viewed them as imperfect, yet reasonable, measures of the volume of biased criminal deviance (Green, Strolovitch and Wong 1998), we conceive of hate crime reports as a measure of organizational action that is shaped by the situational aspects of the behavior at hand (Black 1970) as well as influences within the organizational field of law enforcement (Grattet and Jenness 2005), within agencies (Boyd, Berk and Hamner 1996), and within communities (McVeigh, Welch and Bjarnason 2003).

We collected reports of hate crime from California police and sheriff's agencies from 1995 to 2002. The California Department of Justice, the state agency that compiles these data, requests that each agency establish a two-tier review process for possible bias-motivated incidents before reports are forwarded. The first tier is the responding officer. The second tier is a unit supervisor; however, in a few agencies, the second tier is a specialized unit responsible for evaluating and classifying incidents. Until 2003, when the statewide data collection system was computerized, the Criminal Justice Statistics Center in the California Department of Justice operated as a third tier in the review process. Thus, the data used in this study has survived three screening moments. As a result of the change in reporting method in 2003 we elected to cease the data collection in 2002 to maximize the comparability of the data across years.

All crime reports that met the criteria specified in California's hate crime reporting law (California Penal Code § 13023) were coded as "bias-motivated." If the report provided to the Department of Justice was incomplete or if it appeared that the incident did not meet the criteria specified in the law the agency was notified. At that point, the agency could either provide additional information or agree with the Department of Justice that the incident in question did not meet the criteria of a hate crime. California municipal police and sheriff agencies officially reported 15,171 hate crimes from 1995-2002. This total constitutes more than 99 percent of all hate crime reports in the state. The remaining 1 percent includes reports from other agencies, such as the California Highway Patrol or campus, park, transit or harbor police, which we excluded from our analysis.

As reported in Figure 1, hate crime reporting is not distributed equally across California law enforcement agencies. The modal number of reports

Figure 1. Number of California Law Enforcement Agencies Reporting Various Levels of Hate Crime, 1995-2002



for agencies is zero, the mean is 4.79, and the highest annual count was 562 for the Los Angeles Police Department in 2001. On average, roughly 215 (54 percent) agencies reported no hate crime annually, 50 agencies reported one hate crime, 75 agencies reported two to five hate crimes, and 50 agencies reported more than five hate crimes.

Hate Crime Policies

We solicited “general orders” from all of the municipal police and county sheriff’s departments in the state of California. These documents codify an agency’s official policy on hate crime, often by providing the departmental definition of hate crime as well as the department’s protocol for dealing with hate crime incidents. In addition, policies often signal to officers what counts as a hate crime and who counts as a hate crime victim, as well as why the department is committed to enforcing hate crime law and what the department’s responsibilities to the community entail.⁵ Most importantly for our purposes here, these policies contain a description of the agency’s reporting procedures.

In 1999 and then again in 2000 and 2001, we requested policies pertaining to hate crime from all 339 municipal police and all 58 sheriff’s agencies in the State of California. Of the 397 police and sheriff’s agencies in the state, 39 did not respond to the three successive requests for agency policies, which resulted in a 90 percent response rate. One hundred and sixty-one (40 percent) of the police and sheriff’s agencies in California informed us that they do not have a hate crime policy, and 197 (49.6 percent) of the 397 police and sheriff’s agencies provided us with a copy of their policy.

Although law enforcement agencies in California began creating hate crime policies as early as 1986, as described above hate crime incident data have only been collected statewide since 1995. Sixty-two agencies had policies prior to 1995. Twenty-four agencies did not indicate a date on their policy. One hundred and sixty-one agencies did not have or create a policy from 1995 through 2002. Thus, 109 agencies created hate crime policies during that time period. Any given agency can potentially have a policy in place for all of the eight years under study, none of the eight years under study, or some of the eight years under study.

Data on Community and Agency Characteristics

We gathered organizational and community data corresponding to the hypotheses described earlier. Summarized in Table 1, the community-level demographic data, such as the population size, socioeconomic conditions, and ethnic heterogeneity were drawn from the 1990 U.S. Census. The violent crime rate measure comes from the 1990 Uniform Crime Reports. In addition, we relied upon information from the California Association of Human Relations Organizations to collect data on the distribution of human rights and human relations organizations throughout California municipalities.⁶

Also summarized in Table 1, the organizational measures on California law enforcement agencies come from Census of Local Law Enforcement

Table 1: Descriptive Statistics for Variables

Variable	Measures	Mean	Standard Deviation
Dependent Variable (n = 2592)			
Reported Hate Crime	Incidents of hate crime reported to law enforcement agency ¹	4.79	28.02
Level 1: Agency-Year (n = 2592)			
Policy	Measured dichotomously (1 = presence of policy) ²	.36	.48
Time Since Policy	Years since the adoption of a hate crime policy ²	2.10	3.54
Time Since Policy ²	Years since the adoption of a hate crime policy squared ²	16.91	38.49
Level 2: Agency (n = 324)			
Population Size	Natural log of the population size of the agency's jurisdiction, 1990 ³	10.25	1.48
Socioeconomic Conditions	Score based on % unemployed, median income, % college graduate, and % blue collar worker ³	.00	1.00
Violent Crime	Natural log of the rate of violent crimes (homicide, robbery, aggravated assault and rape) ⁴	3.82	1.44
Ethnic Heterogeneity	Blaui heterogeneity scale (1 = complete integration) ³	.45	.19
Human Relations Commission	Measured dichotomously (1 = presence of human relations commission) ⁵	.47	.50
Community Policing Officers	% of sworn officers assigned community policing responsibilities ⁶	15.04	23.52
Neighborhood Stations	Measured dichotomously (1 = agency has neighborhood or mobile substations) ⁶	.44	.50

Sources:

- ¹ California Criminal Justice Statistics Center.
- ² Authors compilation.
- ³ U.S. Census Bureau (1990), Blau (1977).
- ⁴ Uniform Crime Reports (1990).
- ⁵ Compiled by the California Association of Human Relations Organizations (CAHRO) (2002).
- ⁶ U.S. Bureau of Justice Statistics, Census of Local Law Enforcement Agencies (2000).

Agencies (2000) by the U.S. Bureau of Justice Statistics. Our measures of agency-community integration, the number of community policing officers and whether the agency has neighborhood stations, were collected from the Census of Local Law Enforcement Agencies (2000).

Analytic Strategy

Our choice of analytic approaches is dictated by the nested structure of our data, our assumptions about the substantive process by which agency policies affect reporting practices, and our commitment to understanding how the enforcement effects of hate crime policy might be contingent upon community and agency characteristics. Treating the number of hate crime reports submitted by individual local law enforcement agencies as the dependent variable, we rely on hierarchical models to examine two levels of effects (Kreft and de Leeuw 1999; Raudenbush and Bryk 2002). Our analysis relies on a growth curve model estimated with eight annual observations for each agency. Given that the dependent variable is hate crime counts – skewed, integer and nonnegative – the appropriate level-one sampling model is poisson. Thus, the level one specification is:

$$E(Y|\pi_{ii}) = \lambda_{ii}$$

$$\text{Log}[\lambda_{ii}] = \eta_{ii}$$

$$\eta_{ii} = \beta_{0i} + \beta_{1i}P_{it} + \beta_2TS + \beta_3TS^2 + r_{ij}$$

η_{it} is the log-event rate, which, in this case is the rate of hate crime reporting. "P" is a dummy variable that measures the presence of a hate crime policy. "TS" is time since the adoption of the policy, which we include to determine whether the effect of policy changes after its initial creation; and "TS²" is a term included in order to detect a nonlinear effect of time since adoption on reporting. The coefficients β_{0i} and β_{1i} are permitted to vary across agencies (denoted "i"), whereas the coefficients β_2 and β_3 are assumed constant across agencies. We also estimated a level one scalar variance (σ^2) to adjust for overdispersion (Raudenbush, Bryk and Congdon 2001). Although it is plausible that a policy might raise the level of reporting depending upon agency or community characteristics, the idea that the time since policy adoption effects might display a similar dependency is not suggested by previous empirical or theoretical work. Thus, with regard to the time since policy adoption variables, we assume that the time dynamics would either operate the same across agencies or not exist. $\text{Exp}(\beta_{0i})$ is the predicted average reporting for each agency before a policy has been adopted and $\text{exp}(\beta_{0i} + \beta_{1i} + \beta_2 + \beta_3)$ is the predicted reporting for each agency after a policy has been adopted. In discussing our results we transform the coefficients into predicted values to aid interpretation.

The level two model is specified as follows:

$$\beta_{0i} = \gamma_{00} + \gamma_{01}\text{Pop90} + \gamma_{02}\text{SES} + \gamma_{03}\text{LnCr} + \gamma_{04}\text{Het} + \gamma_{05}\text{HRC} + \mu_{0i},$$

$$\beta_{1i} = \gamma_{10} + \gamma_{11}\text{NEIGH} + \gamma_{12}\text{COMPOL} + \mu_{1i}$$

$$\beta_2 = \gamma_{20}$$

$$\beta_3 = \gamma_{30}$$

We treat population (Pop90) as a control variable for the at risk set because, technically speaking, everyone in a jurisdiction is a potential target for a hate crime precisely because hate crime law specifies status provisions, such as race, religion, national origin, sexual orientation, etc., that apply to all members of the population. Indeed, whites, Christians, natives and heterosexuals have been victimized by bias-motivated violence and prosecutors have prosecuted such manifestations hate crime (Jenness and Grattet 2001). Likewise, the violent crime rate (*LnCr*) is used as a control for the overall level of violent behavior in the community.

The variables hypothesized to affect the variation in reporting across agencies are socioeconomic conditions (SES), ethnic heterogeneity (Het), and the presence of a human relations commission (HRC). The variables hypothesized to affect the variation in the effects of a hate crime policy are the presence of neighborhood substations (NEIGH) and the percent of community policing officers (COMPOL). We assume the slopes for the TS and TS² variables are the same across agencies. All variables in level two are grand mean centered, except the dichotomous variables.

Findings

Our first analytic step was to estimate a fully unconditional (i.e., ANOVA) model to assess the degree to which a hierarchical approach is necessary. The intraclass correlation indicates that 68 percent of the variation in hate crime reporting is across agencies ($\rho = .68$). This suggests that a hierarchical model is the appropriate choice to analyze the data (Kreft and de Leeuw 1999; Raudenbush, Bryk and Congdon 2001).

Table 2 presents the fixed effects of hierarchical Poisson models with different variable specifications. Model 1 is a random slope and intercept model that includes only the policy variables. It reveals that the effect of having a policy increases hate crime reporting when other factors are not controlled. Also, the time variables indicate that policies increase reporting in the year in which they are created, but thereafter the effect of policy slowly decays. This pattern appears across all of the models in Table 2 and is consistent with the argument that policies stimulate an immediate instrumental impact on enforcement behavior (i.e., reporting), but the effect of policies diminish over time. Given that law enforcement agencies, like other public service organizations, routinely confront new issues, it

Table 2: Hierarchical Poisson Models of the Effects of Hate Crime Policies, Community and Agency Characteristics on Hate Crime Reporting

Variable	Random Slope and Intercept	Reporting Model	Reporting and Policy Model
Intercept (β_{0j})			
Intercept (γ_{00})	-.261 (115)*	-.614 (.094)***	-.596 (.093)***
Socioeconomic Conditions (γ_{01})	—	.088 (.075)	.107 (1.419)
Violent Crime Rate (γ_{02})	—	.232 (.052)***	.224 (.051)***
Ethnic Heterogeneity (γ_{03})	—	-1.477 (.370)***	-1.415 (.367)***
Human Relations Commission (γ_{04})	—	.508 (.123)***	.514 (.121)***
Population, 1990 (γ_{05})	—	1.132 (.049)***	1.092 (.051)***
Policy (β_{1j})			
Intercept (γ_{10})	.462 (.105)***	.488 (.095)***	.323 (.125)**
% Community Policing Officers (γ_{11})	—	—	.006 (.003)*
Presence of Neighborhood Stations (γ_{12})	—	—	.296 (.134)*
Time Since (β_{2j})			
Intercept (γ_{20})	-.042 (.014)**	-.045 (.015)**	-.045 (.015)**
Time Since ² (β_{3j})			
Intercept (γ_{30})	.002 (.001)**	.002 (.001)**	.002 (.001)**
Log Likelihood ($\chi 10^{+3}$)	-4.636	-4.503	-4.500
Random Effects			
Reporting Mean, μ_{0i}	3.274***	.826***	.811***
Policy Slope, μ_{1i}	.431***	.442***	.440***
Level-1 effect, r_{1i}	1.417	1.504	1.498

Note: Standard errors in parentheses.

* $p < .05$ ** $p < .01$ *** $p < .001$

is not surprising that a decay effect is revealed. One way to interpret this effect is to emphasize that as agencies confront new issues, the focal issue – hate crime in this case – declines in salience, but it is never rendered irrelevant after being established in agency policy and practice.

Comparison of the level one variance between Model 1 and the fully unconditional model shows that 6.3 percent of the variance in reporting is accounted for by the inclusion of the policy variables. This is a relatively small increase in the explained variance; however, as the intraclass

correlation reveals, most the variation in reporting comes from level two. Put another way, 6.3 percent is about one-fifth of the available level 1 variation to be explained after level two is taken into account.

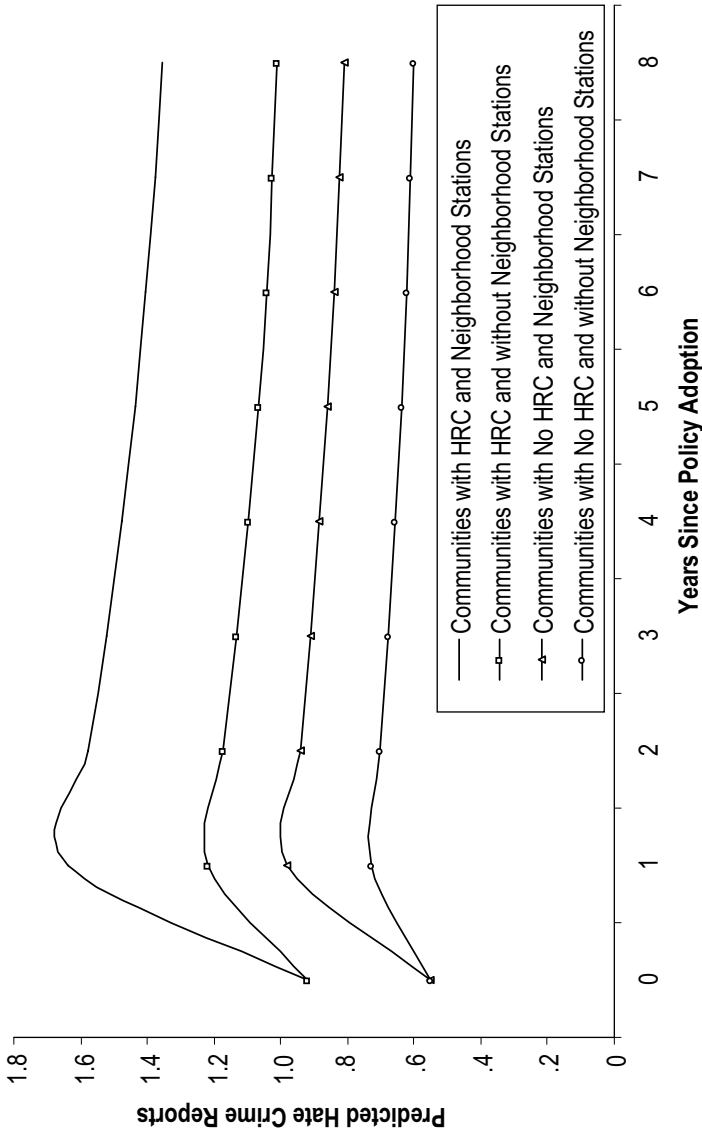
Model 2 holds constant all of the factors correlated with the level one intercept, which varies across agencies and represents the average annual reporting by an agency. Controlling for population size and the volume of violent crime, this model reveals that an agency's reporting is a function ethnic heterogeneity and the presence of a human relations commission. Consistent with the findings of Green et al. (1998), socioeconomic conditions do not influence the reporting of hate crime. Poorer communities do not generate more reported hate crimes than their wealthier counterparts. The presence of a human relations commission increases reporting in expected ways. However, ethnic heterogeneity has the opposite effect on reporting than the literature indicates, suggesting that diverse communities in California are not necessarily more likely to report hate crime. One way to interpret this finding is to draw on the "threat hypothesis" (Jacobs et al. 2005; Jackson 1989; Messner et al. 2004) as well as the work of critical race theorists (Crenshaw, Gotanda, Peller and Thomas 1996; Delgado 1995), which both suggest that the instrumental effects of law often works against minority interests. The addition of these variables to level two has a substantial impact. Specifically, including them reduces the variance in hate crime reporting across agencies (i.e., level 1 intercept) by 75 percent.

Model 3 incorporates predictors of the slope of the policy variable across agencies. All of the variables in the intercept equation remain consistent in strength and direction. Both measures of the extent of police embeddedness in the community are positive. This indicates that the more integrated the agency and community, the more policies created to aid the enforcement of hate crime law increase hate crime reporting. The effect of the policy remains, although it drops to .323 when community policing and neighborhood stations are held constant. Thus, having a policy increases the reporting of hate crime by 38 percent (i.e., $\exp[.323]=1.38$), controlling for other factors. Also, these findings do not alter the temporal effects of policy found in the initial model. In other words, they support the conclusion that policies affect reporting, but that the effect of policy diminishes over time.⁷

Figure 2 shows how these factors work in different community and agency circumstances. The figure reports predicted values of hate crime reporting based on the final model (i.e., Model 3) and shows how policies affect reporting in different contexts and different points in time. Communities with a human relations commission and neighborhood-based police stations experience the largest payoff for creating a policy. Their reporting nearly doubles in the year in which the agencies create a

hate crime policy. Thereafter, their reporting decays, but it never returns to the level it had prior to the creation of a policy. On the other end of the continuum, communities without a human relations commission and without neighborhood stations experience a comparatively small effect of their policy on reporting. Together these findings suggest a symbiotic relationship between communities and agencies that is consequential for whether hate crime policy is enforced. If a human relations commission is present, it represents, at minimum, a watchful eye on police policies and, at maximum, an active pressure group standing by to ensure that

Figure 2: Predicted Hate Crime Reports Under Selected Community and Agency Conditions



policies get translated into action. Moreover, the effects of these sorts of external interests are amplified in agencies that have structures that more easily permit citizen access and influence, such as those that commit labor-power and resources to community policing and those that disperse police presence into communities through neighborhood stations. Thus, community-agency integration shapes the effects of policing policies such that agencies that are more saturated in their communities are more likely to see policies translated into instrumental outcomes.

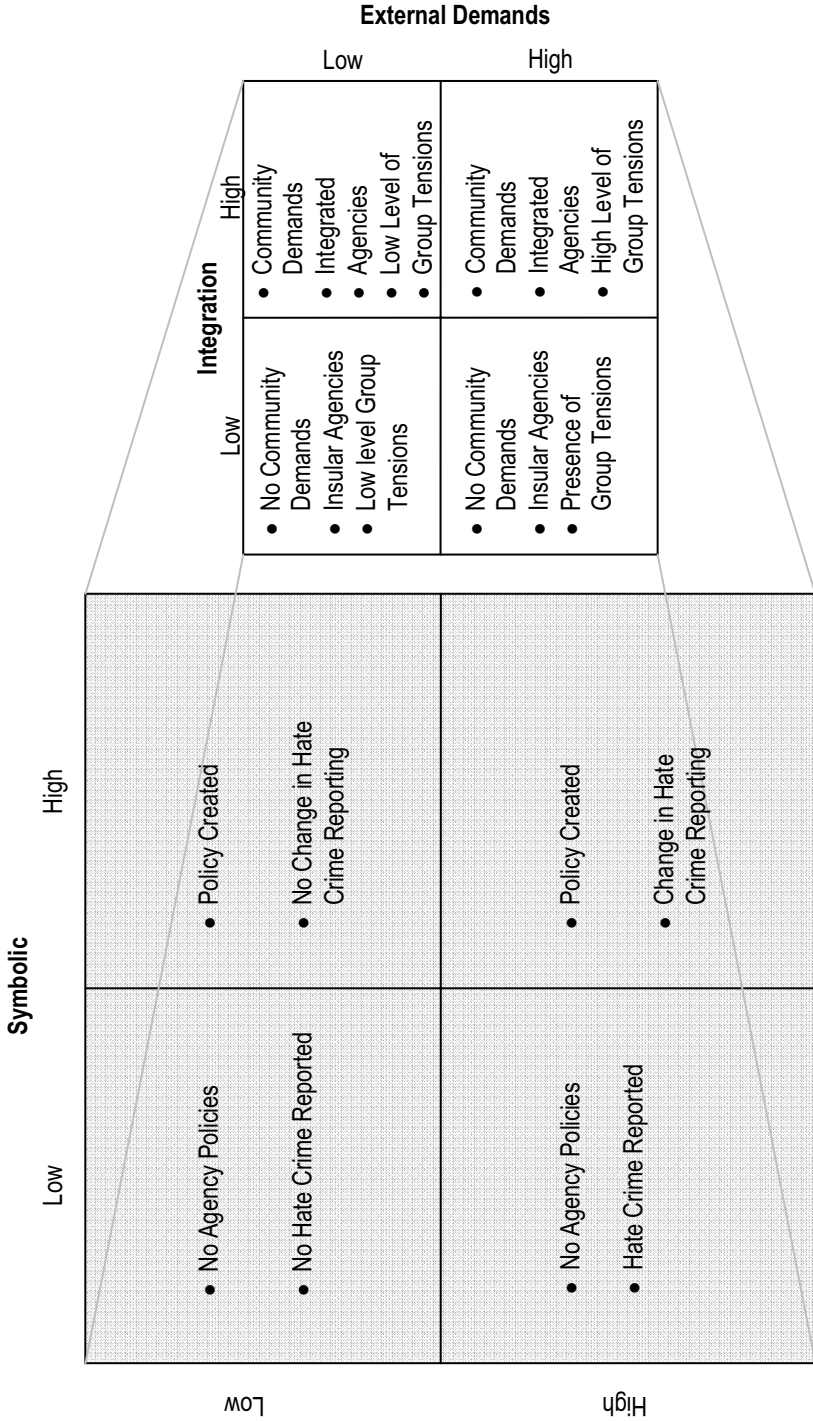
Discussion and Conclusion

The early history of hate crime law in the United States was marked by widespread skepticism that such laws would be enforced. These concerns, echoed by researchers, social observers, activists and policymakers alike, have been expressed with an implicit – and often explicit – reliance on a distinction between the instrumental and symbolic effects of law. Most frequently, hate crime laws were declared “symbolic” and argued to be unenforceable or predicted to have little instrumental impact. This conclusion, however, does not reflect the more nuanced picture of the instrumental and symbolic aspects of law presented in this article.

We show that the instrumental impacts of hate crime law do exist, but they are not uniform. In California, some departments and agencies do not currently have hate crime policies that signal to officers and the community alike an organizational commitment to enforcing hate crime law. Moreover, many agencies in California have yet to report a single hate crime. When policies do exist, however, they generate significant positive changes in reporting practices. However, the effect of adopting a hate crime policy is not evenly distributed across law enforcement agencies and the communities in which they reside. The magnitude of the effect of having a policy is contingent upon the local enforcement context. Agency characteristics, in this case measures of the integration of the local agency within the community, shape the degree to which an agency’s policy affects its reporting of hate crime. Specifically, the more an agency is engaged in a symbiotic relationship with the community in which it resides, the more the policy affects reporting. These findings support the view that hate crime legislation as symbolic laws are not intrinsically incapable of producing changes in enforcement patterns; such effects are dependent upon agency and community processes.

These findings suggest it is more useful to consider the enforcement context in which a body of symbolic law is rendered instrumental rather than simply deeming a body of law either symbolic or instrumental in its entirety. This, we argue, is a more nuanced way to think about the consequences of law at the level of implementation. Examinations of other

Figure 3. Symbolic and Instrumental Uses of Hate Crime Policies by Selected Dimensions of Communities and Agencies



bodies of law, for example administrative law and regulatory law, should further delineate the conditions under which symbolic law also becomes instrumental to determine whether the community and agency dynamics found here generalize to other areas of law and government. Likewise, an examination of another type of criminal law, such as cyber crime law, that does not invoke the same degree of “identity” politics and community contestation as hate crime, would be illuminating.

To encourage this type of research, a final figure both incorporates and expands upon the empirical findings presented in this article and points to the kinds of social conditions that shape whether symbolic law is accompanied by instrumental impacts (Figure 3). The image presented in Figure 3 is of two refracting 2 X 2 tables. The larger 2 X 2 table in Figure 3 indicates four possible linkages between symbolic and instrumental effects. Figure 3 recognizes that laws can have symbolic or instrumental effects, neither, or both; moreover, as ideal types, each dimension – symbolic and instrumental – is a matter of degree rather than a dichotomous characteristic. Agencies that adopt policies are engaged in symbolic legal activity by using official policy to signal to their officers and their communities – the intended audiences of a policy – the importance of the issue and their commitment to addressing it in accordance with the law. Likewise, agencies that actually detect and report hate crime are engaging in instrumental action insofar as detection and reporting of any crime is the first step in a larger enforcement process.

With policy and reporting conceived in this way, four organizational-environmental conditions can be discerned. First, as revealed in California, many agencies do not have a hate crime policy and have yet to report a single hate crime. Such agencies score low on symbolism and low on instrumentality when it comes to the politics and enforcement of hate crime. Second, if an agency that has no official hate crime policy reports hate crime nonetheless, then it demonstrates a predominantly instrumental orientation to law. In other words, the agency does not need or care to signal its commitment to the issue to its environment (i.e., watchdogs or interest groups) or to its own personnel. The agency’s officers simply enforce the law without fanfare. Third, if an agency adopts a policy, but its officers do not alter their enforcement behavior such that an increase in enforcement actions results, then we can say that the agency is involved primarily in symbolic activity insofar as it has not demonstrated a commitment to produce instrumental effects. Such an agency’s legitimacy may be enhanced from the point of view of constituencies promoting a forthright approach to such problems (i.e., a policy adoption), but policy remains decoupled from practice and the adoption of policy is ceremonial (Meyer and Rowan 1977). In the last circumstance, if an agency creates a policy and its officers subsequently

alter their response to the issue then it has taken a symbolic measure and given it an instrumental impact.

These responses, in turn, grow out of different enforcement contexts, represented by the smaller 2 X 2 table in Figure 3. First, communities that do not have demands by external entities, are not particularly rife with group conflicts, and do not have law enforcement agencies that are insulated from their communities, engage in neither symbolic nor instrumental action when it comes to hate crime law enforcement. These contexts possess little demand for policies related to hate crime and little inclination by the agency to adopt such a policy. Second, agencies that exist in communities that make few demands on the police – for example, in terms of the volume of crime, the amount of watchdog activity or the pull of the prosecutors' offices – have little pressure to develop policies that are designed for symbolic purposes. Such communities might, in fact, have intergroup tensions and conflicts. When they do, however, the police confront them, record incidents as hate crimes, and enforce the law. They do not rely on symbolic statements of policy to aid enforcement. Thus, they show instrumental effects without a symbolic expression of support for the law. Third, agencies that have created organizational structures that allow for greater citizen involvement and influence on the department are arguably more integrated with the community. More integration, in turn, leads to more attention to symbolic activities. If an agency does not have a high degree of intergroup tensions within its community, then it is unlikely that these symbolic activities will be translated into instrumental effects. There will be no particular need to do so. Fourth, the final condition manifests when a community has ongoing tensions between groups, organizations able to express community demands, and a law enforcement agency that is open to community influence. Such agencies have the greatest chance of seeing symbolic policies actually alter enforcement practices. In other words, these community-agency characteristics are most likely to have symbolic policies accompanied by instrumental changes in the handling of cases.

This typology is meant to stimulate further sociological investigation and refinement related to how the "symbolic" and "instrumental" aspects of law are manifest within public policies and how different configurations of symbolic and instrumental aspects are rooted in agency and environmental conditions. Having offered some conclusions from the case of hate crime law, the question for further research is not whether a law or body of law is symbolic or "has instrumental effects," it is under what circumstances and in what enforcement contexts does the transformation between the two kinds of effects occur.

Notes

1. Detection and reporting are the crucial starting points of the law enforcement process, which also entails investigation, arrest, prosecution, conviction and punishment (Goldstein 1977). As Black (1971) pointed out more than 35 years ago, and many others have affirmed, crimes that are not identified by the police are unlikely to receive attention from other state social control agencies.
2. For more on community policing philosophy and practice, see Goldstein (1990), Greene (2000) and Friedman (1992).
3. See Jenness and Grattet (2005) for more about human relations commissions and the range of activities they undertake relative to hate crime.
4. For details on the legislative history and judicial rulings on hate crime in California see Jenness and Grattet (2004).
5. For a lengthier discussion of the content of California law enforcement hate crime policies, see Grattet and Jenness (2005).
6. In recent work on hate crime policy, King (2008:1373) reported that “neither race, politics, nor Christian fundamentalism is significantly associated with the creation of hate crime policies” among prosecutors and Haider-Markel (2002:140) found that “law enforcement may be resistant or indifferent to efforts at political control by elected officials.” Thus, we did not include these measures of political culture in the models presented in the next section.
7. Given that agency size varies considerably, with four law enforcement agencies (the Los Angeles Police Department, the Los Angeles Sheriff’s Department, the San Francisco Police Department and the San Diego Police Department) reporting slightly more than half (51 percent) of the hate crimes in during the observation period, we compared the analysis reported here with a similar set of analyses excluding the five agencies reporting the most hate crime. The results were similar.

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