WHICH BIAS CRIMES GET PROSECUTED? AN ANALYSIS OF BIAS MOTIVATED INCIDENTS AND PROSECUTIONS IN THE CITY OF BOSTON, MASSACHUSETTS 2007-2008

A dissertation presented

By

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To
The Department of Sociology and Anthropology

In partial fulfillment of the requirements for the degree of
Doctor of Philosophy

In the field of

Sociology

Northeastern University,
Boston, Massachusetts

April 20, 2011

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ABSTRACT OF DISSERTATION

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in the Graduate School of Arts and Sciences of
Northeastern University, April, 2011

ABSTRACT

Research was collected from the Community Disorders Unit of the Boston Police Department and the Suffolk County District Attorney's Office, to determine which bias-motivated crimes are prosecuted and which are not. Additionally, interviews were conducted with 15 Assistant District Attorney's to determine how they socially construct the bias crime cases that do get prosecuted. This exploratory study was conducted to determine what, if any differences exist between 34 bias motivated crimes prosecuted in the city of Boston in 2007-2008 and 34 incidents matched for the same bias-motivation from the Community Disorder Unit. The current research will contribute to the lack of literature which to date has only investigated the law enforcement aspects in identifying such cases, or even fewer studies regarding which cases are most likely to be prosecuted. This exploratory research combines both aspects to determine what, if any differences exist between the prosecuted and non prosecuted cases with respect to the bias-crime, race and age of victims and offenders, injuries to the victim or the weapon used in the incident. In Boston, the overwhelmingly majority of bias-motivated crimes that were prosecuted were personal and not property crimes, committed by white, adult males against black males or other white males because they were perceived to be gay. Results were consistent with the Federal Bureau of Investigation reported hate crimes, in that the majority of offenses committed were Anti-Black and Anti-Gay male victims. Of the 34 incidents that were prosecuted, the majority was dismissed due to no victim or witness showing in court, or the defendant took a guilty plea. Of the 2 cases that went to trial, they were found not guilty by a jury. To date, there is not a

published study combining the police identification and prosecution discretionary procedures in bias motivated crimes. This study is expected to contribute to the literature regarding law enforcement identification and prosecution of bias motivated crimes within the criminal justice system. It is hoped that more effective liaisons for protected groups can be utilized by the District Attorney's Office, and that the DA will be more public about the bias-motivated cases that are prosecuted. Further recommendations include vertical prosecution of bias-crime cases, where the same ADA and judge follow the case from beginning to end.

ACKNOWLEDGEMENTS:

To my committee, Jack Levin, Jack McDevitt, Gordana Rabrenovich and Carolyn Petrosino: I truly appreciate the patience you had with me through this ordeal. You have been so supportive, even when I wasn't sure I could make it happen. I am so grateful for your encouragement.

To my wonderful husband, Jack---you supported me the best way you knew how in the beginning—financially, and for that I am eternally and literally indebted! My mission now is to pay you back. You were a work in progress, just as much as my dissertation was! In the end, your emotional support was overwhelming. I love you very much, but you still have to call me Dr. Stephie!

For my dearest friend Hemali, you were there for me throughout the entire process—just to listen, the offer of your endless support and edits, and pushing me, encouraging me that I could do—I am perpetually thankful!

For my Mom and Dad- y'all gave me the tools as a child to finally realize my dream. I love you both so much and hope your trip to Boston won't just be sightseeing—Semper Fi!

To my mother-in-law Pat Cappadona, who even while dealing with her own tribulations, still found time to encourage me and listen when I needed an ear. I love you! And if I can do this, you will find your happiness.

Suffolk County Prosecutors office--- The Chief of Community Prosecutions provided me with self-less support. She had nothing material to gain from helping me and I stalked her through emails to get the information I needed. I know how busy you are, but you were kind enough to help out anyway. Thank you fellow Texan!

This research would not have been possible without the frank responses from each ADA interviewed--- I thank you for making the time to meet with me.

Thank you so much to the CDU- particularly the detectives who put up with me day after day--Sergeant White, I truly miss our conversations, and wish you and your family the best in the future.

Finally, for Henry, who just couldn’t hang on long enough for me to finish, and for Stinky, without your sacrifice, this literally could not have been completed.

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CHAPTER ONE:

INTRODUCTION

In the United States, between the mid-1980's and the mid-1990's bias motivated crimes assumed a more visible role in the public's perception of social problems (Jenness and Grattet, 1996; Lawrence, 1999). Debate surrounded the issue of whether these crimes were actually occurring more frequently, whether the media was attending to and reporting this behavior more often than it had in the past, or whether it was just that the behavior was newly defined and proscribed. As Petrosino argued, the behavior itself is not "a modern-day phenomenon, but extend[s] throughout the history of the United States," (Petrosino, 1999:22). Even a cursory glimpse at history can establish the fact that bias-motivated incidents have existed as long as perceivable differences between individuals. It has only been more recently, however, that society recognized bias motivated behavior as a crime—the social construction of the crime itself. This project will utilize an exploratory model for the research, and will focus on two agents of the social construction of bias motivated crimes to discover how they are identified and prosecuted in Suffolk County, Massachusetts: law enforcement and the prosecutor's office.

All around the world, it is possible to find examples of brutal attacks on an individual or groups based solely or primarily on the fact that they are suspected to be a member of a group, against which another has prejudicial beliefs. With the media publicizing the most brutal of attacks, bias crimes gain more public attention. The mass media reports highlight differences in groups involved in bias crimes and the violence utilized in an attack. But, it is the less physically

violent, but still vile bias crimes that occur on a daily basis and do not make for a useful story, and are reported less often than the egregious acts of bias motivated violence. Victims that don't report the bias crimes further keep these crimes from the general community. Victims that don't report the bias crimes further keep these crimes from the general community. Therefore, without the publication of these events in the media, the general public is either unaware of their occurrences, or unaware of the serious social consequences that continue a cycle of prejudice, discrimination and violence in a community.

Much debate surrounds the numerous issues involved in bias-motivated crimes: is separate legislation necessary or not? Who should be covered under the law? What constitutes a bias-motivated crime? There is not only misunderstanding by the general public regarding the issue of bias crimes, but there is also disagreement among scholars on various issues. If those in the field can't agree on these issues, then typical citizens cannot be expected to come to an understanding of bias crimes, nor break the cycle of this type of violent behavior—that is based on often on misinformed beliefs.

Two important areas to be studied with respect to how bias-motivated crimes travel through the American Justice System: enforcement and prosecution. Each plays a distinct and vital role in the examination of bias-motivated crimes.

This dissertation explores each Agency's involvement with bias-motivated crimes in the City of Boston from reports of bias incidents to final prosecution of bias crimes for 2007-2008.

Project Description

The research presented in this dissertation is guided by the Symbolic Interactionist Perspective, and more specifically a social constructionist theoretical framework. Best (2008) stated that "social construction is the process of making choices---of people in a particular situation choosing one perspective among all the possibilities," (327). Constructionist theory highlights how and why specified issues are created as social problems. Instead of explaining how bias-motivated crimes are generally defined and developed as a social problem, this research will explore what definitions are assigned to the bias behaviors, whether the problem is clearly identified, and how the issue is processed through the criminal justice system by law enforcement and prosecutors.

First, this research will briefly describe how the police department personnel define, identify and respond to reported bias motivated incidents. Second, and more in-depth, the study will identify the role The Community Disorders Unit of the Boston Police Department play during the investigation of a bias incident. Thirdly, the research will investigate the process of transferring a bias incident to the Suffolk County District Attorney's Office. Finally, the exploratory study will conduct personal interviews to understand how the social construction of the behavior as a bias-motivated crime influences the ultimate outcome of the case. Due to the lack of research on the combination of police and prosecution social construction of bias crimes, this research began with inadequate knowledge of the system in the City of Boston. There is considerable variation among jurisdictions and their management of crime control. For example, due to the population of the city, there are District Courts in nearly every neighborhood- Dorchester, Charlestown,

East Boston, Roxbury, and South Boston. If a bias crime occurs but does not fall under the jurisdiction of the Boston Superior Court such as homicide or major felonies, one of the "satellite" sites maintains jurisdiction. This paper contributes not only to further academics' comprehension of the system, but in addition to an enhanced understanding of bias-crimes and the Criminal Justice System for Boston residents.

Federal Law:

Within the bias-motivated crime literature, Jenness and Grattet, (1996) state that no general consensus exists for the term "hate crime". Lawrence (1999) and Petrosino (1999) assert that this is due to the role political interests engage in when defining crimes in general, and to social norms and cultural variations. Due to the heterogeneous composition of the city, certain neighborhoods still maintain their own social norms that vary slightly from that of other parts of the city. The cultural variations have followed individuals to this county and are handed down through the generations. An example is mistrust of authority figures, such as police and prosecutors. Certain cultures have a tendency to deal with an injustice within their own communities and not involve the Criminal Justice System, because they either don't trust them, or don't believe that justice will be done. Another example is that of the ongoing conflict between African-Americans born in the United States and those Dominicans who have settled in Boston. Instead of coming together to form a strong cultural and political presence in Boston, they basically remain distrustful of each other's group, as well as the Criminal Justice System.

The definition commonly referred to, among other reasons because of its extensive nature, is that of the Hate Crimes Statistics Act of 1990. According to the Uniform Crime Report, the U.S. Department of Justice cites this act,

> As Amended. 28 U.S. Code 534
>
> (b)
> (1) ….crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, intimidation; arson, and destruction, damage or vandalism of property.
>
> Hate Crime Statistics Act, 2005
> U.S. Department of Justice-FBI
> Released October 2006.

Hate Crime Statistics Act 1990

Enacted in 1990, the Hate Crime Statistics Act (28 U.S. Code 534), required that the Department of Justice gather data from local U.S. law enforcement agencies and publish them in an annual summary of these findings, issued each January by the Federal Bureau of Investigation. The Violent Crime Control and Law Enforcement Act enacted in 1994 expanded coverage of Hate Crime statistics Act of 1990 requiring reporting of crimes based on disability, (http://www.adl.org/99hatecrime/federal.asp). An important result of collecting these statistics has been that local law enforcement has been able to geographically chart, in a systematic fashion, the locales of bias-motivated crime occurrences, (Personal interview, Sergeant White, 7/16/10). Determining where patterns of this type of crime occur, is the first step in identifying

the extent of the social problem in a community, and thus the need for enforcement and prosecution of these crimes.

Hate Crimes Sentencing Enhancement Act

As part of the Violent Crime Control and Law Enforcement Act of 1994, the Enhancement Act took effect November 1, 1995. Public Law 103-322 requires the United States Sentencing Commission to afford the sentencing enhancement of "not less than 3 offense levels for offenses that the finders of fact at trial determine, beyond a reasonable doubt, are hate crimes," which are defined according to this provision as a "crime in which

the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person," (Altschiller, 1999: 17). Also included in this part of the statute are those assaults and vandalisms that occur on federal property and U.S. national parks. This Federal supplement is an additional tool State Prosecutors can make use of in their cases. It is important to state here that "expressions of hate protected by the First Amendment's free speech clause are not criminalized," (ww.adl.org/99hatecrime). But, once the beliefs and actions cross the line into criminal behavior, then the action is subject to a stiffer sentence. The enhancement would occur if the victim were chosen based on the perceived membership of the victim's protected group. For example, if two individuals get into a physical altercation, any charges filed are likely to be assault and battery. But, if two individuals get into a physical altercation based on one's bias or hatred of the other, solely based on that belief turned

to behavior, the charges would be bias motivated with bodily injury, and qualify for a longer sentence.

Recent Legislative Action

In 2009, Congress considered no less than 17 bills and resolutions regarding bias-motivated crimes (http://thomas.loc.gov/cgi-bin/thomas). The David Ray Hate Crimes Prevention Act (H.R. 254), also known as David's Law was introduced by Representative from Texas Sheila Jackson Lee in January 2008. This proposal would provide for increased enhancements for Federal enforcement of bias-motivated crimes. So far, subcommittee hearings have been held, but as of this writing, it has been referred to Committee, but not yet passed, (http://www.govtrack.us/congress/bill.xpd?bill=h110-254&tab=committees) . An additional proposal, also referred to Committee, by Representative Lee is H.R. 262, would offer additional resources to victims of bias crimes, and to generally prevent such crimes, (http://thomas.loc.gov/cgi-bin/thomas). A current bill proposed by the Senate is particularly salient for this proposal—S. 909 (http://thomas.loc.gov/cgi-bin/thomas). The bill proposed by Massachusetts Senator Edward Kennedy is commonly known as the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, (http://www.govtrack.us/congress/bill.xpd?bill=s111-909). The bill would provide Federal protection to individuals on the basis of their sexual orientation, gender, gender identity or disability, (Abrams, 2009). In addition it "would make it easier for federal prosecutors to step in when state or local authorities are unable or unwilling to pursue hate crimes" and further provides federal grants "to help state and local officials with the costs of prosecuting hate crimes and funds programs to combat hate crimes committed by juveniles," and allow the federal government to intercede when "the Justice Department certifies

that a state does not have jurisdiction or is unable to carry out justice," (Abrams, 2009: 1). The Senate passed provisions which underscored that the bill will not "prohibit constitutionally protected speech and that free speech is guaranteed unless it is intended to plan or prepare for an act of violence", (Abrams, 2009:1). This bill, along with others proposed to provide financial support to state and local agencies for prosecution of bias-motivated crimes, will likely play an essential role in future state prosecutions. When the State is unable or unwilling to prosecute a bias-motivated crime case, the bill would provide a resource for Federal Prosecution, thus not letting the crime go unprosecuted to the extent that it deserves. The Associate Press reported that the Senate voted to attach the bill to a defense spending bill in late July, and The Mathew Shepard and James Byrd Jr. Hate Crime Prevention Act (HCPA) was signed into law by President Obama in October of 2009, (http://www.npr.org/templates/story/story.php?storyId=114223708). It is anticipated that once this bill is implemented, it will be yet another device for State Prosecutors to utilize in their prosecutions of bias-motivated crimes.

State Statutes

According to the Anti-Defamation League, "forty-five states and the District of Columbia have hate crime laws [and] only 30 states and D.C include sexual orientation in their law; 26 states and D.C include gender; only 12 states and D.C include gender identity; and only 30 states and D.C include disability," (http://www.adl.org/combating_hate/What-you-need-to-know-about-HCPA.pdf).

To qualify as a bias motivated crime, according to Federal Law, the behavior must be committed on the basis of any of the characteristics previously noted. Lawrence (1999) makes the distinction that in bias crimes, the victim is chosen based on *what* that individual is, not on *who* the victim is. Unlike other violent crimes, such as crimes of passion, murder for hire, or revenge homicides for instance, the victim in a bias crime could be interchanged with someone else. Any other individual would do as well, as long as he or she held the target characteristics of prejudice with which to motivate the offender.

Massachusetts State Laws

Massachusetts General Laws

In Massachusetts, during the 1970's, Boston suffered the terrible issue of racial assaults which seemed to be only spiraling downward and creating greater divisions in the city. So, in the "summer of 1978, internal and external forces combined to bring about significant changes in the way the Boston Police Department dealt with racially motivated crimes," (www.usmayors.org/usmayornewspaper/documents/09_16_99). The Community Disorders Unit, the first of its kind in the nation, was established in April of 1978, due to the relentless and undeniable patterns of bias motivated crimes. (www.usmayors.org/usmayornewspaper/documents/09_16_99) In the Suffolk County Court System, bias crimes are referred to and charged as Civil Rights Violations. Under the General Laws of Massachusetts, these cases are indicated in "Part IV Crimes, Punishments and Proceedings in Criminal Cases," (M.G.L. Chapter 265). Chapter 265 describes the statute for crimes against the person, Section 37 defines the violations of constitutional rights and the

proscribed punishment; Section 39 is split into part (a) which defines the categories covered under the statute and the punishment; part (b) is the more serious of the possible charges and discusses punishment and specific conditions such as the Diversity Awareness Education program for convicted offenders.

According to Massachusetts General Laws Chapter 265 Section 37:

> No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both,
> (http://www.mass.gov/legis/laws/mgl/265-37.htm).

And Massachusetts General Law Chapter 265 Section 39, refers to the groups covered under the statute, as well as the punishment allowed by the statute.

> Whoever commits an assault and battery upon a person or damages real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, or disability shall be punished by a fine of not more than five thousand dollars, or by imprisonment in a house of correction for not more than two and one-half years, or by both ….
> (http://www.mass.gov/legis/laws/mgl/265-39.htm).

As such, there is no additional enhancement for a bias-motivated crime---the prosecutor cannot increase a penalty beyond what is written in the statute, (conversation with Miller, 2010).

Written into these statutes are

misdemeanor and felony charges and punishments, which include penalty enhancements for bodily injury or the use of a firearm. Chapter 265, section 37 was originally passed in 1979, but section 39 was not added until 1993, (Hate Crime Resource Manuel. 1998, Massachusetts Governor's Task Force on Hate Crime).

The two Sections under Massachusetts General Laws Chapter 265 are the statutes that resulted in data utilized in this research project. The cases that are referred from the Community Disorders Unit of the Boston Police Department to the Suffolk County District Attorney's Office for prosecution are charged as Civil Rights Violation crimes according to these Massachusetts General Laws. Any crimes identified and labeled as bias-motivated crimes under the jurisdiction of the Boston Police Department would be forwarded to the Community Disorders Unit for investigation. Once the incident is assigned to a detective, she or he will further investigate by speaking to the victim, witnesses, conducting surveillance in the area where the incident occurred and filling out the Bias Crimes Screening Form. Once the case is determined to be a bias-motivated crime, the detective files a criminal complaint against the suspect in the Office of the Clerk Magistrate. A hearing for probable cause follows, and if the clerk magistrate finds as such, then the case is forwarded to the Suffolk County District Attorney's Office and assigned to an ADA for arraignment. Once the Clerk Magistrate finds probable cause, the case is sent to the District Attorney's Office for the prosecutors to arraign and indict the cases. Interviews were conducted with fifteen ADA's to better comprehend how they socially construct the case once it is in their hands. Results of the interviews can be found in the second section of the Results.

CHAPTER TWO:

Theoretical Framework

As indicated earlier, the theoretical framework for this research project is drawn from the Symbolic Interactionist perspective. This sociological perspective focuses on the symbolic meaning and interpretation of language and symbols for society, (Leon-Guerrero, 2005). Research here is further guided by the social construction theory, which attempts to explain the practice by which social actors perceive their circumstances as "real", (Bell, 1997). Fundamental interactions between individuals typically occur in face-to-face settings. An individual's reality is constructed through everyday routines of life, but organizations have influence in the structure of everyday customs, (Berger and Luckmann, 1966). Organizational influence is maintained through the use of social controls, the process by which individual conduct is proscribed. The social constructionist view "explores relationships among structures, law, criminal acts, and perception….[and] focuses on the origins and effects…..[of]social movements and social practices," (Rafter, 1990: 376).

Constructionism consists of social, historical and political perspectives, so it is particularly useful in analyzing the policing and prosecution of bias-motivated crimes. Factors such as social control, organizational structures, culture, history and politics combine to illustrate the processes involved in the definition, identification and prosecution of bias crimes in society. The groups advocating protection under bias legislation are social constructions themselves. Bell (1997) suggests that these groups are created by "society…out of its need for order," (10). Further, Bell posits that the social constructionist approach is valuable for police identification and

classification of bias-motivated crimes and incidents by virtue of their typical routines. Such an approach could be functional for police to navigate the convoluted racial, religious, and other bias-motivated incidents they encounter. Police are the initial responding authorities charged with the task of sorting through the 'stories' of victims and witnesses, and evidence when no immediate victims or witnesses are apparent. Police must use an objective approach to determine if the incident is situated within the proper legal category established by bias-motivated statutes. The prosecutor has a similar task when plotting the route through the organizational and political structures of the court system. Given that it is routinely the detectives in the CDU that file a criminal complaint, and the clerk magistrate decides if there is probable cause to file charges in the cases, ADA's do not have the power to decide whether or not to charge. They only have the discretion of agreeing with all involved parties to plea to a lesser charge before the court, or to ask for additional bias-motivated charges to be brought upon investigation of the case. The Chief of the Community Prosecution Unit, as well as a Sergeant in the Community Disorder Unit agree that such a development is quite rare. Therefore, the interviews conducted with ADA's were adjusted to further appreciate how individual ADA's socially construct the case once it has been charged. This exploratory research obtained information on how each ADA interviewed construct their presentation of the case. This information was based on their own belief systems as well as their conception of what is necessary to successfully prosecute a bias-motivated case.

As this research proposal demonstrates, the interactionist perspective is relevant for use in this study on three fronts: the label of the behavior as criminal, the legislative process, and the

enforcement of social policy. First, the bias-motivated crime issue is a social problem, constructed by perceptions and definitions. As discussed in the Historical Basis section below, bias based violent behavior was recognized and identified as a social problem. Once the behavior was interpreted and defined in this way, social policy was developed in an attempt to control the newly created criminal behavior. Second, as a social construction, the legislation itself can stand to show which groups are valued in society and deserving of legal protection and equality. The penalties issued for bias-motivated behavior represent the social disapproval of such conduct, and conveys the intensely held social norms of the community. As Lawrence states, "the scope of bias adopted by a polity is a significant statement of its values and its sense of equality," (Lawrence, 1999: 3). And third, the bias crime definition itself is rooted in the individual perceptions of specific traits held by the victim. The offender is charged under the bias crimes statute based on the perceived victim group membership. The bias is not based on the social reality of the victim characteristics, but instead on the offender's interpretation of particular characteristics.

In addition to clear expectations of anticipated behavior and equality, the larger and more crucial reason for the enactment of bias-motivated crime statutes is the continued unity of society. The interactions of individuals and the social structures are used as the foundation for awareness of social relations. It is then the people who create the laws, rooted in their own history. The bias-motivated laws in the United States are the culmination of decades of disputes among those who have traditionally been marginalized by society. When the legislators are initially unable to protect certain groups, grassroots and social movements arise to act on their behalf. In these

ways, Symbolic Interactionism is an appropriate perspective from which to view bias-motivated crimes.

If the majority of society is to benefit, and social solidarity assured, there should be certain proscriptions against behavior so that society is made aware that such behavior will not be tolerated. Attitudes may be tolerated in society, but behavior turned to action, based upon beliefs and attitudes will not. Violent behavior that targets an individual based on race, color, ethnicity, religion, sexual orientation, or gender and is intended to instill fear in other members of that same population is not acceptable in society, and will be punished accordingly. However, it should not be expected that fear of prosecution and imprisonment or even enhanced penalties will deter those intent on committing bias-motivated crimes. Typically, the cognitive processes, or motivations behind these criminally violent behaviors are not going to be dissuaded by legal sanctions. Even though the law-making and enforcing may not be effective as a deterrent, based on its inability or ineffectiveness to deter, this does not mean the law should not exist. Either as a penalty enhancement, or as a law in itself, the bias-motivated crime laws are effective in defining the limits of acceptable and unacceptable behavior to the rest of society. The bias-motivated crime statutes can be used to communicate to all social members the types of behavior that will not be tolerated by society, and to show, in effect, that society will maintain social cohesion, and not be held hostage by a few rebel members. In order to do this, police personnel must correctly identify bias-motivated incidents when they occur. Furthermore, these cases need to be vigorously investigated prior to forwarding them to the District Attorney's Office. For their part, the Assistant District Attorney's must prosecute these cases to the fullest extent of the

law. The police department and prosecutors office must work together to demonstrate to society that bias-motivated incidents will be taken seriously.

Scope of the Issue

While all violent crime has terrible consequences and leaves primary and secondary victims in it's wake, the damage done by bias-motivated crimes actually occurs on three different levels, which separates it from other types of violent crimes (Lawrence, 1999). The first level is the nature of the injury to the immediate victim, second is the fear imposed on the broader target community, and third, is the harm to society generally. The motivation behind bias crimes is to intimidate and instill fear not only in the immediate victim, but in the community and society at large. Even if the initial victim does not face actual physical violence, the emotional and psychological damage that can be achieved by property crimes of a bias type, could surpass that of a physical nature. For example, if a Jewish Synagogue is vandalized with swastikas, the primary victims are the Temple members, but all Jewish communities—local and national, will feel the fear and hurt, and the entire community, Jewish or not, will be affected. In this hypothetic scenario, the target victim is not chosen at random, but rather in a methodical manner, based on specific characteristics. The intention is not to victimize the property alone, or even one member, but all of the same faith—in the community and beyond.

The Federal Bureau of Investigation Uniform Crime Report collects data on numerous crimes, including bias crimes. The F.B.I. acknowledges that not every law enforcement agency in the United States submits data to the Uniform Crime Report. As indicated by the 2008 Hate Crime Statistics law enforcement agencies that submitted reports to the F.B.I., included 13, 690.

However, the number of contributing agencies continues to rise as the reporting agencies in 2007 included 13,241, which represent 86.3 percent of the population in the United States. (http://www.fbi.gov/ucr/hc2007/abouthcs.htm).

The 2007 UCR reports 7,624 bias criminal incidents occurred, involving 9,006 offenses. These include personal and property crimes. Personal crimes are those that include assaults, intimidation, battery and threats. Property crimes are those in which a suspect has defaced personal or public property such as spray-painting Nazi symbolism, or derogatory comments scrawled on walls, sidewalks and lawns and bias-motivated vandalism to motor vehicles and other property. The Table 2.1 below lists the target of the crime in percentages reported to the Federal Bureau of Investigation in 2007 and 2008. Of these offenses reported in 2007, 60.0 percent were personal crimes and 39.7 percent were property crimes.[1] In 2008, personal crimes inched slightly upward at 60.4 percent and property crimes declined slightly at 39.4 percent. Table 2.2 displays the percentages of bias crimes reported to the F.B.I. according to bias motivation. Of the crimes against persons for 2007, intimidation accounted for 47.4 percent, simple assaults were 31.1 percent, aggravated assaults were 20.6 percent, with .2 percent comprised of nine murders and 2 forcible rapes.[2] The majority of property crimes consisted of destruction, damage and vandalism at 81.4 percent, and 18.6 percent included robbery, burglary, larceny, theft and motor vehicle theft. The bias motive indicated for these incidents included: 52.5 percent racial bias, 16.4 percent religious bias, 16.2 percent were sexually-oriented bias,

[1] The remaining .3 percent were crimes against society (narcotics and prostitution) as reported by the F.B.I.

[2] The remaining .6 percent involved the other offense category as collected by the National Incident Based Reporting System (http://www.fbi.gov/ucr/hc2007/incidents.htm).

14.0 percent were ethnically based bias, and .9 percent were bias against disabilities, (http://www.fbi.gov/ucr/hc2007/table_02.htm).

In comparison, because this exploratory study utilized data from 2007- 2008, it is appropriate to list the same numbers for 2008. For bias motivation incidents that year, 7, 783 were reported, representing 9,160 offenses. As reported to the F.B.I., there were 60.4 percent crimes against persons and 39.4 percent were property crimes, with the remainder footnoted the same for 2007 as crimes against society. Intimidation accounted for most of the crimes against persons at 48.8 percent, with the remainder being simple assault at 32.1 percent, aggravated assault at 18.5 percent, the remaining .3 percent were 7 murders and 11 forcible rapes. Property crimes consisted of 82.3 percent of acts of vandalism, damage and destruction. The other 17.7 percent of the property crimes were robbery, larceny-theft, arson, motor vehicle theft and burglary. As for bias motivation the breakdown for 2008 was as follows: 51.4 percent were racially motivated, 17.5 percent were motivated by religious bias, 17.7 percent were sexual-oriented biases, 12.5 percent were of an ethnicity/national origin bias and .9 percent were disability bias incidents.

Table 2.1 F.B.I.

Offenses by Crime Category

	2007	**2008**
Personal Crimes	60%	60.4%
Property Crimes	39.7%	39.4%

[3]

[3] The remainder were crimes against society- (www2.fbi.gov/uce/hc2007/incidents)

Table 2.2
F.B.I. Hate Crime Reported by Bias-Motivation within Incidents

	2007	2008
Racial Bias	52.5%	51.4%
Religious Bias	16.4%	17.5%
Sexual Orientation	16.2%	17.7%
Ethnic Bias	14.0%	12.5%
Disability Bias	.9%	.9%

http://www.fbi.gov/ucr/hc2007/table_02.htm

Due to lack of participation on the part of some law enforcement agencies, and incidents that are not reported to police personnel, these numbers represent only a portion of the actual bias-motivated crimes that occur each year. The research included here, particularly the qualitative data, should be useful in contributing to the literature on law enforcement personnel identification and processing of bias-motivated incidents. Qualitative and quantitative methods are employed in the exploratory research so that the study can reflect two aspects of the bias-motivated criminal prosecution. The first aspect is the actual statistical numbers to recognize patterns, explain and describe the variation in case characteristics. The second aspect is the qualitative method of interviews with law enforcement personnel and assistant district attorneys in order to gain knowledge of the social processes involved in obtaining the statistical information, (Bachman and Schutt, 2008). The intensive interviewing is utilized in this research to acquire the social reality as experienced by the participants who influence outcomes of the bias-crime cases.

Historical Bases for Bias-Motivated Crime Movement

Through the historical development of the social movements that influenced the criminal statute, it has typically been the groups in the minority, those that have had to struggle to gain the slightest modicum of power, that these laws are intended to protect---not the most powerful in society. The subjectivist approach to social problems suggests that people need to consider an issue to be problematic for society, otherwise it won't be defined as a social problem. The significance of the problem is "determined by society's response to and perceptions of troubling problem," (Best, 2008:12). Social problems are more than just an inconvenience or a moral panic that spreads through mass media. Social problems can threaten groups, individuals and social institutions that maintain social solidarity. By understanding how a social problem is defined and developed, it is possible to appreciate the movements that gave the bias crime issue stimulus. Without their lead to follow, the bias crime as a social problem may have remained simply a social issue that affects some individuals, but not others in society. By defining bias motivated criminal behavior as a social problem, it is possible to transform a social problem into legislation. It is through the law, its definition, enforcement, prosecution and punishment that society can benefit from a more inclusive, tolerant and cohesive culture.

Civil Rights Movement

The horrific events committed by the Nazi's during World War II in Germany truly brought back to reality the inconsistency between Americans' ideals of equality and the realities and consequences of prejudices, discrimination, inequality and racial exclusion, upon which America was supposed to be formed. While prejudicial conflicts occurred during the 18th and 19th centuries in America, the scale of the extermination of so many individuals based simply on what

groups they belonged to---Roma, homosexuals, and Jewish people to name a few—shocked the core values of the majority of Americans. Unfortunately, it was not enough of an outrage to remain in the conscience of all Americans. Certain segments of the population may have agreed with the Nazi's behavior, others tolerated it and neutralized the behavior by saying it's not in "our country". Fortunately, some grassroots movements jumped on the opportunity to develop groups that would mobilize for change, fearing that something similar to the Nazi extermination could happen in America. The "modern" civil rights movement that appeared in the mid-1950's worked diligently toward legal, economic and social equality for African-Americans specifically, but also for other racial and ethnic minorities (Jenness and Grattet, 2001). Initially, focus was concentrated on the legal prohibitions around differences simply in skin color in public spaces, voting rights, and inequalities based in economics.

In the decades of the 1950's and 1960's, particularly in the southern region of the United States, bias-motivated violence committed against African-Americans or other racial minorities increased, but so too did the civil rights movement's eagerness to confront racism of any variety (Jenness and Grattet, 2001). Grassroots organizations became more structured, coordinated and spread nationwide. The National Association for the Advancement of Colored People (NAACP), founded in 1910, and already firmly embedded by 1950, provided the model dedicated to working for equal rights at all levels: local, state, regional and federal.

As a result, throughout the 1960's, ideas of rights extended still further. The dialogue surrounding inequality and those deserving of rights, soon extended to homosexuals, women, and abortion rights, rights to privacy, and the rights of crime victims. The issue was no longer

solely physical violence towards African-Americans, but, in the decade of the 1970's, its focus spread to include the symbolic violence directed at all racial, ethnic and religious minorities. Following the lead of the NAACP, nonprofit organizations like the Southern Poverty Law Center, the Anti-Defamation League of B'nai B'rith, The National Institute Against Prejudice and Violence and the Center for Democratic Renewal began to track incidents of violence perpetrated against racial and ethnic minorities, (Jenness and Grattet, 2001).

Women's Movement of 1970's

Along with increasing awareness, the Civil Rights Movement demonstrated how other organizations could mobilize for change. Similar to the former wave of Feminist movements which sought voting rights for African-Americans as well as women, this second surge was just as concerned with violence against minorities and women. The women's movement included topics that ranged from reproductive health rights, more social and sexual autonomy—including the right to refuse sex-- the right to be free from violence, and more recently "to focus…on institutionalized violence against girls and women," (Jenness and Grattet, 2001: 23). By identifying incidents of violence, determining the causes as patriarchal oppression, and developing crisis interventions, public protests, and public educational awareness programs, the women's movement was able to bring the problem out of the personal shadows of the family. Once labeled as a social problem, and an institutionalized form of discrimination, legislation was developed to protect females from such violence. The same pattern would repeat itself again decades later with the definition and identification of bias-motivated crimes as a social construction.

Gay and Lesbian Movement of 1970's

Similar to the women's movement, the gay and lesbian movement actually had a foothold in a small segment of American society at least a decade and a half before it was brought to the attention of the wider public. During the late 1960's, gay men and women were able to be more politically mobilized to attack discrimination in the turbulent social climate of the nation. At first, the gay and lesbian movement was concerned with modifying the general public's stereotypical notions of homosexuality, and in the late 1960's the focus narrowed to fighting discrimination through political mobilization (Jenness and Grattet, 2001). Members of the gay movement sought the same legal protections under the law that the civil rights and women's movements had previously; most importantly, they wanted the 1964 Civil Rights Act to include sexual preference as one of the protected groups. As the other movements that preceded it, if the gay and lesbian group could be socially and legally labeled as a category in need of protection, that would be the first step in obtaining equal rights, at least symbolically under the law. The Gay and Lesbian Organizations have been one of the most vocal and powerful groups regarding legislation for bias crimes.

Crime Victim's Movement of 1990's

The mounting social consciousness of the 1960's and the turbulent political and social climate of the 1970's also helped to spawn another group looking for status in the eyes of the law. The women's movement, increases in violent crime, and dissatisfaction with the criminal justice system were other factors that contributed to the development of the crime victim's movement (http://www.ojp.usdoj.gov/ovc/ncvrw/2005).

In 1968, President Richard Nixon affirmed that the foremost of civil rights for "every American" is to be free of violent crime, (Jenness and Grattet, 2001: 26). This was a particularly significant time for the crime victim's movement because it helped provide legitimacy for their cause. The Executive Branch of government had recognized that all Americans deserved the right to be safe and not subjected to violent crime. Similar to former movements that helped to set it in motion, the victim right's movement defined itself as "groups victimized by a society organized around inequality," (Jenness and Grattet, 2001: 30). Once these group of victims were "discovered" and defined, the recognition earned them status according to law. With this increase in status, the movement was then able to be a factor in establishing a policy domain.

In 1980, this increased stature helped to establish the fist Basic Bill of Rights for Crime Victims and Witnesses in Wisconsin. By 1999 most states had passed similar bills and in 2000 a federal amendment to the constitution was introduced, but not yet passed. In 2004, the Justice For All Act was signed by President George W. Bush, and it included the Crime Victims' Rights Act designed to enforce victim's rights, (http://www.ojp.usdoj.gov).

CHAPTER THREE:

Literature Review

Policing of Bias-Motivated Incidents

Police personnel, particularly responding officers arguably represent the most important step in the process of identifying bias-motivated crimes, (Bell, 2002). One of the fundamental issues with bias motivated crimes is the actual reporting to police and other law enforcement agencies. It is crucial that law enforcement agencies have clear, coherent definitions and policies, and that they encourage and support the identification of bias-motivated offenses, (Bell, 2002). Otherwise, it is too simple for police personnel to use ambiguous definitions of bias crimes in order not to identify a crime, or to interpret a bias-incident as unimportant. Without complete and unmistakable support of department authorities, bias-motivated incidents may be overlooked, or missed completely.

Victims choose not to report bias incidents to police for a number of reasons ranging from embarrassment to fear of retaliation (Nolan and Akiyama 1999). Since police departments submit statistics on a voluntary basis, there is the ever constant difficulty with determining the true extent of the problem. An additional concern for the police departments' treatment of bias motivated incidents is the appropriate identification by police personnel. McDevitt's 1988 study of police identification of bias motivated crimes is a clear example of this problem: only 4.2 percent of the reporting officers correctly identified bias incidents, (Levin, B 1992/3).

Susan Martin (1995) highlighted the lack of literature regarding the police response to bias motivated crimes in her study of the social construction of these crimes by the Baltimore Police Department. She stated that the police must maintain a "balancing act" between protecting the rights of the citizens with the constitutional right to expression and also maintaining order in their community. In addition, Martin's findings were consistent with few others studies in the field that: 1) offenders motivations are frequently not clear to the responding officer; 2) the role of "hate" is unclear; 3) bias-motivated incidents may be the result of mutual conflict; and 4) community consensus may be lacking.

Boyd, Richard and Hamner (1996) investigated two urban police divisions to determine the decision-making processes of police detectives in cases of bias-motivated crimes. They hypothesized that there would be three main issues in the implementation of bias statutes: difficulties with initial identification, motive assessment, and unclear language in the statutes. This study did not consider the identification and classification utilized by the initial responding officer, only the secondary analysis made by the police detectives who later received the case. The authors findings indicated that the rates of the bias-motivated crimes "are the products of both individual decisions (by the police personnel) and the institutions in which those decisions are made," (1996: 845). They found that the detectives based their decisions on a variety of factors such as: how closely the reported event resembled a "typified" bias crime; degree to which activities such as motive of the incident were consistent with the specific category invoked; and finally, the practical comprehension of the role of the police in relation to the district attorney.

Nolan and Akiyama (1999) described three main reasons for police misidentification or omission of the reporting of bias incidents: discretion in defining; onerous paperwork and public drama caused by the label of bias incident; and organizational conditioning. Some officers did not believe that bias-motivated incidents should be treated as a special category of crime—a simple assault is a simple assault regardless of motivation. Officers also did not relish the fact of adding more bureaucratic conditions to their already burdened work-load.

Finally, organizational conditioning is the idea that police officers are trained to identify crimes based on severity of the crime, not on the basis of motivation for the behavior. Brian Levin suggests that this organizational conditioning, "inhibits officers from understanding the subtleties and importance of bias crimes in the context of a larger, community-wide perspective," (Nolan and Akiyama, 1999: 114). Initial responding officers have the task of identifying whether or not a crime has been committed, they are not trained to determine motive for the behavior. Defining an incident as a bias-motivated crime is contingent upon identifying a motive---racial, ethnic, religious, based on disability or sexual orientation. Therefore, if responding officers are expected to define the incident as a bias crime, proper training and clear definitions are requirements.

In a study focusing on the policing of bias-motivated crimes in California, Grattet and Jenness (2005) discovered considerable variation in the definition of such crimes. The authors suggest that law enforcement, due to the lack of clear definitional and enforcement instructions, engage in their own "rulemaking" behavior. The result may be to broaden the scope of the definition,

but more likely, it is to narrow the definition. If the definition is too narrow to fit the applicable statutes, the bias-motivated incident will not reach the prosecution stage. Through their research, Grattet and Jenness also identified what they termed the "distributed character of lawmaking…that is the power to determine what the law is and how it should be applied to specific circumstances is spread across legislative bodies, administrative agencies and levels and jurisdictional units," (2005: 898). Their findings indicate that organizational dynamics influence the creation of local policies which frequently produce confusing or conflicting definitions in policy. This usually results in officers utilizing their own discretion in the application of definitions, possibly misclassifying bias-motivated incidents.

The basis for charging a crime as a bias-motivated crime, or even its use as an enhancement at trial, cannot solely be on the facts of racial, ethnic or religious differences between victim and offender. To assist in the process of identification of these crimes, Lawrence (1999) suggests that one can use the "but for" test to determine if a crime is in fact motivated by bias: but for certain characteristics of the victim, would the criminal behavior have taken place? Would the crime still be committed? Would that victim 'do'? The test proposed by Lawrence could be utilized in cases where the motive may be unclear, or even mixed. Utilizing the "but for" test proposed by Lawrence should be considered an additional tool for law enforcement personnel to determine the motivation of an incident, when it is not readily apparent.

Prosecution of Bias-Motivated Crimes

The literature on prosecution of bias-motivated crimes indicates that very few published studies exist in the field on decision-making processes regarding bias-motivated crimes. In his paper

presented in 2001 at the Midwest Sociological Society, King examined extra-legal factors in order to determine which have an impact on the prosecution of state bias crimes, (McPhail and Jenness 2005). The author reports two main factors that influence the decision-making process: the size of prosecutor's office, and the presence of the Anti-Defamation League in the jurisdiction. The implications here are frightfully obvious: if there is no direct involvement by advocates, or if there is not an appropriate allocation of resources within a jurisdiction, bias-motivated crimes are less likely to be identified, classified and prosecuted.

In another study, the American Prosecutor's Research Institute (2000) conducted a national survey of prosecutor's offices and found 3 factors that determine whether the case was classified as a bias-motivated crime: the offender's use of words, symbols or acts that could be offensive to an identifiable group, and statements of witnesses and offenders. Again, the implications are worrisome: what is the outcome of an incident where there is no verbalization or clear symbolic act? What do law enforcement personnel achieve if the incident is not done in the presence of witnesses, or if as all too often occurs in the criminal justice system, the witnesses are not willing to testify? As this research proposal suggests, it is expected that the prosecutor, if he or she even received the case for prosecution, will likely not file charges in the case if he or she is not able to have a clear and simple conviction.

McPhail and Jenness (2005) conducted interviews with16 prosecutors in Texas to investigate prosecutorial decision-making in bias crimes. The authors found that, when determining whether or not to charge as a bias crime, prosecutors search for substantiation of the "subjective state of hate rather than the behavioral indication of differential selection bases on group membership---

prosecutors have a narrow understanding of what constitutes hate crime," (McPhail and Jenness, 05:114). This is indicative of a similar problem encountered by police personnel when responding to or investigating a bias-motivated incident: no clear understanding of the definition of the criminal behavior, and/or an inability to properly classify the criminal behavior as based in selection bias.

The researchers further found that prosecutors seem to be clearly seeking the strategic benefit in the decision to charge as a bias-motivated crime, or whether to use the penalty enhancement statute. For example, if the strategic upper-hand is not to be gained through the use of the bias-crime penalty enhancement, then the statute may not be utilized, and a lesser charge agreed upon through a plea-bargain. This results in a clear failure to protect specific groups and individual victims in general. It is also possible that an offender will serve less time, or be free to commit the act again.

McPhail and Jenness also discovered that prosecutors are inclined to focus solely on individual notions of justice, relying upon the facts of the case as they apply to the singular defendant, and the victim as a discrete person. Bias-crime policy views the victims and perpetrators as members of a particular, perceived group. Further, the use of plea bargains to obtain a positive outcome for the prosecutor is clearly at odds with the world-view of the bias-crime policy advocates. Prosecutors are expected to charge cases such that they can obtain a conviction. Bias-crime policy advocates urge prosecutors to use the bias-crime statutes available in order to send a message to the community that such behavior, whether a crime against the person or property, will not be tolerated in the community.

Albonetti (1987) conducted an investigation into the use of discretion by prosecutors in the Superior Court Division of the United States Attorney for the District of Columbia, and found three key areas of decision making: circumstances under which criminal charges will be filed; level at which an offender may be charged, and; when to stop the prosecution. The author cites "prosecutorial success" as an additional influence on charging policies. Prosecutorial success is defined by Albonetti as "achieving a favorable ratio of convictions to acquittals….[which] is crucial to a prosecutor's prestige, upward mobility within the office, and entrance into the political arena," (1987: 295). When the prosecutor is uncertain of a conviction, the case may not be charged as originally planned—sometimes the offender is allowed to plead guilty to a lesser charge, or the case may be dropped altogether. The author did find that prosecutorial uncertainty is reduced with "certain legally relevant evidence…[which includes] the ability to control exculpatory, corroborative and physical evidence, witness management variables, and review control over police decision to arrest," (311). These results demonstrate the need for proper training, objectivity, clear definitions and proper collaboration between police and prosecutors.

In an article from *The Yale Law Journal*, Hernandez (1990) discussed prosecutorial discretion in bias-motivated crimes and the role unconscious racism often plays in the prosecution of bias-motivated crimes. An important point she notes is the discrepancy between incidents in New York City (800 reported to the police in 1988) and the actual prosecution (only 33). The author posits that many such crimes do not get prosecuted because the state statutes leave too much discretion in the hands of prosecutors. Hernandez suggests that the true problem with the criminal statutes is the deficit of enforcing the laws. She notes 3 possible reasons for the lack of

prosecution in bias-motivated cases: the exclusion of disfavored groups other than Black Americans from statutory protection; unmonitored prosecutorial discretion; and the related problems of unconscious prosecutorial racism. Certain groups such as gay, lesbian or disabled, even if they are covered under the state or Federal statute, may go unrecognized when they are the victims of bias crimes. Or, law enforcement and court officers themselves may have a certain bias that prevents them from objectively identifying and classifying and prosecuting the case. Lastly, it is well known that the prosecutor's office is a highly charged political entity. Politically based results cannot instill a real sense of justice. The author concluded that one way to increase prosecutions is to establish an independent Bias Reporting Agency (BRA) instead of a department under the authority of a police department. This special BRA would better be able to hold the prosecutor accountable for not prosecuting certain cases or in the instances where a plea deal is offered, the prosecutor would have to justify such actions.

Through an ethnographic study of sexual assault crimes, Frohmann (1997) studied how prosecutors assign stereotypical attributes to victims, witnesses, offenders and jurors. The social construction by the prosecutors has immense influence on whether and how cases are prosecuted. The author states that:

> Prosecutors presume that we live in a segregated society and that since the occupants of these segregated spaces have distinct cultures, they use different interpretive frames for making sense of and organizing the world…when people have limited contact, they form "place images" of other communities and their residents to make sense of their lives.
>
> (p. 541).

Frohmann further concluded that the organizational and political requirements of the prosecutor's office contributed to the justification for lack of prosecution in certain cases. She

suggested that prosecutors should be allowed to file charges in a specified number of cases regardless of likelihood of conviction. To go forward with the prosecution of so-called “risky” cases without negative consequences, may redefine what is believed to be a convictable case.

Since prosecutors are more often exposed to the common criminal aspect of social life, it is obvious to see how they become cynical and begin to attribute certain characteristics to people they are involved with on a daily basis. It can become difficult for them, as it is for police, to be objective with every case. While it may be easy to fall into this pattern of behavior, it is particularly dangerous when applying this behavior to bias-motivated criminal cases. The prosecutor, through the prosecution of criminal cases, represents the entire community. But, by categorizing certain actors in the criminal justice system, they inevitably exclude some segments of society. With regard to bias-motivated crimes, this is an incredibly dangerous pattern of behavior as it could potentially perpetuate the social construction of these crimes and the inequality in the criminal justice system.

CHAPTER FOUR: METHODS

RESEARCH DESIGN:

The purpose of the study is to determine the nature of bias-motivated crimes in Boston Massachusetts in 2007-2008, and whether any differences exist between prosecuted and non-prosecuted cases, such as specific bias motive, age and race of offender and victim, level of injury and whether weapons were used during the incident in the city of Boston. Following a content analysis of the CDU files and interviews with ADA's who prosecuted the cases, this research attempts to uncover the characteristics and nature of these types of crimes.

This is an exploratory study, utilizing qualitative and quantitative methods to investigate bias-motivated incidents reported to the Boston Police Department and charged in the Suffolk County, Massachusetts Courts under Massachusetts General Laws: Ch 265 sections 37 and 39 in 2007 and 2008. Exploratory studies attempt to uncover what issues concern individuals, the meanings that they assign to their behaviors and how they cope in particular settings (Bachman and Schutt, 2008). For this research two agencies were crucial in understanding the characteristics associated with bias-motivated crimes: The Community Disorder Unit of the Boston Police Department and the Suffolk County District Attorney's Community Prosecution Division. The current study is singular in that the City of Boston has a special unit specifically to cope with bias crimes. The Community Disorder Unit (CDU) was created in April of 1978 to help control the racial tensions that were escalating in the city at that time. Boston was plagued by a variety of what were labeled as racial assaults. These came in the form of "racial epithets painted on the outside of homes, broken car windows, threatening phone calls, intimidation, physical attacks and even arson,"

(www.usmayors.org/usmayornewspaper/documents/8_16_99/usm). The local media seized upon these incidents and local community leaders and activists groups, as had been done decades before, came together to cast the spotlight on these racial incidents, "[w]hat had been unacknowledged and ignored became officially visible and a high priority for investigation," (www.usmayors.org/usmayornewspaper/documents/8_16_99/usm. Thus, the CDU became the first police investigative unit in America to specialize in examination of bias-motivated crimes.

Due to the lack of research combining both aspects of bias-motivated crimes---the police identification and classification, and prosecutor's decisions to charge a crime under a particular statute---an exploratory study will be valuable to recognize how the issue is socially constructed by these principal players. A crucial aspect to understand how bias-motivated crimes are classified and charged under Massachusetts or Federal Law, is to discern the meanings that prosecutors assign to the social phenomenon. Therefore, rather than talking with police officers and detectives to determine how bias-motivated incidents are classified, as other studies have done, a content analysis of the files from the CDU was conducted. The subject matter examined from the CDU files included original police reports, Massachusetts Hate Crime Reporting Forms, CDU screening form, memos, interviews, notes and evidence.

DATA COLLECTION:

First in order to obtain the necessary data, the author applied for Community Offender Record Information (CORI) clearance in order to access files in the Community Disorders Unit and when meeting with Assistant District Attorneys. This request went through the Criminal History

Systems Board to give "CORI clearance" to access files in the Community Disorders Unit and when meeting with Assistant District Attorneys. Further, a letter was drafted to the Boston Police Commissioner requesting consent to access BPD criminal case files in order to collect data for a research dissertation. After consideration and review, a Memorandum of Understanding (MOU) was signed by the Police Commissioner and the author, detailing acceptable procedures according to BPD, for collection and publication of said information.

For the 34 prosecuted cases and the non-prosecuted cases that occurred in 2007 and 2008, data was gathered regarding the geographic region (neighborhood), victim statistics (age, race/ethnicity, sex, number of victims), perpetrator statistics (number of offenders, age, race/ethnicity, sex verbal and non-verbal language that occurred during the incident, time and day of event) and incident characteristics, such as type of bias motivation, indicators of bias motivation and where the incident occurred. This data collection provides essential information about the types of bias-crimes committed, and victim and offender characteristics. The information collected from the copious notes and screening forms still does not tell the complete story—this data can only indicate which cases have been identified as bias-motivated crimes, but not which cases have been prosecuted by the District Attorney's Office.

To fill the void, a spreadsheet of all prosecutions of bias crimes from the Suffolk County Prosecutor's Office was obtained to determine the outcome of these cases. For example what were the subsequent charges, was the case resolved through a plea bargain, or was there a conviction on bias crime charges or other criminal charges and the sentence imposed? While the

Suffolk County prosecutor's office has jurisdiction over the city of Boston, it also includes the towns of Winthrop, Chelsea and Revere. Included in this study are only 34 of the prosecuted cases that occurred in Boston. Some of the cases had multiple bias and/or multiple defendants, which were considered the same incident for the purpose of this research. So, when it was necessary to match the 34 cases according to specific bias, to control for bias motivation, cases were randomly choose every 4th case from the CDU list of non-prosecuted cases, it was done by matching according to bias motivation of the incident. Some of the prosecuted cases to be matched on motivation, there were no exact corresponding CDU cases. As an example, one case was anti-gay and anti-Semitic that was prosecuted, but no corresponding case was available in the non-prosecuted incidents. From the CDU cases, one anti-Semitic and on anti-gay case were chosen to use as a comparison. The total number of prosecuted 2007 there were 19 cases prosecuted and for 2008 prosecuted cases totaled 15. The CDU matched cases were 18 and 16 respectively. Not included were the cases outside the Boston Police jurisdiction—Winthrop, Chelsea and Revere, because those municipalities have their own police departments, and do not have a specialized unit for bias-motivated crimes.

One other issue in matching cases was that in disaggregating juvenile, young adult, adult, juvenile and young adult, juvenile and adult, young adult and adult. Once this was done, the cell numbers were too small in order to analyze properly, so the researcher looked at each case that was marked juvenile and young adult, juvenile and adult, and young adult and adult, and they were categorized accordingly. For example, if there was an adult who committed an offense with a juvenile, that case was taken from the grouping of juvenile and adult, and one offender was added to each discreet category—juvenile or adult. Also, in some cases, such as a blitz

attack or a group attack, the victim reported to the police that 5-7 or 8-10 offenders were at the scene of the crime. While the detectives at the CDU did list that in the screening form, because the victim could not be certain of the number, it was recorded as one offender and one young adult.

Due to the nature of how criminal cases often move slowly through the system, it was imperative to obtain two separate lists of prosecuted cases. This research includes only incidents that occurred in 2007 and 2008, but some of the cases did not get charged or did not have an outcome until 2009. Therefore, I was given two separate spreadsheets from the District Attorney's office—the first one contained the 2007-2008 prosecutions. A year later, I was able to obtain information on a small number of incidents that occurred in the years under study, but due to clogged courts, continuances and motions filed, among other reasons, a small number of cases were not actually prosecuted until 2009.

Through one-on-one interviews with Suffolk County Assistant District Attorneys', information was obtained with respect to four separate areas: prosecutorial experience, prosecution of bias-motivated crimes, social cohesion, and demographics. Further interviews were conducted with the Chief of Community Prosecutions to obtain information about organizational policies. Open-ended questions were orally administered by the researcher, in order to induce meaningful descriptive information about the bias-motivated cases.

A few points need to be clarified regarding the criminal charges and the collection of data. As mentioned earlier, bias-motivated crimes are prosecuted as described in the Massachusetts

General Laws. These are divided into felony and misdemeanor cases with and without bodily injury. These statutes still include the language of the Federal Hate Crimes Statute with respect to interference with an individuals' exercise of liberties. Secondly, it is not the duty of the prosecutor to actually indict a bias-motivated crime case. The first step in the process is to have a police report submitted by a responding officer to his or her District Sergeant. The systematic process as prescribed by the Boston Police Department is for an officer from the district in which the incident occurred to complete a police report on the incident—referred to by the police as a "1:1". The responding officer then turns the report over to the supervising Sergeant for the district for further screening. When evidence is available in the report (1:1) that there may be a bias component to the incident, the district Sergeant forwards the report to the Community Disorders Unit. The Lieutenant of the CDU will assign the case to a detective to further screen the case. Detectives are required to indicate why they classify the particular incident as a bias crime case. The detective contacts the victim and conducts interviews to try and determine if the incident was motivated by bias. The detectives often even ask the victim that very question to further establish motivation—as perceived by the victim. If possible, the detective also conducts interviews with any available witnesses, and possible suspects. Each detective completes a Boston Police Department Screening form once they are assigned the case, and then the Massachusetts Hate Crime Reporting Form is completed, and the case is again submitted for approval to the commanding Lieutenant. After further investigation and discussion, if the commanding Lieutenant and the detective decide or find further indication that the incident is in fact, not a bias-motivated crime, there are two possible outcomes. The first is to label the case in the CDU as a "miscellaneous" case to be placed in the files at the Unit, incase further information becomes available to solidify the fact that it is indeed a bias-motivated crime. The

second possibility is to send the case back to the district in which the incident originated, and the Sergeant of that district can seek a criminal complaint based on which crime the incident is labeled (ex: assault and battery, harassing phone calls, but without a bias component). These cases would then be under the jurisdiction of the appropriate Boston Police Department Unit, such as narcotics, sex crimes, robbery and the like.

Typed memorandums of every action taken are included in the CDU files, such as letters sent to victims and witnesses, canvassing and surveillance of the location where the crime occurred and other investigative techniques that were employed. Once the detective has completed the investigation to the best of her or his ability, and the Lieutenant approves the detectives' actions, a criminal complaint is filed. Detectives file a criminal complaint against the defendant with the Clerk Magistrate of the Courts.

In Massachusetts, the District Attorney does not typically indict a bias-motivated criminal case. Criminal complaints can be brought before the clerk by anyone—citizen, District Attorney's Office or law enforcement personnel. It is typically done by the detective or police officer working the case. If the case is of a more serious nature—great bodily harm or death---the DA will hold a Grand Jury investigation instead of filing a criminal complaint. In the case of a bias-motivated homicide, the homicide case would not even go to the CDU. That case would go directly to the Homicide Unit, therefore, no homicides were included in this exploratory study. Detectives file a criminal complaint against the defendant (if known) with the Clerk Magistrate of the Courts. A hearing is held by the clerk to determine if there is sufficient evidence to indict on the bias-motivated charges among others that may have occurred during the incident (ex:

assault, harassing phone calls or notes, while using derogatory terms). Once probable cause is found for the case, it goes to the District Attorney's office to the Chief of Community Prosecutions. The Chief then designates an Assistant District Attorney (ADA) who then goes before the assigned judge for arraignment and indictment. There is no special bias crime ADA or unit, so the Chief studies the case and assigns the ADA she knows to be most capable to process the case through the court system. The major issue here is that once a case is in the hands of one ADA, does not mean that that ADA will carry out the entire prosecution process, (Personal Interview with ADA 6/10/10). The courts are so busy and over-loaded, that it is typical for an ADA to get a case for arraignment, but then never have further contact with the case, as it is passed to whichever ADA is in court at the time of a hearing or trial. This occurs most often in District Court, not as frequently in Superior Court.

None of the bias crimes included in this research were charged under the Federal Hate Crimes Statute. The majority of those cases would be handled by the United States Attorney General's Office, and would include civil rights violations in the workplace, or patterns of discrimination within the social and political structure (interview with Chief of Community Prosecutions, September 21, 2008). The track that all of the cases in this research followed were either through Massachusetts Superior Court, or Massachusetts District Court. The chief factor in deciding which Court the criminal case is filed in is that of jurisdiction. This includes type of case, as well as physical location. Basically, Superior Court will deal with most major felonies, and District Court will handle the misdemeanors and some of the simple minor felonies.

In District Court, a criminal complaint must be sought before the Clerk Magistrate as previously mentioned. Once the Clerk issues a complaint, the case is directed to the appropriate District Court for an arraignment of the suspect, (Interview with ADA 3/12/09).

In Superior Court, the criminal case could be transferred from the lower District Court based on seriousness of the charges. With Superior Court, there exist basically two tracks for the ADA to follow. The first is if the case was initially charged in District Court, but the facts of the case upon further investigation require more serious charges, the case may be dismissed from District Court and transferred to Superior Court. The ADA may ask for a Direct Indictment, even if there is no identified suspect, the case will still be heard before a grand jury as to indict or not. If there is a suspect identified, a grand jury is still convened for investigation of the case. If the Grand Jury returns a True Bill, then the case will stay in Superior Court.

Vertical prosecution is utilized in Superior Court, while there is no vertical prosecution in District Court. Vertical prosecution means that the same ADA will follow every aspect of the case from arraignment to disposition. The District court is more of a hybrid, there is little vertical prosecution. Through interviews with the Assistant District Attorney it was learned that the District court caseload is “too heavy” in order to operate as vertical prosecution alone. Although there is over-lap between the courts, a decision of court jurisdiction is based on the charges brought in the case. For example, if there is bodily injury, the case is reviewed based on the facts, the suspects’ record and then typically sent to Superior Court. If there is no bodily injury, a case charged under a different statute, it will be assigned based on jurisdiction in either Superior or District Court. Through an interview with one of the ADA’s, it was stated that the charge of

bodily injury can be taken out of the indictment and sent to District Court, usually done when the prosecutor believes there is a “better chance of a conviction,”(Interview with ADA 7/6/10).

Per the author’s request, the Chief of Community Prosecutions commissioned her office to comprise a list of all bias crimes prosecuted by that office from 2007 to 2008. Additionally, she contacted all prosecutors in her office that handled a bias crime motivation case for those same years and advised them that I would be contacting them requesting an interview, and strongly encouraged each ADA to participate in an interview and give me access to public information located in their criminal files. It is from the list of prosecuted cases that it was possible to find the random sampling among CDU incidents. It is not always possible to ascertain from the CDU case files whether a case was actually prosecuted or the final outcome of the criminal case. Once the case is indicted, the detective submits a memorandum requesting the case be either closed or inactive. A case is closed if there is not enough evidence to go forward, or if the case has been indicted. A case may be requested to be given the status of inactive if the investigation has been exhausted with no offender identified, but the detective believes he or she may be able to open activate the case at a later time (interview with Sergeant Detective of CDU , 8/15/09).

Thirdly, interviews were conducted with fifteen of the thirty Assistant District Attorneys named as having participated in the prosecution of the cases. From the thirty ADA’s twelve had already left the office, and three refused to do the interview. The Chief of Community Prosecutions urged the ADA’s to request the file for the cases I would be interviewing them. Unfortunately, I was not allowed to view any “work product” which included internal memos and notes from the ADA’s to each other. In some other cases, files were not found or requested. In a few cases, the

ADA being interviewed had not actually prosecuted the case, only stood up in court for another attorney, or they proceeded in court as suggested by the previous ADA. Open-ended questions were orally administered by the researcher to each of the ADA's in the privacy of their own offices, to induce meaningful descriptive information about the bias-motivated cases and to further encourage discussion of the case. (See Interview and Consent forms in Appendix A and B).

One hurdle to overcome through out the study was that of not obtaining requested files, and the passing of one case file to another ADA. During the course of the interviews, a small number of ADA's could not remember the case and referred me to another ADA. When unable to obtain data from the ADA's file, I contacted the Chief of Community Prosecutions and she was able to obtain the necessary information by requesting the files from archives. Apparently the charges and disposition of the case are included in a computer data base. But, unfortunately, the probation outcomes when they occurred were not. That information could only be retrieved from the specific probation office determined by jurisdiction (ex: South Boston, Dorchester Court, Boston Municipal Court), or by pulling all of the specific files. Although it is public information, the Chief of Community Prosecutions requested the files and supplied the required information when possible. For a few files, I was told they were not in the boxes or filed appropriately and not able to be found. For those probation conditions, "unknown/not available" was entered in the database.

Further, only case-incidents from 2007 to 2008 were available from CDU. Previous years' files were archived and inaccessible. And, finally, though it was not the intention of this exploratory

study to interview regular police personnel, or patrol officers, this study relied upon the determination of the Community Disorder Detectives to decide if the incident was a bias-motivated crime and in need of a criminal complaint. As mentioned in the literature review earlier, previous studies have interviewed other police personnel to determine how they define bias-motivated crimes. That was not the focus of this research.

CHAPTER FIVE RESULTS: Bias-Motivated Incidents Reported to the CDU

Results from the Community Disorders Unit:

Presented in this chapter are the basic characteristics of bias crimes committed in Boston, Massachusetts based on the 279 cases from the CDU that occurred from January 2007 through June 2008. In particular, the first section of the chapter focuses on the targets of bias incidents, either property or person; the age, gender and race of the victims and offenders; types of injuries sustained by victim**s** during these bias motivated incidents, and type**s** of weapon**s**, if any, used during the attacks. In addition, the general and specific bias-motives in all incidents are reported. The next chapter will concentrate on the number of prosecuted cases that went from CDU to the Suffolk County District Attorney's office.

Personal and Property Crimes:

Below, Table 5.1 displays the results of all incidents reported to the CDU from January 2007 through June 2008 based on whether the incident was committed against a person or property crime, for a total of 279 cases. The majority of crimes for the period under study--- nearly 82 percent consisted of personal crimes—mostly assaults. The much smaller percentage of property crimes—some 18 percent-- typically involved an incident with a motor vehicle or the defacement or physical destruction of a residence, sidewalk, or house of worship.[4] It was also the case, again a very small number, where the police categorized the "victim" as the person reporting a vandalism or graffiti incident. So, for those cases, the researcher identified the individual cases

[4] The few incidents that consisted of both property and personal offenses were treated, for the purpose of this study, as personal crimes. For example, motorists of different racial backgrounds who have a minor traffic accident. One person cuts another of in traffic or blocks a contested parking space and the espouses racial slurs or threatens physical violence.

and read through all case summaries to be certain the incidents were indeed property crimes. Therefore, it is likely that bias-motivated cases do not get charged initially as such, but rather may reflect a reporting effect for some of the more serious crimes (ex: homicide, attempted murder).

Table 5.1

Target of Bias-Motivated Incidents:

	Frequency	Percent
PERSON	228	81.7
PROPERTY	51	18.3
Total	279	100

The first example from the CDU files represents a typical case classified as a personal bias-motivated incident from 2007. In this situation, a 49 year-old white male claimed to be victimized by his 41 year-old black, male neighbor:

> *The victim reports that he was sweeping in front of his house when the suspect saw him and said, "Hey Faggot, you had to call the city on me…fucking faggot! I am talking to you, you had to call the city on me?" To which the victim stated "what is your problem?". The suspect replied "why didn't you call me first fucking faggot, why don't you get on your knees and blow me…you see I am still building you fucking faggot". The suspect was on the porch yelling at him, but was holding a nail gun pointed in his direction. The victim reportedly stated "you're a jerk" and went inside to phone the police. He further stated that he feared for his life. He and his partner have lived at their current address since 1990. They get along well with suspect's wife and children, but the suspect only seemed to get along with 2 other black families in the neighborhood. The victim has been President of The Corridor Neighborhood Association for 18 years and his job is to report illegal*

> *activities in the neighborhood. The suspect wanted to convert his two-family home into a three-family, but the neighborhood voted him down. However, they said he could turn his attic into living space. There have been complaints about the loud work the suspect does on evenings and weekends and the victim has contacted city hall regarding said work. The victim did not wish to press charges, but hoped the detectives could talk to suspect. They did so on and suspect stated that he blew up and was wrong and had messed-up. The suspect apologized and was told he shouldn't have done what he did and to stay away from the victim. Detectives requested to close the file, as the victim reported that while he and his partner have seen the suspect, he (suspect) just looks down and walks away. The victim was satisfied with the outcome.*
>
> …BPD case files, ID#11

A second instance taken from the CDU files represents a rather typical violent confrontation, and categorized as a bias crime against the person:

> *Victim 2 and 3, both white females, 29 years of age, were at a tavern and met the suspect, who stated he played for the Patriots. He gave his name and showed his driver's license, upon which one of the patrons in the bar recognized him as a former Buccaneer's player. Victim 2 and 3 were leaving the bar and the suspect asked if he could walk them home. Once there, the victims thanked him and went inside. The suspect began loudly banging on the door and trying to gain entry. Victim 2 called her boyfriend and told him a black male was outside banging on the door. Victim 1, a white male, came home from work and found the suspect outside who stated "there's a party in there and I'm trying to get in,". The white male, victim 1, stated he lived there and there was no party. The suspect began yelling racial slurs at victim 1 and demanded he let him in. The suspect grabbed victim 1 by the throat and a struggle ensued. The fight led out to H street, at which time another resident heard it and phoned police. The suspect fled the scene, but left his license behind. Victim 1 sustained bruises to his cheek, but declined medical attention. Detectives attempted to contact all three of the victims numerous times by phone and certified mail, to no avail. Detectives requested to have the case be filed as inactive.*
>
> …BPD case file, ID# 12

Both of the above incidents were physical confrontations between two or more individuals, with varying levels of physical violence involved. Neither case was pursued for prosecution, for

various reasons. The first example was a conflict between neighbors, and the second was a physical violence between two individuals who did not know one another. In the first instance, it appeared that the victim simply wanted protection by the police. Once the suspect had a discussion with the police, the issue seemed to be resolved. In the second example, where there was a violent physical confrontation between two individuals ensued, the victims did not wish to involve the legal system, even though the offender was identified, the victims never responded to numerous attempts at police to contact them.

Similarly, the following property crimes, epitomize the most frequently reported bias-crimes reported to the police, but were not prosecuted.

> *In 2007, and unknown suspect spray-painted a swastika and "KSW" (Keep Southie White) in front of a 29 year-old white male's house and sidewalk. The victim is Irish, married and has lived at that location about two years. About 1am the home-owners heard males outside talking…"fuck him" and "fuck this shit, all right, I'm outta here". The male got up to tell them to be quiet as his infant daughter was asleep. When he got dressed, no one was there. He did noticed white spray painted graffiti the next morning: a swastika and K.S.W. on the sidewalk and partially on the building. Photos were taken by detectives and placed in the file. The detective reported that they conducted surveillance of the address, but no further incidents occurred, and, no further incidents had been reported by the victim. The detectives requested to classify case as inactive.*
>
> *…BPD case file, ID #1*

A second similar incident occurred a month later in a different part of the city.

> *A number of unknown suspects wrote "townies" on the top of the right door of 37 year-old, white male man's Mercedes and a swastika on the hood of a Honda Pilot. The Mercedes' owner*

> *stated he is not Jewish and has had no problems before. The other motor vehicle vandalized on the same street was identified, and through an interview with the owner's wife, detectives found that they and their neighbors are only ones with light color cars—which may be why they were chosen. The Detectives informed and demonstrated to her how to remove black marker herself—warm water and soap. She further indicated that she believed the graffiti was done by students walking to or from one of the local schools--middle or elementary. A few weeks later, through interviews with the motor vehicle owners', there was no further indication of any issues. The detectives requested to inactivate the case, pending any further incidents. Notes in the file indicate that there were 3 Polaroid's were taken of the graffiti, but they were not in the file.*
>
> …BPD case files, ID# 2

These cases are quite characteristic of the types of property crimes committed throughout the city. Since the majority of the vandalism and graffiti classified as bias-crimes occur at night, detectives are not usually able to locate a suspect, but simply have the city clean the property. In a few of the cases, there was video surveillance available, but the suspect was usually still unidentifiable. Detectives were vigilant in conducting physical surveillance of an area when such property crimes were reported, but the suspect rarely returns to the same area within a week or two.

The property crimes found through a content analysis of the files at the CDU were believed by the property owner and detectives to be juveniles or young adults looking for thrills or to send a message or make a statement. Though it is impossible to know for sure, or to decidedly indicate that a female or male was the offender in the incident, detectives once on the job for a while develop instincts based on certain behaviors and incidents. One example of a property crime was an incident that occurred in Allston, Massachusetts---over which The Boston Police Department and Suffolk County maintain jurisdiction.

> *A male victim reports he came outside to go to work and saw a swastika painted on his motor vehicle and saw "yubbie scum" and "eat a dick" and "ol" painted on his gas tank. The police report indicates that the video surveillance from a nearby building showed 2 males, possibly in their 20's enter the parking lot at 3:04am and go directly to the victim's Mercedes and then Both offenders were wearing dark colored clothing. The report indicates that the detectives sent the video surveillance to the Boston Police video unit to be enhanced, and they conducted surveillance of the area in an attempt to catch the offenders at work again, but none of the leads were able to identify the suspects. The detectives asked for the file to be placed in the inactive file.*
>
> …BPD case files, ID #103

Based on the social context of the situation and the population in that area, it is more likely than not that these were youths were expressing their hateful feelings toward the wealthier individuals in the community, but instead of properly spelling "yuppies", they wrote "yubbies". Allston is a highly integrated neighborhood, but also has a very transient population that consists of every income level-both low-rent tenants and every income range of college students, as well as long-established families. Most recently, as many areas of Boston have been gentrified, Allston has experienced this as well. It also includes individuals who express themselves through music and the arts, resulting in an eclectic mix of residents.

That was not the only property crime that occurred that night in Allston. A number of other residents reported similar writings on their motor vehicles, sidewalks, and walls. In the CDU files, detectives checked for surveillance cameras to no avail, and also conducted personal surveillance in the area at the time they believe the crime occurred, also to no avail. Through

reading case files, it became clear that the majority of these incidents seemed to occur in a rash of short intervals on certain streets, cease, and then occur again in another area. While the physical damage was minimal and detectives notified clean-up crews to remove the graffiti as soon as possible, the message was still sent to the community. In one case, a young college student reported her car being spray-painted with a swastika---as were other vehicles on her street—and she was upset 1) because she wasn't Jewish and didn't understand why she was "targeted", and 2) because she was disturbed at the message it sent to the community. She didn't want community residents to feel they were not welcome, and she did not want young adults in her neighborhood to send a message to specific residents—because she viewed them, the offenders, as being in the minority. The victim didn't want other residents in her community to feel "unwelcome".

The CDU files investigated contained a great range in the circumstances of the incidents and the amount of violence which occurred during the commission of personal crimes. The incidents took various forms such as physical conflicts, harassment through emails and phone calls.

> *At Simmons College, a 52 year-old black, female, Professor found a note left on her chair in the social policy office, "you are an ugly monkey it would be nice if you stop trying to act like you are one of us because you are not. Why don't' you go back home to Africa where you belong nigger? Remember "jena 6". The following day another note was left in the victim's mailbox, and another was found the following day in the student lounge area. Two days later, the same note was left on a copy machine outside the office of the victim.*
>
> … BPD case files, ID #14

The detectives were assigned the case, based on the repeated incidents and the threatening language used. The Note was submitted to the police for a check of latent prints, but nothing was found, and the detectives requested to inactivate the case.

Juveniles and Adults as Offenders:

Specifically looking at the CDU data (the Unit), Table 5.2 below displays the number of juveniles, young adults, and adults involved in bias-motivated incidents as offenders. [5] Juveniles were categorized as under the age of 18; young adults consisted of those offenders aged 18-29; adults were those 30 or older. As shown in the table, the largest percentage of offenders, nearly 39 percent were adults aged 30 or older. Juveniles accounted for 13 percent of the offenders, and the young adults comprised 27 percent of all offenders. As previously mentioned, for the categories of juveniles and young adults, juveniles and adults, young adults and adults the researcher specifically checked each case and added one offender for each appropriate category. The results for the "Unknown" offenders, totaled 21 percent, as displayed in footnote number 5 below. For example, if an incident reported to the CDU had a young adult and adult as offenders, one offender was added to young adult category and one offender was added to the adult category. For these two reasons, the total offender count is 299, instead of the total incidents of 279. There were 279 incidents reported to the CDU, but there was more than one offender in these categories, so that accounts for the discrepancy in the total number. Even by disaggregating these categories, it is still clear that juveniles' bias-motivated crimes, when known, were reported less frequently to the CDU. According to the CDU files, adults committed bias-incidents at three times the number of offenses, where the offender age was known. These

[5] When the offender age was unknown, and the incident was against a person, it is categorized as "unknown".

results indicate a massive shift from previous results obtained in a similar study conducted in the early 1990's by McDevitt and Levin.

Their original study, conducted in 1992, found that of offender typologies 66 percent of the cases were classified as thrill crimes, the types of crimes that are most frequently committed by youthful offenders, "In this category of crimes, youths often told police they were just bored and looking for some fun," (2002: p. 307). Many of the property crimes were juveniles committing random vandalism or scrawling graffiti on a wall or sidewalk. But the results from this study, in comparison with the earlier McDevitt and Levin research, indicate a reduction in the number of juveniles committing thrill crimes. In a smaller number of cases, results were youths committing personal crimes, in a group of 5 or more. Often, they are intoxicated and roaming the streets for what they define as "fun". Their type of fun includes physical attacks on individuals based on their appearance—a perceived membership in a specific group. From the current study, results demonstrate that more recent bias-crimes seem to be perpetrated by young adults and adults who feel threatened by the presence of an out-group in their neighborhood, schools, and community, and decide to defend their turf or territory. This appears to be a change in the trend during the early 1990's, as shown by the McDevitt and Levin study, where 66 percent of the bias-motivated incidents were the most common type of hate crime committed by juveniles. This study's results indicated only 13 percent of juveniles, where age is known, committed these types of crimes. Even if the category of juveniles and young adults or juveniles and adults are disaggregated to inspect only juveniles, the number of juveniles who committed bias-crime incidents that are reported to the police in 2007 and 2008 is still minimal in comparison to the McDevitt and Levin's early 1990's results, (Levin and McDevitt, 1993).

In the field of Criminology, it is well established through decades of research, that juveniles are more likely than older adults to commit criminal acts. Therefore, the results in the table below that indicate only about 13 percent of the bias-motivated crimes were committed by juveniles is important. These results may indicate that the Thrill crimes committed by this age group are on the decline. The young adults and older adults appear to be committing more of the bias-motivated offenses.[6] This shift in ages of offenders in bias-motivated crimes could be attributed to a variety of social and historical contexts. It may indicate an increase in defensive bias-motivated crimes because of perceived threats to offenders. For example, more immigrants are moving into what were formerly more homogenous neighborhoods and schools; the September 11, 2001 attack on American soil; the election of the first African-American President of the United States; and the heightened state of discussions and demonstrations regarding gay marriage.

TABLE 5.2

OFFENDER AGE IN INCIDENTS REPORTED TO THE CDU:

	Frequency	Percent
Juvenile	39	13.0
Young Adult	82	27.4
Adult	115	38.5
Total	236	100

[6] The unknown category is a bias incident in which the police did not know the age of the offender—usually crimes committed at night in the forms of vandalism and graffiti. These accounted for 63 incidents and 21.1 percent of the incidents reported.

The following cases embody the type of bias crimes committed by adults in Boston. The first case occurred in 2007:

> *The 44 year old black, female victim stated she was in line at a fruit stand and overheard Indian customers being refused service and spoken to in a derogatory manner. She came up in line and asked the vendor for produce, the adult white male suspect ignored her, she repeated her request and he replied, " shut the fuck up," she said "don't' tell me to shut the fuck up", "fuck yous" were exchanged, and the male suspect then said "you get the fuck out of here you fucking nigger" and adult white male suspect 2 stated " you fucking nigger bitch, go back to Africa, all you niggers want our hair," and adult, white male suspect 3 said "go back to Africa on a banana boat like you came here, you fucking monkey go back to your tree". Emotionally distraught, the victim phoned police. She then met up with her friend, who also told police she, also black, had experienced a similar incident at that cart. While the victims were speaking to police, the suspects fled. Detectives were able to do a mobile identification of 2 of the 3 suspects. The victim and detective testified to alleged facts in a show cause hearing. The Clerk Magistrate found probable cause for the following criminal complaints: assault, threats to do bodily harm, and bias-motivated crimes. The ADA indicated through discussions with the defense attorney, that both suspects wished the matter settled through mediation. The Detective and victim stated this was inappropriate given the facts of the case. Following a reassignment of the ADA, the defense attorney filed motion to dismiss, because the incident did not amount to a bias crime. The defendants' attorney did not show at the court date, so the case was continued. After an additional reassignment of the ADA, all parties appeared for a motion to dismiss the hearing, but instead both parties pled guilty to all criminal charges.*
>
> …BPD case files, ID #17

Most interesting about this case, is that the defendants received the following sentence: Continue without a finding (CWOF) for one year, and one year probation, plus "sensitivity training" administered by the probation department: the defendants must watch a videotape, read the book Us and Them: A History of intolerance in American and write an essay. There was also a stay away order, defendants' paid probation costs and did community service. However, the

Detective indicated the defendants should get at least a suspended sentence due to their criminal history, but the ADA indicated she was bound by former ADA's offer. This is the only case of all that were prosecuted that had any mention of reading a book or watching a video and writing an essay. When the ADA's were asked why this sentence wasn't imposed on all bias-crime offenders, none of them had even heard of a judge sentencing someone to watch a video, read a book or write an essay. The ADA that originally handled the case was no longer in the office.

This incident reported to the CDU and committed by an adult, seemed to be quite common of bias-motivated incidents in the city of Boston.

> *An adult victim pulled into a parking space when the a 57 year-old white female suspect drove up to her and called her racial slurs and said "you fucking spic you took my parking spot', drove off and then came back and continued her verbal assault upon the victim. The victim phoned police and due to the threats and language used by the adult suspect, it was further screened at the CDU. There were no further incidents between the victim and suspect, so the victim did not wish to pursue the incident further and the case was requested to be closed.*
>
> ….BPD case files, ID #111

While arguments over parking spaces are not unheard of, particularly in large cities, the hope is that this child-like behavior would be limited to the juveniles and young adults. But, in Boston, as the results indicate, it frequently starts with an adults' inappropriate and often bias-motivated behavior.

Another typical bias-motivated crime that occurred frequently in Boston was a conflict between neighbors of different races or ethnicities. In 2007:

> *A 35 year-old white male victim was leaving his apt on a 40 year-old black male suspect came down the stairs of their apartment building and said "try spitting in my face fucking faggot, I'll kick your ass faggot" in reference to an earlier incident when the suspect's 37 year-old black female girlfriend was harassing the victim and he spit in her face to get her away so he could get into his apartment. During the earlier incident, the victim complained of noise in the suspect's apartment. The suspect's girlfriend contacted the apartment management to give 30 days notice of moving because the victim was making her life miserable. The management had received complaints about the victim playing his music too loud and yelling at people for getting too close to his parked minivan. The victim has a restraining order against suspect girlfriend (is on the lease and has had prior run ins with the victim). Detectives contacted both parties, and requested for closed status due to the restraining order and suspects' move out of the building.*
>
> …BPD case files, ID # 20

Another typical incident that was in the CDU case files was between two adults who did not know one another, but in 2008, had this confrontation at a local pharmacy:

> *A 36 year-old black female victim was at Walgreens getting a medication for her sick daughter. While she was standing in line, a 53 year-old black female suspect cut in front of her. The victim told her to go to end of line, and the suspect replied "fucking Haitian go back to your own country" to which the victim replied, "I'm Jamaican why don't you go and learn something,". To which more words were exchanged, the victim paid for her items and left the store. The suspect then ran towards her and tried to punch her, but missed, while the suspect's boyfriend was trying to restrain her, the suspect kicked the victim in the leg. The management came and separated the women and the victim phoned the police. The suspect was told to leave by her boyfriend who stayed on scene to talk to police.*
>
> …BPD case files, ID # 21

The CDU detectives received the file and after further screening, a detective set a date for a probably cause hearing before the Clerk Magistrate, and the case was requested to be closed. No further information was available; so the case was either not prosecuted, or was not prosecuted as of this writing.

While results from this study indicate that most bias-motivated incidents in 2007 and 2008 were committed by adults, reasons for the behavior varied from: motor vehicle conflict between those who do not know one another, adult conflicts in public between individuals who are strangers to one another, and conflicts between neighbors. Many of the young adult incidents, that may or may not include a juvenile and/or adult offender, typically occurred in public places, such as the streets and bars. One example from 2007 is listed below:

> *A 22 year-old white, male victim was walking from a club to his car with a friend. Another white male, in his mid-20's and two other males started walking with them. The white, male suspect stated "you're a faggot," and the victim said "yeah, I'm gay, do you have a problem with that, am I doing something to you?". The suspect and his two friends got into their car, but the suspect suddenly jumped out of the vehicle and punched the victim in the face. The suspect's friends grabbed him and put him into the car and drove off. The victim's friend called 911.*
>
> …BPD case files, ID # 30

Police responded and sent their report to the CDU for further investigation. Detectives searched for surveillance cameras in the area in an attempt to identify the suspect, because no one got the motor vehicle plate number. Nothing could be done to further identify the suspect, so the case was requested by detectives to be inactivated, in the event further evidence became available.

> *A 43 year-old white, male victim reports that he was loading his car outside his house when he heard a loud bang, he turned around and saw two black males, in their mid-20's walking toward him .One male passed, but the other stopped and asked "what are you looking at whitey?" The victim went inside and when he came back, the suspect was standing outside his place with a bat and said "I'll kill you and your whole family whitey,". The victim phoned 911.*
>
> …BPD case files, ID # 64

The incident took place in a public housing project, and through memorandums in the CDU files, the incident seemed to be handled both by the CDU detectives and by the Boston Housing Authority through a private conference with the residents. A no-contact order was issued to the suspect, and the victim reported no further issues to the CDU detectives, so they requested to inactivate the case.

As for juvenile offenders, results indicate they committed the fewest incidents that went through CDU. A few examples of typical cases are listed below. From the content of the CDU files is a typical case of juveniles looking for thrills, or just to bother citizens based on their perceived group membership:

> *A 25 year-old white male and his partner were in their house, when 3 suspects began banging on their window-asking to be let in. The victims refused and the suspects spit on the window and stated "let me in…we'll be back later you fucking faggots". The three suspects were about 15 years of age, one white, one black and one Hispanic, and two were male and one female. Victim one's partner called 911 and victim 1 saw an officer on a detail outside. He went outside and told the officer what had happened and pointed out the suspects who were still walking down the street. But the victim was told that the officer was on a detail and they should call 911. The victims did so and waited an hour, at which point the kids walked by again. The victim called the area police station and asked what was going on, and explained to the officer what had happened. The officer said he was busy booking someone and if he called to complain he called the wrong person, he was trying to book someone and he should call 911. When the victim phoned 911 again and he was told that the victim had previously told her his partner was going to talk to a police man so she thought it was being taken care of. The victim waited another 1 ½ hours with no response. For the third time, they phoned 911 back who told him he would be put in the call back system. Photos of windows with the spit on it were in the file, along with several*

> *notes on surveillance conducted at the home to no avail. So, the detectives requested the file be placed on inactive status, incase further information becomes available or further incidents occur.*
> …BPD case files, ID # 14

The following is another illustration in which a group of juveniles harass an adult and young adult victim:

> *Two Hispanic victims, one 32 and one 22 were attacked on the street by a group of about 8 white, juvenile males. The group of white offenders began to throw bottles at them and yell, "fucking wetbacks…fucking Mexicans no good for shit..". Police responded to a call for a fight or disturbance. At least one of the victims sustained minor injuries and transported to the local hospital. The victims are homeless and could not be located for further interviews after the initial one at hospital, so the police canvassed the neighborhood in an attempt to locate any witnesses-but to no gain. The detectives requested to inactivate due to no further leads to identify the suspects.*
> …BPD case files, ID #57

Race/Ethnicity of Offender:

The next category is the results for offender race/ethnicity. For the most part, the categories are the same as that for the victim section below. The categories include, White, Black, Hispanic, Asian, and Middle-Eastern. [7] In two of the categories for offenders, the category of a Black and a White offender and a Hispanic and a White offender, needed to be added. Neither of these was necessary to be categorized in the victim results. As displayed in Table 5.3, of the results for which the offender race/ethnicity is identified, the highest percentage of offenders was white, with nearly 47 percent of the 279 total incidents. Black offenders were responsible for almost 22

[7] The category of unknown offender race/ethnicity includes those where either the police or the victim were unable to make a visually identification, or the property crimes, where no offender was seen during the incident.

percent of the incidents. Results for those who identified as Asian comprised only 5 of the 279 incidents from the CDU files as offenders. Hispanic offenders were close to the Asian suspects with 4 and 5 incidents respectively. The offenders categorized as Middle-Eastern maintained the lowest number of 3 incidents. Slightly over 2 percent of the results indicate when there are multiple offenders. As mentioned above, they occurred in groups of either: White, Black and White, or Hispanic and White offenders.

TABLE 5.3

Race/Ethnicity of the Offender:

	Frequency	Percent
White	130	46.6
Black	60	21.5
Hispanic	4	1.4
Asian	5	1.8
Middle- Eastern	3	1.1
White and Black offenders	5	1.8
Hispanic and white offenders	2	.7
Unknown	70	25.1
Total	279	100.0

The final two examples from 2008 are most typical among offender races as demonstrated by the above results:

> *A 43 year-old black female victim and her friend were in her car, trying to leave her apartment, but there was a tow truck blocking her car in the driveway. When she asked the adult white, male suspect to move it, he refused, and asked to see someone who*

> *no longer lived there. The male suspect called one victim "a cunt" and the other victim "a nigger" and sat in his truck but would not move it so the victim was unable to leave. Victim two's son came out and asked if he needed to "handle" it, and the suspect drove off in the tow truck. The victims reported the truck Department of Transportation number and the license plate to police. Due to racial language, the case was sent to the CDU. Detectives repeatedly attempted to contact the suspect and finally met for a taped interview. His story differed considerably from the two females victims' story. He told detectives he had gone to the address to repossess the car of a man who used to live with the second victim. The suspect offered to apologize for blocking the driveway, but the victims wanted an apology for his use of racial epithet, which the suspect denied using, "I am married to a black woman and my son is half black, I would never use the N word".*
>
> ….BPD case files, ID # 9

The detectives were forced to close the case as there was no further incident and the stories were conflicted.

Another 2008 incident that involved a motor vehicle:

> *An adult Hispanic male victim accidentally struck the adult white, male suspects' car while making a turn. Both parties exited the vehicles and the victim asked if everyone was ok. The suspect began yelling racial slurs at the victim, "go back to your country you fucking spics, we don't give a shit about you" and punched the victim several times in the face.*
>
> ….BPD Case files, ID # 102

The outcome also from the police files indicate that there was a request to close the case made by the Detective. A memorandum in the file stated the defendant was scheduled for arraignment in 2009. The case had to be continued so that the defendant could receive a psychological evaluation as he claimed to have Tourette's Syndrome.

The following incident involved an adult white, female offender and her young adult black, female neighbor in 2008:

> *The incident has been an ongoing issue between the two neighbors. The white female suspect allegedly leaves threatening notes with racial slurs and dog excrement on the welcome mat of the black, female victim, and the suspect's nephews threaten the victim as well "you black bitch nigger, we'll fuck you up,". The victim reports that the adult suspect encourages this type of behavior from her nephews whenever they visit.*
>
> …BPD case files, ID # 46

Detectives at the CDU received the case, and after interviewing the parties involved, requested a probable cause hearing in the Brighton neighborhood of Boston. The last notes in the file state that the clerk continued the case for a hearing. The detective requested to close the case, as no further court action will be taken and no further problems had been reported by the victim.

An incident that encompasses a racial combination of offenders occurred in the South End of Boston in 2007:

> *A 24 year-old white transgendered male was standing on the corner of the street, when a group of three Hispanic teenaged males walked up to the victim and was called "fag" and punched in the face by two of them. Initially the victim reported the incident to the police, who sent the case to the CDU for further investigation. Through their investigation, they found the phone numbers given by the victim to be disconnects and were unable after several attempts to locate the victim for further interview, and believed he may be homeless. Therefore, they requested the case be inactivated in the event that the victim contacts them again in the future.*
>
> …BPD case files, ID #150

The next example from the case files is characteristic of an adult male attacked by a group of mixed race youth and young adults:

> *The 33 year-old white, male victim was walking down the street in Dorchester when he came upon 3 younger males. The group included on black, male juvenile, and two young adult black, males. The victim anticipated a confrontation when one of the offenders asked him "What's up white boy? You the one with the black wife? Why you with a black woman? Go back to your own neighborhood," and the juvenile, suspect one, punched him, and while the victim was trying to fight him off, the adult black, male suspect three stabbed him.*
>
> …BPD case files, ID # 69

The file further states that the male suspects ran and the victim phoned police. Apparently the stab wound was superficial, because he was not seriously injured. When the CDU detectives followed up on the investigation, they were not able to have any further contact with the suspect—he never returned phone calls or certified male letters requesting further interviews. So, the detectives requested that the file be inactivated, in the event the victim decided to come forward.

A final illustration of offender race is summed up in the following instance from the Unit case files:

> *Two adult black, male victims were trying to get out of a parking lot, but were blocked by another motor vehicle which was not involved in the incident. While the victims were to attempting to maneuver out of the spot, one white, young adult and 2 adult Hispanic males approached them, and began a confrontation. One of the suspects hit one victim over the head with a beer bottle, while the other suspects grabbed the other victim and punched him in the face while calling him "nigger".*
>
> ...BPD case files, ID # 156

As for the outcome listed in the Unit files, the one of the suspects was arrested for an outstanding warrant, and the other for the Assault and Battery. But, the detectives were not able to get any cooperation from the victims, were forced to request that the case be closed.

Gender of Offenders:

Results for the gender of the offender are reported in table 5.4. With respect to the gender of the offenders as expected just over 57 percent of the 279 cases were committed by males. Females were responsible for offending in just over 12 percent of the incidents. The most surprising finding from these results is that 6.5 percent of the offenders were both male and female. The majority of those incidents were juveniles and young adults. Whether these were incidents where the male and female offender were intimately related is unknown—as that is not listed in the police files. From the descriptions in the synopses below, most of the incidents are committed by small groups of male and female juveniles and young adults, simply for the thrill, or they were opportunistic crimes. In 24 percent of the incidents, the offender gender was listed as unknown or not listed. These again, were the situations where property crimes occurred with no witness.

TABLE 5.4

Offender Gender

	Frequency	Percent
Female	34	12.2
Male	160	57.3
Male and Female	18	6.5
Unknown	55	19.7
Not Listed	12	4.3
Total	279	100.0

The following two cases are representative examples of males as offenders:

In 2008:

> *A 48 year-old black male victim reports that he was assaulted by three young adult black, males who said to him "nigger go home and fucking Haitian,". The victim received wide open laceration under chin, a cut on his head, and abrasions on his arm and cuts on hands.*
> …BPD case files, ID # 32

Included in the CDU files was a DVD of video surveillance that captured the incident. Detectives tried to enhance and retrieve photos of the suspects to display to the victim in a police photo line-up, but the victim was not able to be located, so detectives were forced to request that the case be inactivated.

> *In South Boston, a 50 year-old Hispanic female victim went to pick-up her son from her boyfriend's house. She stayed in the car and honked her horn to signal her son she was there. A young adult white, male suspect yelled out of his window to the victim, "You fucking spic get the fuck out of here spic, go back to Roxbury, you don't belong here,. The victim got her son and went to her car and left, and later phoned police. The suspect was later interviewed and said that the victim was blowing her horn annoying him, so he set off his car alarm to see how she liked it. The suspect said that the victim's boyfriend yelled something about*

> *gringo, so and suspect got out of bed, went to the window and called them dirty spics. He said that he had some beers and was ashamed of what he said, that he normally doesn't speak like that. The detective told him to stay away from the victims and he agreed.*
>
> …BPD case files, ID # 96

The detective filed a memorandum requesting the case be closed. He spoke to both parties and each side was pleased with the outcome.

The following case summary occurred in 2007 and involved a transgendered male victim:

> *The 26 year old black, transgender victim reports he was walking to the bus stop to get his nephew, when he heard 2 female and 2 male children, of unidentified race who began yelling "you're a faggot" and "you're a boy not a girl, you faggot". The victim reported that this has happened before and he ignored it, but he is tired of the harassment and wanted to file a report for a bias-crime. He does not know the children's names, but knows the apartment number, as he has seen them enter it. He further stated that he had even previously tried to speak with their guardian, but it clearly hadn't worked. Investigators tried to contact the victim, but no further contact was able to be established, and detectives requested the case be placed in the inactive status.*
>
> …BPD case files, ID # 7

A second incident that occurred in 2007 had two female offenders and is described below:

> *Two adult white females went to dinner with an adult white male, and some of the local clubs downtown. Late, on the walk back to their hotel, they walked through a crowd of people, one behind the other. Without warning, victim 1 was grabbed by her hair by an unknown young adult black, female suspect who pulled her to the ground and punched her in the face and head. One of the other black female suspects saw the other female victim, and pushed her to the ground and also began to punch and kick her. As soon as they were able to get up and away from the suspects, the victims found an officer who called for an ambulance and they were transported to the hospital. The first officer did not file a report,*

> *after the victim told him she had been jumped, so her brother flagged down another cruiser while she was at the hospital to file the report. The victims were shown a photo line up but could not identify anyone. Security at the hotel took photos of the victims' injuries. The detectives attempted repeatedly to obtain video surveillance of the attack. In the police report, the victim stated that the suspects said "White honky bitch and fucking white bitches", but the language was not reported in the regular police interviews with the victims. When the details came out, the report was sent to the CDU for further screening. The victims had not returned repeated attempts to contact them, by detectives, so they requested for inactive status on the files, until the victims get back to them for a suspect identification.*
>
> ….BPD case files, ID #44

Juveniles and Adults as Victims:

The victim characteristics reported in the CDU files include age, race and gender.

The results listed in Table 5.5 involve those incidents reported to the Unit by the age of the victims. The same definition of categories of ages was applied to the victims as they were to the offenders above: juvenile, young adult and adult. Though for the victim incidents, the groups of juvenile and adult; juvenile and young adult; adult and young adult was also included. This is because nearly 7 percent of the bias-incidents reported to the CDU included adults and young adults as victims. As shown, the largest percentage of victims-almost half—were adults aged 30 or older. Only less than 4 percent were juveniles. A small percentage of the incidents-slightly more than 10 percent—involved victims classified in the mixed- age categories.[8] The percentage of "unknown victim" listed in the represented property crimes that were not witnessed. As with most crime, bias-motivated crimes are intra-group. Therefore, when you compare age of victim and age of offenders' percentages, they are similar; most juveniles target other juveniles, and adults target other young adults or adults.

[8] These include the categories of juvenile and young adult, juvenile and adult, young adult and adult

TABLE 5.5

Age of the Victim**:**

	Frequency	Percent
Juvenile	11	3.9
Young Adult	62	22.2
Adult	131	47.0
Juvenile and Young Adult	3	1.1
Juvenile and Adult	9	3.2
Adult and Young Adult	18	6.5
Unknown Victim	45	16.1
Total	279	100.0

The two incidents from 2008 listed here are rather typical of an adult as a victim in the case files:

> *In the Dorchester neighborhood of Boston, a 44 year-old white female victim reported that two, young adult black, male tenants in her rooming house constantly call her "white bitch" "white trash" "cunt " and tell her she's in the wrong neighborhood. During this incident one of the suspects blocked the kitchen doorway, so that she couldn't get in and then bumped her with his shoulder.*
>
> …BPD case files, ID #39

The victim decided to report the incident to the police, as the on-going conflict was escalating to violence. The CDU received the case based on the racial differences and language used. A detective spoke with the victim and suspects and advised them to stay away from one another. When the detective checked with the victim at later date, she stated that she has not had any further confrontation and does not wish to pursue criminal charges. The detective requested that the case be closed.

In the Fenway area of Boston, in 2008, the following incident occurred to an adult victim*:*

> *A little past midnight, a 59 year-old white, male victim was*

> *awakened in his apartment by loud talking outside. He looked and saw his young adult, white male, neighbor talking loudly on his cell phone outside. The victim asked him to be quiet to which the suspect replied, "Go back to California you faggot," and made a threatening gesture, then flicked a lit cigarette at him.*
>
> …BPD case files, ID # 93

The victim then phoned the police, who sent the incident to the CDU for further investigation. A detective interviews both parties involved, and the suspect denied using sexually oriented slurs, and no further incidents were reported between victim and suspect. The detective requested to close the case.

While these cases again were in the minority of those incidents reported to the CDU, they are none the less indicative of the types of crimes committed by juveniles and young adults in 2007. The following summary occurred between a 13 year-old male victim and a large group of similarly-aged juveniles.

> *A juvenile black, male victim was at a park with friends when they noticed another group of 10-15 white males and females youths. Two of the white males approached the juvenile victim and said something, when he asked "what?" one male punched him in the face and knocked him to the ground, where the suspects continued to kick and hit him as he stated, "Get out the park nigger". One of the victims' friends phoned for police, and once they arrived, the suspects fled in all directions. In this case, the victim was able to identify at least one offender who was tried in juvenile court on the case.*
>
> …BPD case file, ID #141

The detectives sought a criminal complaint in the Boston Juvenile Court for Assault and Battery and bias-motivated crimes. The last notes in the police files listed the latest outcome as a Continued Without a Finding (CWOF), which basically means that if the juvenile gets in no further trouble within a set time period, the case will be dismissed. If the suspect does commit

another crime, he or she would be taken back into court and have to serve the full sentence. This might be a simple probation, or community service. The detectives requested to close case. Once it is in the hands of the prosecutor, detectives are no longer involved except to attend hearings and trials, or help the Assistant District Attorney with further investigations.

Next is an unusual example of an incident regarding victim age is somewhat rare where the results of this study are concerned. The incident involves a juvenile offender, a juvenile victim and two adult victims. But, as you can see from the facts of the incident, the case was originally between two juvenile girls and escalated to include the adults.

> *This case occurred in 2008 and has 3 victims—one 13 year-old female student and 2 teachers, aged 28 and 31.The victim and juvenile suspect, also female, were in class arguing about music. The suspect called the victim a "Dominican bitch, Goya yellow rice and bean bitch,". The teacher heard the comments and moved towards the students as they engaged each other in a fight--pulling hair and punching one another. The male teacher was hit and had his glasses knocked off in his attempt to separate the two juveniles. Once the he had the situation under control, he and the suspect were walking in hallway to calm her down, and another female teacher came out of her classroom to see what the disturbance was. When the female teacher said something to the juvenile suspect, the suspect punched the female teacher in the face.*
>
> …BPD case files, ID# 1

The outcome of the case is noteworthy, if for no other reason than to illustrate the difficulties police and CDU detectives have in identifying cases that need further screening for a criminal complaint to be sought. It is also an example of the difficulties encountered when jurisdictional issues are of consideration, and various agencies are involved in the reported incident.

The CDU was notified of the case after the Boston School Police made a report and called the Boston Police. The Boston police decided it needed further investigation as a bias-motivated crime and sent the case to CDU. A Boston School police officer sought charges against the juvenile suspect for Assault and Battery on the teachers and the juvenile victim. To the Boston School Police, this case was a physical confrontation, and either the bias part of it was not conveyed in the confusion, or not determined by the School Police to be the charges sought. The detectives at CDU were unaware of the probable- cause hearing seeking the charges, as they were not notified by Boston Police or Boston School Police. During the hearing before the clerk magistrate, the charges were dismissed against the juvenile victim. Both of the girls were spoken to, and they agreed it was a stupid incident and both wanted to put it behind them. The charges of Assault and Battery against the female teacher was held in abeyance until June 20, 2008 and if there was no further trouble, the case would be dismissed. There is no indication of the outcome of the charges for the male teacher and the detectives requested to close the case.

Race/Ethnicity of the Victim:

The following results in table 5.6 concern the race/ethnicity of the victim in the bias-motivated incident. Whites encompassed 33 percent of the victims of bias-crimes. Blacks were not far behind with just over 27 percent as victims. If one compares these percentages with the latest published Census Bureau Statistics in Boston, the percentage of white and black residents are recorded at about 57 percent and 23.5 percent respectively, (2009 American Community Survey, U.S. Census Bureau). This may signify an overrepresentation of blacks as victims of bias-motivated crimes in the city of Boston, and an underrepresentation of whites as victims, when one compares the racial composition of the city.

TABLE 5.6

Race/Ethnicity of the victim:

	Frequency	Percent
White	92	33.0
Black	76	27.2
Hispanic	21	7.5
Asian	19	6.8
Middle-Eastern	4	1.4
Black and White victims	5	1.8
Other or not classifiable	8	2.9
Unknown race/ethnicity	54	19.4
Total	279	100.0

The following two cases are examples from the 2007 CDU files where a white male was the victim of the bias-attack.

> *A 30 year-old white male victim reported that he went out drinking after work, and while standing outside another club to get in, he accidentally bumped a female standing next to him. He apologized, but she wouldn't let it go, so he left and went to another bar. He doesn't recall anything after drinking a fruity drink. A coworker who witnessed the incident reported as follows: The victim was in men's room with another male (possibly promiscuous behavior), and when the management confronted the victim, the coworker indicated that the victim had instigated a physical confrontation and hit the manager over the head with a beer bottle. According to the victims' account "what happened next is still unknown". The victim does not recall being beaten or who did it. He stated he was missing his keys, coat, phone, watch and money. He further said that he does not wish to pursue the case, and is embarrassed that he let himself get into the situation. He did not even recall what he reported to the police on-scene, and thinks he may have mixed up the incident with the earlier one involving the female. In the original police report, the victim stated he was walking down Stuart Street, near the Radisson parking garage, when a 30 year-old white, male suspect called him "faggot' and punched him in the face, while stating "you deserve it homo". The suspect then*

> *demanded the victim's personal possessions. The victim gave him his watch, ruby and sapphire ring, one hundred dollars and then the suspect ran off. The victim told police that there were two other males there, but they did not participate in the assault.*
> …BPD case files, ID #5

The CDU files further indicate that the white, male victim did not wish to pursue the matter any further. He did not want other employees where he worked to know about the situation, despite the various broken bones and other major injuries received. The detectives were forced to inactivate the case.

The final incident involved a white victim, and also occurred in 2007:

> *A 36 year-old white, male manager at a local convenience store would not refund the full price of a return item because the 24 year-old female suspect had no receipt. The suspect became belligerent and called the manager a "fucking faggot" numerous times. The suspect felt threatened and phoned the police. The victim and the suspect gave their accounts to the police, who diffused the situation, and gave the female suspect a verbal trespass warning, telling her not to return to the store.*
> …BPD case files, ID # 91

The responding officers sent the original police report to the CDU for further investigation based on the language used. However, the detectives could not locate the suspect based on the name and date of birth she supplied, so they were again forced to request to inactivate the case.

In 2007 in front of a well-known restaurant and entertainment center in Boston, just as the bars were all closing the following incident occurred:

> *An adult, white female victim reported that she was in front of Jillian's bar with her adult, black male friend, when members of a different group of young adult, white males standing nearby made vulgar remarks to her. Her black male friend told them to stop because the victim was his girlfriend. The suspects called male the*

> *male victim a "nigger" and additional vulgar remarks were made to the female victim. She took out her cell phone to call 911. One male suspect told her not to take his photo. Another of the male suspects punched her in the face and grabbed her cell phone. All of the white male suspects entered a white taxi and drove away. The female victim did not wish to pursue matter with police any further, so detectives requested to inactivate case.*
>
> …BPD case files, ID # 34

A rather rare occurrence with a female and male as victims took place in 2007 and was reported to the CDU for further investigation to see if criminal charges were warranted.

> *Two white-Hispanic victims—a 43 year old male and 21 year old female were in their vehicle trying to enter a gas station and pull next to the pump. The suspect--a white male in his mid-forties--pulled up the wrong way and parked bumper to bumper with the victims' car, blocking their pump. After the suspect filled his tank, as he left, he stated "you fucking niggers" and hit the victims' front bumper with his car.*
>
> …BPD case files, ID#71

The victims reported the incident to the police, but did not have a license plate number or any further physical description of the individual or his car. The incident occurred in Roslindale. The police who took the report listed the incident as a "racial-religious" report. It was sent to the CDU for further investigation based on the language used and the property damage to the vehicle. The CDU detectives typed a memo to their Lieutenant with a request to inactivate the case based on the lack of evidence.

In the CDU files investigated, there was a wide range in the circumstances of the incidents and the amount of violence which occurred during the personal crimes. The incidents took various

forms such as physical conflicts, harassment, and threatening emails and phone calls. The following incident also occurred in the Brighton neighborhood, at a local hospital in 2008:

> *…A 38 year-old black-Hispanic male reports that a 41 year-old male suspect came to the hospital and left car to be parked at the valet. The victim said they stopped taking cars after 4pm and to park the vehicle himself. The suspect then asked the victim if he was working the previous day, and the victim responded "yes" and the suspect began yelling at him "you fucking immigrant you took my wallet; you fucking nigger I'll have you deported. The victim told him he did not take the wallet and suggested they go to security. The suspect filed a report and both parties left. The next day when the victim reported for work he saw the suspect's vehicle at the emergency entrance and when the suspect came out and saw him, the harassment and name calling continued.*
>
> …BPD case files, ID # 10

The police reported the incident as "investigate person" and sent to the CDU. The detectives at the unit requested to close the case because there were no further incidents between the two involved parties, and the victim did not wish to pursue the case. There is no mention of what actually happened to the suspect's wallet.

Gender of Victims:

Results for the gender of the victims are displayed in Table 5.7 below. Males were the victims in nearly 62 percent of the 279 incidents, and females were victims in just above 22 percent. Again, going back to the U.S. Census Bureau, for the city of Boston males account for just over 48 percent and females at nearly 52 percent of the cities' population. This is fairly consistent with the United States Census Report of the entire United States comprised of 49.3 percent males and 50.7 percent females, (wwwfactfinder.census.gov/servlet/ACSSAFFFacts?). While there are more women in Boston than men, according to the census, they account for less than half of the

bias-crime victims. Males appear to be overrepresented in the city population as victims. This is true of crimes generally. Men tend to be overrepresented as victims and offenders. In nearly 8 percent of the bias incidents, the victims were both male and female. For the category of unknown or not listed victim, they were nearly 19% of the total incidents. These would be the property crimes committed where there is no personal victimization.

TABLE 5.7

Victim Gender

	Frequency	Percent
Female	62	22.2
Male	144	51.6
Male and female victim	21	7.5
Unknown/not listed	52	18.6
Total	279	100.0

Due to the fact that males commit more crimes, and that these are often intra-group as well, the examples for victim gender are limited here. Most male on male crimes occur when one or both parties are intoxicated, a conflict over a female, or simply a confrontation on the street.

The following are two examples of some common bias-incidents involving males as victims:

> *An 18 year-old victim was hanging out on the street in the Lower End/West Roxbury area of Boston with friends. A 33 year-old black, male suspect came up from behind him and got in his face and said "this is a game I like to play called cracker pop, where I hit a white boy" and slapped him in the face. He was hit so hard, that the victim fell to the ground. He got up to defend himself, but his friends held him back, and the suspect walked off laughing.*
>
> …BPD case files, ID #16.

The detectives from the CDU obtained the case for further investigation, but when they contacted the victim, he did not wish to pursue the matter any further. The detectives requested to close the file.

> *In the Jamaica Plain neighborhood of Boston, a 31 year-old white, male victim had complained previously of his neighbor-a 57 year-old white, male—suspect banging, and generally making loud noises and cursing while taking out the trash. The victim reported that he is often awoken early in the morning to the loud noises. When he asked the suspect to stop, a verbal confrontation ensued in which the elder suspect threatened to kick his ass and called him a "fucking faggot'. There were numerous neighbor witnesses to the incident, and the victim feared for he and his and partner's safety, so he reported the incident to the police. Detectives from the CDU were assigned the case and brought it before the Clerk Magistrate for a probable cause hearing. The victim reported no further problems at the hearing, and the suspect said he didn't mean anything by it and had forgotten the incident. The victim requested charges held for one year to be dismissed, provided no further incidents occurred. The suspect apologized to the victim and his partner.*
>
> …BPD case files, ID # 96

The hearing before the Clerk Magistrate involved only the detective, not an ADA or other attorney. Due to the outcome of the probable cause hearing, the detective wrote a memorandum and requested to close the case.

Weapons used in the Incident

Results were also calculated for the type of weapons used in all 279 and any injuries received in all of the incidents. As Table 5.8 below illustrates, the use of a gun during a bias-motivated incident occurred only in just over 1 percent of the incidents. It is likely that the low numbers of gun usage that emerged in this study is because if a gun is used during a bias crime, and the

victim is murdered, that data would not be forwarded to the CDU. As mentioned earlier, a homicide, regardless of motive, is automatically sent to the Homicide Unit, though Boston does not have many bias-motivated homicides. Weapons such as sticks or clubs and rocks and bricks accounted for just over 3 percent of the bias incidents. A knife or other sharp object was utilized in slightly over 3 percent of bias crimes. The most often used identifiable weapon was the suspects' hands and feet at nearly 28%. These numbers seem obvious when one considers a "typical" bias-motive attack of one individual attacking another in a fight. The category of "other weapons" accounted for just over 17 percent of bias incidents. From the case file summaries, these weapons consisted of eggs thrown at a victim, a napkin holder, a phone, a beer bottle, teeth and a book as a few examples. Surprisingly, slightly over 43 percent of the incidents included no weapon or was listed as not applicable in the files. These cases consisted mostly of harassing phone calls or emails and property crimes. An unknown weapon was used in 3.2% of the cases. Through the content analysis of the files, it was clear that sometimes the police would list the instrument—such as a coffee pot---or they simply marked the box as "other" with no further explanation. Some further examples of other weapons used included teeth, keys, bottles and cans. These also could be property crimes where vandalism was committed at a location, or personal crimes where the victim was unable to report to the police what the weapon actually was. By reading through the case files, it is obvious in a very small number of cases, that the victim did not know what he or she was attacked with, so the police categorized them as Unknown. From the data collected, it appeared that very few of these incidents involved weapons that the offender brought to the altercation. This seems to be an indication of the spontaneous nature of most bias motivated crimes. Most of the incidents were not pre-planned, but occurred simply as a result of an opportunity.

TABLE 5.8

Weapons used during Incident

	Frequency	Percent
Gun	3	1.1
Knife	9	3.2
Stick/Club	4	1.4
Rocks/Bricks	8	2.9
Hands/Feet	77	27.6
Other weapon	48	17.2
None/Not applicable	121	43.4
Unknown weapon	9	3.2
Total	279	100.0

The incidents described first are characteristic of most of the incidents in which the physical confrontation transpires with fists and feet. This conflict took place in 2008:

> *At about 4 am, two young adult, white, male victims were walking down the street in Allston, and noticed a party going on and asked permission to enter, which they were granted. A short time later, they were asked to leave because one of the victims was openly gay. As they were leaving, they heard two young adult, white, males yell 'fags' from the balcony. The victims ignored the comment. The suspects, with no shirts on, came running out of the apartment to chase them down. The victims ran in different directions. While victim # 1 was making his escape, he found officers in the area and told them about the attack. Police followed him back to the scene, but when he was searching for his friend, he was attacked from behind and struck to the ground and the suspect stated "you fucking called the cops on us,".*
>
> …BPD case files, ID # 101

The police on-scene made a report and it was sent to the CDU for further screening. The detective took out a criminal complaint before the clerk magistrate. Probable cause was found for an indictment, and the detective requested to close the case, as it was scheduled for a court appearance for arraignment.

The following incident happened to a 43 year-old female victim in the Mid-Dorchester neighborhood of Boston:

> *The victim reported that a young adult, black female suspect passed her in the hallway of their apartment building and the female suspect called her "white trash" and grabbed her by the hair and threw her to the ground and kicked her about the head and body. The victim pulled fire alarm to stop the beating. The victim believed the attack could have occurred because she had asked this suspect to turn down her music in the past.*
>
> ….BPD case files, ID # 29

The detectives investigated the case, and due to past history between the neighbors and due to the language and violence perpetrated by the suspect. They took out a criminal complaint before the Clerk Magistrate, and the case was scheduled for a formal hearing in Dorchester court. The detective requested to close the case, as the case is expected to be heard in court, and no further incidents had occurred between the two neighbors.

Another incident that occurred in 2007 is as follows:

> *A 21 year-old black, male, victim was at Club Rumor, standing outside with his friends, when two young adult white male suspects walked by and called them "fags" and suspect one punched the victim in the face. Later that evening, the victim ran into the suspect in his apartment complex and was attacked again—beaten*

> *and kicked to the ground. The victim and suspect lived in the same apartment complex, so they knew one another, but due to the language and violence used by the suspect, the victim reported the incidents to the police.*
>
> …BPD case files, ID # 89

Detectives at the CDU were assigned the case and contacted the victim for another interview, but at that time, the victim reported that it was all a misunderstanding, and that he did not wish to pursue any criminal charges.

The next case includes an example of a gun that occurred in 2008 on Warren Street in Dorchester;

> *A 32 year-old black male victim was walking down the street, when two black males in their early 20's yelled "Fucking faggot I saw you with your sweet friends…move from here faggot,". The victim responded that he wanted no trouble, and the suspects pushed him against a wall, repeated the warning to move and one suspect pulled out a gun and pointed it a the victim. At this point, the traffic became heavy on the streets and suspects fled.*
>
> ….BPD case files, ID #86

The victim could not positively identify the suspects, and soon would no longer respond to detectives' attempts to contact him. They requested the case be inactivated with the possibility that further information may surface in the future.

Another incident involving a gun occurred in 2007. This incident easily could have completely eluded the CDU and been handled through the District police station as just an assault. But, because the officer writing the report included that there was language that may be indicative of a bias-motivated crime, it was sent to the CDU for screening.

> *A forty-year old Hispanic victim and 17 year-old black male began*

> *arguing, and the suspect called the victim a "faggot" and lifted his shirt to display a handgun. The detective repeatedly tried to contact the victim, without a response, so the case was closed. The suspect was arrested on assault charges and awaiting trial in Dorchester Court.*
>
> ...BPD case files, ID#70

This case is a brilliant example of how well the system in place in Boston can and should work. The district officers flagged the police report as a possible bias-motivated crime, and it was sent to the CDU. The detective was assigned to the case and was vigilant in attempting to contact the victim. In the end, the victim simply did not want to cooperate, and the detective was forced to close the case, therefore, there was no bias prosecution.

Injuries Sustained During the Incident:

The next set of results is displayed in Tables 5.9 include levels of injuries sustained during the bias-motivated incident. These ranged from broken bones to no visible injuries. Broken bones were reported in slightly over 1 percent of the incidents. Another serious form of bodily harm—possible internal injuries accounted for just under 3 percent of the incidents. The category of severe lacerations combined with other major injuries only accounted for 3.6 percent during the bias-crime. Other minor injuries occurred in almost 20 percent of the incidents. The category of no visible injuries accounted for the highest percentage of injuries sustained at nearly 29 percent. This is likely due to so many of the offenders' who failed to employ a weapon other than their own hands and feet, in a simple assault and battery. Due to the manner in which police interpret their incidents in split-second decisions, or if they are unclear how to complete the bias-crimes reports, the reports can often contain slight errors, those in nearly 26 percent of the incidents where there was nothing listed on the report. In slightly over 18 percent, the injuries sustained

were reported as not applicable, and this is probably due to property crimes or threats and harassment using inappropriate slurs.

TABLE 5.9

Injuries sustained during incident

	Frequency	Percent
Apparent Broken Bones	4	1.4
Possible Internal Injuries	8	2.9
Severe Lacerations	6	2.2
Other Major Injuries	4	1.4
Other Minor Injuries	54	19.4
None Visible	80	28.7
Not Listed	72	25.8
Total	228	81.7

[9]

The following two incidents reported to the CDU in 2008 appear standard behavior for no visible injuries reported:

> *An adult cab driver victim pulled into a Sunoco to fill car his with gas. An unknown suspect cut in line with his car, parking very close to the victim. When the victim entered the store to pay, the male suspect yelled at him "You don't belong here, go back to where you came from" and threw a blue liquid on his and another victim's cab. The suspect was identified through his license*

[9] The difference in numbers here are due to the fact that Property Crimes were taken out of the table because they included some cases that were Not Applicable (51 and 18.3% respectively).

> *plate number, and the victim reported the incident to the police.*
> …BPD case files, ID #4

The detectives at the CDU received the case and sent a letter to the suspect, requesting an interview regarding the incident. The suspect did contact the detective and scheduled an interview for which he failed to appear. After numerous attempts to contact the suspect, both by mail and telephone, the suspect refused further contact with the detective. The suspect was a New Hampshire resident, so the detective requested to inactivate the case.

A final incident that occurred in 2008, also contained no visible injuries:

> *Two white, young adult female victims reported that while driving her motor vehicle, a 52 year-old black male suspect repeatedly called the victims—specifically the driver of the vehicle "cracker" and "white bitch" as he drove behind them. The suspect then pulled up next to them, continued the racial slurs, then got behind them and repeated the behavior again. One of the victims phoned police with her cell phone to report the incident.*
> …BPD case files, ID # 26

Detectives at the CDU contacted and interviewed both parties involved. The suspect apologized to the victim for his behavior, and the victim was satisfied with the apology and had no interest in pursuing criminal charges. Detectives requested to close the case, with the note that the suspect's recollection of events was different from the victims'.

The two cases with serious injuries occurred in 2008, and briefly described below:

> *A 22 year-old white male victim was walking down the street in South Boston/Lower Roxbury area of Boston, when a 24 year-old black male took the wallet out of the victim's back pocket. When the victim turned around to look at him, the suspect called him a "fucking faggot" and knocked him to the ground and beat him severely.* …BPD case files, ID # 70

The victim eventually got up and was able to phone for police. He returned one phone call to the CDU detectives, but they were not able to contact him any further. Detectives requested to inactivate the case. The file did contain the 911 call and Polaroid photos of the damage done to the victim in the brutal beating.

> *A 21 year-old white male, victim reported he was walking down the street, when he was attacked by 5-6 males, of an unknown race, in their 20's who said "fuck you up white mother fucker" and took the victim's wallet, credit cards and cell phone while he was being attacked on the ground by fists and feet.*
> …BPD case files, ID # 94

District police forwarded the report to the CDU detectives due to the language used during the attack. Detectives repeatedly tried to contact the victim, but he only returned one phone, and no further information was available in the file. It is more than likely, that the suspects could not be identified, but even prior to that that the victim did not wish to further involve the police.

Most of the injuries listed in the files, 29 percent, described a situation in which there were no visible injuries to the victim. These were harassment cases, or encounters between neighbors using racial slurs, or individuals who used derogatory terms when speaking with the victim.

General and Specific Bias-Motivation:

Frequencies and percentages were also calculated for general and specific bias motivation. According to the results in the Table 5.10, race/ethnicity had the overwhelmingly largest frequency at nearly 58 percent. Sexual orientation followed with 29 percent, and religious bias was just over 9 percent. Cases in which there was found to be more than one bias motivation,

accounted for a much smaller number at almost 4 percent. While the categories of disability and gender are included in the cities' definition of a bias-motivated crime, none was reported for either category to the CDU for the time under investigation.

TABLE 5.10

General Bias-Motivation

	Frequency	Percent
Race/ Ethnicity	161	57.7
Religious	26	9.3
Sexual Orientation	81	29.0
Disability	0	0
Gender	0	0
Multiple Bias	11	3.9
Total	279	100.0

The results from this research are consistent with reports from the Federal Bureau of Investigation as to hate crimes nationally. The following table shows the general bias motivation numbers for all reporting agencies in America for race, religion and sexual orientation, compared to those reported for the same year in Boston, (http://www2.fbi.gov/ucr/hc2008/hcsummary.html). While the national numbers are obviously much higher due to the discreet population of Boston for this study, the tendency is clear. Below is a comparison table of percentages for race, religion and sexual orientation.[10]

[10] The F.B.I. disaggregate the category of race and ethnicity. Since this research included them together, the author added the percentages from the UCR data for these categories added the percentages from the UCR data for these categories. Race and Ethnicity were added together and the remaining 1 percent was disability bias.

Since this study only include half the year for 2008, those were the only incidents that could be compared to the UCR numbers. The percentages for the F.B.I. data remained relatively consistent for the years 2007-2008, as shown in Table 5.11.

Table 5.11 **F.B.I. Bias-Motivated Crimes**

	2007 percentages	2008 percentages
Race/Ethnicity	64.0%	62.8%
Religion	18.4%	19.5%
Sexual Orientation	16.6%	16.7%

http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2007
http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2008
[11]Race and ethnicity were added together for both years, and the 1 percent refer to disability in 2007 and 2008.

The researcher then took an average of these F.B.I. statistics to compare to the current study of December 2007-June 2008 shown in Table 5.12 below.

Table 5.12 **F.B.I. National Average Compared to Current Study**

	F.B.I. data	Current Research Data
Race/Ethnicity	63.4%	58.2%
Religion	19 %	8.7%
Sexual Orientation	16.7%	28.4%

[12]

As these results show, Boston is about 5 percent lower than the national average for race/ethnicity, and about 10 percent for religious bias. But, for sexual orientation bias, the CDU data indicates that Boston exceeds the F.B.I. national average by nearly 12 percent. The category of religious bias-motivation for the entire nation is two times of what Boston reports. The reasons for this may vary, beyond the population

[12] The missing 4.7 percent from the current research is multiple bias.

differences. It could be due to geographic location, politics, education and economics, or to the fact that Boston was the first in the nation to institute a bias-incident unit to deal with specifically with these sorts of crimes. It is also likely due to the 2003 Massachusetts Gay Marriage Decision. Under the Massachusetts Constitution, gay marriages now equally applies to the "same laws and procedures that govern traditional marriage,"(MGL c. 207). If this is indeed the reason for a percentage of the anti-gay bias crimes, it could be straight members of the community lashing out against individuals based on their anger and/or frustration with the change of a conventional more—the sanctity of a marriage between a man and a woman. Another possibility is that the publicity given to "Don't ask, don't tell" has heightened the threat to homophobic individuals who are then more likely to commit a hate crime. Levin and Rabrenovic (2004) further state, "Popular culture generates basic ideas about what our society is supposedly like. It provides us with a source of information—even if it is misinformation- about social reality,(Levin and Rabrenovic, 2004: 115). So, when one links the mass media "reality" with current events in the news, or changes in policies regarding homosexuals, an individual may be more likely to get wound up and attack someone they perceive as belonging to that group at any opportunity.

From the CDU results, nearly 58 percent were motivated by race or ethnicity. The Table 5.10 does not indicate any Anti-White bias incidents, but that is only because there were no Anti-White prosecutions that occurred in 2007 or 2008. There were 17 incidents of this type of bias in

2008 and 21 incidents reported in 2007, but none of them were prosecuted. In 2007, the majority of the Anti-White incidents reported to the police were vandalism or property crimes that occurred in neighborhoods with mostly African-American or Hispanic residents. But, again, due to gentrification in Dorchester, Roxbury, East Boston and Hyde Park areas of Boston, these Anti-White crimes do occur. Of the 2007 cases, at least seven were labeled on the police reports as "Assault and Battery", "Threats to do bodily harm", and "Assault and Batter with a Dangerous weapon", in addition to the bias-motive. Once such example is described below:

> *The victim, a 32 year-old white, male Boston firefighter was getting something to eat at restaurant on the way to work, when 3-4 Hispanic males in their 20's yelled at him when he was getting into his car " we don't want any gringos here, get the fuck outta here,". To which the victim replied "fuck you I work here, I'm a firefighter". The group continued to exchange "fuck you's" again, and the victim drove to his station, just down the street. As he backed into his parking spot, the suspect- males were coming up behind him. He got out of the car, as the males approached him aggressively, and they began to exchange blows. One of the Hispanic males whistled prior to the exchange, and more men approached and jumped into the fight. The victim was on the ground covering his head from the blows when he felt something hot. He thought he had been stabbed, so he ran to the firehouse ringing the bell and banging on the door. He was let in by another firefighter, and he waited for paramedics to arrive. The victim reported that he doesn't believe it was racial or that he was targeted. Detectives canvassed the area but could find no witnesses. Surveillance tape from the restaurant was shown to the victim, but he did not recognize any suspects. The victim did pick out two suspects from a photo lineup. The FBI was assigned to the case per the U.S. Attorney General's Office. The victim was transferred to another Engine Company in the South End area of Boston. Detectives contacted the victim to see if he would like to do a ride along to identify the suspects, to which he agreed. He never went on the ride-along, and after numerous attempts, the detectives filed a memorandum in the file in 2009 to request for inactive status as the victim was not responding to further calls to do the ride along. Although he said he was interested in pursuing the incident, he has not attempted to contact investigators.*
>
> …..BPD case files, ID# 17.

Sexual Orientation was the category recognized as containing the next highest percentage at 30.2 percent reported to the CDU. Within the category of sexual orientation, the unit further separated this into anti-gay and anti-lesbian. As with race, there did occur anti-lesbian incidents that were reported to the unit, but none were prosecuted within this research time frame. The following anti-gay incident took place in the neighborhood of Charlestown, adjacent to the North End of Boston.

> *The 56 year-old white victim states he and his partner were walking home from dinner in the North End when they walked by the park on Main Street. At this point, a group of 15-20 youth between the ages of 12 and 17, were hanging out. When the victims were about 8 feet past the suspects, one male suspect shouted "fag" at him. The victim walked back to group to find out why they said that. One of the suspects came from the back of the large group of youth and began dancing around like a boxer and stated "I'll take him on" and punched the victim square in the face. The victim had his glasses on and fell to the ground, at which point the suspects fled the scene.*
>
> ….CDU case files, ID #37

Through detectives' interview with the victim, it was revealed that an elderly woman living in the area came out and asked the victim if he was "ok", and she further reported, "These kids hang out on this corner all the time and hassle people,". The police found surveillance tape of the incident, but the suspect could not be positively identified by the victim. The detectives requested to inactivate the case, in the event that the suspects could be identified in the future.

In the case of a religious incident in 2008 in a mid-Dorchester neighborhood, an unidentified resident

…reports finding a swastika and devils star

> *drawn in marker on the apartment elevator wall. Detectives canvassed the building, interviewing various residents, but no suspects were identified and no witnesses to the vandalism could be located.*
> ….BPD case files, ID#7

The detective requested the case be labeled as inactive, with the understanding that if it would happen again, or if someone came forward with some information, the case could be further investigated.

The last two categories for general bias motivation, occurred at the same frequency and percentage—1 incident and 1.9 percent of that group were identified as a religious incident and a multiple-bias. The multiple bias was listed as anti-black and anti-Semitic. In the incident report, not much was recorded:

> *In 2008, a 39 year-old black male living in the Hyde Park neighborhood of the city, reports someone drew a swastika in the snow at the back of the parking lot of his residence.*
> …BPD case files, ID # 31

The detailed notes in the file at the CDU indicated that the detective checked for surveillance footage to no avail. The detective repeatedly tried to contact the reporting person, by phone and registered letters, all of which were included in the files. The detective requested to inactivate the case because the man who reported the incident never responded to the detectives numerous attempts to contact him for further information, and no suspect was identified.

<u>Specific Bias Motivation:</u>

The incidents from the CDU were disaggregated in order to further identify frequencies and percentages of specific bias-motivated incidents, as shown in Table 5.13. Of the 279 total cases,

slightly over 28 percent were classified as Anti-Black. The second highest percentage consisted of Anti-Gay bias incidents with just over 25 percent. The third highest percentage was for Anti-white bias incidents as just about 14 percent. Next highest was the Anti-Semitic category of virtually 8 percent. The rest of the bias incidents fell far behind the others at nearly 6 percent for Anti-Hispanic incidents reported, followed by almost 3 percent of Anti-Arab incidents. Multiple-bias incidents occurred at just over 5 percent, and the Anti-mental and Anti-Physical bias were both at 0 percent. Others resulted in nearly 4 percent; these were the incidents that the police were initial unable to categorize the type of bias.

TABLE 5.13

Specific Bias Motivation

	Frequency	Percent
Anti-Black	79	28.3
Anti-White	38	13.6
Anti-Asian	11	3.9
Anti-Hispanic	16	5.7
Anti-Arab	8	2.9
Anti-Semitic	22	7.9
Anti-Islamic	3	1.1
Anti-Gay	70	25.1
Anti-Lesbian	7	2.5
Multiple Bias	15	5.4
Anti-Mental	0	0
Anti-Physical	0	0
Other	10	3.6
Total	279	100.0

For the purposes of comparison with the F.B.I. data again, the same procedure was used in an attempt to compare Boston's specific bias motivated crimes with the national average in the tables listed below.[13]

TABLE 5.14

Specific Bias Offenses Reported to the F.B.I.

Specific Bias:		
Race/Ethnicity Bias	**2007**	**2008**
Anti-Black	69.3%	72.6%
Anti-White	18.4%	17.3%
Religious Bias		
Anti-Jewish	68.4%	65.7%
Sexual Orientation Bias		
Anti-gay (male)	59.2%	58.6%
Anti-lesbian (female)	12.6%	12.0%

[14]The numbers do not add up to 100%, because only select categories were utilized in this table for comparison.

(male) incidents is about half that of the national average, and the Anti-Lesbian (female) national average is nearly 5 times higher than the 2.5 percent in Boston. [15]

[13] The F.B.I. specifically state that their data do not total 100 percent because a very small percentage of the crimes were homicides and rapes.

[15] The below data is also used for comparison purposes only, and does not equal 100% as some categories for specific bias were not utilized in the table below.

TABLE 5.15

Boston: Specific bias type:

	Boston Data
Anti-Black	30.4%
Anti-White	12.7%
Anti-Jewish	7.4%
Anti-gay(male)	25.4%
Anti-lesbian (female)	2.3%

Of the 91 Anti-Black incidents reported to the CDU, incidents ranged from verbal harassment to assault and battery. Below is an example of a 2007 case that was not prosecuted:

> *The victim, a 25 year-old black male and 3 friends were walking from a friend's house to a local bar, in the Dorchester neighborhood of Boston. A group of white male and female teenagers also walked by and as they did, one of the youth males said "look at this nigger here"…the victim stopped and said "what did you say to me?". The suspect walked up to him, while another one kicked him from behind. The victim went down and the suspect kicked and hit him in the face. The victim chipped tooth a tooth and sustained scrapes on his forehead. The black male's female friend told the suspects to stop, while his other friends phoned police. As the officers arrived on scene, one of the white male suspects was apprehended. The male victim positively identified him. Eventually, the detective requests to close the case, as numerous phone calls to the victim went unreturned and certified letter elicited no response from him.*
>
> ….BPD case files, ID #32

In the Charlestown neighborhood of Boston in 2007, the following incident transpired in a neighborhood that has a well-known history of racial tensions.

> *At 3:38pm, an 8 year-old Hispanic boy was being driven home by his 43 year-old god- father. A 46 year-old male was trying to cross the street, but when the car did not stop for him, the suspect yelled "nigger" at them and the male suspect pulled down his pants, grabbed his penis and said "suck this nigga".*

….BPD case files, ID #76

The second highest specific-bias incident percentage was 25 percent for the Anti-Gay category. An example of the case from 2007, which occurred in the Fenway area of Boston is described below:

> *A 29 year-old East Indian victim and his friend were walking in Fenway when they were attacked by a group of 8-10 black males between the ages of 18-22. One of the suspects took the wallet out of the victim's pocket and punched him in the face asking "is that your boyfriend?". Further sexually oriented taunts were made and the group of suspects fled. The victim phoned police and the police broadcast a description of the suspects. An officer on paid detail in area detained 8 males running down street in area of the crime. The victim could not positively identify the suspects, so the detective requested to inactivate the case.*
>
> ….BPD case files, ID # 159

One final example of an Anti-Gay incident took place on Huntington Avenue in Boston, not far from Northeastern University and the previous Fenway incident:

> *A 36 year-old white male and a 45 year-old Hispanic male were walking down the street when the first male victim began to talk to a an unknown female. At this time, he was punched in the face by a 27 year-old while male and called "fag". The Hispanic male victim tried to come to his aid, but he was also assaulted, and the suspect fled. The victims flagged down an officer driving down the street and gave him the suspect information. There was no video surveillance and the white male victim admitted to the police that he does not want "things to come out" due to his banking position*
>
> …BPD case files, ID #83

These results clearly show that for the most part, bias-motivated incidents in the city of Boston are personal attacks, committed by white, male adults against other white or black adult males. The general motivation is either race/ethnicity of the victim, or their perceived sexual orientation. The specific motivation is highest against black victims and gay males. Most of the attacks are committed with fists and feet, or some innocuous weapon, as the victims' injuries were either not visible after the attack, or resulted in minor injuries, such as scratches, scrapes, black eyes, or other bodily bruising.

The next chapter, 6, reports the results for the cases that were prosecuted.

CHAPTER 6 RESULTS:

Suffolk County District Attorney's Office:

The first set of results was obtained in order to discover any differences between the prosecuted and non prosecuted cases. Then, the interviews with the Assistant District Attorneys are presented to show how they socially construct cases, and to offer an explanation for the outcome of the cases selected to be prosecuted.

Offender Race and Ethnicity

Table 6.1 lists the results for the race/ethnicity of the offender, prosecuted and not prosecuted cases. As shown, white and black offenders were prosecuted more than any other groups. The category of Black and White offenders indicates there were one Black offender and one White offender. Due to small cell frequencies, the race/ethnicity categories were disaggregated into only White and Black offenders. Table 6.2 suggests that white offenders were significantly more likely to be charged than their black counter parts.

Table 6.1

Race/Ethnicity of Offender According to Prosecutions

Prosecuted or Not	OFFENDER RACE/ETHNICITY								Total
	WHITE	BLACK	HISPANIC	ASIAN	MIDDLE EASTERN	BLACK AND WHITE	WHITE AND HISPANIC	UNKNOWN	
Prosecuted	26	1	1	1	0	5	0	0	34
Not Prosecuted	117	63	3	5	3	2	2	59	254
Total	143	64	4	6	3	7	2	59	288

Table 6.2 Race/Ethnicity of Offender:

Offenders Prosecuted by Race/Ethnicity

Prosecuted or Not	OFFENDER RACE		Total
	WHITE	BLACK	
Not Prosecuted	108	59	167
Prosecuted	22	1	23
Total	130	60	190

*Chi-square 10.76, df=1, p<.05

Offender Age

Table 6.3 compares the incidents from the CDU that were prosecuted and not prosecuted, this table indicates that very few juveniles were either arrested or charged. Specifically, only 8.3 percent of all juveniles were prosecuted. When all the categories of offenders are analyzed, there appears to be a significant difference. So, the tables were collapsed into simply Juvenile and Adult. Table 6.2 presents an analysis of prosecution by collapsed aged categories, versus all adults. As shown below, juveniles were no more or less likely than adults to be charged.

Table 6.3 Offender Age

Cases Prosecuted or Not According to Offender Age

Prosecuted or Not	Offender Age							
	JUVENILE	YOUNG ADULT	OLDER ADULT	JUVENILE AND YOUNG ADULT	JUVENILE AND ADULT	YOUNG ADULT AND ADULT	UNKNOWN	Total
Prosecuted	2	14	8	1	7	2	0	34
Not Prosecuted	22	54	96	10	2	3	67	254
Total	24	68	104	11	9	5	67	288

Table 6.4
Prosecutions According to Offender Age

Prosecuted or Not	Offender Age		Total
	JUVENILE	ADULT	
Prosecuted	2	32	34
Not Prosecuted	22	165	187
Total	24	197	221

*Chi-square 1.02, df=1, p>.05

Weapons

Table 6.5 compares the weapons used by offenders who are and are not charged. [16] As indicated, external weapons were absent in a large number of both prosecuted and non prosecuted incidents. Most offenders used their hands and feet.

Table 6.5 Weapons Used

Specific Weapon Type

Prosecuted or Not	WEAPON								Total
	GUN	KNIFE	STICK/ CLUB	ROCKS/ BRICKS	HANDS/ FEET	OTHER	NONE	UNKNOWN	
Prosecuted	1	1	0	1	25	0	6	0	34
Not Prosecuted	2	9	4	7	60	42	113	17	254
Total	3	10	4	8	85	42	119	17	288

Table 6.6 Weapons Used
Hands and Feet Versus Other External Weapons

Prosecuted or Not	WEAPONS		Total
	ALL OTHER EXTERNAL	HANDS AND FEET	
Prosecuted	3	25	28
Not Prosecuted	64	60	124
Total	67	85	152

*Chi-square 15.50, df=1, p<.05

[16] The category "other" consists of anything from keys, coffee pots, to snowballs.

Table 6.7 Weapons

Hands and Feet Versus All Other Weapons, Matched by Bias Motivation

	WEAPONS		
	EXTERNAL WEAPONS	HANDS AND FEET	Total
Prosecuted	3	25	28
Not Prosecuted	7	12	19
Total	10	37	47

*Chi square 4.61, df=1, p<.05 (.032)

Table 6.6 contains the prosecution data of weapons-hands and feet versus an external weapon. Defendants were significantly more likely to be charged when they used their hands and feet during an attack. Ironically, prosecutors were more reluctant to charge when an external weapon was present. However, it may be the added difficulty of identifying and locating the weapon that is responsible for attracting prosecutors to cases where they used hands and feet to attack. Or, it could be that when a bias motivated attack or fight occurs, it is in a more public setting, so either victims or witnesses can phone police immediately. Police would take photographs showing the injuries to the victim, which then could be used as evidence at trial. With other external weapons, the injuries may not be as obvious, or it could occur in a setting without witnesses. As shown in Table 6.7, differences in bias motivation did not explain the prosecutors' preference for offenders who used an up close and personal method of attack. This significant difference in weapon use was maintained even when bias motivation was controlled by matching.

Injuries to Victims

Table 6.8 displays the results for specific injuries to the victim in all cases. Results indicate that the majority of prosecuted hate crimes involved a victim who was not injured physically. indicate there was a very significant difference for prosecuted cases, according to visible or not visible injuries. Therefore, the variables were collapsed into “visible” and “not visible” and results still indicate a significant difference, shown in Table 6.9. In bias-motivated cases, those victims without visible injuries were significantly more likely to be prosecuted. Again, in order to determine if the type of injury was significant when matched by specific bias motivation, variables were collapsed and analyzed, holding constant specific motivation.

In bias-motivated cases, those without visible were significantly more likely to be prosecuted. Again, in order to determine if the type of injury was significant when matched by specific bias motivation, variables were collapsed and analyzed according to specific motivation. Table 6.10 displays the results for visible and not visible injuries to the victim of a bias motivated case, matched by bias motivation. Results did not indicate a significant difference, suggesting that the ostensible preference of prosecutors for uninjured victims of hate attacks was actually a result of differences in bias motivation, not injury.

Table 6.8- Specific Victim Injuries

Specific Victim Injuries-All Cases

Prosecuted or Not	INJURY								Total
	APPARENT BROKEN BONES	POSSIBLE INTERNAL INJURIES	SEVERE LACERATIONS	OTHER MAJOR INJURIES	OTHER MINOR INJURIES	NONE VISIBLE	NOT LISTED	UNKNOWN	
Prosecuted	5	0	1	0	8	20	0	0	34
Not Prosecuted	4	1	5	2	29	177	12	24	254
Total	9	1	6	2	37	197	12	24	288

Table 6.9 Injuries to Victim

Visible and Non Visible Injuries

Prosecuted or Not	VICTIM INJURIES		Total
	VISIBLE	NOT VISIBLE	
Prosecuted	6	28	34
Not Prosecuted	11	207	218
Total	17	235	252

*Chi-square 7.42, df=1, p<.05

Table 6.10 Specific Injury to Victim-Matched by Bias Motivation

Victim Injury Matched by Bias Motivation

Prosecuted or Not	VICTIM INJURIES		
	VISIBLE INJURY	NOT VISIBLE INJURY	Total
Prosecuted	6	28	34
Not Prosecuted	2	30	32
Total	8	58	66

*Chi-square 2.01, df=1, p>.05

Types of Cases Prosecuted

As the results in Chapter 5 showed, more than 82 percent of the incidents were personal crimes and only 18 percent were property. So, it is no surprise that more personal crimes were prosecuted. Of the 34 cases that did go the District Attorney's Office, 33 were personal crimes and 1 property crime. Possible explanations for this result will be further discussed in the conclusion section.

Charges and Outcomes:

The next results include the number of prosecuted cases based on the charges. As explained earlier, there are basically two sections of the Massachusetts General Laws that can be used for bias motivated crimes: Section 265, Section 37 and 39. Of the 34 cases prosecuted, 22 of the cases were charged under Section 37 (a), which is the misdemeanor charge, and 12 cases were

charged under (b), which is a felony charge with bodily injury. A standard charge under Section 37 (a), as a misdemeanor would be punished by a fine of one thousand dollars or less and incarcerated for less than a year, or both. While there were only 12 of the 34 cases charged that were done so under Section (b) , under this section, the punishment is much higher, "..if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both," (GLM Chapter 265, Section 37). None of the cases in this study charged were done so under the General Laws of Massachusetts 265, Section 39. Of the total 288 cases researched for this study, 254 cases were not prosecuted.

Table 6.11- Dispositions of Bias Motivated Cases

Prosecuted	DISPOSITION					
	PLEA	DISMISSED	NOLLE PROSEQUI	JURY TRIAL, NG	DEFAULT	UNKNOWN
Total	12	13	4	2	1	2

Results for are the 34 prosecuted cases: 12 cases were pled out; 13cases were dismissed; 4 Nolle Prosequi; 2 Not Guilty by jury trial; and 1 is in default and 2 cases had no disposition at the time of this writing. In criminal cases, a Nolle Prosequi may be entered at any time before the finding of the grand jury, by the attorney general, and generally after a true bill has been found. A Nolle Prosequi may be entered as to one or several defendants. The effect of a Nolle Prosequi, is that it does not operate as an acquittal; for he may be afterwards re-indicted, and even upon the same indictment, fresh process may be awarded. (http://www.lectlaw.com/def2/n061.htm). The most common outcome for the 34 cases charged under GLM 265, Section 37, were the cases that were dismissed. The next most prevalent outcome was for those that were pled-out. The cases listed

as “Nolle Prosequi”, or cases where the ADA dropped the charges because he or she did not have enough facts of the case to fully prosecute. No reason was given as to why the cases were found not guilty. The default case is that which the defendants do not show up for the court date. A bench warrant can be issued by the judge, but as told by the ADA interviews, there are not enough resources to send law enforcement officials out to look for the defendant. The following section is the results from the interviews conducted with the Assistant District Attorneys to discover how they socially construct the prosecution of a bias-motivated case.

Assistant District Attorney Interviews

The information presented in this results section of the research refers to the interviews with the Assistant District Attorney’s (ADA). The results are largely qualitative because this type of data more completely captures the true nature of how the cases are socially constructed. While it is not the prosecutor who initially seeks a criminal complaint, they still play a paramount role in how the case is constructed.

For the years 2007-08, the number of cases sent to District Attorney’s Office for bias-motive prosecution was 34, and the same number of cases from the CDU that were not prosecuted, but were matched according to bias-motivation, for a total of 68 cases were utilized in this research.

Demographics of the Assistant District Attorneys:

Of the fifteen Assistant District Attorneys interviewed, there were only two men who had worked on any of the bias cases still employed by the District Attorney’s Office. The ages of the Assistant District Attorney’s ranged from 28-44 years old, with an average 32.7 years of age.

The race or ethnicity of the ADA's was collected and eleven identified themselves as Caucasian, three as African-American, one identified as an Italian. As for prosecutorial experience, the mean was four years for all those interviewed, but it did range from two and one-half years to fifteen years.

For experience as bias-motivated prosecutors, due to the lack of vertical prosecution District Court in Suffolk County, Massachusetts, the total experience for these ADA's in ranged from one to six years, with the average being two and one-half years. As revealed in the interviews, some of the ADA's only stood up in court for a hearing one day and the case was passed to another ADA. As to any decisions that needed to be made in court that day, the "fill-in" prosecutor simply followed the instructions of the ADA assigned to the case. They did not delve into the case or make suggestions for how it should be prosecuted. As the ADAs' stated during the interview process, they could get one bias case per year, or have years go by without being assigned such a case.

Prosecuting Bias Motivated Cases

The first step in the process of obtaining the interviews was to speak with the Chief of the District Court and Community Prosecutions. She was integral in providing access to the Assistant District Attorney's, information of how the prosecution of bias-motivated crimes occur, and a number of detailed lists of the charges and outcomes for these crimes. The Chief's interview was the first conducted in order to set the foundation for the inner workings of the office, and to obtain contact information for the additional ADA interviews.

Prosecutorial Training for Bias-Motivated Cases

The Chief of Community Prosecutions has worked as a prosecutor for ten years, and been involved with bias-motivated cases for three years, but has only fully prosecuted one in Norfolk, County, before coming to Suffolk County. Two of the many responsibilities for the Chief are: training and case assignments. In the personal interview, she specified the type of training that she organized for the Assistant District Attorney's under her supervision. She, herself is very invested with gay and lesbian rights' groups. She called upon the Head of the Massachusetts Transgendered Coalition to speak with her ADA's about transgender cases. The type of issues discussed included sensitivity training---knowing how to address such individuals, to be respectful and why it is important that their rights' be respected. She also had Victim Witness Advocates from the court system help the ADA's understand the importance of treating victims with respect. Further, they were advised about their expected role---keeping in contact with the victim, being made aware of any address changes, and specific sensitivity to their issues. The Chief said that the training is mandatory for all new-hires and covers a 2 week period. During the training session, the Chief concentrates her section of the training on bias-motivated cases: how to investigate these types of cases, and what is necessary to obtain a conviction.

Though the Chief held these trainings, the ADA's answered the same question with a variety of responses. Five of the 15 ADA's replied that they had no training specifically for bias-motivated criminal cases. Another one indicated that she couldn't remember getting any training, though she had been in the office for over four and one-half years. Another ADA who had also been in the office the same amount of time, said that she usually discussed the cases among her peers in

the office and "bounced ideas off of them", (Personal Interview 6/24/10). Five of the ADA's interviewed replied that they had received special training days, following the initial two week training. These were usually one day sessions that concentrated on one topic or another with respect to bias-crimes. The 3 remaining interviewees described how they relied upon their life experiences and their prosecutorial experiences to guide them through the process. One of the three indicated that she further relied upon her experiences as a minority herself when constructing the case for prosecution. She carefully read the facts of the case, considered the location of the offense, studied the background of the defendant, and interviewed the victims involved in the case, to understand the effect the crime had upon them.

Bias-motivated cases require an added element, beyond what other criminal cases entail. Two questions asked of the ADA's pertain to this concept: What role does motivation play in determining the charges or an enhancement; and what is necessary to obtain a conviction in a bias-motivated case. Results from these questions, will be addressed first.

Role of Motivation

Typically in criminal cases, the prosecution needs to prove: that the crime occurred, that the defendant was responsible for the crime, and that the defendant intended to commit the crime. In most criminal cases, prosecutors do not need to prove motivation for the crime; it is not a necessary element. Prosecutors frequently do their best to provide a motive for the jury, to provide the link between the victim, offender, and that the crime happened. But, in bias-motivated cases, the motive of the crime is an incredibly important component of the construction of the case.

During another interview, one ADA said that “motive is what you always try to figure out---it’s the natural inclination of the jury to ask why?” (Personal interview 4/16/10). Three other ADA’s referred me to the jury instructions as to what role motive plays in the prosecution of cases. One interviewee said that it plays a major role, because without the motivation, you must rely upon language and behavior during the crime. As a prosecutor, “you try to do background interviews, check police reports, any earlier indication of bias…but it’s all about the resources,”(Personal Interview, 3/12/10). That is when ADA’s rely upon the CDU---to find witnesses, to fully investigate the case, and provide further details.

Another ADA, who had only prosecuted one bias-motivated case, suggested that the role of motivation had an impact during sentencing. She did not mean in terms of mitigating or aggravating circumstances---as mentioned the punishment for the defendant is written into the statutes, and cannot be changed by the judge or jury. But this ADA said that she may recommend “the defendant find an organization that deals with homosexuals to do some community service,” (Personal Interview 3/30/10). In fact, one other prosecutor said she scoured the probation department’s binder of programs, but could find nothing appropriate for her defendant. A further fear expressed with respect to trying to expose defendants to groups to which they perceived the victim to belong, was that it would maintain or inflame the bias behavior. It’s possible that the defendant would approach the exposure to the group as his punishment and come away with more negative feelings, and possibly more violent behavior against that group, (Personal interview (6/13/10). All of the ADA’s agreed that with these types of crimes it is very difficult to obtain a conviction, but one interviewee who had prosecuted at least 5 cases said, “…you are

most successful by the sheer conduct itself…you use the action as a function of the motive," (Personal interview, 6/24/10). If the prosecutor is able to show the judge or jury that the bias motivated behavior, whether physical attack or fight, was the catalyst for the criminal behavior, then the case is simpler to construct. By the offender's conduct, he or she is providing the prosecutor specifically what is necessary to obtain the conviction—the criminal behavior itself illustrates for the court the intent and motive. These would be the types of case referred to before, in which there is overt physical violence and clearly recognizable derogatory language. As reported in the CDU results, these are not always the facts of the case, which is likely to be one reason that so many more incidents are reported to the CDU than are actually prosecuted.

One of the ADA's who had not in fact prosecuted a full case, but had handled two cases in court at different points in time for another prosecutor, said that to prosecute bias-motivated crimes, "…you must have an inditia of bias-based motives that you can combine with the additional elements and the incident," (Personal interview 7/6/10).

During a different interview, a prosecutor who had worked in Suffolk County also agreed that obtaining a successful prosecution, "…is easier when you have other crimes with this crime specifically. If I had to go to trial, I would have tried to get them to emphasize an assessment of them [the defendants]…tone of voice, actions individually, and prior bad acts to meet the burden of proof," (Personal interview, 6/14/10). She further explained that in certain cases, the prior bad acts may be brought into the case during the trial in order to prove a pattern of behavior, but that depends on the discretion of the judge. Another ADA with 9 years of prosecutorial experience, who had prosecuted 6 bias-motivated cases, said that he looks at the past history of the

defendant—did this person have a history of bias attacks? This is when the history and the social context of the incident becomes important as well. He further stated that obviously the cases are easier to prosecute when videotapes are retrieved, or when you have a number of credible witnesses. The video surveillance can be most useful when the video frames can be stopped and photographs made and the jury can see the eyes and the body language of the defendant during the crime, (7/20/10). While this may be a rare occurrence to obtain such evidence that is a second reason these types of crimes are not prosecuted more frequently. That is when the ADA's rely upon the CDU---to locate witnesses, conduct interviews and to fully investigate the case and provide further details. Every ADA agreed that they did not have the time or resources to do all the investigation that is necessary in every case—due to case overload. They do the best that they can, but are grateful to have the CDU to assist them, and use their resources to investigate the facts of the case, when prosecutors are unable to do so.

One ADA who had prosecuted 5 bias-motivated cases in 15 years as a prosecutor said the motivation is:

> "…self-evident once you determine the facts of the case. [It is] not like Boston in 1974…the media exposes kids to other races and cultures—like rap music. I don't think it's common for juveniles anymore, or for anyone under 50…these crimes just aren't happening with the frequency they used to. This is probably, along with social change, [and] the CDU is changing [the social environment] based on the work they are doing,".
>
> (Personal interview, 7/1/10)

A different ADA said that while it is difficult to prove motivation in some bias cases, she draws attention to the victim, so she can demonstrate to the jury that it could have been any one of them who was different from the defendant. In the 2-3 cases she had prosecuted, she said she

truly strives to show the jury that the victim was chosen for their perceived membership in a group—that these are not random victims on the street. For example, she tries to let the jury know that while the attack may be been random in the sense that the defendant and victim did not know each other, and any member of the perceived group would have been a suitable victim, these (victims) are not random people—they are people just like the rest of us. Only the defendant(s) in these cases do not view the victim as a person, but rather as an amalgamation of what the defendant is bias toward. An example of one of her cases is described below:

> *Two young adult victims, one white and one black, were walking home after a night out, when a 23 year-old suspect passed them and said, "You look like a kike, that must be your nigger," and attacked the victims physically. He then got into his BMW and drove off. Victim one took out his cell phone and called the police, while the other victim got the license plate number of the vehicle, when the suspect put the car in reverse and backed up and tried to hit them. He then through a coffee pot at them and drove off.*
> …ID #108-59

Police came and took a report, which was forwarded to the CDU for further investigation. A criminal complaint was sought by the detective and the ADA was assigned the case. The defendant was charged with two counts of bias-crimes, under Chapter 265, Section 37 with injury. The case went through numerous hearings, with at least 4 different ADA's handling the case, before the current ADA dealt with the outcome. None of the witnesses showed in court, the victims did not show up for court, the police who took the report did show, but had not witnessed the incident, so the judge Dismissed the case Without Prejudice. When asked why she thought the victims didn't appear, she said that they probably did not want to get involved any further, as the process of repeated hearings and continuances are frustrating, and the process of getting to the court date was long and difficult for the victims, (Personal interview, 6/18/10)

Massachusetts ADA's interviewed for this research, once they specified the legal necessity for a conviction, willingly shared what they further believed would influence their social construction to build the case for their strategic advantage.

Even though there is no specific bias-motivated unit, there are a few of the ADA's that seek out such cases. Based on interviews with the ADA's, the belief is that bias-motivated crimes are not prevalent enough for the court to develop its own specialized unit. Rather, the community based prosecutions unit works closely with the CDU to fill the void and address bias-motivated criminal behavior. The Chief of Community Prosecutions is critical to assigning bias-motivated cases. She closely scrutinizes each case that comes before her, then, based on her experience and interactions with the Assistant District Attorney's, she assigns the case to whom she thinks is best-suited.

Obviously, motivation is an integral part of bias crimes, but, from the interviews, the results are clear that motivation plays a crucial role in prosecuting these types of crimes. So, while every ADA agreed it is a difficult type of crime to prosecute, each one described the different ways that they have found to overcome the complexities of these cases. The ADA's socially construct their cases through various methods: basing the case on their own life experiences and history, utilizing the resources and expertise of the CDU detectives, maximizing the evidence against the defendant, and the facts of each case individually—particularly the past behavior, actions and words used during the crime itself.

Obtaining a Conviction

An issue discussed at length during the ADA interviews was the evidence and resources that might be necessary in order to successfully obtain a conviction in a bias-motivated case. The majority of ADA's referred me to the Jury Instructions for District Court. According to Instructions 5.69, the Civil Rights Violations, there are 4 necessary requirements to prove a criminal violation in the Massachusetts courts beyond a reasonable doubt:

> …*First:* That [alleged victim] was exercising a right or privilege protected by the Constitution or laws of the Commonwealth of Massachusetts or of the United States;
>
> *Second:* That the defendant either injured, intimidated, interfered with, oppressed or threatened, or attempted to injure, intimidate or interfere with [alleged victim]'s exercise or enjoyment of that legally protected right;
>
> *Third:* That the defendant did so by using force or by threatening to use force; and
>
> *Fourth:* That the defendant did so willfully. (Commonwealth of Massachusetts, Criminal Model Jury Instructions, 2009)

Aside from the four elements necessary under Massachusetts law, the most frequent responses from the personal interviews regarding motivation were: the manner and language used by the offender, any symbols, signals or gestures and the intent of motive and behavior, (Personal Interview 6/14/10). Most of the ADA's, when asked what is necessary to obtain a conviction in such cases, agreed that it is very difficult to not only obtain a conviction, but also to deliver the proper level of punishment. One ADA explained that the instructions to the jury are very difficult for most of their juries to understand. This ADA indicated that the jury is looking for strong and consistent "hate speech" or explicit violence against the victim. Often the incident is not a

precise, clear cut case like that, (Personal interview 7/15/10). One of the ADA's held that, aside from the legal necessity of the jury instruction, she had noticed after 2 years of prosecuting these types of crimes, the jury relied upon the language and sometimes the geographic location of where the crime occurred, during deliberations. She realized that if the jury was familiar with the Boston neighborhoods, that the location had some impact on how the juries decided the cases. In essence, the jury would rely upon the social and historical contexts of the criminal behavior, combined with the area where the crime occurred. Stereotypes and racial tensions vary, but can still be high in the city of Boston among some segments of society, and when a defensive type of bias-crime occurs (someone defending their territory or neighborhood), the jury still looks to the stereotypes when deciding a case, (Personal interview, 6/24/10).

One prosecutor interviewed placed great emphasis on the part of the jury instructions that dealt with the interference with ones constitutional rights. She said it is necessary to show intent—that the defendant meant to deprive the victim of his or her rights. She said the decision to charge as a bias-crime usually comes out of the speech and language used, the animosity shown towards the protected class and any overt actions that may have occurred. A brief summary of the case, illustrates those that are representative of the types of crimes charged in Suffolk County. She described a 23 year-old white male transvestite was walking to the methadone clinic, when he was confronted by a 45 year-old black male who yelled derogatory comments, hit the victim with his fists and then threw a canister at him. She took the case seriously and in the end, the victims chose not to cooperate, so the case had to be dismissed without prejudice, (Personal interview, 7/21/10). While she understood that the victims did not wish to put themselves through the ordeal of a trial, she was very frustrated because not only did someone get rewarded for their

completely inappropriate behavior, but the message was sent to the defendant and others that it's not very difficult to "beat" anti-gay bias crimes charges.

As for the question of how the prosecutors decide to include the bias-charges, and what kinds of evidence they consider when making that decision, clarification is necessary. Previously mentioned, it is not the prosecutors who actually file the charges. The police or detectives apply for a criminal complaint before a Clerk Magistrate of the Court. The prosecutors receive the cases that the Clerk believed showed probable cause.

In one case the ADA read through the case, which was being charged as an Assault and Battery, and did not go through the CDU. Once she read the facts of the case, she contacted a detective from the CDU and requested him to apply for a bias-crime hearing before the Clerk Magistrate. She was frustrated that, even though few racial slurs had been used, it had not been considered a bias-motivated incident. The detective further interviewed the victim, and filed a criminal complaint for the charges, (6/18/10).

All but one of the ADA's mentioned at least some of the jury instructions as responses to the question of proving a bias-crime occurred. One ADA who had prosecuted 5-6 bias cases in the two years he had been with the DA's office indicated that he was "not sure how to answer the question". (Personal Interview, 7/16/10) When prompted to consider what he had done in past cases, he said that he does look at the language used during the crime, but questioned whether the language was an indication of bias, or possibly the intent of the defendant to enrage the victim during the crime.

Finally, one ADA stated that she would be unlikely to take out charges—or to prosecute a case—that cannot be proven beyond a reasonable doubt. She looks to the statement of the defendant, the injury to the victim, and the lasting effects the crime had on the victim.

The ADA's interviewed for this research did admit that they had the ability to upgrade or downgrade charges depending on the circumstances of the case. For example, if the bias-motivation was not strong enough for a conviction, the prosecutors would drop the bias-charges and strive for the strongest punishment based on the other crime committed during the bias incident. All of the ADA's admitted they would rather convict someone on the more serious charges, if the case of bias was too weak, than not get a conviction.

The most frequently reported results as to the role of motivation and how ADA's construct their cases were: their own experiences and history, reputation or prior record of the offender; any overt behaviors that seemed to be based solely on the protected membership group; once the victim's rights are infringed upon and they can prove that there was specific intent to do so; any indicator that the offender is a member or affiliated with a specific, organized hate group; and any incriminating utterances by the defendant. Through the research in this study, there were no indicators in any of the cases—prosecuted or not-- of an organized group committing a bias-crime.

One case study that exemplifies how much control the ADA's still maintain over a case, and thus, how they construct it for prosecution is as follows:

> *In South Boston, a girl was dating a black male and she brought him to a gathering of other juveniles from the area. They were all basically hanging out and drinking beers at a dead end road, in some woods. A few of the other youth did not approve of the girl bringing a black man into their territory, and told them not to speak to each other. The black juvenile said that he could talk to whomever he wished, and a white youth attacked him, while 3-4 of the white males began throwing beer cans at them and calling the girl a "nigger lover". The brawl escalated, with more white juveniles jumping into the mix and the main suspect hit the black male victim in the head with a brick. Shortly thereafter, the youth all fled the scene on their cell phones, but as the male victim was attempting to leave, two more car loads of juveniles arrived with golf clubs and continued attacking the male victim shouting "run, nigger, run..we're going to get you,". The police arrived on scene and when the main suspect was detained by the police, he was shouting "he came into our neighborhood and started with us,"*
>
> .. BPD case files, ID # 57

The ADA who prosecuted the case complained of receiving numerous phone calls from local Boston Police trying to speak on the suspect's behalf, stating "he's a good kid, he just got mixed up in some trouble,". She told me that the bias charges were taken out on the juvenile suspect after an investigation into an assault and battery with a dangerous weapon. She later discovered that the suspect had many of the Boston Police personal cell numbers in his mobile phone, and that he was basically the neighborhood "snitch". The ADA was outraged during the interview that the case became so politicized, especially considering the violent nature of the bias-motivated act. She pushed strongly for the bias-motivated charges based on three factors: the violent behavior displayed by the suspect, the language used during the attack, and the social context of the situation. So, while responding officers did not initially "flag" the case as a CDU case, the ADA carefully studied the case and sent the case to CDU for further investigation. The judge in the case, who formerly worked in the Civil Rights division of the Attorney General's Office, gave the juvenile a plea deal on bias and assault and battery with a dangerous weapons

charge. The deal resulted in the offender receiving five and one-half months guilty delinquency-probation. This meant that the offender could only be given probation until he was eighteen, and he was seventeen and one-half years old at the time of disposition. The probation consisted of a no-contact/stay away from the victim order, had a 9pm curfew, he paid probation and victim-witness fees, and had to write a letter of apology to the victim[17]. She further advised me that one way her office helps police determine what is necessary for a successful prosecution—what it is that ADA's need from the officers- is to use the victim-witness advocates to talk to the victim, if she or he feels the victims were not forthcoming with the police. She believes that victims are often more likely to speak with an advocate than an officer; that they are often able to obtain more information regarding the case than the police would have been able to in certain situations. This case seems to be a perfect example to which the ADA referred. The suspect was believed to be a police informant, therefore, it appears logical that the other juveniles, whether involved in the incident or simply at the scene, would be unwilling to fully disclose all the facts of the case to the responding officers. The ADA's belief as to why some incidents, such as this one, may not initially be screened as a CDU case, could be that,

> …maybe some officers are not aware of the statute or may not be focusing on the language used at the scene of the incident, or there could be language barriers, such as translation issues. In District court, there is not as much time to spend on specifics because by the time we get to talk to the victim, he or she may have moved on and not want anything more to do with the case. (Personal interview 8/3/10).

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[17] By statute, all matters on behalf of or against children are considered non-criminal in nature. Traditionally, Juvenile Court jurisdiction ended upon a child attaining the age of 18. As of Dec. 1990 this jurisdiction was extended to age 19 in supervising orders of probation or commitment when cases were not disposed of prior to age 18. For the purposes of classification in this research, since there were only two juvenile cases, and both of them were disposed of prior to the offenders' 18th birthday, the age of 18 is considered an adult in the data analysis. (http://www.massbar.org/about-the-mba/press-room/journalists'-handbook/2-juvenile-court-system.

This particular ADA worked as a prosecutor for four years and only handled 2-3 bias-motivated cases, yet she strongly agreed with charging this bias crime, or any when "it goes beyond a regular violent crime and is motivated by something of that nature," (Interview with ADA 8/3/10). She also admitted that she had received no special training for prosecuting bias-motivated cases, aside from some victim training that occurred during a one-day general training session.

Social Cohesion

A second component to the interview was to determine what role social cohesion of the community plays in the prosecutors' construction of a bias-crime. The two questions to be answered below were: How important is it for you to send a statement to the community regarding the tolerance of such behavior in society, and who is in the best position to send this message; and when prosecuting a bias-crime, aside from the legal aspects, do you view the offense as occurring to the individual or to the group to which the victim was perceived to belong? Of the fifteen interviews conducted, 10 said that sending a message to the community was "extremely important", while 5 said "important". But this is not to say that they don't take it as seriously as the previous 10—they simply had different ways of responding, as the results indicate below.

One ADA who had only worked on 2 bias-motivated cases gave the most succinct answer, "It's my job—not to go public—but to protect the welfare of the community,". And she further stated that she concentrates on the individual victim, and trying to obtain justice for the victim. She

indicated it was the District Attorney who was in the best position to advise the community that bias-motivated behavior would not be tolerated. He is the one in front of the cameras, or releases press statements. The ADA told me that she is not allowed to just go before the media and talk about a bias case—even a conviction in a heinous case. She has to go through the proper channels, which include permission from the Chief of Community Prosecutions, permission from the DA himself, and it also has to be approved by Press Relations. That is why so few bias-motivated cases are reported in the media, (Personal interview, 7/14/10).

The ADA who worked in the county for the longest, and prosecuted the most bias cases said, "[bias-motivated crimes] are a cancer on the whole community…we as prosecutors should be driving the bus on how the case is handled, where we identify this [bias] as the motive, and not consider it the secondary problem….prosecutors should argue these crimes passionately at sentencing to indicate to the judge and jury how serious these crimes are," (Personal interview 7/20/10). He further believed that it should be the individual victim that is the focus of the trial--as it is a legal realm. But, he admitted that while it is the individual victim's problem because they suffered the crime, a message needs to be sent to the community that this type of "cancer must be attacked because it will spread if it is not addressed,".

Others who responded that the social cohesion of the community is threatened by these crimes, and it is critical to send the message to society that it's not acceptable behavior, offered up the following reasons: the primary reason for the charges is to demonstrate to the community bias-motivated crimes will not be tolerated; some ADA's grew up here and this is their community also, and as a prosecutor, you must do the best you possibly can to change such behavior; that the

community learns only of negative behavior, but the community should know the prosecutor's are there for them; it's about having a good relationship with the community and its agents of social control; the community needs to know that they are safe and should not be picked based on their membership in a group; prosecutors are there to protect them and prevent people from developing any further bias and trigger reverse discrimination; that more individuals are "coming out" as homosexual and they are now getting targeted, this should not happen.

In general, the results indicated by the responses is that judges need to "step up" and take these cases more seriously, the District Attorney needs to be more public about statements regarding such inappropriate behavior, and that it's up to everyone in the community to help control unacceptable behavior of bias-motivated crimes, and to work together for social solidarity.

The results above are consistent with the results from the American Prosecutor's Research Institute (2000) as to whether a case is charged as a bias-motivated crime: defendant's words, symbols or behavior that might be offensive to a protected group, and statements of witnesses and victims.

Further, the research results here are consistent with those of McPhail and Jenness (2005) that prosecutors view the victims in legal terms, as discrete individuals, separate from the group that was the target of a bias-crime.

This is understandable as that is how they are trained to try their cases. But bias crimes are different, because they are not just an attack on one person—but a person who is representative

of an entire group of people—all over the world. Nearly all of the respondents in the current study also viewed the individual as the victim of the crime, but did not want to discount the group to which they belonged.

As the results demonstrated in this research, not many juveniles are prosecuted for bias crimes. This may be because they are the ones committing the property crimes, and they are not identified as a suspect. Regardless, it is more adults or young adults who commit bias-motivated crimes most frequently.

The following is an example of case, according to the facts of the, that clearly should have been prosecuted, but one in which the ADA was not pleased with the punishment handed down:

> *In 2008, a 29 year-old white male suspect entered the Milky Way bar in Jamaica Plain and demanded a beer. When he was denied the beer because he was already too intoxicated, he slapped the 41 year-old male bartender in the face and said, "fucking faggot I'm going to kick your faggot ass". The victim called police who escorted him out of bar. The suspect returned shortly afterwards, overpowered the victim who tried to keep him out of the bar and then the suspect pushed the victim down the stairs,*
>
> ..ID # 60

The victim pled guilty and received a suspended sentence from the judge. The prosecutor said she wanted to ask for at least a year of incarceration, but that the “judge would have laughed at me!” (Personal interview, 6/24/10). Instead, the judge gave him 2 years suspended sentence,

under intense supervision by the probation officer, complete a drug and alcohol program, and stay away from the bar and the victim.

Of the cases 13 cases dismissed, there were various reasons for the dismissal, but the most common reason was that the victim did not show up for court. The most egregious case facts are as follows:

> *This is a case of ongoing racial tensions between neighbors. The victims were a 15 year-old, and 35 year-old black females. The suspects were two black females aged 15 and 35 years-old. The elder suspect calls both victims racial names, throw trash and other objects in their year, block the driveway, blocking entrances and exits in the apartment building. Victim one was trying to leave her apartment to drive her daughter to get her prom dress, but the suspect had put trashcans and suspect 2 was standing behind the victims' car. When the victim asked her to move them, the suspect replied "fuck you African, go the fuck back to Africa, you're a fucking alien and I'm an American,". The adult victim didn't want to fight with her and called 911. As she was calling police, the suspect moved the trashcans and went into her apt. The victim sat in car and waited for police. Meanwhile, the suspect came back out and banged on their car hood. So, the victim left to get daughter, returned and the police were there. The police told the suspect to leave the victim alone. The victim went inside and returned later to take her daughter to the prom. At that time 8 more suspects arrived in a pick-up truck and blocked her way. She phoned the police again, but waited in the car with her daughter and the windows rolled down when she phoned police. Two of the suspects got out of truck and began punching her daughter through the open window. As the victim got out of car and tried to help her daughter, a male suspect came behind her and chopped her in the neck. The original suspect came back outside and struck her across the face with a stick*
> ….ID #61

The case was sent to the CDU and a detective took out a criminal complaint against the two female suspects. The victims' repeatedly told the ADA that they wished to appear in court and fully cooperate with the prosecution of the defendants. Unfortunately, the victims had gone

out of the country for a few weeks, and never received the summons in the mail as to when the court date would be. The adult defendant had her case dismissed without prejudice because there were victims or witnesses against her. When I asked the ADA, didn't they keep in contact with the victims', send a certified letter, or have an official deliver the summons, she told me that in District Court, it's just too busy—there isn't the time to keep in contact with the victims that there needs to be, and that they don't have the resources to make sure the summons is received. She said in District Court the population is usually transient, have no phone numbers or are homeless. In Superior Court it is much easier to keep track of the victims and the defendants, because they are easier to keep in contact with, and the summons is hand-served, (Personal interview, 6/24/10). The attorney in the juvenile case asked for a directed verdict[18] and was granted it for one of the assault and battery charges. An additional assault and battery and bias-motivated charges were dismissed from adult court and sent to juvenile court. There, the defendant opted for a jury trial, and she was found not guilty on both counts. Once the victims returned to the country and found out what had happened, they were livid. But, at that point, they had no recourse.

Other reasons for the numerous dismissals include: no evidence, dismissed for agreed plea, and dismissed by the Commonwealth with no reason given. In many of the cases that were dismissed, it was because the victim didn't show for court. This could be out of fear of reprisal from the defendant, distrust of the Criminal Justice System, many homosexual victims do not want their private lives to become public, and other victims just get tired of the continuances and many court hearings—a ploy often used by the defense to wear the

[18] Not enough evidence for the jury to convict.

victim down, so that they will finally give up and not appear. This is not surprising because many of these crimes are committed by offenders who do not know their victims, and the victims may not want to see their victimizer again.

The following chapter, 7, will discuss conclusions and policy implications for the findings of this research.

CHAPTER 7: Conclusion and Policy Implications

Through data collection and interviews with bias motivated crime prosecutors, the goal of this exploratory research was to: understand how the Community Disorders Unit identifies and screens bias incidents; determine why and under what conditions the Suffolk County District Attorney's office prosecutes bias-motivated crimes; and, to identify any significant differences between prosecuted and not prosecuted bias cases.

As the results in Chapter 4 and 5 reveal, when the suspect's identity is known, older adults are prosecuted more frequently, but young adults are closing the gap, with numbers of incidents much closer to that of the older adults. Most of the bias-motivated incidents are committed by adult white males either against other white adult males based on their sexual preference, or against other adult black males based on their race or ethnicity. The majority of bias-motivated attacks was committed with fists and feet, and thankfully, result in minor or no visible injuries to the victim.

The process by which bias-motivated incidents travel through the Criminal Justice System in Boston, Massachusetts is complex, yet remarkable. It obviously begins with the responding officer, who is responsible for correctly fulfilling the role in the first step of the process---identifying whether a case may contain elements of a bias-motivated case. This first step often is difficult, depending on the scene the officers' encounter. Sometimes the scenes are chaotic and police struggle to be certain they obtain the appropriate information—from victims, witnesses, and suspects still on scene. In other instances, police respond to a bias-motivated

crime scene, such as a property crime, and have no one but the reporter of the incident from which to gain information. Police can document the incident, and talk to citizens in the area to determine if they saw anything suspicious. By asking the proper questions and filling out a complete, accurate report, they ensure that bias-motivated crimes are properly flagged for further investigation by the Community Disorders Unit. The responding officer submits his or her report to the District Sergeant for the initial screening, and if appropriate, the case is forwarded to the Community Disorders Unit (CDU) for further scrutiny.

Once the bias-motivated incident reaches the CDU, the second stage in the process is for the Lieutenant in charge of the department to assign the case to a detective. The incident is additionally investigated by the detective: attempted contacts with all victims, suspects (when possible), and witnesses. Depending on the case, detectives typically conduct surveillance in the area—usually for the property crimes to see if the suspect returns another night to wreak havoc in the community. In the case of a personal crime, interviews are conducted, evidence gathered, such as 911 call tapes, video surveillance, and a physical canvass of the area where the incident occurred. Each action taken by the detectives is typed in a memorandum and filed in the case, this includes all transcribed interviews, returned certified mail and all attempts to contact involved parties. These incident reports were crucial for the researcher to obtain knowledge about the types of bias-crimes committed. Sometimes the responding officer' are not able to gather the proper information in the confusion of a crime scene, and the CDU detectives are crucial in filling that void. Typographical errors that occurred in the police reports (the 1:1) were corrected in the memos, for further clarification as the facts of the incident. The detectives also have to fill out a Hate Crimes Screening Form where they must justify why the crime fits

into the category of bias-motivated crimes. For example, some detectives will list specifics from the police report, such as derogatory language used, weapons involved and injuries sustained by the victim. Other detectives simply state that the "incident appears to be more likely than not to be motivated by racial, religious, sexual orientation or other bias," (from case files of CDU bias motivated incidents). In a number of cases, there is no suspect to identify, as no one saw the crime occur—usually the property crimes where someone spray paints or writes on a random car parked on the neighborhood street, on sidewalks and sides of buildings and fences. Despite their best efforts, the detectives have no recourse in these situations but to request the case be inactivated, pending further evidence. This process can be helpful in determining trends in certain parts of the city, such as the property bias crimes, previously described, that occurred in the Allston neighborhood of Boston. In the event that the suspect is caught while defacing property, the inactivated cases can be further investigated to see if they are linked. One suggestion for making better use of this system is that when detectives do see these trends in bias –motivated property crimes, they should contact the District Captain, who can then publicize the fact that these crimes are occurring in their neighborhood, so citizens are more alert and can report any odd behavior they witness. It's quite possible someone in the community drives by, or happens to look out of a window and witness the destruction of property and think nothing of it. But, if citizens were more aware of the impact that bias-motivated property crimes have on targeted group members, as well as the whole community, they may be more inclined to report suspicious behavior and not just dismiss it, as it doesn't involve them directly. Of the 279 incidents reported to the CDU for the time period researched, 51 were property crimes and 228 were personal. With this large difference in numbers between bias-motivated property crimes and personal crimes, and the availability of evidence, personal

crimes are obviously prosecuted more often than the property crimes. In this research, just over 90% of the personal crimes were prosecuted, and less than 5% were property crimes that were prosecuted. With the exception of motor vehicle incidents involved during a bias-motives crime, the rest of the property crimes were committed with no witness, or at least no witness that notified the police, and no suspect could be identified. Therefore, the number of bias-motivated property crimes reported to the CDU was less and those prosecuted even fewer. Without a witness or specific personal victim, it would be quite difficult to get the Clerk Magistrate of the

Courts to indict an unseen property crime, and if detectives would able to get an indictment, ADA's were be most likely to plead the case out, rather than try to prove to the judge or jury that the defendant committed the crime, without a solid suspect identification.

This leads to the third stage of the process in prosecuting bias-motivated crimes. When a detective is confident he or she has enough evidence, he or she will schedule a hearing before the Clerk Magistrate of the Court. If the Clerk finds probable cause to prosecute the case, the detectives deliver all evidence to the District Attorney's Office and then request the case be closed at the Unit. Even though the case is officially closed as far as the Boston Police Department is concerned, detectives continue to work with the assigned ADA and attend all court dates related to the case. If the Clerk finds no probable cause to prosecute, the case goes back to the CDU and is either closed or inactivated, pending further evidence.

The fourth stage in the process is for the Chief of Community Prosecutions in the Suffolk County District Attorney's Office to review each and every bias-motivated criminal case and assign it to an ADA for prosecution. The number of cases reported to the researcher by the Chief of Community Prosecutions, for the time under study, 54 cases were prosecuted. When one compares the number of bias-motivated crimes prosecuted, to the number of incidents reported to the CDU, 279, the variation appears quite substantial. Reasons for this vary from lack of evidence, no witnesses, and victims' refusal to cooperate and go forward with a prosecution. The detectives at the CDU, during informal interviews voiced their frustration at the attrition rate of victims and witnesses, and most frequently attributed it to the defense counsel repeatedly delaying the case through motions, hearings and continuances.

The fifth stage in the process of the prosecution of bias-motivated crimes in Boston, was the main topic of study for this research. Once the Clerk has found probable cause, the ADA must construct the case to their advantage---to obtain a conviction. Interviews were conducted with 15 different Assistant District Attorneys, in an attempt to uncover how they socially construct these cases. Prosecutors' duty is to successfully convict the correct defendant in their cases, and to seek the appropriate level of punishment, in hopes of modifying the inappropriate behavior.

One component of this research that was encountered during the interviews with the Assistant District Attorneys is that, as attorneys, they are trained to approach their cases from the legal perspective---a perspective that is often at odds with bias-motivated advocates. As McPhail and Jenness (2005) found in their research with Prosecutors in Texas, cases are constructed in a way

that will create a strategic advantage for them to win a case, even if that includes a plea to lesser or different charges. Through interviews with the Boston ADA's, it was clear that they also strive for a strategic advantage, but are often assisted in this quest by the CDU. One finding that appears contradictory to the McPhail and Jenness (2005) results, is that the Boston ADA's, while they do view the victim of a bias-crime as an individual, the majority of those interviewed for this study agreed that it is important to consider the individual as a member of the group targeted. This could be a regional difference, but ADA's in Boston, through their interviews conveyed the significance of sending a message to the defendant and to the community that bias-motivated crimes will not be tolerated. Another reason Boston ADA's gave the impression that they are more vested in these cases may be due to the organizational leadership. The Chief of Community Prosecutions was adamant about prosecuting bias-motivated crimes, and made fervent attempts to assign the cases to the ADA's she knew would fight for the victim and the group targeted, and those most experienced in prosecuting bias cases. When the ADA's know that their Superior is resolute in obtaining justice for the community it bolsters their morale to make the case paramount in their prosecution. The same can be said of the CDU—when the Lieutenant Detective is serious about finding the offenders, the detectives' drive is high as well.

The ADA's interviewed for this research were grateful to have the CDU to go to for further help in investigating the bias-motivated cases, but believed one problem with the CJ System was the court system—particularly District Court. All agreed that District Court prosecutions add an additional hurdle to overcome in an already difficult case to prosecute. Without the vertical prosecution in Superior Court, no single ADA or judge is responsible for each bias-crime case. And, as mentioned in the results section, when a case is passed from one ADA to another, it is

more challenging to keep tabs on their victims and witnesses. Therefore, cases that merit prosecution and punishment get dismissed, because there is no victim-witness to speak against the defendant.

Research here is further consistent with The Prosecutor's Research Institute study from 2000 regarding 3 components that they found to influence whether or not the crime was classified as a bias-motivated crime. While Boston ADA's do not have control over the actual indictment, they still responded that the construction of their case was based in the defendant's language, actions, and symbols that proved the victim was targeted for his or her membership in a protected group.

Another study, regarding prosecutorial discretion in prosecuting bias-motivated crimes was that of Hernandez (1990), who discussed prosecutors' possible unconscious racism and the decision to charge as a hate crime.

The current research, through interviews with the ADA's resulted in a completely different outcome. Hernandez did similarly note the difference between number of cases reported and those that were ultimately prosecuted. She believed the statutes give too much judgment to the prosecutors and that the statutes are not being enforced properly. Two of her findings are important to research done here: unmonitored prosecutors' discretion and unconscious racism among prosecutors. As already stated, there appeared to be compelling oversight on the part of the Chief of Community Prosecutions. As noted in her interview, she had an extraordinary interest in protecting members of the targeted groups, as did the majority of ADA's under her

direction. Even though eleven of the fifteen ADA's identified themselves as Caucasian, it was determined through the spirit of the interviews, that racism, even unconscious racism did not appear to be an issue in any of the cases.

Additionally, the results from this study were different from the Levin and McDevitt (1993) study about 20 years ago. The juveniles in their study may have grown into adulthood and continued to commit different types of bias-motivated crimes—they don't seem to be Thrill motivated in the current study. Of course, there is always a new group of juveniles there to replace the previous generations' Thrill crimes, but they are either not being reported to police, or not learning the same bias behaviors they did two decades ago. As mentioned before, bias-crimes in 2007-2008 were committed by conflicts between neighbors, blitz attacks on the street, random or opportunistic crimes committed by mostly white, male offenders against other adult males-black or gay residents in the city of Boston.

Results from this exploratory study demonstrate that the ADA's do not have the ultimate discretion in whether to charge a case, or suggest an enhanced punishment for the offender based on the systematic process and the way in which the General Laws of Massachusetts are written. The enhancement is written into the statute and depends on the facts of the case. Assistant District Attorneys do, however, have the power to upgrade or downgrade charges. This appeared to be a rare occurrence, mostly due to the CDU's initial involvement in the case. The Unit appears to act as the basic "screener" and investigators for bias-motivated cases, which assists the ADA's by having a fairly solid case established by the time it gets to the prosecutorial stage.

As for the outcome of the 34 cases sent for prosecution, 13 cases were dismissed—usually due to the victim or witnesses not appearing at the court date. Another 11 were pled out, but the defendant still received an average of a year and a half of supervised probation and paid probation fees. Four of the cases were Nolle Proseuqui, 1 was in default at the time of this writing, and only 2 went to trial, and were found not guilty by a jury. As for the victims in the cases, 16 were black and 12 were white. Results pointed toward white, adult males more successfully being prosecuted in an anti-black case, than in the anti-gay cases. This finding is not surprising, given that often gay men, when they are not generally known to be gay, do not wish to get involved in a court case, for fear that their secret will be divulged. Or, they don't wish their sexual orientation or lifestyle to be scrutinized, as in some rape cases. So, the victim makes the decision not to cooperate, or not to show for court.

To sum up, through the personal and confidential interviews with the ADA's, they socially construct their cases based on their own history and experiences, the facts of the case, and the social and historical context in which it occurred. They search the criminal history (if it was not already done by the CDU) of the defendant—has this behavior occurred before? They look at the context of the situation—is it an ongoing problem between neighbors, is it a blatant blitz attack on an unsuspecting victim, is the crime attributed to prejudicial behavior, was there a weapon used, and what were the physical and mental injuries inflicted upon the victim? Among all of these factors, the ADA's must consider what a judge is likely to accept or reject during hearings and trials, what resources are available to them, and which court has jurisdiction over the crime. From the interviews, it is clear that ADA's prefer to have vertical prosecution—

where they are the ones responsible for the case, and the case is tried in the courtroom of the same judge.

Through interviews with the ADA's their view of prosecuting bias-motivated cases appear to be realistic. The lack of prosecutions, even the lack of successful prosecutions seems to be more a function of the lack of resources---financial and individuals. Like any American court system there is a lack of the resources necessary to keep track of all individuals involved in the case, particularly if the case is in District Court. Every one of the ADA's interviewed further wished that proper probation options were available for them to sentence defendants—options that would be conducive to modifying the behavior of the defendant for the long-term, not just a year or so probation and some fees paid. Most importantly, when asked, the Chief of Community Prosecutions, believed the Diversity Awareness Education Awareness Fund, overseen by the secretary of the Executive Office of Public Safety, was a crucial component of sentencing. But, the same reason the Suffolk County District Attorney's Office does not have an individual bias-motivated unit, like the police department does, there are not enough cases to warrant its own unit, and not enough cases prosecuted to put money into the fund, even though it is written into the statute that there be a Diversity Awareness Education Fund.

As with any quantitative study, one must rely upon honest responses, and in this study it was no different. There are political as well as personal reasons ADA's gave the responses that they did, the researcher can only go by what they are told, but cannot interpret what was meant, or any underlying notion. While simple chi-square tests were conducted with some variables to determine if there was any significant influence in which cases get prosecuted, results indicate it

is more a function of the way the CJ System is conducted in Massachusetts. The Suffolk County District Attorney's Office is quite fortunate to have a pre-screening process in place, and to help with investigations. Even so, it remains a mystery as to why only 38 cases out of 279 incidents in 2007-08 were prosecuted. Further research is clearly needed to determine why this discrepancy exists. The purpose of this exploratory study was to determine the nature of bias crimes in Boston and to understand how ADA's socially construct their cases for prosecution.

While it appears the CDU take these incidents very seriously and investigate them to their full capability, and the ADA's interviewed remained steadfast in their duty and intent to prosecuted bias-motivated cases, there is still a missing component. It is possible, as previously mentioned, that individuals, either crime victims or witnesses tire of the court process when justice is slow, or when they believe there will be no justice, they stay away from the courts. If victims were dealt with in a more personal and consistent manner—same victim advocate, same ADA and same judge---victims would be more likely to stick with their cases, and see them through to the end. Once society feels as though the Massachusetts Criminal Justice System is there for them, working on their side, and they are treated as individuals, but also viewed as members of a protected group, fewer cases of bias-motivated crimes may be lost to attrition.

A weakness of this study is that due to the time-frame in which this study was conducted, some of the cases may not have made it to trial, which may account for the low number of prosecutions.. A longitudinal study should be conducted in which the researcher can follow the case from beginning to end in order to get a better understanding as to why so few cases are

prosecuted. From the results in this study, it is white adult males who are prosecuted for anti-black bias-crimes, and black and white men who are prosecuted for anti-gay bias-crimes. There does not appear to be any significant difference between weapons, or seriousness of injury, or victim or offender race. This could be a function of bias police personnel who first respond to the scene and gather the first pieces of the puzzle for the detectives to put together. It is further the duty of the prosecutors' to glue the puzzle and hold it together—then display it for all in the community to view.

Some in society may ask the question: why do bias-crimes matter? Why do we have them, when the accompanying behavior is usually already a crime? Adding penalty enhancements will not deter bias motivated crimes in most cases, so why add additional sanctions because certain words or gestures were used?

Policy implications

The acquisition of this knowledge will hopefully further enable the prosecutors' office to develop strategies to charge and prosecute future bias-motivated crimes. While it would take enormous resources to overhaul the system, some recommendations for the District Attorney's Office is as follows: to maintain the same Assistant District Attorney throughout the life of the case, so they are able to devote the time necessary to keep in contact with the victims, to work closely with the CDU detectives with respect to identifying unknown suspects, and to develop a process for releasing information to the public regarding bias-motivated crimes. Further, the same judge should over-see each bias-crime case, so he or she is familiar not only with the defendant's history, but to preserve consistency in the court proceedings. The Chief of

Community Prosecutions in this study did conduct trainings, but a suggestion would be to have annual trainings to refresh prosecutors about what is necessary to obtain a conviction in these complex cases, as well as the treatment of victims. Often when one doesn't perform an action for a long period of time, skills and information can be lost. And, with the few bias-motivated cases that are prosecuted, ADA's do not have the opportunity to repeatedly prosecute these cases. As mentioned during the interview section of the results, some of the ADA's handle maybe one bias-motivated case per year, or just part of the case.

Further, in addition to the training, the DA's office should forge a closer relationship with advocacy groups in the city, so that ADA's can utilize them as liaisons between the prosecutor's office and the group to which the victim belongs. This is problematic of course, due to further budget constraints. The solution could be to utilize college students to act as the liaison for specific groups, as part of their service learning or internship. At this point, one must utilize all possible resources to make up for the lack being experienced now. Sometimes the victims won't even take advantage of the victim-advocates already established, and this may be due to the fact that the victim views their bias-crime differently from other types of crimes, and expect advocates to not understand their situation.

Many citizens do not even know what a bias-motivated crime is, or where the limits are drawn between free speech and criminal behavior. If the public is not educated as to the fact that the criminal behavior is treated seriously by the City of Boston and the District Attorney's office, it is impossible to modify behaviors and beliefs. Cases of bias-motivated crimes should be more publicized in local media so that the public is aware of what constitutes a bias-crime and the DA

should make a statement to the community that the behavior will not be tolerated. The Office should be releasing statements to the press on all bias-motivated crimes, what the facts are, and why it is unacceptable behavior.

The cultural transmission of beliefs and behaviors in a community can be more problematic in this time of globalization and mobility. Prior to the saturation of mass media, changes in the socialization of one generation could begin the progression towards more (and less) acceptable forms of behavior within a community. It is the duty of Criminal Justice Personnel and scholars to utilize the media in a positive way.

Without interventions and early education initiatives, the growing tide of incivility will continue on a downward spiral until it is not possible to control. One just needs to look at the examples that our American leaders provide for both adults and children. One example is that of South Carolina Congressman Joe Wilson who shouted out "You lie!" during President Obama's speech before Congress, (www.freepublic.com/focus/f-news). While America is supposed to be the heart and soul of free speech, just because one can do or say what he or she wants, does not mean it is a good idea or proper example for others. This behavior showed a lack of internal controls, and disrespect. Two factors that can also be found in those who choose to commit bias motivated crimes. Congressman Wilson apologized, but the various media overplayed the clips of him yelling out, but down-played the apology made afterwards where the last line of his statement said, "I extend my sincere apologies to the President for this lack of civility," (conservativeexpress.blogspot/2009/09/). But, the damage is already done. Once members of a society witness the incivility of its leaders and respected individuals, the modeling has occurred

and without sanctions, some in society deem it acceptable behavior and simply perpetuate inappropriate behavior.

The world-view of a multicultural community, such as Boston, is that of both consensus and conflict. Some members want assimilation-- to live peacefully and respect one another's culture. Others in the community want to "maintain a sense of pride in their ethnic community, as well as a way to develop in children a sense of their unique self-identity," (Levin and Rabrenovic, 2004: 97). Early education in the public school system should also be instituted, because hate is a learned behavior—a social construction of one's reality. Children should be taught at an early age to respect individuals' differences in order to foster toleration as they age. Often times, hate is culturally transmitted through the family, so school would be the next best place to teach pro-social skills and respect for the differences of others. The DA's Office and victim advocates should play a central role, so that the youth can understand why the behavior is wrong, and as an adult choose not to make inappropriate decisions, and Boston can continue its path towards social solidarity and respect for all.

APPRENDIX A:

Questionnaires

Northeastern University, Department of Sociology and Anthropology
Stephanie Cappadona
PERSONAL INTERVIEW CONSENT FORM (ADA) FOR BIAS-MOTIVATED CRIME STUDY IN BOSTON, MASSACHUSETTS 2007-2008

Informed Consent to Participate in Research Study

We are inviting you to participate in an exploratory research study regarding the nature and extent of bias motivated incidents and crimes in Boston, Massachusetts from 2007-2008. This form will tell you about the study, but the researcher will explain it to you first. You may ask this person any questions that you have. When you are ready to make a decision, you may tell the researcher if you want to participate or not. You do not have to participate if you do not want to. If you decide to participate, the researcher will ask you to sign this statement and will give you a copy to keep.

Why am I being asked to take part in this research study?

You are being asked to participate in this study because you are an Assistant District Attorney with Suffolk County. As an ADA we are asking you to answer the following questions so that we may gather information about the prosecution of bias-motivated crimes in the City of Boston. We further believe that you can provide us with unique insight into the techniques used by the Suffolk County District Attorney's Office in prosecuting bias-motivated crimes throughout the city.

Why is the research study being done?

The interview we are asking you to participate in is an important source of information regarding prosecutor's perceptions and the incidents of bias motivated crimes. As an ADA, we believe that you can provide unique insight into the prosecution of bias-motivated crimes in Suffolk County. The hope is that the results from this project will assist law enforcement in identification and investigation, assist District Attorneys in the identification and prosecution of these crimes, bring awareness to the community regarding the serious nature of bias motivated crimes, and develop a more cohesive social environment.

What will I be asked to do?

The survey includes 19 questions regarding your personal and professional perceptions and experiences involved in prosecuting bias motivated crimes in Boston, Massachusetts. The

interview is divided into 4 sections: your experience in prosecuting bias-motivated crimes in the City of Boston; role of motive and facts

of the crime to determine charges; your perceptions of community cohesion; and basic demographic information.

Where will this take place and how much of my time will it take?

If you choose to participate, the singular interview is anticipated to take between thirty minutes and an hour to complete. The interview will be conducted at your convenience, in the Suffolk County Prosecutor's Office, or a different public place of your choosing.

Will there be any risk or discomfort to me?

Anything you tell us and all information we collect from interviews will be held in the strictest confidence. Your name, or any identifying information will never be used in any report, unless you explicitly give consent to do so. Otherwise, only those involved in the research will know your true identity and position. Your decision whether or not to participate in this project will not affect your status or position in any way.

You may stop participating in the project at any time. You may also refuse to answer any questions throughout the interview at any time.

Will I benefit by being in this research?

There is no direct benefit to you personally. However, it is anticipated that your responses will help to further the study of bias-motivated crimes, and to determine the process used by Suffolk County Assistant District Attorneys for prosecuting these cases.

Who will see the information about me?

The Principle Investigator is Dr. Jack Levin of the Sociology and Anthropology Department at Northeastern University. The research investigator, working under the direction of Dr. Levin and the individual conducting the interviews and data collection is Stephanie Cappadona, a PhD candidate in the Sociology and Anthropology Department at Northeastern University. Only the person conducting the interviews will specifically know your responses to the questions. Any published reports of the study will only include your response, but no identifying information, unless you indicate by signing this form that it is proper to do so.

If you indicate that you do not wish to be identified in any way, your interview will be coded by a number that is only known to the interviewer. This information will be kept in a locked file, and only Jack Levin and Stephanie Cappadona will have access to the locked files with which to identify you. All interview information will be shredded after three years.

The only limits to confidentiality are if you tell me that you specifically intend to commit a crime, or about child or elder abuse and neglect. In these cases, the researcher must report the information to the proper authorities.

In rare instances, authorized people may request to see research information about you and other people in this study. This is done only to be sure that the research is done properly. We would only permit people who are authorized by Northeastern University to do so.

If I do not want to take part in the study, what choices do I have?

You have the right to refuse to participate in the study at any time. Simply notify the interviewer if you wish to stop the interview at any time.

Can I stop my participation in this study?

You do not have to participate. You may refuse to answer any question at any time.

Who can I contact if I have questions or problems?

If you have any questions or problems, please do not hesitate to contact Dr. Jack Levin, by phone at 617-373-4983 or by email at jlevin1049@aol.com. You may also contact Stephanie Cappadona at (617) 803.7423 or email to Johnson.st@neu.edu.

Who can I contact about my rights as a participant?

If you have any questions about your rights as a participant, you may contact Nan C. Regina, Director, Human Subject Research Protection, 413 Lake Hall, Northeastern University Boston, MA 02115 tel. 617-373-7570. You may call anonymously if you wish.

Will I be paid for my participation?

No compensation, financial or otherwise, is provided for your participation in this study.

Will it cost me anything to participate?

There is no financial cost to you for participating. The only cost is the time in which it takes you to complete the interview.

Is there anything else I need to know?

Please be aware that we are very grateful to you for your participation in this study.

Please sign and date below to indicate that you have had the consent form read aloud to you, understand the information, and that all your questions have been answered.

- *I agree to participate in this interview. I understand that my participation is voluntary and will not affect my job status. I understand that I may discontinue the interview at any time, or refuse to answer any questions I do not wish to answer.*

Printed Name:_____

Signature:_____

Position: _____

Date: _____

- *I agree to the use of my name in the final draft of the research study*

  Yes _____ **Initial_____**

  No _____ **Initial _____**

- *I agree to the disclosure of my title in the final draft of the research study.*

  Yes _____ **Initial _____**

  No _____ **Initial _____**

Signature of witness who explained the study to the participant above and obtained consent:

Name:_____
Date: _____

Printed Name: _____

Appendix B:

Bias Motivated Prosecutions in Boston, Massachusetts- ADA interview

Experience:

1. What is your position in the District Attorney's Office?

_____
_____

2. How many years have you worked as a prosecutor, here or elsewhere?

_____
_____
_____

3 a. How long have you been involved with bias-motivated crimes?

_____
_____
_____

3 b. Approximately how many bias motivated cases have you prosecuted or handled in either this or another office, in the role of assistant district attorney or another capacity?

_____
_____
_____

4. Please describe your training process for handling bias-motivated incidents with the Suffolk County Prosecutor's Office:

_____
_____
_____
_____
_____
_____
_____
_____

5. Please indicate the specific background and surrounding circumstances of the most recent 2 or 3 bias motivated incident cases: (Ex: where did the incident take place? What were the circumstances of the incident? Any precipitating factors? What led to the decision of charging as a bias-motivated crime or attaching a bias-motivated enhancement to the charges?)

_____
_____
_____

_____
_____
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6. From your personal view, do you agree with the charge of bias-motivated crime, or the addition of an enhancement during sentencing? Why or why not?

_____
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_____
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_____

Prosecuting Bias Motivated Crimes:

7. What role does Motivation play in determining charges or enhancement? For example, in prosecuting other types of crimes, you are not required to provide a motive, but with Bias-Crimes, it is central to the prosecution. How does this affect your construction of the case, with respect to other types of prosecution.

_____
_____
_____
_____
_____

8 a. What goes into the consideration of whether or not to attach the charge of "hate crime" to a particular case—to charge a case as a bias crime? What kinds of evidence do you consider when making the decision?

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8 b. What factors do you think influence this process of attaching "hate crime" to charge in a case ---what factors influence the process of charging a hate crime? The Judge? The particulars of the case? Public sentiment?

8 c. What are the stages involved in the process of charging a bias crime?

8 d. Knowing the difficulties police sometimes have in obtaining sufficient evidence for the prosecution of bias-motivated crimes, in what way do ADA's help the police to determine what is necessary for a successful prosecution?

9. Under what conditions would the prosecution suggest the addition of the "hate crime" enhancement to the charges?

10 a. What is typically necessary to prove a case (obtain conviction) of bias motivation? What elements are necessary? (ex: facts about a criminal charge and then bias motive, use of language, evidence of participation in organized hate groups?)

10 b. Is bias- motive a secondary or primary issue in such cases, as charged under the statute (ex: is the language or witness testimony as important or more than determining underlying bias-motive?)

_____
_____
_____
_____
_____

11. Do you consider the perpetrators' criminal and bias-motivated behavior during the crime for prosecution? Or the history of perpetrators' bias-motivated behavior?

_____
_____
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_____
_____

12. How do you determine if the bias was the singular motive or if there were additional, underlying multiple motives? And, which motive do you utilize in prosecution, if there are multiple motives?

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13. In your experience, why do you think bias motivated crimes are sometimes not being charged as bias crimes?

_____
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Social Cohesion:

14. How important is it to you to send a statement to the community regarding the tolerance of such behavior in society? Who is in the best position to send this message?

_____
_____
_____
_____
_____
_____

15. When a bias crime occurs, do you view the offense against the group to which the victims are perceived to belong, or only against the particular victim involved?

_____
_____
_____
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_____
_____

Demographics:

16. What is your age: _____

17. How do you identify your race/ethnicity? _____

18. What is your gender? _____

19. What is the religion you grew up in or the religion you now identify with?
_____

Additional Notes or Comments:

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