



Special Commission of Inquiry into LGBTIQ hate crimes

**Expert Report
Martha Coakley**

A. Qualifications and Professional Background

1. My name is Martha Coakley.
2. This statement made by me accurately sets out the evidence that I would be prepared, if necessary to give to the Special Commission of Inquiry into LGBTIQ Hate Crimes (**Inquiry**). I acknowledge that I have read the Expert Witness Code of Conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005* (NSW) and agree to be bound by it.
3. I am currently counsel at Foley Hoag LLP, a law firm in Boston, Massachusetts.
4. I graduated from Boston University of Law in 1979. Since that time, I have practised as a lawyer in the Commonwealth of Massachusetts. I have experience prosecuting offences relating to homicide, child abuse, organized crime, and civil rights violations.
5. From 1979 to 1986, I worked in private practice at the law firm of Parker, Coulter, Daley & White and later at Goodwin Proctor in Boston, MA.
6. In 1986, I joined the office of the Middlesex District Attorney in Cambridge, Massachusetts as an Assistant District Attorney.
7. In 1987, the U.S. Department of Justice invited me to join the Boston Organized Crime Strike Force as a Special Attorney. The Strike Force investigated and prosecuted cases of organized crime and public corruption.
8. In 1989, I returned to the District Attorney's office. In 1991, I was appointed Chief of the Child Abuse Protection Unit within the District Attorney's office.
9. In 1998, I was elected District Attorney of Middlesex County, as the chief criminal law enforcement office for 54 cities and towns within the county.
10. In 2006, I was elected Attorney General of Massachusetts. I was sworn into that role on 17 January 2007 and served in that capacity until January 2015. A copy of "Hate Crime in Massachusetts 2014", which provides bias crime statistics voluntarily reported for each county and for the Commonwealth for the last year I served as Attorney General is annexed as "**Exhibit A**".
11. From 2015-2019 and from July 2022 to present, I have worked with the legal team in the U.S. pressing for an investigation into the 1988 death in NSW of Scott Johnson. I am familiar with

the efforts made to date in that case, as well as with other gay hate/bias crimes in Australia during the relevant time period.

12. In 2016 and 2017, I taught a law seminar, "Policing in the 21st Century" at Boston University School of Law as adjunct faculty. The course focused on the need for multidisciplinary and community based policing as well as new technology and investigatory techniques.
13. A copy of my CV is annexed to this statement and marked "**Exhibit B**".

B. Preparation of this statement

14. I have been asked to provide a statement addressing certain questions. A copy of the letter I received from Enzo Camporeale of the Inquiry dated 16 November 2022 (**Letter**) is annexed to this statement and marked "**Exhibit C**". The Letter asked me to address the following four matters:

1. *The origins and use of the "Bias Crime Indicators" contained in the 2000 "curriculum" document (McLaughlin et al, Massachusetts), as reflected in the BCIF.*
2. *Your view as to the appropriateness of the methodology used by the Strike Force Parrabell officers, including the use of the BCIF, having regard to the objectives of the Strike Force (as to which see assumptions 3, 4 and 5 above).*
3. *Your view as to the appropriateness of the different methodology used by the academic team, having regard to those objectives.*
4. *Other ways and/or models of which you are aware, in which bias crime has been, or may be, identified and/or documented and/or characterised and/or analysed, whether in the USA or elsewhere.*

15. The Letter also enclosed the following documents which I have read and considered:

- (1) The Inquiry's Terms of Reference;
- (2) The Strike Force Parrabell (**SFP**) Final Report (**Parrabell Report**);
- (3) The Coordinating Instructions for SFP (**Coordinating Instructions**);
- (4) A document authored by McLaughlin *et al* entitled *Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals* (Report, US National Centre for Hate Crime Prevention, Education Development Centre (2000)).

16. In preparing this statement, I have adopted the following assumptions, which were contained in the Letter:

- (1) In or about 2015, the NSW Police Force (NSWPF) established SFP.
- (2) SFP was a successor to “Operation Parrabell”, which had commenced in about 2013.
- (3) SFP was established to review a list of 88 previously investigated deaths of persons, between 1976 and 2000, to determine if a “sexuality or gender bias” was a contributing factor”: Coordinating Instructions, p 2.
- (4) Elsewhere in the Coordinating Instructions (at pp 2 and 3) and in the Parrabell Report itself (e.g. at pp 17-20), other terms were used besides “sexuality or gender bias”, including “gay hate crimes”, “bias crime” and “anti-gay bias”, as also indicating the objective or purpose of the Strike Force.
- (5) SFP was to review matters that had already been investigated by the NSWPF. It was not to, and did not, reinvestigate any matters. It did not contact any witnesses, suspects or family members. Rather, it reviewed written “holdings” from NSWPF files. Its aim was to arrive at a determination as to whether any of the 88 deaths were in fact motivated by an “anti-gay bias” (or the like), rather than identifying and prosecuting offenders: Coordinating Instructions pp 3, 14; Parrabell Report pp 19-22.
- (6) Various officers from the NSWPF were seconded to SFP over an 18-month period: Parrabell Report, p 20. The names and ranks of those officers are at p 6 of the Parrabell Report.
- (7) NSWPF engaged academics from Flinders University (the academic team) to conduct a review of the work of the Strike Force: see Parrabell Report at p 21.
- (8) Pages 1 – 46 of the SFP Report comprise the report of the Strike Force officers, while the longer part of the SFP Report, at pages 47 – 133, consists of the academic review by the Flinders University academic team.
- (9) In conducting their review of the cases, SFP officers used a “Bias Crime Indicators Form” (**BCIF**), said to be used by the NSWPF Bias Crime Unit: Coordinating instructions pp 3-4; Parrabell report pp 20-21. 1
- (10) That BCIF Form is set out in full at pp 4-13 of the Coordinating Instructions.

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- (11) According to the Coordinating instructions (pp 3-4 and footnote 1), and the SFP Report itself (see pp 67-70 within the academic review section of the Report, and footnote 20 thereto):
- i. Indicators 1-9 in the BCIF had been derived from the US document authored in 2000 by McLaughlin et al (document 7 above), while
 - ii. Indicator 10 (as to “Level of Violence”) had been developed by the NSWPF Bias Crime Unit.
- (12) The methodology employed by the Strike Force officers, including their use of the BCIF, was set out at pp 3-4 of the Coordinating Instructions and at pp 19-22 of the Parrabell Report. It was the subject of comment by the academic team at pp 65-70 of the Parrabell Report.
- (13) In respect of each of the cases considered by SFP:
- i. the BCIF form was completed by one or more of the police officers who comprised the Strike Force, in the sense that the 10 sets of “prompts” and “indicators” in the left hand column of the form were answered in writing in the right hand column;
 - ii. such police officers were of varying ranks and experience;
 - iii. such answers, and thus such completed BCIF forms, were of varying lengths and composition;
 - iv. the answers to such “prompts” and “indicators”, in each particular case, were composed by whichever Parrabell officer or officers was or were assigned to that case, derived from the views formed by such officer/s in the light of their reading of whatever historical files were available in that case; and
 - v. in all or most completed forms, there was a final box headed “Summary of Findings”, in which the assigned Parrabell officer/s ascribed one of four possible descriptors to the case, namely either “Evidence of bias crime”, or “Suspected bias crime”, or “No evidence of bias crime”, or “Insufficient information”.

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- (14) In Recommendation 3, the Strike Force officers expressed the view that “the current system with 10 bias crime indicators” was “not user friendly for operational police”: Parrabell Report, p. 39
- (15) The academic team expressed reservations about the BCIF tool used by the NSWPF: Parrabell report pp 68-71 and footnote 20.
- (16) The academic team used a different methodology, as outlined by them at pp 56-58, 70-71 and 79-91 of the Parrabell Report.
- (17) The academic team created and applied their own definition of “bias”: Parrabell Report, pp 82-83. 18.
- (18) The academic team then categorised bias crimes based on whether they were:
- i. “proactive” or “reactive”, and
 - ii. “associative” or “non-associative”: Parrabell Report, pp 88-90. 19.
- (19) On 5 November 2018, Professors De Lint and Dalton made a joint written submission (document 4 above) to the Standing Committee of the NSW Legislative Council on Social Issues, which was conducting an Inquiry into Gay and Transgender Hate Crimes between 1970 and 2010 (the Parliamentary Committee), in which they said, among other things:
- i. “There are difficult questions to be asked when assessing whether an incident is a bias crime and quite often investigators do not have the information to answer them” – at [3.4];
 - ii. “The tool used by the NSWPF, the Bias Crime Indicators Review Form (BCI[R]F), draws its ten indicators from the National Centre for Hate Crime Prevention ... It leaves too much discretion and does not rank or prioritise among the indicators and is being discontinued by the NSWPF” – at [3.6];
 - iii. “[W]e designed a simple three-part test of bias is as follows. Bias crime: expresses a categorical animus (directed at a person or group on the basis of his/her perceived identification with a vulnerable group); produces an act that intentionally, by way of criminal predation on the basis of that categorical animus, causes harm to that person or group; is mitigated or aggravated by an offender’s contemporaneous associations that are linked

by a commitment of denunciatory non-identification with the vulnerable person or group” – at [3.8].

- (20) On 28 November 2018, Professors De Lint and Dalton gave joint oral testimony (a transcript of which is document 5 above) to the Parliamentary Committee, in the course of which they made statements to the following effect:
- i. At p 11 – that the material with which the academic team was provided, and on which they based their analysis, consisted of “case summaries” (which the Inquiry at this stage, subject to any later clarification, understands to be a reference to the completed BCIF questionnaires with the ten sets of “prompts” and “indicators”) created by the Parrabell police officers (in 2015-16);
 - ii. At pp 11-12 and p 14 – that the academic team did not look at any of the primary documents which “sat behind” those summaries;
 - iii. At pp 10, 14 – that the academic team looked at the case summaries “to determine whether or not the attribution of bias that was provided (by the Parrabell officers) made sense to us”;
 - iv. At p 15 – that the police did not attempt to ascertain whether other homicides in the relevant period, beyond the list of 88, might be gay bias related; and
 - v. At pp 17-18 – that the academic team treated cases of anti-paedophile bias (where in their view that was indicated, from the case summaries) as separate and distinct from anti-gay bias.

C. Questions

Background

17. In 1968, the Federal Government enacted the first federal hate/bias crimes statute in the U.S., which covered crimes committed in whole or in part because of a victim(s)’ race, color, religion and/or national origin.
18. In 2009, the *Shepherd/Bird, Jr. Hates Crimes Prevention Act* (U.S.) added gender, gender identification, and sexual orientation to the list of protected groups under the federal statute, and under specific circumstances permitted the federal government to take

jurisdiction of State crimes committed and charged as bias/hate crimes. Such crimes require proof that a crime is motivated, in whole or in part, by hatred or bias against a victim based upon the enumerated categories. These statutes generally allow for injunctive relief, as well as criminal liability with fines and/or imprisonment.

19. In the United States, California was the first State to establish hate/bias crimes that included sexual orientation in 1984.¹ In 1998, California also added “gender identity” to its statute. From 1984 on, many States enacted such statutes. 46 States today have some version of a hate/bias crime statute.
20. In 1990, the *Hate Crimes Statistics Act* (U.S.) (“the 1990 Act”) required the U.S. Attorney General to collect data and publish an annual summary on crimes that manifest prejudice based on race, religion, sexual orientation, ethnicity, or disability. The Act was amended in 1994 and 1996. This statute helps the Federal Bureau of Investigation (“FBI”) identify the geographical location, nature and types of bias crime occurring in the United States and publish reports on those results.
21. Before the passage of the 1990 Act, no comprehensive source of hate/bias crime incident data existed in the United States, due in part to differences in defining, reporting, and compiling incidents of bias crime in different states.
22. National U.S. statistics still underreport hate/bias crime. State reports of hate/bias crimes are voluntary, while federal agencies must report any hate/bias crimes which they identify. The 1990 Act requires the FBI and Justice Department to collect hate crime data from the federal, state, local, tribal, and college/university law enforcement. However, the 1990 Act does not require those non-federal agencies to submit hate crime data to the FBI.
23. Hate/bias crimes are defined and reported differently across US states and communities. See, for example, **Exhibit A**, a report on hate crime in Massachusetts in 2014.² Some Massachusetts communities report hate/bias crimes to the Commonwealth, and some do not. Laws that differ from state to state, and inconsistent reporting requirements contribute to underreporting of hate/bias crime. None of the bias/hate crimes reported in Massachusetts in 2014 were homicides.

¹ The *Unruh Civil Rights Act* was enacted in 1959 and is codified in California Civil Code: Civil Code of the State of California, Cal Civ. Code, § 51 (Deering 2001) (‘Cal Civ. Code’). In *Rolon v. Kulwitzky* 153 Cal App 3d 289 (Cal Ct Crim App, 1984), the California Court of Criminal Appeal interpreted § 51 as prohibiting discrimination on the basis of sexual orientation.

² Massachusetts Executive Office of Public Safety & Security, *Hate Crime in Massachusetts 2014* (Report, December 2015).

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24. Some victims may not report their own experiences for fear of persecution or reprisal.³ Local police and other community officials may not want the designation of “hate crime” affecting their reputations in, and of, their communities.⁴
- 1. *The origins and use of the “Bias Crime Indicators” contained in the 2000 “curriculum” document (McLaughlin et al, Massachusetts), as reflected in the BCIF.***
25. The determination that a crime is a “bias crime” is always based on the facts of the case. Bias crime indicators suggest a possibility, not a legal certainty, which possibility investigators should entertain and explore. Crime indicators thus assist law enforcement in investigating and confirming that a particular crime was or was not motivated by the offender’s bias. The identification and confirmation of such prejudice motivation should be made for five primary reasons:
- a. Successful prosecution;
 - b. Proper law enforcement and victim assistance response to victims and communities;
 - c. Development of effective prevention programs and strategies;
 - d. Accurate data collection to inform research, legislation, and public policy; and
 - e. Victim and community awareness and understanding.
26. The Massachusetts model protocol for bias crime investigation defines “bias crime indicators” as “objective facts, circumstances, or patterns attending a criminal act, which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole or in part, by any form of bias”.⁵ These factors are outlined as well in the McLaughlin Training Materials (2005).⁶ SFP cited these training materials in preparing the Bias Crime Indicator Forms used in their exercise of reviewing, but not re-investigating, the 88 homicide crimes listed in their Report.
27. Bias indicators are not required to establish that the predominant motivation for an offender’s actions was hatred or bias. An incident can be classified as a bias crime if the

³ See Tanner Stening, ‘Why Hate Crimes Are Unreported and What Police Departments Have to Do with It’, *News at Northeastern* (online, 23 August 2021) <<https://news.northeastern.edu/2021/08/23/why-hate-crimes-are-underreported-and-what-police-departments-have-to-do-with-it/>>, quoting Professor Carlos Cuevas, Professor of Criminology and Criminal Justice at Northeastern University.

⁴ *Ibid*, quoting Professor Jack McDevitt.

⁵ *Hate Crimes*, 501 CMR 4, 16 June 2005. Available online at Massachusetts Government, ‘501 CMR 4.00: Hate Crimes’ (Web Page) <<https://www.mass.gov/regulations/501-CMR-400-hate-crimes>>.

⁶ McLaughlin et al, *Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals* (Report, US National Centre for Hate Crime Prevention, Education Development Centre, 2000)).

offender was acting out of hatred or bias, together with other motives, or if a bias motive was a contributing factor, in whole or in part, in the commission of a criminal act. But only with a conviction (by trial or by plea) are the indicators useful for the reporting of statistics; unsolved matters might be only reported as incidents which include potential bias crime indicators.

28. The McLaughlin Training Materials (2000) explore the types of bias crime indicators and their supporting elements that they believe are useful for training and for investigations of certain crimes that may be motivated by hate/bias.⁷ Those factors are:

- a. Race, Ethnic, Gender, and/or Cultural Differences
 - i. The race, religion, ethnicity/national origin, disability status, gender, or sexual orientation of victim differs from that of the offender.
 - ii. The victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred.
 - iii. The victim was engaged in activities promoting his or her group.
 - iv. The incident coincided with a holiday or date of particular significance to the victim's group.
 - v. The victim, although not a member of the targeted group, is a member of an advocacy group that supports the victim's group, or the victim was in the company of a member of the targeted group.
 - vi. Historically, animosity exists between the victim's group and the offender.
- b. Comments, Written Statements, or Gestures;
 - i. The offender made bias-related comments, written statements, or gestures.
- c. Drawings, Markings, Symbols, or Graffiti;
 - i. Bias-related drawings, markings, symbols, or graffiti were left at the scene of the incident.
- d. Organized Hate Groups;

⁷ Ibid.

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- i. Objects or items that represent the work of organized hate groups (e.g., white hoods, burning crosses, and hate-related graffiti) were left at the scene of the incident.
 - ii. Are there any indications that a hate group was involved?
 - e. Previous Bias Crimes or Incidents;
 - i. The victim visited a location where previous bias crimes had been committed against members of the victim's group.
 - ii. Several incidents occurred in the same area and the victims were members of the same group.
 - iii. The victim(s) had received previous harassing mail or phone calls or had experienced verbal abuse based on their affiliation with a targeted group.
 - iv. The recent bias incidents or crimes may have sparked a retaliatory hate crime.
 - f. Victim/Witness Perception;
 - i. The victim(s) and/or witnesses perceive that the incident was motivated by bias.
 - g. Motive of Offender;
 - i. The offender was previously involved in a similar incident or is a member of, or associates with members of, an organized hate group.
 - ii. The victim was in the company of or married to a member of a targeted group.
 - iii. The offender perceived the victim as violating or breaking from traditional conventions or working in nontraditional employment.
 - iv. The offender has a history of previous crimes with a similar modus operandi and involving other victims of the same race, religion, ethnicity/national origin, disability, sexual orientation, or gender.
 - h. Location of Incident;

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- i. The victim was in or near an area or place commonly associated with or frequented by members of a particular race, religion, ethnicity/national origin, disability, sexual orientation, or gender.
 - ii. The incident occurred at or near a house of worship, religious cemetery, or home or establishment of a group considered a minority or “outsider” in a given neighborhood.
- i. Lack of Other Motives: no clear economic or other motive for the incident exists.
29. The Bias Crime Indicators (the basis of the Form created by SFP) were developed in conjunction with other training and investigative multidisciplinary training materials from the Mass. Justice training Council, Department of Justice and the DOJ Office for Victims of Crime. The materials, and the factors, were designed for training police, District Attorneys, Victim Witness Advocates, and community members to recognize, investigate, and identify hate/bias crimes at the time. The materials used by SFP cite to the fact that it is a revision of an earlier curriculum, “The National Bias Crimes Training Manual”. A review of that document shows it is co-authored by EDC and the MASS Criminal Justice Training Council, Authors KA McLaughlin et al., published in 1995.
30. They were applicable to the universe of hate/bias crimes, not just LGBTIQ hate/bias crimes, nor just homicides.
31. They were “clues” that the professionals could look for in determining if a case should be investigated as hate/bias crime and could serve as guidelines to shape that process.
32. They were meant to help address the totality of the circumstances of the crimes, to allow investigators to follow evidence that could rule in, or rule out, that a crime had been motivated by hate/bias.
2. ***Your view as to the appropriateness of the methodology used by the Strike Force Parrabell officers, including the use of the BCIF, having regard to the objectives of the Strike Force (as to which see assumptions 3, 4 and 5 above).***
33. The methodology used by SFP is overinclusive in using the 9 US-derived bias crime indicator factors plus a 10th factor, level of violence, which can be relevant both to non LGBTIQ crimes, and to crimes other than homicides as well. Certain of the factors that might be relevant for race/national origin bias or bias based on religion would not necessarily be helpful in the gay hate/bias crime investigation, at least at the relevant time in NSW. For example, under the

first Indicator namely “Differences”, neither “outnumbering” nor “date of particular significance” (other than the annual Mardi Gras parade after 1978) would be likely to be applicable to LGBTIQ bias. The 10th factor, level of violence involved with a crime, is not a factor unique to gay hate/bias crime.

34. SFP’s use of the BCIF substitutes a checklist, or “check the box” method for merely reviewing files of past crimes that should have been investigated initially reviewing the totality of the circumstances.
35. If the goal of SFP was to determine which, if any, of the 88 deaths were in fact motivated by an “anti-gay bias”, the methodology was only going to be as successful as the original investigators were **at the time** in recognizing, investigating, and identifying evidence of a possible hate/bias crime.
36. For unsolved cases, the use of the BCIF alone would not assist the SFP police reviewers in identifying, or even categorising, gay hate/bias crime. A hate/bias crime requires proof of intent or motive; where no perpetrator and/or suspect has been identified, the SFP cannot address a crucial element needed for categorisation. It is thus not surprising that both the police summaries of investigations, and the review of just those summaries by the academic team, would result frequently in the conclusion that there was no evidence, or insufficient evidence that it was, or may have been a gay hate/bias crime.
37. The reviews were done by different police officers, with varying degrees of experience and training who looked, it seems, at each factor almost in isolation. The methodology did not address the issue of whether the original investigations may have been inadequate for reasons such as homophobia, transphobia or negligence. If the original case files were inadequate, the SFP officers had very little with which to work. If then you add the differential of varying degrees of experience and training, you cannot be certain even using the BCIF that the stated result in each case is consistent across the range of cases reviewed. Even the SFP noted that the BCIFs were not “user friendly”.⁸
38. The methodology, including employing the academic team, tended to give the impression of an open, rigorous and scientific investigation, but really only created the illusion that there was not extensive homicidal violence towards the LGBTIQ community during the relevant time period.

⁸ NSW Police Force, Strike Force Parrabell Final Report (Report, 2018) 39.

3. *Your view as to the appropriateness of the different methodology used by the academic team, having regard to those objectives.*

39. The academic team seems to recognize that their process is not likely to produce different or other results from the original case files, noting that there are limits on archival information: “an archive can only yield something that was captured in the first instance”.⁹
40. Nonetheless, they establish their own categories of “proactive, reactive ... associative or non-associative” crimes. In my view these different categories are not such as to produce any better results. The academics even note that “the distinction between ‘proactive’ and ‘reactive’ can be hard to determine, even when a great deal of forensic testimony and witness testimony is available...”,¹⁰ which was not the case here.
41. Moreover, most crimes, including homicides, can either be pre-planned or crimes of opportunity, or somewhere in between. Most crimes also can be committed alone or in concert with others. There is nothing unique about these categories in connection with gay hate/bias crimes or indeed any hate/bias crimes.
42. In my opinion, therefore, these categories of the academic team do not assist police in the SFP exercise, or in the future for recognizing, investigating, and identifying hate/bias crimes. These categories provide possible parameters as to how and/or why a (known) perpetrator might have committed any homicide, but are not particularly helpful for investigators seeking to rule in or rule out a gay bias/hate crime.
43. The academic team categories might or might not be useful in sentencing a convicted offender, as they go to intent, or dangerousness, although the academic team was not engaged in an exercise relating to sentencing. The finding of whether any crime is proactive or reactive might go to the state of mind of the perpetrator, the amount of planning involved, and the risk to the public in the future without appropriate general and specific deterrents employed in sentencing.
44. The academic team also recognized that in some cases, including that of Scott Johnson, there was a failure to determine, or sometimes even consider, that a death was a homicide, but rather they were labelled “suicide” or left undetermined. They seemed to recognize that where there is no sufficient investigation of a death at the time, a later review like that of

⁹ Ibid 80.

¹⁰ Ibid100.

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- SFP will not remedy this problem. Their categories are even less useful than the BCIF in unsolved cases, because there is no suspect available to assess a motive or behaviour according to their categories.
45. The academic team seems to understand the shortcomings of the original investigations, and thus the limited ability of SFP to have success in further identifying, or even categorising, gay bias/hate crimes. They of course are limited by the same shortcomings. Even more so as they are merely reviewing summaries that SFP compiled.
46. Thus, the Parrabell Report projects a conclusion that a transparent and robustly verifiable review did not uncover evidence of either a large number of gay hate/bias crimes, or a failure by the Police to identify those crimes. The SFP officers reached that conclusion by using the bias crime indicators for a purpose for which they were not intended. The academic team used even less relevant categories to assess the SFP summary files. Neither conclusion is based on a sound methodology. Both are open to doubt.
47. In short, given the decision by SFP not to open or re-investigate any of the 88 homicide files, the prospects of success of the project were essentially very limited from the start.
48. A more realistic and useful exercise would have been for the SFP, even using the BCIF in reviewing the files, to triage those files for unsolved deaths which had the greatest indicia of hate/bias crimes, with sufficient, or even some evidence. The prudent course would have been then to re-open those cases, assigning experienced homicide investigators, to perform investigations that may have been able to rule in or rule out a bias hate crime, even if the perpetrator(s) could not be positively identified and/or prosecuted.
49. Even for those cases that had been “solved”, a review of why so many had reductions of charges from murder to manslaughter or less, even if academic only, might have offered some helpful explanations. Exhausting those avenues might have given some comfort to the LGBTIQ community and the family and friends of the victims that the SFP had actually done all that they could.
4. ***Other ways and/or models of which you are aware, in which bias crime has been, or may be, identified and/or documented and/or characterised and/or analysed, whether in the USA or elsewhere.***
50. I am most familiar with Massachusetts and US Department of Justice models for identifying, documenting, characterizing and analyzing hate/bias crimes.

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51. In Massachusetts, for example, any unattended or suspicious death, or apparent homicide, since the early 1980s is investigated by local police in partnership with the MA State Police (with the exception of some of the larger city police departments who have greater resources and expertise). The District Attorney by statute has jurisdiction over these deaths. She designates the appropriate police investigators, who have training and experience and have senior officers in charge, and an assistant District Attorney for oversight in drafting of search warrants if applicable for gathering evidence, for an arrest, a grand jury investigation, and a trial or plea. Such a team at the outset would look for all evidence, including that of motive, particularly if there were any bias/hate crime indicators either at the scene or otherwise.
52. The current practice for the MA Attorney General, as when I served as the state-wide Attorney General, is to partner with the DA in the country where the crime occurred. The AG will focus on the civil prosecution options for other relief while the DA would pursue appropriate criminal charges. Annexed as **Exhibit D** is a current training document used by the Mass. Attorney General's Office for Investigation of Bias-motivated Threats, Harassments, and Violence.
53. A current website that gives insight into the US Department of Justice model is the Community Relations Service: <https://www.justice.gov/crs>.
54. Neither the Commonwealth or MA, nor the US DOJ, have or claim to have perfect models and perfect employment of them for addressing hate/bias crimes. However, recognizing the bias and hate in our communities that often leads to threats, harassment, and violence is the first step in developing multipronged strategies to prevent and hold accountable those who act with bias and hate. Police are an important, but not the only, factor in successful prevention and accountability. They cannot do it alone. However, they should strive to be part of the solution.

Signed



Martha Coakley

Of Counsel, Foley Hoag LLP

Date: December 20, 2022