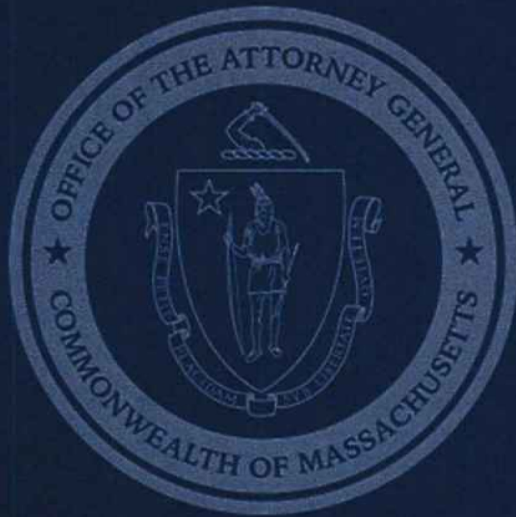


# EXHIBIT D

# Civil Prosecution of Bias-Motivated Threats, Harassment, and Violence



Civil Rights Division  
Office of the Massachusetts Attorney General  
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BJ(8)



# Hate Crimes v. Bias Incidents

- Criminal hate crime prosecution cannot adequately address the broad range of hateful conduct and speech that causes individual and societal harm.
- Hateful and offensive conduct and speech alone do not necessarily violate the law.

**Slide 2**

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BJ(8) Generally, we talk about 3 categories of conduct: hate crimes, bias-incidents, and hate speech (which you've correctly identified as deserving its own slides). Bias-incidents are exactly that--non-criminal bias motivated conduct. More common, arguably more destructive, and frequently harder to deal with.

Burke, Jonathan (ASCC), 12/1/2019



# Civil Enforcement Massachusetts Civil Rights Act

The Massachusetts Civil Rights Act authorizes the AGO to sue to prevent and punish any person for:

- (1) Interference or attempted interference;
- (2) With any right secured by state or federal law (including Constitutional protections);
- (3) Involving threats, intimidation, or coercion.

Although it does not have a “bias” component, the Civil Rights Division uses the MCRA to civilly prosecute both conventional hate crimes and bias-incidents.



# How The AGO Has Used the MCRA

- Neighbor harassment
- Landlord harassment
- Interference with access to reproductive health care facilities
- Bias-motivated threats and violence



# Identifying Hate – Bias Indicators

- Racial, ethnic, gender, sexual orientation or cultural differences between victim and offender
- Bias-related comments, written statements or gestures
- Victim/witness perception that incident was motivated by bias



# Bias Indicators

- Victim in company of a member of a targeted group or was perceivable by the offender as violating or breaking from stereotypes
- Offender has history of conduct targeting victims of the same racial, religious, ethnic/national origin, handicap, gender or sexual orientation group
- Location at or near area associated with members of a particular race, religion, ethnicity, national origin, disability, sexual orientation, or gender





# Benefits of Civil Enforcement

Where there is also criminal prosecution:

- Demonstrates support for victimized communities
- Faster, more extensive, and more permanent remedies
- Labels conduct prosecuted under the general criminal laws as a “hate crime”
- Investigative and prosecutorial assistance
- Deters escalation and recurrence

The AGO may also bring an action under the MCRA to reach conduct that is not, cannot (yet), or should not be criminally prosecuted.



# MCRA Explained

The MCRA does not require proof beyond a reasonable doubt or...

## 1. A physical threat, confrontation, or injury.

*"A pattern of harassment and intimidation...support[s] a finding of non-physical coercion under the MCRA."*

*Thomas v. Harrington*, 909 F.3d 483, 493 (1<sup>st</sup> Cir. 2018)

## 2. Specific intent to interfere with secured rights.

*"The MCRA must apply to any threatening, intimidating, or coercive behavior regardless of whether the defendant specifically intended to interfere with a [secured] right..."*

*Redgrave v. Boston Symphony Orchestra*, 399 Mass. 93, 99-100 (1987)

## 3. Identification of (or testimony from) victims.

*"The Attorney General, as a plaintiff in this action, represents the public interest in guarding against ...future unlawful conduct that would be harmful to persons not currently identifiable...The fact that the defendants' unlawful conduct if repeated would cause a reasonable woman in the circumstances to feel threatened, intimidated, or coerced requires prospective relief in the public interest."*

*Planned Parenthood League of Massachusetts v. Blake*, 417 Mass. 467, 479 (1994)



# MCRA Explained

- Threat: intentional exertion of pressure to make another fearful or apprehensive of injury or harm.
- Intimidation: putting in fear for the purpose of compelling or deterring conduct.
- Coercion: application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.

*Planned Parenthood League of Massachusetts, Inc. v. Blake*, 417 Mass. 467, 474 (1994)



# Secured Rights in Bias Cases

Many cases involve broad rights to “security of the person” and “use and enjoyment of property” secured by the Constitution and 42 U.S.C. §§ 1981 & 1982.

State and federal civil rights and anti-discrimination laws provide additional protections involving:

- Voting
- Employment
- Education
- Travel
- Housing
- Use of public spaces and accommodations
- Access to and use of the legal system
- Participation in government programs



# MCRA Penalties

- Civil Rights Injunction
- Compensatory Damages for Victim
- Costs and Attorney's Fees
- Civil Penalties
- Violation of a Civil Rights Injunction is a criminal offense punishable by up to 10 years in state prison.



# Civil Rights Injunctions

## MCRA injunctions typically:

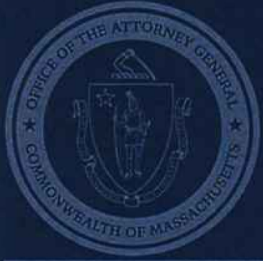
- Order offender to stay away from victim's home, school, work, area where incident took place, other geographic areas, witnesses, and victim's friends and family
- Prohibit offender (and those acting in concert) from threatening, intimidating, or coercing the victim and similarly-situated persons
- Prohibit offender from encouraging or assisting any other person in violating the injunction.



# Other Areas of Civil Enforcement

The AGO uses the Commonwealth's other civil rights and anti-discrimination laws to address both individual bias incidents and systemic problems that occur in specific contexts:

- »Education
- »Housing
- »Employment
- »Public Accommodations



# Hate Speech and the First Amendment

“Hate speech is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits.” [American Bar Association – Division for Public Education]

The First Amendment does not have a “hate speech exception” but...





# When is Hate Speech Actionable?

- The First Amendment does not apply equally in all circumstances (e.g. K-12 education) and does not protect all speech against prosecution including, e.g., fighting words, harassment/true threats, and speech integral to the commission of a crime.
- Conduct and “unprotected speech” do not become shielded from prosecution simply because they are mixed with protected speech.
- Anti-discrimination laws that have an “incidental impact” on speech are generally constitutional, e.g. hostile environment cases.
- Protected speech may be used as evidence in both civil and criminal prosecutions.



# *Commonwealth v. Jedrzejczyk*

## Criminal Action

**Facts:** Engaged in pattern of racially-motivated harassment against tenant.

- Rented unit to a woman and her two teenage daughters, who appear Caucasian
- When one daughter gave birth to a baby who appeared to be, at least partially, African-American, Jedrzejczyk began a campaign of intimidation and harassment targeting the daughter and her infant child.
- Called the young woman a “race traitor” and called the infant a “ni\*\*er.”
- Locked the tenants out of the basement; disabled electricity to the infant’s bedroom; broke a window in the apartment while the family was at home; repeatedly banged on wall outside baby’s room.
- Sent the family multiple eviction notices and repeatedly stated he wanted “the niggers out.”

**Action:** Successful criminal prosecution (G. L. c. 12, § 11J)



# *Commonwealth v. Jedrzejczyk*

## Civil Action

**Facts:** Two Holyoke brothers engaged in a pattern of racially-motivated harassment against their neighbors, a single mother and her two, six year-old daughters.

- The adult victim was a political asylee who, in 2001, fled political persecution in Haiti out of fear for her life.

**Action:** Order including a civil rights injunction prohibiting the Jedrzejczyks from threatening, intimidating or coercing the victims, or anyone else in the Commonwealth, because of their actual or perceived race or ethnicity.



# *Commonwealth v. Hill*

## Action:

- Case filed in Norfolk Superior Court
- Received preliminary injunction against Hill
  - Defendant could not enter pizza store for any reason unrelated to landlord duties, and must provide 24 hours advance notice in writing
  - Defendant could not come within 20 feet of family
  - Defendant could not initiate any communication with family
- Obtained permanent injunction & other relief



# *Commonwealth v. Hill*

**Facts:** Cohasset landlord engaged in bias-motivated harassment towards Arab pizza store owner and family.

- “Get out of my building, you f’ing towelhead.”
- “I’m going to send you back to your country in a casket.”
- Hill compared an employee to a terrorist and asked him if flew planes into buildings.



# *Commonwealth v. Tripp*

## Facts:

- Wellfleet man approaches group of young people in a park
- Young people are of different races
- White male starts yelling at black 14-year-old, and then punches him
- White male pulled away by white woman, who he punches as well

## After Arraignment:

- Defendant stays on same municipal bus as victim and stares at victim for several minutes



# *Commonwealth v. Tripp*

## Action:

- Case filed in Barnstable Superior Court
- Police affidavit provided
- Received preliminary injunction
- Preliminary injunction obtained against Tripp:
  - Prohibiting him from contacting the victims, their families, or any witness in the case
  - Prohibiting him from coming within 25 yards of the victims or within 50 yards of their residences, places of employment, and school of the child victim
  - Prohibiting him from threatening, harassing, or intimidating the victims or any person on the basis of race



# Easthampton High School

## Facts:

- Several students of color and a white student are involved in a “physical altercation” after white student makes racist posts on social media
- School disciplines students of color (including bystanders) and requests criminal prosecutions without adequate investigation
- Students, parents, and community members stage protests and demonstrations to draw attention to “racial issues” at school
- Other students react by, e.g., creating Instagram pages containing disturbing images of the Confederate flag, weapons, the EHS building, and EHS students and staff
- Situation causes severe and escalating disruptions to school environment





# Easthampton High School

## Action:

- AGO conducts months-long investigation in coordination with Easthampton Police Department and Northwestern District Attorney's Office
- Investigation identifies severe deficiencies in the manner the School handled racist and bias-related conduct by students, including threats of violence
- Investigation also identifies racial and ethnic disparities in administration of school discipline.

Resolution: Memorandum of Understanding requires School District to make systemic changes to address problems with educational environment. Changes are identified and implemented in consultation with Easthampton Police Department, District Attorney's Office, and other stakeholders.

# Questions



ANY  
QUESTIONS  
?



# Thank you!

## Contact Information

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