This workshop was held at the 2018 Equal Justice Conference in San Diego, California.

Title:
Combating Hate: A National Campaign to Protect and Defend Targets of Hate

Presenters:
Shirlethia V. Franklin, Jones Day, Washington, DC
Barbara Mack Harding, Jones Day, Washington, DC
Becky Monroe, Lawyers Committee for Civil Rights Under Law, Washington, DC

Hate-related incidents have increased over the past several years as the country becomes more polarized and individuals influenced by white nationalist, neo-Nazi and anti-Muslim ideologies are emboldened by nationalist and racist rhetoric. This session will describe national efforts by volunteer attorneys and premier civil rights organizations to combat extremism and stem the tide of targeted campaigns of hate-inspired intimidation, harassment, threats, trespass, and violence.
Barbara Harding  
Partner, Jones Day

Moderator: Shirlethia Franklin, Of Counsel, Jones Day

Becky Monroe  
Director, Stop Hate Project, LCCR

Chris Tenorio  
Assistant U.S. Attorney, DOJ
Roadmap:

- **Rise in Hate Crimes**
  - Data & Reporting
  - Federal & State Hate Crime Laws
  - Private and Non-Profit Response
What is a Hate Crime?

A criminal offense against a person or property motivated in whole or in part by an offender’s bias due to a victim’s race, color, religion, disability, sexual orientation, national origin, gender, or gender identity.

The perpetrator’s prejudicial motive, or bias, is what distinguishes hate crimes from other sorts of crimes.
Where Do Hate Crimes Occur?

At or near victim's home: 38.7%
Parking lot, on street, or on public transportation: 24%
Commercial place: 14.2%
School or college: 13.6%

Source: FBI UCR
### Partial Year Hate Crime Comparisons for Cities of Populations of 250,000 or More (Percent of Change, 2016-2017)

<table>
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<th>City</th>
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©Center for the Study of Hate and Extremism, CSUSB, September 2017/K. Grisham
Bias Breakdown:

**Victim's perception of bias in hate crime victimizations, 2011-2015**

- Race: 48.1%
- Ethnicity: 35.4%
- Gender: 29.3%
- Association: 22.5%
- Sexual orientation: 22.1%
- Religion: 16.7%
- Disability: 15.6%
- Perceived characteristics: 6.6%

**Bias Motivations**

Analysis of the 6,063 single-bias incidents reported in 2016 revealed the following biases:

- Race/Ethnicity/Ancestry: 57.5%
- Religious: 21.0%
- Sexual orientation: 17.7%
- Gender identity: 2.0%
- Disability: 1.2%
- Gender: 0.5%

Source: Bureau of Justice Statistics
10 Days After Election: 867 Hate Incidents

Source: Southern Poverty Law Center
Anti-Semitic Banner Found Hanging Over Holocaust Memorial

By Alice Salles

According to Forward, a banner showcasing anti-Semitic slurs was hung over a Holocaust memorial in Lakewood, New Jersey. Hikers sporting the same hatred were also left on nearby cars.

Using an anti-Semitic slur and symbol that are both often used by members of the so-called alt-right, Forward reports, the banner claims that members of the Jewish faith "will not divide us."

Toward the bottom of the banner, it reads, "Presented by," followed by a link to a website that defends white supremacy, using a term coined by German Nazis.

This isn’t the first time that a Holocaust memorial has been targeted by anti-Semitic vandals. More recently, the New England Holocaust Memorial in Boston, Massachusetts, suffered major damage due to vandals.

While in this case no property damage seems to have been reported, it’s important that acts of vandalism are caught promptly. As local officials investigate the banner and fences as hate crimes, we encourage all community members to stay aware and report any suspicious activity to authorities.

The New York Times
Hangman’s Noose, Symbol of Racial Animus, Keeps Cropping Up

By MIRVYL GAY VOOR HEIDT and ALISON JOHNSON

PHILADELPHIA — It was the beginning of the night shift last Wednesday at the United States Mint in Philadelphia, a secure facility that manufactures money, when a white male coin maker strode across the factory floor to the workation of an African-American colleague. He was carrying a piece of rope.

The rope had no official purpose: to seal coin bags once they were full. But the worker, who operates the machinery used to make coins, instead looped and twisted it into a hangman’s noose, according to Rivarda Sapp, president of the Mint workers’ union. She was soon alerted by calls and text messages from outraged employees.

The episode, which has not previously been reported, drew a powerful symbol of hatred directed at African-Americans from a mint in New York City, hanging from nooses on the same day that the first black woman was set to assume the presidency of her university’s Student Government Association.

"To me, it’s a noose in lynching," said Taylor Thompson, the woman who became the university’s student government president.

"That’s immediately what comes to my mind," Thompson said.
A California woman pleaded guilty to two counts of vandalism and what appears to be a sentencing enhancement for a hate crime for breaking windows and bicycles at and placing bacon on a mosque near Sacramento. The article states that the woman will be sentenced in June 2017.

**Message of Peace After Hate Crime in New Britain**

City leaders gathered to show unity after a Muslim man was the target of a hate crime in New Britain.

After a New Britain man and his family fell victim to what police are calling a possible hate crime, city and state officials gathered to send the message that hate crimes will not be tolerated.

NBC Connecticut interviewed Omar Abdelgader on Thursday, a day after a shirt with references to 911 and ISIS was found hanging outside of his Arch Street home. On the shirt were messages asking the Sudan native and president of the Islamic Association of Central Connecticut: “what is your plan?” “are you supporting or possible terrorism?” And questions of extremism.

In the center, it says “9/11 was not a joke.”
Virginia Man Charged With Hate Crime Found Not Guilty by Reason of Insanity in Terrifying Attack on Black Woman

A Virginia man who was facing multiple charges, including committing a hate crime after police said he dragged a black woman out of her car and attacked her based on her race, has been found not guilty by reason of insanity.

According to the Richmond Times-Dispatch, 27-year-old Matthew R. Ellis was found not guilty by reason of insanity after Chesterfield County, Va., Circuit Court Judge Lynn S. Bitos reviewed reports from two mental health professionals who came to the conclusion that Ellis was insane at the time of the May 3 attack.

“The evidence supporting the insanity defense was overwhelming in this case,” Bitos said.

A Muslim girl was beaten to death after leaving a mosque.

A Muslim girl was beaten to death after leaving a mosque.

Staff Report

Virginia police found remains of a Muslim teenager who went missing after she walked back from an IHOP restaurant to her mosque, the All Dulles Area Muslim Society (ADAMS), on Sunday night.

"I can’t think of a worse instance to occur than the loss of a 17-year-old on Father’s Day, as the father of a 17-year-old myself," the Loudoun County sheriff said.

According to police and mosque officials, Nabra Hussain was walking back after getting breakfast at the missing girl,” the mosque said in a statement.

"They all dispersed after the incident and when they met back up they realized she was missing," said Deputy Aleksandra Kowalski, a spokesperson for the Loudoun County Sheriff’s Office.

A 22-year-old, identified as Darwin Martinez Torres, was arrested and charged with murder. The suspect was seen driving suspiciously in the area as police were searching for the teen. Police said they arrested Torres after a search.

A baseball bat was also recovered from the area. "We have recovered articles of evidence from the area where we believe she was assaulted," Wright explained. "We will try and release information about the weapon used as we process it."

"I can’t think of a worse instance to occur than the loss of a 17-year-old on Father’s Day, as the father of a 17-year-old myself," Loudoun County Sheriff Michael L. Chapman said.

A Virginia man attacked an African American woman because of her race. He faced multiple charges, but he was found not guilty by reason of insanity.
Roadmap:

- Rise in Hate Crimes
- Data & Reporting
- Federal & State Hate Crime Laws
- Private and Non-Profit Response
Hate Crime Reporting:

The Hate Crime Statistics Act, 28 U.S.C. § 534

- DOJ/FBI Uniform Crime Reports
- DOJ/Bureau of Justice Statistics National Crime Victimization Survey
Uniform Crime Reporting (UCR) Program:

Preliminary Crime Stats for 2017
Both violent crime and property crime decreased during the first half of 2017 when compared to the first half of 2016. Details

National Incident-Based Reporting System 2016
Law enforcement agencies reported 5,237,106 incidents involving 6,101,034 offenses in 2016. Details

2016 Hate Crime Statistics
Law enforcement agencies reported 6,121 hate crime incidents in 2016. Details

Law Enforcement Officers Killed and Assaulted 2016
The latest edition of Law Enforcement Officers Killed and Assaulted provides national statistics on lives lost in 2016. Details
Bureau of Justice Statistics’ (BJS) National Crime Victimization Survey (NCVS):

Measures crimes *perceived by victims* to be motivated by an offender’s bias against them.

**Requirements:**

1. Offender used hate language
2. Offender left behind hate symbols
3. Police confirmed that incident was a hate crime
What the Data Reveals:

2015 DOJ NCVS’ survey estimates 207,880 hate crime incidents

DOJ/FBI showed 5,850 incidents reported to law enforcement in 2015 and 7,321 in 2016.

Police Reports Undercount Hate Crime Relative to Victimization Surveys

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About 54% of hate crime victimizations were not reported to police during 2011-15

Underreporting:

- Doubt law enforcement
- Hesitation to reveal vulnerabilities
- Cultural and Linguistic barriers
- Fear of reprisal
Gaps in FBI Data:

Every dot on the map, marks a gap in FBI’s hate crimes data

Huntsville, Alabama Police Department has never reported a hate crime to the FBI

Hawaii does not report hate crimes to the FBI

Source: ProPublica
Why the Disparity?

Why?

- Collection Variability
- Definitional Differences
- Training
- Voluntary Reporting
- Heightened Standard
Roadmap:

- Rise in Hate Crimes
- Data & Reporting
- Federal & State Hate Crime Laws
- Private and Non-Profit Response
Federal Law

Criminal

Interference With Federally Protected Activities (18 U.S.C. § 245(b)(2))


Fair Housing Act (42 U.S.C. § 3631)


Damage to Religious Property/ Interference w/ Free Exercise of Religious Beliefs (18 U.S.C. § 247)

Conspiracy Against Rights (18 U.S.C. § 241)

Civil


Conspiracy to Deprive Any Person or Class of Persons of Equal Protection of the Laws (42 U.S.C. § 1985 (3))

Interference, Coercion, or Intimidation in Violation of the Fair Housing Act (42 U.S.C. § 3617)

Violence Against Women Act (42 U.S.C. § 13981)
State Law

State Hate Crime Statutes
   Enhancement v. Stand alone
   Civil v. Criminal
   Protected Categories
   Property

State Tort Actions
   Intentional infliction of emotional distress
   Assault
   Battery
   False imprisonment
   Trespass
   Property Damage
   Stalking
   Harassment
   Defamation
   Conspiracy
   Cyberbullying
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[Image 0x-0 to 941x540]
Summary of State Hate Crime Laws at 8449nohate.org
The First Amendment Defense

Does not protect “true threats”

Roadmap:

- Rise in Hate Crimes
- Data & Reporting
- Federal & State Hate Crime Laws
- Private and Non-Profit Response
Lawyering to Confront Hate:

www.8449nohate.org
Impact Litigation Campaign
Positive Precedent:

State Hate Crime Statutes create civil cause of action:

*Simms v. Chaisson,*

*Johnson v. Smith,*
878 F. Supp. 1150 (N.D. Ill. 1995)

**IIED:**

*Tompkins v. Cyr,*
202 F.3d 770 (5th Cir. 2000)

Invasion of Privacy:

*Melvin v. Burling,*
141 Ill. App. 3d 786, 490 N.E.2d 1011 (1986)
Examples:

Oregon

Defendants wrote harassing and threatening letters referring to plaintiff’s sexual orientation and included swastika drawings. Plaintiff won compensatory and punitive damages for intimidation based on the perpetrators’ “perception of the [victim’s] race, color, religion, sexual orientation, disability or national origin,” intentional infliction of emotional distress, and invasion of privacy.

Virginia

Target employee harassed customer by using a racial slur, making derogatory statements about African Americans, and detaining her. Customer’s claim for racial, religious, or ethnic harassment under state statute survived a motion to dismiss.
Potentially favorable jurisdictions include:

Arkansas
California
Connecticut
Illinois
Massachusetts
New Jersey
Oregon
Pennsylvania
Tennessee
Virginia
Washington
Additional Private Bar Responses

Charlottesville: *Sines v. Kessler*, Case No. 3:17-072 (W. D. Va.)

- Virginia Hate Crime Statute, 42 U.S.C. § 1985, Negligence Per Se, Civil Conspiracy, Assault & Battery, IIED
- Seeking injunctive relief, compensatory damages, punitive damages
- Partnership with Integrity First for America
Lawyers’ Committee For Civil Rights

Legal resources; local service organizations; access to counsel

https://communitiesagainsthate.org/report

Resources are also available on www.8449nohate.org

1-844-9-NO HATE (1-844-966-2483)

national hotline serving individuals and organizations that experience hate
Gersh v. Anglin, Case No. 17-0005 (D. Montana)

- Tanya Gersh victim of troll storm
- Invasion of Privacy, Intentional Infliction of Emotional Distress, Violation of the Montana Anti-Intimidation Act, Malice (Montana Code § 27-1-221)

10 Ways to Stop Hate

- A guide setting out 10 principles for fighting hate in your community
Law Enforcement

U.S. Department of Justice
   Civil Rights Division
   Task Force on Crime Reduction and Public Safety
FBI
International Association of Chiefs of Police
   A Police Officer’s Guide to Investigation and Prevention Hate Crime in America
   Lawyers' Committee Advisory Committee to Enhance the Response to Hate Crimes
San Diego Regional Hate Crimes Coalition

Formed in 1995 to develop and promote the awareness, understanding, and prevention of hate crimes and hate incidents.

A coalition of NGOs, community-based groups, and federal, state, and local law enforcement agencies

Coordinates San Diego Region outreach, education, and responses
San Diego Regional Hate Crimes Coalition

Countywide Regional Hate Crimes Policy Protocol
Hate Crimes Training Manual for law enforcement
Hate Crimes Training Program within the San Diego PD and for the military
Creation of the “US vs. Hate” public service announcement campaign
(bus/bus stop posters, decals, t-shirts)
Discussion & Questions