
CIVIL RIGHTS HATE CRIME SYMPOSIUM
November 7-9, 2023
Columbia, South Carolina

AGENDA

TUESDAY, NOVEMBER 7, 2023

8:00 - 8:30 a.m. **REGISTRATION**

8:30 - 8:45 a.m. **NAC WELCOME REMARKS**
Chris Canova
Jessica A. Ginsburg

8:45 - 9:00 a.m. **INTRODUCTION AND WELCOME**
Kristen Clarke

9:00 - 9:45 a.m. **PROSECUTION OF THE MEN WHO KILLED**
AHMAUD ARBERY (CLE Eligible)
Bobbi Bernstein
Christopher Perras

The prosecution team in United States v. McMichael et. al will deliver a presentation about the prosecution of three men responsible for the death of Ahmaud Arbery, a young Black man who was shot and killed while jogging through the defendants' mostly-white neighborhood. The presenters will discuss the underlying facts of the case and the trial team's decision-making process through the investigation and trial. Topics covered will include a discussion of how the team developed evidence of bias motivation, how the team made charging decisions, and issues that arose during voir dire and during trial.

9:45 - 10:00 a.m. **BREAK**

10:00 - 10:35 a.m.

**PROSECUTION OF THE MEN WHO KILLED
AHMAUD ARBERY -CONTINUED (CLE Eligible)
Bobbi Bernstein
Christopher Perras**

The prosecution team in *United States v. McMichael et. al* will deliver a presentation about the prosecution of three men responsible for the death of Ahmaud Arbery, a young Black man who was shot and killed while jogging through the defendants' mostly-white neighborhood. The presenters will discuss the underlying facts of the case and the trial team's decision-making process through the investigation and trial. Topics covered will include a discussion of how the team developed evidence of bias motivation, how the team made charging decisions, and issues that arose during voir dire and during trial.

10:35 – 10:40 a.m.

BREAK (Cafe closed)

10:40 - 12:25 p.m.

**LEGAL OVERVIEW OF FEDERAL HATE CRIME
STATUTES (CLE Eligible)
Angela Miller**

Angela Miller will discuss the statutes commonly used to prosecute federal hate crimes. Specifically, the lecture will focus upon the four substantive hate crime statutes (18 U.S.C. §§ 245, 247, 249, and 42 U.S.C. § 3631) and the civil rights conspiracy statute (18 U.S.C. § 241). It will cover the jurisdictional and substantive elements needed to prove each statute, as well as the conspiracy provisions of § 249 that were recently added by the Emmett Till Antilynching Act. The presentation will also touch upon common defenses.

12:25 – 12:30

BREAK (Café closed)

12:30 - 1:00 p.m.

BEYOND HATE (CLE Eligible)
Maura White

Federal Hate Crime statutes require proof that the defendant acted “because of” one of the characteristics set forth in the relevant hate crime statute (race, color, LGBT status, etc.) In this NAC Talk, Maura White will address the common misconception that the government must prove that the defendant acted with longstanding prejudice or bias, explaining instead that the legal requirement is merely that the defendant would not have acted as he or she did in the absence of the protected characteristic.

1:00 - 2:00 p.m.

LUNCH

2:00 - 3:00 p.m.

**SOUTHERN POVERTY LAW CENTER:
INTELLIGENCE REPORT (No CLE sought)**
R.G. Cravens

This presentation will provide an overview of important, disturbing trends and developments within the anti-LGBTQ movement, including the surge in threats and violence against transgender people, children, and their caregivers. By focusing on commonalities in rhetoric, symbols, locations, and actors involved in violent anti-LGBTQ attacks and targeted intimidation, this presentation will help investigators and prosecutors identify potential evidence and motivations for bias crime.

3:00 - 3:15 p.m.

**REMARKS FROM THE AGAC CIVIL RIGHTS
SUBCOMMITTEE (No CLE sought)**
The Honorable Dena J. King
The Honorable Henry Leventis
The Honorable Philip Sellinger

3:15 - 3:30 p.m.

BREAK

3:30 - 3:50 p.m.

AAPI ISSUES (No CLE sought)
Anita Channapati

Anita Channapati will discuss hate crimes committed against Asian Americans and Pacific Islander victims. She will discuss the historic context and how bias against these victims was exacerbated by the pandemic. She will also explain the steps the Department is taking to vindicate the rights of AAPI victims.

3:50 - 4:10 p.m.

**USING 18 U.S.C. § 241 TO COMBAT VOTER
DECEPTION (No CLE sought)**

Mark D. Blumberg

Sarah Howard

Election Deception: Can our civil rights statutes cut a path through deceit designed to interfere with voters or does the 1st Amendment leave us at the mercy of tricksters and con-artists? Sarah Howard and Mark Blumberg will discuss United States v. Mackey and the tools available to prosecutors to curb certain efforts to suppress the vote.

4:10 - 4:15 p.m.

BREAK (Café closed)

4:15 - 4:45 p.m.

**INVESTIGATION OF CIVIL RIGHTS COLD CASES
UNDER THE EMMETT TILL ACTS (No CLE sought)**

Maraya Best

Maraya Best will discuss the Emmett Till Unsolved Civil Rights Crimes Act, explaining how the Cold Case Unit of the Civil Rights Division staffs and investigates death-resulting civil rights crimes that occurred before 1980. Ms. Best will describe the challenges to bringing justice in these cold case matters. She will explain what USAOs should do if a Till Act case is referred to them and the resources available in these investigations.

4:45 - 5:00 p.m.

QUESTION AND ANSWER PANEL (No CLE sought)

5:00 p.m.

RECESS

WEDNESDAY, NOVEMBER 8, 2023

8:30 - 10:00 a.m.

HATE CRIME MASS SHOOTINGS (CLE Eligible)

Moderator: Christopher Perras

Shan P. Patel

Annamartine Salick

Timothy Visser

This panel will examine several recent hate-crime mass shootings, including the Buffalo supermarket shooting and the El Paso Walmart shooting, with a focus on the Department's role in the immediate aftermath of these shootings. Panelists will address several common challenges, including: (1) coordinating with state and federal partners; (2) building rapport with victims and their families; (3) developing bias-motivation evidence; (4) anticipating and addressing mental health defenses; and (5) dealing with emotional trauma.

10:00 - 10:20 a.m.

BREAK

10:20 - 10:40 a.m.

LINK BETWEEN DOMESTIC TERRORISM AND HATE CRIMES (No CLE sought)

Jacob Warren

This presentation will spotlight the overlap between hate crimes and domestic terrorism and will address how domestic terrorism prosecutors in the Department's National Security Division partner with hate crimes prosecutors from the Civil Rights Division and AUSAs to investigate and prosecute these cases.

10:40 - 11:00 a.m.

JUVENILE PROSECUTIONS
Tara Allison (No CLE sought)

Compared to other kinds of federal crimes, a larger-than-average proportion of hate crimes are committed by juveniles, particularly cross-burnings and defacement of houses of worship. There is a process for holding juveniles responsible in delinquency proceedings or trying them in federal court as adults. This intervention may help to prevent juveniles from committing crimes in the future. This talk will discuss the benefits and challenges of juvenile prosecutions.

11:00 - 12:30 p.m.

**RELIGIOUSLY-MOTIVATED HATE CRIMES:
ATTACKS ON HOUSES OF WORSHIP AND
WORSHIPPERS (CLE Eligible)**
Moderator: Sheldon L. Beer
Kyle Boynton
Mary J. Hahn
Janea Lamar
Soo Song

This panel will examine cases involving religious bias, running the gamut from mass shooting cases to arsons at houses of worship, to threats, and graffiti. The panel will examine how to select the most appropriate charges, challenges in proving interstate commerce, and issues that arise in trials and investigations.

12:30 - 1:30 p.m.

LUNCH

1:30 - 2:00 p.m.

**CUTTING THROUGH THE CONFUSION –WHAT IS A
CRIME OF VIOLENCE? WHAT HATE CRIMES
QUALIFY (AS OF THIS MOMENT!) (CLE Eligible)**
Bobbi Bernstein

During this NAC talk, Bobbi Bernstein will describe the ever shifting and increasingly complex legal landscape prosecutors must navigate to determine what crimes fall within the definition of a “crime of violence.” Whether an offense qualifies as a “crime of violence” has important implications for charging decisions, detention determinations, and sentencing. The presentation will provide an overview of the law and a review of which of our federal hate crimes (currently) qualify as crimes of violence

2:00 - 3:15 p.m.

**UNITED STATES V. JOHN RUSSEL HOWALD:
CREATIVE PATHS TO PROSECUTING 18 U.S.C. 249
CASES BASED ON SEXUAL ORIENTATION (CLE
Eligible)**

**Moderator: Mark D. Blumberg
Eric Peffley
Ethan Plaut**

The trial team will discuss the challenges in the investigation and prosecution of Defendant Howald, who went to Basin, Montana, with a self-described “mission” to rid the town of its lesbian and gay community. Armed with three rifles and two pistols, Howald shot at a woman who identified as a lesbian, attempting to kill her. He then turned away from her property to target others but was interrupted before he did so. The panel will discuss how they decided to frame the charge, challenges of proving interstate commerce, and crime of violence issues.

3:15 - 3:30 p.m.

BREAK

3:30 - 3:45 p.m.

**TALKING TO VICTIMS IN THE LGBT+ COMMUNITY
(No CLE sought)**

Kathryn E. Gilbert

Cultural competence and appropriate terminology are crucial to interviewing members of the Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning+ community. This talk will offer an overview of key considerations.

3:45 - 4:00 p.m.

**OVERCOMING HURDLES TO PROSECUTING
TRANSGENDER VIOLENCE (No CLE sought)**

Laura Gilson

Three men recorded themselves assaulting a transgender woman by shooting paintballs at her because of her gender identity and then shared the recording over social media. This NAC talk explores how federal prosecutors investigated the defendants for violating 18 U.S.C. § 249(a)(2) and the challenges that they encountered during the prosecution.

4:00 - 4:10 p.m.

INTRODUCTION TO SECTION BREAKOUTS
Jim Felte (No CLE sought)

4:10 - 5:00 p.m.

TEAM BREAKOUTS (No CLE sought)
Sheldon L. Beer
Bobbi Bernstein
Forrest Christian

AUSAs will have an opportunity to meet with the Deputy Chief and CRT attorneys who work in their jurisdiction. Attendees will have the opportunity to discuss issues in a small group setting, including discussing their District's experience with the United Against Hate outreach events.

5:00 p.m.

RECESS

5:30 - 6:30 p.m.

RECEPTION

THURSDAY, NOVEMBER 9, 2023

8:30 - 8:45 a.m.

**FACE PROSECUTIONS IN THE POST-DOBBS ERA
(No CLE sought)
Laura-Kate Bernstein**

This presentation will focus on recent Freedom of Access to Clinic Entrances Act (FACE) litigation and the challenges being raised to the FACE Act in the wake of Dobbs v. Jackson Women's Health Organization. The presenter will discuss the misconception, common among defendants, that Dobbs renders the FACE Act unconstitutional. She will also address the recent use of civil rights conspiracy statutes in FACE Act prosecutions.

8:45 - 10:00 a.m.

**THREATS AND SOLICITATIONS IN HATE CRIME
CASES (CLE Eligible)
Kathryn E. Gilbert**

This presentation will address which types of threatening communications and solicitations may be prosecutable under federal civil rights and other criminal statutes. Some hate speech, while abhorrent and offensive, is protected by the First Amendment. Kate Gilbert will discuss the line between crimes and speech. Her discussion will include an overview of the Supreme Court's recent decision in Counterman v. Colorado and practical tips for investigating and prosecuting threats and solicitations.

10:00 - 10:15 a.m.

BREAK

10:15 - 11:45 a.m.

**PROFESSIONAL RESPONSIBILITY IN HATE CRIME
PROSECUTIONS (Ethics CLE sought)
Barbara Kay Bosserman
Kyle Boynton**

This presentation will focus on ethics issues that arise in hate crime cases, including issues that arise in contacts with represented persons, rules regarding pretrial publicity, conflicts of interest, candor to the tribunal, and confidentiality.

11:45 - 12:00 p.m.

WRAP UP AND CLOSING (No CLE sought)