



FEDERAL HATE CRIMES

Assistant U.S. Attorney Gavin W. Bruce

United States Attorney's Office

District of Oregon



Shepard/Byrd Hate Crime Prevention Act

18 U.S.C. § 249

THREE PROVISIONS OF § 249



- Bases for Jurisdiction:
 - (a)(1): “racial” hate crimes - 13th Amendment
 - (a)(2): non-racial hate crimes – Commerce Clause
 - (a)(3): hate crimes on federal property – Special Maritime and Territorial Jurisdiction

ELEMENTS OF § 249(A)(1) “RACIAL” HATE CRIMES



- The Defendant willfully caused bodily injury (or attempt, with a weapon); and
- The Defendant acted because of *actual or perceived* race, color, religion or national origin.

ELEMENTS OF § 249(A)(2) NON-RACIAL HATE CRIMES



- The Defendant willfully caused bodily injury (or attempt, with a weapon)
- The Defendant acted because of *actual or perceived* national origin, religion, disability, sexual orientation, gender, gender identity
- Interstate commerce connection

APPLICABILITY



- Race + injury or threat with weapon =
249(a)(1)
- Other protected characteristic + injury or
attempt with weapon + interstate commerce =
§249(a)(2)

INVESTIGATION



- Focus on the “why”
 - words/symbols/drawings used during commission of crime,
 - social network pages, text messages, memberships in clubs/organizations, tattoos
 - history of subjects (talk to teachers, friends, associates)
 - relationship between subjects and victim
 - conversation before, during, after crime

NOTEWORTHY DISTINCTIONS



- Limited to physical attacks and attempts with weapons
 - Does not cover threats
- Always a felony

INTERFERENCE WITH PROTECTED RIGHTS

18 U.S.C. § 245



- Covers threats where § 249 does not apply.
- Can be a misdemeanor or felony.
- More difficult to prove due to double “because of”.

INTERFERENCE WITH PROTECTED RIGHTS

18 U.S.C. § 245



- Elements:
 - The Defendant used force or threat of force
 - The Defendant acted willfully
 - The Defendant acted because of race, religion, color, or national origin
 - The Defendant acted because the victim was enjoying a specifically listed federal right

INTERFERENCE WITH PROTECTED RIGHTS

18 U.S.C. § 245



- Protected rights include:
 - Right to attend public school
 - Right to use state facility or program
 - Right to employment
 - Right to serve in court
 - Right to use a facility of interstate transportation
 - Right to use a facility of public accommodation

HOUSES OF WORSHIP

18 U.S.C. § 247



- Three Types of Activity Covered:
 - Defacing, damaging, destroying religious real property because of:
 - race, color, or ethnicity of congregation; or
 - religious character of property
 - Obstructing or attempting to obstruct, by force or threat of force, including by threat of force against religious real property, any person in the enjoyment of those persons' free exercise of religious beliefs.

DAMAGE TO RELIGIOUS PROPERTY

18 U.S.C. § 247



- What is Religious Real Property?
 - “Any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship.”

INTERFERENCE WITH HOUSING

42 U.S.C. § 3631



- Elements:
 - The Defendant used force or threat of force
 - The Defendant acted willfully
 - The Defendant acted because of race, religion, color, national origin, sex, disability, family status
 - The Defendant acted because the occupation of/use of/rental of a home

Questions?

