



### Prosecuting Domestic Terrorists (2/20/20)

- 00:00:28 Harmony Barker: Good evening and welcome. My name is Harmony Barker, and I am the assistant manager of public programs here at the 9/11 Memorial & Museum. It's my pleasure to welcome you all to tonight's program: "Prosecuting Domestic Terrorists." As always, I'd like to extend a special welcome to our museum members and to those tuning in to our live web broadcast at [911memorial.org/live](http://911memorial.org/live).
- 00:00:50 Tonight's program will explore what constitutes domestic terrorism and the challenges in prosecuting it. Several high-profile attacks in 2009 prompted a national-- or 2019, excuse me-- prompted a national debate about how the attackers would be charged and raise public awareness of the lack of a federal domestic terrorism statute. We are very pleased to be joined tonight by two of the most sought-after voices in that conversation, Seamus Hughes and Mary McCord.
- 00:01:19 Seamus Hughes is the deputy director of the Program on Extremism at George Washington University. He is an expert on terrorism, homegrown violent extremism, and countering violent extremism, and regularly provides commentary to media outlets including "The New York Times," "The Washington Post," "The Wall Street Journal," "The Atlantic," CNN, BBC, and "60 Minutes," among others.
- Hughes previously worked at the National Counterterrorism Center, where he created an intervention program to help steer individuals away from violence through non-law-enforcement means. He is a recipient of the National Security Council Outstanding Service Award and two NCTC Director's Awards for outstanding service.

00:02:01 Mary McCord is legal director at the Institute for Constitutional Advocacy and Protection and a visiting professor of law at George... Georgetown University Law Center. McCord served as the acting assistant attorney general for national security from 2016 to 2017, and principal deputy assistant attorney general for the national security division from 2014 to 2016.

Previously, McCord served for almost 20 years as an assistant U.S. attorney for the District of Columbia. We are especially fortunate to have Seamus and Mary here to share their thoughts and insight with us, and we'd like to thank them both for taking the time to, to come and be here with us tonight.

00:02:44 Given the sensitive nature of tonight's topic, please keep in mind that there will be an opportunity to ask questions at the conclusion of the program. Without further ado, please join me in welcoming Seamus Hughes and Mary McCord in conversation with senior director of public and professional programs Jessica Chen.

(applause)

00:03:07 Jessica Chen: Welcome and thank you for joining us. Many of you look familiar. Many museum members in the audience. So as some of you may know, we've been holding public programs here at the museum since 2015. And a large number of these conversations that we've had have talked about post-9/11 security issues, current events in the Middle East, and terrorism-- at that time the greatest threat of ISIS-- and understanding that threat.

00:03:33 Now, five years later from that, today, we're having our first program on domestic terrorism, and in a large way, it's reflecting the evolution of terrorism since that time. And it's interesting, to me, at least, that a lot of the experts that we consulted, the practitioners in post-9/11 terrorism, are now the experts and the people who are at the forefront of talking about domestic terrorism.

00:03:57            So I'm very pleased to welcome Seamus and Mary here tonight. I'd like to open up our conversation by having you both reflect a little bit on how 9/11 connects to your career and how that's brought you to focus on domestic terrorism. Maybe start with Mary.

Mary McCord: Sure, well, I was a prosecutor in the U.S. attorney's office in DC when 9/11 happened, and it really changed the world when it came to criminal prosecutions. And I'll give you just an example. I was working with the FBI's bank robbery squad, and almost overnight, all the bank robbery squad switched to counterterrorism. So the impact on the FBI in terms of where it was putting its resources shifted very, very dramatically to counter the international terrorism threat.

00:04:40            But through the ensuing years, and including through when I was the principal deputy and later the acting assistant attorney general for national security at the Department of Justice, the focus really in terms of the national counterterrorism program was about prevention. It was about preventing another 9/11. It was about preventing international terrorism. It's not that we didn't think about domestic terrorism, but that's where most of the resources and time and effort were spent.

00:05:09            And I went over to main Justice in the national security division in May of 2014 just a month before ISIS declared a caliphate. And that summer was the summer of, of horrible beheadings and horrible terrorist atrocities. And it really, the, the pace of investigations and prosecutions of international terrorism picked up over that period-- 2014 and especially 2015-- to its greatest clip since immediately post-9/11.

00:05:41            So we had this massive resurgence. But as that threat has been addressed-- I mean, it's not over, it, it exists, and probably many of you here have been to programs here at the museum discussing the threat from ISIS-- but as that threat has become, has changed, and ISIS no longer holds physical territory, we've seen the threat increase here in the U.S. when it comes to what we think of as domestic terrorism.

00:06:10 And by that I mean not Islamist extremist terrorism, I mean terrorism that's motivated by ideologies like white supremacy, and... Because that's where the real threat is. It could be motivated by things like anarchy, or sovereign citizen, or animal rights, or environmental rights. But the real threat in terms of lethality has come from white supremacist violence. So this hit me.

00:06:34 Um, I left the government in May of 2017 and started up this constitutional impact litigation institute within Georgetown, and watched in horror on August 11 and 12 of 2017 when the Unite the Right rally took place in Charlottesville, Virginia. It was the week before I was taking my eldest son back to school at the University of Virginia, and probably you're all aware of what happened there.

00:07:01 This is when a bunch of very far-right extremist groups demonstrated in this very, this small town, causing many, many counter-protesters to come and resulting in a lot of street violence, but most horrifically, it resulted in James Fields using his car to plow into a crowd of counter-protesters, killing one Heather Heyer and, and very, very seriously injuring dozens others.

00:07:29 And I watched that, and I thought, "Well, this is terrorism." This is just the type of terrorism that I prosecuted in government when it was done on behalf of ISIS using vans and cars and trucks throughout Europe in 2015, 2016. Yet we don't call this terrorism here. We don't have a federal charge that applies to it because it's not connected to a foreign terrorist organization. And it was at that time, within 24 hours, I wrote my first piece about this, and I've been speaking and writing and thinking more and talking more about it ever since.

00:08:04 Talking to people in government, talking to people in Congress, talking to civil rights, civil liberties groups, talking to folks like Seamus, and to raise the awareness of where we have some gaps in our current law and what we might do to fill them.

Jessica Chen: Seamus.

Seamus Hughes: Thank you. And thank you for having me. I did a tour before this, and the hallowed space, it really gets to you, and you take it all in. And it's real, an honor to be here. And thank you for putting me next to Mary, who will save me a number of times.

00:08:33            So I started my career as a congressional staffer looking at how the U.S. government was, was functioning post-9/11, and trying to implement many of the 9/11 Commission recommendation acts. So setting up the intelligence community to address the gaps that were there when it comes to C.I.A. and FBI sharing information and a number of other things. Setting up the National Counterterrorism Center. I also spent a good amount of time looking at homegrown terrorism. So when I was looking at it, we had five or six Al-Qaeda cases a year of individuals drawn to the ideology-- 2005, 2006 timeframe.

00:09:06            I kind of grew as the threat grew with it. I spent about five years looking at that, Fort Hood investigation, a number of domestic Islamist attacks here. I then moved to the National Counterterrorism Center, working primarily in prevention efforts. We've got an individual we're worried about. We could arrest that individual. We probably should, but we don't have the tools. What are the non-law-enforcement tools we can put against the problem to try to get that person back into society before he crosses the legal threshold, before he commits violence?

00:09:38            About five years I spent on the road mostly talking to Muslim American communities about ways that we can partner together to prevent the next three kids from jumping on a plane to go join ISIS. After about ten years in government, I got frustrated, frankly, with the lack of data out there, and the lack of a nuanced conversation about the threat picture. And so myself and a colleague, Lorenzo Vidino, we set up a program at George Washington University that just focused entirely on extremism in the United States.

00:10:07            And pulling court records, talking to FBI agents, prosecutors, defense attorneys, family members, you get a sense of what this looks like. What

does the threat landscape look like? Should we be worried about it every day? Should it be something that we shouldn't talk about, right? Of course, the answer is somewhere in the middle, right? And you talk to victims of terrorist attacks, which I imagine there are a number in this room, you want to prevent the next one.

00:10:33

And so what makes that person tick, and how do you, how do you get to that, that issue? I have focused most my career on Islamist-inspired terrorism. Um, but I think it's very fair to say, when you look at the last, the events of the last two to three years, you can't just focus on the Omar Mateens of the world anymore. You have to look at the Robert Bowers. It's not an either-or proposition, and in many ways, domestic terrorists are playing off jihadist or Islamist terrorists.

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There's a reciprocal radicalization playing off. You'll see an attack happening in a mosque, and the next day, an attack happening in the streets of a... Individual gets released is a convicted terrorist. They feed off each other. The narratives are the same. But the way we address these issues are much different. The fact that we have a material support to terrorism clause, which I imagine we'll dive into in great detail, allows us some level of tools. But we don't, we have a very parallel system when it comes to domestic terrorists, and, and how we determine how we're gonna do that is going to determine how the threat picture looks like in the next two or three years.

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Jessica Chen: So as we get into this conversation, the terminology gets very complex, and so going back to kind of how this program—at least now how it's framed-- we're thinking about prosecuting domestic terrorism. So often, we'll hear something described or called as a domestic terrorist act.

But I think we're curious about what the legal definition is, and, and what, what significance that has and, um, you know, maybe I can start with you, Mary. I think it might be helpful also to think about this within the context of actual events. So if there are actual events that come to mind.

00:12:05 Mary McCord: Sure. So the federal code right now has a definition of domestic terrorism and it has a definition of international terrorism. And when I say the federal code, I mean the U.S. Criminal Code. And the definitions are almost identical in terms of what the crime is, with one difference. So in both cases, it is a crime of violence that is a violation of state or federal law-- so think things like murder, kidnapping, assault with a dangerous weapon, aggravated assault, those types of crimes of violence—

00:12:38 When done with the intent to intimidate or coerce a civilian population or to influence a policy of government through intimidation or coercion. So those are exactly the same for the definition of domestic terrorism, the definition of international terrorism. Where they differ is, domestic terrorism is defined as, and the act occurs domestically, in the U.S. For the definition of international terrorism, you might think, does that mean the act occurs abroad? Not necessarily. It could mean the act occurs abroad, or it occurs domestically but has a connection to international terrorism.

00:13:14 And by connection, that really means it's done in connection with or in furtherance of a foreign terrorist organization, like an Al-Qaeda, like an ISIS, right? Like some others you may be familiar with-- Boko Haram, others. Almost overwhelmingly all Islamist extremist organizations. There are 67 designated foreign terrorist organizations. None of them are white supremacist organizations. They're almost all Islamist extremist organization, with a few Colombian, like the FARC, and a few actually Irish, Northern Ireland organizations.

00:13:50 So... So they're not very helpful, right? Because that means that you can have... Seamus mentioned Omar Mateen. So Omar Mateen was the shooter at the Pulse nightclub in Orlando a few years ago, who pledged by, to the leader of ISIS, Abu Bakr al-Baghdadi, just before committing his attack, shot 49 people, and then, of course, he was killed. So 50 deaths relating to this. So that occurred domestically. But under our law, it's considered international terrorism because he was doing it on,

attempting to do it on behalf of a foreign terrorist organization, ISIS, right?

00:14:31 Take the El Paso shooter, right? He commits almost a very, very similar act of violence-- a mass shooting, kills 22 people. But he doesn't pledge any type of allegiance to a foreign terrorist organization. He instead says he's doing this because he's worried about the invasion of Latinos across the Southern border. He's worried about preserving white supremacy and creating a white ethno-state.

00:15:02 And so he, under our law, is thought of as a domestic terrorist because he was... there's no connection to a foreign terrorist organization. Okay, so in the case of Omar Mateen, had he not been killed in the course of law enforcement getting there to end this attack-- had he survived-- he would be charged with a whole lot of terrorism offenses related to international terrorism, including attempting to provide material support himself to a foreign terrorist organization. And a number of other crimes.

00:15:35 The El Paso shooter, because he wasn't connected to a foreign terrorist organization, and because he didn't use something like a bomb or a radiological dispersal device, or a biological dispersal device, or a nuclear device, or shoot down an airplane-- all of those are forms of terrorism, even if, even if done in the name of white supremacy. But he didn't use anything special. He used a firearm, the most common means of committing a terrorist attack in the U.S. and probably the most common abroad, as well.

00:15:55 He used a firearm, and because of that, no terrorism offense in the U.S. Code applies to his conduct. So will he go free? Of course not. He'll be prosecuted for homicide, to at least 22 counts of homicide under state law. He may or may not be charged federally with federal hate crimes. Some others have been. Robert Bowers, at the Tree of Life Synagogue, has been charged locally, but also charged federally with hate crimes. But he won't be charged with a terrorism crime, because we don't have one that applies to him.



00:16:34 Seamus Hughes: And for something like this, there's practical ramifications, right? Like an attack, there's a number of federal charges you could put against an individual-- attempted murder, murder, things like that. But let's take a case like Mohammed Khan, a 17-year-old kid from Chicago who drives to the airport. He's gonna go join ISIS, right? His material support to terrorism, to ISIS, is himself. Personnel, right? Now, if a white supremacist-- and we have a number of these cases-- a white supremacist wants to go to Ukraine, train up, and then come back, that is not material support to terrorism because there's no link to a terrorist organization overseas.

00:17:10 You cannot arrest an individual for training overseas for a white supremacist group, whereas you could for Mohammed Khan in the world, right? So we can debate whether, whether you should or should not in those cases. But there is, there's no parity in terms of how we address it.

Jessica Chen: Can we go deeper into the difference under federal law between domestic terrorism and international terrorism? Can you talk about kind of what it means for certain things to be codified? Like you mentioned, you know, because he used a firearm? So what does it mean for, you know, certain things to be codified so that a terrorism charge applies, and also what is, what is lacking, you know?

00:17:46 Mary McCord: Okay, so, codification just means there's a statute that would apply. And so prosecutors and law enforcement can charge a crime under that statute. But it has, it has serious implications for, for preventing crime. So, you know, as I mentioned before, the El Paso shooter, he will definitely, you know, have his day in court. He will likely be convicted. He will likely spend the rest of his life in jail. He may even face the death penalty under Texas law. Um... So it's not that you cannot bring justice after the fact, but a lot of investigations are driven by trying to prevent crimes before they occur.

00:18:26 So let me give you an example that's completely outside the realm of terrorism. Years ago, I prosecuted child sexual exploitation. So this is when people, you know, make arrangements to have sex with a child. And oftentimes, these arrangements are made online. There are

pedophilia chat rooms where people interested in this type of criminal sexual activity with children will talk to each other and set up liaisons.

00:18:58 And so we had an FBI agent whose job all day every day was to go undercover into those chat rooms, pretend to be a pedophile, not, not lure people into committing crimes, but, you know, be receptive when someone says, "I'm looking for a seven-year-old." And maybe he can say, "Well, I'm a father of a seven-year-old," and they put together a sting operation.

00:19:22 And one day, that person who thinks he's going to go into DC and have sex with a seven-year-old gets to the hotel room, and it's the FBI waiting for him. And they have prevented a real seven-year-old from being sexually exploited by using undercover operations online, and a sting operation, and, and having that person go all the way to the point of thinking he's gonna finish committing that offense, but it doesn't actually happen, right?

00:19:49 So that's an attempt to commit this crime of child sexual exploitation. So those are the same techniques that we use in combating terrorism, and we've done it for international terrorism for years. There are FBI agents who participate in online forums and chat rooms with would-be jihadists, and hear them talk about their plans, and take on a different persona as someone who also is a would-be jihadist, someone who also might be trying to travel to Syria through Turkey to join ISIS, and can provide information.

00:20:24 Or, "I know a person who can help you get, get into the country," that kind of thing. And then the FBI, working with other law enforcement, enforcement partners, will often then take that case down and make an arrest before the person travels, or before the person...They've made many before the person detonates a bomb outside, for example, a military base or a police department. We've thwarted a number of those cases. So the idea is, you thwart a case before it happens.

- 00:20:50            These are controversial techniques. There are people who think that, you know, you're criminalizing people's, you know, fantasies or their mental states, and that's not right to do that when they haven't yet actually committed a crime. But they have committed a crime under U.S. law, because U.S. law makes the attempt to do these things, the conspiracy to do these things, et cetera, makes it a crime, and it prevents the crime from happening.
- 00:21:13            Because we don't have a terrorism offense on the U.S., in the U.S. Code that applies to these ideologically motivated acts of terrorism done with a firearm or with a vehicle in the U.S. if they're not tied to a foreign terrorist organization, it's harder for law enforcement to actually engage in the types of investigative techniques I've just been talking about.
- 00:21:38            And that's because of the First Amendment. And it's rightly because of the First Amendment. We, you know, people are allowed in this country-- people and entities-- to say pretty hateful things and be protected. So the FBI is not permitted to open an investigation or infiltrate into a chat room based solely on First Amendment-protected activities. So if it's just, if it's just a chat room where people talk about wanting to have a white ethno-state, but never talk about using violence to get there or anything like that, the FBI really wouldn't be able to get into that chat room.
- 00:22:11            Once they start talking about violence, though, then you have potential crimes that might be being committed. But without that terrorism offense on the book, the FBI's having to use, having to be more creative in the tools it used to figure out, to figure out how, "How am I going to actually investigate this? How am I actually gonna prevent it?"
- 00:22:31            Now, even with the terrorism offense, you would still have the First Amendment, right? We wouldn't wipe out the First Amendment. But rather than think, "Well, maybe the person might be committing a firearms violation, so I'll open up a case based on that," or, "Maybe the person might be committing some other type of crime that I can open a case based on," agents would be able to direct their investigations a little bit more precisely. And at the risk of going on way too long-- Seamus will

have more to add-- let me give you a concrete... two actual concrete examples.

00:22:59 So last fall, I guess it was, there was an arrest of a Coast Guard lieutenant, Christopher Paul Hasson, who was planning a series of mass shootings in furtherance of his goal to create a white ethno-state. And the reason this came to light is because he was using his work computer as a member of the Coast Guard, which is really a foolish thing to do. And so... If you don't know, if you work for the U.S. government, you have no expectation of privacy in what you do on your computer.

00:23:30 So this was revealed to the FBI, who then, of course, did a search warrant on his apartment. Found he had a virtual arsenal of assault rifles. He also had various types of drugs that allowed people to stay awake for extended periods of times. He had files and computer searches where he was starting to, you know, plan his attacks. He had a four-year plan. He was gonna acquire weapons for a certain amount of time. He was starting to research his attacks. So they clearly prevented potential series of mass shootings.

00:23:59 But there was no terrorism crime to charge him with. So he was charged with unlawful possession of a silencer, unlawful possession of drugs-- because he had these drugs-- and unlawful possession of a firearm by a drug addict, because he had the drugs in his apartment. The judge initially said he probably was not going to be able to hold Hasson in jail pending a trial because he wasn't even charged with a violent crime.

00:24:27 And normally-- and I agree with this-- normally you let people who, you know, we're innocent until proven guilty. Normally, people, when they're arrested, they still are able to remain in the community until they're found guilty by a jury. But when people are very, very dangerous, the government can go in and prove this person is such a threat to public safety, he needs to be detained. And the judge said, "Well, you haven't even charged him with a violent crime. How can I detain him on that?"

00:24:50                    Ultimately, that was appealed. He was held. He was just sentenced, um, two, two weeks ago? To 13 years. Now, and the judge basically stacked up, because none of those offenses were very serious in terms of the penalties. But the judge, I think, realizing the significance of the threat, stacked up those. Now, we may think 13 years is the right result here. But nowhere on his resume is it going to say "terrorism." You know, when he comes out of jail, what is on his resume is a firearms offense and some drug offenses.

00:25:21                    More recent example-- and Seamus can probably speak more to this-- is the arrest of this group, two different groups, of individuals who are members of a newer organization called The Base. The Base translates into Arabic as Al-Qaeda. Super-creative these guys were.

(laughter)

Mary McCord: They are, they are a group established here in the U.S. They are intent on creating a white ethno-state. Actually taking territory in the Pacific Northwest. They recruit online, they radicalize online, they vet people who want to be members. "What skills do you have? Do you have skills in explosives, engineering, things that could be particularly useful to our mission?"

00:26:08                    And the FBI recently arrested three of these individuals in Delaware, right before a big lobbying event in Richmond, Virginia, that was put on by a lot of Second-Amendment advocates who wanted, who were protesting the Virginia Legislature's consideration of gun safety legislation. And these three were planning to go there, to that day, that lobby day where thousands and thousands of gun rights activists were intending to be there, armed.

00:26:27                    And these guys were planning to basically take up sniper positions and start sort of picking people off with their assault rifle they had built so that they could start some sort of civil war. Um... Now, the FBI creatively was able to find ways to open an investigation. But they, kind of like Hasson, they're charged with unlawful firearms offenses and...

Seamus Hughes: This is the best one.

00:27:02

Mary McCord: Yes, harboring an illegal alien because one of them had come in from Canada.

(laughter)

Mary McCord: So...

Seamus Hughes: The first time I've ever seen that in my 15 years.

Mary McCord: First time I've seen that. So I'm gonna stop talking and let Seamus talk more about this. But, you know, they thwarted that immediate threat. So I'm very thankful for that. But talk about sort of square peg-round hole kind of way to be creative without really addressing the issue head-on.

00:27:28

Seamus Hughes: Yeah, I don't think we should make our prosecutors be that creative. If only because it leads to abuse, too, in some ways, right?

Mary McCord: Yep, that's right.

Seamus Hughes: And you look at the Coast Guard case. You know, I was looking at the search warrant, and his house was down the street from mine. So the first line of the search warrant says, "Christopher Hasson is a domestic terrorist," right? So the assistant U.S. attorney files that paperwork with the judge, and the judge says, "No, he's not, you haven't charged him with terrorism," which is a perfectly reasonable and rational position for a judge to hold, because there's not a domestic terrorism statute.

00:27:58 So these things have, have ramifications. And of course, you know, you look at The Base, and that's very creative charges, but the average, or the recommended sentence for material support of terrorism for ISIS is 20 years, right? Christopher Hasson, with three charges stacked on top of each other, gets 13. We may decide 13 is a reasonable number. But it's not in terms of parity.

Mary McCord: Right.

Jessica Chen: While we're on the theme of kind of things that are lost without criminalizing domestic terrorism, you know, what would be gained from a creation of a federal crime of domestic terrorism? Like, if we, if we actually criminalize it, in addition to kind of giving our prosecutors more tools, giving our investigators more tools, what else can we, you know, expect or hope to see?

00:28:41 Seamus Hughes: Listen, I think resources also lead where, where, um, intent goes. So if Congress intends that domestic terrorism is, is, rises to a level of a domestic terrorism statute, then Congress will advocate for more resources for that problem. Prosecutors will be able to do their job a little bit better. It also allows for a network not to form. So if you look at cases in the U.S. of, of ISIS, right?

00:29:09 You're talking about cases of twos and threes and individuals, right? Whereas if you're looking at cases like The Base or a white supremacist group, that is a group of seven to eight, nine, ten people. Atomwaffen, anywhere between ten to 20 individuals. And that is because that network's able to form because there's not those tools to be able to disrupt that network.

00:29:29 So these guys are able to go to Georgia, get 100 acres, and shoot up guns for three weeks and train up before they go out on their sniper rifle, uh, rampage, right? Whereas that same dynamic would not happen, or would be very unlikely to happen, in ISIS cases, because there's a number

of trip wires. Or if you look at the trip wires like you talked about, when you, you can't open an investigation solely on the basis of speech, which is absolutely right. You can open it on speech and communication with a known or suspected terrorist, right?

00:30:00            So if you are a gentleman from Minnesota and you reach out to-- he's dead now, but let's assume he's alive for a moment-- you reach out to Anwar al-Awlaki, who was a notable radicalizer and operational guy in Al-Qaeda in the Arabian Peninsula. You reach out to Anwar al-Awlaki, you've now raised a level, and you're now a full-field investigation for the FBI, right?

00:30:21            Now, take another individual, a white supremacist in Georgia. He reaches out to a white supremacist leader in Russia, Ukraine, any number of other places. That is not a predicate to open a full-field investigation. Even if that guy is the bug light for all white supremacists in the world. Like, everyone knows, you can talk to this guy, you are a true believer of that, that is not going to allow you to rise level. Which means your tools in your toolbox are gonna be less.

00:30:49            There's also-- let's be fair-- there's also something to be said about a statement from society right? A designation of a terrorist organization, of a terrorist act when it is a terrorist act is important. Robert Bowers got charged with 63 different federal charges-- some of them hate crimes, but none of them terrorism. Right?

There is something powerful about saying, when you walk into a synagogue and shoot 11 people, from the elderly to the very young, with the intent to kill Jewish people, that is an act of terrorism. But our government doesn't call it that because our hands are tied on that. And we should have that, that debate of whether that is the right position we're gonna have.

00:31:29            Mary McCord: And it serves, in addition, to create a moral equivalency, which I think there's value in. Some people ask me, "Is that just semantics?" And I don't think it is just semantics, because, again, as



Seamus said, it is... Crimes are the way that our society expresses its moral condemnation for certain acts. And so when you have acts that are so equivalent done to intimidate and coerce, there's really no reason that they shouldn't be on that same parity.

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But it's, it's an important educational component, too, because since 9/11-- and it's understandable why this occurred-- most Americans, you know, when you think terrorism, they think Islamist extremist terrorism. They think Muslims. And terrorism has existed in this country since its very founding. I mean, the lynchings were acts of terrorism. We're coming upon the 100<sup>th</sup> anniversary of the massacre in Tulsa that wiped out an entire black population, all for racist-motivated reasons. Including not just killing people, but taking out what was known as Black Wall Street, a very thriving commercial area. Even air assets were used in this, in this massacre.

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We are this year recognizing the 25th anniversary of the Oklahoma City bombing. So we've had terrorism throughout our history. We've just never called it that. And that means, you know, when, when these same types of crimes of violence, done to intimidate or coerce, are done, you know-- frankly, oftentimes by white people, for racist reasons-- it gets a very different label than when a, when a Muslim commits a similar crime on behalf of ISIS.

00:33:13

But to get very specific to your question about what would change, I want to get very granular. And I will say, one other thing is data. We don't have good data because we don't have, um... a crime that applies to a lot of these things. So you would, in, in addition to resources, as Seamus mentioned, we'd have better data collection. But to get very granular on what a crime could do.

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So there are two material support crimes in our, in our Criminal Code. One is the one we've been talking about-- material support to a foreign terrorist organization. That's the thing that says you, you know, you call up, you start talking with a, with a member of a foreign terrorist organization, you're going to get opened up as an investigation. And if

you provide anything, five dollars, even, you know you're gonna, you're gonna face... Get a knock on the door from the FBI.

- 00:33:56            There's another crime that involves material support, but it's material support to terrorism, and it criminalizes providing material support or resources, or disguising the nature of resources, knowing and intending that they'll be used in furtherance of... And then the statute lists this whole list of terrorism crimes.
- 00:34:19            And that list includes things I was talking about, like using a bomb, a weapon of mass destruction, radiological, biological, nuclear devices, shooting down airplanes, those kind of things. And crimes related to a foreign terrorist organization. If you created, if Congress passed a crime that applies to any act of terrorism in the U.S., no matter what its motivation-- Islamist extremism, white supremacy, animal rights, anarchist, whatever-- then that new crime could be added to that list of terrorism crimes in this material support to terrorism statute.
- 00:34:55            Which means that then, a person like Christopher Paul Hasson, right, who was "concealing or disguising the nature of resources"—his arsenal of assault weapons-- knowing and intending that he was going to use those to commit these mass shootings, acts of terrorism, that would violate this terrorism in the U.S. statute, you would then have him already having committed the crime of providing material support or resources to terrorism.
- 00:35:22            Which again, would be a predicate for more investigations, it puts, it puts his act on parity with what someone doing the same thing on behalf of ISIS or Al-Qaeda or any other foreign terrorist organization would be charged with. And it fills this gap... that, that drives resources. It drives FBI investigations, et cetera.
- 00:35:42            Seamus Hughes: It also gets to a larger point, which is, "Okay, great, you arrested Christopher Hasson. You put him away for 13 years." He's not tagged as a domestic terrorist, right? So he goes in the federal penitentiary system, and maybe Bureau of Prisons knows he's a domestic

terrorist, because it's a big enough case, and that makes sense. But if it's a run-of-the-mill white supremacist case, you got to hope there's some level of coordination in government to tell people from D.O.J., Bureau of Prisons, to probation services, that you're dealing with a different ideological threat than just a gun charge.

00:36:15

And I worked in government for 15 years. That doesn't exist, right? And so if we're... There is an importance for this, right? Because if you, if you know these domestic terrorists, maybe you don't put all the Aryan Brotherhood guys in the same jail, right?

Mary McCord: Together.

Seamus Hughes: Or maybe you do, because that's just easier, and they won't radicalize others, right? But these are policy decisions we haven't made because we don't have the data behind it.

00:36:37

Mary McCord: And what are you doing to try to get them deradicalized while they're there? Or are they going to get out in ten years, or five years, or 13 years, and go right back to their previous activity?

Seamus Hughes: Right, also, you know, doesn't, doesn't fall on the no-fly list, right? And so if they want to travel to, overseas to do training after they've done their 13 years as, you know, with the silencer, that's fine. Whereas you kind of automatically trigger for other cases.

00:37:03

Jessica Chen: So we're talking about kind of the, you know, thinking about the code now, and thinking about the breakdown between what we consider domestic terrorism and international terrorism. Even thinking back to last night's attack in Germany, that even though, you know, the definitions haven't necessarily caught up, or that... We're now looking at these events and saying the ideology, the motivations, the organization around these groups is, is transnational.

And I'm curious, because both of you have spoken about ISIS, and Al-Qaeda, and groups like that, what are some of the similarities? And perhaps, you know, kind of the considerations that we have because we've looked at groups like that that we can now apply to looking at these groups?

00:37:38

Mary McCord: Mm-hmm, you want to start?

Seamus Hughes: Yeah, I think that first of all, we... I think domestic terrorism is not the right term anymore. Maybe it was ten years ago, but it's less so now. It's in many ways a difference without a distinction. You're seeing an internationalization of domestic terrorism. A coordination between groups, whether they be in the U.K., Germany, France, the U.S., a transferring of funding back and forth, a trading of leadership back and forth, a coalescing online of that, right?

00:38:09

And so we can't just think this is a domestic problem, because there's many ways, international links, right? And so I think that's, that's the first buck I'd think about. Also, if you look at this, to be fair, like, it's not that hard to get your head around understanding jihadism in the U.S., right? You've got ISIS. You've got Al-Qaeda. You've got Al-Shabaab. You've got the occasional Boko Haram case, right?

00:38:34

But you're really talking about four or five groups and organizations. And I can tell you kind of the ideologies of each of those groups, with their little nuances here and there. That landscape is much different when it comes to white supremacy or white nationalists. The Base is a white nationalist group, but it also has a strange, cultish view and Satanic rituals, right? Atomwaffen has similar views to The Base, but has this little bit of different on that, right? A different white supremacist group has a little bit of a twist. Sovereign citizens are completely different on that, right?

00:39:03

And so we don't have a full understanding. There's very few in the U.S. who have a full understanding of the variety and nuances of the ideology, because we haven't focused on it in any real substance.

Mary McCord: And I, just to piggyback on your first point, Seamus. For example, the Christchurch shooter in Christchurch, New Zealand, you know, referenced, I think, Dylann Roof, you know, a notorious domestic terrorist here in the U.S.-- not charged with terrorism, of course, but charged with many, many other crimes. The El Paso shooter referenced the Christchurch shooter.

00:39:36 So they're, they're, you know... Commonly, they write these manifestos or take videos of themselves and things like that, and they are... They're referencing each other. So these, these boundaries are really no longer valid at all. White supremacy, white nationalism doesn't stop at the borders of the U.S. And so we need to treat it more like international terrorism. And that triggers some other things.

00:40:02 For example, the National Counterterrorism Center that Seamus was at for a number of years, you know, was created post-9/11 in order to, um... you know, really bring together all of the different intelligence products coming from around the intelligence community and from foreign partners, and analyze it, make sure it gets out to the right people so that we don't have another breakdown in communication, like, at least in part, of what led to... Not led to, but part of the failure that resulted in 9/11.

00:40:36 But they've never done that when it came to other ideologies like white supremacy. Their, their relationships—and I talked quite a bit with the last two directors about this recently-- their relationships that they've formed with other governments, intelligence communities, have always been in those intelligence channels related to Islamist extremism. And they've never, you know, like, really engaged with local law enforcement about, "What's your... What's your sort of domestic terror threat in terms of white nationalism?"

00:41:06 Now, they are opening the doors to that now. They've looked at their original formative statutory authorities, and decided that they can branch out into that more. But that's what we're talking about when we're

talking about the need to treat this more like international terrorism, with, you know, with two big caveats. One, again, we still can't domestically open up investigations based purely on First Amendment-protected activity. And secondly, some people think, "Oh, if you're talking about international intelligence collection, you must be talking about FISA."

00:41:39 FISA is the Foreign Intelligence Surveillance Act. It allows for law enforcement and the intelligence community to get, to get surveillance not based on probable cause that a crime's being committed, but on probable cause that the target of that surveillance is an agent of a foreign power, which is defined to include agent of a foreign terrorist organization.

00:42:01 So I'm not talking about opening up the ability to get FISA warrants, which are for intelligence collection, they're not for criminal evidence collection-- although there can be an overlap. But you can't get it just because you want to get evidence of a crime. So I'm not talking about opening that up, because that raises a lot of other red flags that would be difficult to deal with.

00:42:23 Jessica Chen: I guess the question that is kind of like the elephant in the room, which I've thought about a lot, and maybe veers on the philosophical, is, what is it about our reticence to call white nationalism, white supremacy, terrorism? Does it have something to do with, you know, we're thinking about events that have occurred in the, in our nation's past? Is it, is it a fear of trying to reconcile those things within our new, you know, this concept of terrorism? But I wonder if either of you have thought about that and kind of what, what that challenge is or what the challenges might be in that.

00:42:51 Mary McCord: Well, I think there's a lot of things. I mean, I think, um., and you hit a few of them. I think there is, there is a little bit of that reluctance to sort of reconcile ourselves to some of the real atrocities of our own history. And that when you start talking about white supremacy and white nationalism—and again, any... Any ideological extremist violence should be equally condemned.

- 00:43:17           The reason I've been focusing on white supremacy is because, as the FBI director has testified repeatedly over the last year, and as our own data shows, the threat in terms of lethality, the actual deadly violence that's occurred, has been based on far-right extremism, white supremacists, white nationalist extremism, not on animal rights extremism, environmental extremism, et cetera. If it were different, I would condemn it just as soundly. But the threat is there.
- 00:43:45           So I think that part of it is just this discomfort and awkwardness. And part of it is because, you know, extremism is a continuum, right? It starts with, um, you know, some level of hate. Sometimes that's blaming someone else for some, for your own grievances, when you're, you know, are struggling to find a place. And so it's easy to blame someone else. And, and right now in this country, there's a lot of xenophobia and blaming others for our own problems, whether they're economic problems or problems with not being able to get jobs, problems with not being able to have families, et cetera.
- 00:44:21           But that's one thing. But when you have an environment that, uh, in some cases even encourages, and social media circles that, that encourage that radicalization on that path toward extremism-- from just hate to extremism-- and then from extremism to violence, you know, that's what becomes so dangerous. And so when you start talking about the extremist violence, you know, many people know, "Well, if I trace that back, that comes to some feelings of hate that maybe some people down my street had those feelings. Or maybe I've even had those feelings."
- 00:44:57           Certainly there's people in Congress that have stated things like that. Certainly we've heard our president say very, very anti-other... use very, very anti-other rhetoric in his tweets and his public statements. And so I think, politically, it gets awkward sometimes, at least for our politicians, to talk about these things. I've heard social media also say, "The difficulty we have in taking down some of this type of domestic ideological content is because we would end up taking down," you know, "the, the accounts

of elected officials because of some of the things that they, that they tweet."

00:45:34 Well, thing one: social media is not bound by the First Amendment. They can take down anything that they want to take down, if it violates their terms of service. But that's, you know, that's a really uncomfortable position to be in, and they feel uncomfortable drawing it. So, you know, if we're gonna do something about this problem, we've got to be able to talk about it, and recognize it, and deal with it, and not sweep it under the rug.

00:45:59 Seamus Hughes: And I think of a different angle on that, answer to that question, too, which is, this is hard. You look at, at the manifesto of the, the gentleman who killed eight people in Germany yesterday, right? Very clear that there is anti-immigrant sentiment. Very clear there's far-right beliefs-- extreme far-right beliefs. But then it gets really messy, right?

00:46:21 There's voluntary celibacy. There's conspiracy theories. The ideology isn't as clear-cut as it, as we would hope as both researchers and government, right? You want somebody to say, in many ways, you know, "I was a white supremacist and this is why I did it." These guys aren't doing that anymore, right? It's a bit of a cocktail of ideologies. They're picking and choosing online. And so, you know, I wouldn't fault a researcher who's, who's gonna look at that case and code it as, as this as opposed to that. And so it's not as clear-cut as it used to be. Even the El Paso manifesto or the shooting that happened two days later. It just, it's not, not easy to get this to data.

00:47:04 Jessica Chen: Are there other countries that are doing better than us in this regard? Or is everyone kind of in the same... kind of grappling with the same things?

Mary McCord: Well, other countries don't have a First Amendment, and so they are able to—many have banned hate speech. And they're able to open investigations that, that we couldn't open here. And I'm not suggesting that we abandon the First Amendment by any stretch, but it



does, it does, uh, present a hurdle that you have to get through here that others don't have to get through the same way. But I will say other countries are also struggling with the lone-wolf aspect, right? Because oftentimes, people are radicalized through social media.

00:47:44

Almost, almost all the time. When I was in government, every single case when I was head of national security, every single international terrorism case that we brought, every single one, involved social media in the radicalization of that person. And so we're seeing that same type of thing when it comes to "domestic ideologies." But that doesn't mean that everyone is part of a group or does it as part of a group. And oftentimes-- and that's the case whether it's a homegrown violent extremist who does something on behalf of ISIS, but hasn't otherwise been in a lot of communication with ISIS members, he was just inspired by it. And it's hard to-- it's hard to ferret that out beforehand.

00:48:26

Same with domestic violence. Is it maybe the person has consumed white supremacist rhetoric, but hasn't really been sort of, like, a member of a group? And so it's hard to ferret that out. And so, and so I think other countries struggle somewhat with that, as well.

Seamus Hughes: There's a learning curve on this, too. You know, you look at early ISIS cases in Europe. It wasn't illegal to go to Syria if you were in the U.K. and join a foreign terrorist organization-- or at least was hard to prosecute. They now have proscribed lists and proscribed areas in Syria that if you go, like, that's a terrorism offense. But it took them a couple of years to get there, right?

00:49:07

That same dynamic's happening when it comes to white supremacy or domestic terrorist organizations within individual countries in Europe. If you look at deradicalization programs in the U.K., when it comes to Channel program, which is a program to try to get people out of extremist movements, you know, used to be 90-10 ISIS, ten percent domestic terrorists. Now it's about 50-50.

00:49:31 If you talk to Europol, you know, it used to be 90-10, now it's 60-40. And so you're going to see a ramping-up of this. You're going to see a shifting of resources. And to be fair, you're gonna see some, a lot of mistakes. Because there was a lot of mistakes when there was a rise of ISIS, and we had 5,000 people leave from Europe, and everyone was saying, "What just, what just happened to us?" Right? We're, we may get to that point, too. But I'm hopeful that... that there's at least an understanding that we need to get in front of this.

00:50:02 Jessica Chen: I want to kind of think about-- and this will be our, kind of a broader question, and then we'll take a few audience questions, so start thinking about those. But, you know, we think of acts of terror, meant to terrify people, and then terrorism, as we're talking about it, in terms of, at least in this context, a federal criminal charge.

00:50:20 And thinking about things that complicate this conversation, you know, in our, in our country, we've had, you know, debates around mental health and its relation to events like this, gun control, and even so much as to say, you know, school shootings have often been considered acts of terror. And I'm just wondering for, for us, you know, thinking about defining something and then criminalizing it, where did it kind of... How expansive are these boundaries, and, and where do we draw the lines?

00:50:49 Mary McCord: Well, um... As I started out this talk giving you the definition of terrorism in the Criminal Code, right? It wouldn't cover things like a school shooting or the Las Vegas shooting, where we don't know what motivated it. Where we don't know... It's a mass shooting, it certainly terrifies people, but under our definition, is not terrorism because it wasn't intended to intimidate or coerce a population, or influence a policy of government. And that's, that's been interpreted to mean for an ideological reason.

00:51:20 So that certainly would leave a number of mass shootings in this country not fitting within that, um, that definition, and therefore not falling within a new terrorism charge that would apply in the, in the U.S. Um, and, you know, we can argue about whether that's right or wrong, but it does.... When we're gonna label somebody a terrorist, it carries big

baggage. It carries a lot of weight, and it's, it's been always interpreted to mean this effort to intimidate or coerce.

00:51:52 And so the other issues around, you know, the... the proliferation of guns in America, the very lax regulation of those, that certainly is one reason why it's so easy to commit mass shootings here. And that's a whole 'nother policy issue to discuss. And it's certainly makes the ability to commit terrorist acts easier. And so I have my own views about that, that I'd be happy to talk offline with people about.

00:52:19 But people who want to commit acts of violence will find ways. They can use their vehicle, like James Fields did, and like truck drivers, and car drivers, and van drivers in Europe did. You know, it's really easy. And ISIS in 2015 was saying, "Look, you don't need any special equipment—just use your vehicle," right? "Use whatever you have." And so, or people can use a knife, right? Like, there's things, other things they can use, if they really are bent on committing an act of terrorism.

00:52:42 I think one of the things we need to think hard about, though, when we talk about enacting a new criminal offense is, how could that be misused? And a lot of my discussions over the last couple of years as I've been talking about that have been with civil rights and civil liberties groups who frankly don't trust the FBI. They don't trust law enforcement. And their fear is-- and it's a well-founded fear, based on some of the abuses of our past... In fact, those of you are old enough to remember COINTELPRO will know about those types of abuses. Their fear is that law enforcement can't be trusted to actually put its resources to where the real threat is.

00:53:23 And rather than go after, you know, white supremacists, they'll go after Black Lives Matter, or they'll go after, you know, environmental groups. And so there is a huge trust deficit right now in this country, and it's something we very much need to deal with. But it also means that any type of new crime needs to take that into consideration and have robust oversight, have mechanisms to test that, and make sure that this authority is not being abused. So possibilities include, you know, yearly

reporting-- public reporting, and to Congress-- about the number of investigations that the FBI opens, and...

00:54:06 You know, investigating terrorism in the U.S. And if you, if they open 100 cases, and 90 of them are animal rights activism, and ten are white supremacist cases-- you know, I don't expect them to give us the names of the targets or anything like that that would, you know, let on to the target that they're being investigated. But they could do it by category, and you could pretty easily tell if they are matching their resources up to where the real threat is, because we know where the threat is based on the data, and the deaths, and the shootings.

00:54:39 That's one thing. Another thing is, you could look to outside bipartisan organizations. The Privacy and Civil Liberties Oversight Board is one that has, was also stood up after 9/11, to review some of our surveillance techniques. It's usually been used to review surveillance programs to see if they comport with privacy and civil liberties rights of U.S. persons.

00:55:00 But they could look at something like, how is the FBI, and how are law enforcement using this, their, this resource, like, how are they actually investigating cases? And are they doing them in a way that respect the privacy and civil liberties rights of Americans? And there might be other, you know, ways of making a check to ensure this isn't abused. And so any conversation about this just, you know, has got to include that piece.

00:55:28 Seamus Hughes: I would absolutely agree, and I would advocate for a very narrow focus on the definition of terrorism. You don't want it to be something that can be a catchall. You know, I think of the Countering Violent Extremism programs in the Obama and Trump administrations. If violent extremism isn't defined, everyone that you look at is gonna be a violent extremist, depending on your world view on things. And it means that the way you address that problem, you're gonna throw a bunch of different things, depending on how it goes.

00:55:56 I also absolutely agree in terms of data. So, the FBI director for the last three years has said there's a thousand active investigations in all 50

states for ISIS-related activities. The same time, he's said there's a thousand active investigations for domestic terrorists. A couple of things. I don't, that bucket of domestic terrorists, when it comes to, within the bureau, is very broad. And so it can include white supremacists, environmentalists, anti-abortion, you name it, that all falls in the bucket, right?

00:56:27            So I don't know if it's 700 cases of white nationalists and 300 cases of sovereign citizens. I don't know if it's vice versa. And so some level of clarity on that would help figure that out. And then in the last point about mental health. You know, I have a colleague who's fond of saying that terrorism doesn't attract the well-adjusted. There's something to be said about that. But there's also something to be said about... Depending on how you identify with the person is depending on how you view the act.

00:56:55            If you could see yourself or see your family members, that you tend to say, "Oh, that must be mental health. No one would do that with a sane mind." Whereas if you can't, you may say, "Mm, that looks like an ideological attack. It looks like foreign influence. It looks like domestic terrorists." And so I would hesitate to both use the stigma... try to add a stigma of mental health and violence, which, I don't think there is any-- but it looks at academic research-- but also in terms of understanding the ideologies of sometimes just explaining the way that that person is, is not right isn't good enough if you're trying to address the issue.

00:57:34            Jessica Chen: So now we'll take a couple of questions from the audience. If you could just raise your hand, and we'll have a mic run to you. Right here in the center. If you could just wait for the mic coming from that side.

00:57:51            Audience Member: Thank you both so much. In this milieu of terrorism and white supremacy, so much can be said. My heart broke a couple of months ago with this event in Jersey City. And my question to you both is, the specter, this ancient specter of anti-Semitism, and that in particular as a, both a creepy facet of white supremacy and a stand-alone ill. What are your thoughts on, on the growth of that?

- 00:58:34 Seamus Hughes: I think by, by any measure, we've seen a growth domestically, especially when it comes to violence. It also is the glue that binds both international and domestic terrorists, a level of anti-Semitism, whether a jihadist or a white supremacist. You're seeing more brazen attacks. Uh, you're seeing individuals that are either networked and planning to attack things, and you're also seeing the lone actors when it comes to Robert Bowers. I have a serious concern about the rise of attacks against Jewish Americans in the U.S.
- 00:59:08 Mary McCord: I agree, and you know, the attacks recently-- not the attacks yesterday in Germany, but just a few months ago that were... was an attempt on a synagogue, but he wasn't able to get in and diverted elsewhere. So we're seeing, again, not only here domestically, but abroad this common thread. And, you know, the ugliness of the Holocaust, we're seeing it, it... Not that that's to be repeated, but we're seeing Holocaust-deniers. We're seeing the anti-Semitism grow.
- 00:59:38 And when I talk about white supremacy, I'm talking about, you know, those who are anti-other, anti-Semitic, et cetera. Because it all goes hand-in-hand. What we saw at the Unite the Right rally in Charlottesville, I ended up bringing my organizational lawsuit against a number of the white supremacist organizations and militias that were there in order to get court orders for them not to engage in that activity in the future, that type of militarized violence, that privatized violence.
- 01:00:04 But there we had such, such a diversion of... Or not diversion-- so many different groups. And you were mentioning this before, we had neo-Nazis, we had neo-Confederates, the League of the South. We had, um, uh, you know, this new sort of alt-right that was marketed to young people. You had the more... hard-core KKK and skinheads. But a common thread really was the anti-Semitism among these groups. And so they have a lot of things they diverge on, but they do tend-- maybe a little bit less so with the neo-Confederates—but otherwise, they do tend to have a lot of agreement there.

01:00:47                   And so it's a very scary thing that that is becoming so prevalent now. And again, I think, you know, we've talked a lot about sort of, like, using criminal law. But I think it's important to realize, like, that's one... That's one piece of sort of a whole... Not just whole-of-government, but, like, whole-of-community approach to this, and that's, that's not an adequate piece to remedy the problem. And we have a serious problem in this country, and a lot of other countries do, with the polarization, and the, the anti-other, and racism, and anti-Semitism. And that's going to take a lot more than criminal law to fix that.

01:01:27                   And, you know, there are great organizations that are trying to get more conversations going in communities between people of color, and people of different religions, and, and white people, and politicians and non-politicians. But, you know, and those can have, like, great results in their little, you know, small communities. But, like, scaling that is, is a challenge, particularly right now, with the level of extremist rhetoric that is, so abounds.

01:01:55                   Seamus Hughes: There's also the last dynamic there, which is... We're, we were getting pretty... Well, I was hopeful about a society where extremist thoughts were being marginalized to the edges, right? That dynamic is shifting as, as these guys are coalescing online. They're no longer the lone person who thinks this thought about anti-Semitism.

01:02:17                   They've now got 10,000 of their buddies who agree with them, who like their posts, who they never-- they're never gonna hear anybody else, right? It's an echo chamber online, no dissenting voices. And so it's going to reinforce the radicalization and accelerate the radicalization of violence in ways that we haven't seen before, especially as the interconnectivity of that, and the fact they're using encrypted apps, which makes it harder for law enforcement to access it.

Jessica Chen: Another question. Right over here. Oh, go ahead. And then we'll move this way.

01:02:52 Audience Member: Hi, can you speak to the extraterritoriality of our current terrorism laws, maybe in the context of, um, maybe the more common, you know, extent, and, you know, Islamist extremism, with maybe Americans going overseas, whether with ISIS or other events, and whether that's been a focus of the D.O.J.?

And also, going forward, as we've seen the rise of, you know, far-right movements overseas in Europe and elsewhere that maybe would attract people here in the United States with similar extremist views, whether extraterritoriality would be a focus of, you know, a bill that targeted those groups-- where you see that sort of going.

01:03:33 Mary McCord: So Congress can make any statute extraterritorial by simply saying that it is. That might, might or might not violate international law. But as a matter of domestic law, that's how they do it. And certainly all of our terrorism crimes in the U.S. have extraterritorial application, including the material support.

01:03:53 And so when you have seen the U.S. prosecute not people here committed their crimes domestically, but people who committed their crimes on the battlefield in some cases, or in Syria, or elsewhere... The recent prosecution of one of the organizers of the attacks on our compound in Benghazi, Libya, for example, was actually, you know, brought here from Libya to face trial, and others have been brought here, as well.

01:04:21 So right now... So that, that exists and will continue to be a focus of D.O.J. You know, that always causes political discussions about what is the long-term option. So, for example, when, um, when the Libyan attacker was, was brought here, there was questions-- should he be going to Guantanamo? Should he be in law-of-war custody? Should he be prosecuted in a federal court here? And that is a case that was developed using federal law, and he was prosecuted in federal court.

01:04:51 Right now, there, because no terrorism crime applies, you know, to the types of ideologies we talked about here, and right now, because there's



no foreign terrorist organization designated that's a white supremacist organization, the issue hasn't really come up about extraterritorial... extraterritorial application of our most commonly used terrorism laws to things like white supremacy.

01:05:18 Now, I think that the State Department ought to be looking at whether any of the foreign white supremacist organizations, such as Combat 18 and a number of others that Seamus knows better than I do, whether any of them should be designated. It just... there's three criteria: it's foreign; it commits acts of terrorism, or has the capability and intent to commit acts of terrorism; and is a threat to U.S. nationals or U.S. national security.

01:05:46 So if any of those European or Southeast Asian and other white supremacist organization meets that, those criteria, it could be designated. And then I think you would be seeing potential extraterritorial application. And if some of you are wondering, why don't we designate a domestic organization like The Base that we were just talking about? It's because of the First Amendment, right? A foreign organization doesn't have First-Amendment rights, a domestic organization does.

01:06:10 And that even though incitement to violence and acts of violence are not protected First-Amendment activity-- even though they certainly have an aspect of expression to them, they're not protected-- our Supreme Court has said an organization usually engages in a variety of, of activity, and would have at least some protected speech, even if it were to also have some members who might engage in violence.

01:06:32 Seamus Hughes: That, that last point is key. So I was a congressional staffer for five years. I am not hopeful that the seven bills for domestic terrorism have any chance of passing. Also, 'cause I'm not hopeful of anything getting passed in Congress right now, right? But the State Department does not need an act of Congress in order to designate a white supremacist group overseas as a foreign terrorist organization. It just needs to hit those three criterias. Now, we can debate if, what that, what that looks like when that happens. Because I think it opens up a

Pandora's box. But there's nothing precluding the State Department from doing that if the facts are what they are.

01:07:09 Jessica Chen: Let's take a final question. I promised to the gentleman right here.

Audience Member: Thank you. So hypothetical: You have two brothers, 30 years old, they're up walking in Central Park. One guy's-- not together—and one's walking along, and someone jumps out of the bushes and says, "Give me all your money." Says, "I haven't got any." Boom, boom, beats him up, goes to hospital for six months. The other brother is walking a couple of blocks away, Central Park, guy jumps out and says, "I hate you because you're Hispanic." Or, "I hate you, I'm a terrorist." And beats him up, six months in the hospital, same result. Or they're both killed—same result.

01:07:44 But in our system now, the second guy, the second criminal, would get a lot more. I've read-- this is not an opinion, it's a question. I've read a lot of articles saying, "Well, hey, a crime's a crime." If you beat him up and he's in the hospital for six months or if he's killed, why not punish them identically? Why does the court try and figure out what the motivation was?

01:08:05 Mary McCord: So I think it's actually, um, not always the case that the one guy would get a lot more. Particularly if you're talking about them both being killed, right? Murder's a crime in all 50 states, punishable by at least life imprisonment, and in many states, death. So even if the one got prosecuted for a hate crime, and the other for state law murder, the potential for the same sentence is very, very likely. If you're talking about aggravated assault, you're also talk about similar sentences.

01:08:33 I think your second scenario would be more like, less likely to be able to qualify as a crime of terrorism, but probably would qualify as a hate crime. And some people think, "Well, what's the difference?" And there is a Venn diagram of things that could be both. Like, what Robert Bowers

did qualify as hate crimes, but I think would also qualify as terrorism. Same with Dylann Roof and some of the others.

01:08:52 But when you're talking about sort of one-on-one opportunistic violence- - "I see you, I, I want... I want to commit a crime against you because you're a different color than me"... That's, that's really, I'm doing it because of your race and not trying to send a bigger message. But those have enhanced penalties, but those enhanced penalties are still not necessarily going to be any greater than what the state law penalty for that crime of violence are. State law penalties for crime of violence are pretty significant. So I don't think they would get more time.

01:09:23 What is a bigger issue is, are you labeling it right? Does the label matter? Is there a, is there a, you know, a morally... a moral reason to have labels, and how do we combat it, right? How do we, what tools do we have to do the prevention? And that's when it starts to make a difference, because you have less ways to go at trying to prevent that. Those were both opportunistic crimes that probably would be difficult to prevent under any regime.

01:09:49 Seamus Hughes: But you're charging a hate crime because you want to tip the scales that this is an important... that you want to prevent the next hate crime, right? That society looks at this and says, "This is different than a run-of-the-mill crime," right?

Mary McCord: Yeah. I don't know how well it does at preventing.

Seamus Hughes: Yeah, I know.

Mary McCord: But I think that it was, you know, a reaction to some really, you know, horrible things. The Matthew Shepard murder in South Dakota. Gosh, now, how many years ago has it been?

01:10:15 I recently met his parents, wonderful people, who, you know, have been very instrumental in having many, many states pass hate crimes statutes. It's a way, you know, it is another way of just society condemning a particular type of crime. But I will tell you, for a local prosecutor to prosecute something... 'Cause there are domestic terrorism laws in a number of states.

Seamus Hughes: Including this one, yeah.

01:10:40 Mary McCord: Yeah, and, which have been prosecuted recently, under Cy Vance, the D.A. here. But for a local prosecutor, let's assume you have a murder. To prove that murder-- particularly 'cause a lot of these things are on video, like, you, it's not that hard to prove. You prove this person killed the other person, and you prove murder. To prove terrorism or hate crime, you then have to prove an... a heightened level of intent. So many state law prosecutors are gonna be, like, "Why would I do that? Why would I make my job more difficult?"

01:11:07 So again, the things we're talking about here are less about making sure there's adequate punishments, and it's more about, how do we address, how do we integrate fighting terrorism as part of the nationwide counterterrorism program and use all kinds of resources to preventing it?

Jessica Chen: Just one quick question, which, as you know, if our audience can take away something from tonight's program in terms of what they can do now with this knowledge, what would you recommend?

(laughter)

Jessica Chen: Was that a quick question? Just me saying the question was quick. The answer is not quick.

01:11:43 Mary McCord: Yeah, well, I mean, I think the awareness is really important. Understanding the lack of parity, as Seamus put it, and understanding the threat. We need to know the threat of terrorism is not all Islamist extremist terrorism. There's a lot of other types of terrorism. We need to be cognizant of it, and try to see in our own communities, what are the things we as individuals can do to try to prevent these types of things? When we... and, you know, this whole sort of "see something, say something," which has been used in lots of different contexts, but it does apply.

01:12:15 You know, we had data from various researchers that talked to family members and others of individuals incarcerated for international terrorism crimes. And in something like 70% of those cases, there was a bystander-- a family member, a friend, you know, a teacher, a coach, a religious... a religious... a religious leader-- who, who saw the person changing as they were kind of on this path of radicalization, and, and worried about it, but didn't ever say anything.

01:12:48 And it's understandable, because the last thing you wanna do is have the FBI come knock on your door and arrest your son because you said, "I think he might be getting radicalized." Like, that's a terrifying thing. But the point is, a lot of times, there's times to intervene earlier on that cycle. And if you see that kind of thing happening to somebody you know, there might be something driving it, right? Some other, you know, um, problems that that person might be having in their lives.

01:13:13 And not necessarily mental health, it could be just job-related problems, education-related problems, could be mental health problems. You know, see if there are things that can't be done at that stage before it becomes too late.

Seamus Hughes: I would just add, you know, I think back to... the New York senator used to say, you know, "I change my mind when the facts change," right? I wasn't an advocate of the domestic terrorism statute three or four years ago. I've looked at the threat and just determined that, you know, actually, it makes sense in terms of resources to do that. But there is something to be said about public debate, right?

01:13:44 We should have a healthy debate on whether the civil rights and civil liberties concerns outweigh the potential benefits for a domestic terrorism statute. We should have a debate on whether there should be... Whether putting, again, you know, 20 years against a sentence versus 13 is the right, right thing. We're not currently having that debate. We're not having the data that we need to. So it's incumbent on us to have events like this. So I thank the 9/11 Museum for having us. But this should just be a start of a conversation.

01:14:10 And you may decide after, after having these conversations that you are against a domestic terrorism statute. I'm absolutely fine with that. As an academic, I would love to have someone disagree with me, right? Let's have that debate back and forth and go from there as a society.

Jessica Chen: Well, that's a great note for us to end on. A couple of takeaways. We have more public programs here coming up throughout the season, including one with the GW Program on Extremism. So I encourage you to go to [911memorial.org/programs](http://911memorial.org/programs) to see our upcoming events.

01:14:42 If this... clearly, we have a lot to talk about tonight, I know there are a lot of unanswered questions. If this event's topic appealed to you, I encourage you to answer the post-event survey that comes to you in your mailbox, or to shoot us an email at [info@911memorial.org](mailto:info@911memorial.org) to let us know that you're interested in discussing this more.

And lastly, we do have our 9/11 Memorial & Museum annual 5K coming up at the end of April. So, please, check out our website to get more information. We encourage you to register and join us for that day. So without further delay, please join me in thanking our special guests, Seamus and Mary.

01:15:14 (applause)