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Comment

The Amish Beard Cutting Case: A Defense Lawyer's Perspective

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On November 23, 2011, I met Amish bishop Samuel Mullet in a holding cell in the federal courthouse in Youngstown, Ohio. He was arrested that morning, along with six other men from his Amish community in Bergholz, Ohio. In the fall of 2011, there was a series of beard and hair cutting incidents in Amish communities throughout eastern Ohio, and Mullet and the others arrested were accused of these attacks and charged with violating the Federal Hate Crimes Act of 2009.

In December of 2011, a total of 16 Bergholz Amish community members, ten males and six females, were indicted by federal authorities with various charges, including the aforementioned hates crimes and other related offenses. In August and September of 2012, in the first federal hate crimes case alleging attacks based upon religious animus, the case against the defendants proceeded to trial in federal court in Cleveland, Ohio. The trial resulted in convictions on most of the counts. The defendants were later sentenced to various periods of incarceration, from a year and a day for some the defendants, to up to 15 years in prison for Samuel Mullet.

A federal appeals court later reversed the hate crimes convictions based upon an improper jury instruction regarding the hate crimes charges. The government chose not to retry the defendants on the hate crimes; instead, it sought re-sentencing on the remaining counts of conviction, which included obstruction of justice charges for concealing evidence. While the defendants all received reduced sentences, the sentence the court imposed on 70-year-old Samuel Mullet was still nearly 11 years long. Samuel Mullet is the only Bergholz defendant still incarcerated, and will remain so, barring any further legal relief, until April of 2021.

The 2009 Federal Hate Crimes Act was named in honor of James Byrd, Jr. and Matthew Shepard. Byrd was an African-American gentleman who was targeted by three individuals simply because he was black. The individuals chained Byrd by the ankles to the back of their pickup truck and dragged him behind the truck until he was dead. Shepard was a young man who was tied to a fence post and beat to death simply because he was gay. The federal hate crimes law was enacted to target bias motivated violence. It made it unlawful for a person, or persons, to cause bodily injury to another "because of" the person's race, religion, ethnicity, nationality, gender, sexual orientation, gender identity, and disability. When the Federal Hate Crimes Act was used against the Bergholz Amish for allegedly assaulting other Amish, many legal commentators

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stated that the government was stretching the bounds of the law. In other words, how can an Amish defendant harm another Amish person because of his or her religion when they are of the same religion? How can an Amish person's motive in assaulting another Amish person be "because of" the person's Amish religion?

In fact, the Circuit Court of Appeals reversed the hate crimes convictions because the trial court improperly instructed the jury on the defendants' motives. The trial judge instructed the jury that the defendants could have multiple motives for the assaults, but a "substantial motivating factor" had to be the victims' religion. The Court of Appeals held that the instruction was overly broad. Instead, the trial court should have instructed that the victims' religion was the "but for" cause for the assaults and reversed the hate crimes convictions. As stated above, the government chose not to retry the defendants on the hate crimes charges. In fact, a retrial on the hate crimes charges would have been difficult as there were many motives testified to at trial as to why the Bergholz defendants did what they did, and little had to do with the fact that the targets for the beard and hair cutting were Amish. Accordingly, it would have been difficult to prove the "but for" reason for the assaults was because of the victims' Amish faith.

During trial, the government employed the services of noted Amish scholar, Donald Kraybill, in large measure to cast doubt on the legitimacy of the Bergholz community's Amish credentials. In many respects, the government was concerned about the anomaly of bringing a hate crimes prosecution alleging religious animus when the perpetrators and the alleged victims were of the same faith. Accordingly, Kraybill was employed to not only explain the basic tenants of the Amish religion, but to try to cast the Bergholz Amish as a "renegade" or "lone ranger" group to make the government's hate crimes case more plausible as crimes being committed against those of the Amish faith by some who had at least repudiated parts of the Amish faith.

Outside the specific criminal charges, there has been a lot of rumor and innuendo concerning Samuel Mullet and the Bergholz Amish community. A lot of this false narrative was spread by the "Amish grapevine," or gossip, from other Amish communities about what others believed was taking place in Bergholz. Much of the misinformation was spread by detractors during litigation surrounding a custody dispute between Samuel Mullet's daughter Wilma and her estranged husband, Aden Troyer.

One of the most troubling claims to develop from this false narrative was that the Bergholz Amish were not Amish at all. Although he never explicitly claimed the Bergholz Amish were not Amish, Donald Kraybill, strongly implied in his book, *Renegade Amish*, that they were not. Kraybill stated that "[t]he pie of Amish identity can be cut into three slices: (1) ethnicity (language genealogy, common history, culture background), (2) religious practices, and (3) religious beliefs" (138). While Kraybill acknowledged the Bergholz Amish predominately satisfied the first two "slices" of the Amish identity "pie," he said that they did not satisfy the third. The problem with Kraybill making such a strong charge against the Bergholz Amish is the fact that Kraybill never interviewed a current member of the Bergholz Amish community before

he wrote his book. He relied heavily on the word of many individuals who were antagonistic to the Bergholz Amish. Accordingly, he takes much of what was said by others about the Bergholz Amish at face value, without subjecting it to proper scrutiny.

In fact, it was the federal government that first employed false narratives against the Bergholz Amish to justify its extraordinary action in bringing a federal case against Samuel Mullet and many of his church members. Far from being a neutral observer into the circumstances surrounding the beard cuttings, Kraybill became the government's "hired gun" to help legitimize what was basically a family feud run amuck into a bonafide federal hate crimes prosecution. When one understands the true back story to what happened in Bergholz, however, it is clear to see that the Bergholz Amish have always been, and continue to be, Amish.

On September 14, 2007, a SWAT team, led by Jefferson County, Ohio, Sheriff Fred Abdulla, stormed the one-room school house in the Bergholz, Ohio, Amish community, looking for the two infant daughters of Wilma Mullet and Aden Troyer. The girls were not in the schoolhouse where their mother was a teacher. Instead, the girls, one and a half years and nine months old, were being watched by one of Samuel Mullet's other daughters, Lizzie Mullet, in Mullet's home. The Sheriff was armed with an Emergency Temporary Custody Order from the Jefferson County Domestic Relations Court. Aden and Wilma earlier separated, and Aden lived in another Amish community. Over Wilma and Lizzie Mullet's protestations, Samuel Mullet told the women that they had to surrender the children to the Sheriff because he had paperwork from the Domestic Relations Court. Over the next two years, the couple battled in court over who should be the residential parent of the two daughters. In the fall of 2009, an appeal of an Order awarding custody of the girls to Aden Troyer was lost.

The Bergholz Amish Community had been estranged from other Amish communities since 2006, after a committee of over 300 Amish bishops went against 400 hundred years of Amish tradition, and voted to reverse shunnings the Bergholz Amish community had placed upon some former Bergholz Amish Church members. Included in the families who had the shunnings lifted by the outside bishops were Aden Troyer's parents, Lavern and Mattie Troyer. With the shunnings lifted, the Troyers and the other shunned Bergholz Amish Church members were free to join other Old Order Amish "strict shunning" church communities. In lifting the ban of an outside Amish church, the 300 bishops ignored the centuries old tradition found in "strict shunning" churches, that a person shunned from one strict shunning Amish church could not join another strict shunning Amish church until he or she first received forgiveness from the church that shunned them.

Ironically, Kraybill states that the fact that Samuel Mullet went against the counsel of the greater number of Amish bishops was evidence that he had strayed from the Amish faith (Kraybill 2014, 140). Mullet believes it was the 300 Amish bishops that had strayed from Amish teaching when they lifted the ban another Amish community had placed on its own members. Although 300 may seem like an impressive number, the Amish strongly emphasize consensus. In

reality, only a couple of influential bishops framed the Bergholz case, and without a retort from Bergholz, these bishops' ability to put their seal on the consensus was a shoo-in.

Actually, the Bergholz Amish had good doctrinal reasons not to lift the ban against the church members they had shunned. Correspondence between the committee of bishops assigned to interview Mullet and the larger committee of bishops demonstrated that Samuel Mullet's Amish community refused to lift the ban because the shunned members never returned to Bergholz and sought forgiveness. Lavern Troyer was very close friends with Ulysses, Pennsylvania bishop, Atlee Miller. It was Atlee Miller who convened the larger committee of bishops to address the Bergholz shunnings. When Samuel Mullet and the Bergholz Amish refused to lift the ban on the excommunicated Bergholz Amish church members, the committee, led by Lavern Troyer's good friend, Atlee Miller, did it for them. It wasn't that the Bergholz Amish were not willing to lift the ban, they were simply waiting for the condition precedent required by Scripture to do so, repentance, which never came.

After the court system granted residential parent status to Aden Troyer and the appeal was lost, the Bergholz Amish community believed that God allowed Wilma's daughters to be taken because the Bergholz Amish community must be living in sin. Many of the women accused their husbands of failing in their roles as the spiritual leaders of their families. Many of the men became penitent and agreed that they had, in fact, failed in their roles as spiritual leaders and had been living in sin. They felt they were hypocrites to wear a beard because they had been sinful. Accordingly, they allowed their beards to be cut off as a demonstration of their re-commitment to their Christian faith. During this period of time, which Donald Kraybill described as the "winter of lament," members of the Bergholz Amish church also submitted to corporal punishment, such as spending time in chicken coops, to reflect on the sins that they had committed. When word of what was going on in Bergholz reached other Amish communities, the gossip grew more rampant than before and Bergholz became even more distant from other Amish communities.

When other Amish witnessed the Bergholz Amish men and women at places where the Amish gather—horse sales, machine sales, etc.—they believed the Bergholz Amish were leaving the Amish faith because the men cut their beards, not understanding their spiritual motivations for doing so. The Bergholz Amish church, shocked by the loss of Wilma Mullet's daughters, was desperately trying to draw even closer to God. Not understanding the spiritual motivations for the Bergholz practices, feuds began to develop with Bergholz family members that lived outside Bergholz.

Kraybill claims in his book that the motivations for the unwanted beard cutting incidents that occurred *outside* the Bergholz Amish community were as follows:

In the Bergholz mind-set, the beard-cutting episodes that began in the fall of 2011 were warnings of the devastation to come from God's hand if the Amish hypocrites did not repent and turn around, as the Bergholz flock had done during the *Winter of Lament*. In

that sense, the shearings were prophetic acts of compassion to help other Amish get back on the old road to heaven.

Still, there was a sinister word underlying this yarn that was spun along the Yellow Creek. That word was revenge. The narrative that the clan constructed blamed many of its troubles on the outside Amish hypocrites. And now, with a compelling ideology legitimated by religious belief, the little flock felt justified to exact vengeance on those they thought had treated them unfairly.

Imputed with this righteousness, their narrative carried a deep sense of moral obligation. Acting on their convictions was, in short, the right thing to do. It was this set of beliefs that spurred the Mullet clan forward in the events that began to unfold on September 6, 2011 (Kraybill 2014, 80).

Notwithstanding Kraybill's overly active imagination and thrilling edge-of-your-seat detective novel-type writing style, there was no grand plan by the Bergholz Amish to engage in outside beard cuttings to warn others outside Bergholz "of the devastation to come from God's hand." In reality, the Bergholz Amish community resigned itself to the idea that they would continue to live without the fellowship of other Amish communities that continued to spread gossip about them. In fact, there was no conspiracy to go on a string of beard cutting assaults. The evidence presented at trial established that there were varying motivations for the separate beard cutting incidents that occurred outside Bergholz; most was because of familial discord.

The catalyst to the beard cutting incidents that occurred throughout the fall of 2011 was a chance encounter between some Bergholz Amish community members and their estranged father at a machine sale. In August of 2011, Marty and Alan Miller, and their sister Nancy Burkholder, ran into their father, Marty Sr., at a machine sale in Geauga County, Ohio, and got into a verbal disagreement. The children argued with their father over who was more "with God" in their faith practices. Marty Sr. admonished his sons, "If God was with you, you would have never cut your beards...If God is with me, my beard will never be cut." In response, Alan told his father he had just said a mouthful.

When the Miller children returned to Bergholz, they advised their siblings, and the greater Bergholz Amish community, of their encounter with their father. The five Miller brothers and their sister, Nancy, discussed that they should go to their parents home and cut their father's beard. On September 6, 2011, the Miller children and their spouses hired a driver to take them to their parents home in Mesopotamia, Ohio. When they arrived, the men proceeded to their father's room, where they woke him and took him to a chair in another room, where some of the men held him down, while the others shaved his beard and hair with battery powered clippers. The women argued with Barbara Miller, their mother and mother-in-law, before they held her in a chair and cut her hair. During the men's cutting of their father's hair, Alan Miller shouted at his father, "God is not with you!" When the Miller children returned to Bergholz, they informed the

community of what they had done.

Inspired by what the Miller children did with their parents, two other Bergholz community members also decided to settle family scores. The first occurred on September 25, when Levi Miller (no relation to the Miller children) cut his brother-in-law David Wengert's beard and hair after inviting him and his wife, Levi's sister, to Bergholz for dinner. Levi was upset that David had enlisted the assistance of Sheriff Abdalla to continue to check on Levi's status in the community. Levi cut Wengert's beard to tell him to leave him alone.

The final familial beard cutting incident happened when Emanuel Shrock, Samuel Mullet's son-in-law, invited his father Melvin and mother Anna to his home on November 9, 2011. Prior to the meeting with his parents, Sheriff Abdalla came to Emanuel's home to admonish him against doing anything to his parents. During the meeting with his parents, everything seemed to be going well until Emanuel and his father got into an argument. Emanuel reminded his father that his father had told Emanuel that if he stayed in Bergholz he would stop living as Amish. When Emanuel told his father that he could plainly see that he and his family were still living as Amish, some four years after his father had made the statement, Melvin Shrock said, "just give it a little more time." Emanuel became upset and retrieved a pair of sewing scissors from a drawer and proceeded to cut off his father's beard.

None of the family members whose hair and beards were cut went to the authorities. In fact, consistent with their Amish faith, they resisted authorities' attempts to pursue charges. However, on October 4, 2011, the beard cutting incidents were escalated to non-family members. The first incident involved Holmes County, Ohio, Amish bishop Raymond Hershberger. The second involved Carrolton County bishop Myron Miller.

Inspired by the Miller parents and the David Wengert beard cutting incidents, Johnny Mullet, Samuel Mullet's son, decided he wanted to confront bishop Hershberger when Bergholz community members traveled to Mount Hope, near where Hershberger lived, on October 4, 2011, for a horse auction. Johnny was upset with Hershberger because he was one of the bishops that sat on the committee overseeing whether the Bergholz shunnings should be reversed. As convoluted as it may seem to others, Johnny believed that the reversal of the Troyer's shunnings is what emboldened Aden Troyer to use the English courts to take Wilma's children away from her. Later that evening, Johnny Mullet, along with four others, visited Hershberger's residence and went into the home to talk with Bishop Hershberger. Bishop Hershberger was accompanied by his son, Andy. Not long after they were gathered to talk, Johnny told Hershberger, "We're here about what you did to our shunnings." When Hershberger responded in a perplexed manner, Johnny proceeded to cut Hershberger's hair and beard. Others attempted to cut Andy Hershberger's beard, but the clipper head became detached from the clippers during the attempt.

On the way back to Bergholz, the men stopped at Carrolton County, Ohio, Bishop Myron Miller's home. Miller was a bishop who had been openly critical of the Bergholz Amish. Miller

also had accepted Samuel Mullet's son, Bill, into his Amish community after Bill was excommunicated from Bergholz. The same five men that took Hershberger's beard, approached Myron Miller's residence, and knocked on the door. When Bishop Miller appeared, the men pulled him out of the house and proceeded to attempt to shear his beard. In the turmoil, Bishop Miller ended up with a handful of Johnny Mullet's beard.

The Holmes County incident was investigated by law enforcement. Although Hershberger was extremely reluctant to do so, the Holmes County Sheriff, with the assistance of other Amish bishops, convinced Raymond Hershberger to bring charges against the men who sheared his hair and beard. Not long after, the state authorities yielded the case to federal authorities. The United States Justice Department authorized prosecution for all five of the beard cutting incidents. The government alleged the incidents were part of a greater conspiracy in which Samuel Mullet was the head. In fact, the government later conceded that there was no evidence that Samuel Mullet ever participated in, or ordered, any of the beard cutting incidents, but argued his liability was based upon the fact that he knew about the incidents in advance and that his failure to stop them meant he tacitly approved them. According to the government, considering his status as the Bergholz Amish bishop, his failure to stop the beard cuttings meant that he approved them. Based upon this, there is at least an argument to be made that Samuel Mullet was charged "because of" his religious status, which is the ultimate irony of the federal hate crimes case brought against him.

It is ironic that others have challenged his Amish identity, because everything Samuel Mullet has done in his life has been about clinging to his Amish identity and what it represents to him, a true pathway to Heaven. In 1995, Samuel Mullet, along with his wife, Martha, moved his family to Bergholz, Ohio, to attempt to keep his family safe from the drift that he was witnessing in the Amish communities in which he lived. He and his wife were alarmed by the loose morals of the young people, including boozing and sexual activity before marriage. Mullet first moved from the Middlefield, Ohio, Amish (where he was born) to be surrounded by what he believed to be the more conservative Amish of Fredricktown, Ohio. He then felt it necessary to move his family from Fredricktown to Bergholz to help create a new Amish community because he felt the "drift" was in Fredricktown as well. The only motivation for Samuel Mullet for moving from the Amish communities in which he lived was so that he could live an unequivocal Amish lifestyle and raise his family as Amish, the way his parents and grandparents had before him.

A lot has transpired since Samuel Mullet moved his family to Bergholz in 1995. Some of what has transpired resulted in Samuel Mullet being incarcerated in a federal prison. While nobody is defending the forcible cutting of people's hair and beards, it was, and still is, legitimate to question whether such actions violated the federal hate crimes law. It *is* offensive, however, to question the legitimacy of another's faith based upon the gossip of others.

Samuel Mullet remains incarcerated in federal prison, and will remain so for the next 5 years, barring relief from the courts. Sadly, Sam's wife Martha passed away in November of

2014. Because of his incarceration, Sam was not permitted to attend his wife's burial. Samuel Mullet remains the bishop of the Bergholz Amish community, and the Bergholz community continues to be an Amish community, notwithstanding the gossip and false scholarship of others.

Reference

Kraybill, Donald. 2014. *Renegade Amish*. Baltimore, MD: Johns Hopkins University Press.