

***Hate Crime:  
What It Is & What It Isn't,  
Plus Free Speech Considerations***

**University of California, Davis  
Police Accountability Board  
August 16, 2017**

# Anti-Defamation League

- 1913: *“...To stop the defamation of the Jewish people...[and] to secure justice and fair treatment to all...”*
- Model hate crime statute → 45 states, Washington DC, and federal
- A World of Difference Institute® / No Place for Hate®

# What Will We Cover?

- Define “hate crime “and “hate incident” under CA law (a/k/a bias-motivated crime/incident)
  - Free speech considerations
  - Bias indicators
  - Law enforcement response
- Prosecutor’s perspective
- Scenarios

# So then, what's a hate crime?



**HC = Crime + Bias Motivation**

**Proof: Beyond a reasonable doubt**

# Hate Crimes = Message Crimes

- What message is the perpetrator sending?
- To whom is the message being sent?
- What is the countervailing message that needs to be sent?
- Who should send that message?

# **Hate Crime:**

## **CA Penal Code sec. 422.55(a)**

**A criminal act committed in whole or in part because of one or more of the following actual or perceived characteristics of the victim:**

**Disability**

**Gender**

**Nationality**

**Race or Ethnicity**

**Religion**

**Sexual orientation**

**Association with a person or group with one or more of these actual or perceived characteristics**

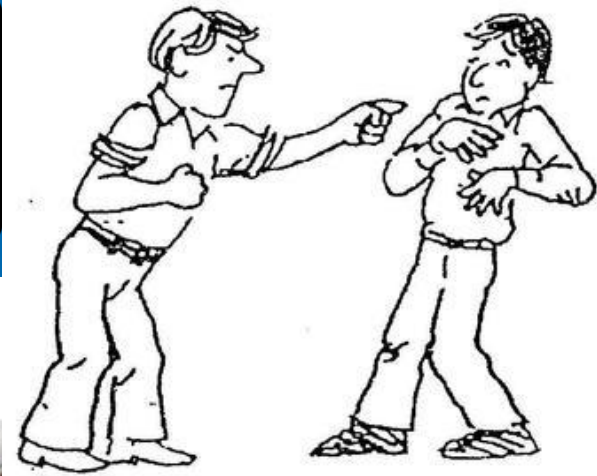
# Hate Crime

- **A crime against a person or property (victim)**





All Rights  
Reserved





# Prohibited Speech: CA Penal Code

- Criminal Threats, § 422(a)
- “Incitement to riot”, § 404.6(a)
- “Offensive words” / “Fighting words”, § 415(3)
  - *(Of crimes against the public peace)*

# What about “hate speech”?



# Hate Crime

- A crime against person or property
- In whole/part because of disability, gender, nationality, race/ethnicity, religion, or sexual orientation

# Bias Indicators

- Words, gestures, tattoos, jewelry, clothes, graffiti?
- Significant day/location for the victim's group?
- History of tension between groups?
- Differences between the suspect and victim?
- Suspect involved in similar incidents?
- Victim new to the community?
- Suspect went to victim's area? Vice versa?
- Excessive or symbolic violence?
- Opinions of victim/community/suspect?
- No other rational reason for the crime?

# Hate on Display™ Hate Symbols Database

This database provides an overview of many of the symbols most frequently used by a variety of white supremacist groups and movements, as well as some other types of hate groups.

## Filter by Category

- ☐ General Hate Symbols
- ☐ Hate Acronyms/Abbreviations
- ☐ Hate Group Symbols/Logos
- ☐ Hate Slogans/Slang Terms
- ☐ Ku Klux Klan Symbols
- ☐ Neo-Nazi Symbols
- ☐ Numeric Hate Symbols
- ☐ Racist Hand Signs
- ☐ Racist Prison Gang Symbols

Showing 1 - 40 of 178 Results



HATE SYMBOL

### 1-11

1-11 is a numeric symbol used by the Aryan Knights, an Idaho-based prison gang, to identify themselves. Substituting letters for numbers, 1 and 11 mean A and K, i.e., Aryan Knights.

# 100%

HATE SYMBOL

### 100%



# Hate Crime

- A crime against person or property
- In whole/part because of disability, gender, nationality, race/ethnicity, religion, or sexual orientation
- **Actual or perceived**

# Hate Crime

- A crime against person or property
- In whole/part because of disability, gender, nationality, race/ethnicity, religion, or sexual orientation
- Actual or perceived
- **Association**

# Hate Incident

**Non-criminal conduct which is motivated by hatred, prejudice or bigotry and directed at any individual, residence, or house of worship, institution or business expressly because of the victim's (person or institution) real or perceived race, nationality, ethnicity, religion, sexual orientation, gender, or disability.**

(as defined by *POST*)



**Mordecai Shoahwicz**

@TheAntiShill



(( @Ike\_Saul ))) your name was a dead giveaway, but here's the echo you forgot to put you vile jewish rat

[pic.twitter.com/McugHG7RWL](https://pic.twitter.com/McugHG7RWL)

11:44 PM - 18 Jun 2016



# Hate Incidents

**Criminal conduct which is motivated by bias, but does not meet the burden required by the criminal statute.**





- **No target**
- **Insufficient bias motive**

# Scenario

- A young man accompanies his girlfriend to her college campus to pick up her yearbook. He has a shaved head, a tattoo on his forehead spelling “RACIST,” and a Nazi swastika tattooed under his right eye. Behind them at the school office are two male students, both African American. The young man starts eyeing them hostilely, and calls them racial epithets. He then removes his shirt to show additional hate symbol tattoos, and brandishes a pocket knife at the students saying he will stab them. Finally, he threatens to “blow up the school.”





# Scenario

- On a chilly evening, two female students chatting in Spanish huddle together to stay warm as they walk across campus. A man and a woman appear behind them, and begin shouting anti-Latina and anti-lesbian slurs at them. The students first ignore them, but finally one turns and says, “hey, we’re just trying to keep warm.”
- The man and woman then attack the students, with punches and kicks. They then steal the women’s backpacks and run off.

# Scenario

Wendy, who is Jewish, and Donna are arguing heatedly. Donna pushes Wendy to the ground and yells, "You should have burned in an oven with the rest of the Jews." Wendy files a police complaint, though the women present conflicting claims as to who started the physical fight. The police do not file any charges against Donna.

Six months later, Donna and her husband are arrested on weapons charges, and the police find white supremacist and neo-Nazi paraphernalia in their home.



# Scenario

Overnight, a banner advertising an LGBT Pride event is defaced. The vandalism includes the phrase “Kill Fags.” This is reported to the police, who investigate though the perpetrators are not found.

The event is taking place next week. What should campus administrators and police do?

# Scenario

- The 60 Asian-American students report to the university administration and police receiving anonymous and racist emails, each ending with “I am personally making it a life goal to find and kill every one of you.”

# Scenario

**Staff at the Consulate General of Mexico arrive at work on Monday morning and find a large swastika in black spray paint defacing the side of their building. The subject of immigration has been debated heatedly in the national news recently.**

**Also that day, a similar swastika is discovered on a window of a nearby Christian Scientist church.**



# Scenario

Two female students, both wearing hijabs, are in line at Peet's. A large man standing behind them leans in between them and says in a low voice, "your days are numbered."

What should law enforcement do?

**Criminal Justice Information  
Services (CJIS) Division  
Uniform Crime Reporting (UCR) Program**



**Hate Crime  
Data Collection Guidelines  
And Training Manual**

Version 2.0

Document Date: 2/27/2015

Prepared by:

Law Enforcement Support Section (LESS)  
Crime Statistics Management Unit (CSMU)



# Response: Two-Tiered

- “First-level judgment officer” (i.e., responding officer):
- Like any response but also:
  - Extra sensitivity to victim’s needs
  - Bias indicators? ➡ “Suspected bias-motivated crime”

# Response: Two-Tiered

- “Second-level judgment officer/unit”:
  - Review
  - Investigate further
  - Final determination and reporting

# Victims: Interviewing

- Do:
- Express concern, validation
- Allow emotional response
- “Why do you think you were targeted?”
  - Get exact statements, etc.
- Apprise of next steps
- Confidentiality & safety (if can)
- “What questions do you have for me?”
- Refer to support services

# Victims: Interviewing

- Don't:
- “It wasn't really so bad.” / “It could've been worse.”
- “I know how you feel.”
- “You really shouldn't be so open about \_\_\_\_\_ here.”
- “Was this a hate crime?”

# Community Response

- Address the community directly & clearly outline expectations
- Goals:
  - Reduce fears
  - Obtain evidence to prove the HC motive
  - Identify unreported incidents
  - Prevent additional incidents/retaliation
  - Foster good community relations
- One Bad Experience...

# Thank You! Questions?

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