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Hate Crimes: Past, Present and Future

May 24, 2021

CDA A Webinar Series

•AGENDA•

Wednesday, March 24, 2021

- | | |
|---------------|--|
| 9:00 – 10:00 | WHY HATE CRIMES MATTER
Leonard Trinh, Special Operations Division, San Diego County |
| 10:00 – 10:30 | Developing a Hate Crime Case
Leonard Trinh, Special Operations Division, San Diego County |
| 10:30 – 10:45 | BREAK |
| 10:45 – 11:45 | HATE CRIME TRENDS, INVESTIGATIONS & SYMBOLS
Brian Levin, Professor & Director, Center for the Study of Hate Extremism |
| 11:45 – 12:15 | LUNCH |
| 12:15 – 1:15 | LEGISLATION
Greg deGiere, Civil Right Advocate, The Arc California |
| 1:15 – 1:30 | BREAK |
| 1:30 – 2:00 | Q&A
Leonard Trinh, Special Operations Division, San Diego County
Greg deGiere, Civil Right Advocate, The Arc California |

Welcome to Hate Crimes: Past, Present and Future

Presenter Bio:

Leonard Trinh, Deputy District Attorney, San Diego County has been a prosecutor for 16 years. For the last 3.5 years, he has been the lead Hate Crimes Prosecutor for the San Diego District Attorney's Office. He is currently prosecuting *People v. John Earnest*, the Chabad of Poway shooter.



CDAAL Webinar Series



1

Hate Crimes

Deputy DA Leonard Trinh
San Diego County DA's Office

2

Objectives

- Why hate crimes matter
- Hate crimes laws in California
- Hate symbols
- White supremacist groups and incels
- New legislation
- Anti-disability hate crimes

3

Why Hate Speech/Crimes Matter to Me



4

Global Scale Impact of Hate Crimes

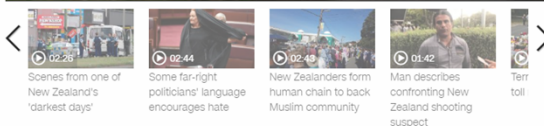


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Global Scale Impact of Hate Crimes

Death toll rises to 50 in New Zealand mosque shootings

By [Nicole Chavez](#) and [Madeline Holcombe](#), CNN
Updated 5:17 AM ET, Sun March 17, 2019



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Global Scale Impact of Hate Crimes

7 SAN DIEGO Home News Weather SportsWrap Entertainment ... LIVE TV 61° Connect

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Suspect of Possible Arson Attack at Escondido Mosque Leaves Note Referencing New Zealand Terrorist Attacks

Scorch marks could be seen on the side of Dar-ul-Arqam on West 6th Avenue in Escondido, California

By Andrew Johnson
Published Mar 24, 2019 at 8:40 AM | Updated at 6:52 PM PDT on Mar 25, 2019

f t e p



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VIDEO 81 Women Sue Sharp

7

Global Scale Impact of Hate Crimes

19-year-old kills 1, wounds rabbi and 2 others at synagogue

By ELLIOT SPAGAT and DAISY NGUYEN Associated Press Apr 28, 2019 Updated Apr 28, 2019 Comments



Two people hug as another talks to a San Diego County Sheriff's deputy outside of the Chabad of Poway synagogue, Saturday, April 27, 2019, in Poway, Calif. A man opened fire inside the synagogue near San Diego as worshippers celebrated the last day of a major Jewish holiday.

Denise Poroy

f t e p



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- Panza's to open new Broadway location this weekend in Saratoga Springs
- Milton man charged with criminal contempt

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Why Hate Speech/Crimes Matter to the Public

March 5, 2019

Racial slurs shouted at SDSU's Black Resource Center

Posted: 11:34 AM, Mar 05, 2019 Updated: 11:34 AM, Mar 05, 2019
By: Allison Horn



10News Leadership



The New York Times

Read More

SAN DIEGO (KGTV) - San Diego State University officials announced Monday plans for healing circles after reports of several people calling out racial slurs toward the Black Resource Center on campus.

A racially diverse group of men was in a vehicle Friday when they yelled slurs at the building on Lindo Paseo, a witness told 10News.

9

Why Hate Speech/Crimes Matter to the Public

April 14, 2019

SDSU Black Resource Center vandalized

POSTED 3:08 PM, APRIL 14, 2019, BY MATTHEW MEYER AND ANDREW NOMURA, UPDATED AT 03:47PM, APRIL 14, 2019

FACEBOOK

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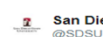
PINTEREST

LINKEDIN

EMAIL

SAN DIEGO — The Black Resource Center at San Diego State University has been vandalized, the school announced Sunday.

Officials learned of the damage Sunday morning but believe the center was vandalized as early as Friday evening. Someone broke into the center, damaged a TV and moved around other items. No injuries were reported and no staff were inside at the time of the break-in, a school spokesperson told FOX 5.



San Diego State University @SDSU

SDSU became aware Sunday morning that the Black Resource Center was vandalized at an unknown time after Friday evening. The university is investigating and asks that anyone with info call the University Police Department at 619-594-1991 or email policeinvestigations@sdsu.edu.

54 2:19 PM - Apr 14, 2019

55 people are talking about this



10

Why Hate Speech/Crimes Matter to the Public

May 1, 2019

San Diego State University Student Arrested After 'Threatening and Disparaging' Remarks Made in Snapchat Video

By Andrew Johnson

Published May 1, 2019 at 5:41 PM | Updated at 11:53 AM PDT on May 2, 2019



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VIDEO Arrest Made in Notorious 1985 Killing of DEA Agent

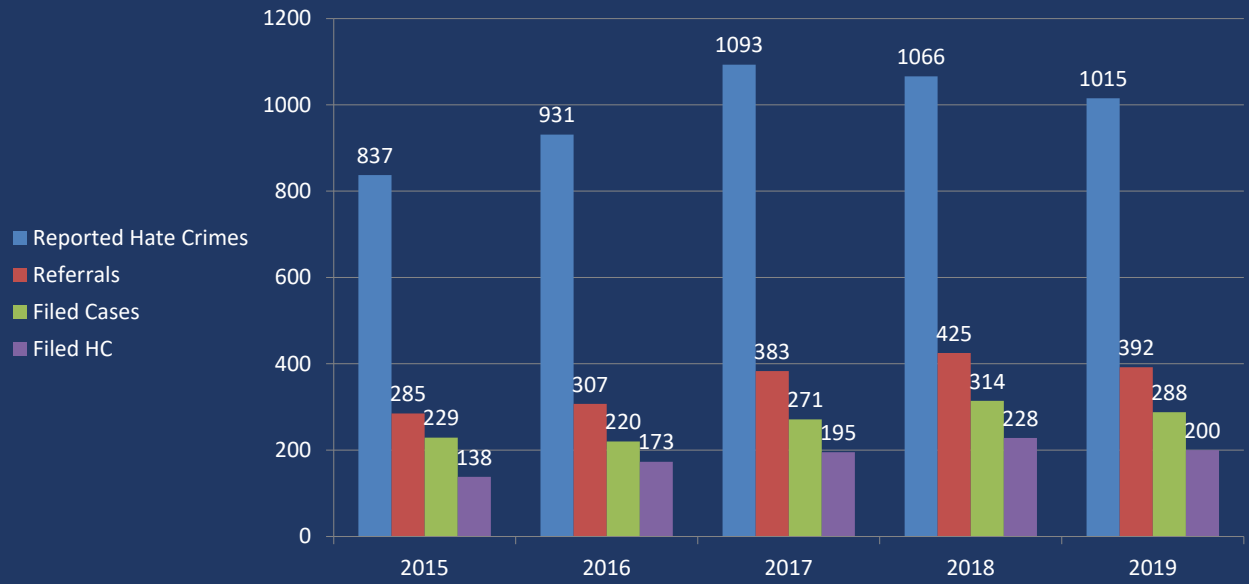
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Harms of Hate Crimes (from *People v. MacKenzie* (1995) 34 Cal.App.4th 1256)

- Hate crimes are “more serious than conventional crimes; the injuries inflicted have ‘a more debilitating effect on the victim and on members in the victim’s community than does conventional crime’; and the injuries are also ‘more severe’ due in part that the crimes are more likely to be committed by strangers and multiple offenders.”

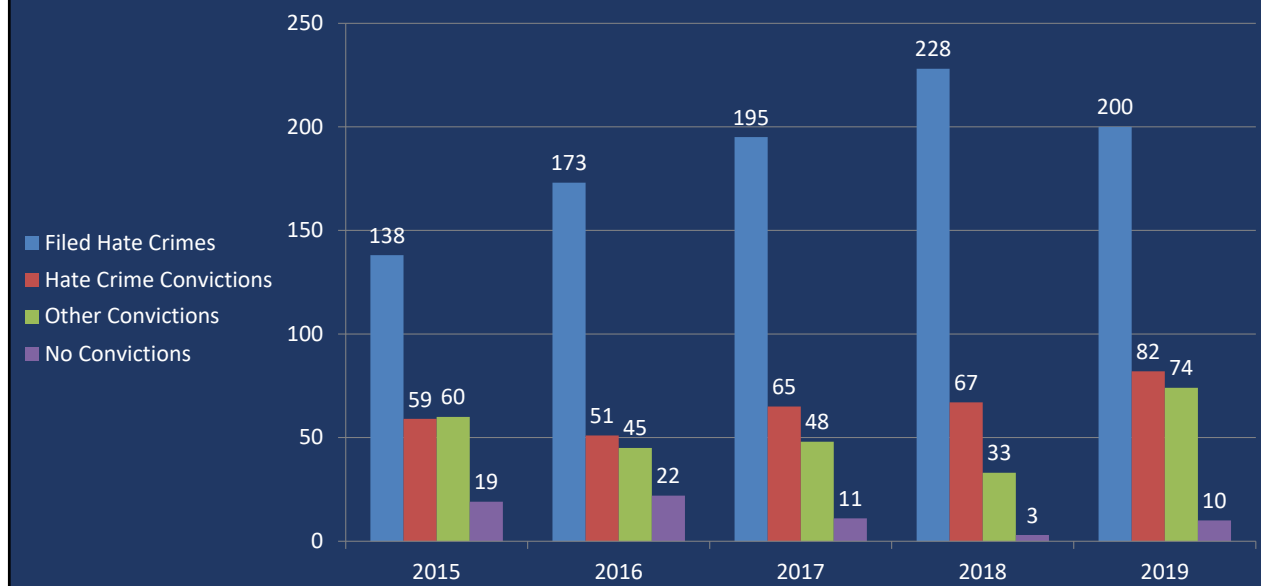
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California DOJ Hate Crime Stats



13

California DOJ Hate Crime Stats



14

Hurdles in Hate Crimes

- Fearful and reluctant victims
- Mistaken identification
- Self defense
- Insufficient evidence of bias
- Defendant has friends that have the same targeted characteristics

15

Helping Get Reluctant Victims on Board

- San Diego Regional Anti-Hate Crime Coalition
- San Diego Hate Crime Intelligence Committee
- Statewide Hotline?
- Victim Considerations and Protections

16

Victim Considerations and Protections

- Penal Code 422.88(a) - The court shall take all actions reasonably required to safeguard the health, safety, or privacy of the alleged victim.
- Legislative history – may include provisions prohibiting or restricting photographing of a hate crime victim to safeguard health, safety, or privacy of that person

17

Victim Considerations and Protections

- Penal Code 422.93(b) – Whenever an individual who is a victim of or witness to a hate crime, or who otherwise can give evidence in a hate crime investigation, is not charged with or convicted of committing any crime under state law, a peace officer may not detain the individual exclusively for any actual or suspected immigration violation or report or turn the individual over to federal immigration authorities.

18

Evidence Code Section 351.4

- (a) In a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status.
- (b) This section does not do any of the following:
 - (1) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense.
 - (2) Limit discovery in a criminal action.
 - (3) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.
- (c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

19

Protective Orders – Penal Code 422.85(a)

- In the case of any person who is convicted of any offense against the person or property of another individual, private institution, or public agency...that is a hate crime, the court, absent any compelling circumstances stated on the record, shall make an order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant's probation.

20

“Hate Crime” Defined – Penal Code 422.55(a)

- “Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
 - 1) Disability
 - 2) Gender
 - 3) Nationality
 - 4) Race or ethnicity
 - 5) Religion
 - 6) Sexual orientation
 - 7) Association with a person or group with one or more of these actual or perceived characteristics

21

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 - 5) Religion
 - 6) Sexual orientation
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22

Disability – Government Code 12926

- Disability means mental or physical disability regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.
- Mental disability – anything that limits a major life activity
- Does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance-use disorders.
- Physical disability – includes cosmetic disfigurement that limits major life activity
- Major life activity – broadly construed; includes physical, mental, or social activities and work

23

Disability - Government Code 12926

- A disability limits a major life activity if it makes participation in the activity difficult.
 - Don't consider whether the limitation can be overcome with medications, assistive devices, reasonable accommodations, or other mitigating measures.
 - If a mitigating measure itself limits a major life activity, you may consider this as evidence that the disability limits a major life activity.

24

“Hate Crime” Defined – Penal Code 422.55(a)

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25

Gender – Penal Code 422.56(c)

- Gender = sex, gender identity, and gender expression
- Gender expression = gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth

26

“Hate Crime” Defined – Penal Code 422.55(a)

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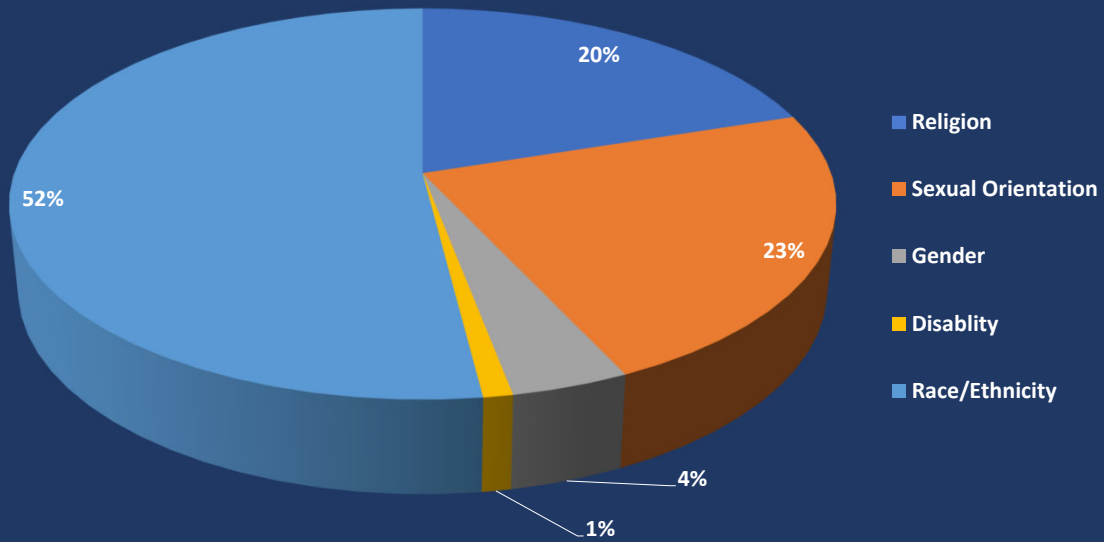
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Sexual Orientation – Penal Code 422.56(h)

- “Sexual orientation” means heterosexuality, homosexuality, or bisexuality
- Asexual, fluid, pansexual, etc. not included

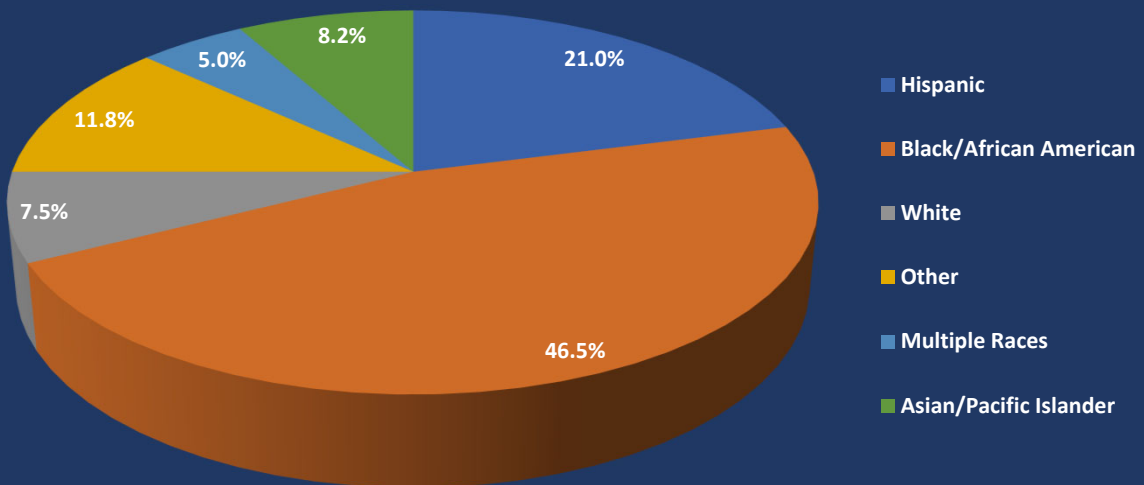
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California Hate Crimes – 2019

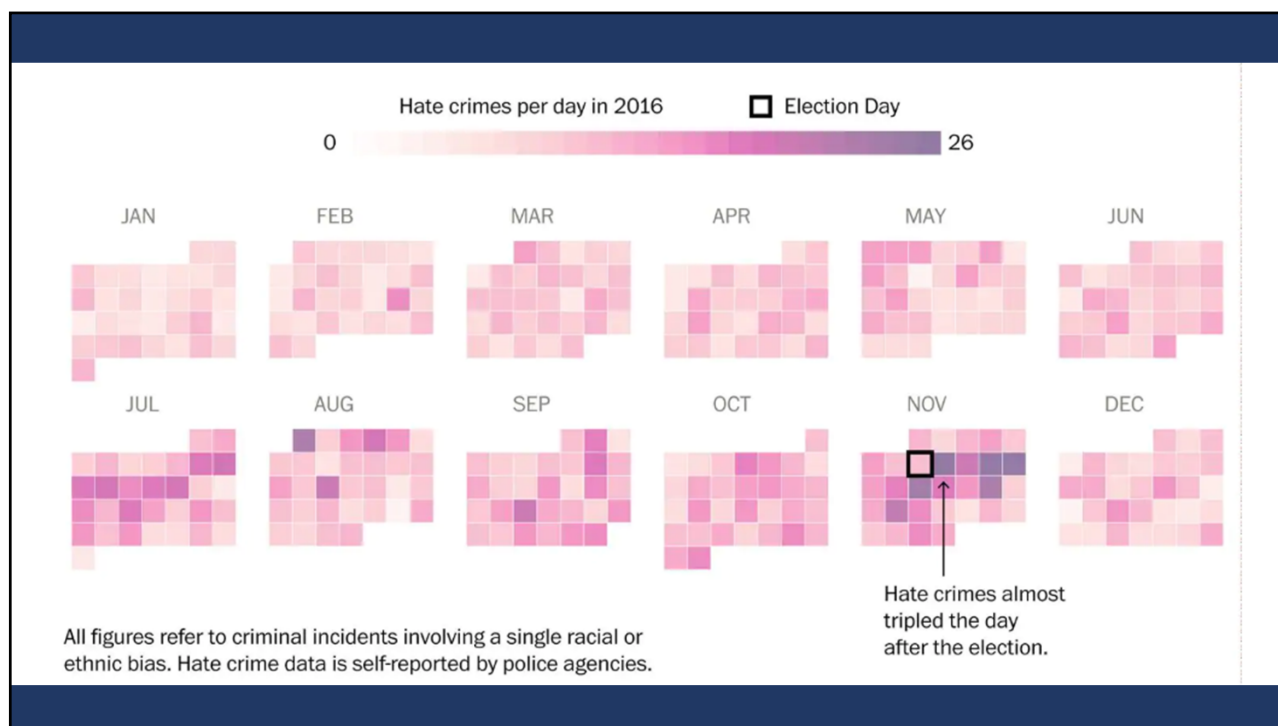


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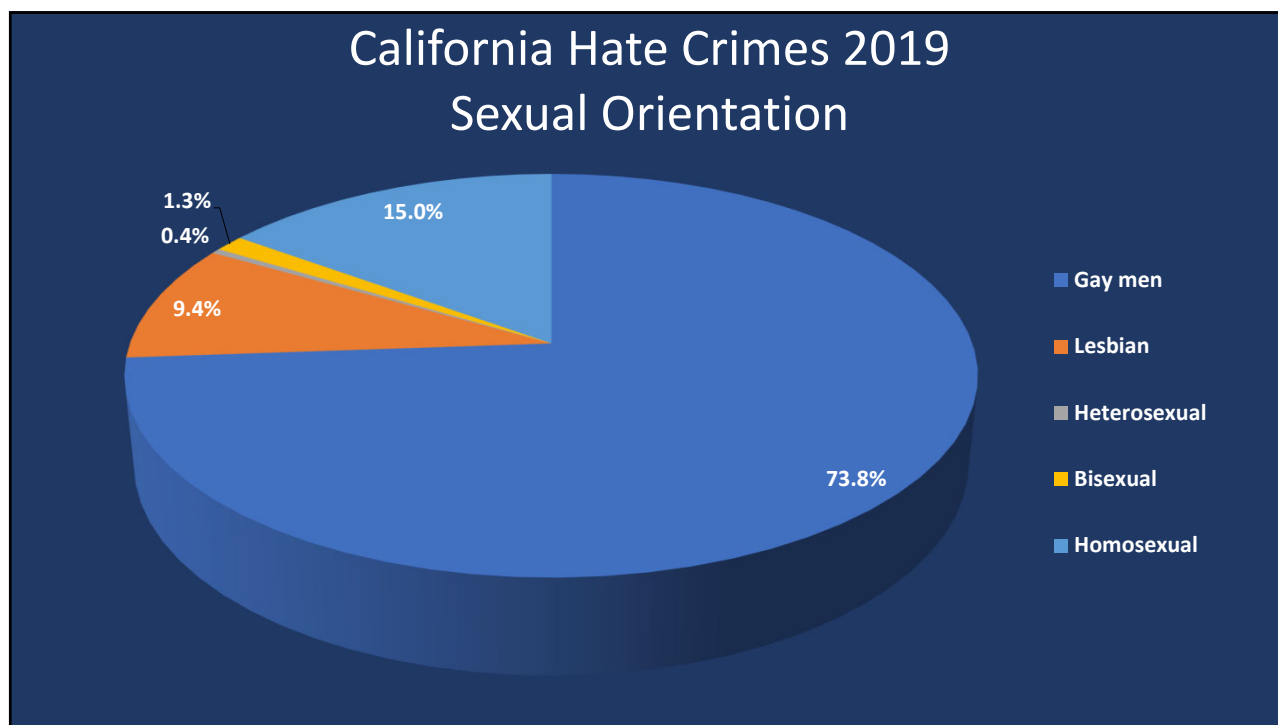
California Hate Crimes 2019 Race / Ethnicity / National Origin



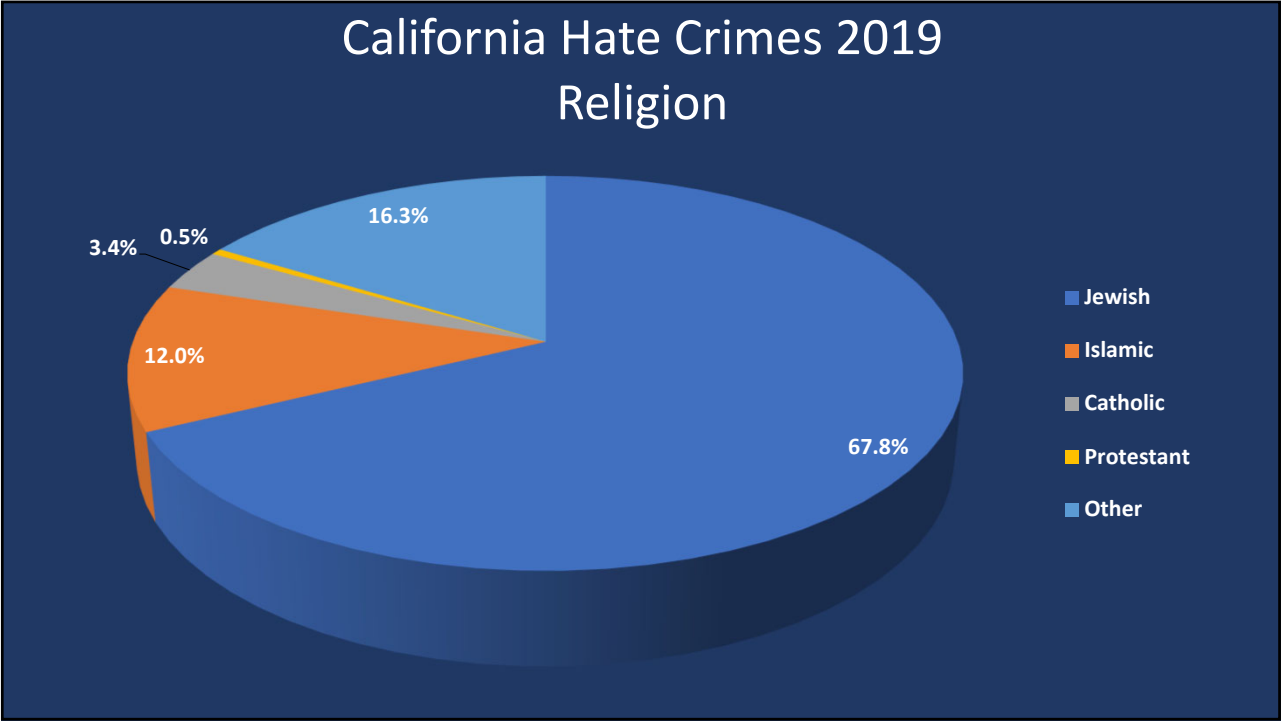
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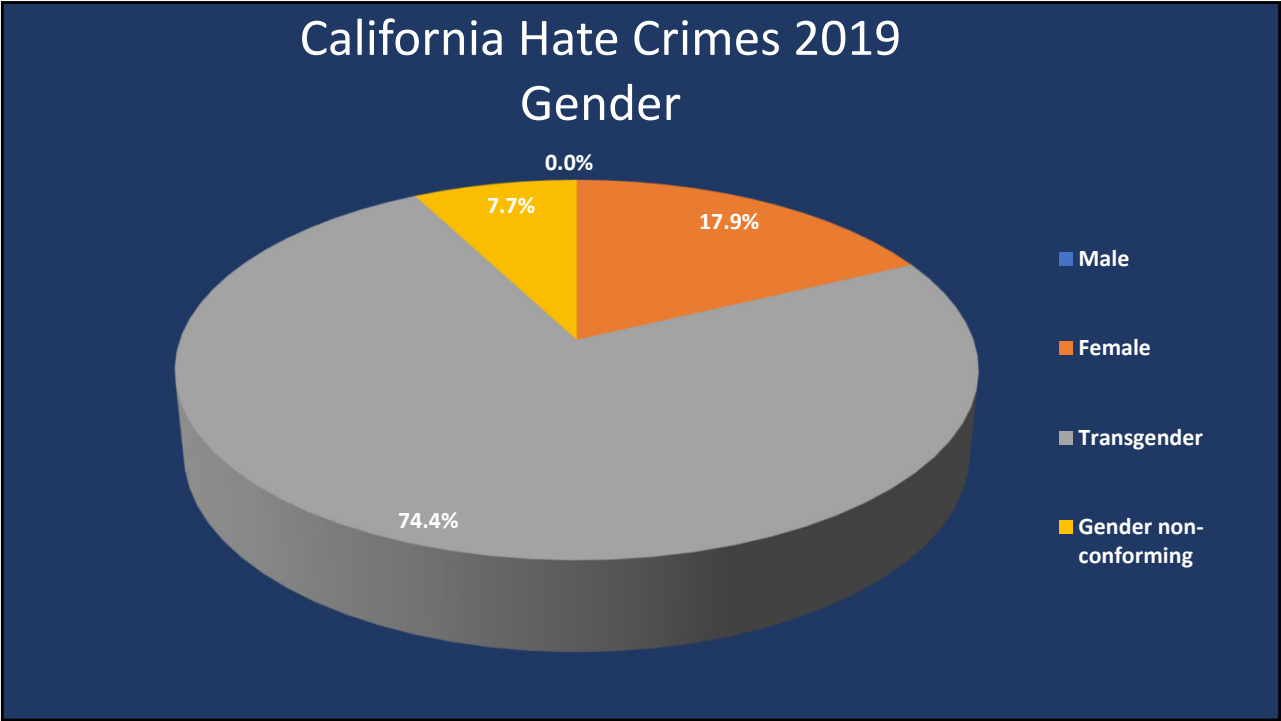
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33



34

“Hate Crime” Defined – Penal Code 422.55(a)

- “Hate crime” means a criminal act committed, **in whole or in part**, because of one or more of the following actual or perceived characteristics of the victim:
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35

“In Whole or In Part” Defined – Penal Code 422.56(d)

- “In whole or in part because of” means that a bias motivation must be a cause in fact of the offense, whether or not other causes also exist.

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What Does Bias Mean?

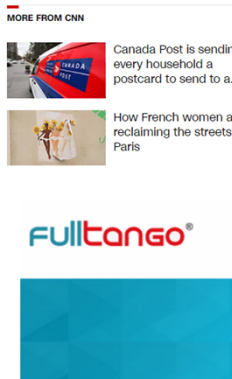
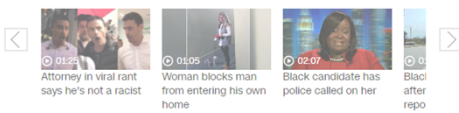
- Bias is not defined in the CalCrims
- DOJ definition – preformed negative opinion or attitude
- PC 422.87(a)(3)(B)
 - Pre-existing negative attitude toward actual or perceived characteristics
 - Hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as weak, worthless or fair game because of a protected characteristic

37

NY Café Incident

New York attorney in racist rant has history of confrontations

By Eric Lipton, Paul P. Murphy and Gianluca Mezzofiore, CNN
Updated 8:17 PM EDT, Thu May 17, 2018



Employees should speak English

Threatened to call ICE to have workers deported

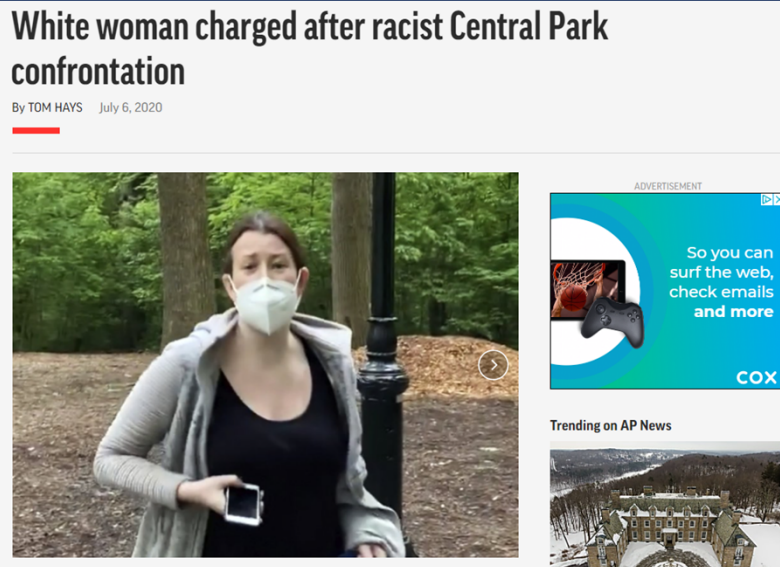
"I pay for their welfare, for their ability to be here"

Past History

"What country are you from? I'm going to call the police on you. I'm a citizen here, you're not. You're a fu***** ugly foreigner."

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Unreasonable Fear or Paranoia – NY Central Park Case



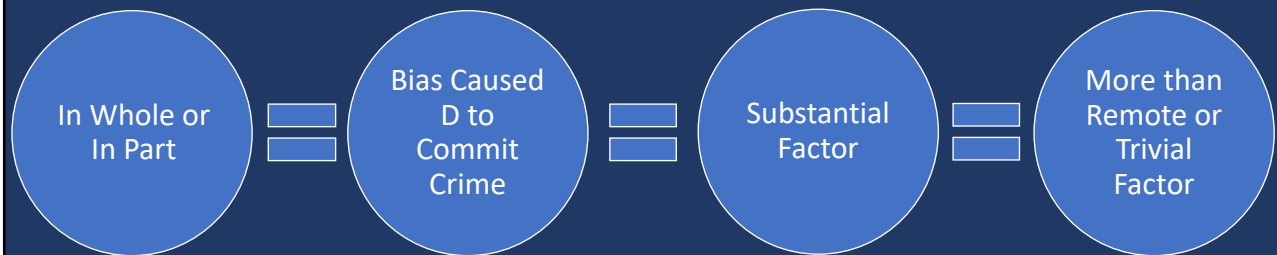
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“In Whole or In Part” Defined – Penal Code 422.56(d)

- “In whole or in part because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist.
- When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.
- There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.

40

CalCrim - “In Whole or In Part” Defined



41

“Hate Crime” Defined – Penal Code 422.55(a)

- “Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following **actual or perceived characteristics** of the victim:

- 1) Disability
- 2) Gender
- 3) Nationality
- 4) Race or ethnicity
- 5) Religion
- 6) Sexual orientation
- 7) Association with a person or group with one or more of these actual or perceived characteristics

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Actual or Perceived Characteristic

- Defendant does not have to get the characteristic right.
- Sufficient that defendant perceived victim possesses the characteristic upon which his/her bias is based.

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Association Defined – Penal Code 422.56(a)

- 1) Advocacy for, identification with, or being on the ground owned or rented by or adjacent to
- 2) Any group or person who has one or more of the protected characteristics.
- Victim need not share the characteristic of targeted group.
- Defendant's motivation is victim's association with target group.

45

“Hate Crime” Defined – Penal Code 422.55(a)

- “Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
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Other Jurisdictions – Bias Categories

- Political Affiliation – Iowa, West Virginia, DC
- Homelessness – Maine, DC
- Age – Minnesota, Vermont
- Armed Forces – Vermont
- Fire/EMS – Kentucky, Louisiana, Mississippi
- Involvement in civil or human rights activities - Montana
- Peace Officer – Kentucky, Louisiana, Mississippi, Texas
- Judges – Texas

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“Hate Crime” Defined – Penal Code 422.55(a)

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 - 5) Religion
 - 6) Sexual orientation
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1st Amendment

Congress shall make no law...abridging the freedom of speech.

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Exceptions

- Obscenity
- Defamation
- Fraud
- Incitement
- Fighting Words
- True Threats
- Speech Integral to Crime
- Child Pornography

50

Hate Speech

May 5, 2020

Home » Crime » This Article

Santee Vons Shopper in KKK Hood Identified by Sheriff's Department

POSTED BY KEN STONE ON MAY 5, 2020 IN CRIME | 31977 VIEWS | COMMENTS | LEAVE A COMMENT

Share This Article:

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Photo circulated widely on social media of man wearing Ku Klux Klan hood at the Santee Vons grocery store Saturday.

By Ken Stone

The Santee Vons shopper [wearing a makeshift](#) Ku Klux Klan hood has been identified, the Sheriff's Department announced Tuesday.

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Hate Speech


May 8, 2020

RACISM

Man with Swastika on Face Covering Spotted in Santee Grocery Store

The man was seen wearing the mask Thursday at a Food 4 Less in Santee just days after a man was seen wearing a Ku Klux Klan hood at a Vons in the same city

By Rafael Avitabile • Published May 8, 2020 • Updated on May 8, 2020 at 11:49 pm




MAN EXPLAINS MASK WITH SWASTIKA 11:00 68° 7

(GET LOCAL UPDATES AT NBC7.com/Newsletters)

It was the second display of racist headwear at a Santee grocery store in less than a week.

Days after a customer was spotted in a Santee Vons wearing a Ku Klux Klan hood, a shopper at a Food 4 Less in the same city was seen wearing a face covering with a swastika.



Trending Stories

- SAN DIEGO UNIFIED SCHOOL DISTRICT**
San Diego Unified School District Changes Grading System to 'Combat Racism'
- CARLSBAD**
Carlsbad High School Students Pay Tribute to Classmate
- SAN DIEGO COUNTY**
Latest COVID-19 Statistics

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Hate Speech

July 2, 2020


Home » Life » This Article

Sight of Nazi Swastika Flag Stuns East County Motorists on I-8

POSTED BY KEN STONE ON JULY 2, 2020 IN LIFE | 131539 VIEWS | COMMENTS | [LEAVE A COMMENT](#)

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Smartphone images of SUV with Nazi flag parked near Alpine Albertsons. Photos by Albert Aguilar

By Ken Stone

Who's driving around East County with a Nazi flag on their rear window? And why?

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Defense Arguments Re: 1st Amendment

- Violates 1st Amendment - can't punish speech (no, see *Wisconsin v. Mitchell* (1993) 508 U.S. 476)
- Chilling effect on speech (no, see *Wisconsin v. Mitchell* (1993) 508 U.S. 476)
- Overbroad (no, see *In re M.S.* (1995) 10 Cal.4th 698)
- Vague (no, see *People v. MacKenzie* (1995) 34 Cal.App.4th 1256)

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Constitutionality of Hate Crime Provisions

- *Wisconsin v. Mitchell* - 508 US 476 (1993)
 - D and his companions in Kenosha, WI targeted young white male and beat him, rendering him unconscious and in a coma for four days
 - D prosecuted and convicted under WI hate crime statute
 - D appealed
 - Statute punished “offensive thought”
 - Overbroad because admission of prior speech would have chilling effect on speech
 - Distinguishable from anti-discrimination laws that were previously upheld as constitutional

55

Do Hate Crimes Laws Punish “Offensive Thought?”

- *Wisconsin v. Mitchell* - 508 US 476 (1993)
 - “The Constitution does not erect a *per se* barrier to the admission of evidence concerning one’s beliefs and associations at sentencing simply because they are protected by the First Amendment.” (Quoting *Dawson v. Delaware* (1992) 503 US 159)
 - “The WI statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. Bias motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.”
 - “The State’s desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision.”

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Do Hate Crimes Laws “Chill” Speech?

- *Wisconsin v. Mitchell* - 508 US 476 (1993)
 - “The sort of chill envisioned here is far more attenuated and unlikely...We must conjure up a vision of a Wisconsin citizen suppressing his unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim’s protected status, thus qualifying him for penalty enhancement...This is simply too speculative a hypothesis to support Mitchell’s claim.”

57

Is It a Hate Crime????

- Repeat DV offender
- Serial rapist
- Caregiver for disabled individuals

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Hate Crime Charges and Allegations

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Hate Crime Murders

Penal Code 190.2(a)(16) – Special Circumstance Murder – Death Penalty or LWOP

- 1) First-degree murder
- 2) Victim intentionally killed because of his or her race, color, religion, nationality, or country of origin

Penal Code 190.03(a) – LWOP

- 1) First-degree murder
- 2) Hate Crime

60

Hate Crime Felonies

- Penal Code 11413 – Terrorism – Use of Destructive Device or Explosive or Commission of Arson in Certain Places (3, 5, 7 years, 1170(h))
 - Exploding, igniting, or attempting to explode or ignite any destructive device or committing arson
 - For the purpose of terrorizing another or in reckless disregard for terrorizing another
 - Any of the following places: house of worship or any private property if the property was targeted in whole or in part because of an actual/perceived characteristic listed in PC 422.55(a)
 - “Terrorizing” means to cause a person of ordinary emotions and sensibilities to fear for personal safety

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Hate Crime Felonies

- Penal Code 594.3(b) – Vandalism of Religious Institution Due to Racial/Religious Prejudice (16 mos, 2, 3, 1170(h))
 - Knowingly commits an act of vandalism
 - To a church, synagogue, mosque, temple, cemetery, building owned/occupied by a religious educational institution or other place primarily used as a place of worship where religious services are regularly conducted
 - Hate crime + purpose of intimidating and deterring persons from freely exercising religious beliefs

62

“Building” Defined

- *People v. LaDuke* (2018) 30 Cal.App.5th 95
 - Any physical structure, or personal property located within that building or on the same real property as, and related to, the building

63

Hate Crime Felonies

- Penal Code 11412 – Threats Obstructing Exercise of Religion (16 mos, 2, 3)
 - Intentionally cause or attempts to cause another person
 - To refrain from exercising their religion or from engaging in a religious service
 - By means of threat to inflict an unlawful injury upon any person or property
 - Directly communicated to such person
 - Reasonably appears to the recipient of the threat that such threat could be carried out

64

PC 422.75 Hate Crime Felony Allegation

- Can attach to any felony or attempted felony
- Penal Code 422.75(a) - Hate crime allegation
Adds 1, 2, or 3 years
- Penal Code 422.75(b) - Hate crime allegation in concert
Adds 2, 3, or 4 years
- Penal Code 422.75(d) - Prior hate crime conviction per 422.75
Adds 1 year

Time to be served in state prison.

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Hate Crime Wobblers

- Penal Code 594.3(a) – Vandalism of Religious Institution (16 mos, 2, 3, 1170(h) or 1 year county jail)
 - Knowingly commits an act of vandalism
 - To a church, synagogue, mosque, temple, cemetery, building owned/occupied by a religious educational institution or other place primarily used as a place of worship where religious services are regularly conducted

66

Hate Crime Wobblers

- Penal Code 11411(c) – Repeated Terrorizing Hate Signs (16 mos, 2, 3, 1170(h) or 1 year county jail)
 - Place or display a sign, mark, symbol, emblem, or physical impression
 - On private property of another
 - On two or more occasions
 - For purpose of terrorizing owner or occupant of private property
 - “Terrorize” means to cause a person of ordinary emotions and sensibilities to fear for personal safety

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Hate Crime Wobblers

- Penal Code 11411(d) – Cross Burning (16 mos, 2, 3, 1170(h), or 1 year county jail)
 - Burn or desecrate cross or other religious symbol
 - Knowing it to be a religious symbol
 - On the private property of another without authorization, or on primary, junior high, or high school
 - For the purpose of terrorizing the owner or occupant/attendee/employee or in reckless disregard of terrorizing

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Hate Crimes Elevator – Penal Code 422.7

- 1) Any misdemeanor (except 422.6) committed for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of a right secured by law or Constitution
- 2) Hate crime
- 3) If committed against person, includes present ability to commit violent injury or causes actual physical injury (422.7(a)); OR

If committed against property, causes damage in excess of \$950 (422.7(b)); OR

Has been previously convicted of PC 422.6. (422.7(c)).

69

Rights and Privileges from Law or Constitution

- Right to be free from violence (See Civil Code sections 43, 51.7)
- Right to be free from threat of violence (See Civil Code sections 43, 51.7)
- California Constitution
 - "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

70

Hate Crime Misdemeanors

- Penal Code 11411(a) - Hanging a Noose (1 year)
 - Hang a noose
 - Knowing it to be a symbol representing a threat to life
 - On the private property of another without authorization or on primary school, junior high, high school, college campus, public park, or place of employment
 - For the purpose of terrorizing the owner, occupant, employee, attendee, or in reckless disregard of the risk of terrorizing

71

Hate Crime Misdemeanors

- Penal Code 11411(b) – Terrorizing hate symbol (1 year)
 - Place or display a sign, mark, symbol, emblem, or physical impression
 - On the private property of another without authorization
 - For the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing

72

Hate Crime Misdemeanors

- Penal Code 302 – Disturbing Religious Meetings (1 year)
 - Intentionally disturb or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship
 - By profane discourse, rude or indecent behavior, or by unnecessary noise
- First conviction – court may order 50-80 hours of community service in lieu of imprisonment or fine
- Second conviction – With prior, shall be ordered 120-160 hours of community service

73

Hate Crime Misdemeanors

- Penal Code 422.6(a) – Interfering with Free Exercise of Rights by Threat (1 year)
 - Threaten physical violence against a specific person (or specific group of people)
 - The threat would have caused a reasonable person to be afraid because the defendant appeared able to carry out the threat
 - Use the threat to willfully interfere with, injure, intimidate, or oppress another person's free exercise or enjoyment of a right/privilege established by the law or Constitution of CA or US
 - In whole or in part because of the other person's actual or perceived PC 422.55(a) characteristic.
 - Intended to interfere with the other person's legally protected right (or privilege).

74

Hate Crime Misdemeanors

- Penal Code 422.6(a) –Interfering with Free Exercise of Rights by Threat (1 year)
 - Cannot be based on speech alone unless speech threatened violence against a specific person or group of people and the defendant had the apparent ability to carry out the threat.
 - The Court shall order the defendant to perform a minimum of community service, not to exceed 400 hours.

75

Hate Crime Misdemeanors

- Penal Code 422.6(b) –Interfering with Free Exercise of Rights by Damaging Property (1 year)
 - Deface, damage, destroy real/personal property of another person
 - Knew he/she was defacing, damaging, or destroying property of another person
 - For the purpose of interfering with or intimidating that person's free exercise or enjoyment of a right or privilege established by the law or Constitution of California or US
 - In whole or in part because of actual or perceived PC 422.55(a) characteristic.
 - Intended to interfere with the other person's legally protected right (or privilege).

76

Proving the Bias

- Statements by the defendant before, during, or after the crime
- Complete absence of any other motivation for crime
- Prior contacts with law enforcement demonstrating bias

77

Uber Driver Assault

February 2006 – 647(f) investigation, “You fucking Mexicans”

March 2006 – 415 investigation, “You fucking Mexican. You come from the jungle. I have a surprise for you.”

May 2013 – 23152 investigation, “Fucking foreigners. I spent 3 years defending our country so these two foreigners can bring us down.”

May 2018 – 422 investigation, “I’m gonna get you faggot. I’ll fucking kill you.”

78

Proving the Bias

- Statements by the defendant before, during, or after the crime
- Complete absence of any other motivation for crime
- Prior contacts with law enforcement demonstrating bias
- Social media/chat forums

79

Social Media/Chat Forums



80

California Electronic Communications Privacy Act (CalECPA)

- SW must be limited to only that information necessary to achieve the objective of the warrant, including by specifying the target individuals or accounts, the applications or services, the types of information, and the time periods covered.

81

Penal Code 1524.3 ECPA Search Warrants

- Right to Privacy
 - Can only retain information related to the scope of the warrant
 - Everything else must be sealed
- Right to Notice
 - Suspects must be contemporaneously notified
 - Can defer notification for 90 days, and can renew deferments

82

Proving the Bias

- Statements by the defendant before, during, or after the crime
- Complete absence of any other motivation for crime
- Prior contacts with law enforcement demonstrating bias
- Social media/chat forums
- Tattoos/clothing/hate symbols

83

Sentencing Considerations

84

Hate Crimes Sentencing - Penal Code 422.86(a)

- It is the public policy of this state that the principal goals of sentencing for hate crimes, are the following:
 - Punishment for the hate crimes committed.
 - Crime and violence prevention, including prevention of recidivism and prevention of crimes and violence in prisons and jails.
 - Restorative justice for the immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes.

85

Hate Crimes Sentencing Laws

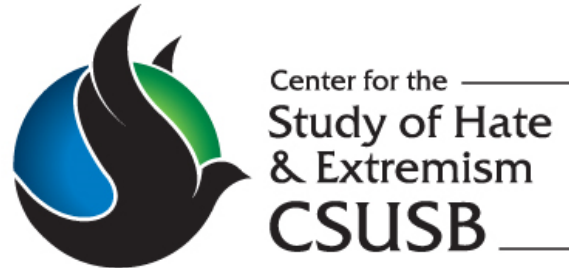
- Penal Code 422.75(c)
 - Shall be a factor in aggravation that the defendant personally used a firearm in the commission of offense.
 - Does not preclude imposing sentence enhancement under 12022.5, 12022.53, or 12022.55
- Penal Code 422.75(e)
 - Enhancement must be pled and proved
- Penal Code 422.75(f)
 - Any additional term shall be in addition to any other punishment provided by law
- Penal Code 422.75(g)
 - The court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment
- Penal Code 422.76
 - Except when punishment is imposed under 422.75, the fact that a person committed a felony or attempted to commit a felony that is a hate crime shall be considered a circumstance in aggravation

86

Classes/Programs – Penal Code 422.85(a)(1)-(3)

- The court may order that the defendant be required to complete a program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and anti-social behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.
- Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.
- Reimburse the victims for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts.

Prof. Levin is the founder and Director of the Center for the Study of Hate & Extremism at California State University, San Bernardino where he has taught criminal justice since 1999.



What is the
Center for the Study of Hate and Extremism?

1

Extremism Images, Symbols, Dates & Context:
CDAA, MARCH 2021

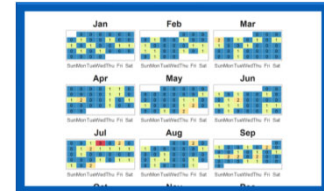
Prof. Brian Levin, Center for the Study of Hate & Extremism, Cal. State Univ.,
SB



2

Overview of CSHE

- Non-partisan center housed at CSUSB (est. 1999)
- Provides reliable information on bias-related violence and various forms of violent extremism
 - Government officials (US federal government, California and local government officials)
 - Law Enforcement (Federal and State)
 - Media and General Public (debate in the public sphere)
 - Scholars in the study of hate and violent extremism
- Concerned when people use legitimate debates to promote violence, tactical falsehoods, and an attack on the pluralistic institutions of our democracy.



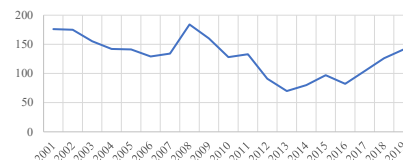
 CSUSB WE DEFINE THE *Future*

3

General Comments About California

- From 2001 to 2014 had a general downward trend
- 69% were violent crime offenses and 31.0% were property crimes
- Increases in 2014 to 2017
- Decreases from 2017 to 2019
- Trends by group targeted:
 - Anti-Asian and Anti-Semitic hate crimes have been trending upward since 2014
 - Anti-Black trending downward
 - Anti-Latinx trending up until 2019 which is down

Anti-Semitic Hate Crimes in California from 2001-2019

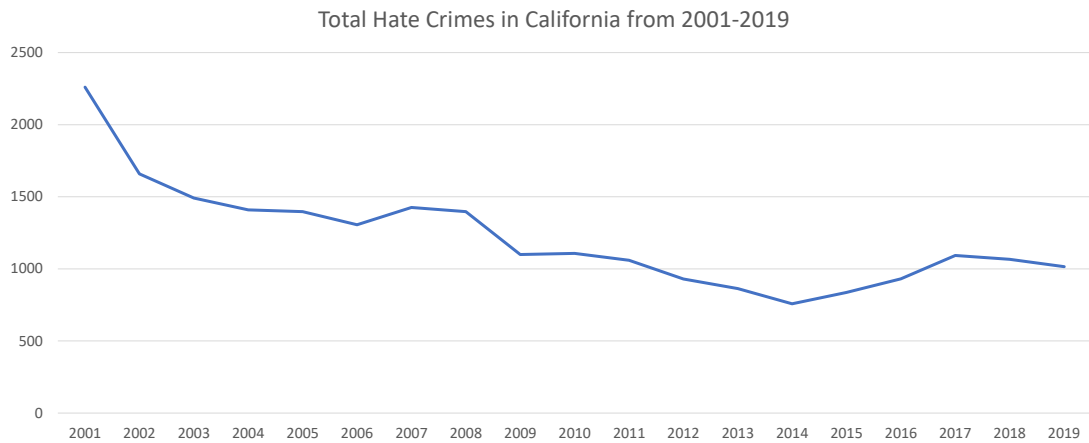


Anti-Black Hate Crimes in California from 2001-2019



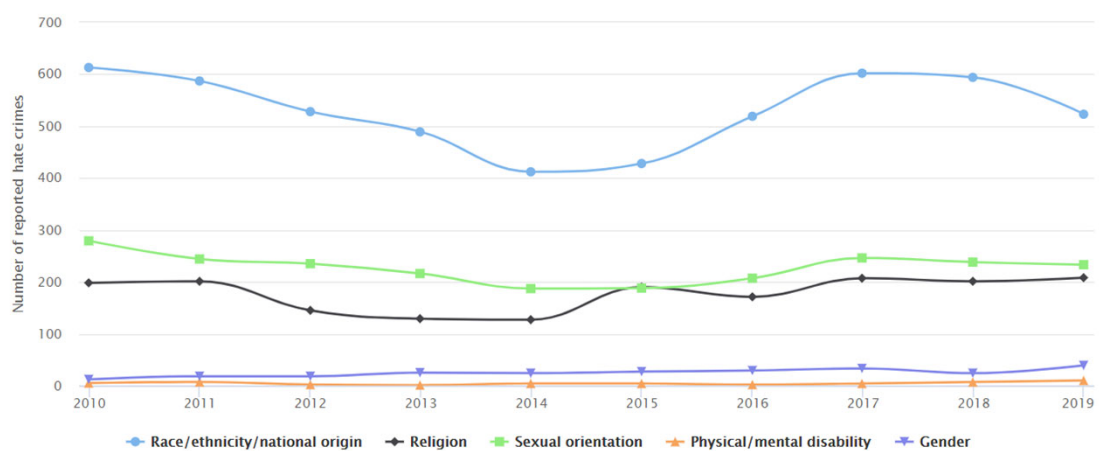
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California and the State of Hate



5

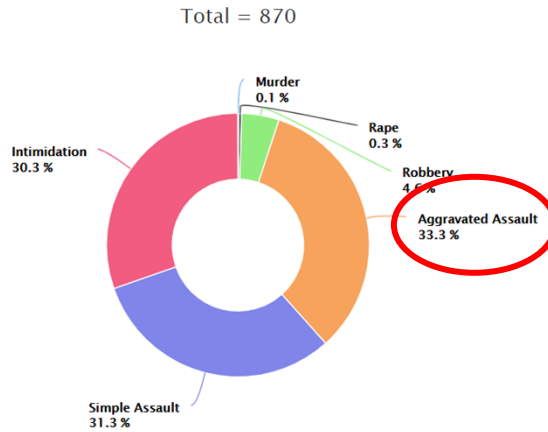
HATE CRIMES BY TYPE OF BIAS, 2010-2019



Hate Crime Data from OpenJustice Portal

6

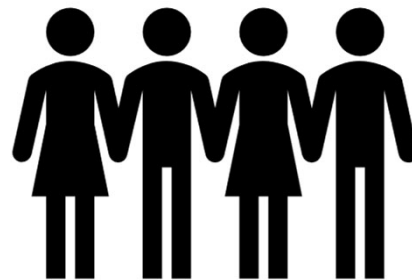
HATE CRIME OFFENSES BY VIOLENT CRIME, 2019



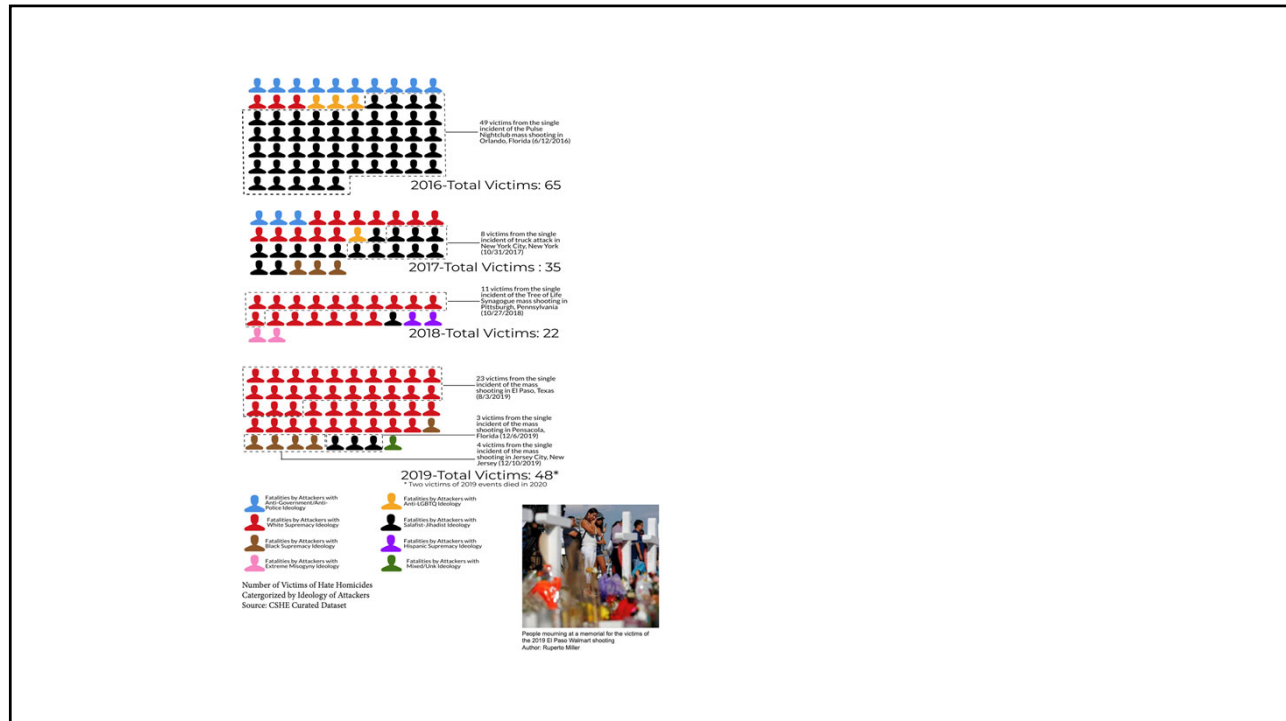
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Possible Factors in the Current State of Hate in California

- Pre-COVID 19 Environment
 - Economic shifts and demographic shifts
 - Political Fragmentation(contagion effect)
- COVID-19 Environment
 - Social isolation and online echo chambers
 - Anti-lockdown sentiment
 - Conspiracy movements flourish
- After COVID-19
 - Coiled Spring of Grievance
 - Role of social media platforms



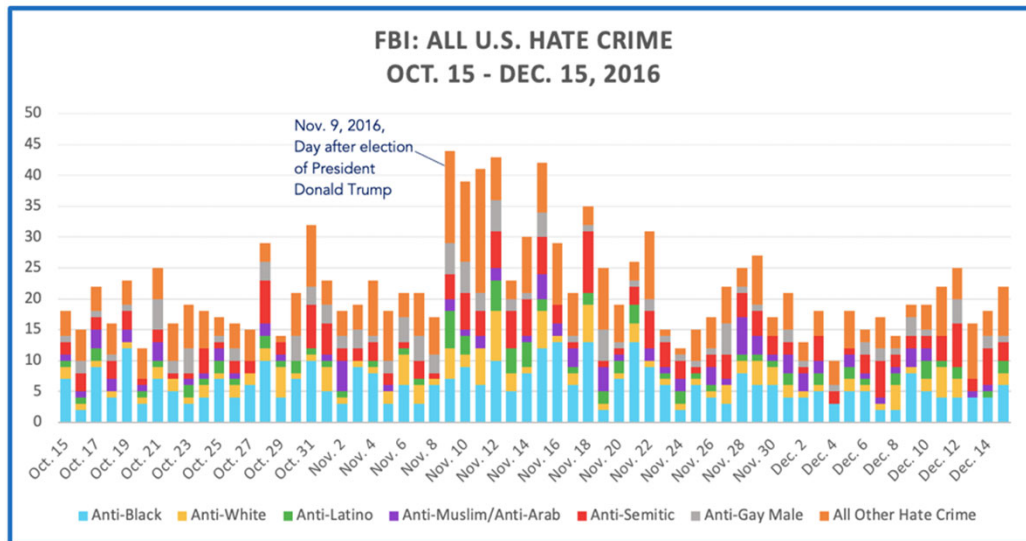
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9

Hate Crime Prosecutions By County: Referred/Hate Crime/ Other Prosecution									
2019			2018			2017			[CA AG/HC Annual]
CA 58% Referred Prosecuted As Hate Crime									
425	228	86	377	221	74	329	186	55	
Los Angeles									
64	62	0	102	72	0	84	50	13	
Orange									
30	14	6	32	15	10	17	8	7	
Riverside									
17	5	3	22	11	6	11	8	0	
Alameda									
7	6	0	6	4	0	61	12	0	
Contra Costa									
8	5	1	4	3	0	5	0	2	
SF									
24	16	2	29	23	1	23	27	4	
San Diego									
66	30	16	51	30	15	25	13	4	
San Mateo									
3	2	0	6	4	0	5	4	1	
Santa Clara									
16	2	11	25	5	7	5	3	1	
Santa Cruz									
6	6	2	10	5	3	10	3	7	

10



11

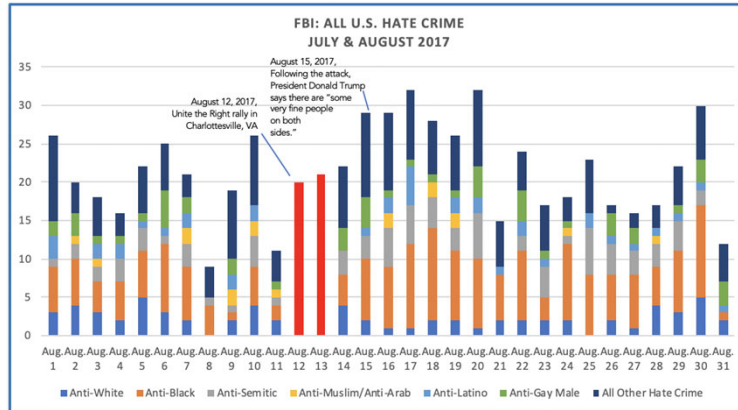
All Bias Motivation Types 1992-2018													Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1992	495	514	615	608	829	546	492	559	478	569	524	433	6,662
1993	634	596	568	686	689	651	718	680	623	662	617	479	7,603
1994	406	455	612	541	502	461	509	533	552	585	418	379	5,953
1995	584	573	709	671	564	715	719	691	757	855	586	522	7,946
1996	686	679	756	783	757	790	812	760	776	761	651	548	8,759
1997	561	598	740	715	788	712	712	673	695	758	584	512	8,048
1998	595	597	651	662	707	688	736	655	663	763	549	485	7,751
1999	566	642	636	777	738	638	704	711	684	710	581	488	7,875
2000	561	629	751	743	702	653	663	685	740	879	596	461	8,063
2001	624	552	735	809	741	762	684	711	1,942	1,043	616	511	9,730
2002	544	519	701	708	673	666	651	633	767	643	537	420	7,462
2003	528	488	683	673	697	649	641	678	681	681	615	475	7,489
2004	523	630	685	701	741	654	670	633	646	718	585	463	7,649
2005	542	541	622	678	680	600	612	625	612	677	548	426	7,163
2006	559	535	637	735	700	690	742	641	682	695	611	499	7,726
2007	553	479	632	675	717	686	688	658	744	743	574	475	7,624
2008	561	591	674	683	721	669	684	673	680	722	667	458	7,783
2009	478	491	565	549	615	591	557	639	594	628	500	405	6,612
2010	474	437	600	663	613	538	558	619	657	634	473	362	6,628
2011	440	387	516	539	589	553	548	572	552	571	470	485	6,222
2012	560	544	589	577	629	571	611	568	590	518	465	371	6,593
2013	395	394	476	524	566	561	594	560	510	507	440	387	5,914
2014	324	383	434	483	512	504	505	550	490	548	366	380	5,479
2015	412	364	437	512	558	562	592	544	481	469	462	457	5,850
2016	382	385	496	489	492	538	612	521	536	568	758	491	6,268
2017	544	576	632	560	648	641	580	663	631	642	579	479	7,175
2018	475	502	550	539	652	634	662	645	639	702	589	593	7,120

Data for the graph obtained from the FBI Uniform Crime Reports: Hate Crime in the United States 1992-2018.

Bolded, outlined cells indicate the worst month in the relevant year.

Color distribution of cells conditioned on the tenth, fiftieth, and ninetieth percentiles.

12



13

CAUTION: For Dates & Many Symbols Presented Context is KEY as Many CO-Opted Important Dates

Holidays-Milestones: Easter, Yom Kippur & Hanukkah, Ramadan, Halloween, May Day, Election/Transition Periods, July 4, Juneteenth & Kwanza

Catalytic Events: Wars, Police Use of Force

Days of Clashing Protests/ Events



14

More...

Jan. 27 Holocaust Remembrance Day

Feb. 14 Valentine's Day

April 15 Tax Day (This year May 17)

April 20 Hitler's Birthday

May 1 May Day

May 14 Israel Indep. Day

June 19 Juneteenth

September 11 9/11 Anniversary

Kristallnacht Nov. 9-10

December 7 Pearl Harbor

Dec. 8 Martyr's Day

15

- RELIGIOUS EXTREMISTS

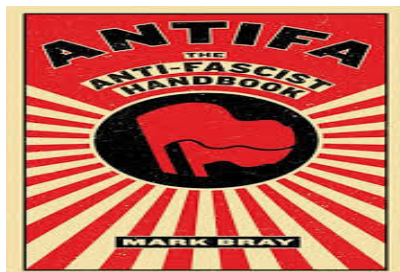


16

Hard Left & Related: Antifa, Anarchist & Communist Symbols Frequently Also Used By Peaceful Adherents



17



||| Symbols Often Associated with Anti-Racist Anarchist Extremists



Anarchist Symbol



Anti Fascist
Downward Arrow Symbol



Anti Fascist Flag Symbol



Anti Racist Symbol



Good Night White
Pride Symbol

18



19



20

HARD RIGHT: Militias, KKK, Neo-Nazi, Insurrectionists & Conspiracists



21



22

KU KLUX KLAN



23



24

Not all Nazi symbols are as obvious as swastikas. Here are some lesser-known runes and emblems used by contemporary white supremacists.



ODAL RUNE

Often used in place of the swastika, the odal rune was used by Waffen SS units during World War II.
Used by: National Socialist Movement (NSM)

SONNENRAD

Also called the "black sun," the sonnenrad used by Nazis today was designed by Heinrich Himmler for use in Wewelsburg Castle. The sonnenrad is considered a type of "sunwheel," which has been historically used by Indo-European cultures.
Used by: Christchurch shooter, National Socialist Club



SCHUTZSTAFFEL (SS) BOLTS

One of the most commonly used Nazi symbols, the SS bolts were worn by the Gestapo, the Nazi secret police, and guards at concentration camps. They have also been commonly used by bikers since the 1950s.
Used by: Widely used

TOTENKOPF

The Totenkopf, or "death's head," was used by members of the SS who ran Nazi concentration camps.
Used by: Neo-folk band Death in June, Boogaloo-ers



WOLFSANGEL

Originally used as a ward against wolves, the wolfsangel was adopted by Waffen SS units during WWII.
Used by: Aryan Nations, Azov Battalion

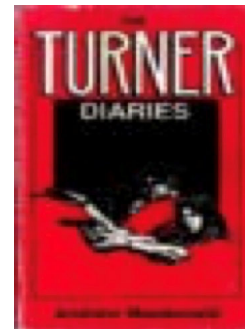
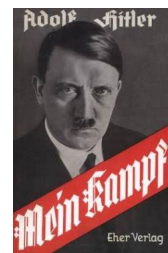
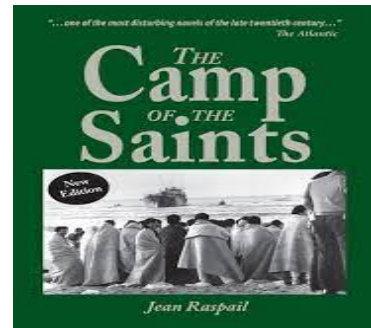
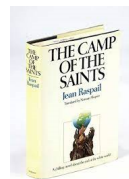
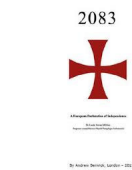
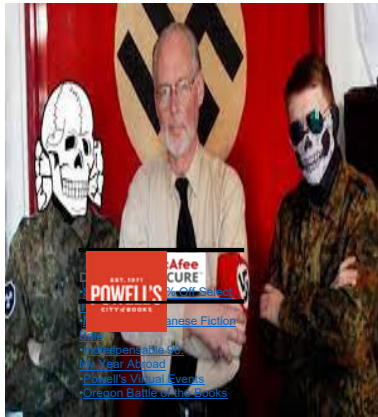
CELTIC CROSS

25



26

Books & Manifestos



27

MORE RECENT SYMBOLS



28



29

Numbers often refer to letter order in Alphabet

88 = HH = Heil Hitler [2 hand circles]

12= Aryan Brotherhood

311= KKK

2 Fingers Left/ 3 Right = WHITE (W is 23rd letter of alphabet)

737= Public Enemy #1 Death Squad [PDS]

14 Words: "We must secure the existence of our people and a future for white children"

30

31

OATHKEEPERS



32

THREE PERCENTERS



33

BOOGALOO BOYS



34

QAnon



35



36

PROUD BOYS



37

NEO-NAZIS



38

Rise Above Movement: RAM



39



40

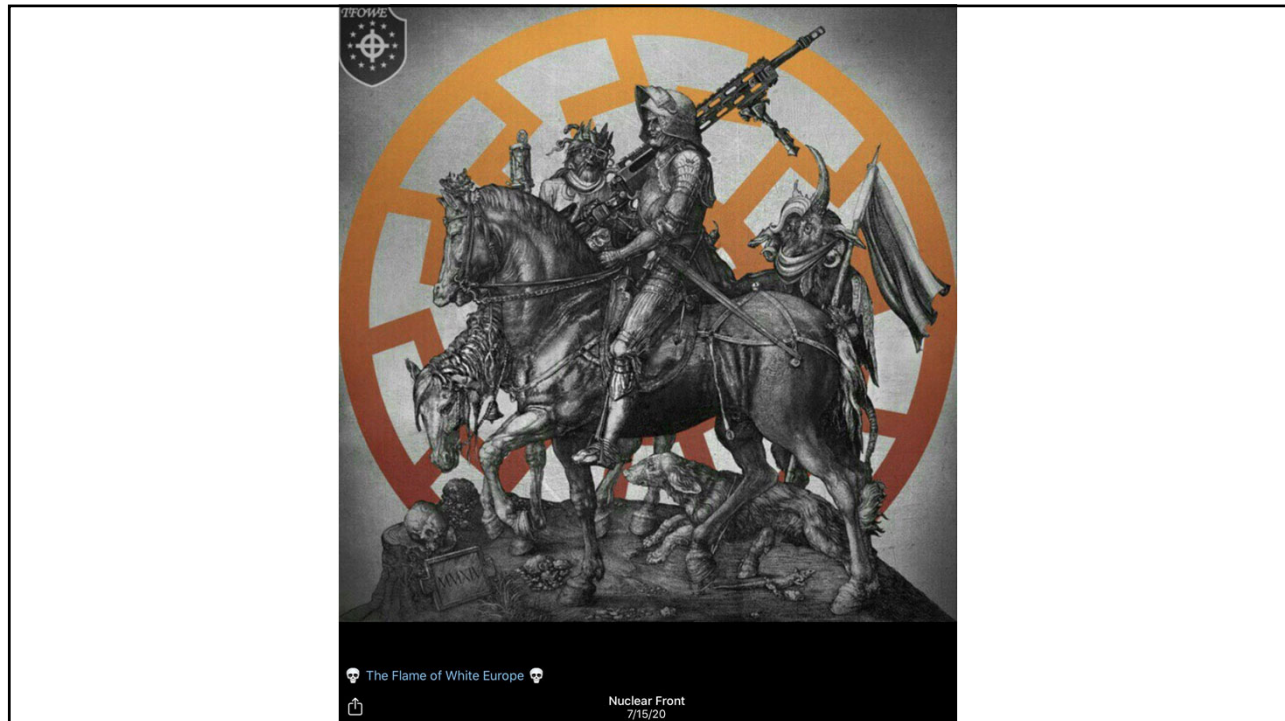
AIM (Formerly Identity Evorupa)



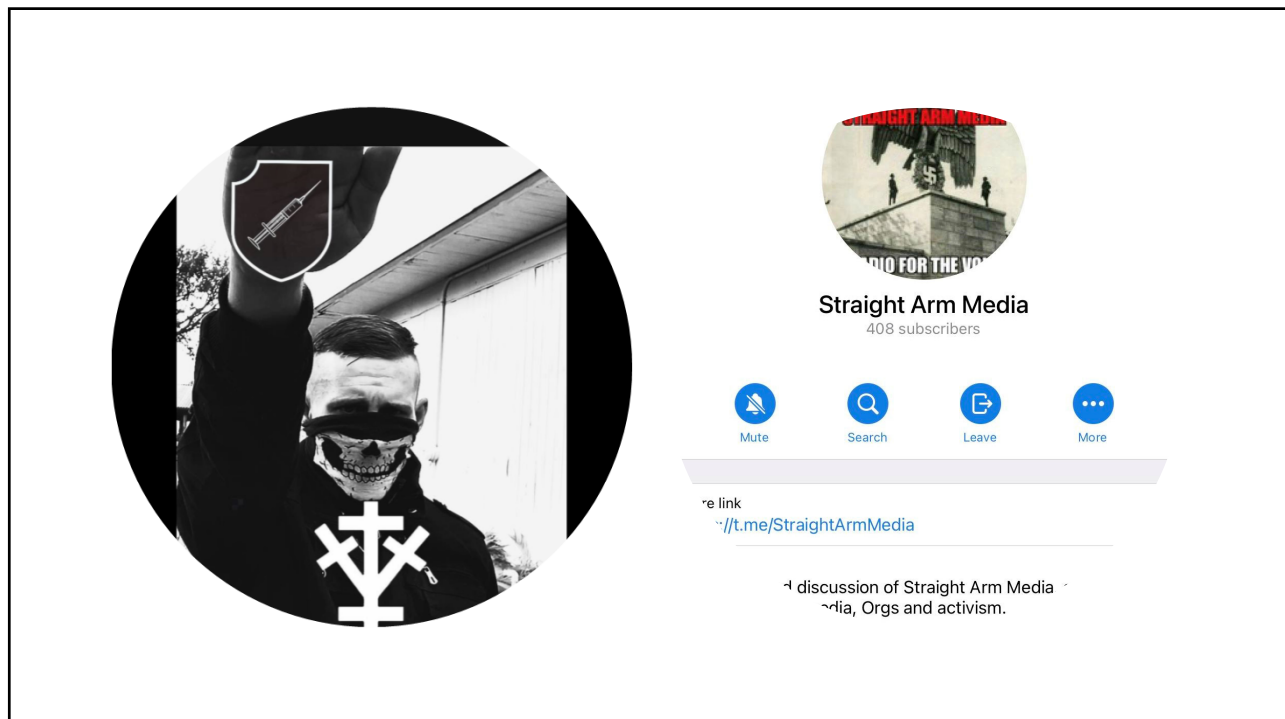
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44



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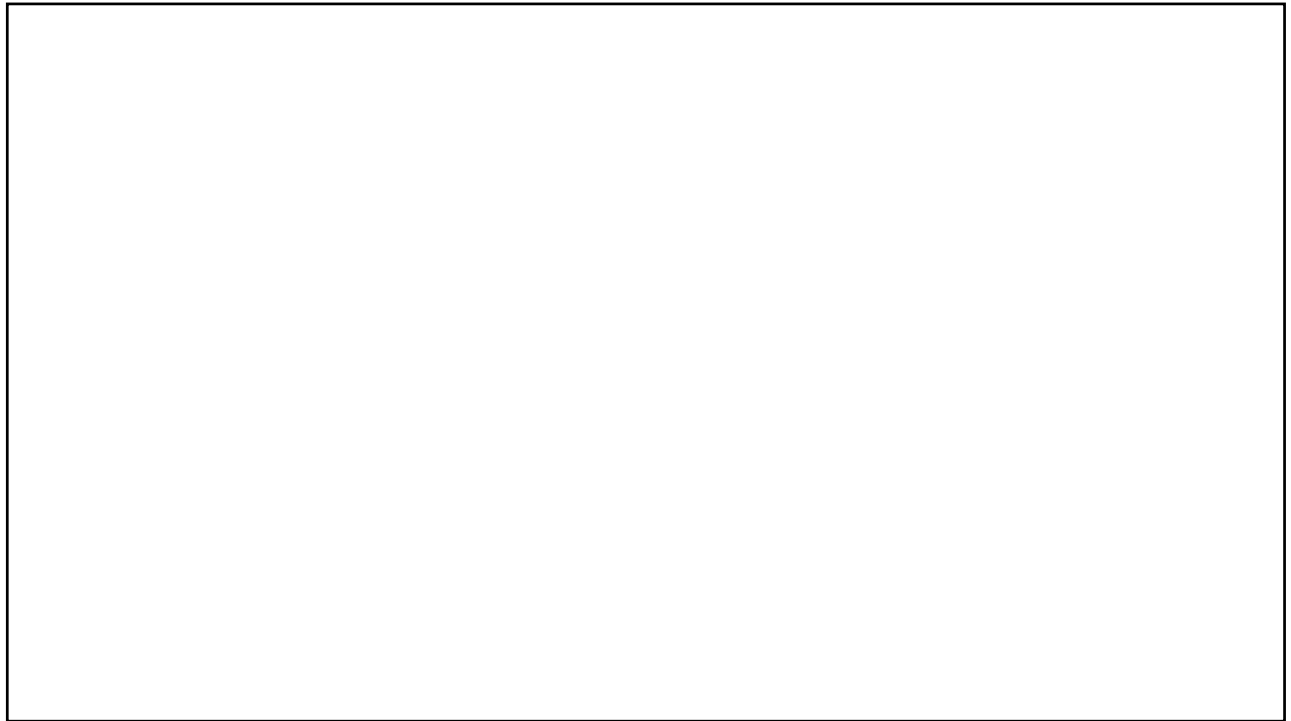
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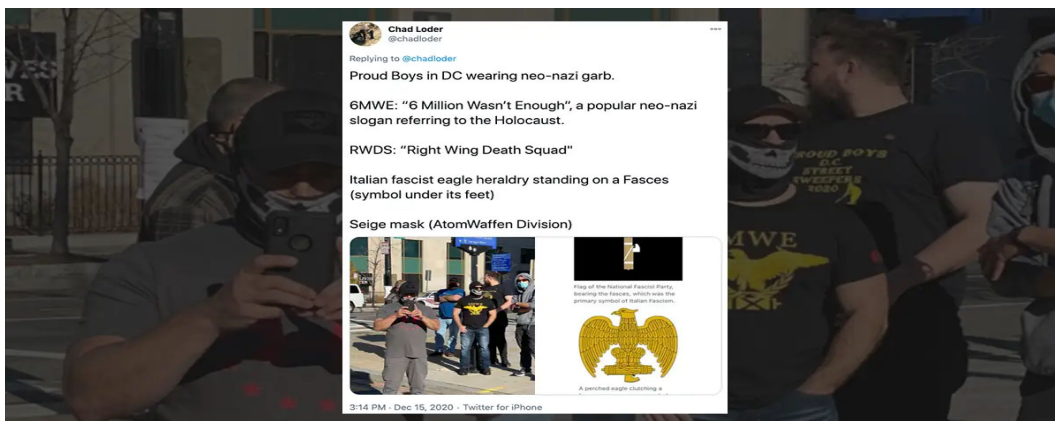
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52



53



54

Hate Crimes Legislation

Presenter Bio:

Greg deGiere is the Civil Rights Advocate of the The Arc California, which advocates on behalf of adults and children with intellectual and developmental disabilities and their families. He began his professional interest in hate crimes as a consultant to the Senate Office of Research. In that office, he did the research leading to - and then drafted - what became California's hate crime law, Title 11.6 of Part 1 of the Penal Code, enacted by a bill by Senator Sheila Kuehl in 2004. Since retiring from the legislative staff and becoming an advocate, he has drafted and helped win passage of one other major hate crime bill expanding the content of the POST model hate crime policy, enacted by a bill by Assemblymember Phil Ting in 2018. He has served as a subject-matter expert on POST hate crime training and policy-development projects and last year authored an article on hate crimes law for the Prosecutors Brief. He coordinates a statewide network of civil rights and community groups lobbying the Legislature and Department of Justice on hate crimes policy. He met his wife Elizabeth on the old Militia Watchdog listserve.

Greg deGiere
Civil Rights Advocate
The Arc California
Greg@TheArcCA.org
www.TheArcCA.org

1

SB 1234 (Kuehl) of 2004

Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code

2

AB 1985 (Ting) of 2018

PC 422.97(a)(3)(B)

"For the purposes of this paragraph, 'bias motivation' is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55.

"Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's 'own kind,' or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender."

Word-for-word from *88 Ops.Cal.Atty.Gen. 141 (08/18/2005)* with some additions.

3

PC 422.97(a)(3)(C)(i)

"In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore 'deserving victims,' a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations."

4

PC 422.97(a)(3)(C)(ii)

"In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in antisdisability bias.

"This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity."

5

AB 85 (Assembly Budget Committee) of 2021

\$1.4 million for STOP AAPI HATE website and related UCLA research

6

AB 57 (Gabriel)

Hate crime training, identification, reporting and response
Major amendments to come?

7

AB 226 (Cooper)

Defines a felony hate crime as a violent felony

8

AB 282 (Lackey)

Prohibits judges from offering misdemeanor diversion over the objections of the prosecutor for the charged offenses of, among other things, certain hate crimes.

9

AB 557 (Muratsuchi)

Spot bill for statewide hate crime reporting hot line

10

AB 600 (Arambula)

Adds actual or perceived immigrant status as part of the protected characteristic of nationality

11

SB 764 (Umberg)

Domestic terrorism and hate crimes

12

AB 885 (Bonta)

Spot bill to be amended to:

Fund community-based organizations that facilitate culturally competent and mental health services for victims of hate violence and restorative justice programs.

Expand the eligibility for victims of hate violence to access victim compensation funds and not be denied solely because the victim did not file a police report.

13

2021 Budget Act

\$50 million for security for places of worship, LGBTQ centers, etc.

14

Mystery bill

A legislator who wishes to remain anonymous is looking for ideas for making hate crime charges easier to prove. One is to amend the definition of “bias motivation” to include “discriminatory selection.”

If she or he has come out by the time of this presentation, I’ll let you know so you can send your ideas to them. Otherwise you can send them to me and I’ll pass them on under cover of darkness - Greg@TheArcCA.org.

15

THE END.

16