



California Lawyers Association

*presents*

Hate Crimes: What It Is, What Is Prosecutable and How to Defend in State and Federal Courts

1.25 Hours MCLE; 1.25 Elimination of Bias; Legal Specialization in Criminal Law

Saturday, September 23, 2023

11:30 AM -12:45 PM

Speakers:

**Alicia P Williams, Esq.**

**Matthew Brown**

**Ashanti Z Smith, Esq.**

**Abigail Dillon, Esq.**

Conference Reference Materials

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**Saturday, September 23, 2024, 11:30am- 12:45pm**

## **Hate Crimes: What It Is, What Is Prosecutable and How to Defend in State and Federal Courts**

**There has been an increase in Hate Crimes and Incidents in California and across this nation. This program will explain who are being targeted, whether based on actual or perceived race, ethnicity, gender, religion, sexual orientation/identity and other protected class protections under our state and federal constitutions.**

**Criminal Law Specialization and Elimination of Bias Specialty Credits  
MCLE 1.3 Hours**

**Sponsored by the CLA Criminal Law Section Executive Committee**

# ANNUAL MEETING

BREAKING BARRIERS

## Panelists and Moderator

**Matthew Brown:** Director, Incident Response & Law Enforcement Initiatives, Anti-Defamation League (ADL) Western Division

**Abigail Dillon, Esq.:** Deputy District Attorney, Office of the San Diego District Attorney, Special Operations Division

**Ashanti Smith, Esq.:** Deputy Public Defender, Office of the Primary Public Defender of San Diego County, El Cajon Misdemeanor Unit

**Alicia Williams, Esq.:** Assistant US Attorney, Hate Crimes Coordinator, Department of Justice, Southern District of California

**Lei-Chala I. Wilson, Esq.:** Law Offices of Lei-Chala I Wilson, San Diego (Moderator)  
CLA Criminal Law Section Executive Committee Education Maven

# FEDERAL HATE CRIMES Overview and Impact

## AUSA Alicia Williams

United Against Hate: Identifying, Reporting and Preventing Hate Crimes. Hate crimes create fear and divide communities. Engaging with these support systems can help prevent hate crimes, and play a role in uniting a community should an incident occur.

We recently collectively witnessed the terrible massacre at the Tops Market in Buffalo, New York that claimed 10 lives and tragically impacted so many more.

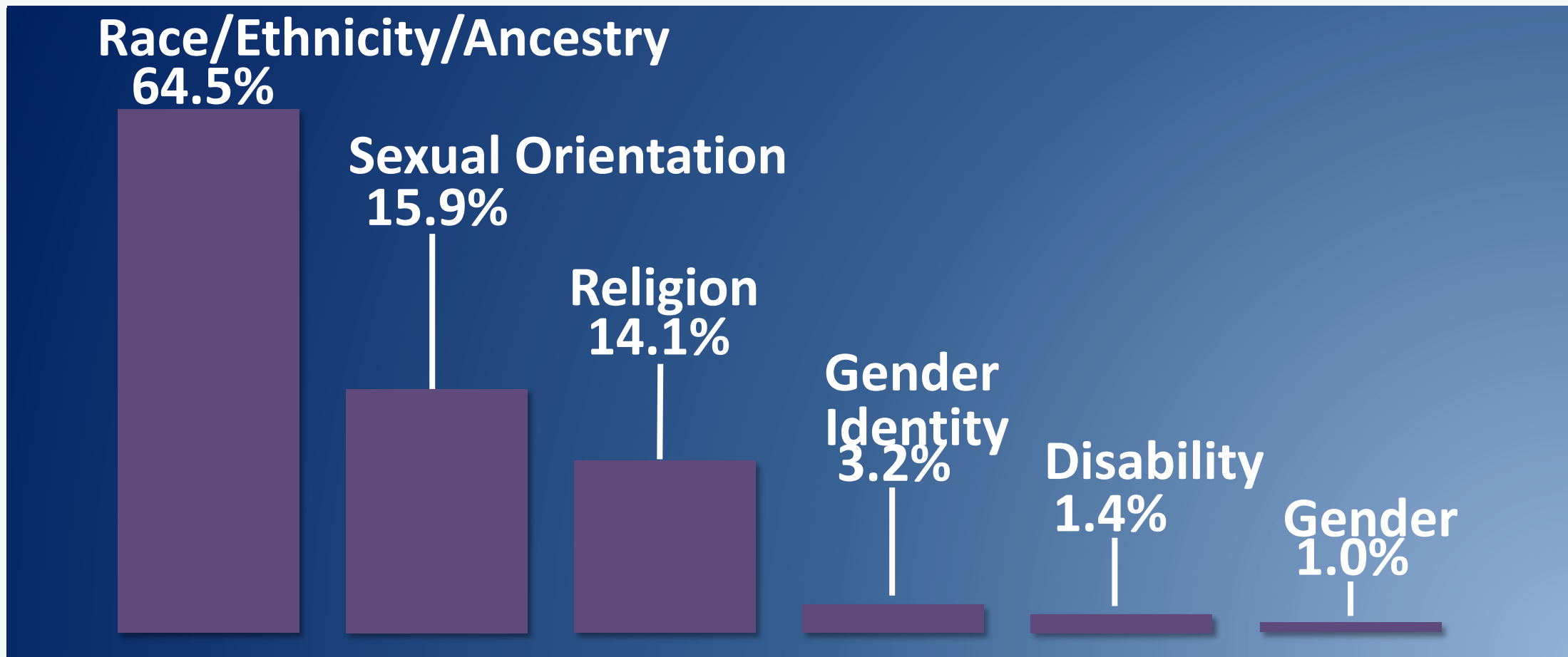
In just the last few years, we have seen hate-fueled massacres at the Walmart in El Paso, Texas, the Tree of Life synagogue in Pittsburgh, Pennsylvania, the Mother Emmanuel A.M.E. church in Charleston, South Carolina, and the Sikh Temple in Oak Creek, Wisconsin, as well as the attack on civilians during the “Unite the Right” rally in Charlottesville, Virginia, just to name a few. All of these tragedies left permanent marks on our hearts. There have also been numerous other incidents that did not garner international media attention but impacted their communities deeply all the same.

## What is a Hate Crime?(A Crime + Motivation = Hate Crime)

In general, a hate crime is a criminal offense such as murder, assault, arson, vandalism or threats that is motivated by one's hate against a group of people or a class of people protected by law.

The term “hate” is a bit misleading. While individuals who commit hate crimes often hate everyone who has the characteristic of their targeted victims, most laws require only that the crime be committed *because of* those characteristics. Thus, there is usually no requirement that prosecutors prove that the defendant universally hated everyone with that particular characteristic.

## 2021 Reported Hate Crime Statistics - by Bias



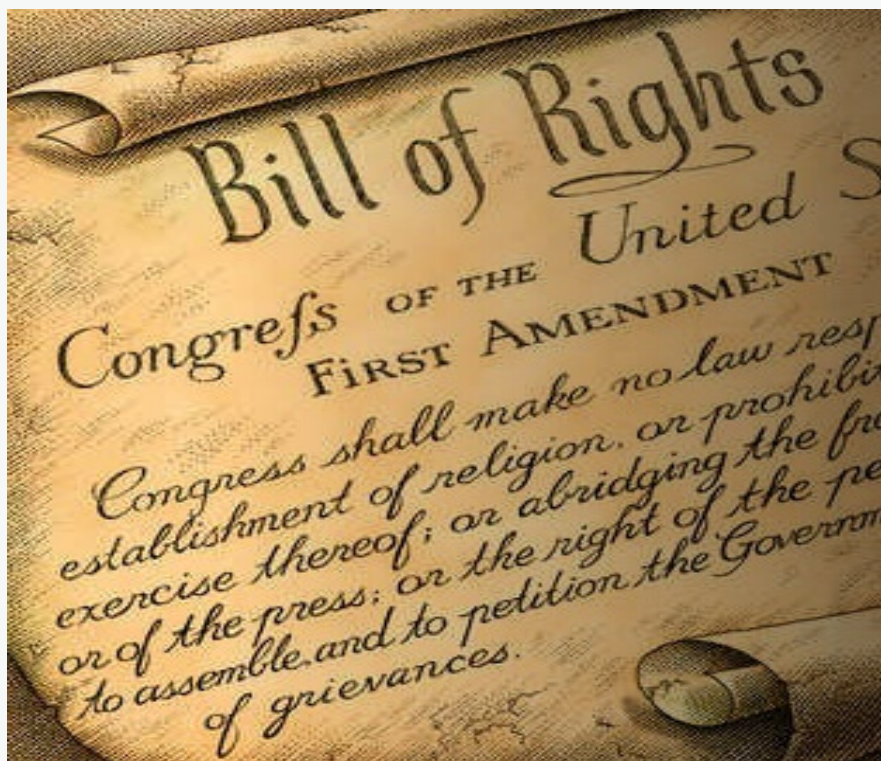
## Difference between Hate Crimes and Hate Incidents

Hate Crimes

Hate Incidents

Discrimination

## First Amendment Protections



Expressing One's Belief

Asking someone else to adopt those beliefs

Being a member of a group that adopts or expresses those beliefs



## Some Hate Incidents May Be Discrimination

**Federal law protects you from illegal discrimination.**

Report civil rights violations to:  
[www.civilrights.justice.gov](http://www.civilrights.justice.gov)

## **Federally Protected Classes**

**Race, Color, National Origin**

**Disability**

**Sexual Orientation**

**Family Status**

**Sex, Gender**

**Gender Identity**

## Overview of Federal Hate Crime Laws

2022- Emmitt Till Antilynching Act

2021- Covid-19 Hate Crimes Act

2009- Hate Crimes Prevention Act

1996- Church Arson Prevention Act

1968- Violent Interference with Federally Protected Rights  
Criminal Interference with Right to Fair Housing

1870- Conspiracy Against Rights, “KKK Act”

## **The History of the Department of Justice**

**The Judiciary Act of 1789 established the Office of the Attorney General.**

**In 1870, Congress passed the Act to Establish the Department of Justice, led by the Attorney General, to handle the legal business of the United States.**

## The History of the Department of Justice

- ▶ **The adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution extended civil and legal protections to former slaves and prohibited states from disenfranchising voters “on account of race, color, or previous condition of servitude.”**
- ▶ **President Ulysses S. Grant ordered that the new Department of Justice’s initial mandate was to counter and subdue those groups in the South who had been using intimidation and violence to oppose the Amendments.**

## Key Federal Hate Crime Statutes

18 U.S.C. § 249(a) (Hate Crimes Prevention Act)

42 U.S.C. § 3631 (Interference with Housing Rights)

18 U.S.C. § 247 (Damage To Religious Property; Obstruction Of Persons  
In The Free Exercise Of Religious Beliefs)

18 U.S.C. § 245(b)(2) (Violent Interference With Federally Protected Rights)

## 18 U.S.C. § 249(a) (Hate Crimes Prevention Act)

**Prohibits violent acts motivated by bias based upon race, color, religion, national origin, gender, gender identity, sexual orientation, and disability.**

## 42 U.S.C. § 3631 (Interference with Housing Rights)

**Makes it a crime to interfere with a person's occupancy of a dwelling, by force or threat of force, because of the victim's race, color, religion, national origin, sex, disability, or family status.**



## **18 U.S.C. § 247 (Damage To Religious Property; Obstruction Of Persons In The Free Exercise Of Religious Beliefs)**

### **Prohibits:**

- 1) using force or threats of force to intentionally obstruct individuals in the free exercise of religion.**
- 2) defacing, damaging, and destroying religious real property.**

## 18 U.S.C. § 245(b)(2) (Violent Interference With Federally Protected Rights)

Prohibits bias-motivated interference with certain activities recognized as protected under federal law.

- ▶ Enrolling in a public school
- ▶ State activity (e.g., public parks, jury)
- ▶ Public accommodations (e.g., hotels, restaurants)
- ▶ Employment
- ▶ Travel
  
- ▶ *Only covers bias-motivated offenses based on race, color, religion, or national origin*

## Activity: Hate Crime or Hate Incident

**Scenario:** A young African American brother and sister are walking down the street. They pass a man who screams racial slurs at them.

**Hate Crime**

**Hate Incident**

**Discrimination**

## Activity: Hate Crime or Hate Incident



## Relevant Hate Crime Indicators

Victim is a Part of a Protected Class

Comments, Written Statements or Gestures

Drawings, Markings, Symbols, or Graffiti

Membership in Hate Groups

Previous Hate Crimes or Incidents

Location of Incidents (such as church, temple, etc.)

## Recent Cases

### **John T. Earnest Sentenced to Life Plus 30 years in Prison for Federal Hate Crimes Related to 2019 Poway Synagogue Shooting and Attempted Mosque Arson**

Assistant U. S. Attorneys Peter Ko (619) 546-7359 and Shane Harrigan (619) 546-6981

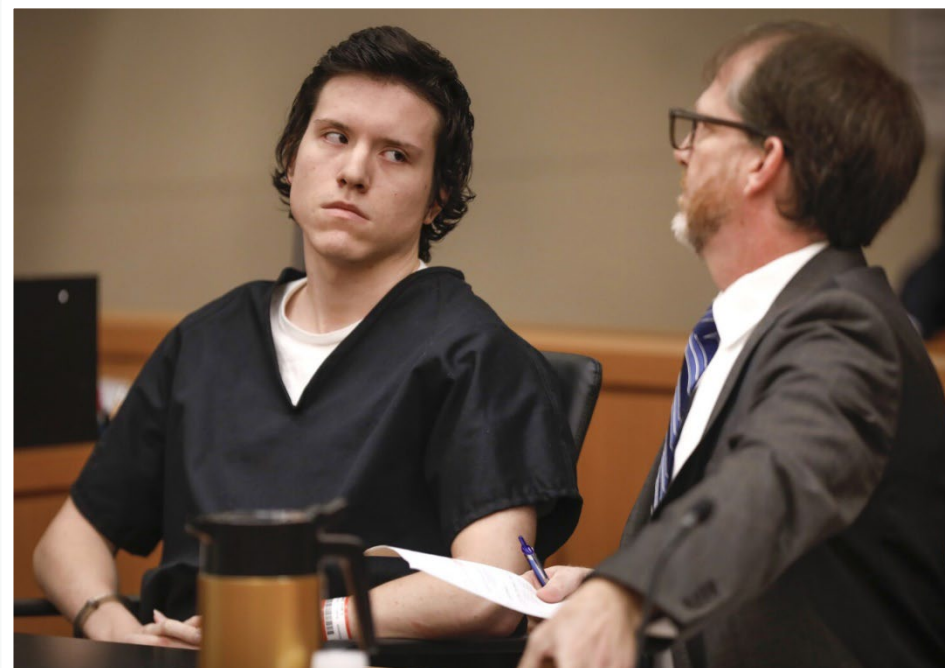
#### **NEWS RELEASE SUMMARY – December 28, 2021**

SAN DIEGO – John T. Earnest, a Rancho Penasquitos man who entered the Chabad of Poway on April 27, 2019, opened fire and killed one woman, injured three others, and attempted to kill 50 others, was sentenced in federal court today to life plus 30 years in prison for his crimes.

Earnest previously pleaded guilty to a 113-count indictment that included 54 counts of violating the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, 55 counts of violating the Church Arson Prevention Act, and four firearms offenses.

Earnest also admitted that on March 24, 2019, he attempted to burn down the Dar-ul-Arqam mosque in Escondido, California, because of his hatred of Muslims and the religious character of the building. Seven missionaries were asleep in the mosque, but no one was injured.

“All people in this country should be able to freely exercise their religion without fear of being attacked,” said Attorney General Merrick B. Garland. “This defendant’s horrific crime was an assault on fundamental principles of our nation. The Justice Department is steadfast in its commitment to confronting unlawful acts of hate and to holding perpetrators of hate-fueled violence accountable.”



# The New York Times

*Buffalo Gunman Sentenced to Life in Emotional and Dramatic Hearing*



## DOJ Components Addressing Hate Crimes

Federal Bureau of Investigation (FBI)

Civil Rights Division (CRT)

United State Attorney's Office

Community Relations Service (CRS)

Office of the Community Oriented Policing Services (COPS Office)



## Hate Crimes in State Courts: San Diego Deputy District Attorney Abigail Dillon

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

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

## Hate Crimes are Message Crimes

“You don’t belong.”

Safety concerns extend beyond individual victims to all who share the victims’ targeted characteristic

Hate crime victims more likely to experience psychological distress

## What Is a Hate Crime?

“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

## “In Whole or In Part” Defined

1) Suspect was biased against V’s characteristic

AND

2) Bias motivation *caused* suspect to commit the alleged crime

Bias does NOT have to be the only motivation for the crime, or even the *main* motivation for the crime, to be considered a hate crime

## Actual or Perceived Characteristic

Suspect does not have to get the characteristic right.

Sufficient that suspect is biased against the victim's  
*perceived* characteristic

## Association Defined

A victim does not need to share the characteristic of the targeted group

You can still be a hate crime victim if you advocate for, identify with, or are otherwise associated with any group/person who has the protected characteristic

## Hate Crime Laws and the 1<sup>st</sup> Amendment

1<sup>st</sup> Amendment Freedom of Speech and Expression

Speech alone is usually not a crime

*Unless:*

Directly threatens violence against a person or group of people

Apparent ability to carry out the threat

Leaves victim in sustained fear

## What are Hate Incidents?

Action, speech, or behavior that, while motivated by hate, is legally protected by the First Amendment

### Examples:

- Insults

- Derogatory comments

- Displaying hateful material on your own property

- Distributing hateful material in public places



# Hate Incident Example

## May 05, 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

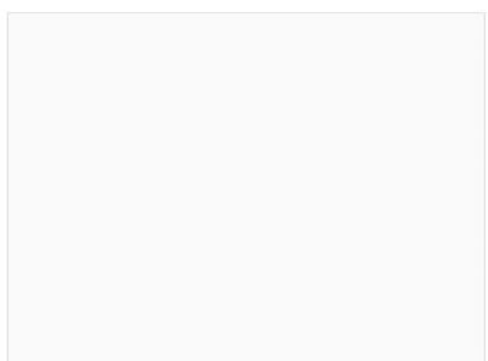
Share This Article:



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.

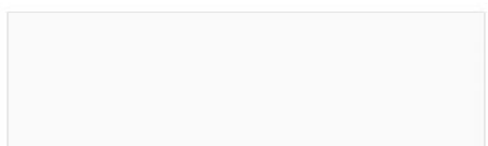


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## Most Common Ways to Charge a Hate Crime

1. Penal Code section 422.7 *elevates* some misdemeanor offenses to felonies
2. Penal Code section 422.75(a) can be attached to any felony and can *increase* punishment by 1, 2, or 3 years

## SDDA HATE CRIMES PORTAL

CALL: (619) 515-8805

EMAIL: [hatecrimes@sdcca.org](mailto:hatecrimes@sdcca.org)

SUBMIT ONLINE: [www.sdcca.org/helping/hate-crimes](http://www.sdcca.org/helping/hate-crimes)

DEFENDING HATE CRIMES:  
A PUBLIC DEFENDER'S PERSPECTIVE  
San Diego Deputy Public Defender Ashanti Smith

# What is A Hate Crime?

## CALCRIM No. 1355. Hate Crime Allegation: Misdemeanor (PC 422.7)

The People must prove:

1. When committing that crime, the Defendant intended to interfere with [or intimidate] another person's free exercise or enjoyment or right [or privilege] to (describe the right raised by the evidence), established by law or Constitution of California or the US.

AND

2. The defendant acted in whole or in part because of the other person's actual or perceived (disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group having this actual or perceived characteristic.

AND

3. When committing that crime, the defendant caused an actual physical injury or had the ability to.



If you find that there was more than one reason to commit the alleged acts, the bias MUST HAVE BEEN a SUBSTANTIAL MOTIVATING FACTOR.

**THE DEFENDANT “ACTED IN WHOLE OR IN PART”  
BECAUSE OF THE ACTUAL OR PERCEIVED  
CHARACTERISTIC (I. E. PROVING RACISM) IF:**

1. The Defendant was BIASED.

AND

2. The BIASED motivation *Caused* the Defendant to Commit the Alleged Acts.

# **HYPOTHETICAL/REAL LIFE SCENARIO:**

## **THE MONTGOMERY BRAWL**



# WAS THE SECURITY GUARD A VICTIM OF A HATE CRIME?

Evidence

Jury of One's Peers

Cultural Arena

## Montgomery Brawl

Were those **ATTACKED**  
**PROCEEDING THE INITIAL ATTACK**  
**VICTIMS OF A HATE CRIME?**

Were those **ATTACKED PROCEEDING THE INITIAL  
ATTACK** VICTIMS OF A HATE CRIME?

What Are the differences between racism  
and Hate Crimes?

## **BOTH SIDES WOULD BE MY CLIENT...**

Humanize the Client

Establish Trust

Desired Outcomes vs. Ability to Achieve Success

Analysis of the Case/Evidence

Combatting Recidivism

# The Three PRIMARY THEORIES OF CRIMINAL JUSTICE

RESTORATIVE JUSTICE

RETRIBUTIVE JUSTICE

TRANSFORMATIVE JUSTICE

## Restorative Justice

Unlike classical criminal justice theories that focus primarily on punishment as a deterrent to crime, the restorative justice perspective seeks to repair the harm caused by crime. Restorative justice offers an approach that centers on community-based responses to crime by providing opportunities for redemption for offenders and encouraging reconciliation with victims.

## Retributive Justice

Argues that everyone who commits a criminal act deserves to suffer a punishment, administered by courts of law, and that the severity of this punishment should be in proportion to the harm caused by the crime committed. It is therefore morally wrong to punish innocent people for crimes they have not committed and is unacceptable to inflict disproportionately large or severe punishments not warranted by the damage caused by the crime.

# Transformative Justice

Challenges the focus on punishment that underscores retributive justice and moves beyond the offender-victim dynamic advocated by restorative justice models.

Provides a critique of the criminal justice system as essentially unjust. The theory faults traditional approaches to crime for separating victims and offenders, revictimizing the victim, and transforming offenders into victims of the unjust criminal justice system.

Argues that "crime" is defined and framed by the state through the criminal justice system. State control perpetuates injustices toward people of color, LGBTQ+ communities, women, people with disabilities, immigrants, the poor, and other marginalized and oppressed groups.

Rather than looking at offenders and victims as distinct entities, transformative justice recognizes that an individual may have caused harm and suffer from harm.

Transformative approaches strive to improve the quality of life for victims, offenders, and the community by addressing the social and economic inequalities that cause crime.



# Antisemitism on the Rise

Matthew Brown, Anti-Defamation League ~ September 23, 2023

SAN DIEGO / SEPTEMBER 21- 23

## ANNUAL MEETING

BREAKING BARRIERS

CALIFORNIA  
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#CLAAnnual

## What is antisemitism?

Certain perception of Jews, which may be expressed as hatred toward Jews.

Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and Jewish religious facilities.

## Why target Jews?

Hostility towards Jews dates to ancient times, perhaps to the beginning of Jewish history.

From the days of the Bible until the Roman Empire, Jews were criticized and sometimes punished for their efforts to remain a separate social and religious group.

11<sup>th</sup>-14<sup>th</sup> century – Jews viewed as outsiders who rejected Jesus

18<sup>th</sup> century – Judaism attacked as an outdated belief that blocked human progress

Fast forward to modern times – Jews blamed for societal issues...

## Why target Jews?

Conspiracy Theories (*the need to place blame*):

Jews control the banking systems

Jews control the healthcare systems

Jews control science

Jews control immigration policies

# ADL's 2022 Audit of Antisemitic Incidents

Significant surges Nationally in incidents:

2022 was the worst year for antisemitic incidents since ADL began recording more than four decades ago.

Total of 3,697 antisemitic incidents across the U.S. in 2022, an increase of 36% compared to 2021.

Violent assaults: 111, 26% increase

Harassment: 2,298, 29% increase

Vandalism: 1,288, 51% increase

White supremacist propaganda distribution: 102% increase from 2021 to 852 incidents

K-12 schools: 49% increase to 494 incidents

College campuses: 41% increase to 219 incidents

Attacks on orthodox Jews: 67% increase to 59 incidents

Bomb threats to Jewish institutions: increase from 8 to 91 incidents

## ADL's 2022 Audit of Antisemitic Incidents

Significant surges in California incidents:

CA had the second highest number of recorded incidents (518) just after New York with 580.

Harassment: 327, up 51% from 2021

Vandalism: 178, up 32% from 2021

Assaults: 13, down from 15 in 2021

## How ADL is responding

Advocacy work

Investigative work and work with law enforcement

Education in K-12 schools

Programs on college/university campuses

## ADL Policy Recommendations

Public officials and civic leaders use of their bully pulpits to denounce hate incidents and hate crimes and speak out when free expression crosses the line into incitement of violence

Policymakers support of efforts to provide law enforcement tools and training to prevent and respond to hate crimes

Federal, state and local law enforcement must improve procedures for reporting hate crimes

School districts should promote and implement anti-bias, bullying prevention and Holocaust education in elementary and secondary schools.

Congress and the U.S Department of Education, state legislators and mayors should increase funding for anti-bias education to promote an inclusive school climate.



## Questions?



## Contact Info for Panelists

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