



Written by [Selwyn Duke](#) on January 4, 2018

Hate-speech Laws USA? California Prosecutes Man for Anti-Muslim Posts

California is already flouting federal immigration law with its “sanctuary” status. Now it’s also ignoring the most American of laws — the First Amendment — prosecuting a man simply for posting five anti-Muslim messages to Facebook.

The hapless defendant is 41-year-old Mark Feigin, who expressed his opinions at the Islamic Center of Southern California’s (ICSC) Facebook page in 2016. Feigin is certainly an acerbic, acid-tongued, foul-mouthed fellow, and he admits to sending the messages. But while many may not like their substance and/or style, they’re clearly an example of constitutionally protected speech. They are as follows, as [presented](#) by the *Daily Caller*:



- “THE TERROR HIKE ... SOUNDS LIKE FUN” (In reference to the center’s advertised “Sunset Hike”)
- “THE MORE MUSLIMS WE ALLOW INTO AMERICA THE MORE TERROR WE WILL SEE.”
- “PRACTICING ISLAM CAN SLOW OR EVEN REVERSE THE PROCESS OF HUMAN EVOLUTION.”
- “Islam is dangerous — fact: the more muslim savages we allow into america — the more terror we will see — this is a fact which is undeniable.”
- “Filthy muslim s[***] has no place in western civilization.”

The California Attorney General’s office is prosecuting Feigin under [Cal. Penal Code § 653m\(b\)](#), which states, “Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device ... to another person is ... guilty of a misdemeanor.” Feigin’s trial began on Tuesday.

The government’s arguments, frankly, smack more of emotion than reason and sound as if formulated by an undergraduate social-justice warrior. The AG’s office writes, “What could be more ‘intolerable’ than for [the] ICSC Communications Director ... to check the ICSC’s Facebook page and discover that someone has written ‘PRACTICING ISLAM CAN SLOW OR EVEN REVERSE THE PROCESS OF HUMAN EVOLUTION’ as the Defendant in this case did?”

What’s more intolerable? Oh, maybe, being beheaded, female genital mutilation, honor killings, suicide bombings, and about 1,000 other things? Are our rights now dependent upon a determination of tolerability? Whose version? What’s “tolerable” is wholly subjective and relative.

Continuing in this subjective, emotional vein, the government wrote, “Protected speech? Political speech? Defendant’s posts on the ICSC Facebook page are neither of those things.” No? Freedom of



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speech is no freedom at all if it doesn't protect unpopular speech, for popular speech's popularity is protection enough. It's not the popular kid who gets picked on at school.

Note, too, that the ICSC could just block Feigin's posts — which it *did* in fact do. Yet its communications coordinator, Kristin Stangas, also saved copies and reported them to the authorities — which apparently share her ideological convictions. As UCLA law professor Eugene Volokh [writes](#):

The government's [argument](#) makes clear that it's going after Feigin for the content — indeed the viewpoint — of his speech: “The mere content and nature of the posts establish that they are not made in ‘good faith’ as Defendant would suggest but are meant to annoy and harass.” “Defendant is not seeking understanding [sic] or guidance, instead he is posting in order to annoy and harass those who have beliefs with which he vehemently abhors.” The Facebook's page public accessibility “does not translate into requiring ICSC or its members to sustain repeated harassment from those who wish to mock and disparage their religion.” “Rather than attempt to engage in discussion or debate, Defendant's posts are cruel and pointedly aimed at dismissing an entire religion and those who practice it.” Nor is the government's argument limited to vulgar epithets (“Filthy muslim shit”), though even those epithets are constitutionally protected when said outside the context of face-to-face “fighting words”; it applies just as much to the nonvulgar criticisms.

So now the government can read Feigin's mind. Note that he appears to genuinely believe the sentiments he expressed, and perhaps part of his aim was to influence the ICSC page's readers. Of course, he certainly is rough-hewn and vulgar, but is freedom of speech now only for the eloquent and erudite?

Actually, under California dreamin', there's no freedom — only speech — and only for the “right” speakers. As to this, there's more to the Feigin story than media have recently related.

Feigin initially got on the government's radar in September 2016, when he was charged with a hate crime for allegedly calling a mosque and threatening to kill its members. (This is a separate count.) It now appears possible, however, that the real culprit there may be a man named Michael Slawson, who has been positively identified as the individual who made another angry call to the mosque a day earlier but who hasn't been charged (note: He also happens to be the son of an L.A. Superior Court judge).

But here's where it really gets interesting. Making the case that the Feigin Facebook prosecution is ideologically driven, his attorney, Caleb Mason, pointed out that Feigin was offered a plea deal requiring that he “renounce the KKK and the alt-right,” [reported](#) CNN in September. The problem?

Feigin has no association whatsoever with the KKK.

In fact, “Mason called the plea offer ‘bizarre’ in his court filing, noting that Feigin ‘has no connection to the KKK, and none was ever alleged.’ He added that Feigin's family is Jewish and Catholic, both targets of the Klan,” CNN further informed.

“The former prosecutor also questioned the condition regarding the ‘alt-right,’” CNN continued. “‘Since when does a prosecutor demand that a defendant ‘renounce’ his political beliefs as a condition of avoiding prison[?]’ Mason wrote. ‘The answer is simple: We don't do that, not in this country.’”

Yet there may be method to the government's madness. Feigin's case was handled by then-California Attorney General Kamala Harris's Office — which held an October 2016 press conference announcing the “hate crime” charges — even though such cases are normally handled by the given county district attorney. Why this departure from the norm?



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A clue could be that Harris was running for Senate at the time, and a nice résumé enhancer is tackling the Klan — as long as no one realizes you’re actually tackling the rule of law. This certainly would explain why you’d try to morph a non-Klansman into a Klansman.

Regardless, as Professor Volokh points out, the Facebook-post prosecution “can’t possibly be consistent with the First Amendment.” Moreover, there’s “nothing in the government’s logic that limits it to comments posted on the Islamic Center’s page, or for that matter on the Catholic Church’s page or the Westboro Baptist Church’s page or the Church of Scientology’s page,” he writes. “If the government is right, and the statute applies to posts on organizations’ pages, then it would apply to any repeated harshly critical posts” — whether it’s an NRA, pro-Trump, NOW, or some other entity’s page.

Note, too, that at issue are *five* postings. Millions of Americans post far more angry messages than that every year to a multitude of sites. We’d better start building a lot of new prisons.

Sadly, the site of this unjust prosecution is not surprising. Americanism in the Golden State has given way to worship of the golden calf of [Gramscian ambitions](#). Thus is California now a place where politically correct killings (poor [Kate Steinle](#)) are tolerated, but politically incorrect dissent is intolerable.

Image: Screenshots from ads on [Islamic Center of Southern California’s website](#)



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