



LEGISLATIVE RESPONSES TO TERRORISM: CALIFORNIA'S HISTORY

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The 2015 San Bernardino terrorist attack thrust terrorism into Californian's public consciousness. There is, however, a history of politically-motivated violence in the state spanning union-sponsored violence in the early 1900s to the radical jihadists and other groups who perpetrate attacks today. In response to many of these attacks the California legislature has enacted legislation aimed at protecting Californians.

Most instances of terrorism in the early years of California history were attacks by the militant wing of the organized labor movement against their big business targets. From the early 1900s through World War I and World War II there was a strain of violent radicalism that was a part of the struggle between the unions and their bosses. The most famous expression of this violent strain was the 1910 bombing of the Los Angeles Times building in Los Angeles. The explosion destroyed the building, killing 20 people and injuring many more. The paper's editor, Harrison Gray Otis, was a fierce critic of organized

labor, making him a target for more militant union members. Local union leaders adamantly denied any involvement in the bombing and condemned the attack. They also proclaimed the innocence of James McNamara and John McNamara when the two were arrested one year later. The McNamara brothers were members of the International Association of Bridge and Structural Iron Workers. Labor unions rallied behind the McNamaras and even hired Clarence Darrow to defend them. At trial, however, James McNamara pled guilty to the crime of murder and John McNamara pled guilty to being an accessory to the bombing of the Llewellyn Iron Works a few months after the Los Angeles Times bombing.

In the decade following the Los Angeles Times bombing, hostility toward union violence continued to grow in California and nationwide. The California legislature moved to take up comprehensive legislation criminalizing the union sponsored violence after a particular incident in December of 1917. An bomb exploded on the back porch of the

Governor's mansion was attributed to the Industrial Workers of the World (the IWW or "Wobblies"), a radical labor organization known for its sometimes violent acts. In early 1919 the California legislature took up a bill aimed at the Wobblies and other radical labor organizations. The California Criminal Syndicalism Act outlawed criminal syndicalism, defined as "the doctrine and activities involving the use of violence as a means of social change." Union leaders warned that this law could have the practical consequence of criminalizing legitimate union activity such as strikes and boycotts. Despite the efforts of legitimate labor organizations to oppose the law, it passed 33-0 in the Senate and 59-9 in the Assembly and was signed by Governor Stephens on April 30, 1919.



The Los Angeles Times building, post-bombing in 1910.

Source: *California Historical Society* | *Wikimedia Commons*

The political climate created by the trial of the Wobblies' members for the Sacramento bombing, and the lingering suspicions about organized labor for the role of union members in the Los Angeles Times bombing and other attacks, hurt their chances of mounting an effective opposition campaign. The Criminal Syndicalism Act ended up being a significant piece of legislation in line with a nationwide trend of legislating against radical leftism. The trend emerged in response to the red scare that followed the Bolshevik Revolution in Russia and specific instances of terrorism that came from radical left wing groups sympathetic to the Bolshevik ideal.

The Criminal Syndicalism Act was the subject of a challenge in *Whitney v. California*. The United States Supreme Court upheld the law as constitutional in 1927. The case centered on the plaintiff's challenge of her conviction for being a member of the Communist Labor Party of California. Her participation in the party was enough for a conviction under the Criminal Syndicalism Act even though she never participated in any violence in pursuit of political change. The Court held that this conviction was constitutional, as criminal

syndicalism makes it a crime to even be a member of an organization which has advocated violence for political or economic change. This case is also notable for a concurrence from Justice Brandeis in which he extolled the virtues of free speech and famously said that the solution to unpopular speech is more free speech rather than “enforced silence.” Justice Brandeis wanted to ensure that his vote to uphold the syndicalism conviction was not used to suppress healthy criticism of the government. His concurrence made it clear that free speech was an integral part of the democratic process, just not when it was advocating for violence.

“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

*- Justice Brandeis, Whitney v. California
(concurring opinion)*

The Supreme Court overturned *Whitney v. California* more than 40 years later in the 1969 case *Brandenburg v. Ohio*. *Brandenburg* held a criminal syndicalism law in Ohio to be unconstitutional on the grounds that it failed to distinguish between general advocacy for a cause and specific incitement of imminent lawless action.

As the stability of the 1950s gave way to the tumultuous cultural conflicts of the next few decades, radical terrorist groups on the left and right threatened the peace in California in the 1960s and 70s. Groups like the Black Panthers and the Weather Underground undertook direct terrorist actions to advance their political agendas. After each instance of terrorism, legislators in Sacramento proposed bills that would help keep their constituents safe.

The Black Panther Party rose to national prominence due to its militant brand of opposition to

policing in black communities. The party began in late 1966 as a local movement opposed to the police departments of the East Bay cities of northern California. The Black Panthers would patrol their own communities armed with openly-carried loaded guns, and would resist government efforts to stymie their behavior. In early 1967 a Republican East Bay legislator, Don Mulford, introduced AB 1591 which would criminalize the open carry of firearms in public places. The bill was directly intended to curb Black Panther patrols in the communities that Mulford represented. Huey Newton, the leader of the Black Panthers, saw this challenge to the Panther’s right to bear arms as a potentially huge publicity coup. On May 2, 1967, as the California Assembly debated the Mulford Act, Newton and 30 fellow Black Panthers descended on the capitol in full regalia, complete with loaded weapons. They marched into the capitol and six of the Panthers forcibly entered the Assembly chambers while the members were debating AB 1591. It was a striking scene as some legislators dove for cover and others stood paralyzed by fear. There was, however, nothing illegal about the Panther’s actions that day. The only thing the sergeants-at-arms could do was escort the intruders out of the chamber.

The California legislature responded by amending the Mulford Act specifically to prohibit carrying loaded firearms inside the state capitol or other state government facilities, in addition to the broader prohibition on open carrying of guns. The Mulford Act passed and was enacted with a companion urgency statute so it could go into immediate effect. In much the same way as the bombing of the governor’s mansion porch strengthened support for the Syndicalism Act, the violation of the state capitol fueled significant political will to pass a stringent anti-terrorism statute. The Mulford Act is also notable for being gun control sponsored and promoted by a Republican legislator and then signed into law by Governor Ronald Reagan.

The 1960s also saw the rise of radical left wing groups with various agendas related to race relations and opposition to the Vietnam War. Many of the groups were peaceful, but some took a more

militant approach to effecting political change. The Weathermen (later the known as the Weather Underground) stood out for its terrorist tactics and willingness to use violence in pursuit of their agenda. The Weathermen were founded in 1969 by University of Chicago students. They began their militant campaign with a “declaration of war” against the American government. After their name change, the Weather Underground undertook a national campaign of bombings, many of which occurred in California. While they were ostensibly committed to not killing anyone with their bombings, in early 1970 the Underground was linked to the murder of a San Francisco policeman via a jerry-rigged nail bomb planted at a police substation near Golden Gate Park. In other attacks Underground members bombed the army base at the Presidio and a Marin County courthouse.

These attacks compelled California legislators to respond. A 1970 report of the Assembly committee on criminal procedure lists a package of legislation that seriously increased the penalties for making, possessing, or using destructive devices. Assembly Bill 970 (Crown), AB 1003 (Biddle), and SB 1350 (Beilenson) all dealt with updating statutes related to bombings. Chapter 1425 of the Statutes of 1970, concludes with this statement, “Bombings of public and private buildings have recently taken place at an increased rate, and in order to provide greater security and control over explosives which might wrongfully become available to persons intent on using such explosives for illegal purposes and to deter such illegal bombings, it is necessary that this act go into effect immediately.” The terrorist activities of the Weather Underground and other radical organizations were the clear target of this spate of



President Gerald Ford immediately after the assassination attempt by Lynne “Squeaky” Fromme in Sacramento

Source: Ricardo Thomas | Wikimedia Commons

legislation. The committee report also included further legislation which increased the sentences for criminals convicted of assault with a deadly weapon on a peace officer. SB 84 (Nejedly) raised the sentence from 15 years to life for such a crime, perhaps in response to increased attacks against police officers like the Park Station bombing.

In 1975 there were two attempts on President Gerald Ford's life in California. Both attempts were perpetrated by women who used pistols to try and kill the President during his public appearances. The first attempt by Lynne "Squeaky" Fromme in Sacramento failed when she did not cock the revolver before firing, and the second attempt in San Francisco by Sara Jane Moore was stopped by a former marine who tackled her after she missed her first shot. Both Fromme and Moore were involved in some manner with revolutionary politics. Fromme was a member of the Manson Cult and Moore had an obsession with Patty Hearst and the Symbionese Liberation Army. After both of these attacks Governor Jerry Brown signed two pieces of legislation. The first imposed mandatory minimum sentences on criminals convicted of a specific set of gun-related crimes and the second instituted a 15-day waiting period between the purchase of a gun and its delivery. Brown was trying to crack down on crime and set the expectation that individuals who committed gun crimes would be punished. Moore had purchased her gun the day of her assassination attempt, so the waiting period was intended to stop such crimes of passionate momentary rage.

California's thriving agricultural sector has also been targeted by terrorist attacks. In 1989, a group calling itself "The Breeders" took responsibility for deliberately spreading the invasive Mediterranean fruit fly across Southern California. The state government had been aerial spraying the chemical Malathion to try to eradicate the infestation of medflies. However, eco-terrorists were opposed to spraying Malathion over large swaths of Southern California because they thought it was harmful for the environment and humans. The Breeders threatened to continue introducing more medflies

into areas just beyond the spray zones until the Malathion campaign was called off. The identity of the breeders remains a mystery and they were never caught. The government did stop the Malathion spraying. Senator Rueben Ayala introduced legislation in response to the medfly issue. His SB 1754 made it a felony to import Mediterranean fruit flies into California. The act was passed with an urgency statute and went into effect in June of 1990, presumably so The Breeders could be charged under the more stringent law. The Breeders are a good example of the kind of danger that California's agricultural sector faces from agro-terrorism.

A determined foe could use chemical or biological weapons to contaminate the vast farm land of the San Joaquin Valley.

The modern era of terrorist violence has seen more diffuse organizations attack vulnerable civilian and government targets. California legislators have played a small but significant role in keeping their constituents safe by legislating on an eclectic mix of topics in response to the terrorism of the present day and age.

After a spate of anthrax attacks in Southern California during the late 1990s local law enforcement officials clamored for a bill to give state authorities the jurisdiction to investigate these terrorist incidents. In 1999 then Assembly member Robert Hertzberg introduced AB 140, the Hertzberg-Alarcon California Prevention of Terrorism Act. Committee analyses for the legislation indicate that it was intended to give state authorities concurrent jurisdiction for terrorism-related crimes, which were previously criminalized only by federal statute. Specifically, the bill provided penalties for the possession or usage of a weapon of mass destruction and making terrorist threats. The legislation was also intended to increase penalties

for agro-terrorism, which meant classifying chemical and biological weapons as WMDs. AB 140 ended up looking especially prescient in light of the terrorist attacks of September 11, 2001 which showed the need for comprehensive responses to terrorist acts.

In the months following the 9/11 attacks, California legislators introduced a suite of bills aimed at combatting terrorism. SB 910 from Senator Jack Scott made it illegal to bring box cutters or parts of weapons that could later be assembled onto a plane. SB 1257 from Senator Kevin Murray tightened regulations on the transportation of hazardous materials that would be of potential use for terrorists. AB 1838, by then Speaker of the Assembly Robert Hertzberg, expanded the definition of weapons of mass destruction to include vehicles and airplanes. Finally, AB 74 by Assembly member Carl Washington added WMD related crimes to the list of wiretap eligible offenses and made it easier to amend existing wiretaps to include new phone numbers. Though the legislative response was limited in scope, California legislators took what actions they could on the state level to act in the face of the national tragedy.

More recently, the California legislature has had to respond to the San Bernardino terrorist attack in 2015. Much like the post-9/11 response,

the nature of the legislation corresponded to the particular details of the attack. The radical jihadist couple who carried out the attack used high power rifles to massacre government workers at the Inland Regional Center. The legislature tried to crack down on the types of weapons used in the attack. SB 880 from Senator Isadore Hall expanded the definition of assault weapon to include guns with so-called “Bullet Buttons,” a mechanism gun manufacturers had been using to get around existing California law banning rifles with detachable magazines. The bullet button allows a rifle’s magazine to be detached using a specific tool. SB 880 added rifles with any sort of detachable magazine, even those protected by a bullet button, to the assault weapon classification. Current owners of guns classified as assault weapons are not required to give up their firearm, but they must register their firearm with the state and are seriously restricted in how they can use it. SB 1235 from Senate President pro Tempore Kevin De León creates a statewide database of ammunition purchases and requires IDs and a background check before purchasing ammo. Finally, SB 1446 by Senator Loni Hancock prohibits the possession of high capacity, 10 or more, bullet magazines. These measures are another chapter in the California legislature’s long tradition of acting in response to terrorist attacks. ◆

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