

AGGRAVATED HARASSMENT IN THE FIRST DEGREE
Penal Law § 240.31(3)
(Committed on or after June 7, 2006)

The (*specify*) count is Aggravated Harassment in the First Degree.

Under our law, a person is guilty of Aggravated Harassment in the First Degree when, with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, [age of sixty years old or more¹], disability or sexual orientation, regardless of whether the belief or perception is correct, he or she etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

The following term(s) used in that definition (has/have) a special meaning:

INTENT means conscious objective or purpose.² Thus, a person acts with intent to harass, annoy, threaten or alarm another person when his or her conscious objective or purpose is to do so.

[DISABILITY means a physical or mental impairment that substantially limits a major life activity.³]

In order for you to find the defendant guilty of this crime, the

¹See Penal Law § 240.00(5) which defines age to be sixty (60) years old or more. Accordingly, include material in brackets only in a case involving age.

²See Penal Law §15.05(1).

³See Penal Law §240.00(6).

People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (*date*), in the County of (*County*), the defendant (*defendant's name*) etched, painted, drew upon or otherwise placed a swastika, commonly exhibited as the emblem of Nazi Germany, on a building [or other real property], public or private, owned by any person, firm or corporation or any other public agency or instrumentality; and
2. That the defendant did so without express permission of the owner or operator of such building [or real property]; and
3. That the defendant did so with the intent to harass, annoy, threaten or alarm (*specify person*) because of a belief or perception regarding the (*specify appropriate attribute(s)*), of (*repeat name of above specified person*), regardless of whether the belief or perception was correct.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.