

Legally, hate crimes are different from derogatory name-calling

Guest commentary

During this past academic year, there have been hundreds of "hate-related" incidents and hate crimes on campuses nationwide. They have ranged from physical beatings of a student, to vandalism of student property and school buildings.

About a month ago, campus police at California Polytechnic University at San Luis Obispo arrested several students who had thrown eggs at students who were staffing a gay students' club booth on campus. While throwing eggs at someone ordinarily would be a simple misdemeanor, because it's a hate crime, the attackers face felony charges.

Two weeks ago, the National Gay and Lesbian Task Force released a comprehensive study, indicating that one-third of lesbian, gay, transgender and bisexual students (in their survey of 14 campuses) had experienced harassment in the past year, while 20 percent said they feared for their safety.

A federal law, the Clery Act, requires all colleges to report each year on the number of crimes on campus for the previous year. For 2001, college campuses reported more than 300 incidents on college campuses, including arson, aggravated assault, simple assault and forcible sex offenses.

The Clery Act requires schools to report crimes motivated because of a person's race, religion, gender or sexual orientation.

While states define hate crimes differently, they all involve some underlying crime, such as a battery (touching), assault, arson or vandalism (property damage). If the perpetrator's motive in committing the crime is the victim's race, for example, then the state may enhance the penalty assessed.

Thus, a simple misdemeanor battery (offensive touching) can become a felony because of the hate crime enhancement.

A hate incident is one where someone is called a derogatory name. While name-calling is not itself a crime, the recipient may rightfully feel intimidated and possibly threatened with imminent violent attack. So it's a reportable incident.

Most states today do have some type of hate crime statute, but the coverage varies. Most states include attacks because of a person's race or religion, and many cover sexual orientation, too.

For example, California and four other states also include "gender identity." This latter provision covers cases where a transgender person is attacked.

Some states, however, do not include sexual orientation. Federal law, for example, does not include sexual orientation in its version of hate crimes. Congress is considering adding it to the federal law, but it currently does not.

There are also some misconceptions about hate crimes that are important to clarify:

1. Some attackers have argued that they haven't really committed a hate crime because they really didn't know for sure that their victim was, let's say, gay or Muslim. It doesn't matter. As long as the perpetrator "perceived" the victim to have a certain characteristic, that's all that matters.

2. Some attackers contend that it's not a hate crime because their motive was something other than picking on the person because of his or her race. And this does present a problem for prosecutors. Often the attacker makes derogatory comments about the victim's race and that provides the proof that the crime was committed, in part, because of the victim's characteristics. Prosecutors don't have to prove that the crime was committed solely because of a person's race, just that a motivating factor was the person's race.

3. An interesting situation arises

when one is attacked who is not, let's say, Muslim, but is a sympathizer. The victim is not Muslim, nor perceived to be. Yet, the victim is attacked because he or she is defending the rights of the Muslim. The Illinois Supreme Court, in such a case, held that the victim is still a victim of a hate crime. In essence, the attacker's intent to harm someone is transferred to a different person.

4. Perhaps the biggest misconception about hate crimes is that most hate crimes are property-related crimes, usually involving vandalism. Spraying a swastika on the wall of the Jewish Student Union is a hate crime because the vandalism is motivated by the victims' religion. California courts have held that, even spraying a swastika in an area where Jewish students congregate, is a hate crime. Tearing down banners of the gay student union would also be a hate crime. These are property crimes motivated because of the victims' characteristics.

5. Another misconception is that schools do not have to do anything to respond to various hate crimes. That's really not the case. Federal law requires schools to act reasonably, not indifferently, to acts of bias. In the Cal Poly case, the university police acted correctly by investigating the matter and apprehending suspects.

Some people argue that hate crime laws limit free speech. There's never been a prosecution for merely uttering derogatory terms relating to race, religion or sexual orientation. And campus speech codes that make such punishable offenses are likely to be construed as unconstitutional.

But when words are uttered in connection with a physical assault and specific harm to the recipient, then it rises to a hate crime and is punishable.

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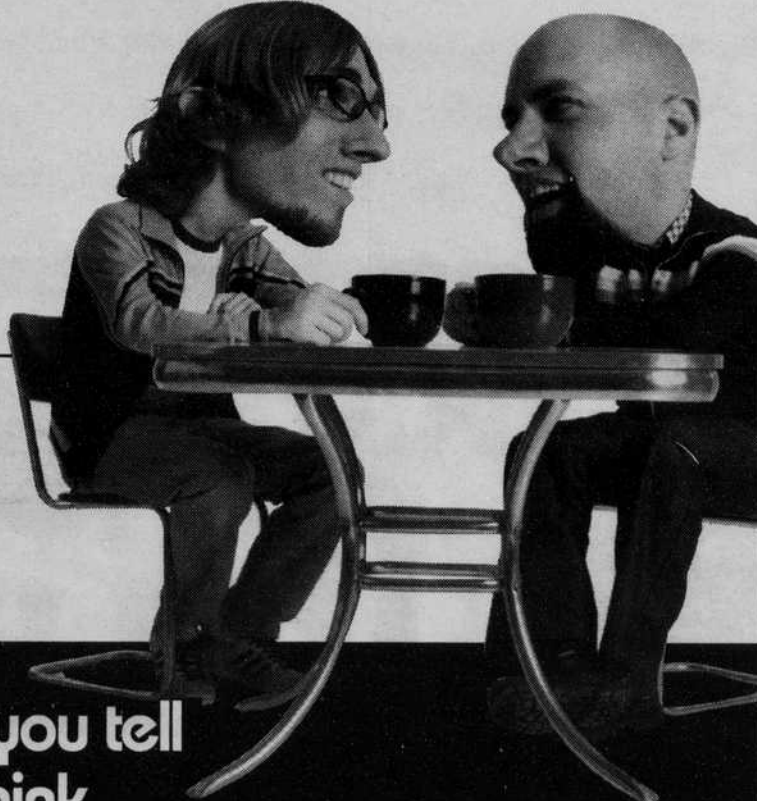
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