psycholegal aspects of
CYBERBULLYING
THE DARK SIDE OF SOCIAL NETWORKING

By Eric Y. Drogan, Rachel M. Cannon, Frantz C. Farreau,
Amanda G. Hutchison, & Lauren E. Sutphin
“Cyberbullying” occurs when groups or individuals employ “Internet web sites, chat rooms, instant messaging, text and picture messaging on phones, and blogs” to harass or intimidate others online.\(^1\) Social networking venues that offer seemingly limitless opportunities for business promotion and positive personal connections can also serve as conduits for the most degrading and destructive forms of ad hominem attack.

According to recent US Department of Justice Bureau of Justice statistics, approximately four percent of 12- to 18-year-old students have reported being the victims of cyberbullying—a prevalence that current research has suggested may nearly double when the focus shifts to children with developmental disabili-

ies.\(^3\) This is not a problem confined to children, although reliable statistical data regarding victimized adults are still largely lacking.\(^2\) One recent study of workplace cyberbullying found harassment rates in excess of 10 percent as a result of abuse meted out through the use of such “modern technology.”\(^5\)

News reportage of the most tragic of cyberbullying cases—those culminating in a victim’s suicide—has led the way in drawing public attention to this phenomenon and in spurring calls for decisive legal reform. For example, when social networking harassment victim 15-year-old Phoebe Prince took her own life in 2010, resulting in national media coverage;\(^6\) the Commonwealth of Massachusetts enacted legislation soon afterward to assist in the prevention of cyberbullying in schools.\(^7\)

Social scientific research has continued to enhance our understanding of cyberbullying victims and perpetrators alike. These insights contribute in turn to the legal system’s perspectives on culpability and damages, impacting both case law and statutory innovations.

**The Victims**

The most basic categorical distinctions drawn by mental health professionals are reflected in psychiatric diagnoses. These broad designations for “classification of mental disorders” are compiled in the Diagnostic and Statistical Manual of Mental Disorders (DSM), now in its fourth revised edition.\(^8\) Two diagnoses are frequently associated in the scientific literature with the experiences of persons subjected to cyberbullying: Post-traumatic Stress Disorder (PTSD) and Major Depression.

The most readily attributed of these diagnoses over time is PTSD,\(^9\) particularly in light of the finding that approximately one-third of student victims “found the incidents extremely distressing.”\(^10\) PTSD can be a highly controversial diagnosis in terms of its specific applications,\(^11\) especially given concerns over malingering,\(^12\) but belief in the existence of this disorder is solidly entrenched in clinical practice and research. The treatment of PTSD sufferers exposed to stressors over an extended period of time—such as a sustained campaign of website attacks—may be more difficult as these persons have experienced “chronic” as opposed to “discrete” trauma.\(^13\)

Symptoms of Major Depression have been ascribed to cyberbullying victims in a broad range of cultural settings.\(^14\) These can include “feelings of painful dejection” and “feelings of worthlessness and guilt,”\(^15\) leading in many cases to suicidal ideation—as confirmed on the basis of a recent survey of nearly 2,000 adolescents—\(^16\) and in some cases even to suicide attempts, which tend to occur with females only in cases of “frequent victimization,” while low numbers for males have “precluded a meaningful examination of the risk of attempts.”\(^17\)

Overall, bullying has been established as “the third leading cause of death in youth between the ages of 10 and 24.”\(^18\) Given that cyberbullying is a relatively new circumstance, it remains to be seen whether it ultimately proves similar to other forms of bullying in the propensity for abuse suffered during childhood to manifest itself some years later in the form of suicide by an adult.\(^19\)

Successful treatment may prevent one of the more surprising effects of cyberbullying. Some studies maintain that victims are likely to become perpetrators after suffering from bullying—perhaps because these persons seek social acceptance and may attempt to gain it by dominating other individuals.\(^20\) Treating underlying symptoms of PTSD and Major Depression may reduce the risk for future cyberbullying, or at least increase the probability that the victims will deal with such behavioral inclinations more constructively.

**The Perpetrators**

The activities of cyberbullying perpetrators are considerably affected by the

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\(^1\) Eric Y. Drogin, J.D., Ph.D., is the Chair of the ABA Section of Science & Technology Law and a member of the Program in Psychiatry and the Law, Department of Psychiatry, Beth Israel Deaconess Medical Center, Harvard Medical School. Rachel M. Cannon, Frantz C. Farreau, Amanda G. Hutchison, and Lauren E. Sutphin are J.D. candidates currently attending the William & Mary Law School.
The relatively recent arrival of cyberbullying as a psycholegal phenomenon means that social science research is still in its infancy.

unique nature of the Internet, which offers anonymity for the offender, as well as immediate circulation of and high visibility for his or her negative messages. This anonymity encourages behavior that might not otherwise have been committed were the perpetrator to be faced with immediate social repercussions. The power of broad dissemination, coupled with the illusion of low risk, encourages cavalier behavior. This circumstance enables perpetrators to cause damage of a kind and to a degree that was simply not available to most persons in the past, who lacked such tools for interconnection and for sharing their opinions.

Conduct Disorder is a diagnosis commonly linked with the role of the perpetrator in such cases. Indeed, among the specific DSM options for the clinician’s confirmation of this condition is the observation that the subject “often bullies, threatens, or intimidates others.” Other relevant diagnoses may include Attention Deficit Disorder, anxiety, and various personality disorders, as well as Child or Adolescent Antisocial Behavior, employed “when the focus of clinical attention is antisocial behavior in a child or adolescent behavior in a child or adolescent that is not due to a mental disorder . . . examples include isolated antisocial acts of children or adolescents (not a pattern of antisocial behavior).” Mental health professionals have devised a number of tests—such as the “Bullying Behavior Scale” and the “Bully/Victim Questionnaire”—that can be used to assist in teasing out the motivations of a particular perpetrator as well as to gauge the problems being experienced by a particular victim.

The Legal Response
The responsibility for monitoring and punishing cyberbullying has historically rested with the school system, not the courts. To the extent that schools are active and effective at enforcing these laws, there is sound logic supporting the tradition of their being the primary enforcers. Bullying behavior tends to be most prevalent in school-age children, whose main sources of authority are their parents and the school system.

In an atmosphere of increased media attention, there appears to be popular movement for a shift toward incorporating criminal liability, in addition to traditional civil tort liability. As of November 2011, all states but Hawaii, Michigan, Montana, and South Dakota had instituted some form of statutory prohibition against bullying, while 10 states—Arkansas, California, Connecticut, Kansas, Louisiana, Massachusetts, Nevada, New Hampshire, North Carolina, and Oregon—had promulgated such laws in a fashion that bore specific reference to cyberbullying, typically casting violations as misdemeanors. Missouri raises charges to a felony in cases in which the cyberbully is over 21 and the victim is under 17, and in which the cyberbully has previously committed this form of harassment. New York has proposed legislation that would create a statewide hotline, an offender registry, and the potential for a cyberbully to be prosecuted for a felony under circumstances in which some verifiable form of physical injury has occurred.

The shift toward criminal liability highlights the issue of the cyberbully’s intent in a way it obviously would not if he or she were only held civilly liable. In some states, newly promulgated statutes seem to hint at a recklessness or negligence standard, not requiring malicious intent, but only an intentional act that a reasonable person under the circumstances would know could cause harm. Other statutes require the presence of intentional purpose to harm, and yet others avoid the establishment of a mens rea standard, and thus leave this notion open to interpretation by the courts. These variations are essential to consider if the codification of anticyberbullying law continues its expansion.

Predictably, the criminalization approach has not met with universal approval on the part of scholars and activists, some of whom have continued to insist that these cyberbullying statutes run afoul of constitutional guarantees of freedom of speech. In J.S. ex rel. Snyder v. Blue Mountain School District (2010), a student created a MySpace profile of her school principal, containing profane language and insinuations that the victim was a pedophile and sexual addict. On appeal, the Third Circuit Court of Appeals found that there had been no substantial disruption of school activities (in line with requirements established by the Supreme Court of the United States in Tinker v. Des Moines Independent Community School District (1969)—and that school officials could not reasonably have forecast such a disruption—thus clearing the way for a determination that the student’s eventual suspension was a violation of her First Amendment rights. This court reached this decision even though it transpired that several persons had approached the victim and that the profile had been accessible by the general public until the student limited its visibility to 22 other persons whom she had “friended.” Similarly, in J.C. ex rel. R.C. v. Beverly Hills Unified School District (2010), a Federal District Court in California found that a YouTube video containing derogatory remarks about a classmate merited Tinker protections despite widespread student discussions of the video and the victim’s statement that she was upset and did not wish to attend classes, each arguably qualifying as disruptions to school activities under the Tinker standard.

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The Future

The relatively recent arrival of cyberbullying as a psychological phenomenon means that social science research is still in its infancy. Investigators have yet to address in substantial depth such issues as the inoculating value of previctimization counseling, differences in degrees of trauma when victims confront perpetrators in person as well as in cyberspace, and the most effective ways for psychotherapists and family members to effect meaningful change for both parties. Similarly, courts and legislatures will continue to grapple with constitutional restrictions and effective enforcement criteria for some time to come.

Endnotes


5. Carmel Privitera & Marilyn Anne Campbell, Cyberbullying? The New Face of Workplace Bullying? 12 Cyberpsychol. & Behav. 395, at 397.


16. Sameer Hinduja & Justin W. Patchin, Bullying, Cyberbullying, and Suicide, 14 Archives of Suicide Res. 206 (2010).


27. Laura M. Crothers & Edward M. Levinson, Assessment of Bullying: A Review of Methods and Instruments, 82 J. Counseling & Dev. 496, at 499–500.

28. Drogin & Young, supra note 9, at 684.


31. SB 818, Modifies Various Provisions Relating to Stalking and Harassment (Mo. 2008).

32. A04028, An Act to Amend the Penal Law, in Relation to Increasing the Penalties for Hazing; to Amend the Education Law; in Relation to Prohibiting Bullying or Cyber-Bullying on School Property; to Amend the Penal Law, in Relation to Establishing the Crime of Aggravated Harassment of Teachers and School Personnel; and to Amend the Education Law, in Relation to Creating a Statewide Central Registry for Bullying, Cyber-Bullying and Hazing Complaints (N.Y. 2009–2010).

33. See, e.g., HB 7, An Act to Amend Title 14 of the Delaware Code to Establish the School Bullying Prevention Act, 144 Gen. Assembly (Del. 2007).


