Prosecuting Cyberbullies

SUPPORTERS ARGUE
Cyberbullying causes real pain and psychological difficulties for its victims, and, in extreme cases, can even lead to suicide. Schools and parents have largely failed to seriously address cyberbullying, a growing problem among teenagers, who use the Internet and cell phones to socialize more and more frequently. States should pass new anti-cyberbullying legislation so that prosecutors can effectively target cyberbullies, setting an example for other teenagers and preventing tragedies.

OPPONENTS ARGUE
Schools and parents, not courts, should address cyberbullying. Prosecuting a few teenagers for their poor judgment is a far less effective strategy in fighting cyberbullying than a widespread, more comprehensive campaign to teach students the proper way to behave online and encourage tolerance and civility. Furthermore, legislating against online behavior is an infringement on civil liberties, particularly freedom of speech.

In September 2010, 18-year-old Tyler Clementi committed suicide by jumping off the George Washington Bridge, which connects New Jersey and New York. Tyler had just started college at Rutgers University in Piscataway, New Jersey. Several days before the suicide, Clementi’s roommate, Dharun Ravi, and Ravi’s friend Molly Wei had streamed footage online from a webcam hidden in Ravi’s and Clementi’s dorm room. The streaming video showed Clementi having a romantic encounter with another man.

Prosecutors in Middlesex County, New Jersey, charged Ravi and Wei with invasion of privacy, which carried a maximum sentence of five years' imprisonment. Some observers protested the charges, saying the incident was merely a youthful prank gone awry. Others, meanwhile, accused Ravi and Wei of homophobia and urged the county attorneys to prosecute them for hate crimes and even manslaughter. If charged with a hate crime, the students could face up to 10 years in prison. Richard McCormick, the president of Rutgers University, said that if Ravi and Wei are guilty of the crime with which the prosecutors had charged them, their actions "gravely violate the university's standards of decency and humanity."

Clementi’s suicide, which garnered national attention, followed at least three other widely reported suicides of teen boys that month. All of the boys had been bullied either for being openly gay or for being presumed to be gay. In October, President Obama (D) posted a video on the White House website expressing his shock at the string of bullying and suicides, and said he hoped society would progress from considering bullying to be "a normal rite of passage." Several days later, Obama’s wife, Michelle, delivered her own message condemning bullying.
Although students and schools have long struggled with student cruelty, cases such as Clementi's have revealed a new form of harassment—cyberbullying. According to the website of the Cyberbullying Research Center, the phenomenon is defined as "willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices." Cyberbullying methods can range from sending hurtful or threatening messages through instant or text messaging to spreading rumors online or posting embarrassing photos or videos online meant to mock or humiliate a classmate.

About 20% of more than 4,400 11–18-year-olds surveyed by the Cyberbullying Research Center in 2010 reported having been cyberbullied at some point in their lives. About 20% also admitted to having cyberbullied someone else. The survey found that cyberbullying is a growing problem because of the increasing frequency with which students use the Internet and cell phones to do homework and socialize.

At least 40 states have antibullying statutes on their books, and schools nationwide have spent millions of dollars over the last decade on antibullying campaigns, but cyberbullying represents a relatively new threat that parents, school administrators and legislators alike are unsure how to handle. According to Time magazine, "Technology has transformed the lives of teens, including the ways they pick on one another. If parents and teachers think it's hard to control mean girls and bullying boys in school, they haven't reckoned with cyberspace."

Should cyberbullies be prosecuted? Should the state legislatures and the federal government pass laws specifically outlawing cyberbullying, just as many states have passed laws against bullying?

Supporters of prosecuting cyberbullies argue that cyberbullying is a real threat that can cause its victims to develop severe emotional problems. Cyberbullies maliciously target their victims, revealing personal information on the Internet or harassing them through frequent or threatening messages, supporters note. Too often, advocates say, schools and parents fail to step in, leaving it to the criminal justice system to stop invasions of privacy or harassment by cyberbullies. Supporters are therefore calling upon states to pass new laws or update existing antibullying legislation to cover cyberbullying, so that prosecutors can charge cyberbullies under criminal law.

Criminals of prosecuting cyberbullies say that criminalizing online behavior might infringe on people's First Amendment right to free speech. Cyberbullying is not a problem for the courts, critics say, but a dilemma best solved by schools and parents. Prosecutors tend to press charges in cyberbullying cases that end in suicide, critics note, but defendants should be prosecuted only for their own actions, not for those of their victims. Instead of prosecuting a few cyberbully scapegoats in highly publicized cases, opponents say, the public should concentrate on spreading messages of tolerance and civility to all young people.

What is Cyberbullying?

Most antibullying legislation stipulates that, for an action to constitute bullying, it has to involve repeated harassment with the demonstrable intent to harm the victim, whether physically or psychologically. Like other kinds of bullying, cyberbullying is meant to do harm, using such electronic devices as computers and cell phones.

Cyberbullying can come in many forms. Cyber harassment, for example, refers to repeated hurtful e-mails, text messages or instant messages. Another form of cyberbullying is impersonation, in which cyberbullies pretend to be their victims online in order to sully their victims' reputations. Cyber denigration occurs when a cyberbully spreads derogatory or untrue information about someone online, or digitally posts an embarrassing or altered photo or video of that person.

The codirectors of the Cyberbullying Research Center, Sameer Hinduja—an associate professor at the School of Criminology and Criminal Justice at Florida Atlantic University in Jupiter, Florida—and Justin Patchin—a professor of criminology at the University of Wisconsin–Eau Claire—say that cyberbullying used to be most common in "chat rooms"—pages online where multiple users can post comments. The rise of social networking sites such as MySpace and Facebook, and the popular video-sharing site YouTube, however, have provided cyberbullies with more popular venues.

Besides being perpetrated in cyberspace, cyberbullying differs from physical bullying in several ways. First of all, a cyberbully may be able to act anonymously by, for example, creating a fake profile on a social networking site. According to some experts, the potential to be anonymous online can embolden bullies while intensifying victims' fears. As Time magazine journalist Bonnie Rochman writes, "Internet culture, with its avatars and screen names, can cultivate a sense of anonymity that allows people—especially teens who lack the biological ability to consistently predict the consequences of their actions—to act in ways they wouldn't face to face."

Second, while a traditional bully might be able to embarrass his or her victim in front of a few other schoolmates, cyberbullies, because of the wide reach of the Internet, have the ability to humiliate their targets—whether through a rumor, embarrassing photograph or mocking video—in front of potentially thousands or even millions of viewers.

Unlike traditional bullying, cyberbullying can occur virtually all the time. While victims of traditional bullying at school can usually find refuge at home, cyberbullies are in a position to potentially harass their victims 24 hours a day, seven days a week. Marlene Sandstrom, a psychology professor at Williams College in Williamstown, Massachusetts, writes that cyberbullies' ability "to attack their targets even after their actual physical contact ends...makes it hard for victims to find a safe haven. Walking away from the perpetrator, avoiding contact, or finding a protective ally...no longer does the trick."

Other observers, however, have contended that cyberbullying is just an updated form of old-fashioned adolescent harassment. John Palfrey, a law professor at Harvard Law School in Cambridge, Massachusetts, writes, "Cyberbullying is just bullying that happens to be mediated through digital technologies. There's nothing fundamentally different about it." While studies have shown that the number of cyberbullying incidents has risen, he notes, that does not necessarily mean that bullying overall is increasing. As Palfrey writes, "We...can't say that kids are meaner today than they were in the past."
According to experts, bullying has moved online and through cell phones simply because the social lives of young people have in large part moved into electronic media. While teenagers in previous decades primarily socialized at school or in other public spaces such as parks and malls, now much of the social lives of adolescents occurs online, on social networking sites such as Facebook, and through text messages. According to the New York Times, the occurrence of cyberbullying may be especially high in wealthier school districts where students are more likely to have computers and cell phones and often do not have after-school jobs, leaving them with more time to spend online. [See Social Networking and Privacy]

According to a study sponsored by the Centers for Disease Control and Prevention, published in 2007 in the Journal of Adolescent Health, incidents of cyberbullying rose by 50% between 2000 and 2005. The same report said that cyberbullying can cause emotional problems in victims—such as anxiety and depression—making it difficult to function at home and in school.

In August 2005, researchers at Clemson University in South Carolina released the results of a survey finding that about 18% of middle school students had been cyberbullied in the preceding two months. The same study found more cyberbullying perpetrators and victims among girls than among boys: about 33% of eighth-grade girls surveyed reported having been cyberbullied in the preceding two months, compared with 10% of boys.

Among teenagers who identify themselves as non-heterosexual, victim rates appear to be even higher. A study by a research team at Iowa State University in Ames found that half of non-heterosexual youths are regularly cyberbullied. Those victims, like others, most often do not report those bullying incidents either for fear of retribution, or because they think school officials or authorities would be unable to help them.

In some incidents, observers say, those fears may be justified. As Hinduja and Patchin write, "Parents often say that they don't have the technical skills to keep up with their kids' online behavior; teachers are afraid to intervene in behaviors that often occur away from school; and law enforcement is hesitant to get involved unless there is clear evidence of a crime or a significant threat to someone's physical safety." [See School Administrators Hesitate to Punish Cyberbullying That Takes Place Off Campus (sidebar)]

Cyberbullying Leads to Suicide, Prosecution

Over the past few years, several high-profile cases that have ended in tragedy have brought national attention to cyberbullying. In 2003, a 13-year-old Vermont teenager, Ryan Halligan, killed himself after he was taunted incessantly online and received numerous instant messages questioning his sexual orientation. Halligan's father became an antibullying activist, and the following year the Vermont state legislature passed an anti-cyberbullying law requiring schools to institute disciplinary policies addressing both on- and off-campus bullying.

In 2008, a cyberbullying case concerning a Missouri woman, 49-year-old Lori Drew, garnered national media attention. After Drew's daughter and a neighbor's daughter, Megan Meier, had a falling out, Drew and two other people set up a fake profile on MySpace under the name Josh Evans. "Josh" contacted 13-year-old Meier routinely, flirting with her, before eventually turning on her and saying that "the world would be a better place" without Meier in it. Shortly after receiving that message, Meier—who suffered from clinical depression—killed herself. Prosecutors charged Drew with one count of conspiracy and three violations of the Computer Fraud and Abuse Act, a 1986 federal law meant to prevent hacking. The prosecution argued that Drew had violated MySpace's terms of use, which stipulated that users provide truthful information when registering for a profile on the site. That violation of rules, prosecutors said, constituted "unauthorized access" to the site, a violation of the Computer Fraud and Abuse Act.

Some observers, however, balked at the charges. Experts noted that few Internet users regularly read the terms of use on all the websites they joined, and that sometimes it was beneficial for users of sites such as MySpace to present false information to protect their privacy. In September 2009, a California federal judge threw out Drew's misdemeanor convictions after ruling that laws criminalizing violations of websites' terms of service are too vague to be constitutional.

In 2008, Representative Linda Sanchez (D, California) introduced the Megan Meier Cyberbullying Prevention Act in the House. If the bill passes, any
electronic communication meant “to coerce, intimidate, harass, or cause substantial emotional distress to a person” will become a felony under federal law. In September, the House Subcommittee on Crime, Terrorism and Homeland Security held a hearing on the bill, but many legislators voiced concerns that the bill would violate First Amendment free-speech protections. The chairman of the subcommittee, Representative Bobby Scott (D, Virginia), warned that legislators should “be extremely careful before heading down this path.”

In January 2010, Phoebe Prince, a 15-year-old high school student in South Hadley, Massachusetts, hanged herself after being bullied both at school and on Facebook. District Attorney Elizabeth Scheibel prosecuted seven students for actions related to bullying Prince, charging them with, among other things, stalking, criminal harassment and civil rights violations. At the time of the incident, Massachusetts was one of the few states that had not adopted antibullying legislation. In May, Massachusetts—partly in response to the highly publicized Prince tragedy—passed an antibullying statute worded broadly enough to encompass out-of-school bullying, including cyberbullying, as long as such harassment “materially or substantially disrupts the education process or the orderly operation of a school.” [See Strict Massachusetts Antibullying Law (sidebar)]

Also in January, administrators at McClure Middle School in Seattle, Washington, suspended 28 students after they created a Facebook club intended to bully another student. In February, three 14-year-old boys in Newbury, Massachusetts, were arrested and charged with identity theft after they created a Facebook profile under a classmate’s name in order to harass him.

In September 2010, Education Secretary Arne Duncan hosted a Bullying Prevention Summit in Washington, D.C. In his speech at the summit, Duncan noted that the administration of President Obama (D) had requested a 12% increase in funding for antibullying programs.

Cyberbullies Cause Real Harm and Should Suffer Real Consequences, Supporters Say

Supporters of prosecuting cyberbullies say that it is possible to distinguish teenagers who are merely being thoughtless from those who have carried out premeditated acts of cruelty, and press charges appropriately. Malcolm Lazin, the executive director of Equality Forum, a gay rights advocacy group based in Philadelphia, Pennsylvania, says that the defendants in the Clementi case, for example, deserve to be put on trial. He told the New York Times, “Clearly, what they did was premeditated. This was not a visceral response. This was something well thought out, executed and then put on” the Internet for all to see. Lazin urged prosecutors in the Clementi case to strengthen their charges from invasion of privacy to manslaughter.

Furthermore, supporters argue, cyberbullies often knowingly post private information about their victims online. Prosecutors should not tolerate that violation of privacy, supporters insist. Lazin says that Clementi’s harassers “had to know that outing a reclusive 18-year-old on the Web would be emotionally explosive. As a society we should not tolerate—whether straight or gay—this invasion of the most basic privacy and its malicious exploitation on the Internet.”

Indeed, cyberbullying can have dire consequences for victims, supporters note. Representative Sanchez, who sponsored the Megan Meier Cyberbullying Prevention Act, writes in the Huffington Post, “Rather than build character, bullying can cause children to become anxious, fearful, unhappy, and even cause them to be physically sick. A young person exposed to repeated, severe and hostile bullying online is deserving of protections because bullying puts them at risk for depression and suicide.” Bullying can lead not only to self-harm, supporters note, but also to the urge to harm others. Studies have shown that perpetrators of school violence—such as the two students who went on a shooting rampage at Columbine High School in Colorado in 1999—often have a history of both bullying and being bullied themselves.

Because of the seeming inability of parents and school administrators to recognize and stop cyberbullying before it is too late, prosecutors must step in, supporters say. According to Time journalist Nancy Gibbs, Scheibel (who prosecuted Prince’s bullies) “was forced to act by the craven failures she saw.” Gibbs describes Scheibel’s philosophy as follows: “If you don’t police this, we will, [prosecutors] declare—a warning aimed at the abdicators as much as the perpetrators.” Supporters note that school administrators in the Clementi and Prince cases, both of which led to suicide, knew about the bullying and took no meaningful action to stop it.

In order to indict cyberbullies, prosecutors need new, up-to-date laws, supporters say. Prosecutors charging Lori Drew, supporters note, had to resort to using anti-hacking legislation because existing antibullying legislation in Missouri did not cover actions in cyberspace. Daniel Gelb, a criminal defense lawyer in Boston, Massachusetts, and a former prosecutor, writes that because abuse on social networking sites “can lead to extreme emotional stress and mental anguish,” and even suicide, “the law must evolve to address how our society communicates, promoting proper conduct, and deterring future bullying with a legal means to punish those who cause harm.”

In fact, supporters contend, laws against cyberbullying are conspicuously absent from the wide range of laws regulating online behavior. Sanchez argues, “[W]e have laws criminalizing stalking, sexual harassment, identity theft and more when it takes place in person and online. All of these actions have consequences. But there is one serious online offense that has no penalty—cyberbullying.”

Since, supporters say, bullying and cyberbullying are equally dangerous, federal and state governments should legislate against both. Sanchez writes, “Do we not think it is as serious because it takes place in cyberspace and not face to face?... It’s happening everywhere and it follows kids home—occurring at any hour of the day or night. Cyberbullying is hurtful enough and affecting kids enough that its victims have turned to suicide or violence just to make it stop.”

Furthermore, supporters argue, updating legislation against, and prosecuting, cyberbullying makes the problem more visible, and, in turn, make people more aware of their behavior and what they say online. In an interview with National Public Radio (NPR), Sanchez said, “[B]y virtue of having the law on the books, it starts a discussion with parents, with school administrators and with kids that this kind of behavior isn’t tolerated.”
Courtroom Is Not the Place to Stop Cyberbullying, Critics Say

Prosecuting cyberbullying could infringe on freedom of speech, critics contend. Robert Trestan, a civil rights lawyer for the Anti-Defamation League, a Washington D.C.–based organization in defense of civil liberties, writes of the furor against cyberbullying, "In the grief and outrage that fuels [sic] our emotions, we must not forget about the constitutional freedoms all of us enjoy. Too often a rush to judgment has infringed on those rights."

Critics argue that criminalizing online expression runs contrary to ideas of individual liberty. Wendy Kaminer, a civil libertarian and author, contends that although the actions of the bullies who targeted Meier were "unforgivable," they should not be considered criminal. She writes, "Human malevolence is a problem the law can't solve and often can't even punish, without grievous infringements on liberty. The cost of a right to feel good about yourself is everyone's right to be free."

Instituting legislation against cyberbullying, critics say, would criminalize what is typical schoolyard abuse simply because it happens in cyberspace. Representative Louie Gohmert (R, Texas) called the Megan Meier Cyberbullying Prevention Act "another chapter of over-criminalization." He said, "When a bully beats up a smaller student and the smaller student goes home, gets on the Internet and says the playground bully is mean, ugly and stupid, it's the smaller student victim that has now probably committed a federal felony under this proposed law."

Critics note that prosecutors will be most likely to level charges against cyberbullies whose victims commit suicide. But cyberbullies, critics say, should not be punished for the actions of their victims, which are out of their control. Paul Butler, a law professor at George Washington University in Washington, D.C., and a former federal prosecutor, writes that although suicide is a tragic response to cyberbullying, "It is also a rare response." He continues:

> Of the millions of children who suffer bullying, few take their own lives. Bullies "cause" suicides in the same way that a man "causes" the suicide of a lover he spurns. The criminal law typically does not hold people responsible for outcomes that are idiosyncratic or unpredictable.... Every tragedy doesn't have to result in somebody going to jail.

Furthermore, critics say that schools and parents should be the ones policing children's online activity, not courts and legislatures. Schools should be teaching students how to use the Internet responsibly, critics say. Patchin writes, "The vast majority of cyberbullying incidents can and should be handled informally: with parents, schools, and others working together to address the problem before it rises to the level of a violation of criminal law." More than 40 states already have antibullying legislation, critics note, yet the problem still exists.

Critics balk at suggestions that alleged cyberbullies, such as Ravi and Wei at Rutgers University, should be charged with anything as grave as manslaughter. Richard Kim, a senior editor at the *Nation*, acknowledges that their actions were undoubtedly "immature, prurient and thoughtless" but goes on to say, "That they acted with homophobic malice, that they understood what the consequences of their actions might be or that their prank alone—or even chiefly—triggered Clementi's suicide is far less clear."

Indeed, critics say prosecuting cyberbullies not only is overzealous, but is also a distraction from more effective strategies to address the problem. Butler writes, "If the only tool you have is prison, then every problem looks like a crime.... A national conversation about the importance of civility and respect would be a more effective tribute to Tyler Clementi than trying to prosecute his bullies for manslaughter. They acted meanly, and possibly even criminally, but not homicidally."

Indeed, especially in the case of gay cyberbully victims, the solution needs to be far more encompassing than simple prosecution, critics say. Kim writes, "[W]hen faced with something so painful and complicated as gay teen suicide, it's easier to...invoke the wrath of law and order, to create scapegoats out of child bullies...to blame it on technology." Instead, critics say, those concerned with cyberbullying should launch educational efforts about the importance
Parents, Websites Fight Cyberbullying

Experts have urged parents to become more educated about the websites and new technology that often define much of their children's social lives, speak with their children about refraining from cyberbullying and denounce it when others commit it. Furthermore, according to the website cyberbullyhelp.com, parents should "set up guidelines for appropriate use for each new piece of technology that is brought into the home." The authors of the site also recommend that schools incorporate into their curriculums lessons on appropriate "netiquette"—the respectful and courteous treatment of others online.

Social networking sites and other popular websites, meanwhile, have strengthened measures to protect users against abuse. YouTube, a video-sharing site, has introduced a tool called the "Abuse and Safety Center," which allows viewers to report inappropriate videos, including those posted by students meant to mock their classmates. MySpace, in turn, allows parents to flag abuses and is developing technology that will be able to recognize and delete inappropriate postings, such as hate speech, even before they are reported.

Others, however, say that adults need to address the root causes of cyberbullying. Danah Boyd, a fellow at the Berkman Center for Internet and Society at Harvard University in Cambridge, Massachusetts, told the New York Times, "There are lots of kids hurting badly online. And guess what? They're hurting badly offline too. Because it's more visible online, people are blaming technology rather than trying to solve the underlying problems of the kids that are hurting."

Discussion Questions

1) Do you think cyberbullies should be prosecuted? Why or why not?

2) Do you think schools should be able to punish students for what they say or do at home on the Internet? Explain your answer.

3) If you were a prosecutor in a cyberbullying case in which the bullied victim committed suicide, what charges would you press against the cyberbully, if any? Explain your position.

4) What do you think social networking sites such as Facebook or MySpace should do about cyberbullying?

5) Have you ever been cyberbullied? How does it feel? Do you notice cyberbullying at your school? Write an essay about cyberbullying among your friends and what should be done to stop it.

Bibliography


"You Want to Take This Online?" Time, August 01, 2005, www.time.com.


Additional Sources

Additional information about prosecuting cyberbullies can be found in the following sources:


Contact Information

Information on how to contact organizations that either are mentioned in the discussion of prosecuting cyberbullies or can provide additional information on the subject is listed below:

Berkman Center for Internet and Society
23 Everett St., Second Floor
Cambridge, Mass. 02138
Telephone: (617) 495-7547
Internet: www.cyber.law.harvard.edu

Equality Forum
1420 Locust St., Suite 300
Philadelphia, Pa. 19102
Phone: (215) 732-3378
Internet: www.equalityforum.com

Facebook
1601 S. California Avenue
Palo Alto, Calif. 94304
Telephone: (650) 543-4800
Internet: www.facebook.com

Keywords and Points

For further information about the ongoing debate over prosecuting cyberbullies, search for the following words and terms in electronic databases and other publications:

Cyberbullying
Cyberharassment
Megan Meier Prevention Act
Phoebe Prince
Tyler Clementi