



NATIONAL FORENSIC LEAGUE

Public Forum Topic Analysis

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Resolved: Cyberbullying should be a criminal offense.

Overview:

- I. Topic analysis by Jeremy D. Johnson, National Forensic League
- II. Interview with Professor Jody M. Roy, Professor of Communication and Chair of the Department, Ripon College, founder of Students Talking About Respect, Inc. and chair of the National Association of Students Against Violence Everywhere (SAVE) board of directors.

Topic Analysis

According to the National Crime Prevention Council, “Online bullying, called cyberbullying, happens when teens use the Internet, cell phones, or other devices to send or post text or images intended to hurt or embarrass another person.”¹ This broad definition seems to adequately encompass what many would suggest constitutes as cyberbullying. With a plethora of recent events highlighting the dangers of cyberbullying, such as a recent case in which a Rutgers University student committed suicide after being harassed, the problem is once again in the national spotlight.

Representative Linda Sanchez (D-California) has on more than one occasion introduced legislation that would criminalize cyberbullying. One example is the Megan Meier Cyberbullying Prevention Act, named after a young girl who took her own life after being tricked over MySpace, a popular social networking site. The Congressional Research Service summarized the bill:

4/2/2009--Introduced.

Megan Meier Cyberbullying Prevention Act - Amends the federal criminal code to impose criminal penalties on anyone who transmits in interstate or foreign commerce a communication intended to coerce, intimidate, harass, or cause substantial emotional distress to another person, using electronic means to support severe, repeated, and hostile behavior.

Following are a few potential considerations for each side of the debate:

Pro side

Cyberbullying is a widespread problem

Much of the precedent for considering cyberbullying a crime derives from harassment laws. Cyberbullying criminalization would essentially look to extend harassment charges into the cyber realm, particularly for protection of minors. The existence of these laws suggests that the issue can be treated as one of serious, even criminal, offense. Recent surveys found that 43 percent of teens were cyberbullied last year.² The pervasiveness of cyberbullying surely merits attention and care.

Criminalization could serve as a deterrent

If potential perpetrators faced legal consequences as a result of cyberbullying, many would argue that it could significantly reduce the number of incidents. This argument would suggest that law could serve to deter people from unjust or malicious actions as a result of fearing the potential consequences.

Criminalization could give victims a method to stop the bullying

Should cyberbullying be a criminal offense, victims would be able to appeal to authorities to intervene in an ongoing cyberbullying situation. One might currently argue that victims see little way out of a bullying situation, since the mechanism to stop bullying is largely untenable; as such, victims might be empowered by the potential to have authorities intervene.

Criminalization could save lives

A corollary to the previous argument is that fewer victims might take their own lives should they see an opportunity to alleviate the situation. Many victims take their lives as a result of hopelessness, believing that the only way out of the situation is death; with hope that authorities could help, the frequency of cyberbullying suicides could be reduced.

Cyberbullying could serve as a precedent for legal extension into the cyber realm

The cyber realm has presented a barrier for a number of laws, because anonymity and Internet privacy tend to make many legal differences impossible to overcome. Should cyberbullying be criminalized, it could serve as a precedent for laws being translated into the cyber world. Further laws, such as libel/slander laws, might be able to transcend the cyber barrier by following this precedent. Mitigating the culture of lawlessness on the Internet would be valuable; criminalization might remind us that anonymity does not mean we are free to violate laws and harm others.

Cyberbullying invades privacy more than other forms

Because cyberbullying can follow victims wherever they go via Internet and cell phones, it is a more heinous violation of privacy. Whereas normal bullies are limited by physical means (unless they engage in stalking behavior, which is grounds for restraining orders and legal action), cyber bullies can be anywhere and everywhere a victim is.

Con side

Many opposed to criminalizing cyberbullying argue that it is a case of “overcriminalization.” Opponents contend that cyberbullying may not be right, but that it should not be illegal. From this perspective, potential laws against cyberbullying would be extraneous and simply another burden for the government to uphold.

Cyberbullying should not constitute its own legal category

Regular bullying in itself is not a crime; it only becomes a crime when it constitutes ground for harassment. This argument purports that cyberbullying can only be criminal when it is considered harassment, much like bullying. This suggests that “cyberbullying” should not be a crime, but that harassment laws should be enforced when violated. In addition, hate speech laws cover much of what cyberbullying criminalization might; often, cyberbullies resort to hateful speech, demeaning others on the basis of sex, class, race, etc.

An apt analogy may be the issue of cell phone use while driving. Many consider this law unnecessary because distracted driving laws already cover cell phone use. Some critics argue that better enforcement of existing distracted driving laws would render specific laws against cell phone use unnecessary.

Considering cyberbullying a criminal offense would be nearly impossible to enforce

Because the Internet is centered around anonymity, it is often extremely difficult to track down particular users. Though IP addresses can be used to track people, it takes a *lot* of effort and cooperation with Internet providers, Web sites and law enforcement, particularly if harassing users are trying to remain anonymous. The difficulty in enforcing such laws would render them much less effective.

Cyberbullying criminalization would further strain an already strained legal system

Overcriminalization directly feeds from this concept, asserting that creating more categories of crime will only further strain a legal system bogged down with trials and a crowded prison/rehabilitation system. This criminalization would make a *large* portion of the population count as criminal.

Criminalization would not deter cyberbullying

Because it is extremely easy to bully over the Internet and through other cyber methods like cell phones, almost anyone is capable of trying it. Opponents of criminalization argue that a reactive policy of charging cyberbullies fails to appropriately address the problem and does not prevent damage, such as the recent cyberbullying suicides; instead, they suggest, we should focus on the causes of bullying.

Cyberbullying is by nature nebulous, making it difficult to identify

What precisely is cyber bullying? Opponents argue that because it is so difficult to define, nobody may actually know if they are committing a crime. Is cyberbullying simply harassment with the intent to coerce or harm, as some have suggested? What if the intent (guilty mind/*mens rea* element) is not there, but actions somehow caused harm anyway? Just as typical bullying is often hard to define (and many contemporary definitions are *extremely* broad), cyberbullying is incredibly difficult to definitively pin down; to make it a crime would almost certainly create a vague category of crime.

Criminalization does not help people cope with bullying

Most people will at some point in their lives be bullied. Opponents of criminalization may argue that policy should be geared toward helping people *cope* with cyberbullying, rather than attempting to deter it. Rather than putting funds toward punishing droves of people, education on coping mechanisms may be more worthwhile. Being bullied is almost inevitable; criminalization will almost certainly not eliminate bullying. As such, it would be more valuable to help people cope.

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Interview with Professor Jody M. Roy

NFL: How would you define cyberbullying?

Roy: I would define cyberbullying as the use of technology to humiliate, harass, intimidate, or harm another person.

NFL: In what ways is cyberbullying different from regular bullying?

Roy: It has the potential to be far more psychologically and socially damaging because it can reach a wider "audience." In conventional bullying, there may be no "witnesses" to the actual event, whereas in most forms of cyberbullying (such as social-networking attacks) hundreds, if not thousands, of people may witness the event. Whether or not those witnesses judge the victim as a result, the victim may well feel judged and humiliated and, thus, have a more difficult time recovering. That said, unless cyberbullying tactics are used to coordinate physical violence or inspire self-injury in the victim, cyberbullying is, by definition, not so likely as conventional bullying to result in physical injury or death of the victim.

NFL: Is cyberbullying as emotionally damaging as face-to-face bullying?

Roy: I believe it is worse. As noted above, the victim's awareness of a potentially vast audience witnessing their plight is, itself, damaging. Additionally, because cyberbullying is often conducted either anonymously or via aliases, the victims usually do not know for certain the identity---or even the number---of their attackers. That can add a devastating level of fear in the aftermath and lead to distrust of others in the future.

NFL: How serious is the cyberbullying problem in the U.S.?

Roy: We see news reports almost weekly about a particularly "tragic" case. We have to worry about how many "routine" cases---the kind that make victims miserable, but don't make the national news---happen for each one of those so outlandish as to warrant network coverage.

NFL: Is the problem of cyberbullying growing in scope? Why or why not?

Roy: I believe the problem is growing in scope in large part because our legal system is struggling to keep pace with advances in technology. Even conventional bullying is often not taken as seriously as it should be because it involves children and often happens on school grounds; as a result, what would be a criminal action if it involved an older person---or even a minor, but off school grounds---is treated as something different and less severe. The term "bullying" itself is actually a problem: much of what we label "bullying" is actually "assault" or "battery." The same phenomenon is happening with cyberbullying, it appears, only more so due to the complicating legal factors of the technology serving as a veil in some cases.

NFL: Who do you think should be responsible for stopping cyberbullying?

Roy: Every person should be involved. This is an American problem that requires all our efforts to stop.

NFL: Do you think criminalizing cyberbullying could be a viable strategy for solving the problem?

Roy: Yes. See above.

NFL: How can children cope with cyberbullying?

Roy: Any form of bullying makes a victim feel ostracized, humiliated, and afraid of future attacks. It is critical that victims not also feel totally isolated. One single friendly, supportive person--whether a parent, teacher, classmate---can be critical to a victim. Additionally, kids who generally have a strong sense of authentic self-esteem, based on various aspects of their life (personality, talents, academics, athletics, spirituality, community service, etc.) are more resistant not to bullying per se, but to its most devastating consequences. Parents and teachers can help vaccinate kids against the worst consequences of bullying by helping them develop in multi-faceted ways, such that they can hold on to other positive areas in their life when a bully does attack.

Jody M. Roy, Professor of Communication and Chair of the Department at Ripon College, holds a Ph.D in Communication from Indiana University. She is a violence-prevention activist and the author of [Love to Hate: America's Obsession with Hatred and Violence](#) and [Autobiography of a Recovering Skinhead: The Frank Meeink Story as told to Jody Roy](#). Roy founded Students Talking About Respect, Inc. in 2001; the organization is now a part of National Association of Students Against Violence Everywhere, found at www.nationalsave.org. SAVE is an organization dedicated to violence and harassment prevention in schools. Jody is chair of the organization's board of directors.
