



Cyberbullying & Law

Presented by Annie Luo, Alexandra Li, Chloe Akins, Kevin Yan, Jacob Zhou

Table of contents

01 Backgrounds

What are
Cyberbullying
Laws?

02 First Amendment Issue

The incompatibility
between First
Amendment and
cyberbullying laws

03 Content Neutrality

04 Policy Proposals

Existing issues &
proposed policy
and changes

05 Critique & Suggestion



Bullying: seek to harm, intimidate, or coerce

CONSEQUENCES OF BULLYING

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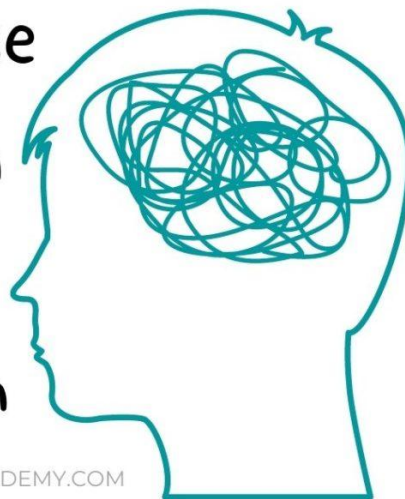
! Suicide/homicide

! Drug abuse

! Depression

! Anxiety

! Aggression



Cyberbullying, sometimes is also called cyber-harassment, is “the use of information and communication technologies to support deliberate, repeated, and hostile behavior by an individual or group, that is intended to harm other.”

Cyber bullying adds a new dimension to this powerlessness with its ability to reach the target 24 hours a day, 7 days a week. Now a target cannot even rely on his or her home as a safe haven from bullying behavior.





- Following several cyberbullying cases where the victim commit suicide (ie: Megan Meier, a 13-year-old girl committed suicide in 2016 after suffering ongoing bullying on MySpace).
- States have pursued both educational and legislative approaches to combat the phenomenon.
- By 2011, more than 45 states currently have cyberbullying laws
- Focused on school policies for dealing with the bullying.
- Overall, the law has struggled to keep apace with advances in technology.
- On-Campus vs Off-Campus



Why is it difficult to enforce Cyberbullying laws?

Question #1 First Amendment Challenges Cyberbullying Laws

- People v. Marquan M (First case that a US Court weighed the constitutionality of criminalizing cyberbullying)

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, June 5, 2014

No. 139 People v Marquan M.

(papers sealed)

Marquan M., a 15-year-old student at Cohoes High School, was arrested in June 2011 for alleged violations of Albany County's recently-enacted "cyber-bullying" law, which makes "cyber-bullying against any minor or person in the County of Albany" a misdemeanor. Marquan had created a "Cohoes Flame Page" on Facebook and posted photos of 10 classmates, along with comments about them that were largely derogatory and sexual in nature.

The local law defines "cyber-bullying" as "any act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person." Marquan challenged the validity of the law, arguing it criminalized protected speech and was unconstitutionally vague and overbroad. After Cohoes City Court rejected his constitutional claims and denied his motion to dismiss, Marquan pled guilty to one count of cyber-bullying and was sentenced as a youthful offender to three years of probation.

Albany County Court affirmed. Rejecting the free speech claim, it said, "The law's proscription is limited to conduct -- using mechanical or electronic forms of communication -- that lacks a legitimate purpose.... [T]he law does not circumscribe pure speech directed at an individual but it is directed at words communicated mechanically or in electronic form coupled with intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person, about which the County has a legitimate state interest to prohibit.... In any event, to the extent that pure speech is implicated, constitutional protections are not absolute -- especially where, as here, substantial privacy interests are being

Facts



In 2010, the Albany County introduced the offense of cyberbullying.

The law defined cyberbullying as “any act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person.” (statute of NY state law)

The defendant Marquan created a Facebook page where he posted sexual information and photographs of fellow classmates and other adolescents on Facebook.

At trial, Marquan argued that the law violated the Free Speech Clause of the First Amendment because the clause was overbroad and unlawfully vague.

Decision (5-2)



“overbroad and facially invalid under the First Amendment.”

The law was so broad that it criminalized a number of protected communications far beyond the cyberbullying of children.



Dilemma:

- 1) The need for cyberbullying laws?
- 2) The Freedom of Speech?

Question #2

Should Cyberbullying laws
be “Content neutral?”



State of North Carolina v. Robert Bishop. (2016)

- **Defendant Bishop posted negative comments consistently about his classmate on sexually themed internet post.**
- **Bishop was charged with one count of cyberbullying in violation of N.G.G.S §14-458.1.**



- The law itself aims to inhibit any person to use a computer or computer network to intimidate or torment a minor with intent, to make any statement with the intent to immediately provoke, etc.

§ 14-458.1. Cyber-bullying; penalty.

- (a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:
- (1) With the intent to intimidate or torment a minor:
 - a. Build a fake profile or Web site;
 - b. Pose as a minor in:
 1. An Internet chat room;
 2. An electronic mail message; or
 3. An instant message;
 - c. Follow a minor online or into an Internet chat room; or
 - d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.
 - (2) With the intent to intimidate or torment a minor or the minor's parent or guardian:
 - a. Post a real or doctored image of a minor on the Internet;
 - b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
 - c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.
 - (3) Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a minor.
 - (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).
 - (5) Sign up a minor for a pornographic Internet site with the intent to intimidate or torment the minor.
 - (6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the minor.
- (b) Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.
- (c) Whenever any person pleads guilty to or is guilty of an offense under this section, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146. (2009-551, s. 1; 2012-149, s. 3.)

Court Decision



The court unanimously decided that the cyberbullying statutes in North Carolina unconstitutionally restricted speech in violation of the First Amendment.

The law was not content neutral. The Statute punished speech on the basis of its viewpoint.
“The statute criminalizes some messages but not others.”

Statute’s failure to define important words such as “torment,” and “personal.”



Summary



- Question 1: How does First Amendment Challenge Cyberbullying Laws?
- Question 2: Furthermore, Should Cyberbullying Laws Be “Content Neutral?”





Question #1 The Resulted First Amendment Limitations to Cyberbullying laws

The **First Amendment (Amendment I)** to the United States Constitution guarantees the freedom of speech and the freedom of press.

However, Four precedents give the schools power to regulate the speeches of students in those institutions.

Tinker v. Des Moines Independent Community School District
Student speech rights could be restricted only if they “substantially interfere[d] with the work of the school or impinge[d] upon the rights of other students.”

Bethel School District v. Fraser
The Court recognized limits to student speech rights in this case.

Hazelwood School District v. Kuhlmeier
The Hazelwood Court established the right of schools to censor school-sponsored publications.

Morse v. Frederick
The Court effectively expanded school authority beyond the campus to outside events sanctioned by the school, thereby continuing the post-*Tinker* trend of limiting student speech rights.

The Dilemma

Cyberbullying is neither on-campus nor related to the campus. Therefore, it is hard to apply precedents like Tinker and Morse.



If the school regulated the students' online speech, there is a risk for the school to violate the First Amendment.

If the school failed to regulate the students' online speech, not only may the problem of cyberbullying continue to escalate, but schools also may face Title IX liability for not preventing harassment when cyberbullying involves sexual or racially discriminatory content.

Therefore.....



The schools and the educators have the responsibility and authority to teach or help the students to avoid the internet dangers.

We should have cyberbullying law for failing to fight cyberbullying would bring harm to many teenagers and violate the Title IX, but lawmakers should also better define the scope of public-school authority to prescribe speech (e.g. It might not be proper for the school to restrict students' online expressions off-campus).



Content-Based Laws v. Content Neutrality

A content-based law or regulation discriminates against speech based on the substance of what it communicates. In contrast, a content-neutral law applies to expression without regard to its substance.

Content-based laws are seen as a threat to free speech because the government would be suppressing certain speech based on the content of the speech itself

The government wants to implement viewpoint neutrality

Government actions must be done in an even-handed way and not discriminate on the message advocated

State of North Carolina v. Robert Bishop

Cyberbullying statute made it a crime to

- (1) post or encourage others to post
- (2) certain information to the Internet
- (3) with the intent to intimidate or torment a minor.



Posting is considered speech and posting itself had been criminalized

“Posting information on the Internet – whatever the subject matter – can constitute speech as surely as stapling flyers to bulletin boards or distributing pamphlets to passersby – activities long protected by the First Amendment.”

Court found (by its own terms), the law was not content neutral:

“The statute criminalizes some messages but not others, and makes it impossible to determine whether the accused has committed a crime without examining the content of his communication.” Consequently, the statute punished speech on the basis of its viewpoint, and was subject to the most stringent scrutiny.

Content-Based, but also Content-Neutral?

If there is a purpose outside of regulating the content, such as secondary consequences of free speech, then the law is seen as content-neutral even though the application of the law depends on the message

So, application of the principle of content neutrality by the court has resulted in content-based laws to be seen as content-neutral because they are motivated by a permissible content-neutral purpose



ISSUE

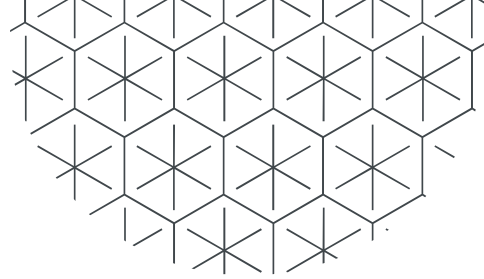


Court is looking at the the Cyberbullying Statute in terms of its content–neutrality

The standard of being content–neutral for laws like Cyberbullying are paradoxical when the law itself hinges on the regulation of speech

Since, content–neutrality is a large factor in the ability of a law to be constitutional, then laws regarding Cyberbullying are hard to legislate

Cyber–bullying laws and statues are heavily reliant on analysis of the content itself so seems inherently content–based, which is typically assumed to be unconstitutional



The Practical aspect



- ❏ Issues specific to cyberbullying
 - ❏ Proposed policies and changes
-

Issues



1. Policymakers have to keep pace with technological development
2. The harm caused often not materialized
3. School policies being the only reference
4. Lack of a reporting agency
5. Victim shaming and a negative cycle

Policies

-state's own cyberbullying department

- Collaboration with the IT department
- Clear guidelines provided to public schools
 - Punishment stated explicitly
 - What constitutes a cyberbullying case–2 key factors
 - Bullies' intention
 - Victims' suffering
 - A report agency on school level
 - Collaboration with mental health agencies

Policies

-state's own cyberbullying department

- ◆ Above standards available to all education institutions
 - The department will be involved in hard cases
- ◆ Cases where school policies do not apply
 - Parties involved are from different states
 - Parties involved are from institutions where the guidelines are not adopted
 - Adults are involved

Changes-Education



- ❑ Incorporate courses that educate students on negative impacts of cyberbullying into curriculum
- ❑ Tackle with the issue of victim shaming
 - ❑ Bring a stop to the negative cycle of victims becoming abusers



Critique on Policies and Further Suggestions



- Building new state department can be very expensive.
- Government's unrestricted surveillance
- Clearer Guidelines:
 - Definition of “severe cyberbullying”
 - Intention requirement
 - Report Agency: what about private bullying & secondary harms?

- Uniform Standard: does not further incentivize private schools to change
- “Divide-and-Conquer” strategy

- Education: Preventative Measure
 - Takes the victim's perspective
 - List possible biases that could lead to victim blaming



Conclusion

Life is Fantastic!
Call the Cops!
Be Strong!

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