

LAW'S EXPRESSIVE VALUE IN COMBATING CYBER GENDER HARASSMENT

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The online harassment of women exemplifies twenty-first century behavior that profoundly harms women yet too often remains overlooked and even trivialized. This harassment includes rape threats, doctored photographs portraying women being strangled, postings of women's home addresses alongside suggestions that they should be sexually assaulted and technological attacks that shut down blogs and websites. It impedes women's full participation in online life, often driving them offline, and undermines their autonomy, identity, dignity, and well-being. But the public and law enforcement routinely marginalize women's experience, deeming it harmless teasing that women should expect, and tolerate, given the Internet's Wild West norms of behavior.

The trivialization of phenomena that profoundly impact women's basic freedoms is nothing new. No term even existed to describe sexual harassment of women in the workplace until the 1970s. The refusal to recognize harms uniquely impacting women has an important social meaning—it conveys the message that abusive behavior towards women is acceptable and should be tolerated.

*Grappling with the trivialization of cyber gender harassment is a crucial step to understanding and combating the harm that it inflicts. My previous work *Cyber Civil Rights* explored law's role in deterring and punishing online abuse. This Essay emphasizes what may be law's more important role: its ability to condemn cyber gender harassment and change the norms of acceptable online behavior. Recognizing cyber harassment for what it is—gender discrimination—is crucial to educate the public about its gendered harms, to ensure that women's complaints are heard, to convince perpetrators to stop their online attacks, and ultimately to change online subcultures of misogyny to that of equality.*

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INTRODUCTION

The harassment of women online is a pernicious and widespread problem.¹ It can be severe, involving threats of sexual violence, doctored photographs of women being suffocated, postings of women's home addresses alongside the suggestion that they should be raped, and technological attacks that shut down feminist blogs and websites.² Cyber harassment is a uniquely gendered phenomenon—the majority of targeted individuals are women,³ and the abuse of female victims invokes gender in threatening and demeaning terms.⁴

Such harassment has a profound effect on targeted women. It brands them as incompetent workers and inferior sexual objects. It discourages them from writing and earning a living online.⁵ It raises their vulnerability to offline violence. The harassment causes considerable emotional distress.⁶ Some women have committed suicide.⁷

To avoid future abuse, women assume gender-neutral pseudonyms or go offline, even if it costs them work opportunities.⁸ Others curtail their online

¹ Although its scope is difficult to estimate, one study suggests that approximately 40% of female Internet users have experienced cyber harassment. Azy Barak, *Sexual Harassment on the Internet*, 23 SOC. SCI. COMPUTER REV. 77, 81 (2005); Francesca Philips & Gabriela Morrissey, *Cyberstalking and Cyberpredators: A Threat to Safe Sexuality on the Internet*, 10 CONVERGENCE: INT'L J. RES. INTO NEW MEDIA TECHS. 66, 72 (2004) (estimating that one-third of female Internet users have been harassed online). Any existing statistical evidence surrounding cyber gender harassment is likely to underestimate the phenomenon as women tend to under-report it due to feelings of shame and embarrassment. Report from the Attorney General to the Vice President, *1999 Report on Cyberstalking: A New Challenge for Law Enforcement and Industry*, Aug. 1999, <http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm>. This is unsurprising given women's under-reporting of workplace sexual harassment. Louise Fitzgerald et al., *Why Didn't She Just Report Him?*, 51 J. SOC. ISSUES 117, 199-21 (1995).

² Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 69-75 (2009).

³ P. Sheridan & T. Grant, *Is Cyberstalking Different?*, 13 PSYCHOL. CRIME & LAW 627, 637 (2007) (citing various studies suggesting that the majority of cyber stalking victims were female and their online stalkers were less likely to be ex-partners of the victims).

⁴ Barak, *supra* note 1, at 78.

⁵ Posting of Louisa Garib on On the Identity Trail blog, *Blogging While Female, Online Inequality and the Law*,

http://www.anonequity.org/weblog/archives/2007/08/blogging_while_female_online_i.php (Aug. 21, 2007 11:59).

⁶ Ellen Nakashima, *Sexual Threats Stifle Some Female Bloggers*, WASH. POST, Apr. 30, 2007, at A1.

⁷ B.J. Lee, *When Words Kill: Suicide Spurs Bid to Regulate the Net in South Korea*, NEWSWEEK.COM, Oct. 15, 2008, <http://www.newsweek.com/id/164013>.

⁸ Ellen Nakashima, *Sexual Threats Stifle Some Female Bloggers*, WASH. POST, Apr. 30, 2007, at A1; *see, e.g.*,

Posting of Heart to Women's Space, *Blogging While Female. Hacking as Sexual Terrorism*, <http://www.womensspace.org/phpBB2/2007/08/06/blogging-while-female-men-win-hacking-as-sexual-terrorism/> (Aug. 6, 2007) (explaining that she shut down her women's issues website due

activities.⁹ For the “digital native”¹⁰ generation, forsaking aspects of the Internet means missing innumerable social connections. Although online harassment inflicts the most direct costs upon targeted individuals, it harms society as well by entrenching male hierarchy online.

But no matter how serious the harm that cyber gender harassment inflicts, the public tends to trivialize it. Commentators dismiss it as harmless locker room talk, characterizing perpetrators as juvenile pranksters and targeted individuals as overly sensitive complainers.¹¹ Others consider cyber gender harassment as an inconvenience that victims can ignore or defeat with counter-speech.¹² Some argue that women who benefit from the Internet have assumed the risks of its Wild West norms.¹³ Although the arguments differ, their message is the same—women need to tolerate these cyber “pranks” or opt out life online. This message has the unfortunate consequence of discouraging women from reporting cyber gender harassment and preventing law enforcement from pursuing cyber harassment complaints.¹⁴

The trivialization of harms suffered by women is nothing new.¹⁵ Society ignored or downplayed domestic violence’s brutality for over 200 years.¹⁶ No term even existed to describe sexual harassment in the workplace until the 1970s, despite the pervasiveness of the practice.¹⁷ In light of this history, the current refusal to take seriously the cyber harassment of women is as unsurprising as it is disappointing.

to cyber harassment that included threats of violence, technological attacks, and publication of her home address).

⁹ Garib, *supra* note 4.

¹⁰ A digital native is “a person for whom digital technologies already existed when they were born” and has “grown up with digital technology such as computers, the Internet, mobile phones and MP3s.” Wikipedia, Digital Native definition, http://en.wikipedia.org/wiki/Digital_native (last checked June 15, 2009).

¹¹ Less People Less Idiots, *Silence of the Hams*, <http://lessidiots.blogspot.com/2007/04/silence-of-hams.html> (Apr. 3, 2007, 16:19 EST).

¹² Posting of Markos Moulitsas to Daily Kos, *Death Threats and Blogging*, <http://www.dailykos.com/story/2007/4/12/22533/9224> (Apr. 11, 2007, 23:45 PST) [hereinafter Posting of Moulitsas].

¹³ Post of Susannah Breslin to The XX Factor, *Is Blogging While Female Really So “Perilous”?*, SLATE BLOG, <http://www.slate.com/blogs/blogs/xxfactor/archive/2009/03/13/is-blogging-while-female-r> (Mar. 13, 2009, 5:03) (arguing that the web is equal opportunity attack forum and thus women need to “get over themselves”); Comment of Fistandantalus to Less People, Less Idiots, *Silence of the Hams*, <http://lessidiots.blogspot.com/2007/04/silence-of-hams.html#33100672972431349> (Apr. 3, 2007, 13:28).

¹⁴ PAUL BOCIJ, CYBERSTALKING: HARASSMENT IN THE INTERNET AGE AND HOW TO PROTECT YOUR FAMILY 17 (2004).

¹⁵ ROBIN WEST, CARING FOR JUSTICE 96 (1997).

¹⁶ *Id.*

¹⁷ CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION, at xi (1979).

Due to the Internet's relative youth, this is an auspicious time to combat the trivialization of cyber gender harassment before it becomes too entrenched. If it continues unabated, cyber harassment could very well be the central front of struggles against sexual harassment in the coming decades given our increasing dependence on the net. More people make friends, apply for jobs, and discuss policy online than ever before, shifting their social interactions to the net and with it the risk of sexual harassment.¹⁸ As the market leans towards more realistic sensory experiences in virtual worlds and as these sites become more popular, cyber gender harassment may more closely approximate conventional notions of sexual violence. For instance, Second Life users' avatars have reportedly been forced to perform sexually explicit acts after being given malicious code.¹⁹ These developments, and others like them, would further threaten gender equality in our digital age.

Wrestling with the marginalization of cyber sexual harassment is a crucial step in combating its gender-specific harms. Law has a crucial role to play in this effort. Law serves different functions here. It can deter online harassment's harms by raising the costs of non-compliance beyond its expected benefits. Law can also remedy such harm with monetary damages, injunctions, and criminal convictions. My article, *Cyber Civil Rights*, explored anti-discrimination law's role in preventing, punishing, and redressing cyber harassment.²⁰ In this piece, I explore law's other crucial role: educating the public about women's unique suffering in the wake of cyber harassment and potentially changing societal responses to it. Because law is expressive, it constructs our understanding of harms that are not trivial. The application of antidiscrimination law would reveal

¹⁸ See, e.g., Posting of Danielle Citron, *Zuckerberg's Law on Data Sharing, Not Puffery*, Concurring Opinions Blog (July 16, 2009, 12:32), <http://www.concurringopinions.com/archives/2009/07/zuckerbergs-law-on-data-sharing-not-puffery.html> (explaining that as of July 2009, Facebook had 250 million members, up from 150 million in January 2009).

¹⁹ Michael Tennesen, *Avatar Acts*, SCIENTIFIC AMER., at 27 (July 2009); Posting on Tech FAQ Blog, *Second Life Virtual Rape*, <http://www.tech-faq.com/blog/second-life-virtual-rape.html> (last checked June 15, 2009) (explaining that Belgian user of Second Life was forced to perform sexually explicit acts after being given a "voodoo doll," a piece of code that takes the form of a regular object as a cup or pen but in fact takes control of your avatar); see also Posting of Regina Lynn, *Virtual Rape Is Traumatic, But Is It A Crime?*, WIRED BLOG, http://www.wired.com/culture/lifestyle/commentary/sexdrive/2007/05/sexdrive_0504 (posted on May 4, 2007);

²⁰ Citron, *Cyber Civil Rights*, *supra* note 2.

online harassment for what it truly is—gender discrimination. It would recognize the distinct suffering of women, suffering that men ordinarily do not experience or appreciate as harmful.

Once cyber harassment is understood as gender discrimination and not as a triviality to be ignored, women are more likely to complain about it rather than suffer in silence. Law enforcement could pursue cyber harassment complaints rather than just counseling women to get off their computers and seek help only if their harassers confront them offline. As a result, some perpetrators might curtail their bigoted assaults. Viewing cyber harassment as gender discrimination could become part of our cultural understandings and practices. As with workplace sexual harassment and domestic violence, changing the norms of acceptable conduct may be the most potent force in regulating behavior in cyberspace. An antidiscrimination message is crucial to harness law's moral and coercive power.²¹

This piece has three parts. Part I explores the gendered nature of online harassment.²² It first defines the phenomenon of cyber gender harassment. It then explores the distinct harms that such online abuse inflicts upon targeted women and society.

Part II documents, and refutes, the view that law should ignore cyber gender harassment due to its triviality. It places this response in its broader context—society has historically marginalized harms that uniquely affect women. As with sexual harassment and domestic abuse in the past, a crucial first step in defeating cyber gender harassment is convincing the public of its seriousness. This part undertakes that work, exploring the false assumptions that underlie the trivialization critique.

Part III demonstrates the expressive role that law can play in de-trivializing cyber harassment and in shaping online behavior. It highlights how law can change the way targeted women, the broader public, law enforcement, and even perpetrators understand cyber gender harassment, drawing on analogies to law's expressive role in changing social norms and behavior concerning domestic violence and workplace sexual harassment. It concludes by explaining why obstacles to law's expressive role are not insurmountable.

I. CYBER HARASSMENT THROUGH A FEMINIST LENS

Online harassment is a problem that has a profound impact on women's lives but is little understood. Just as society ignored sexual harassment until

²¹ Cf. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1335 (1988) (describing the importance of an antidiscrimination message to combat racial subordination).

²² Brian Leiter aptly calls social networking sites that house and encourage such gender harassment "cyber cesspools." Brian Leiter, *Cleaning Cyber-Cesspools: Google and Free Speech* (2008) (draft on file with author).

scholars and courts recognized it as sex discrimination, a definition of cyber gender harassment is crucial to understanding and tackling its distinct harms to women. Yet no working definition has been constructed, perhaps because cyber gender harassment has been relegated to the shadows of our thinking. This Part fills that void and provides an account of the gendered nature of online harassment, highlighting its distinct impact on targeted women and society.

A. *Understanding Cyber Gender Harassment*

Although cyber gender harassment encompasses various behaviors, it has a set of core features: (1) its victims are female, (2) the harassment is aimed at particular women, and (3) the abuse invokes the targeted individual's gender in sexually-threatening and degrading ways.²³

While cyber attackers target men, more often their victims are female.²⁴ The non-profit organization *Working to Halt Online Abuse* has compiled statistics about individuals harassed online. In 2007, 61 percent of the individuals reporting online abuse identified themselves as women while 21 percent identified

²³ Online harassment is also targeted at gay men—the harassment similarly invokes targeted individuals' gender in a sexually-threatening manner. For instance, anonymous posters on the high-school gossip site Peoples Dirt noted that named male students were gay and threatened them with violence. A posting under a male student's name asserted: "we know your g@y...just come out of the closet...and you should choke on a dick and die." Posting of Danielle Citron, *Peoples Dirt: Now Terrorizing High Schoolers Everywhere*, Concurring Opinions Blog (May 18, 2009, 3:05), <http://www.concurringopinions.com/archives/2009/05/peoples-dirt-now-terrorizing-high-schoolers-everywhere.html>. Anonymous posters on the Encyclopedia Dramatica site direct sexually-threatening taunts to named gay men. Posters accused a man of having incestuous sex with his brother and featured pictures of him having "faggoty" sex with his dog. http://www.encyclopediadramatica.com/Chris_Crocker.

²⁴ Sheridan et al., *supra* note 3, at 637; P. Bocij & L. McFarlane, *Cyberstalking: The Technology of Hate*, 76 POLICE J. 204 (2003). A 2003 study of 169 individuals who reportedly experienced cyber harassment found that 62.5 percent of the respondents were female. Paul Bocij, *Victims of Cyberstalking: An Exploratory Study of Harassment Perpetrated via the Internet*, 8 FIRST MONDAY (2003), <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1086/1006>. The harassment consisted of threatening or abusive email messages, threats or abusive comments via IM messages, threats or abusive comments in chat rooms, the posting of false rumors in chat rooms, impersonation of individuals in email messages to friends, and encouragement of others to harass or threaten the respondent. *Id.*

themselves as men.²⁵ In 2006, 70 percent of online harassment complainants identified themselves as women.²⁶ Overall, from 2000 to 2007, 72.5 percent of the 2,285 individuals reporting cyber harassment were female and 22 percent were male.²⁷ Half of the victims were between the ages of 18 and 40 and reportedly had no relationship with their attackers.²⁸ Similarly, the Stalking Resource Center, a branch of the National Center for Victims of Crimes, reports that approximately 60 percent of online harassment cases involve male attackers and female targets.²⁹

Academic research supports this statistical evidence. The University of Maryland's Electrical Engineering and Computer Department recently studied the threat of attacks associated with the chat medium IRC (Internet Relay Chat).³⁰ Researchers found that users with female names received on average 100 "malicious private messages," which the study defined as "sexually explicit or threatening language," whereas users with male names received only 3.7.³¹ According to the study, the "experiment show[ed] that the user gender has a significant impact on one component of the attack thread (i.e., the number of malicious private messages received for which the female bots received more than 25 times more private messages than the male bots)" and "no significant impact on the other kinds of attacks, such as attempts to send files to users and links sent to users."³² The study explained that attacks came from human chat-users who selected their targets, not automated scripts programmed to send attacks to

²⁵WORKING TO HALT ONLINE ABUSE, 2007 CYBERSTALKING STATISTICS 1 (2007), <http://www.haltabuse.org/resources/stats/2007Statistics.pdf>. Nineteen percent of those reporting cyber harassment did not report their gender. *Id.*

²⁶WORKING TO HALT ONLINE ABUSE, 2006 CYBERSTALKING STATISTICS 1 (2006), <http://www.haltabuse.org/resources/stats/2006Statistics.pdf>

²⁷WORKING TO HALT ONLINE ABUSE, CYBERSTALKING COMPARISON STATISTICS 2000-2007 (2007), <http://www.haltabuse.org/resources/stats/ComparisonStatistics.pdf>. 5.5 percent of the reporting individuals refused to provide their gender to the organization.

²⁸*Id.* at 2.

²⁹Christine Petrozzo & Sarah Stapp, *To Catch a Predator: How Some Cyber-Agencies Help Victims Fight Back Against Online Aggression*, THE DAILY ORANGE, Jan. 24, 2008, <http://www.dailyorange.com/home/index.cfm?event=displayArticlePrinterFriendly&uStor>.

³⁰Robert Mayer & Michael Cukier, *Assessing the Attack Threat Due to IRC Channels*, in PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON DEPENDABLE SYSTEMS AND NETWORKS 467 (2006), available at <http://www.enre.umd.edu/content/rmeyer-assessing.pdf>. Chat rooms using IRC protocol permit live conversations via the Internet, containing as many as several thousand people, whereas other chat programs such as MSN messenger and Yahoo focus on two-person conversations. *Id.* at 1. Users can join existing discussions or create new ones. BOCIJ, *supra* note, at 126. Estimates of the number of publicly accessible channels on IRC range from 100,000 to more than 580,000. *Id.*

³¹*Id.* The researchers used simulated users with female names Cathy, Elyse, Irene, Melissa, and simulated users with male names Andy, Brad, Dan, Gregg, and Kevin. *Id.* at 4.

³²*Id.* at 4.

everyone on the channel, and that “male human users specifically targeted female users.”³³

Examples of cyber gender harassment show that it routinely involves threats of rape and other forms of sexual violence.³⁴ It often reduces targeted women to sexual objects³⁵ and includes humiliating comments that reinforce gender-constructed stereotypes,³⁶ such as “who let this woman out of the kitchen?” and “nipples make this chat room more interesting.”³⁷ The online abuse can be “particularly vicious” if targeted women are “lesbian and/or not white.”³⁸

For instance, Kathy Sierra, a well-known programmer and game developer, maintained a popular blog on software development called “Creating

³³ *Id.* at 5.

³⁴ See, e.g., Posting of Lisa Stone to BlogHer, *Hating Hate Speech: Safety for Kathy Sierra and All Women Online*, <http://www.blogher.com/node/17319> (Mar. 27, 2007, 3:47) (explaining that countless women have been threatened with rape, dismemberment, and violent images in online forums such as message boards and blog comments); Jessica Valenti, *How the Web Became a Sexists' Paradise*, THE GUARDIAN, Apr. 6, 2007, <http://www.guardian.co.uk/world/2007/apr/06/gender.blogging> (describing anonymous posters' attack of women bloggers with comments such as “I would fuck them both in the ass” and “hate-fuck” them).

³⁵ Technologist Robert Scoble explains that whenever he posts a video of a female technologist on his blog “there invariably are snide remarks about body parts and other things that simply wouldn't happen if the interviewee were a man.” Lynn Harris, *Death Threats Dog Female Blogger*, Salon.com, http://www.salon.com/mwt/broadsheet/2007/03/28/kathy_sierra/print.html (Mar. 28, 2007).

³⁶ Barak, *supra* note, at 79; see, e.g., Comment of idiolect to Posting of Vanessa on Feministing.com Blog, <http://www.feministing.com/archives/013176.html> (Jan. 18, 2009, 2:52) (explaining that during online discussion, commentator called her a “bitch/whore/cunt” and posted a giant picture of young anime girl's face beaten, black-eyed, and bloody with the text: “Who told you could leave the kitchen? Either make me a sandwich or stfu.”).

³⁷ Posting of Alyssaroyse to BlogHer, *Rape and Death and Batman, OH MY!*, <http://www.blogher.com/rape-and-death-and-batman-oh-my> (Aug. 3, 2008, 11:42). As a writer for the Austin Chronicle reports, “[t]here are endless examples of female bloggers coming under the knife for being bitches or media whores, while male bloggers' gender is either ignored or heralded.” Sofia Resnick, *The Perils of Being a Female Blogger*, AUSTIN CHRONICLE, Mar. 6, 2009, <http://www.austinchronicle.com/gyrobase/Issue?story?oid=751511>.

³⁸ Posting of Lisa Stone to Blogher, *Hating Hate Speech: Safety for Kathy Sierra and All Women Online*, <http://www.blogher.com/node/17319> (Mar. 27, 2007, 1:47).

Passionate Users.”³⁹ In 2007, anonymous individuals attacked Ms. Sierra on her blog and two other websites.⁴⁰ Posters threatened rape and strangulation.⁴¹ They posted her home address and Social Security number.⁴² They posted doctored photographs of Ms. Sierra: one picture featured her with a noose beside her neck; another depicted her screaming while being suffocated by lingerie.⁴³ After the attacks, Ms. Sierra canceled speaking engagements and feared leaving her home.⁴⁴ As she explained, “my blog was in the Technorati Top 100 [at the time of the attack]. I have not blogged there—or anywhere—since.”⁴⁵

Harassers do not reserve their assaults for high-profile women like Ms. Sierra. For instance, anonymous posters targeted NYU law student Jill Filipovic on the social networking site AutoAdmit.⁴⁶ Under a thread entitled “Can someone post a pic of Jill [sic] from NYU?,” posters uploaded Ms. Filipovic’s Facebook profile and picture.⁴⁷ Posters made clear that they attended school with Ms. Filipovic by noting “I sat next to Jill F for an hour.” After a message thread asked: “Any Jill F sightings yet,” posters responded that they had seen her around school.⁴⁸ Anonymous posters threatened Ms. Filipovic with rape: “I want to brutally rape that Jill slut”⁴⁹ and “[s]he’s a normal-sized girl that I’d bang violently,”⁵⁰ “maybe I’d have to kill her afterwards.”⁵¹ They created menacing

³⁹ Greg Sandoval, *Blogger Cancels Conference Appearance After Death Threats*, C/NETNEWS.COM, Mar. 26, 2007, http://www.news.com/8301-10784_3-6170683-7.html.

⁴⁰ Don Park’s Daily Habit, *Simply Awful*, <http://www.docuverse.com/blog/donpark/2007/03/26/simply-awful> (Mar. 16, 2007, 17:06).

⁴¹ Sandoval, *supra* note.

⁴² Valenti, *supra* note. Ms. Sierra explained that “people are posting all my private data online everywhere—social-security number, and home address—a retaliation for speaking out.” *Id.*

⁴³ *Id.*

⁴⁴ *Blog Death Threats Spark Debate*, BBC NEWS, Mar. 27, 2007, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/technology/6499095.stm>.

⁴⁵ Comment of Kathy Sierra to Concurring Opinions Blog, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_a_1.html#comments (Apr. 18, 2009, 2:25).

⁴⁶ In just over 80 message threads, posters discuss Ms. Filipovic—her whereabouts and looks—often with threatening, sexually explicit language.

⁴⁷ Comment of honk if you are nigger to AutoAdmit, http://www.xoxohth.com/thread.php?thread_id=331077 (Jan. 2, 2006, 7:17).

⁴⁸ Posting of Jill to Feministe, *A Follow Up*, <http://www.feministe.us/blog/archives/2006/01/04/a-follow-up/> (Jan. 4, 2006).

⁴⁹ http://www.xoxohth.com/thread.php?thread_id=612665&mc=96&forum_id=2; Posting of Jill to Feministe, *Greatest Hits: The Public Woman*, <http://www.feministe.us/blog/archives/2007/08/08/greatest-hits-the-public-woman/> (May 3, 2007).

⁵⁰ Comment of AK47 to AutoAdmit, http://www.xoxohth.com/thread.php?thread_id=613845&mc=32&forum_id=2 (Apr. 15, 2007, 7:09).

⁵¹ Comment of AK47 to AutoAdmit, http://www.xoxohth.com/thread.php?thread_id=613845&mc=32&forum_id=2 (Apr. 15, 2007, 7:10).

message threads, such as “Official Jill Filipovic RAPE thread”⁵² and “I have it on good authority that Jill F has rape fantasies.”⁵³ Posters discussed photo-shopping a picture of Ms. Filipovic’s head onto a porn star’s body⁵⁴ and claimed that she had a number of abortions.⁵⁵

The harassment negatively affected Ms. Filipovic’s law school studies. After seeing the threatening threads, Ms. Filipovic skipped class, fearing that students in her community would write about her whereabouts.⁵⁶ When she attended class, she avoided participating in discussions as she “did not want to say something stupid and have it appear online.”⁵⁷ Because she could not determine who might be the anonymous AutoAdmit posters, she avoided making friends in law school.⁵⁸ Although Ms. Filipovic had been very involved in student groups as an undergraduate, she did not feel comfortable joining similar law school groups after the AutoAdmit incident.⁵⁹ In the wake of the attacks, she felt depressed and helpless.⁶⁰ Ms. Filipovic has explained that although she blogs at a feminist website, she worries that her writing will attract online harassment much like she experienced during her time in law school.⁶¹ She notes that she has toned down her positions to avoid future attacks.⁶²

Another cyber harassment incident involved blogger Alyssa Rouse who writes about film. In August 2008, Ms. Rouse commented on the business acumen of the studio that made the film “The Dark Knight.”⁶³ Shortly thereafter, anonymous individuals attacked Ms. Rouse with rape threats and demeaning comments on her blog. One threatened: “Get a life you two dollar whore blogger, The Dark Knight doesn’t suck, you suck! Don’t ever post another blog [sic]

⁵² “Official Jill Filipovic RAPE Thread,”

http://www.xoxohth.com/thread.php?thread_id=621704&mc=10&forum_id=2 (Apr. 27, 2007).

⁵³ http://www.autoadmit.com/thread.php?thread_id=613270&mc=1&forum_id=2 (Apr. 14, 2007).

⁵⁴ “Legal Liability from showing pic of Jill fucking,”

http://www.xoxohth.com/thread.php?thread_id=613867&mc=31&forum_id=2 (Apr. 15, 2007).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Telephone Interview with Jill Filipovic, March 6, 2009 (notes on file with author).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Posting of Alyssa Royse to Seattlepi.com, *Business Lessons from Batman and The Dark Knight*, <http://blog.seattlepi.com/startherup/archives/145063.asp> (Aug. 2, 2008, 8:50).

unless you want to get ganged up.”⁶⁴ Another poster urged, “I hope someone shoots then rapes you.”⁶⁵ A poster stated: “if you were my wife I would beat you.”⁶⁶ Others disparaged her intellect: “This why women are TOO STUPID to think critically and intelligently about film; AND business for that matter” and “Why don’t you make yourself useful and go have a baby.”⁶⁷ Ms. Rouse explained that of the nearly 200 comments, only three failed to mention her gender in a disparaging or threatening manner.⁶⁸ To stop the harassment, she closed the comments and deleted 50 of the most violent and threatening ones.⁶⁹

A similar incident involved Christina Lobello. An anonymous individual attacked Ms. Lobello after she joined a chat room to keep in touch with friends.⁷⁰ The attacker stole a picture of Ms. Lobello’s 12-year-old daughter from her chat-room profile and created a fake web page saying that her daughter wanted to be raped by a stranger.⁷¹ The attacker posted her home address and personal information on the site alongside messages that he wanted to “come to [her] house, tie [her] up, rape them and have [her] watch as he kills them one by one and then takes [her] life.”⁷² He also threatened to rape another chat room participant’s daughter.⁷³

Another incident involved a 27-year-old female nurse who faced sexual threats after she entered a chat room as a 15-year-old girl.⁷⁴ A man asked her to go into a private room with him.⁷⁵ After she did so, seven men entered the room and began sending her pictures of women who had been beaten or raped.⁷⁶ The men said they “wanted to rape me, spank me until I bled.”⁷⁷

A group called Anonymous has devoted its efforts to coordinating attacks on specific women working and writing on the Web. The group gathers on message boards and wikis where it maintains a list of women’s websites that it

⁶⁴ Posting of Alyssaroyse to Blogger, *Rape and Death and Batman, OH MY!*, <http://www.blogger.com/rape-and-death-and-batman-oh-my> (Aug. 3, 2008, 11:42).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Comment of Alyssa Royse to Posting of Alyssaroyse on Blogger, <http://www.blogger.com/rape-and-death-and-batman-oh-my> (Aug. 4, 2008, 17:38).

⁷⁰ Christina Chatalian, *Cyber Stalker Terrorizing Family*, NBC Local Syracuse News, Feb. 15, 2008, http://www.cnycentral.com/news/news_story.aspx?id=96646.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Comment of Mary Sisson, CNY Central website,

http://www.cnycentral.com/news/news_story.aspx?id=96646 (Feb. 18, 2008, 6:01).

⁷⁴ Debra Michaels, *Cyber-Rape: How Virtual Is It?*, MS. MAG., Apr. 1997,

<http://www.terry.uga.edu/~dawndba/4500CyberRape.html> (last checked on June 15, 2009).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

has successfully shut down with distributed denial of service attacks, “image reaping” campaigns, and online harassment.⁷⁸ The group takes credit for closing over 100 feminist sites and blogs.⁷⁹ For instance, Anonymous attacked a woman who maintained a video blog about Japanese language and video games.⁸⁰ Group members hacked her online accounts, including her YouTube blog account, email, Facebook profile, and MySpace page, to obtain her personal information.⁸¹ They published her passwords and private medical history on various sites.⁸² Members of the group posted doctored photographs of the woman, including one picture that featured the woman’s head atop naked bodies.⁸³ Next to her picture appeared the promise that group members would rape her “all full force in her vagina, mouth, and ass.”⁸⁴ Group members also saturated her video blog with sexually violent pictures and took down her videos.⁸⁵ When her video blog would reappear, the group would urge its members to “rape” and “nuke[] [her sites] from orbit.”⁸⁶

Whether attackers reduce women to their sexual body parts, threaten rape, and/or invoke demeaning, gendered stereotypes, they make clear that women are targeted due to their gender and have a profound impact on gender equality.

B. *Cyber Harassment’s Gender-Specific Harms*

This Section captures how these attacks inflict unique harms upon women and society, in much the same way that sexual harassment in the workplace and domestic violence produce gender-specific harms.

⁷⁸ See Encyclopedia Dramatica, Cheryl Linsey Seelhoff, http://www.encycolpediadramatica.com/Cheryl_Lindsey_Seelhoff.

⁷⁹ Posting of Jill to Feministe, <http://www.feministe.us/blog/archives/2007/08/09/what-do-we-do-about-online-harassment/> (Aug. 9, 2007, 22:36).

⁸⁰ Encyclopedia Dramatica, Applemilk1988, <http://www.encycopediadramatica.com/Applemilk1988> [hereinafter Applemilk1988].

⁸¹ *Id.*

⁸² Pat Miller, *Another Rape in Cyberspace*, CERISE, Nov. 2007, <http://cerise.theirisnetwork.org/archives/188>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Applemilk1988, *supra* note 66.

⁸⁶ *Id.*

1. Distinct Impact on Targeted Women

Cyber gender harassment invokes women's sexuality and gender in ways that interfere with their agency, livelihood, identity, dignity, and well-being. The subsequent injuries are unique to women because men do not typically experience sexual threats and demeaning comments suggesting their inferiority due to their gender.⁸⁷

First, cyber gender harassment undermines women's agency over their own lives. Online threats of sexual violence "literally, albeit not physically, penetrate" women's bodies.⁸⁸ They expose women's sexuality, conveying the message that attackers control targeted women's physical safety.⁸⁹ They are particularly frightening to women as one in every six women has experienced an attempted or completed rape as a child or adult.⁹⁰ Such threats discourage women from pursuing their interests in cyberspace. For instance, women shut down their blogs and websites.⁹¹ They retreat from chat rooms. A 2005 Pew Internet and American Life Project study attributed a nine percent decline in women's use of chat rooms to menacing comments.⁹² Women limit their websites' connectivity to a wider, and potentially threatening, audience by password protecting their sites.⁹³ They close comments on blog posts, foreclosing positive conversations along with abusive ones.⁹⁴ The harassment scares women away from online discourse "by making an example of those women who [do] participate" with "very real threats of rape."⁹⁵

⁸⁷ This statement is particularly true for heterosexual men who are less likely to face sexual intimidation by women or homosexual men, but less true for gay men who confront sexual taunts when others perceive them as effeminate. J. Finn, *A Survey of On-Line Harassment at a University Campus*, 19 J. INTERPERSONAL VIOLENCE 468 (2004).

⁸⁸ WEST, *supra* note, at 102-03 (discussing real space rape).

⁸⁹ Martha Nussbaum, *Objectification and Ressentiment* (on file with author).

⁹⁰ See LENORA M. LAPIDUS, EMILY J. MARTIN & NAMITA LUTHRA, *THE RIGHTS OF WOMEN: THE AUTHORITATIVE ACLU GUIDE TO WOMEN'S RIGHTS* 180 (4th ed. 2009) (describing incidence of rape in United States). To the extent that we see men experience threats of sexual violence online, they involve gay men. See Posting of Danielle Citron, *People's Dirt: Now Terrorizing High Schoolers Everywhere*, Concurring Opinions Blog, <http://www.concurringopinions.com/archives/2009/05/peoples-dirt-now-terrorizing-high-schoolers-everywhere.html> (May 18, 2009, 3:05).

⁹¹ Sheridan & Grant, *supra* note 3, at 637.

⁹² *Female Bloggers Face Harassment*, WOMEN IN HIGHER EDUC., June 1, 2007, at 5.

⁹³ Ellen Nakashima, *Harsh Words Die Hard on the Net*, WASH. POST, Mar. 7, 2007, at A1 (explaining that women attacked online by anonymous posters suspend their blogging, turn to private forums, or use gender-neutral pseudonyms).

⁹⁴ Comment of Alyssa Royse to Posting of Alyssaroyse on Blogger, <http://www.blogger.com/rape-and-death-and-batman-oh-my> (Aug. 4, 2008, 17:38).

⁹⁵ Comment of C.L. on Posting of Danielle Citron on Concurring Opinions Blog, <http://www.concurringopinions.com/archives/2009/03/cyber-narassmen.html> (March 12, 2009, 10:37).

Cyber harassment also impacts women's agency in their offline lives. For instance, a woman stopped going to the gym because her anonymous harassers encouraged her law school classmates to take cell phone pictures of her and post them online.⁹⁶ After posters warned a female blogger that she needed to watch her back because they knew where she lived, the woman "got an alarm and started carry[ing] a bat to and from the car when I went to work at night."⁹⁷ Kathy Sierra's cyber harassment's experience left her fearful to attend speaking engagements and even to leave her yard: "I will never feel the same. I will never *be* the same."⁹⁸ Another woman explained: cyber threats had a "major impact on me both online and offline—I removed my name from my website and my Internet registration. I rented a mailbox to handle all snail mail related to the website, and I changed my business and home phone numbers."⁹⁹ As Ms. Sierra noted, "it does not take many rape threats to make women want to lay low."¹⁰⁰

Online harassment replicates in cyberspace the autonomy erosion that female employees have long experienced in real space. Workplace sexual harassment exposes and exploits a female employees' sexuality. Verbal sexual abuse and displays of pornography make female employees "feel physically vulnerable" to attack.¹⁰¹ Female employees leave their jobs or seek transfers to escape hostile work environments in much the same way that women shut down income-generating sites or limit access to their blogs to avoid cyber abuse.

Second, cyber gender harassment undermines women's ability to achieve their professional goals. It may impair women's work directly, such as technological attacks designed to shutter feminist websites.¹⁰² It may take a more indirect form of professional sabotage by discrediting women's competence in their careers.¹⁰³ Assertions that "This why women are TOO STUPID to think critically and intelligently about film; AND business for that matter" and "Why don't you make yourself useful and go have a baby" appear designed to generate

⁹⁶ Nakashima, *supra* note, at A1.

⁹⁷ Tracy L.M. Kennedy, *An Exploratory Study of Feminist Experiences in Cyberspace*, 3 *CYBERPSYCHOLOGY & BEHAVIOR* 707, 716 (2000).

⁹⁸ Dahlia Lithwick, *Fear of Blogging*, SLATE, May 4, 2007, <http://www.slate.com/id/2165654>.

⁹⁹ *Id.*

¹⁰⁰ Valenti, *supra* note 19.

¹⁰¹ Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 *VAND. L. REV.* 1183, 1206 (1989).

¹⁰² *See* note (describing activities of Anonymous).

¹⁰³ Posting of Alyssaroyse, *supra* note 21.

feelings of inferiority and to discourage women from engaging in professional activities online. Rape threats and sexually menacing comments have a similar effect. This sort of intimidation is unique to women—men are not routinely told that they belong in the kitchen or bedroom instead of earning a living online.

The abuse harms targeted individuals' careers because employers routinely rely on search engines to collect intelligence on job applicants and may discover negative postings about them. Candidates with impressive online reputations are more attractive to employers than those that lack them. Indeed, an online presence is crucial to obtaining work in certain fields. Noted technology blogger Robert Scoble explains that women who don't blog are "never going to be included in the [technology] industry."¹⁰⁴ Employers also may feel less inclined to interview or hire women where postings suggest that they attract negative attention.

This parallels workplace sexual harassment's interference with women's economic opportunities.¹⁰⁵ Demeaning verbal abuse can be so severe that women leave their jobs,¹⁰⁶ just as online intimidation has pushed women out of the blogosphere.¹⁰⁷ It impairs women's work opportunities by making clear to them that they will be viewed and judged by traditional and subordinate female roles, in much the way that cyber gender harassment does.¹⁰⁸

Third, women sustain harm to their identities *as women*. Women may feel compelled to compromise their female identity by "passing" as men to prevent discrimination.¹⁰⁹ Female bloggers and commentators assume gender-disguising names to prevent cyber harassment.¹¹⁰ Even individuals who present themselves

¹⁰⁴ Nakashima, *supra* note.

¹⁰⁵ See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1763-65 (1998) (conceptualizing hostile work environment harassment as a means for men to preserve dominance in favored types of work by undermining women's effectiveness on the job through demeaning comments, deliberate sabotage, and refusals to provide women support they need on the job).

¹⁰⁶ Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1207 (1998).

¹⁰⁷ Posting of John Hawkins on Right Wing News blog, *Blogging While Female Part 2: Five Women Bloggers Talk about Gender Issues and the Blogosphere*, http://www.rightwingnews.com/mt331/2008/03/blogging_while_female_part_2_5_1.php (interviewing blogger Ann Althouse).

¹⁰⁸ *Id.* at 1208.

¹⁰⁹ KENJI YOSHINO, *COVERING* 23, 144 (2006). Discrimination has long forced women to pass as men to gain access to professions or relationships that would otherwise have remained unavailable to them. See, e.g., MARJORIE GARBER, *VESTED INTERESTS: CROSS-DRESSING AND CULTURAL ANXIETY* 67-70 (1997). Kenji Yoshino identifies films such as *Yentl* and *Boys Don't Cry* as examples of female passing. Yoshino, *supra* note, at 926.

¹¹⁰ Winter & Huff, *supra* note, at 45; Kennedy, *supra* note, at 716 (explaining that female bloggers have changed their gender presentation online to protect themselves from attack after hearing about other's cyber harassment experiences); see, e.g., Elaine Vigneault: *Read My Mind, To Ignore Violence Is to Condone It*, <http://www.elainevigneault.com/to-ignore-violence-is-to-condone-it.html> (Apr. 13, 2007, 14:02) (explaining that she assumes male pseudonyms to

as women may nonetheless feel forced to “cover,” i.e., engage in stereotypically male conduct, to avoid online abuse.¹¹¹ Women play down stereotypically female attributes, such as compassion, and highlight stereotypically male ones, such as aggressiveness, to deflect cyber assaults.¹¹² They “try to write as [they] th[ink] a male would write” to avoid sexually explicit messages.¹¹³ They might harass other women online, perhaps as a way to deflect attention from them.¹¹⁴

Passing as a man or covering stereotypically female characteristics exacts a significant price. Hiding one’s identity produces feelings of alienation as the person must pretend to be something she is not.¹¹⁵ It generates feelings of shame.¹¹⁶ At its most extreme, the impulse to pass or cover can negate a person’s identity so completely that she experiences a slow death of her “psyche, soul, and persona.”¹¹⁷ Learning and performing an unfamiliar identity also takes significant effort and time.¹¹⁸ A cyber harassment victim explains that changing her identity was bothersome because she had to “avoid talking about the same issues in the

comment on male-dominated blogs). This is akin to racial passing on the Internet, where African Americans transform themselves into whites by assuming certain names to reduce the chance that they will be identified as black. Jerry Kang, *Cyber Race*, 113 HARV. L. REV. 1130 (2000).

¹¹¹ See Yoshino, *Covering*, *supra* note, at 780 (discussing the phenomenon of covering). Women also face reverse-covering demands, i.e., to be more like stereotypical women than stereotypical men. In that sense, women oftentimes find themselves in a predicament at work because they are pressured to be “masculine” enough to obtain their co-workers’ respect and “feminine” enough to be respected as women. *Id.*

¹¹² Winter & Huff, *supra* note, at 45.

¹¹³ Email of Christa Laser to Danielle Citron, March 13, 2009 (on file with author).

¹¹⁴ See, e.g., Melissa Dribben, *Penn Shout Outs Is Due*, PHILA. INQUIRER, Apr. 19, 2009, http://www.philly.com/philly/news/local/20090419_Penn_Shoutouts_is_due.html?posted=y&viewAll=y (describing Daily Pennsylvania’s weekly publication of “shoutouts” on its blog, which the editors describe as “reader-submitted expressions of love/vitriol/both . . . and the meaner, the better,” that often include sexualized comments about women by women). College-aged women have seemingly embraced misogyny. In the long term, this development is sure to have corrosive effects as women glorify their own sexual objectification and degradation.

¹¹⁵ Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell,”* 108 YALE L.J. 485, 527 (1999).

¹¹⁶ MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 292 (2004).

¹¹⁷ Deirdre Davis, *The Harm that Has No Name: Street Harassment, Embodiment, and African American Women*, 4 UCLA WOMEN’S L.J. 133, 176 (1994).

¹¹⁸ *Id.*

same ways (otherwise people discover you, find out you are female, and then the cycle [of sexually explicit messages] repeats [itself]).”¹¹⁹

This resembles the performative harms that women experience offline in the face of sex discrimination. In the early 1970s, female lawyers disguised their gender when signing legal briefs to avoid prejudice by the bench and bar.¹²⁰ Female authors write under male pseudonyms for similar reasons.¹²¹ Women mute their female characteristics (e.g., refusing to talk about a pregnancy or parenting) and highlight typically male characteristics (e.g., assertiveness) to avoid differential treatment in the workplace because of their sex.¹²²

Fourth, cyber harassment harms women’s dignity and sense of equal worth.¹²³ Online assaults objectify women, reducing them to their body parts.¹²⁴ For instance, posters on the message board AutoAdmit described a targeted female student as a “dumbass bitch with huge fake titties” who “I want to rape in the ass.”¹²⁵ Harassers further humiliate women by reducing them to *diseased* body parts: “[named woman] is a slut with big titties who should not be fucked because she has herpes.”¹²⁶ They make clear that women have worth only as sex objects.

Such objectification injures women by signaling that they are nothing but things to be used by men, not persons with feelings.¹²⁷ Online rape threats say to women: “you claim to be a full human being, but you are much less than that. You are a mere thing whose autonomy can be snatched away, your feelings ignored or violated.”¹²⁸ Women feel rejected and less worthy.¹²⁹ A victim explained: “someone who writes ‘You’re just a cunt!’ is not trying to convince me of anything but my own worthlessness.”¹³⁰ Martha Nussbaum considers the online objectification of women an attempt to “restore the patriarchal world

¹¹⁹ Laser Email, *supra* note 66.

¹²⁰ FRED STREBEIGH, *EQUAL: WOMEN RESHAPE AMERICAN LAW* 160 (2009).

¹²¹ The Hidden Side of a Leaf: A Books Blog, *13 Women Writers Who Used Pseudonyms*, <http://deweymonster.com/?p=43> (May 2, 2007).

¹²² YOSHINO, *COVERING*, *supra* note, at 154-62.

¹²³ As Leslie Meltzer elegantly develops in her article *Spheres of Dignity: Conceptions and Functions in Constitutional Law* (on file with author), the term dignity implicates a variety of values, including dignity as equality. I aim to use the term dignity here to refer to the value harmed by conduct that demeans, devalues, and denigrates women due to their gender.

¹²⁴ Nussbaum, *Objectification*, *supra* note 91; see WEST, *supra* note 11, at 146 (explaining that sexual harassment objectifies women, inflicting a dignitary injury).

¹²⁵ First Amended Complaint ¶ 49, *DOE I v. Individuals*, No. 307CV00909 (D. Conn. Nov. 8, 2007).

¹²⁶ *Id.*

¹²⁷ Nussbaum, *Objectification*, *supra* note.

¹²⁸ *Id.*

¹²⁹ Kennedy, *supra* note, at 717.

¹³⁰ *Id.* at 717.

before the advent of sex equality in which women were just tools of male purposes . . . and women had no right to be more than tits and cunts.”¹³¹

Sexual harassment in the workplace similarly treats women as moral subordinates and undermines their self-respect.¹³² Employers and co-workers who refer to female workers as “nice pieces of ass” or a “stupid pair of boobs” cause women to see themselves as less equal and able than men.¹³³ As Kathryn Abrams develops in her work, sexual inquiries, jokes, and innuendos in the workplace have the effect of reminding women that they are viewed as objects of sexual derision, not colleagues worthy of respect and equal treatment.¹³⁴

Last, cyber harassment inflicts unique harms to women’s emotional and physical well-being. Women fear that online threats of sexual violence will be realized.¹³⁵ Women’s anxiety may be particularly acute as the posters’ anonymity vanquishes cues—such as the identity or location of the person who made the threat or a joking tone of voice—that might diminish concerns about the threat.¹³⁶ Women’s emotional distress often produces physical symptoms, such as anorexia nervosa, depression, headaches,¹³⁷ and suicide.¹³⁸ Moreover, posts providing women’s home addresses alongside the suggestion that they should be raped have led to offline stalking and rape.¹³⁹ Women experience similar symptoms in the face of workplace sexual harassment.¹⁴⁰

¹³¹ Nussbaum, *Objectification*, *supra* note.

¹³² Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1208 (1989); *see generally* DEBORAH HELLMAN, WHY IS DISCRIMINATION WRONG? (2008) (exploring when and why discrimination is morally wrong).

¹³³ Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479, 2529-30 (1994).

¹³⁴ *See, e.g.*, Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1208 (1998).

¹³⁵ Barak, *supra* note 1, at 82; Jodi K. Biber et al., *Sexual Harassment in Online Communications: Effects of Gender and Discourse Medium*, 5 CYBERPSYCHOLOGY & BEHAVIOR 33, 38 (2002).

¹³⁶ THE SOCIAL NET: UNDERSTANDING HUMAN BEHAVIOR IN CYBERSPACE 248 (Yair Amichai-Hamburger ed., 2005); Biber, *supra* note 169, at 38 (explaining that women often experience online sexually-explicit pictures, jokes, and requests for company as harassment, while men are less likely to have this response).

¹³⁷ Barak, *supra* note 1, at 85; Agnes Gati et al., *Anorexia Nervosa Following Sexual Harassment on the Internet: A Case Report*, 31 INT’L J. EATING DISORDERS 474 (2002).

¹³⁸ Lee, *supra* note.

¹³⁹ BOCIJ, *supra* note, at 17; Comment of L on My Crime Space Blog, <http://www.mycrimespace.com/2008/02/19/syracuse-stlker-at-large/> (recounting how an ex-boyfriend impersonated her in chat rooms saying that she wanted to be raped and provided her

This destructive phenomenon not only has profound consequences for individual women, but for society as well, as the next section demonstrates.

2. The Broader Consequences of Cyber Gender Harassment

Cyber gender harassment damages women as a group and society as a whole by entrenching gender hierarchy in cyberspace. Demeaning, sexualized comments and rape threats suggest men's power and superiority over women. They reinforce gendered stereotypes, casting men as dominant in the bedroom and the workplace and women as subservient sexual objects who are not fit to work online.¹⁴¹ These messages instill the notion that online spaces constitute male turf.

This phenomenon resembles the subordinating impulse of workplace sexual harassment where male workers engage in sexualized talk and circulate sexually explicit images to "mark the workplace as an area in which masculinity is constitutive."¹⁴² Sexually-threatening comments tell women that they are neither welcome nor worthy.¹⁴³ Cyber harassment stakes out the Internet as a male space in the same way that sexual harassment does in the workplace.

Online abuse solidifies male dominance of online spaces by eliminating and muting *women's* voices from the Internet. Cultural feminist theory contends that women contribute to social discourse in ways that differ from men.¹⁴⁴ In this

address and phone number); Catharine Holahan, *The Dark Side of Web Anonymity*, BUS. WK., May 12, 2008, at 64, available at http://www.businessweek.com/magazine/content/08_19/b4083064456431.htm (detailing how strange men showed up at young woman's home in response to sexual comments made about her online).

¹⁴⁰ Sandy Welsh, *Gender and Sexual Harassment*, 25 ANN. REV. SOCIO. 169, 183 (1999).

¹⁴¹ The work of Katharine Franke and Vicki Schultz highlight the gendered-based messages that hostile work environment harassment sends. See Katharine M. Franke, *What's Wrong with Sexual Harassment?*, 49 STAN. L. REV. 691, 693, 762 (1997) (highlighting how male workers use sexuality as a "technology of sexism" to reinforce gender stereotypes, such as the male sexual conquerors and the female sexually conquered); Schultz, *supra* note, at 1766-77 n. 441 (explaining how hostile work environment harassment uses sexuality to demonstrate women's lack of competence and men's sexuality to illustrate required work competence).

¹⁴² Abrams, *New Jurisprudence*, *supra* note, at 1212. As Kathryn Abrams explains, sexual harassment "helps perpetuate the workplace as a site of male control, where gender hierarchy is the order of the day and masculine norms structure the working environment." *Id.* at 1219.

¹⁴³ Abrams, *New Jurisprudence*, *supra* note, at 1206.

¹⁴⁴ MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 57-8 (2d ed. 2003). As Robin West explains, women often value intimacy, fearing the injury produced by separation, whereas men tend to emphasize individuals' autonomy from others. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 65 (1988). This notion that women have a different voice than men has its critics. *Id.* at 60. For instance, Catharine MacKinnon understands the different voice theory as highlighting the voice of victims who have never had the freedom to develop their own perspectives while living under conditions of gender subordination. *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFF. L. REV. 11, 27 (1985) (remarks of Catharine M.

view, online discourse would become more masculine when women curtail their participation in chat rooms, blogs, and other Web 2.0 platforms due to cyber gender harassment. For instance, when Kathy Sierra shut down her blog, society lost a *woman's* commentary on technical issues. This is a particularly troubling development given the real space “brain drain” of women working in technology due to sexual harassment and other manifestations of women’s inequality in the workplace.¹⁴⁵ According to a recent study in the *Harvard Business Review*, hostility to women in the workplace played a significant role in driving the majority of women in technology, science, and engineering careers from their jobs by their late thirties.¹⁴⁶ Cyber gender harassment has a similar effect: it effectively excludes women from professional activities online, bolstering male hierarchy.¹⁴⁷

Despite the destructive nature of these cyber assaults, the public often refuses to take them seriously. The next part details, and rejects, the widespread marginalization of cyber gender harassment.

II. THE PROBLEM WITH TRIVIALIZING CYBER GENDER HARASSMENT

Although cyber harassment substantially harms women, many view it as a benign part of online life that should be tolerated. This is perhaps to be expected—we often overlook harms to women. This Part documents this trend and rejects it as undermining women’s right to participate as equals online. Just as society dismissed sexual harassment in the workplace and domestic violence as trivialities until advocates, courts, and policymakers signaled their harmfulness to women, this Part makes the case for taking cyber gender harassment seriously.

MacKinnon). This Essay does not aim to resolve this disagreement but instead seeks to highlight the various ways in which the retreat of women from online discourse affects society.

¹⁴⁵ Posting of Danielle Citron to Concurring Opinions, *Science and Technology Workplace, A Predominantly Male Face*, http://www.concurringopinions.com/archives/2008/12/science_and_tec_1.html (Dec. 16, 2008 18:07 EST) [hereinafter Citron Posting].

¹⁴⁶ Sylvia Ann Hewitt et al., *Stopping the Exodus of Women in Science*, HARV. BUS. REV. June 1, 2008, at 1; Steven Swinford, *Sexist Culture Drives Women Out of Science*, TIMESONLINE, May 11, 2008, <http://www.timesonline.co.uk/tol/news/uk/science/article3908362.ece>.

¹⁴⁷ Citron Posting, *supra* note.

A. Recurring Patterns

Society often discounts harms that disproportionately impact women.¹⁴⁸ As Robin West explains, criminal law historically targeted gender-specific harms only to the extent that they resembled harms suffered by men.¹⁴⁹ Rape law was clearest and its prosecution most vigorous when the rape most resembled nonsexual physical attacks that men suffer and fear, i.e., attacks committed by strangers and accompanied by actual or threatened violence.¹⁵⁰ However, “rapes committed by husbands upon wives, or by boyfriends upon girlfriends, or by johns on prostitutes” were “under-regulated.”¹⁵¹ In other words, the most gender-specific sexual assaults—those involving an “invasion of the integrity of [a woman’s] body and the invasion of the safety and integrity of her intimate life”—were the most untouched by law.¹⁵²

Moreover, nineteenth-century law imposed significant barriers to the prosecution of crimes targeting women principally, such as rape, but not to crimes affecting men and women equally, such as property intrusions.¹⁵³ Rape laws required witness corroboration and evidence of “utmost” physical resistance by the woman.¹⁵⁴ These requirements made it difficult to convict men of rape.¹⁵⁵ By contrast, property crimes had no such requirements.¹⁵⁶ If someone removed a person’s wallet without express permission, he committed a crime.¹⁵⁷ The defendant could not defend himself by arguing that the victim failed to put up a fight.¹⁵⁸

Similarly, nineteenth-century tort law often ignored women’s suffering, refusing to recognize claims mainly pursued by women, such as those for

¹⁴⁸ WEST, *supra* note 11, at 96.

¹⁴⁹ WEST, *supra* note 11, at 138.

¹⁵⁰ *Id.* at 140.

¹⁵¹ *Id.* Although states historically did not protect married women against rape by their husbands, all states now include assault within marriage within the definition of rape, even though different laws and penalties sometimes apply to marital rape. LENORA M. LAPIDUS, EMILY J. MARTIN & NAMITA LUTHRA, *THE RIGHTS OF WOMEN: THE AUTHORITATIVE ACLU GUIDE TO WOMEN’S RIGHTS* 180 (4th ed. 2009). However, some states define rape within marriage at a lower level of criminality than non-marital rapes or only criminalize certain kinds of marital rape, such as when the parties have formally separated. *Id.* at 181.

¹⁵² *Id.*

¹⁵³ MARTHA NUSSBAUM, *SEX AND SOCIAL JUSTICE* 139 (1998).

¹⁵⁴ LENORA M. LAPIDUS, EMILY J. MARTIN & NAMITA LUTHRA, *THE RIGHTS OF WOMEN: THE AUTHORITATIVE ACLU GUIDE TO WOMEN’S RIGHTS* 180 (4th ed. 2009). States have largely abandoned the “utmost resistance” requirement due to the injustice of refusing to acknowledge a rape unless a woman risked her life trying to resist. *Id.* at 180-81.

¹⁵⁵ Lapidus et al., *supra* note, at 180.

¹⁵⁶ NUSSBAUM, *SEX AND SOCIAL JUSTICE*, *supra* note 11, at 139.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

emotional distress.¹⁵⁹ The tortious consequences of adultery reflect law's gender differentiation of harm as well.¹⁶⁰ English common law found no harm to a woman in cases involving an adulterous husband because the wife suffered "noncompensable hurt feelings" and because the wife failed to mitigate her own injuries, whereas the law understood the husband's hurt feelings as an objective harm, deeming a wife's adultery a loss of property.¹⁶¹ The trivialization impulse carried forward into the twentieth century with society's persistent refusal to recognize harms associated with sexual harassment and domestic violence.¹⁶²

In the past, as in the present, the trivialization of women's suffering fell along several lines. First, some dismissed women's harmful experiences as innocuous aspects of daily living. In the early 1970s, society understood sexual harassment in the workplace as harmless flirting.¹⁶³ When Catharine MacKinnon first described workplace harassment as a form of sex discrimination, judges, employers, husbands, and victims dismissed it as universal "natural" behavior.¹⁶⁴ Courts routinely found that the "attraction of males to females and females to males is a natural sex phenomenon and it is probable that this attraction plays at least a subtle part in most personnel decisions."¹⁶⁵

Second, society refused to recognize harms where women could have ostensibly mitigated the injury. In the domestic violence context, many suggested that victims bore responsibility for the abuse because they failed to leave their abusers.¹⁶⁶ The media's standard story line with regard to spousal battering was

¹⁵⁹ Martha Chamallas & Linda K. Kerber, *Women, Mothers, and the Law of Fear: A History*, 88 MICH. L. REV. 814, 814, 816 (1990).

¹⁶⁰ *Id.* at 818.

¹⁶¹ *Id.*

¹⁶² To be sure, modern society has minimized or ignored other gendered harms, such as street harassment. WEST, *supra* note, at 144. This Essay focuses on domestic violence and sexual harassment in the workplace as prominent examples of the historic non-recognition or trivialization of harms suffered by women.

¹⁶³ MARTHA J. LANGELAN, BACK OFF! HOW TO CONFRONT AND STOP SEXUAL HARASSMENT AND HARASSERS 39 (1993); Deborah L. Rhode, *Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1459, 1465 (1992).

¹⁶⁴ MACKINNON, SEXUAL HARASSMENT, *supra* note, at 2.

¹⁶⁵ *Id.* at 90.

¹⁶⁶ See Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1294-95 (1992); Clare Dalton, *Domestic*

that “if it was that bad, [the women] would leave.”¹⁶⁷ Judge Richard D. Huttner, the administrative judge of the New York City Family Court, recalled his colleague’s reaction to domestic violence victims: “Why don’t they just get up and leave? They have been taking these beatings all these years and now they want me to intercede. All they have to do is get out of the house. What do they want from me?”¹⁶⁸ Similarly, commentators told women to change their supervisors, fields, or jobs if the sexual treatment at work became too uncomfortable to bear.¹⁶⁹

Third, many refused to recognize conduct as harmful due to an environment’s unique norms. Commentators suggested that workplace harassment involved a private arena with different expectations.¹⁷⁰ In this view, sexual harassment was a perk for men to enjoy.¹⁷¹ Society similarly shielded domestic violence from state intervention because “[e]very household has, and must have, a government of its own, modeled to suit the temper, disposition and condition of its inmates.”¹⁷² As Reva Siegel explains, wife beaters were immunized from public and private prosecution because courts refused to look into the “home closet.”¹⁷³ For over two hundred years, a male’s battering of his wife was protected as part of the “private sphere of family life.”¹⁷⁴ It was a “private problem, neither serious nor criminal.”¹⁷⁵

The marginalization of domestic violence only began to subside after activists pressed policymakers and courts to take these injuries seriously.¹⁷⁶ The very concept of domestic violence as harmful arose in late 1960s and early 1970s when the women’s rights movement brought the issue to national attention.¹⁷⁷ Feminist activists and lawyers gave “a name and visibility” to domestic violence,

Violence, Domestic Torts and Divorce: Constraints and Possibilities, 31 NEW ENG. L. REV. 319, 338 (1997).

¹⁶⁷ CATHARINE A. MACKINNON, *WOMEN’S LIVES, MEN’S LAWS* 291 (2005).

¹⁶⁸ STREBEIGH, *EQUAL*, *supra* note, at 386.

¹⁶⁹ NUSSBAUM, *SEX AND SOCIAL JUSTICE*, *supra* note, at 144.

¹⁷⁰ MACKINNON, *WOMEN’S LIVES*, *supra* note, at 291.

¹⁷¹ *Id.* at 185.

¹⁷² *State v. Rhodes*, 61 N.C. 453 (1868); Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996); *see also* CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989).

¹⁷³ Siegel, *supra* note, at 2129 (quoting *Drake v. Drake*, 17 N.W. 624, 725 (Minn. 1920)).

¹⁷⁴ Elizabeth M. Schneider, *Battered Women, Feminist Lawmaking, Privacy, and Equality*, in *WOMEN AND THE UNITED STATES CONSTITUTION: HISTORY, INTERPRETATION, AND PRACTICE* 197, 201 (Sibyl Schwarzenbach & Patricia Smith eds., 2003).

¹⁷⁵ Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 982 (1991).

¹⁷⁶ NUSSBAUM, *SEX AND SOCIAL JUSTICE*, *supra* note, at 142. As Judge Huttner’s comment above makes clear, legal change in the 1970s did not change society’s (and judges’) views about domestic violence right away. STREBEIGH, *EQUAL*, *supra* note, at 386.

¹⁷⁷ Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking*, 23 WOMEN’S RTS. L. REP. 243 (2002).

which had been buried by “cultural complicity.”¹⁷⁸ Similarly, judicial recognition of sexual harassment as a form of sex discrimination in the late 1970s paved the way for the de-trivialization of such abuse.¹⁷⁹ Favorable court rulings emboldened women to bring lawsuits and lobby for legislative change that led to the amendment of Title VII.¹⁸⁰

Advances against cyber harassment may follow a similar path. In the last quarter of the twentieth century, women achieved gains in the workplace harassment and domestic violence arenas after convincing courts, legislators, and commentators of the seriousness of the harms women suffered. Here, too, a legal response will gain greater traction if the trivialization critique of cyber harassment has been rejected. The next section begins this effort.

B. *Critiquing the Trivialization of Cyber Gender Harassment*

Although some people have been outraged by cyber harassment, many others dismiss it as inconsequential.¹⁸¹ Commentators trivialize the harassment of women online by arguing that: (1) it constitutes innocuous teasing, (2) women can mitigate the harms, and (3) cyber harassment coheres with the Internet’s unique norms. This section tackles, and discredits, these arguments.

¹⁷⁸ Schneider, *Battered Women*, *supra* note, at 199.

¹⁷⁹ Catharine A. MacKinnon, *The Logic of Experience: Reflections on the Development of Sexual Harassment Law*, 90 GEO. L.J. 813, 826 (2002).

¹⁸⁰ *Id.* at 831.

¹⁸¹ Extensive empirical work on the trivialization of cyber gender harassment does not yet exist. However, a recent study addresses college students’ reaction to cyber harassment incidents. It suggests that college students do not take hypothetical or real-life cases of cyber harassment seriously. Eileen M. Alexy et al., *Perceptions of Cyberstalking Among College Students*, 5 BRIEF TREATMENT & CRISIS INTERVENTION 279 (2005). Anecdotal evidence also proves instructive here. In the aftermath of the attacks on Kathy Sierra (which received national attention after the Washington Post covered the story), online commentary overwhelmingly suggested that Ms. Sierra overreacted to the rape threats, privacy invasions, and doctored photographs. This pattern has seemingly recurred in numerous incidents as commentators learn about online attacks against women. To be sure, not everyone responds in this way—the groups supporting Ms. Sierra and women like her demonstrate the point. Nonetheless, the trivialization of cyber gender harassment is an important part of the discourse after attacks on women online are publicized. As Part C shows, the trivialization of women’s harm in the face of cyber gender harassment is not reserved for commentators. Significantly, law enforcement officers often fail to pursue complaints of cyber gender harassment because they fail to take it seriously. I thank Neil Richards for urging me to address this important point.

First, some equate online assaults with harmless juvenile antics.¹⁸² For instance, a Wired blogger has described Anonymous, the group credited with shutting down over a hundred women's issues websites, as juvenile "griefers . . . looking for some outlet for their boredom."¹⁸³ Former New York Times reporter and writer for Condé Nast's Portfolio, David Margolick, characterized the anonymous AutoAdmit posters who attacked female law students with rape threats and damaging statements as "juvenile, immature, [and] obnoxious but that's all that they are: frivolous frat boy rants."¹⁸⁴ He explained that because attackers get bored and move on, "these problems can be exaggerated."¹⁸⁵ The attorney representing the former educational director for AutoAdmit remarked that: "these aren't true threats. This is not for us grownups; these are digital natives . . . it is their juvenile shtick."¹⁸⁶ A site operator involved in the Kathy Sierra incident called the posters "immature" pranksters who acted in "bad taste."¹⁸⁷ Another commentator dismissed the doctored photographs of Ms. Sierra as "purely amateur hour, playground silliness."¹⁸⁸

Commentators further trivialize the harassment by describing targeted women as overreacting "drama queen[s]."¹⁸⁹ For instance, founder of the progressive blog *Daily Kos*, Markos Moulitsas, suggested that Ms. Sierra imagined the threats: "Most of the time, said 'death threats' don't even exist—evidenced by the fact that the crying bloggers and journalists always fail to produce said 'death threats.'"¹⁹⁰ Others disparaged Ms. Sierra for dismantling her blog, calling her response "out of proportion to the events that elicited it."¹⁹¹ A *Salon* writer explained that she found herself "cringing" at Ms. Sierra's fearfulness because women should not be "fragile flowers about workplace sexism."¹⁹² Similarly, blogger Ann Althouse condemned the female law students

¹⁸² See Vicki Bell & Denise de La Rue, *Gender Harassment on the Internet* (1995) (on file with author) (discussing the fact that many dismiss cyber harassment as playful teasing).

¹⁸³ Ryan Singel, 'Anonymous' Member Unmasked, Charged With Web Attack on Scientology, WIRED BLOGS, Oct. 17, 2008, <http://blog.wired.com/27bstroke6/2008/10/anonymous-membe.html>.

¹⁸⁴ Interview, On Point with Tom Ashbrook, NATIONAL PUBLIC RADIO, Mar. 3, 2009, <http://www.onpointradio.org/shows/2009/03/cyber-harassment/>.

¹⁸⁵ Interview, On Point with Tom Ashbrook, *supra* note 166.

¹⁸⁶ *Id.*

¹⁸⁷ Posting of RageBoy to the EGR Weblog, *Re Kathy Sierra's Allegations*, <http://www.rageboy.com/2007/03/re-kathy-sierras-allegations.html> (Mar. 27, 2007, 02:10).

¹⁸⁸ Less People Less Idiots, *supra* note.

¹⁸⁹ Jennifer, Letter to the Editor, *Blah blah blah*, SALON, http://letters.salon.com/mwt/broadsheet/2007/03/28/kathy_sierra/permalink/290f1050a4be8aa781a4c67b8b675052.html (Mar. 28, 2007, 13:17 PDT).

¹⁹⁰ Posting of Moulitsas, *supra* note 8.

¹⁹¹ Comment of BC to Posting of Mike Cassidy to Mercury News Blog, *Kathy Sierra Blog Battle Provides a Chance for Change*, <http://blogs.mercurynews.com/cassidy/2007/04/02/kathy-sierra-blog-battle-provides-a-chance-for-change/#comment-3831> (Apr. 3, 2007, 15:26 PDT).

¹⁹² Lithwick, *supra* note.

attacked on AutoAdmit: “Too beautiful to appear in public? Too hot to be hired? Come on! What rational employer would deny you a job because idiots chatted about you online in a way that made it obvious that the only thing you did was look good.”¹⁹³ This response asserts that targeted women have forgotten the childhood saying that “sticks and stones will break my bones but wor[d]s will never hurt me.”¹⁹⁴ It has much in common with the suggestion that workplace sexual harassment constituted harmless flirting and playful teasing.

Characterizing cyber gender harassment as harmless teasing of the overly sensitive belies reality. The online abuse inflicts significant economic, emotional, and physical harm upon women in much the same way that workplace sexual harassment does. Statements about a woman’s sexuality may suggest that she attracts unwanted controversy, causing employers who use Google results in assessing candidates to interview or hire someone else.¹⁹⁵ In the face of rape threats, women refrain from online activities that generate income and/or advance their professional reputations. Publishing a woman’s physical whereabouts alongside the suggestion that she should be raped increases the possibility of stalking and physical violence at the hands of others whom the poster has encouraged.¹⁹⁶ Disclosing a woman’s Social Security number raises her risk of identity theft.¹⁹⁷ Because cyber gender harassment inflicts grave harm and does not constitute childish antics, targeted individuals rightfully feel aggrieved.

Second, many downplay cyber harassment on the grounds that targeted individuals have various means to protect themselves. One approach maintains that women can mitigate the harm by ignoring the abuse or going offline. For instance, a commentator remarked that Kathy Sierra should have just “chosen to

¹⁹³ Althouse, *For Many People the Internet Has Become a Scarlet Letter, an Albatross*, <http://althouse.blogspot.com/2007/03/for-many-people-internet-has-become.html> (Mar. 7, 2007, 09:37).

¹⁹⁴ Michael Sullivan, Letter to the Editor, *I Call Bullshit*, SALON, <http://letters.salon.com/opinion/feature/2007/03/31/sierra/permalink/1a7c43d50408afdb68662df76f7a088b.html> (Mar. 30, 2007, 7:39).

¹⁹⁵ Frank Pasquale, *Rankings, Reductionism, and Responsibility*, 54 CLEV. ST. L. REV. 115, 122 (2006).

¹⁹⁶ BOCIJ, *supra* note, at 69.

¹⁹⁷ Danielle Keats Citron, *Reservoirs of Danger: The Evolution of Public and Private Law at the Dawn of the Information Age*, 80 S. CAL. L. REV. 241, 252 (2007).

skip the section” and moved on.¹⁹⁸ In that person’s view, Ms. Sierra could have “easily turn[ed] off” her computer unlike rape victims “in the real world” who have “no choices and the consequences are very tangible.”¹⁹⁹ The *Daily Kos* founder urged Ms. Sierra to get off the computer if she could not “handle the heat” in her inbox.²⁰⁰ Another person noted: “Anyone who’s going to let the trolls intimidate them should either not blog or not have open comments. It really is just that simple.”²⁰¹ A commentator similarly suggested that the “right way” for “girls” to address cyber harassment is to “let the threads drop to the bottom and everyone [will] forget.”²⁰² Indeed, law enforcement officers have refused to pursue cyber harassment complaints on the grounds that women can “just get off their computers.”²⁰³ This recalls the argument that women faced with sexual harassment and domestic violence should leave their jobs and homes instead of complaining about the abuse.

This argument has no merit. Even if women go offline (or never availed themselves of online activities in the first place), online rape threats, sexually demeaning comments, and damaging statements remain online accessible to anyone searching targeted women’s names, unless website operators agree to take down the destructive postings.²⁰⁴ Thus, cyber gender harassment’s harms are unavoidable, both practically and psychologically, whether targeted women turn off their computers or not. In that sense, women cannot retreat to safety by going offline. Although attackers may forget about the harassment and move onto other

¹⁹⁸ Michael Sullivan, Letter to the Editor, *I Call Bullshit*, SALON, <http://letters.salon.com/opinion/feature/2007/03/31/sierra/permalink/1a7c43d50408afdb68662df76f7a088b.html> (Mar. 30, 2007, 7:39).

¹⁹⁹ *Id.*

²⁰⁰ Posting of Moulitsas, *supra* note.

²⁰¹ Comment of FIAR to O’Reilly Radar, *Code of Conduct: Lessons Learned So Far*, <http://radar.oreilly.com/archives/2007/04/code-of-conduct.html#comment-2032297> (Apr. 11, 2007, 15:13).

²⁰² Interview, On the Point With Tom Ashbrook, *supra* note 166 (comments of Marc Randazza).

²⁰³ Report from the Attorney General to the Vice President, *1999 Report on Cyberstalking: A New Challenge for Law Enforcement and Industry* (Aug. 1999), <http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm>.

²⁰⁴ Patricia Sanchez Abril explains that online social networking sites generally refuse to take down material that is purportedly defamatory or embarrassing. Patricia Sanchez Abril, *A (My)Space of One’s Own: On Privacy and Online Social Networks*, 6 NORTHWESTERN J. TECH. & INTELL. PROP. 73, 82 (2007). On the main, it is difficult to gauge how often website operators remove harassing postings. Anecdotal evidence provides some insight into its occurrence. The AutoAdmit website operators never removed the postings concerning Ms. Filipovic despite repeated requests to do so. The harassing postings of the group Anonymous remain online even though the targeted women complained about them. Website operator Chris Locke initially refused to remove the doctored photographs of Ms. Sierra but eventually took them down. Even if the website operators agree to take down the harassing postings, they may have spread to other sites whose operators refuse to take them down.

victims, targeted women have no choice but to remember, and wrestle with, cyber harassment's harms.

Furthermore, women who maintain an online presence should not be required to forgo it to escape harassment, just as women should not have to quit their jobs or leave their homes to insulate themselves from sexual harassment or domestic violence. Although targeted women close their blogs, disengage from online communities, and assume pseudonyms, they incur serious costs in doing so. Women miss opportunities to advance their professional reputations through blogging. They cannot network effectively online if they assume pseudonyms to deflect cyber abuse.²⁰⁵ They may lose advertising income upon closing their websites or blogs. Unless women are willing to forego the Internet's economic, social, and political opportunities, they cannot walk away from our networked environment without paying a high price. This is particularly true for younger individuals whose lives are inextricably tied to the net.

Jack Balkin's "captive audience" theory aptly captures the difficulty that women face as they develop their careers in a networked environment. Balkin invokes the metaphor of captivity to describe sexual harassment in the workplace: a female employee must listen to an employer's unjust and intolerable harassment because she is practically unable to leave.²⁰⁶ Under Balkin's theory, employees should not be forced to leave their jobs to escape otherwise unavoidable harassment and coercion.²⁰⁷ Much like employees subject to sexually harassing comments at the water cooler, women working online comprise a captive audience—they cannot avoid cyber attacks on their blogs and other sites that can affect their careers, reputations, and income. And they should not be forced to give up those opportunities to avoid cyber harassment.

In much the same way that society today would not trivialize a supervisor's decision to display a doctored naked photograph of a female subordinate, it should not ignore rape threats that terrorize victims and force them

²⁰⁵ Penelope Trunk's Brazen Careerist, *Blog Under Your Real Name, and Ignore the Harassment*, <http://blog.penelopetrunk.com/2007/07/19/blog-under-your-real-name-and-ignore-the-harassment/> (July 19, 2007) (explaining that women who write under pseudonyms miss opportunities associated with blogging under their real names, such as networking opportunities and expertise associated with the author's name).

²⁰⁶ J.M. Balkin, *Free Speech and Hostile Environments*, 99 COLUM. L. REV. 2295, 2312 (1999).

²⁰⁷ *Id.*

to close income-generating blogs. Society suffers a great loss when it loses women from the online marketplace and discourse.

Another approach asserts that women can combat cyber harassment with counter-speech. In this view, women should retaliate against their attackers rather than playing the “victim.”²⁰⁸ It is, however, specious to insist upon cyber harassment’s triviality because women can later respond to it. Women’s subsequent response cannot return them to the position that they were in before they suffered economic and emotional harm.

Even though women could fight back, they may be unlikely to do so.²⁰⁹ Individuals targeted with rape threats may feel too intimidated to engage in counter-speech and think retaliation would not be effective in deterring online harassers.²¹⁰ The anonymity of their attackers renders true engagement difficult, if not impossible. Because most attackers write under pseudonyms, retaliation would have little lasting effect. Attackers can simply re-appear under other names.²¹¹

Retaliation also may be counterproductive. Because the purpose of many online assaults is to force women off the net, harassers may respond with serious venom against a victim who stays online and tries to fight back. This recalls women’s struggle with hostile work environments and domestic violence. Women often felt too intimidated to confront their abusers and risked serious retaliation if they fought back.

David Fagundes suggests that counter-speech exposing and criticizing harassers would have salutary effects.²¹² He argues that counter-speech would empower harassed individuals to “feel capable of taking matters into their own hands.”²¹³ Fagundes is indeed correct—women would feel a sense of empowerment when denouncing their attackers’ harmful behavior. Nonetheless, it seems likely that targeted women would refrain from such counter-speech given the likelihood that it would incur the wrath of their attackers. Women may be particularly reluctant to respond if they lack a strong online community supporting their efforts. Jill Filipovic noted that she eventually blogged about her

²⁰⁸ Comment of Marc J. Randazza to Concurring Opinions Blog, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_l.html (Apr. 15, 2009, 01:37).

²⁰⁹ J.M. Balkin, *Some Realism About Pluralism: Legal Realist Approaches to the First Amendment*, 1990 DUKE L.J. 375, 420-21 (1990).

²¹⁰ *Id.*

²¹¹ Of course, shaming by other members of an online community would play an important role in setting a site’s social norms, but that is a different question as to whether a targeted individual’s efforts would be worth the potential cost.

²¹² Posting of David Fagundes to Concurring Opinions Blog, *CCR Symposium: In Defense of Self-Defense*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_i.html (Apr. 16, 2009, 01:16).

²¹³ *Id.*

cyber harassment experience because she knew that she had a strong community of feminist bloggers behind her.²¹⁴ Many others, however, do not find themselves in that situation and may conclude that counter-speech's psychic benefits come at too high a price.

Third, some defend misogynistic conduct online as an outgrowth of the Internet's unique "Wild West" norms. Commentators note that blogs prominently maintain their sexist image: traffic rates soar when blog threads or forums attack women.²¹⁵ As Robert Scoble explains, "there's just a culture of acceptance of making sexually crude degrading jokes online."²¹⁶ Some suggest that given the net's misogynistic culture, women have assumed the risk of being harassed online. Abusive commentary is "part of the territory—if you want to write a blog like this, you're going to deal with unpalatable people."²¹⁷ In response to the Kathy Sierra attack, another commentator noted: "this is the INTERNET folks . . . there are no laws here, at least not clearly defined ones."²¹⁸ A poster asked why Kathy Sierra was surprised by the attack: "Hello? It's the Blogosphere, Stupid."²¹⁹

These arguments have little persuasive force. The analogy to the "Wild West" fails on its own terms. The West is no longer wild: society long ago

²¹⁴ Interview of Jill Filipovic, *supra* note.

²¹⁵ Valenti, *supra* note; cf. Posting of Chris Bowers to MyDD Direct Democracy, *Women and Blogging*, <http://www.mydd.com/story/2005/3/18/125346/895> (Mar. 18, 2006, 12:53 EST).

²¹⁶ Posting of Robert Scoble to Scobleizer, *Taking the Week Off*, <http://scobleizer.com/2007/03/26/taking-the-week-off/#comment-305533> (Mar. 26, 2007, 15:50); Posting of Robert Scoble to Scobleizer, *Taking the Week Off*, <http://scobleizer.com/2007/03/26/taking-the-week-off/#comment-305624> (Mar. 26, 2007, 16:34) ("It's a culture that allows and, even, sort of encourages sexual attacks on women. Look at Justin.tv's chat room. The comments there are rife with sexual overtones. If it's not attacks on women it's that someone is 'gay'"). In this regard, online harassment of women and gays and lesbians has much in common.

²¹⁷ Brandel, *supra* note.

²¹⁸ Posting of Fistantantalus to Less People, Less Idiots, <http://lessidiots.blogspot.com/2007/04/silence-of-hams.html#33100672972431349> (Apr. 3, 2007, 13:28).

²¹⁹ John Hampshire, Letter to the Editor, *Hello? It's the Blogosphere Stupid*, SALON, <http://letters.salon.com/opinion/feature/2007/03/31/sierra/permalink/0843e0885780eda9090ebe1f6656c80e.html> (Mar. 30, 2007, 08:59).

subjected it to the rule of law. As Brian Leiter astutely notes, the “Internet should not be consigned to a fate that we would not tolerate for the West.”²²⁰

Moreover, the notion that the net has its own norms is founded on a set of false assumptions that supported an earlier age’s arguments concerning domestic violence and workplace sexual harassment. It presumes that online destruction remains suspended in cyberspace with no effect upon women’s real space lives just as many argued in the past that spousal beating was a private matter that had no significance beyond the home’s four walls and that sexual harassment was a private perk for men to enjoy.

This assumption is as faulty now as it was then. Online abuse does not stay contained in cyberspace, just as spousal beating and sexual harassment did not remain behind closed doors of the home or workplace. Quite the contrary, employers, clients, and social contacts see the rape threats, lies, and privacy invasions in Google searches of targeted women’s names. Women may lose job opportunities, social connections, and advertising income. This was certainly true of women’s experience with domestic violence and sexual harassment: women suffered significant economic and emotional harm that extended far beyond the home and workplace. Just as society ultimately rejected the argument that law should ignore domestic violence and sexual harassment because families and workplaces had their own norms, federal and state law make clear that offline institutions can be brought to bear in cyberspace.²²¹

C. A Troubling Consequence of Trivialization: The Under-Enforcement of Criminal Law

The trivialization of cyber gender harassment has an unfortunate consequence: the under-enforcement of criminal law. Targeted individuals often refrain from reporting cyber harassment to authorities, fearing it will not be taken seriously.²²² Law enforcement agencies refuse to pursue cyber harassment complaints on the grounds that the conduct is legally insignificant,²²³ in much the same way that prosecutors once refused to file charges in cases involving gender-specific sexual assaults such as domestic violence and rape. Law’s under-enforcement may be due to the absence of training about cyber harassment.²²⁴

²²⁰ Email of Brian Leiter to Danielle Citron, Apr. 7, 2009 (on file with author).

²²¹ Citron, *Cyber Civil Rights*, *supra* note, at 86-95.

²²² Report from the Attorney General to the Vice President, *1999 Report on Cyberstalking: A New Challenge for Law Enforcement and Industry*, <http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm> (Aug. 1999) (explaining that victims often refuse to report cyber harassment due to their sense that the conduct had not reached a criminal offense or that law enforcement would not take it seriously).

²²³ BOCI, *supra* note, at 17.

²²⁴ Christa Miller, *Cyber Stalking & Bullying*, OFFICER.COM, Apr. 2006, <http://www.officer.com/print/Law-Enforcement-Technology/Cyber-Stalking-and-Bullying/>

The Department of Justice's *1999 Report on Cyberstalking* found that the majority of law enforcement agencies failed to pursue online harassment cases, in part, because personnel lacked training that would allow them "to recognize the serious nature of cyber harassment and to investigate such offenses."²²⁵ Recent reports suggest that law enforcement in rural communities "know very little about cyberstalking law and rarely have any training regarding this cyber crime."²²⁶ Thus, officers do not know how to handle cyber harassment cases.²²⁷

Officers have refused to open investigations until the harassment has traveled offline.²²⁸ Officers often advise victims to ignore the cyber harassment until that time.²²⁹ For instance, Cynthia Armistead and her daughter were subjected to a sustained campaign of cyber harassment that included threatening

("many police departments remain unable to investigate and solve [cyber stalking and bullying] cases. However, the good news is equipment and technology aren't always the answer. Training, education, and a willingness to collaborate are."); see also Eric Kurhi, *Police Lack Standards for Cyber Criminals*, CONTRA COSTA TIMES (WALNUT CREEK, CA.), Feb. 19, 2007, at F4 (explaining that some jurisdictions have trouble telling that an Internet-based crime occurred such as when police in Danville, California told family of a teenage girl who had her information posted online with a sexual solicitation that it was a civil matter when in fact charges could have been filed for cyber harassment).

²²⁵ Report from the Attorney General to the Vice President, *1999 Report on Cyberstalking: A New Challenge for Law Enforcement and Industry*,

<http://www.usdoj.gov/criminal/cybercrime/cyberstalking.htm> (Aug. 1999). The report did, however, suggest two notable exceptions—the New York Police Department's Computer Investigation and Technology Unit and the Los Angeles District Attorney's Stalking and Threat Assessment Team; these agencies pursued a significant numbers of cyber harassment cases. *Id.*

²²⁶ Devennie Wauneka, *The Dangers of Cyberstalking: Educating Law Enforcement & Communities*, Office for Victims of Crime Training & Technical Assistance Newsletter 9 (March-Apr. 2009), http://www.unified-solutions.org/uploads/marchapril_2009.pdf.

²²⁷ *Id.*

²²⁸ See Miller, *supra* note 208, at 1-2; see also Erin Alberty, *Cyber-stalked Blog Writer Sues: Police Can't Help Holladay Dad and His Family*, SALT LAKE TRIB., June 6, 2008 (prosecutor's office refused to investigate case involving anonymous online threats on blog where police noted that typically threats on the Internet are "idle threats" whereas "it's a lot easier" to tell if it is a "terroristic threat when it's face-to-face, or even a threat from somebody nearby"); Janese Heavin, *Web Poses a Cyber Bully Threat*, COLUMBIA DAILY TRIB. (MO.), Oct. 22, 2006 (explaining that police told 17-year-old woman that messages on MySpace page that she "would get what was coming" to her did not warrant a legal response); Brooke A. Masters, *When E-mail Is a Weapon*, WASH. POST, Nov. 11, 1998, at B1 (noting that victims of online harassment have a hard time getting help from law enforcement unless "you can show them off-line harassment.").

²²⁹ Wauneka, *supra* note, at 9.

email messages and doctored nude photographs of Ms. Armistead posted alongside her name, email address, and her interest in sex.²³⁰ The police only took action on her case after her attacker confronted her in real space.²³¹ In another case, local police declined to assist a woman after a chat-room user threatened to rape her daughter, urging her to “go home and turn off the computer” instead.²³² This certainly can be reversed with sufficient recognition and training.²³³ Women should not have to wait until cyber harassment fulminates into physical violence for law enforcement to address it.

Even when cyber harassers face criminal charges, they are often treated leniently because their crimes are not seen as serious.²³⁴ Studies note that cyber stalkers have received light punishments.²³⁵ A defendant harassed a family by posting messages that suggested its nine-year-old daughter wanted to have sex with strangers and provided the family’s telephone number.²³⁶ Although the local police department showed little concern for the family’s distress and provided limited assistance, a neighboring police precinct’s Computer Crime unit pursued the case.²³⁷ The defendant only paid a \$750 fine for the misdemeanor of transmitting obscene material.²³⁸ If the defendant faced charges under a cyber stalking statute, he might have faced jail time.²³⁹ The trivialization of cyber harassment thus may blunt the efficacy of existing criminal law.

²³⁰ BOCIJ, *supra* note, at 17.

²³¹ *Id.*

²³² Comment of Mary Sisson, CNY Central website, http://www.cnycentral.com/news/news_story.aspx?id=96646 (Feb. 18, 2008 6:01).

²³³ Miller, *supra* note, at 1, 5-6.

²³⁴ BOCIJ, *supra* note, at 175. Paul Bocij explains that courts often treat offline stalking leniently as well. *Id.* A 2003 study found that stalking cases typically resulted in dismissal and to the extent that they are prosecuted, many charges were reduced to lesser offenses, most often in the misdemeanor level of stalking or another threat-related crime. *Id.* The study found that the charges filed resulted in convictions in 28.5% of cases. *Id.*

²³⁵ *Id.* The phenomenon of stalkers and cyberstalkers receiving light sentences is not confined to the United States. *Id.* Paul Bocij reports that courts in the United Kingdom, Canada, and Australia give light sentences to convicted stalkers, usually in the form of probation. *Id.*

²³⁶ *Id.* at 89.

²³⁷ *Id.* at 90.

²³⁸ *Id.* The Violence Against Women Act punishes, up to two years in jail, individuals who anonymously use the Internet with the intent to “annoy, harass, or threaten.” 47 U.S.C.A. §223(a)(1)(C) (West 2008). The first prosecution under this provision involved a man who sent threatening emails to his ex-girlfriend and sent pornography to her colleagues under her name. Samantha Nelson, *Annoying Online Posts Could Be Illegal*, PC WORLD, Jan. 13, 2006, <http://abcnews.go.com/Technology/PCWorld/story?id=1503454>. After pleading guilty to two counts of harassment, the defendant received 500 hours of community service and five years of probation. *Id.* The absence of incarceration in defendant’s sentence could be seen as an example of trivialization.

²³⁹ *See, e.g.*, Cal. Penal Code §653m(b) (West 1999).; <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/26/AR2005052601665.html> (explaining that cyber harassment statute permitted up to two years in jail).

The next section demonstrates the importance of de-trivializing cyber harassment: to recognize the grave harm that women and society at large suffer in its wake. It explores law's expressive role in changing our understanding of the harm that cyber harassment inflicts and in altering online social norms.

III. THE IMPORTANCE OF LAW'S EXPRESSIVE MESSAGE

Law has an important role to play in de-trivializing cyber gender harassment and serving as a force of moral suasion. This Part argues that a cyber civil rights agenda can educate the public about the serious gendered and systemic harms that cyber harassment inflicts and transform online subcultures of misogyny to those of equality.

A. A Cyber Civil Rights Agenda

My recent work, *Cyber Civil Rights*, offered a combination of tort remedies, criminal prosecutions, and civil rights claims to prevent, remedy, and punish cyber gender harassment.²⁴⁰ Under existing tort remedies, targeted individuals can sue harassers for defamation,²⁴¹ intentional infliction of emotional distress,²⁴² and privacy intrusions.²⁴³ Cyber attackers can be prosecuted for online threats and harassment.²⁴⁴ At the federal level, The Violence Against Women Act imposes criminal penalties to anyone using a telecommunications device without disclosing his identity and with the intent to "abuse, threaten, or harass any person who receives the communication."²⁴⁵ On the state level, many

²⁴⁰ *Id.*

²⁴¹ *See, e.g.*, *Rombom v. Weberman*, 2002 WL 1461890, at *2 (N.Y. Sup. Ct. June 13, 2002) (upholding defamation award in case where defendant's online postings asserted that plaintiff had been a patient in a mental institution); *Kiesau v. Bantz*, 686 N.W.2d 164, 169-70, 176 (Iowa 2004) (upholding a finding of libel per se where defendant altered a photograph of female police officer to make it appear that she intentionally exposed her breasts and sent the picture to plaintiff's colleagues).

²⁴² *See* RESTATEMENT (SECOND) OF TORTS § 46 (1965).

²⁴³ RESTATEMENT (SECOND) OF TORTS § 652D (1977); *see generally* DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 104-05 (2008).

²⁴⁴ Section 875(c) prohibits the transmission of communications that contain threats to injure another person "in interstate or foreign commerce." 18 U.S.C. §875(c) (2006).

²⁴⁵ 47 U.S.C.A. §223(a)(1)(C) (West 2008).

states criminalize cyber harassment.²⁴⁶ Some states punish posting messages with the intent to urge or incite others to harass a victim.²⁴⁷

These traditional criminal and tort remedies play an important role in combating cyber gender harassment, but they cannot reach all of the harm experienced by individuals, groups, and society when defendants interfere with individuals' right to equal treatment. For instance, they do not address the stigma and economic injuries that individuals experience when they are targeted because of their gender. Existing civil rights laws, however, can compensate for these shortcomings. Targeted individuals can sue attackers under Title VII of the Civil Rights Act of 1964 for preventing them from making a living because of their sex.²⁴⁸ Just after Congress passed Title VII, courts upheld discrimination claims where masked defendants engaged in intimidation tactics to prevent plaintiffs from pursuing their chosen careers.²⁴⁹ Although recent Title VII decisions focus on employer-employee relationships, courts should look to those early cases in assessing claims against attackers who interfere with individuals' online work because of their gender. Doing so would honor Title VII's goal of eliminating discrimination in women's employment opportunities.

Many will oppose a cyber civil rights agenda on the grounds that it interferes with our commitment to free speech.²⁵⁰ Contrary to this view, a cyber civil rights agenda comports with First Amendment doctrine and free speech values.²⁵¹ All speaking is not protected despite the First Amendment's guarantee that "Congress shall make no law abridging freedom of speech." Torts such as defamation and intentional infliction of emotional distress fall outside the First Amendment's protection.²⁵² Threats similarly do not enjoy First Amendment immunity.²⁵³

²⁴⁶ See, e.g., Cal. Penal Code §653m(b) (West 1999).

²⁴⁷ Ohio Rev. Code Ann. §2903.211(A)(2) (LexisNexis Supp. 2009).

²⁴⁸ 42 U.S.C. §2000e-6 (2000).

²⁴⁹ United States v. Orig. Knights of Ku Klux Klan, 250 F. Supp. 330, 349 (E.D. La. 1965).

²⁵⁰ Posting of Michael Froomkin, *CCR Symposium: The Right to Remain Anonymous Matters*, Concurring Opinions, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_1.html (Apr. 14, 2009, 7:48).

²⁵¹ Citron, *Cyber Civil Rights*, *supra* note, at 106-14.

²⁵² Milkovich v. Lorain Journal Co., 497 U.S. 1, 18-20 (1990).

²⁵³ Virginia v. Black, 538 U.S. 343, 359 (2003). Although defendants make threats by speaking, that fact does not provide them with a defense to criminal prosecution or civil suits. Threats of violence made via new technologies are not immunized from penalty on free speech grounds. To be sure, this issue becomes more complicated with crimes, such as threats, that are interwoven with arguably expressive activity. Is the burning of cross on the lawn of an African-American family best characterized as a threat? Or is it an expression of a view about race which, though noxious, is protected by the First Amendment? In *Virginia v. Black*, the Court answered these questions, finding that a state may ban cross burning if the defendant carried it out with the intent to intimidate. *Id.* at 359. As the Court explained, the First Amendment does not protect "true threats" that communicate a serious intention to commit violence against particular individuals.

The First Amendment also does not bar antidiscrimination actions that punish unequal treatment. In *Wisconsin v. Mitchell*, the Court made clear that federal and state antidiscrimination laws like Title VII do not run afoul of the First Amendment because they proscribe defendants' unequal treatment of individuals, not the defendants' offensive messages.²⁵⁴ It explained that Title VII's prohibition of sexual harassment did not punish the harassment's offensive message, which would violate the viewpoint discrimination ban, but instead is aimed at bias-inspired conduct, which is not protected by the First Amendment.²⁵⁵ The Court noted that Title VII's prohibition of sexual harassment constituted "content-neutral regulation of conduct."²⁵⁶ Applying civil rights statutes like Title VII to cyber gender harassment would not implicate the First Amendment because they turn on a harasser's discriminatory choice of victim and the harm that such discrimination inflicts, rather than on the opinions that the attackers express. Intimidating Ms. Sierra with rape threats and sexually-demeaning comments so that she shuts down her income-generating blog is equally offensive, and equally proscribed, no matter the anonymous perpetrators' specific views. When law punishes online attackers due to the special severity of the social harm produced by targeting individuals because of their gender or race, and not due to the particular opinions that the attackers or victims express, no First Amendment values are implicated.

A cyber civil rights agenda also comports with prominent free speech theories that emphasize the importance of autonomy and the promotion of truth. Some view free speech as crucial to individual autonomy because it allows people to author their own narratives.²⁵⁷ Defeating cyber gender harassment is essential to defending the expressive autonomy of targeted individuals. Although cyber

Id. The Court distinguished cross burnings done with the intent to intimidate, which it deemed a proscribable "true threat," from cross-burning for other purposes, which it held constituted a protected expression of viewpoint. *Id.* Online postings thus constitute "true threats" if they convey a serious intention to inflict bodily harm upon the targeted individual, even if they combine the threatening language with protected offensive views. The anonymous posters arguably conveyed a serious intention to inflict bodily harm upon Kathy Sierra with their rape threats, doctored photographs, and revelation of her home address. These threats, and others like them, are afforded no protection under First Amendment law.

²⁵⁴ 509 U.S. 476, 480 (1993).

²⁵⁵ *Id.* at 487-88.

²⁵⁶ *Id.* at 487.

²⁵⁷ THOMAS I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6-7 (1970).

harassers express themselves through their assaults, their actions directly implicate their targets' self-determination and ability to participate in political and social discourse. Self-expression should receive little protection if its sole purpose is to extinguish the self-expression of another. Some may insist upon protecting cyber gender harassment from regulation to promote truth. On this view, any silencing of speech prevents us from better understanding the world in which we live.²⁵⁸ An extreme version of the truth-seeking theory would insist that the marketplace can sort out online deceptions and assaults. Cyber gender harassment, however, has little to do with an exploration of truths. Rape and death threats tell us nothing about the victims—no truths are contested there. This is equally true of denial-of-service attacks. Even where online harassers make factual assertions, the anonymity of online communications prevents the marketplace of ideas from performing its curative function.

B. *The Expressive Role of a Cyber Civil Rights Agenda*

Law has an important expressive character beyond its coercive one.²⁵⁹ Law creates a “public set of meanings and shared understandings” between the state and the public.²⁶⁰ It clarifies, and draws attention to, the behavior it prohibits.²⁶¹ Law’s expressed meaning serves mutually reinforcing purposes. Law educates the public about what is socially harmful.²⁶² This legitimates harms, allowing the harmed party to see herself *as harmed*.²⁶³ It signals

²⁵⁸ Robert Post, *Reconciling Theory and Doctrine in First Amendment Jurisprudence*, 88 CAL. L. REV. 2353, 2363 (2000).

²⁵⁹ Deborah Hellman, *The Expressive Dimension of Equal Protection*, 85 MINN. L. REV. 1, 3 n.10 (2000).

²⁶⁰ Elizabeth S. Anderson & Richard M. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503, 1571 (2000).

²⁶¹ Richard H. McAdams & Janice Nadler, *Coordinating in the Shadow of the Law: Two Contextualized Tests of the Focal Point Theory of Legal Compliance* 42 LAW & SOC’Y REV. 865 (2008).

²⁶² Cass R. Sunstein, *On the Expressive Function of the Law*, 144 U. PA. L. REV. 2021, 2022 (1996); Richard H. Pildes, *Why Rights Are Not Trumps: Social Meanings, Expressive Harms, and Constitutionalism*, 27 J. LEGAL STUD. 725, 755 (1998). In the expressivist literature, some scholars have focused on the ways that government and individuals can act wrongfully because of what they express, rather than simply for what they do. See, e.g., Hellman, *supra* note, at 2, 30, 37 (exploring the expressive dimension of law in equality jurisprudence and articulating an expressivist theory of Equal Protection, namely that “state action violates Equal Protection if its meaning conflicts with the government’s obligation to treat each person with equal concern.”). Other scholars focus on the ways law creates and sustains norms of behavior. See, e.g., Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995). Although law also has intrinsic importance in allowing the public to evaluate society’s commitments, Sunstein, *supra* note, at 2022, this Essay focuses on its norm-shaping potential in much the same way that Larry Lessig has done in his important work. See Lessig, *supra* note, at 1010.

²⁶³ WEST, *supra* note 11, at 151.

appropriate behavior.²⁶⁴ In drawing attention to socially appropriate behavior, law permits individuals to take these social meanings into account when deciding upon their actions.²⁶⁵ Because law creates and shapes social mores, it has an important cultural impact that differs from its more direct coercive effects.²⁶⁶

Law played an important expressive role in de-trivializing workplace sexual harassment and domestic violence during the last quarter of the twentieth century. As Catharine MacKinnon recounts, court rulings in the late 1970s and early 1980s changed the social meaning of sexual harassment by recognizing it as a form of gender discrimination.²⁶⁷ Before those decisions, only two small grassroots women's groups working against sexual abuse in the workplace existed, one of which used another name to describe the phenomenon.²⁶⁸ The media's sole coverage of the issue appeared in the women's magazine *Redbook*.²⁶⁹ MacKinnon explains that as part of her work naming and designing a legal claim to address sexual harassment in the workplace, she contacted the women's workers' organization "9-to-5" to see if any of their members would agree to talk with her about their experiences of unwanted sex at work.²⁷⁰ After a long wait, MacKinnon received an apologetic message from the group declining to participate.²⁷¹ The group explained that its members were "afraid of giving up their only source of power"—their sexuality—in the workplace.²⁷² MacKinnon's "suggestion that [such abuse] was a source of their powerlessness" went nowhere.²⁷³

²⁶⁴ Sunstein, *supra* note 172, at 2032.

²⁶⁵ Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 414, 419 (2002).

²⁶⁶ Lessig, *supra* note 172, at 1010.

²⁶⁷ MacKinnon, *The Logic of Experience*, *supra* note 108, at 818. Beginning with *Williams v. Saxbe* and *Barnes v. Costle* and culminating in *Bundy v. Jackson* and *Vinson v. Taylor*, the D.C. Circuit was the first to recognize sexual harassment as a compensable harm and shaped the rules of accountability for it. *Id.* at 813. Professor MacKinnon's account is particularly instructive as she pioneered the very concept of sexual harassment in the workplace and participated in the litigation of the ground-breaking D.C. Circuit cases. See STREBEIGH, *supra* note, at 241-305 (discussing MacKinnon's crucial role in defining and shaping courts' view of sexual harassment); See generally MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN, *supra* note.

²⁶⁸ MacKinnon, *The Logic of Experience*, *supra* note 108, at 818.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

When court rulings declared sexual harassment a manifestation of women's inequality in the workplace, they changed its social meaning. Courts sent the message that sexual abuse in the workplace violated women's equality in a manner that would not be tolerated.²⁷⁴ Women began to see workplace discussion of their sexuality as wrongful, rather than as a self-help tool to wield against their abusers. Over time, they viewed themselves as the judges did—individuals who had the right to complain about sexual harassment in the workplace.²⁷⁵

Media coverage of sexual harassment followed those court decisions. It legitimated the view that sexual harassment constituted harmful behavior and deepened the public's appreciation of the problem, particularly as accusations involved high profile men who abused their power over subordinate female employees.²⁷⁶ For instance, Professor Anita Hill's testimony during the Senate hearings regarding Clarence Thomas's appointment to the Supreme Court "shaped sexual harassment thinking."²⁷⁷ Hill's description of being sexually harassed while working for Thomas at the Department of Education and the EEOC produced an "explosion of national and global consciousness of the issue."²⁷⁸ Her testimony helped dissipate the view that sexual harassment in the workplace constituted harmless flirting.²⁷⁹ It galvanized and inspired women to bring sexual harassment lawsuits, swelling the number of complaints to the EEOC by the thousands.²⁸⁰

Law also had an important impact on society's attitude towards domestic violence. In the early 1970s, prosecutors refused to acknowledge it as a crime despite law's clear prohibition of physical beatings.²⁸¹ Police officers ignored reports of spousal abuse.²⁸² This changed in the late 1970s after battered women's advocacy groups brought class actions challenging law enforcement's systematic failure to arrest physically abusive husbands.²⁸³ Those suits produced settlements that required police departments to respond swiftly to domestic violence complaints and arrest husbands whenever there was reasonable cause to believe a felony had been committed.²⁸⁴ Women's groups also had success at the

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ MACKINNON, WOMEN'S LIVES, *supra* note, at 199.

²⁷⁷ *Id.*

²⁷⁸ MacKinnon, *Logic of Experience*, *supra* note 108, at 830. .

²⁷⁹ *Id.* at 825.

²⁸⁰ MACKINNON, WOMEN'S LIVES, *supra* note 139, at 205; EEOC, *Trends in Harassment Charges Files with the EEOC During the 1980s and 1990s*, at <http://www.eeoc.gov/stats/harassment.html>.

²⁸¹ ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 42-45 (2000).

²⁸² *Id.*

²⁸³ *Id.*; KRISTEN S. RAMBO, "TRIVIAL COMPLAINTS:" THE ROLE OF PRIVACY IN DOMESTIC VIOLENCE LAW AND ACTIVISM IN THE U.S. 115 (2008) (noting array of civil suits against police and prosecutors in fifteen states).

²⁸⁴ *See, e.g.,* Bruno v. Codd, 47 N.Y.2d 582, 590 (1979).

legislative level, convincing state law makers to adopt mandatory arrest policies and no-drop prosecution requirements in domestic violence cases.²⁸⁵ These legal developments helped alter the social meaning of domestic violence from a private family matter to criminal conduct.²⁸⁶

A cyber civil rights agenda can help transform online subcultures of discrimination into those of equality and dignity before they become too entrenched. The history of domestic violence and sexual harassment sheds light on the potential efficacy of a cyber civil rights agenda. For centuries, women faced pervasive abuse at home and in the workplace with little means of recourse. Since law's recognition of women's suffering in the 1970s, the home and workplace have become safer spaces for women.²⁸⁷ Our cultural practices have evolved, though perhaps not as quickly as one might have hoped. For instance, in 1983, the New Jersey Supreme Court Task Force on Women in the Courts found that "[s]tereotyped myths, beliefs, and biases" continued to affect attorneys' and courtroom personnel's decision-making in subject areas such as domestic violence.²⁸⁸ As Fred Strebeigh explains, despite clear changes in the law, some judges continued to marginalize domestic victims because victims could just "get up and leave."²⁸⁹ Social norms might have changed more rapidly had the marginalization of sexual harassment and domestic violence not been so deeply ingrained.

Today, we see the same pattern of women's subordination and exclusion in cyberspace. Because the trivialization of cyber gender harassment is a relatively new phenomenon, we find ourselves at a particularly opportune moment to educate the public about cyber gender harassment. To that end,

²⁸⁵ LAPIDUS, *supra* note, at 158.

²⁸⁶ Schneider, *Violence of Privacy*, *supra* note, at 982; RAMBO, *supra* note 197, at 115 (explaining that lawsuits like *Bruno* changed societal attitudes towards domestic violence). Elizabeth Schneider explains that the last twenty-five years has witnessed considerable change in the public's familiarity with domestic violence. Schneider, *Violence of Privacy*, *supra* note, at 982.

²⁸⁷ Compare Deborah J. Bostock & James G. Daley, *Lifetime and Current Sexual Assault and Harassment Victimization Rates of Active-Duty United States Air Force Women*, 13 VIOLENCE AGAINST WOMEN 927, 928-29 (2007) (noting that the overall rate of sexual harassment in the U.S. military declined from 1988 to 2002) with Kaushik Basu, *The Economics and Law of Sexual Harassment in the Workplace*, 17 J. ECON. PERSPECTIVES 142, 144 (2003) (noting studies concerning the percentage of female federal employees who reported experiencing workplace sexual harassment were relatively constant—just over 40 percent—from 1980 to 1994).

²⁸⁸ STREBEIGH, *EQUAL*, *supra* note, at 384.

²⁸⁹ *Id.* at 386.

parents and educators have an important responsibility to teach the young about cyber harassment's harms because the longer we trivialize cyber gender harassment, the more difficult it will become to eradicate.²⁹⁰ It is certainly possible that if we act now, future generations might view cyber gender harassment as a disgraceful remnant of the net's early history.

A civil rights agenda has the potential to change the social meaning of cyber gender harassment from a triviality to be ignored to invidious discrimination to be punished and remedied. This would accomplish several things. First, bringing online abuse of women into a civil rights framework could change the public's *understanding* of the problem. It would dispel the notion that the harassment constitutes frat boy rants with little real-world impact. It would teach the public that online harassment inflicts non-trivial damage to women, just as legal change in the 1970s conveyed that workplace sexual harassment was not an innocent fact of life.²⁹¹ It would make clear that women should not have to trade their economic and social well-being for an online presence, in much the same way that court rulings found that women should not have to choose between working in a sexually harassing environment and earning a living. It would discredit the notion that women should address the harm themselves by walking away from their computers or engaging in counter-attacks, just as law made clear that women need not handle sexual harassment or domestic violence on their own by leaving hostile work environments or abusive spouses. It would say that women should not have to surmount such cyber abuse, that the "this is simply not one of the life struggles that our democracy thinks is valuable for people to be fighting on their own by one without legal aid."²⁹² It would demonstrate that the

²⁹⁰ Comment of Nollind Whachell to Posting of Horse Pig Cow, *The Unsinkable Kathy Sierra*, <http://www.horsepigcow.com/2007/03/27/the-unsinkable-kathy-sierra/>. Social networking sites with established communities demonstrate this concern. For instance, AutoAdmit remains a cesspool of misogynistic comments despite the media's attention to the attacks on female law students. See, e.g., Comments on The Hottest Skinny Chick with Big Tits, PICTURE EVER, http://www.autoadmit.com/thread.php?forum_id=2&thread_id=943762&PHPSESSID=ada8e21571d0fce93527016650f7087d (Mar. 3, 2009); Are Cindy McCain's Tits Really this Big, http://www.xoxohth.com/thread.php?thread_id=879129&mc=8&forum_id=2 (Nov. 9, 2008); see also Posting of James Grimmelmann to Concurring Opinions, *CCR Symposium: The Lulz Mob*, http://www.concurringopinions.com/archives/2009/04/ccr_symposium_t_3.html (explaining that website Encyclopedia Dramatica where Anonymous posts its activities is devoted to lulz, the pleasure of "watching someone lose their mind at their computer 2,000 miles away . . . [J]ust as the element of surprise transforms the physical act of love into something beautiful," where "something beautiful" in that passage is a hyperlink to the entry for rape); see, e.g., Cheryl Lindsey Seelhoff, Encyclopaedia Dramatica, http://encyclopediadramatica.com/Cheryl_Lindsey_Seelhoff. (last modified on Mar. 16, 2009) (detailing women's issues websites that the group Anonymous has driven offline).

²⁹¹ Antidiscrimination laws convey a cultural meaning of equality among citizens. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 355 (1987).

²⁹² NUSSBAUM, SEX AND SOCIAL JUSTICE, *supra* note, at 20.

Internet is not the lawless Wild West, just as court settlements and state legislation made clear that the home does not insulate abusing husbands from societal intervention.

Second, a cyber civil rights agenda would legitimate the harm in *targeted women's* eyes. It would validate their suffering by acknowledging the damage to their autonomy, livelihood, identity, dignity, and well-being.²⁹³ Women could see that they would not be overreacting if they experienced online harassment as harmful. They could complain rather than minimizing the distress and their own importance, just as women did following court rulings recognizing sexual harassment as discrimination and Anita Hill's testimony. Instead of enduring cyber harassment, shutting down blogs, or concealing their female identities, women could seek law's protection. They could file civil rights lawsuits and initiate criminal complaints, just as the late twentieth-century court rulings inspired women to file sexual harassment suits. Women could come together to denounce cyber harassment rather than going offline in isolation, just as court rulings emboldened the women's movement to speak out against sexual harassment in the workplace. In short, victims could see, and claim, the Internet as a space that is equally theirs.

Third, a cyber civil rights agenda could change the way law enforcement and courts perceive, and respond to, cyber gender harassment. It would clarify that cyber harassment does indeed involve criminal conduct that should be addressed, just as law intervened to ensure that law enforcement took domestic violence's seriously. It could convince jurisdictions to devote more resources to training personnel about cyber harassment investigations and prosecutions. Courts could impose significant punishment for cyber harassment, rather than imposing light fines. In turn, targeted individuals would be more likely to come forward since reporting such incidents would not seem fruitless. This would have a salutary psychic effect on women: they would no longer view themselves as defenseless. At the same time, the real possibility of criminal sanctions could convince some individuals that cyber harassment's costs exceed its benefits. Criminal prosecutions and tough sentences would send a powerful de-trivializing message to potential cyber harassers and victims alike.

Fourth, seeing cyber harassment as implicating civil rights laws would legitimize current efforts to defeat online gender harassment and galvanize others

²⁹³ See Margaret Jane Radin, *Compensation and Commensurability*, 43 DUKE L.J. 56, 60-61 (1993) (explaining that corrective remedies "show the victim that her rights are taken seriously.")

to help them. In much the same way that advocacy groups have formed to combat domestic violence and sexual harassment,²⁹⁴ individuals have joined forces to protest cyber attacks upon women. Jayne Hitchcock's *Working to Halt Online Abuse* organization provides advice to women targeted for cyber abuse. In the wake of recent attacks on female bloggers, feminist bloggers have devoted efforts to raising awareness about the harassment of women online.²⁹⁵ Bloggers declared a "Stop Cyberbullying Day" after the Kathy Sierra incident.²⁹⁶ Well-known technologists Robert Scoble and Tim O'Reilly publicly supported Kathy Sierra. Mr. Scoble announced his decision to close his blog for a week to convey his support for Ms. Sierra.²⁹⁷ Mr. O'Reilly called for a bloggers' code of conduct that would "change the expectations" for "what is acceptable on line."²⁹⁸ Not surprisingly, those efforts failed to grab the online community's attention—cyber gender harassment's perceived triviality had too strong a hold on the public. A cyber civil rights agenda would provide moral support for those committed to changing destructive harassment online.

In short, the signaling function of a cyber civil rights agenda would be iterative. Communities on blogs and social networking sites would begin to see cyber harassment as unacceptable gender discrimination. They would appreciate the net as embracing the same norms and aspirations as our larger culture. Those inclined to tolerate, and perhaps even those who might partake in, online discrimination might instead internalize the notion that cyber gender harassment is unacceptable and express their disapproval of it, rather than letting such destructive behavior continue without rebuke. Site operators might take down destructive posts, further sending the message that cyber harassment is nontrivial.²⁹⁹ A civil rights message could change our cultural software—our "collectively created tools that constitute us as persons" that we use to interact

²⁹⁴ See, e.g., National Coalition Against Domestic Violence, <http://www.ncadv.org/> (last checked on June 24, 2009); Men's Network Against Domestic Violence: Working to End Family Violence One Young Man at a Time, <http://www.menagainstdv.org/> (last checked on Apr. 21, 2009); Sexual Harassment Support, <http://www.sexualharassmentsupport.org/SHworkplace.html> (last checked on June 24, 2009).

²⁹⁵ Posting of Vanessa, *Listen Up: Bloggers Discuss Online Harassment*, Feministing.com, <http://www.feministing.com/archives/013176.html> (Jan. 16, 2009 5:09); Posting of Lisa Stone, *Hating Hate Speech: Safety for Kathy Sierra and All Women Online*, BlogHer, <http://www.blogger.com/node/17319> (Mar. 27, 2007, 1:47).

²⁹⁶ David Louie, *Cyber Threats Against Well-Known Blogger*, ABC Local News, <http://abclocal.go.com/kgo/story?section=news/business&id=5165663> (March 29, 2007, 8:33).

²⁹⁷ Brad Stone, *A Call for Manners in the World of Nasty Blogs*, N.Y. TIMES, Apr. 9, 2007, at A1.

²⁹⁸ *Id.*

²⁹⁹ Site operators can, and do, overlook cyber abuse of women as they enjoy immunity for the postings of others. Citron, *Cyber Civil Rights*, *supra* note, at 115.

with others and express our values.³⁰⁰ Treating women as individuals worthy of respect could become “the moral law within [us].”³⁰¹

In turn, women could resume blogging and participating in online discussion groups. They would feel comfortable using their own voices and identifying themselves with female names. They could take advantage of the professional and reputational opportunities that our networked environment provides. Because women would be subjected to less threatening and demeaning comments, they would suffer less anxiety and shame. As sexually threatening posts with women’s home addresses disappear, women will be less vulnerable to offline crime inspired by online posts. Women’s online activities would contribute to the erosion of gender hierarchy in cyberspace.

To be sure, law’s expressive value will be dampened if perpetrators cannot be located and sued or prosecuted. This might occur if posters use anonymizing technologies or if the websites hosting attacks fail to track IP addresses. This poses a new challenge for law: women usually had no problem identifying workplace harassers and abusive spouses. Nonetheless, law need not be invoked in every instance of cyber gender harassment for it to wield its expressive power. So long as some posters can be identified and some lawsuits and prosecutions can be pursued, law has the potential to teach the public about cyber gender harassment’s grave harms. In a lawsuit brought by female law students harassed on AutoAdmit, plaintiffs have identified several of the 39 anonymous posters even though the site did not log its posters’ IP addresses.³⁰²

Moreover, in the short term, discourse about a cyber civil rights agenda’s role in combating cyber gender harassment can help inform the public’s understanding of the problem. In this respect, the media has already played an important role in beginning that discussion.³⁰³ As more journalists write about

³⁰⁰ J.M. BALKIN, *CULTURAL SOFTWARE: A THEORY OF IDEOLOGY* 14 (1998).

³⁰¹ IMMANUEL KANT, *THE CRITIQUE OF PRACTICAL REASON* 127 (Thomas Kingsmill Abbott trans., Kessinger Publishing, 2004) (1788); Nussbaum, *supra* note 91, at 79.

³⁰² Isaac Arnsdorf, *Lawyers to Name Defendants in AutoAdmit Case*, *YALE DAILY NEWS*, July 31, 2008.

³⁰³ The media has begun to discuss the significance of a cyber civil rights agenda with regard to online harassment. *See, e.g.*, Interview of Danielle Citron, *Free Speech and the Internet*, *WHERE WE LIVE*, National Public Radio WNPR, Apr. 7, 2009, <http://www.cpb.org/program/where-we-live/episode/wwl-free-speech-and-internet?mini=calendar/2009/05/all&>; Interview of Danielle Citron, *Cyber Harassment and the Law*, *ON POINT WITH TOM ASHBROOK*, National Public Radio WBUR, March 3, 2009, <http://www.onpointradio.org/shows/2009/03/cyber-harassment/>; Jean

cyber harassment as gender discrimination, more targeted individuals would file criminal complaints and initiate lawsuits and more law enforcement authorities would provide training to officers on the criminal implications of cyber gender harassment. Thus, the anonymity of online posters is not fatal to law's expressive role in combating cyber gender harassment.

We also must be mindful that a cyber civil rights agenda's expressive value depends upon its perceived moral legitimacy.³⁰⁴ Society deems legal remedies legitimate if they adhere to cultural intuitions about fairness, i.e., they appear apportioned to what is deserved.³⁰⁵ If society perceives civil rights remedies as weak or ineffective, law's expressive message will ring hollow, thus failing to address the trivialization problem.³⁰⁶ If, on the other hand, civil rights remedies are perceived as too harsh, they may engender resentment, causing the expressive message to backfire.

Whether cyber harassment prosecutions and anti-discrimination lawsuits will be perceived as both deserved and fair is unclear. Because these remedies have been underutilized, we have little empirical evidence to suggest that they would be perceived as overly weak or overly harsh. One thing is, however, clear: in rejecting a cyber civil rights agenda, society would concomitantly fail to correct the harm that cyber gender harassment causes and rather send the unacceptable message that society tolerates such abuse. That cannot stand.

As the media publicizes pending lawsuits and prosecutions and as targeted individuals draw attention to the issue, policymakers, courts, and activists will spend more time on this serious social problem. This will permit an assessment of the legitimacy of current remedies and encourage the evolution of new legal theories and legislation to tackle it more precisely. A cyber civil rights agenda is made up of effective, yet imperfect legal solutions. They send the right message but they could be improved upon to target cyber gender harassment more effectively. An anti-discrimination message ought to play an indispensable role in eradicating cyber gender harassment, both now and in the future.

Marbella, *Time to Rein in Harassment on the Internet*, BALTIMORE SUN, Feb. 22, 2009, <http://www.baltimoresun.com/news/local/bal-md.marbella22feb22,0,7486119.column>; . David Margolick, *Cyber Harassment and the Auto Admit Story*, CONDÉ NAST'S PORTFOLIO (Feb./March 2009); Interview of Danielle Citron, *Cyber Sexual Harassment*, THE MARC STEINER SHOW, National Public Radio WEAA, Jan. 15, 2009; *Checking Your Internet Image*, FOX NEWS, televised on July 17, 2008 (video appears at <http://www.myfoxdc.com/myfox/pages/News/Detail?contentId=7009665&version=1&locale=EN-US&layoutCode=VSTY&pageId=3.9.1>) (discussing *Cyber Civil Rights* article).

³⁰⁴ Sonja Starr, *Sentence Reduction as a Remedy for Prosecutorial Misconduct*, GEO. L.J. (forthcoming 2009).

³⁰⁵ *Id.*

³⁰⁶ I thank Sonja Starr for highlighting these concerns for me.

CONCLUSION

The notion that cyber harassment is trivial is both widespread and damaging. Because so many refuse to recognize cyber harassment as harmful, women suffer in silence, often sacrificing their female identities and their online lives. A cyber civil rights agenda would change this by recognizing and naming cyber harassment as gender discrimination. By changing the social meaning of online harassment and re-characterizing it as a civil rights violation, we may be able to transform online behavior in a manner that permits women to claim the Internet as equally their own.