

Of Legal Rights and Moral Wrongs: A Case Study of Internet Defamation

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*Marry, sir, they have committed false report;
moreover, they have spoken untruths; secondarily,
they are slanders; sixth and lastly, they have
belied a lady; thirdly, they have verified unjust
things; and, to conclude, they are lying knaves.¹*
—*Much Ado About Nothing*

*Clearly she deserves to be raped so that her little fantasy world can be
shattered by real life.²*
—*AutoAdmit.com*

On March 7, 2007, the *Washington Post* published a front-page report: *Harsh Words Die Hard on the Web.*³ It, and the subsequent follow-up coverage, details the story of female law students whose professional reputations may have been badly damaged by anonymous internet defamation.⁴ These women have also been subjected to sexual and racial harassment, including threats of sexual violence.

I am one of those women.

When I first began speaking out, I intended to maintain anonymity, since I knew that the first women to take a stance against autoadmit.com would be subjected to even more lies, anonymous threats, and sexual harassment.

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1. WILLIAM SHAKESPEARE, *MUCH ADO ABOUT NOTHING* act 5, sc. 1.

2. In order to discourage traffic to the AutoAdmit website, citations to postings on that site have been deliberately omitted. Copies of the referenced threads are on file with the Yale Journal of Law and Feminism.

3. Ellen Nakashima, *Harsh Words Die Hard on the Web*, WASH. POST, Mar. 7, 2007, at A1.

4. See, e.g., *Marketplace Money: Get Yourself a Little Online Privacy* (NPR radio broadcast Mar. 2, 2007), available at http://marketplacemoney.publicradio.org/display/web/2007/03/02/an_online_identity/; Elizabeth Wurtzel, Editorial, *Trash Talk: Some Lawyers-To-Be Should Exercise Their Right To Remain Silent*, WALL ST. J., Mar. 19, 2007, at A12.

Remaining unidentified is no longer an option, and this result has come to pass.⁵

An anonymous poster on AutoAdmit leaked my identity on the website soon after the media coverage broke. In a way, I am almost relieved—now I can respond to these increasingly ludicrous allegations. According to the posters, I bribed my way into Yale with an “embarrassingly low amount” of money; I had a secret lesbian affair with the Dean of Admissions while she was on maternity leave, and her jealous husband torpedoed my job search in revenge; and I pretend to be either African-American or Native-American, depending on which post you read. These claims are, of course, absurd, but someone who doesn’t know me would have no way of knowing what to believe—or why so many people might take the time to produce such vigorous lies.

I would like to take this opportunity to elaborate on what has happened and discuss some of the relevant issues surrounding this incident. What happened on AutoAdmit has given rise to a number of debates, including: the role of free speech, the right to privacy, protection against discrimination, the social function of the internet, and the balance of regulation with innovation. I would like to highlight some of the least discussed issues in this short essay. I am not going to attempt to flesh out solutions. This will be the job of much longer, scholarly works. I seek to remind people that this is no easy argument. This is not merely a question of freedom of speech. The events debated here are impacting real lives.

I do not know who put up the original harassing material on AutoAdmit, which was posted soon after I decided to attend Yale Law School. I personally contacted the website owners and operators—a third-year student at the University of Pennsylvania Law School and an insurance agent—multiple times over two years, politely and clearly making them aware of the illegal harassing content and asking them to either remove the thread, to take the thread off Google’s radar, or to allow me to contact the original poster.⁶ In February 2007, the Law Student blatantly refused to take down the thread, claiming that I had threatened him with lawsuits.⁷ This conduct speaks volumes about the Law Student’s belief in the importance of legal ethics. The

5. Other victims have found themselves similarly “google-bombed,” wherein AutoAdmit users have intentionally created negative internet content in order to overwhelm Google searches for the women’s names. The users are explicit in this tactic. For example, in my case, the original harasser returned and issued the following challenge: “Make sure all the Vault 50s know it before she gets an offer. Lets [sic] get this post count to 100 guys, you all didn’t let me down 2 years ago. We’re not going to let that bitch have her own blog be the first result from googling her name!”

6. The AutoAdmit site administrators will herein be referred to as “Law Student” or “Insurance Agent.” See Emails from author to Insurance Agent and Law Student (June 21, 2005, 21:12 EST; June 23, 2005, 20:42 EST) (on file with the Yale Journal of Law and Feminism); Email from author to Law Student (Jan. 26, 2007, 21:45 EST) (on file with the Yale Journal of Law and Feminism).

7. Email from Law Student to author (Feb. 8, 2007, 17:31 EST) (on file with the Yale Journal of Law and Feminism).

AutoAdmit board, self-declared “the most prestigious law school discussion board in the world,” is laced with sexist, racist, homophobic, and threatening content. On March 13, 2007, the Law Student posted an announcement stating he was resigning as “Chief Education Director” of AutoAdmit, but he followed up the announcement with postings later that same day, stating tactfully, “This isn’t a retirement, just a resignation”; and then less subtly, “Actually [Autoadmit is] probably a lot less vulnerable to a shut down now that a law student has no involvement whatsoever.” To this day, the Law Student still participates in the forums and, as a demagogue, if not a member of the establishment, he still arguably exercises control.

The site administrators at AutoAdmit use the First Amendment as a cloak to hide behind, shirking responsibility for the potentially illegal actions that they facilitate.⁸ They cry “free speech” when it suits them, but they only apply the principles that they espouse when it is convenient. For example, the Insurance Agent has asserted that if I apologize to him privately (seemingly for drawing attention to this issue), he will remove original content about me from his website. Both site administrators have written on AutoAdmit that if I had “asked nicely,” they would have removed my content, like they have for other people. In fact, the site administrators actively protect regular posters by removing personally identifiable information about them when that information is posted on AutoAdmit. In so doing, they suppress the ability of those who want to shed full light (through more speech) on those responsible for posting abusive content. Nevertheless, when I (and others) did indeed “ask nicely” over the last several years, we were met with stonewalling and blatant refusals.⁹ This is a classic example of intimidation: Harassers stonewall in private, and in public they seek to shift the blame to the victims who choose to speak up. A true hard-line position on free speech would not incorporate power-plays and exercises of personal discretion. A true free-speech advocate would also acknowledge that bringing issues to the public forum is the “more speech” remedy that is so frequently promoted.

Because of the way the internet is indexed by Google, “more speech” is not a valid method of rebuttal. Content on the internet is maintained indefinitely, often without chronological progressions of debate.¹⁰ Even with a resolution, the offending material might still come up first in Google, thus neutralizing the proposed remedy. There were simple methods that the site administrators could have taken—and still can take—that would not have impinged upon the board’s free speech. I offered a suggestion: one simple line of code inserted into my

8. See Ellen Nakashima, *Law School Deans Speak Out on Web Content*, WASH. POST, Mar. 10, 2007, at D1. A few of the potentially illegal actions facilitated on the website are copyright violations, cyberstalking, threats of physical and sexual violence, and libel. *Id.*

9. Email from Law Student to author, *supra* note 7.

10. Indeed, various services now not only index websites, but also keep backup mirror copies of them.

original thread would have stopped Google from displaying it. The claims, as abhorrent and obscene as they are, could have persisted without causing me egregious harm. I was willing to accept this “solution,” as long as the posts did not impact my life. The site administrators have never responded to this proposal.

The site administrators extol the virtues of free speech, and yet, in making this argument, they have strongly impinged upon the speech rights of others. AutoAdmit is infamous for its virulent attacks on women, ethnic minorities, and homosexuals, and also for its damaging impersonations. In the original thread, someone pretended to be me, responding in ways almost as damaging as the original posts. As I personally experienced, the atmosphere creates a climate of fear and chills the ability of victims to speak credibly on their own behalves. These are not the actions of champions of free speech, but the actions of bullies.

The norms of internet communities like AutoAdmit also speak volumes about what it means to have a female identity in cyberspace. Women are especially targeted by the anonymous postings on AutoAdmit, in postings involving sexually-related attacks and descriptions. On the internet, it seems that feminine identity is narrowly proscribed: If a woman chooses to participate in forums like AutoAdmit she can either be dismissed as irrelevant or unintelligent, or she can fight back aggressively. Even if she develops a rapport with others, she is likely to be hypersexualized. These norms would explain why “Stupid Bitch” was the worst insult that could be thrown at me, and why amassing threats of sexual violence was considered to be good fun. Like other unscrupulous areas of the web, it appears that merely being a vocal woman is a crime. In my case, taking a stance has resulted in gender-specific threats of violence, like calls to “hate-fuck” me. In the words of one poster, “Clearly [Brittan Heller] deserves to be raped so that her little fantasy world can be shattered by real life.”

My situation is by no means unique—it is hardly even unusual. There have been incidents at other forums on the internet where the victims have been threatened with even more explicitly gendered violence. A recent story relating the plight of Kathy Sierra shows that these harmful community norms have spread throughout the internet. Sierra is a well-known computer scientist who has received threats, harassment, and intimidation that have affected her professional life and caused her to fear for her personal safety—all for no other reason than that she is a woman:

Last week, Kathy Sierra, a well-known software programmer and Java expert, announced that she had cancelled her speaking engagements and was “afraid to leave my yard” after being threatened with suffocation, rape and hanging. The threats didn’t come from a stalker or a jilted lover and they weren’t responses to a controversial book or

speech. Sierra's harassers were largely anonymous, and all the threats had been made online.

Sierra had been receiving increasingly abusive comments on her website, *Creating Passionate Users*, over the previous year, but had not expected them to turn so violent—her attackers not only verbally assaulting her (“fuck off you boring slut . . . I hope someone slits your throat”) but also posting photomontages of her on other sites: one with a noose next to her head and another depicting her screaming with a thong covering her face. Since she wrote about the abuse on her website, the harassment has increased. “People are posting all my private data online everywhere—social security number, and home address—as retaliation for speaking out.”¹¹

The Guardian also reported that a “recent study showed that when the gender of an online username appears female, they are 25 times more likely to experience harassment. The study, conducted by the University of Maryland, found that female usernames averaged 163 threatening and/or sexually explicit messages a day.”¹² What would be unacceptable in real life—threats of violence and invasions of privacy—are increasingly part of the online experience of being identified as female.

Even if you do not present yourself as female online, others may choose to identify you by your gender and thus feel that harassment is justified. In February 2007, AutoAdmit spawned an affiliated website, “Girls of the T14,” that displayed pictures of women at top law schools.¹³ The pictures were posted in violation of copyright laws, and most of the women were entered into the contest against their will. Again, the victims' pleas for removal were first mocked and then ignored. Even when some women “asked nicely,” users responding on AutoAdmit commented, “She doesn't have the right to ask us to do this. If we want to objectify, criticize and shit on cunts like her, we should be able to.” The Law Student who administers the site has also encouraged a blame-the-victim rationale: “None of this would have happened if she had simply not voluntarily uploaded pictures of herself to a public website [that] is accessed by millions of college students every day. Unfortunately she doesn't seem to believe in taking personal responsibility for her actions.” Users on AutoAdmit encouraged each other to stalk the participants and take pictures of them so they would own the pictures and copyright would no longer be an issue. There continue to be threats of sexual violence against some of the women on the site.

11. Jessica Valenti, *How the Web Became a Sexists' Paradise*, THE GUARDIAN, Apr. 6, 2007, at page 16. See Kathy Sierra, *Death Threats Against Bloggers Are NOT “Protected Speech” (Why I Cancelled My ETech Presentations)*, *Creating Passionate Users*, Apr. 6, 2007, http://headrush.typepad.com/creating_passionate_users/2007/04/death_threats_a.html.

12. Valenti, *supra* note 11.

13. The site has since been taken down, and all references to it on the board are selectively edited. However, some cached threads remained available at the time of this writing.

The Law Student eventually acquired the “Girls of the T14” website for AutoAdmit, and it was shut down. Threads logging the implementation of the site and the organizers’ roles were then deleted. However, mirror sites of the pictures continue to spring up, and photographs are being used to intimidate critics. For example, a headshot of me when I appeared on *Teen Jeopardy*, owned by Sony Pictures, has been copied to a server that hosts pornography. Videos have also been created, showing people getting shot in the head, addressed to critics of the website. Again, copyright violations and threats of violence are not protected speech, and these in particular are indicative that the content of the site has moved beyond protected expressions of opinion.

There are at least three ways that the myriad of problems stemming from sites like AutoAdmit could be addressed, each with its own advantages and disadvantages. The problems, at a minimum, include: 1) the current inability to connect liability to those who can prevent the harm; 2) the pervasiveness of anonymous online harassment; and 3) the vitriolic online attitudes expressed in both legal and illegal speech. So far, debates have centered on a legal solution, a Google-based solution, or a normative solution.

As the law currently stands, it is the ironically-named Communications Decency Act of 1996 (CDA)¹⁴ that might protect the site administrators against direct legal action. Section 230, the so-called “Good Samaritan” provision, extends immunity for defamation delivered by website content to a “provider or user of an interactive computer service,” like a web forum.¹⁵ The CDA had several purposes, such as fostering free expression on the recently-developed internet and encouraging ISPs to moderate their web forums without fear of incurring liability for third-party content.¹⁶ If ISPs did not have this immunity, then by editing content they could be seen as “publishers” and thus become culpable under defamation law.¹⁷ The danger with this arrangement is that web hosts, with knowledge of immunity, can make the decision about whether or not to keep their content free of errors or outrageous content.¹⁸ The CDA is premised on the structural model of the mid-1990s internet, where technological advances like intentionally anonymous message boards and wikis did not yet exist. Additionally, the incentivizing structure optimistically presumes rational actors and a baseline of common decency.

Public opinion is already highlighting problems like AutoAdmit and will likely begin to influence the policy arena. Recently, the founder of Wikipedia and other online innovators have called for establishing a code of conduct for

14. Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) (1996).

15. *Id.*

16. Anita Ramasastry, *Is an Online Encyclopedia, Such as Wikipedia, Immune from Libel Lawsuits?*, FINDLAW, Dec. 12, 2005, <http://writ.news.findlaw.com/ramasastry/20051212.html>.

17. *Id.*

18. *Id.*

online content.¹⁹ With continuing press on stories like mine,²⁰ and the realization that something like this could happen to anybody, it is not hard to imagine that soon, citizens will demand legislative solutions that involve revamping the organization of the internet or having accuracy controls on online content. It would be both admirable and pragmatic for Google to do this proactively, before political inertia results in statutes that may harbor problematic policy implications.

If historical trajectories of new media are a model, it is not too far-fetched to imagine that legislative solutions may be forthcoming. Historically, new media have always had difficulties integrating defamation laws into their regulatory regime—it happened with the telegraph, the telephone, and the radio.²¹ Initially, proponents of each claimed the selected medium was different and deserved special court protections.²² However, as the media became commonplace and began disseminating the same defamatory speech as older media, the courts reapplied traditional restraints. This provided more consistency, since it was the content and impact of the messages and not the method of the transmission that determined legality. If historical trends hold, the case law surrounding internet defamation may soon begin to shift or new statutes may apply real-life defamation laws to the virtual sphere. Some have suggested that the CDA could be modified to be closer to the Online Copyright Infringement Liability Limitation Act, which allows for notice-and-takedown procedures for illegal content.²³ Section 512 allows moderators, if notified of a copyrighted work posted on their website, the opportunity to contact the original poster and then requires them to take it down if it is, in fact, copyrighted.²⁴ The foundations of law protecting property run just as deep as the ones protecting individuals from libel,²⁵ so treating both with equal weight is not unwarranted.

Legislatively, it will be challenging to find a solution to these problems that does not theoretically affect speech at the margins. However, those who defend marginal speech must not forget that these are not simply theoretical

19. Brad Stone, *A Call For Manners in the World of Nasty Blogs*, N.Y. TIMES, April 9, 2007, at A1.

20. The AutoAdmit controversy has spread throughout the law school community, as more victims have come forward from schools like Harvard, New York University, Northwestern, University of Virginia, and Boston University. Recent press coverage has also told of internet harassment affecting professionals like Ms. Sierra and other private citizens around the country. See, e.g., *Marketplace Money*, *supra* note 4.

21. Melissa Troiano, Comment, *The New Journalism? Why Traditional Defamatory Laws Should Apply to Internet Blogs*, 55 AM. U. L. REV. 1447, 1466 (2006).

22. *Id.* at 1463-64.

23. See, e.g., Jack Balkin, *The AutoAdmit Controversy: Some Notes About Social Software, Code, and Norms*, Balkanization, Mar. 9, 2007, <http://balkin.blogspot.com/2007/03/AutoAdmit-controversy-some-notes-about.html>; Lucy H. Holmes, *Making Waves in Statutory Safe Harbors: Reevaluating Internet Service Providers' Liability for Third-Party Content and Copyright Infringement*, 7 ROGER WILLIAMS U. L. REV. 215 (2001).

24. 17 U.S.C. § 512(a)-(d), (f), (g), (i) (1999).

25. Troiano, *supra* note 21, at 1451.

questions, but real world events that cause real harm to innocent people. Constitutional issues should be taken into account when formulating a solution, but they should not serve as a bulwark for people like the site administrators of AutoAdmit, who brazenly and cowardly harm others with impunity.

What is really at stake here is vice posing as virtue. I am not living in a fantasy world in which I take a stance and say that harassment of this kind should never be permitted. I am saying that what is impermissible in the real world should not be permitted in the virtual world—especially when the ramifications of those actions have profound and real consequences. We need to contest the social norms of the internet, wherein women who respond are automatically “stupid bitches,” with a different set of acceptable behaviors. We need to steadfastly state that these behaviors are not acceptable. I would urge all of us, as legal professionals, to take this incident into account, to reformulate social norms, and to hold responsible those who are capable of providing remedies.