

DO OFFENSIVE WORDS HARM PEOPLE?

Timothy Jay

Massachusetts College of Liberal Arts

The harm thesis—the assumption that words harm people—is a defining feature of sexual harassment, hate speech, verbal abuse, and obscene telephone call (OTC) offenses. This thesis ignores the possibility that swearing can be advantageous, cathartic, or an acceptable substitute for physical aggression. Observational data, courtroom evidence and verbal abuse research reviewed here produce conflicting conclusions on the question of harm. The best evidence of harm resides in harassment and OTC studies, but verbal abuse research is indeterminate because of flawed research methodology. Public swearing research reveals that swearing is a common conversational practice resulting in no obvious harm. “Common sense” (folk psychology) views of swearing are mistaken and inadequate for some decisions regarding harm. Meanwhile, efforts to restrict speech in media and instructional settings continue, despite the lack of a convincing need to do so. Harm from offensive speech is contextually determined; therefore attempts to restrict speech on a universal basis are misguided. Psychologists’ research needs to be informed by public policy and courtroom practices, and public policy and litigation need to be better informed by psychologists’ research.

Keywords: verbal abuse, swearing, indecent speech, hate speech, sexual harassment

Legal scholars advance a harm thesis, that offensive utterances harm people the same way that physical blows do (Matsuda, Lawrence, Delgado, & Crenshaw, 1993). Offensive words comprise, but are not limited to, categories of obscenity, indecency, profanity, racial insults, taboos, and scatology (see Jay, 1992). My focus on harm from offensive words is based on their problematic emotive and aversive properties associated with psychological reactance and memorability (Jay, Caldwell-Harris, & King, 2008; Jay, King, & Duncan, 2006). These are the types of words that *should* cause harm. In contrast, civil libertarians argue that words do not cause harm because speech is abstract or symbolic, not at all like physical blows (Heins, 2007; Strossen, 1995; Wolfson, 1997). These opposing views raise the question: When do offensive words harm people? This is a review of legal and psychological perspectives on harm covering research that supports the harm thesis (e.g., sexual harassment, hate speech, obscene telephone calls [OTCs]) and research that is indeterminate (verbal abuse). Harm research is then contrasted with research that provides no evidence of harm (e.g., conversational swearing, sexuality education, broadcast indecency, humor). *Inoffensive* words associated with harm, such as defamation (including both libel and slander), fraud, and perjury are not reviewed. Recommendations to improve public policy and litigation regarding offensive speech and suggestions to improve research methods are offered.

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Correspondence concerning this article should be addressed to Timothy Jay, Department of Psychology, Massachusetts College of Liberal Arts, 375 Church Street, North Adams, MA 01247. E-mail: tjay@mcla.edu

Harassment and Hate Speech

Gender-related insults and racial epithets that have the effect of denying citizens their civil rights are legally actionable under federal and state statutes. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, gender, or national origin. Title IX of the Education Amendments Act of 1972 makes it illegal to discriminate based on sex in an educational setting. Judgments about speech being harmful to women, children, or minorities depend on the nature of an abusive environment, as well as the language used.

Sexual Harassment

Sexual harassment laws have evolved since the Equal Employment Opportunity Commission defined harassment in the 1980s. Verbal sexual harassment amounts to unwanted jokes of a sexual nature; references to a person's sexual behavior, body, or clothing; or pervasive offensive sexual comments. The mere utterance of an offensive word does not meet the conditions of sexual harassment, nor is speech that is not severe or pervasive enough to create an objectively hostile or abusive work environment—one that a reasonable person would find hostile or abusive. Whether an environment is hostile or abusive can be determined only by examining all contextual circumstances, and one has to judge whether speech is physically threatening or humiliating and not just offensive. It also is important to determine whether the speech interferes with work performance. The employee's psychological well-being can be used to demonstrate that the environment is abusive, but no single factor is necessary to determine whether harassment has occurred.

A landmark case in the development of sexual harassment law is *Harris v. Forklift Systems, Inc.* (1993). Teresa Harris worked at an equipment rental company, Forklift Systems, where Charles Hardy was Forklift's president. The testimony showed that throughout Harris' time at Forklift, Mr. Hardy frequently insulted and made her the target of unwanted sexual comments because she was a woman. Hardy told Harris on several occasions, in the presence of other workers, "You're a woman, what do you know" and "We need a man as the rental manager." He called her "a dumb ass woman" in front of others and suggested that the two of them "go to the Holiday Inn to negotiate [Harris's] raise." Hardy asked Harris and other female workers to get coins from his front pants pocket. He also made sexual innuendos about Harris's and other women's clothing.

When Harris complained to Hardy about his conduct, he said he was surprised that she was offended, claimed he was only joking, and apologized. He promised he would stop but later began again. When Harris was working with a Forklift customer, Hardy asked her, again in front of other employees, "What did you do, promise the guy . . . some [sex] Saturday night?" after which Harris collected her pay and quit. Harris sued Forklift, claiming that Hardy's conduct had created an abusive work environment for her because of her gender. The U.S. Supreme Court ruled that it was not necessary to prove that the work environment caused serious psychological harm to demonstrate harassment.

Comments that are merely offensive are not actionable. For example, in *Lyle v. Warner Brothers Television Productions* (2006) Amaani Lyle was working as

a writers' assistant for the popular television show *Friends*. She claimed that she was subjected to sexually coarse language, sexual jokes, vulgar language, and conduct as the writers talked about their own sexual behaviors and used offensive language in the course of creating content for the television show. However, the California Supreme Court held that the plaintiff failed to establish a sexually objectionable work environment that was sufficiently severe or pervasive to support the sexual harassment claim. Federal courts have held that sexually offensive phrases, for example, *fuck me* or *kiss my ass*, are commonplace in certain circles and do not constitute unlawful harassment by employees.

Hate Speech

Hate speech is bias-motivated speech aimed at a person identified as a member of a historically victimized group based on gender, sexual orientation, race, ethnicity, religion, national origin, or disability. Generally, bias-motivated *speech* falls under First Amendment protection; prejudice is not illegal. Similar to sexual harassment, hate speech is protected until it rises to the level of a threat. A common feature of harassment and hate speech situations is that victims feel threatened by their victimizers' speech. *Virginia v. Black* (2003) established that speech with the intent to intimidate (e.g., cross burning) may not be protected under the First Amendment and may constitute a bias-motivated *crime*. Bias-motivated or hate crimes are prohibited by criminal law and warrant more severe penalties than crimes that are not bias motivated. The Supreme Court in *Wisconsin v. Mitchell* (1993) upheld a statute providing for enhanced punishment when the defendant committed a crime—in this case, assault—and intentionally selected the victim because of his group status. The racial slur can be evidence of that choice. The defendant is not charged for the slur itself, but because the defendant utters a slur, the defendant may be charged with committing a bias-motivated attack and his or her speech may lead to additional penalties or additional charges, depending on the jurisdiction. The use of a slur would not always mean that the victim was chosen on the basis of race.

A key factor relevant to determining whether bias-motivated speech is constitutionally protected language, or subject to criminal penalties, is whether the utterance is a general comment about minorities or a targeted, personal threat. Casual bias-based speech, for example, "I hate fags," which is not directed at a specific individual would be protected. Harm arises if a speaker directly targets a member of a protected group; for example, "I'm going to bust your head, you fucking fag," as the intention expressed is a threat, signaling imminent harm. The general-versus-specific dichotomy is traced to "fighting words," which, as established in *Chaplinsky v. New Hampshire* (1942), are words that will provoke the target to imminent violence and are addressed to an individual, not a group (see Friedlieb, 2005).

Harms experienced by victims of hateful speech, outlined by Matsuda et al. (1993) and Sullaway (2004), include psychological and physiological symptoms similar to posttraumatic stress disorder (PTSD): panic, fear, anxiety, nightmares, intrusive thoughts of intimidation and denigration. Harm may be exacerbated if a victim's friends or subordinates witness the incident (Matsuda et al., 1993; Neu, 2008; Sullaway, 2004). Secondary harm to the victim's community (e.g., racial or

ethnic group) may accrue, as incidents of hate speech or bias-motivated crimes can have a rippling effect on those who identify with the victim. In the past, claims of emotional and psychological distress in reaction to hateful speech have been regarded as credible injuries based on the specific facts of each case (see Neu, 2008). Research indicates that victims of hate crimes are more severely traumatized, and their trauma lasts longer than victims of comparably violent nonhate-motivated crimes (Sullaway, 2004). On ethical grounds, psychological research does not permit us to construct empirical research to test the harm thesis for hate by exposing one group to hate speech and comparing its reaction to a control group that is not maligned. However, on the basis of archival demographic data, there is evidence that suicide rates for ethnic immigrant groups in the United States are significantly predicted by the degree of negativity of hate speech directed toward them (Mullen & Smyth, 2004).

OTCs to Women and Children

The harm thesis is central to OTCs, another form of verbal harassment. As an example, Massachusetts General Law Ch. 269 § 14A defines an OTC as a misdemeanor. The caller must make at least three calls to the victim or their family, and the person's language has to be either indecent or obscene, or the person's sole purpose was to harass or molest the victim. Whoever telephones and uses indecent or obscene language can be punished by a fine of not more than \$500 or by imprisonment for not more than 3 months, or both, according to the law.

The research on OTCs is not as extensive as one might think. More research exists on the nature of obscene telephone *callers* than on the effects of OTCs on their victims. Unless recorded in the act, the caller victimizes the listener, who later can report the incident to the phone company or police. Most women do not report OTCs because complaints produce minimal cooperation from the police and phone company. Nonetheless, the victims are left with the memories of the calls, which produce fear, anger, and annoyance, which might constitute harm (see Smith & Morra, 1994).

There is a body of empirical research regarding the impact of OTCs on women (e.g., Rounds, 1996; Sheffield, 1989; Smith & Morra, 1994). Sheffield (1989) used a self-report procedure to secure descriptive data regarding 58 women's experiences of OTCs. Sheffield's respondents reported feeling anger, fear, disgust, and degradation in reaction to the calls. Smith and Morra (1994) interviewed 1,990 Canadian women and found that two thirds of the victims reported receiving at least one sexual or threatening phone call, mainly from men whom they did not know. Three out of four indicated that they experienced some degree of fear, ranging from uneasiness to terror.

The OTC is primarily a form of male-to-female harassment, and its impact depends on situational variables. Women report that OTCs are more troubling when experienced alone and in the middle of the night. When other people are nearby or during the daytime, the impact of OTCs is mitigated. Research on female victims of OTCs demonstrates that the experience is common and memorable with short-term consequences that include self-reported feelings of shock, fear, shame, and panic. Persistent feelings of anger, disgust, and lingering fears

are common. It would be more informative if victims' feelings were corroborated with objective measures of harm, such as psychological or physiological symptoms documented by a physician or psychiatrist. It would also be helpful to know what was said during OTCs, as threats are very different in content from sexual speech.

Little is known about how OTCs affect children, although recent studies point to debilitating effects depending on the degree to which the child participates in the conversation. Larsen, Leth, and Maher (2000) studied a sample of Danish children who had received OTCs from a single adult offender. All children experienced verbal abuse from the same caller, and none had a previous record of abuse from other sources. The caller threatened to bring the children to the police station, do a body search, or kill their mothers if they did not comply with his requests to undress and perform sexual acts such as touching and penetrating their own genitals while he was masturbating. Most of the children suffered psychological consequences from his calls. The children who obeyed the man's commands (58% of the girls and 31% of the boys) experienced more serious consequences than children who did not comply. Obedient children scored significantly higher than nonobedient children on the Posttraumatic Stress Reaction Index. The most common symptoms, similar to PTSD, were bad memories, intrusive thoughts, fear of being alone, and fear of being contacted again.

Larsen et al. (2000) provided evidence of the negative psychological consequences of OTCs to children. Almost all of the children evidenced psychological stress symptoms; however, children's memories of OTCs may be in doubt. One difficulty with studying children's perceptions of and reactions to abusive speech is that children's memories of abuse are not entirely accurate (see Bidrose & Goodman, 2000; Leander, Christianson, & Granhag, 2008; Leander, Granhag, & Christianson, 2005). Leander et al. (2005) examined reports of 8- to 16-year-olds' memories of OTCs. The investigators were able to match children's accounts of these incidents with police recordings of statements made by the perpetrator regarding his phone calls. All children remembered the phone calls, but they omitted almost all of the sexual and sensitive material (what the perpetrator said); and they omitted about 70% of the neutral material about the OTC. Leander et al. (2005) suggested that the children may have remembered the sexual materials but that they chose not to disclose it within the interview situation because of shame or embarrassment. One is left with the conclusion that more research needs to be conducted to elucidate the factors that contribute to children's memories for sexual and threatening language. One noteworthy advantage of the research on OTCs for children, relative to adult research reported here, is that children's interviews could be compared with the perpetrator's confessions of his OTCs, corroborating the accuracy of both interviews.

Verbal Abuse

Because of flawed methodology, evidence of harm based on verbal abuse research would not be convincing in court. One problem with verbal abuse research stems from the difficulty in defining the phenomenon (O'Leary, 1999; Vissing, Straus, Gelles, & Harrop, 1991). To operationally define *abuse*, Straus (1979) developed the Conflict Tactics Scale (CTS) to measure family verbal

aggression. Participants estimate the number of times per year that they have done the following: insulted/swore at someone, sulked/refused to talk to someone, stomped out of a room/house/yard, did or said something in spite, threatened to hit or throw, and threw or smashed something. The CTS does not separate insulting from swearing, and it provides no estimate for how frequently people swear conversationally when there is not a problem. Uttering swear words conversationally, not abusively, is never measured or isolated from its insulting counterpart in verbal abuse research, implying that all forms of swearing are abusive. Furthermore, throwing an object is a symbolic form of aggression, but it is not *verbal* aggression.

It is a common practice in abuse research to administer the CTS to parents and then correlate CTS scores with dependent variables, such as parents' estimates of their children's problems. Vissing et al. (1991) administered the CTS to parents and obtained information regarding their children's physical aggression and psychosocial problems (delinquency, interpersonal problems). They found that two thirds of the parents reported one or more instances of verbal aggression per year, and the mean was 12.6 instances per year. Vissing et al. reported that children who experienced frequent verbal aggression exhibited higher rates of problems, but these findings are open to question. Results are correlations between the parents' estimates of verbal aggression and the parents' estimates of children's problems. Relationships are not reported between the CTS and external criteria, such as problems at school or victim-based interviews as in OTC research, which would provide a validity check on the parents' estimates. The authors noted the following:

Although we found highly significant relationships between parents' use of verbal/symbolic aggression and psychosocial problems of the child, one cannot tell from these findings which is the cause and which is the effect. (Vissing et al., 1991, p. 235)

Research using the CTS and relying solely on parents' estimates is questionable, and it may not provide solid evidence that words alone actually harmed children.

An oft-cited article by Ney (1987) reported that verbal abuse (e.g., cursing, threatening, humiliating) is more likely than are physical forms of abuse to change a child's view of the world and alter his or her self-perception. Ney speculated that verbal abuse has a greater impact during the childhood years than during adulthood because a child cannot defend himself or herself from a verbal attack. Ney asked parents to complete a questionnaire about abuse on themselves and their children. The point was to find correlations between parents' self-reports of verbally abusing their children and children's self-reports of their feelings about hopelessness ("Do you feel hopeless?") and war ("Do you expect there will be a nuclear war?"). An analysis of the feelings responses constituted what Ney referred to as verbal abuse changing the child's view of the world. A greater proportion of the children who were reported to be verbally abused answered "yes" to the feelings questions. Ney concluded, "This study generally supports the clinical impression that verbal abuse is as harmful as or more harmful to children than other types of abuse" (1987). Ney's results are based on correlations, and causation cannot be determined solely from self-reports and correlations. One

could conclude that the self-reported abuse and questionnaire answers were correlated but not that words alone caused the higher proportion of “yes” responses.

Ney’s claim that verbal abuse is more harmful than physical abuse has been repeatedly echoed in subsequent research. Ney, Fung, and Wickett (1994) examined the covariance of multiple forms of neglect and abuse. They found that physical abuse, physical neglect, verbal abuse, emotional neglect, and sexual abuse occurred in isolation less than 5% of the time, indicating how difficult it is to separate verbal abuse from other abuse. The combination of physical neglect, physical abuse, and verbal abuse has the greatest impact on children’s sense of well-being, supporting the point that it is difficult to disentangle verbal abuse from other forms of abuse.

To address the problem of isolating verbal abuse from other forms of abuse, Teicher, Samson, Polcari, and McGreenery (2006) attempted to assess the impact of verbal aggression (e.g., scolding, yelling, swearing, blaming, insulting, threatening, demeaning, ridiculing, criticizing, and belittling) in the absence of physical abuse, sexual abuse, or exposure to domestic violence. The authors used effect sizes (Cohen’s *d* values) to judge relative impacts of abuse on psychiatric symptoms. A compounding effect of abuse was found, so that subjects who were exposed to two or more categories of abuse (emotional, physical, or sexual) experienced symptoms that were greater than a single component. Verbal abuse effect size was only high for limbic irritability, a scale comprising items that assess somatic disturbances, hallucinations, and dissociative experiences. The effect of verbal abuse on dissociation, anxiety, depression, and anger was low to moderate. The authors noted “the possibility that individuals who have a high degree of current psychiatric symptoms may report their childhood in a more negative light than do individuals who are free from such symptoms” (Teicher et al., 2006, p. 998). A selection bias toward those who are inclined to feel negatively about childhood compromises the results, but the problems do not end there.

Teicher et al. (2006) sampled primarily upper middle class college students who were recruited by responding to an advertisement for individuals who experienced an unhappy childhood. This recruitment eliminates children who grew up with verbal aggression but still experienced a happy childhood. As a result, we have no idea how often children hear their parents swearing conversationally, where swearing is not connected with any form of abuse. It also may be the case that verbal abuse is perceived as more punitive by participating upper middle-class children than by lower status children, who experience more physical punishments (see Mosby, Rawls, Meehan, Mays, & Pettinari, 1999).

Methodological problems have not abated in studies that are more recent. In a paper titled “*Wounding Words*,” Moore and Pepler (2006) looked at maternal verbal abuse and child adjustment in violent and nonviolent groups. Mothers’ scores on the CTS were used to estimate parental verbal aggression. CTS scores were then compared with the mothers’ perceptions of their children’s behavior on the Child Behavior Checklist (Achenbach & Edelbrock, 1983). Moore and Pepler found that both insults and threats were associated with poorer adjustment in children from both violent and nonviolent groups, with stronger associations for the violent group. They concluded, “While the inference of a causal link is

tempting, these data are essentially correlational in nature” (2006). This is an important admission. Not only are the data correlational, but they also rely on the mothers’ perceptions of verbal abuse and of their children’s problems, perceptions subject to the accuracy of mothers’ memories as well as their biases against accurately reporting undesirable behavior.

Geiger and Fischer (2006) forego problems with parents’ biases by directly interviewing sixth-grade victims of verbal aggression. Offensive speech was not universally experienced as hurtful, as children’s reactions depended on several factors: whether they interpreted the speech as for fun or not, which contextual cues were present (facial expression, tone of voice), and the reactions of peers’ at the time of the verbal aggression. Children reported that they felt that cursing, teasing, and tormenting caused anger, hurt, and humiliation. When the message targeted students’ permanent physical characteristics or ethnic–social identity, they felt that an escalation to physical retaliation was justifiable. Geiger and Fischer reported children’s feelings, attitudes, and perceptions regarding harm without more convincing evidence of harm from primary sources (e.g., documented psychosocial problems at school or home). Self-reports of harm are particularly subject to demand characteristics; that is, when an older, more powerful person, such as a researcher, asks children how they responded when people verbally insulted them, there is pressure to respond in a socially desirable manner.

Flaws in Verbal Abuse Research

A major methodological problem with the verbal abuse literature involves its reliance on questionnaires and subjective self-reports of harm. In message-scaling studies, college students are asked to rate on Likert-type scales the offensiveness or harmfulness of written messages (e.g., Kinney, 1994, 2003). Message-scaling studies should not be marketed as evidence of harm but of attitudes or perceptions of potentially harmful speech. Questionnaire and survey research is not unimportant, but it needs to be supported by more objective evidence of harm. There also remains a fundamental problem establishing what constitutes harm or distress as a result of verbal abuse, because different researchers use different criteria. Heyman, Feldbau-Kohn, Ehrensaft, Langhinrichsen-Rohling, and O’Leary (2001) noted that there is no consensus for delineating criteria for distress from verbal or physical abuse. They pointed out problems with using the CTS as a diagnostic screening tool by comparing valid diagnostic interviews with adjustment and abuse questionnaires. They found that the CTS overdiagnosed distress and aggression (especially for women) compared with the interview. They concluded that commonly used adjustment and satisfaction measures are likely to perform worse than real-world screening or interview sessions.

Another problem is the misrepresentation of the relationship between speech and harm. For a critical evaluation of the harm thesis, empirical evidence is required but not anecdotes or speculation. For example, in a chapter on the topic of aggression, Buss asserted that “Aggression need not be physical, and the ‘bite’ of verbal aggression may be as sharp (psychologically) as the serpent’s sting, as may be documented by any married couple” (Buss, 1971, pp. 7–8). This is an example of the kind of glib, irresponsible assertion that, although being provoc-

ative, does not actually support the harm thesis. Buss provided no concrete evidence in that paper to prove that words harm people. Based in part on Buss's opinion that offensive speech is more harmful than physical abuse, Kinney (1994) asked college students to provide examples of messages that hurt them in the past. A typology of verbal aggression (group membership attacks, personal failings, relational failings) was constructed, relating types of verbal aggression with subjects' feelings (e.g., angry, annoyed, depressed). The article concluded that "Attacks marshaled against the self-concept can be as potentially damaging as physical attacks on the body" (Kinney, 1994, p. 213). Note again that Buss did not provide evidence of harm, and Ney's results are correlational.

There is also a problem defining exactly which offensive messages cause harm and which do not. Kinney (1994) noted that some messages (e.g., maledictions, teasing, ridiculing, swearing) represent different forms of verbal attacks that vary in force; threats and ridicules are more forceful than teases. It is important to note that Kinney reported that there are wide individual differences regarding what constitutes a hurtful message. As in Geiger and Fischer (2006), what speech is considered harmful depends critically on situational variables such as bystanders' reactions or the perceived intent of the message. With the wide individual and situational differences, it may be impossible to determine what messages are harmful on a universal basis.

Verbal abuse research reviewed here would not be convincing in court because it is limited by an inadequate definition of harm and inadequate methodology. The strongest evidence of harm rests on subjective self-reports of harm. It is almost impossible to disentangle verbal abuse from other forms of abuse where it matters—that is, with children. Finally, there is a clear failure to differentiate systematically harmful speech situations from harmless situations, which one would think is essential.

Offensive Words and the Absence of Harm

Mass media portray swearing as a bad behavior that needs to be curtailed (e.g., Deam, 2007); however, media and psychological research rarely address the positive, harmless uses of offensive words (Jay, 2000, 2009). Using offensive words in conversations with friends can achieve a number of desirable social effects, which include promoting social cohesion, producing childhood and adult humor as well as catharsis, and using self-deprecation and sarcastic irony to produce harmony. Linguistic research makes it clear that no universal statements can be made about what speech will be regarded as offensive (Jay & Janschewitz, 2008; Locher & Watts, 2005). The meaning and impact of speech is entirely determined by the contextual factors, such as the relationship between the speaker and listener and the topic of discussion. Couples can agree that words such as *nigger*, *cunt*, *bitch*, or *fuck* are not offensive at a given time and place, regardless of what other people may think. Asserting that offensive words universally cause harm cannot be justified.

Conversational Swearing

To argue against the harm thesis, experts should be cognizant of the comprehensive studies of public swearing that have emerged (Jay, 1992, 2000, 2009;

McEnery, 2006; Mehl & Pennebaker, 2003; Mehl, Vazire, Ramirez-Esparza, Statcher, & Pennebaker, 2007). These studies point to the frequent use of offensive words on the order of 0.3 to 0.7% of speakers' daily verbal output. Given an average daily production rate of 15,000–16,000 words, the average speaker says 60–90 offensive words. The overwhelming majority of these uses are not harmful, just conversational. We (Jay, 1992, 2000) have recorded several thousand public episodes of swearing and have never seen swearing result in physical aggression. One concludes that swearing is a common behavior, especially common on a college campus, which leads to no obvious social harm. We do not deny that abusive speech can and does occur outside of the scope of this research, that is, in other public and private settings (e.g., at home or work settings). As for laboratory studies using taboo words, one has to be more cautious, as participant recruitment is based on informed consent and voluntary participation. Of the thousands of participants interviewed in laboratory settings (Jay, 1992, 2000; Jay & Janschewitz, 2008), we have not received complaints after the completion of the laboratory tasks. Moreover, there are no reports of harm in the literature regarding participation in offensive language research.

The Positive Impact of Offensive Words: The Benefits of Swearing

Contemporary views of the impact of violent and aggressive media on viewers are heavily entrenched in social learning theory (Anderson & Bushman, 2002; Heins, 2007). Without weighing the positive outcomes produced by swearing, the social learning perspective frames swearing in a biased manner, as an unwanted or negative behavior that needs to be eliminated. Catharsis is an alternative point of view, which proposes that viewing aggressive or offensive contents attenuates subsequent aggressive and sexual urges. The catharsis view is not well understood and is misrepresented as a theory in psychological science literature. Cathartic effects of emoting and swearing are reported in the literature, although they are usually ignored in social learning reviews (Heins, 2007; Pennebaker, 1997; Scheele & DuBois, 2006; Unruh, 1997). Informants have reported positive effects of swearing; for example, they feel better after swearing (Jay, King, & Duncan, 2006). In addition, one should consider the vibrant culture of adult jokes and humor in the United States in the form of stand-up comedy, comedy album sales, comedy clubs, and scores of bawdy comedies on television; in these contexts, consumers find relief and positive effects of laughing at offensive jokes (Chapman & Foot, 1976, 1977; Zoglin, 2008).

The question that needs more attention in psychological science literature is whether offensive words provide benefits to speakers and listeners. As with the need to contrast base rates for conversational swearing with rates of verbal abuse, we need to contrast situations in which offensive words produce harm with those in which these words produce psychological and social benefits, such as substituting for physical violence. Indeed, some scientists (Jackson, 1866/1958) viewed swearing as providing an evolutionary advantage over physical forms of aggression, because swearing allows the speaker to vent his or her feelings without physically contacting a listener. Cathartic effects provide an opportunity for a well-recognized legal dichotomy for First Amendment rights: freedom *for* versus freedom *from* some types of speech. The notion of catharsis through swearing fits

neatly under the argument that there should be a First Amendment right to say offensive yet cathartic speech. Conversely, the notion that there may be some kind of harm from hearing offensive suggests there should be a First Amendment freedom from harmful offensive speech.

We all grow up in a culture in which we have to learn which speech is appropriate and which is offensive in a given situation; this is our folk psychology of offensive words. Our folk psychology and commonsense beliefs about offensive words do not amount to a scientific understanding of the reasons why people swear or the impact of swearing on other people. When folk psychology, common sense, and flawed studies create a biased, misleading perception of swearing, then this knowledge is inadequate for judges to use for making decisions regarding the harm thesis. We must discredit folk psychology and supplement it with a more objective, research-oriented view of offensive speech (Jay, 2009; Kovera, Rusano, & McAuliff, 2002).

Indecent Speech and the Federal Communications Commission (FCC)

The Supreme Court has recently re-examined the nature of indecency as outlined in *FCC v. Pacifica* (1978), a case assessing the legality of airing George Carlin's "filthy words" routine on radio. In *Pacifica*, the FCC held that offensive words (e.g., *fuck*, *shit*, *tits*) may be indecent when aired during certain times of the day when children are likely to be in the audience or when they are repeated and dwelled upon (Carlin said them repeatedly in the excerpt played on radio station WBAI). Of note, these offensive words by themselves are not indecent, as context is key for the FCC. For example, airing a politician who accidentally said "shit" during a news conference would not be indecent under the FCC's regime if the speech has some political value such as reflecting on the candidate's character. The FCC states its position on context on its Web site:

Are there certain words that are always unlawful?

No. Offensive words may be profane and/or indecent depending on the context. (Available online at <http://www.fcc.gov/eb/oip/FAQ.html#TheLaw>)

The U.S. Courts of Appeals in *Fox Television Stations v. FCC* (2007) raised the question of whether children are harmed by "fleeting expletives" such as Bono's "fucking brilliant" at the Golden Globes Awards. The appellate court wrote:

The agency asserts the same interest in protecting children as it asserted thirty years ago, but until the Golden Globes decision, it had never banned fleeting expletives. While the FCC is free to change its previously settled view on this issue, it must provide a reasoned basis for that change. Cf. *State Farm [Motor Vehicle Manufacturers Association v. State Farm Insurance]*, 1983], 463 U.S. at 42 ("[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.") (emphasis added). The FCC's decision, however, is devoid of any evidence that suggests a fleeting expletive is harmful, let alone establishes that this harm is serious enough to warrant government regulation. Such evidence would seem to be particularly relevant today when children likely hear this language far more often from other sources than they did in the 1970s when the Commission first began sanctioning indecent speech. Yet the

Remand Order provides no reasoned analysis of the purported “problem” it is seeking to address with its new indecency policy from which this court can conclude that such regulation of speech is reasonable. (*Fox Television Stations v. FCC*, 2007, p. 29)

In recent years over a series of indecency violations, the FCC has issued a confusing series of judgments regarding the meaning of the word *fuck*. Originally the FCC ruled that Bono’s fleeting expletive was an adjective and not indecent, but after thousands of complaints to the FCC, the commission ruled that “fucking brilliant” was indecent (decision *FCC 06-17*; FCC, 2006). However in a later opinion, the FCC decided that indecent speech was permissible in the context of showing *Saving Private Ryan* on ABC TV. It reasoned that the language used in the film represented a realistic depiction of how soldiers spoke during World War II. The vacillating arbitrary and capricious nature of the FCC’s rulings were successfully appealed in *Fox Television Stations v. FCC*, in 2007, which required the Commission to reconsider its decision-making process.

If one purpose for the FCC is to protect children from indecent speech in broadcast content, then a current dilemma is to define unambiguously what constitutes “indecent” speech; that is, patently offensive sexual and excretory references. We raise an obvious question: What is the meaning of *fuck*? Is *fuck* always indecent? The FCC’s contention that *fuck* always has a sexual meaning in all uses sits at odds with the Supreme Court’s ruling in *Cohen v. California* (1971), where the phrase “fuck the draft” was given a political, as opposed to sexual, interpretation.

Fairman (2007) examined the inconsistencies on the interpretation of *fuck* and demonstrated that the many of the modern uses of *fuck* are divorced from its earlier predominantly sexual denotation. Public swearing data indicate that the predominant use of *fuck* is to express emotional connotation (e.g., frustration, surprise) and not literal sexual denotation (see Jay, 1992; Jay & Danks, 1977; Jay & Janschwitz, 2007). We have recorded hundreds of incidences of children saying offensive words in public and private places (see Jay, 1992; Jay et al., 2006), making suspect assumptions that children are corrupted by fleeting expletives that they already know and use.

Judicial reasoning in *Pacifica* is based on the Justices’ folk knowledge of offensiveness but not on any scientific evidence of harm from indecent speech. The offensiveness of indecent speech was sufficient to restrict indecent speech in *Pacifica*, but offensiveness is *not* a sufficient basis in cases involving sexual harassment or hate speech. There is no psychological evidence of harm from fleeting expletives. In the end, it appears that the FCC remains out of touch with millions of speakers, and with meaningful linguistic analyses of swearing in public, to impose its own notion on propriety on all of us. Unsupported beliefs about indecency are not unlike those underlying our approach to sexuality education in public schools.

Sexuality Education

Sex education provides an example of a common misperception that discussions about sexuality have harmful effects on children and young adults. When two Presidential commissions on pornography and obscenity (Attorney General’s

Commission on Pornography, 1986; President's Commission on Obscenity and Pornography, 1970) were assembled to determine whether sexually explicit materials harmed people, both commissions found little convincing evidence that offensive speech harmed normal adults. The one exception was for deleterious effects on children that were used to create pornographic *images*, but evidence is lacking that children are harmed by speech.

Opponents of comprehensive sexual education argue that exposing children to explicit discussions of sexuality will result in harm in the form of promiscuous or deviant behavior (Heins, 2007; Klein, 2006). Sex education research has failed to support the harm assumption, yet this notion of harm from sex talk persists in the American populace. Alternatively, the Henry Kaiser Foundation and others have published numerous reports demonstrating the failure of abstinence-only sex education programs. Abstinence-only programs have resulted in either higher rates of sexually transmitted diseases or no change in sexual activities after completion of the program ("Abstinence-only sex education programs," 2001; Klein, 2006).

It is informative to contrast the philosophy behind abstinence-only sexuality education with the philosophy espoused by the Drug Abuse Resistance Education program (DARE). DARE proponents assert that exposing children to information about drugs and drug use will result in more personally and socially responsible behavior (Bosma, Komro, Perry, Veblen-Mortenson, & Kian, 2005). Failing to see the contradictory positions regarding the effect of educating children about problematic issues, Americans think that a comprehensive exposure to drug education has a preventive effect but that a comprehensive approach to sexuality education does not (Heins, 2007).

We rarely read about the positive effects of comprehensive sexuality programs, further entrenching a folk psychology that we should not talk to children about sexuality. Positive effects of sexual education are ignored in popular debates, but several comprehensive studies reported by the Guttmacher Institute (e.g., Nash, 2001) demonstrated that comprehensive sexual education programs significantly delayed the onset of sex among teenage females, increased their use of contraception, and reduced their pregnancy and birth rates. The effects are the opposite of what proponents of abstinence-only programs have argued and are more in line with the DARE philosophy on education. The bottom line, analogous to what we see with verbal abuse, is that objective evidence of harm is lacking, leaving pro-censorship folk psychology to be based on prevailing, scientifically unsound, conservative attitudes, even as scientific evidence runs counter to these prevailing beliefs.

Discussion

In summary, the answer to the question, "Do offensive words harm people?" appears to be "Yes, maybe, and no; it depends . . ." Evidence of harm is present in harassment, discrimination, and OTC cases, but it is indeterminate in verbal abuse research. There is no evidence of harm from fleeting expletives or from conversational or cathartic swearing. The discussion concludes with suggestions to improve public policy, litigation, interdisciplinary communication, and research on the harm question.

Improving Public Policy

One means of preventing overreaching restrictions on offensive speech is to improve initial legislative processes. Legislators' public comments and interpretations of harmful speech situations within the context of our 24-hr news coverage can be more reactive than constructive. Calvert (2008) argued that legislators who want to suppress offensive content in a particular medium (e.g., television, radio, video games) should face a two-step evidentiary burden. First, they must prove actual harm by the speech in question that is sufficient to override free speech rights in that medium, independent of injury from other aggregated sources of speech (e.g., other media or real-world experiences). Agencies such as the FCC would have to prove that fleeting expletives harm children before expanding indecency restrictions. Second, even when sufficient harm is proven by psychological research, the government then must prove that its legislative remedy causes the problem significantly to be ameliorated.

The two-step burden is intended to prevent the government from creating knee-jerk restrictions; for example, restrictions based on inferences about the role of violent video games in the Columbine shootings or about the effect of fleeting expletives in *Saving Private Ryan*. It would probably be difficult for legislative bodies to demonstrate harm on the first step and more difficult to prove that limiting content in a single medium will do any good at remedying the problem. However, this solution would make legislators more cognizant of legal precedents and research demonstrating harm before proposing legislation that sounds good but impinges on freedom of speech or is ineffective.

Some factual predicates are so widely accepted (e.g., obscenity is harmful) that the government gets a free pass on the proof of harm (as in *Ginsberg v. New York* or *Pacific*); in other cases, scientific evidence is useful where common sense fails. The fact that a previous case was decided without scientific evidence of harm does not preclude using evidence in future cases. In the past, distinctions were made between children's and adults' vulnerabilities to offensive speech, but the courts failed to address psychological differences between younger and older children, lumping young children and adolescents into a single homogeneous group. Contemporary research has shown that there are wide variations in the cognitive and social maturity of adolescents (young adults) relative to young children (Heins, 2007). In addition, folk psychology, "common sense," and media depictions of offensive words create a biased and inaccurate view of speech, and they should not be the basis for judicial decisions (see Jay, 2009). Instead, courts need to abandon inaccurate commonsense views of offensive speech and be more open to expert testimony and scientific evidence regarding the nature of offensive words (Kovera et al., 2002).

Litigation and the Question of Harm

As noted in the section on sexual harassment, scientific evidence of harm is not necessary to prevail in cases involving offensive language. Harm is not always the basis for limitations. The Supreme Court has spoken of a right to set standards for society, at least in the case of unprotected speech, and the scientific standard in offensive speech cases is allowed to be somewhat loose.

In *Ginsberg v. New York* (1968), the Supreme Court noted that the science on the negative impact of sexual material on children was not all that clear, but because speech that is judged to be obscene for children is not protected speech, there does not need to be any evidence of harm. Only a rational belief that harm for children exists is required. On the other hand, where speech is protected, the regulation of such speech must meet strict scrutiny. In recent cases involving video games with “violent” content (see *American Amusement Machine Association v. Kendrick*, 2001), the courts have rejected psychological and neurological evidence as inadequate to demonstrate that restricting access is necessary to protect children from negative effects.

Judge Posner, writing for the Sixth Circuit in the *Kendrick* video games case, distinguished violent material from obscene material by noting that restrictions on violent material are motivated by a belief that the material causes harm, whereas limits on obscenity are motivated by offense. Thus, offense seems sufficient to prevail, even without any showing of harm. The same may be said of the broadcast indecency cases. The material is said to offend for the same reasons that obscenity offends. Thus, offense seems enough in a broadcast context (i.e., *Pacifica*) without demonstrating harm, although offense is insufficient in sexual harassment and hate speech cases. Psychologists interested in harm need to be cognizant of the precedents where no proof of harm is needed for legal conclusions (Schauer, 2008). Likewise, lawyers litigating harm from offensive words need to understand how to evaluate emerging scientific testing that they claim supports their position (Heins, 2007; Kovera et al., 2002).

Lawyers, legislators, and psychologists need to better understand how scientific evidence may establish harm, and then our courts can better evaluate whether new scientific testimony relevant to abuse, indecency, discrimination, or harassment is useful. *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) placed responsibility of determining the reliability of expert evidence in the hands of federal trial court judges. Currently, courts face an increasing need to evaluate scientific and technical evidence, and they must ultimately decide whether child protection censorship is necessary and not a threat to First Amendment rights. How can this decision best be made? Psychologists’ methodology (may or may not) provide a means to answer legal questions of harm due to ethical constraints (Calvert, 2008). Because of institutional review boards’ constraints, researchers cannot assign children to experimental groups that experience harm and compare them to effects in a no-harm-exposed control group. However, even where social science evidence is constrained, judges should be informed by or ask for the best evidence available on harm that exists, just as we should ask lawmakers to be cognizant of evidence of harm with respect to their legislation (see Calvert, 2008; Garfield, 2005). Unless they are informed by current research on the nature of swearing in the United States, it may well be the case that many lawyers and judges, because of their age, education, economic status, or living conditions, are too insulated or isolated from Americans’ colloquial or street language to form an realistic opinion about harm (e.g., indecency) standards (Jay, 2009; Kovera et al., 2002).

Fostering Better Communication Between Psychology and Law

Legal and psychological science scholarship exist in an uncomfortable disjunction. Legal decisions can proceed with minimal input from psychologists and psychological science proceeds without a careful consideration of how to address harm in court (see Kovera et al., 2002). One improvement through professional education is to facilitate mutual understanding of psychological science and law perspectives on harm. An expeditious solution would be to encourage interdisciplinary panels of expert psychologists, litigators, and judges who would address the question of harm at psychology and law conferences; this could be accomplished in a matter of months. On a longer term basis, our professional journals should encourage interdisciplinary discussions, white papers, and special topics issues on the question of harm; the current review could serve as a starting point.

As for professional curricula at the classroom level, which would take some time to develop, law students (future judges) would profit from knowledge of psychological science standards and practices—most important, the basics of the scientific method—as well as identifying where consensus exists on research regarding psycholinguistics, cognitive development, childhood sexuality, moral reasoning, and risky behavior. One also needs to appreciate the limitations of anecdotal evidence, correlation versus causation research, statistical significance, representative sampling, the necessity of proper control groups, and the value of observational versus laboratory methods. Alternatively, psychology students need to learn the history and nature of litigation on obscenity and indecency cases, especially those applicable to children. Psychology students need in-depth knowledge regarding legal precedents and practices in cases involving harm (Kovera et al., 2002; Schauer, 2008). An immediate concern is the need for both psychologists and lawyers to better understand how verbal abuse operates on the Internet (see Leander et al., 2008). Interdisciplinary discussions should be promoted in public news media. Television and internet exposure can work to foster a better understanding of the harms and benefits of using offensive speech in the general population.

Conducting Meaningful Research on Harm

Lawmakers and litigators should abandon their commonsense and folk psychology views of harm if those views are inaccurate and begin to educate themselves about research on harm. In turn, researchers should help alleviate social problems, such as verbal abuse, and develop definitive methodology to demonstrate abuse where evidence of harm is definitive. Unfortunately, the harm thesis suffers from two significant problems. First, there is no clear definition of what constitutes harm (O'Leary, 1999). Second, because of methodological inadequacies and ethical problems with exposing people to offensive speech, there is little good research evidence of harm. The definition problem arises because there is no clear relationship between harm from physical violence and harm conveyed by offensive speech. Scholarship has not provided a clear definition of harm, and this vagueness allows just about anything from shifting world views to psychiatric symptoms to qualify as harm. Criteria are also needed for establishing what types of evidence con-

stitute harm. To assert that speech alone harms people oversimplifies the role of complex contextual variables underlying harassment, hate speech, and verbal abuse. The final determination of offensiveness generally is not straightforward but rests almost entirely on complex contextual variables such as the location of the conversation, the relationship between the speaker and the listener, and the language used (Jay & Janschewitz, 2008).

Although researchers acknowledge that words can harm, a systematic assessment of conversational situations in which swearing is harmless has not been attempted. This is a particularly germane criticism of the kinds of anecdotal evidence previously presented in courts throughout the entire history of obscenity trials (Heins, 2007). For example, testimonials from criminals and juvenile delinquents who consumed sexually explicit materials in the form of novels, video games, comic books, or pornography are offered as evidence in court. Unless there is a control group of people who used sexually explicit materials but *did not* become criminals or delinquents, this is bad science. Offensive speech might constitute harm, but not all offensive speech is harmful, and we need to compare and contrast both forms to be thorough.

Psychologists and litigators would profit from more clarity regarding any indirect harm that may arise from adults' conversational swearing. The most harmful speech is that which is targeted specifically toward a vulnerable listener, as evidenced by OTC; harassment; and hate speech cases (see Sullaway, 2004). Overhearing others' offensive or bawdy general comments is, in most cases, harmless speech. Although there may be no direct harm from a child hearing a parent swear, exposure to conversational swearing could communicate to the child that offensive speech is acceptable in all contexts. The child may then be more likely to repeat offensive language outside his or her home (e.g., at school) where he or she would be punished for doing so. The issue here is not that harm comes from exposure to arbitrarily determined offensive words but that harm may be the product of not clearly defining speech standards for children. When our research assistants were recording children's swearing in public, we heard an 8-year-old boy call his mother a "bitch" in a grocery store parking lot. When his mother admonished him and asked him why he said that, he replied, "Why not? Daddy does." This is the kind of speech likely to receive punishment at school, where the context and standards are different from those encountered in the child's home.

Discrimination toward and verbal abuse of adults or children to the point of physical or psychological harm is despicable, and any steps we can take to ameliorate these social ills would be appreciated. Reviewing the abuse literature shows that interviewing the victims of offensive speech is more credible than using surveys or questionnaires. Physiological or psychosocial evidence of harm is more credible than subjective estimates of potential harm. Researchers would do better to find negative effects of harm through observing changes in the victim's behavior, psychological well-being, or problems with peers, or by interviewing those who directly observed changes in the victim's behavior. Interviewing victims is more informative than assessing parents' perception of distress in child victims. Victims' reports should be validated against secondary sources (e.g., recorded misbehaviors at school or work).

In the end, it seems clear that sweeping statements about the impact of any message cannot be made without a careful delineation of contextual factors

that affect harm (e.g., racial inequality and vulnerability, speaker–listener body language, tone of voice, perceived intent), and that attempts to censor words on a universal basis amount to a violation of our First Amendment free speech rights.

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Correction to Fontaine (2008)

Due to a production error, the article “Reactive Cognition, Reactive Emotion: Toward a More Psychologically-Informed Understanding of Reactive Homicide” by Reid Griffith Fontaine (*Psychology, Public Policy, and Law*, 2008, Vol. 14, No. 4, 243-261) was published with incorrect footnote numbering. Specifically, the intended footnotes 2 through 9 were moved to the end, and footnote 10 became footnote 2 and so forth.

To see the complete corrected article, please go to <http://dx.doi.org/10.1037/a0013768>.

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