

Posted 11/30/08

HOW MANY LAWYERS DOES IT TAKE...

By Julius Wachtel, (c) 2010

...to convict someone of a misdemeanor? That's what inquiring minds want to know. On November 26, after a five-day Federal court trial, a team of three prosecutors led by [Thomas P. O'Brien](#), United States Attorney for the Central District of California convicted [Lori Drew](#), 49 of three misdemeanor counts of accessing My Space computer servers without authorization.

Why did the Feds unleash three top guns on a middle-aged Missouri mom? Rewind to October 2006 when Megan Meier, a troubled 13-year old girl hung herself after receiving a My Space message from someone that she met online. That was the horrific outcome of a plot concocted by Drew to take revenge on Megan for spreading malicious online rumors about Drew's own 13-year old daughter. Drew enlisted [Ashley Grills](#), 18, to help. Grills created a My Space profile for a fictitious 16-year old boy and started sending Megan flirtatious messages. When Megan got infatuated and pressed to meet the boy Grills broke it off with a "the world would be a better place without you" message. That unexpectedly drove Megan, who was on anti-depressants, to commit suicide.

Unable to find a State or local law to fit the situation local authorities eventually declined to press charges, leaving the matter to be settled in the civil courts. That's when the intrepid O'Brien came to the rescue, breathlessly [announcing](#) that he was stepping in to protect potential victims everywhere: "If you are going to attempt to annoy or go after a little girl and you're going to use the Internet to do so, this office and others across the country will hold you responsible."

How could an L.A. prosecutor criminalize nasty doings in Missouri? It so happens that My Space computer servers are physically located in L.A. County, bringing Drew's use of the service within O'Brien's jurisdiction. For the precise offense he turned to [Title 18, Section 1030](#), a confusingly worded and complex statute that penalizes "fraud and related activity" in cyberspace.

Then things got curiously and curiously. Instead of letting his worker bees run with the ball, as is common practice in even the most serious crimes, the US Attorney personally injected himself into the case, going so far as to travel to

POLICEISSUES.ORG

Missouri to conduct interviews. Grills, who admitted she set up the My Space account and composed most messages got a sweet deal: immunity in exchange for testimony. Assured of a compliant witness, O'Brien had Drew [indicted](#) on conspiracy, a felony even if the object is a misdemeanor, and three instances of intentional, unauthorized access to a computer, charged as felonies under Sec. 1030(c)(2)(ii) because their alleged purpose was to commit a "[tortious act](#)," meaning a harm under civil law.

Excoriated in the national media, in the bulls-eye of one of the most intensive Federal investigations in recent memory, with her husband out of work and her daughter in hiding, Lori Drew finally came to trial. And that's when the Government's house of cards began to crumble. After attentively listening to all the Government's men and all the Government's witnesses, jurors hung on the most serious charge, conspiracy. And while they did convict Drew on three counts of unauthorized access (under Federal law aiders and abettors are liable as principals) they chose the misdemeanor rather than felony variant.

There followed a groundswell of criticism, but not because the verdict was too lenient:

"What happened to Megan Meier was a tragedy, not a crime...This verdict is a loss for civil liberties and leaves all Internet users at risk of prosecution under federal law. It is a prime example of overcriminalization." ([Andrew Grossman](#), legal analyst, Heritage Foundation)

"This is troubling because it could have a chilling effect on free speech on the Internet. There is a long tradition of anonymous free speech in this country and the tech leaders on the Internet are trying to come up with some good way to balance anonymity with accountability." ([Sheldon Rampton](#), research director, Center for Media and Democracy)

"What they [Drew and Grills] did was cruel and incredible. A grown woman harassing a kid, for heaven's sake? But there's always been a problem, in my view, of holding Drew legally responsible for an unintended consequence...." ([Barb Shelly](#), *Kansas City Star* columnist.)

"As a result of the prosecutor's highly aggressive, if not unlawful, legal theory, it is now a crime to 'obtain information' from a Web site in violation of its terms of service. This cannot be what Congress meant when

POLICEISSUES.ORG

it enacted the law, but now you have it.” ([Matthew L. Levine](#), former Federal prosecutor, now a defense lawyer.)

As one might expect, Drew’s lawyer, [H. Dean Steward](#), delivered his own tongue-lashing, going so far as to accuse US Attorney O’Brien of “grandstanding” to enhance his chances of being reappointed under the new Administration. Steward’s not done. Federal Judge George Wu will soon be ruling on his motion to quash the verdicts because what made the intrusion unauthorized -- Drew’s failure to heed My Space’s terms of service -- couldn’t have been “intentional” as the [statute](#) specifically requires since she didn’t set up the website and never read the guidelines.

Legal technicalities aside, this case highlights a fundamental concern about the proper role of the criminal law. Would Lori Drew’s admittedly abominable acts have been better handled through the civil courts? People are always doing nasty things to each other, occasionally with catastrophic consequences, yet we rarely expect the Government to step in, preferring in a democracy to keep the State’s reach from becoming overbroad. When officials such as an all-powerful US Attorney manage through clever lawyering to invoke a statute clearly intended for a different purpose, we must be doubly cautious so that the fine line between the *people’s* interest and a zealous prosecutor’s *self*-interest isn’t breached.

And there’s another problem. Miscarriages of justice are far more likely to occur when resources are, as in this case, terribly imbalanced. Few of us have the means to hold off a Federal steamroller, and ganging up on a person of such modest means as Lori Drew with three high-powered prosecutors and a pack of Federal agents smells much more like *persecution* than *prosecution*. Even if she “deserved it” you’ve got to wonder: who’s next?