DEATH SENTENCE: A COMPENDIUM AGAINST ASSAILMENT

John F. Serafine

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1 John Serafine received his J.D. from the University of Missouri-Columbia. He holds a B.S. in Administration of Justice from Arizona State University. Call 911 or the Suicide Prevention Hotline at 1-800-273-8255 if you are feeling suicidal. There are good people who can help. See Dean Reynolds, Inside a Suicide Prevention Call Center for Veterans Responding to 1,700 Calls Each Day, CBS EVENING NEWS (Aug. 26, 2019), https://www.cbsnews.com/news/veteran-suicide-prevention-inside-suicide-prevention-call-center-for-veterans-responding-to-1700-calls-each-day/.
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THE BEGINNING

Our progenitors\(^2\) were gardeners\(^3\) with an honor system in place.\(^4\) They could eat any fruit but not from the Tree of Knowledge.\(^5\) “[T]hou shall not eat of it,” God commanded Adam.\(^6\) “[F]or in the day that thou eatest thereof thou shalt surely die.”\(^7\)

Satan was a murderer from the beginning.\(^8\) More subtle than any beast in the field, he prevailed upon Eve outside the presence of Adam.\(^9\) “[Y]ou two] shall not surely die,” said the misanthrope unto Eve.\(^10\)

Eve was wary but not nearly enough.\(^11\) Adam hearkened unto her voice,\(^12\) ingested forbidden fruit,\(^13\) and most assuredly did die.\(^14\) Satan picked on someone his own size in 29 anno Domini.\(^15\)

The devil dared Christ Jesus to jump from the height of the temple.\(^16\) “If thou be the Son of God, cast thyself down: for it is written, He shall give his angels charge concerning thee: and in their hands they shall bear thee up.”\(^17\) “It is written,” Jesus answered, “Thou shalt not tempt the Lord thy God.”\(^18\)

There were other temptations but Jesus did not waver.\(^19\) He began his divine mastery of Scripture at an early age\(^20\) and

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\(^2\) See Genesis 3:20.
\(^3\) See id. at 2:15, 20-22.
\(^4\) See id. at 2:9, 16-17.
\(^5\) See id. at 3:2-3.
\(^6\) See id. at 2:16-17.
\(^7\) Id. at 17.
\(^8\) Compare Revelation 12:9, with John 8:44.
\(^9\) Compare Genesis 3:1-5, with 2 Corinthians 11:3.
\(^11\) See id. at 3:6.
\(^12\) Id. at 3:17.
\(^13\) Id. at 3:6.
\(^14\) Id. at 5:5.
\(^15\) See ED HINSON & THOMAS ICE, CHARTING THE BIBLE CHRONOLOGICALLY 107 (2016).
\(^16\) See Matthew 4:5-6.
\(^17\) Id. at 4:6 (misconstruing Psalms 91:11-12).
\(^18\) Id. at 4:7 quoting Deuteronomy 6:16.
\(^19\) E.g., Luke 4:5-8.
\(^20\) See id. at 2:42-47.
was determinedly obedient to God.\textsuperscript{21} Satan never stood a chance.

\section{I. OUR PROBLEM}

\subsection{A. YOUTH SUICIDE}

Unintentional injury, predominately from car wrecks, is a leading cause of death for children in the United States of America.\textsuperscript{22} So is suicide.\textsuperscript{23} According to a recent report from the U.S. National Center for Health Statistics, the suicide rate for those aged 10 to 14 nearly tripled from 2007 to 2017.\textsuperscript{24} Five-hundred, seventeen (517) children aged 10 to 14 completed suicide in 2017.\textsuperscript{25}

The suicide rate for persons aged 15 to 19 also went up.\textsuperscript{26} It increased more than seventy-five percent from 2007 to 2017.\textsuperscript{27} Two-thousand, four-hundred, ninety-one (2,491) people aged 15 to 19 completed suicide in 2017.\textsuperscript{28}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{21} See Philippians 2:8.
\item \textsuperscript{22} Susan Perry, \textit{Accidents, Suicides and Homicides Lead to Rise in Death Rate for Youth Age 10-19}, MINNPOST (June 6, 2018), https://www.minnpost.com/second-opinion/2018/06/accidents-suicides-and-homicides-lead-rise-death-rate-youth-age-10-19/.
\item \textsuperscript{24} SALLY C. CURTIN & MELONIE HERON, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, NCHS DATA BRIEF NO. 352, DEATH RATES DUE TO SUICIDE AND HOMICIDE AMONG PERSONS AGED 10–24: UNITED STATES, 2000–2017 1, 1 (Oct. 2019).
\item \textsuperscript{26} CURTIN & HERON, supra note 24, at 1.
\item \textsuperscript{27} Id.
\end{enumerate}
\end{footnotesize}
A noted psychologist called the new numbers “extremely disturbing.” Others agreed. Just looking at these numbers,” said a pediatric psychiatrist, “it’s hard not to find them completely disturbing. It should be a call to action.

Congress enacted the K.T. Safety Act of 2007. The law forced federal transportation officials to write a rule that would help prevent backover crashes. An estimated two-hundred, twenty-eight (228) people died annually in these accidents and close to half (111) were under the age of twenty. As a result of the law, rearview cameras became a required feature on all new passenger vehicles starting May 1, 2018.

Meanwhile, five-hundred, ninety-six (596) children aged 10 to 14 killed themselves in 2018. Twenty-eight were

30 Brianna Abbott, Youth Suicide Up 56% in Decade, WALL STREET J., Oct. 17, 2019, at A3; William Wan, CDC Study Finds Surge in Suicide Rates Among Young People, WASH. POST, Oct. 18, 2019, at A17.
31 Wan, supra note 30.
34 Backover Crash Regulation, supra note 33, at 76,240.
35 Id.
37 10 Leading Causes of Death by Age Group, United States – 2018, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR INJURY PREVENTION AND CONTROL.
DEATH SENTENCE

from Ohio\(^{38}\) where suicide is now the leading cause of death for that age bracket.\(^{39}\) Suicide ranked first in Utah for children aged 10 to 17.\(^{40}\) A record number of children killed themselves in Arizona (64).\(^{41}\) Georgia had a near-identical number (63).\(^{42}\)

“When a leading cause of death among our youth is increasing, it behooves all of us to pay attention and figure out what’s going on.”\(^{43}\) While it may be very difficult to determine a single cause for the increasing numbers,\(^{44}\) any “hypothesis would have to include bullying.”\(^{45}\) Severe and continued incidents of bullying have led to suicide.\(^{46}\) We know it to be a contributing factor.\(^{47}\) However, “[t]he link between bullying and suicide has been around for a long time.”\(^{48}\)


38 Holly Zachariah, Mother Spreads Suicide Awareness, MARION STAR (Ohio), Mar. 8, 2020, at A1.


41 Mary Jo Pitzl, Child Suicides Spiked in 2018, ARIZ. REPUBLIC, Jan. 6, 2020, at 1A.


43 Abbott, supra note 30.


46 Anthony D. Pellegrini, Bullying, in 2 WORLD BOOK ENCYCLOPEDIA 698, 696 (2020).

47 Nadine J. Kaslow & Sarah E. Dunn, Suicide, in 18 WORLD BOOK ENCYCLOPEDIA 964, 964 (2020).

48 Ben Benton, Tackling Aggressive Behavior, CHATTANOOGA TIMES FREE PRESS (Apr. 26, 2010),
B. SUICIDE PROVOCATION

Eric Mohat (17) could not only sing—he could perform. Eric Mohat (17) could not only sing—he could perform.49 Much to the delight of his high school choir, Eric brought down the house with *Song of the King.*50 Eric was a “happy little clam from the day he was born” and “[w]hen he smiled, his whole face would light up.”51 He had plenty of friends,52 vibed with female classmates,53 and drew 1,000 people plus to his celebration-of-life service.54 Whereas Eric entertained audiences, two bullies55 from math class56 amused each other tormenting him.57

The duo maligned Eric with the slurs “fag,” “queer,” and “homo.”58 Like envy personified,59 they called Eric “worthless” and “loser.”60 “Pick up your book, faggot,” they


50 Reject (Golden Rule Films 2013).

51 Id.

52 Id.


56 Reject, supra note 50.

57 AP Archive, *In Less Than Two Years, Four High School Students in Mentor, Ohio Have Taken Their Own Lives After B*, YOUTUBE (July 30, 2015), https://www.youtube.com/watch?v=P4gxeSjxyQA.


59 2 MARY SHELLEY, FRANKENSTEIN; OR THE MODERN PROMETHEUS 143-44 (1818) (“I am malicious because I am miserable . . . if I cannot inspire love, I will cause fear.”).

60 AP Archive, supra note 57.
told him after knocking books out of his hands on the stairs.\textsuperscript{61} The pair repeatedly pushed, shoved, and hit Eric.\textsuperscript{62} They pushed him into lockers, gave him smacks upside the head, threw things at him, flicked his ear,\textsuperscript{63} and jabbed him with pencils.\textsuperscript{64} “For several months before [Eric]’s death, he was constantly bullied and harassed.”\textsuperscript{65} Eric attended an Ohio high school but kids said his math class was “hell on earth.”\textsuperscript{66}

“I get picked on every day and I’ve got a whole nine weeks left,” Eric told his mother.\textsuperscript{67} Eric pleaded with his teacher, “I can’t take it anymore, I can’t take it anymore.”\textsuperscript{68} The teacher intervened.\textsuperscript{69} The following week, one of the bullies said to Eric, “Why don’t you go home and shoot yourself? No one would miss you.”\textsuperscript{70} Eric left school, went home, and shot himself to death at 4:16 p.m., March 29, 2007.\textsuperscript{71}

Rosalie “Rosie” Avila (13)\textsuperscript{72} attended middle school in Calimesa, California.\textsuperscript{73} Some students there\textsuperscript{74} bullied her for

\begin{thebibliography}{9}
\setlength{\itemsep}{0pt}
\footnotesize
\bibitem{Barr} Meghan Barr, \textit{1 School, 4 Bullied Teens – All Dead by Their Own Hand}, CINCINNATI ENQUIRER, Oct. 10, 2010, at A18.
\bibitem{Mohat} Mohat, 2013 WL 5450296, at *1.
\bibitem{MENTOR} MENTOR (Garden Thieves Pictures 2014).
\bibitem{REJECT} REJECT, \textit{supra} note 50.
\bibitem{Mohat2} Mohat, 2013 WL 5450296, at *1.
\bibitem{James} Susan Donaldson James, \textit{Teen Commits Suicide Due to Bullying: Parents Sue School for Son’s Death}, ABC NEWS (Apr. 2, 2009), https://abcnews.go.com/Health/MindMoodNews/story?id=7228335.
\bibitem{Id} \textit{Id}.
\bibitem{Goldenberg} Goldenberg, \textit{supra} note 55.
\bibitem{REJECT2} \textit{REJECT}, \textit{supra} note 50.
\bibitem{MENTOR2} MENTOR, \textit{supra} note 63.
\bibitem{Leon} Edward Leon, \textit{Rosalie Avila}, YOUTUBE (Mar. 9, 2018), https://www.youtube.com/watch?v=aX8S-ocFZHQ.
\end{thebibliography}
months. They called Rosalie a “wannabe,” said she tried too hard to fit in, and claimed that her shoes were swap meet. They made fun of Rosalie’s teeth, said she was ugly, and assassinated her character. “They’re calling me a whore,” Rosalie complained. “They’re telling me that I have herpes [and other bad stuff].”

Rosalie began cutting herself in October 2017. Family were supposed to meet with the principal about the bullying on November 26. Rosalie did not want to face her bully, however. Not yet in full bloom, Rosalie hanged herself at home on November 27, 2017.

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77 Id.
79 Boo2Bullying, Charlene & Freddie Avila Parents of Rosalie RIP, YOUTUBE (Feb. 7, 2018), https://www.youtube.com/watch?v=D08JpYNJQiU.
81 Id.
82 Id.
84 Sarah Favot, Bullying that Led to Suicide Attempts, Death at LA, Inland Empire Schools Could Have Been Stopped, Parents Say, REDLANDS DAILY FACTS (May 17, 2018), https://www.redlandsdailymatters.com/2018/05/15/bullying-that-led-to-suicide-attempts-death-at-la-inland-empire-schools-could-have-been-stopped-parents-say/.
85 Id.
A coroner declared Rosalie brain dead on December 1. At a candlelight vigil attended by hundreds, police escorted two bullies from the assembly. One had said, “I’m glad she’s dead.” At Rosalie’s funeral, a classmate came forward and conveyed how “it was one girl who really just did her;” the ringleader told Rosalie, “You should just go kill yourself.”

Valerie Carlson (15) lived in Aledo, Illinois. Valerie loved animals, visited the elderly, and helped care for her twin sisters. The toddlers looked up to “Sissie” but high school students did just the opposite.

Boys and girls alike made fun of Valerie’s short stature, sense of style, and sexual orientation. The bullying sent the freshman into a tailspin of self-harm and time away from school.

90 Dalbey, supra note 76.
91 Id. One of the bullies later posted on Instagram the following: Rosie is still annoying me from the grave.: / Tony Shin, Family Filing Lawsuit Against School Board After 13-Year-Old Kills Herself Following Years of Bullying, NBC 4 (Dec. 18, 2017), https://www.nbclosangeles.com/news/bully-suicide-teen-rosalie-avila-rosies-law-lawsuit-school-district/29534/.
92 Suzanne Hurt, Yucaipa Teen May Have Killed Herself After Bully Told Her to, Relative Says, REDLANDS DAILY FACTS (Jan. 7, 2018), https://www.redlandsdailyfacts.com/2018/01/07/teen-may-have-killed-herself-after-bully-told-her-to-relative-says/.
93 Id.
95 Id.
96 Id.
98 Id.
school. A male student delivered the coup de grâce when she returned. He yelled, “You’re worthless! The world would be better off without you! Kill yourself!” Valerie headed home and ended her life that day, March 28, 2018.

The assailant’s brazen words did not go unnoticed. A reporter quoted the boy in front-page news. The boy’s mother wasted no time contacting the paper with picayune claims of factual inaccuracies and said Valerie “was not a victim” while simultaneously pointing the finger at mental illness. The mother said her son “knows he was wrong for what he did” and “was wailing on the floor . . . saying, ‘No, no.’”

Whether Jekyll stood “aghast before the acts of . . . Hyde” mattered not one iota to the family of a child he trampled in the street. The child’s family members loathed and hated Jekyll. Jekyll paid them off out of fear for his own life. As for Valerie’s mother,

I just miss my daughter. And I don’t want anyone to go through what I’m going through. I don’t want any of you to know what this is like. I just want people to be kind, and not judge, and the bullying is just . . . it’s unbelievable.
C. ASSAILMENT DEFINED

“An individual’s conduct, although it may be reprehensible, is not criminal unless proscribed.”112 “No act can be considered a crime unless it has been previously made a crime, either by statute or the common law.”113 It is generally the prerogative of state legislatures to define the criminal law and prescribe punishments therefor.114

Dictionaries define “assailment” as an “[a]ct of assailing.”115 “Assail” may mean “to attack by words, hostile influence, etc.”116 It may mean “to attack forcefully or violently by nonphysical means (as with words).”117 Any definition depends on the dictionary.

In this article, assailment means asking, telling, or tempting a person under the age of eighteen to attempt or complete suicide. It also means extorting or blackmailing a child into suicidal behavior. It does not include advising, encouraging, or recommending suicide.

II. BULLYING

A. HOW CHILDREN BULLY

VERBAL BULLYING

Attorney Brian Claypool represents the family of Rosalie Avila.118 He said this about verbal bullying: “Remember. Words are weapons. Words can kill.”119

113 21 A.M. Jur. 2d Criminal Law § 3 (2016).
114 Id. at § 12.
115 WEBSTER’S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 164 (2d ed. 1934).
116 Id.
118 ‘Right Now Was Going to Be Her Time to Shine’, supra note 86.
119 Missy Kelly, Rosalie HLN 12 19 17 930AM, YOUTUBE (Dec. 19, 2017), https://www.youtube.com/watch?v=yMrUR0sWuEg.
Verbal bullying is the most common kind of bullying. Verbal bullying is the most common kind of bullying.120 “Children are humiliated with rude names or nasty comments about clothes, shoes, teeth, color or texture of skin, hair,” and more.121 A bully may continue to call a target names over days, weeks, months, or years, “happily destroying the victim’s sense of self-worth.”122

In addition to name-calling and insults, verbal bullying includes the use of words to taunt, mock, or threaten harm.123 It can take the form of cruel criticism, defamation,124 nasty nicknames,125 rude noises,126 swearing,127 and assailment.128 Racial and sexual epithets constitute verbal bullying.”129 So do homophobic or transphobic jokes and slurs.130

NONVERBAL BULLYING

Nonverbal bullying is when kids point,131 laugh,132 make faces, stick out their tongues,133 roll their eyes, stare,134

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120 CORONA BREZINA, HELPING A FRIEND WHO IS BEING BULLIED 9 (2017).
121 SALLY KUYKENDALL, BULLYING 43 (2012).
122 See PAM T. GLASER & LIZ SONNEBORN, SHUTTING DOWN VERBAL BULLYING 7 (2017).
125 Lee Nelson, Creating Bully-Proof Children, QUAD-CITY TIMES (Iowa), Oct. 29, 1999, at 2T.
126 JOHN BURSTEIN, WHY ARE YOU PICKING ON ME? 9 (2010).
127 HILE, supra note 123, at 11.
130 CORONA BREZINA, STANDING UP TO BULLYING AT SCHOOL 18 (2018).
131 SU’ELLEN FRIED & BLANCHE SOSLAND, BANISHING BULLYING BEHAVIOR 38 (2d ed. 2011).
132 DEBORAH CARPENTER WITH CHRISTOPHER J. FERGUSON, PARENT’S GUIDE TO DEALING WITH BULLIES 21 (2009).
133 FRIED & SOSLAND, supra note 131, at 38.
134 CARPENTER, supra note 132, at 21.
posture, or stalk\textsuperscript{135} in order to demean, distress, or frighten another child.\textsuperscript{136} It includes dirty looks and the implication of physical threat by gesture.\textsuperscript{137} Nonverbal bullying does not involve a physical attack or actual words\textsuperscript{138} but can be part of a process that reinforces bullying already going on.\textsuperscript{139} “[I]t may be used to maintain control over someone, and to intimidate and remind them that they are likely to be singled out at any time.”\textsuperscript{140}

N.K. attended an elementary school in Rhode Island.\textsuperscript{141} During third grade, another student (“A.S.”) called N.K. “gay” and “retard.”\textsuperscript{142} A.S. made fun of N.K.’s ears.\textsuperscript{143} He called him “elf ears,” “moose ears,” and “Dumbo.”\textsuperscript{144}

During fourth grade, A.S. pushed N.K. off playground equipment,\textsuperscript{145} kicked him in the crotch,\textsuperscript{146} and tipped over his milk.\textsuperscript{147} N.K. exited the school bus crying day after day after day.\textsuperscript{148} N.K. wanted surgery on his ears to make A.S. stop.\textsuperscript{149}

After the two boys were assigned separate classrooms in fifth grade,\textsuperscript{150} A.S. made faces at N.K.\textsuperscript{151} and spread lies about him.\textsuperscript{152} A.S. punched N.K. in the nose at recess on December 18,

\begin{footnotesize}
\footnote{\textsuperscript{135} MUSD Defines Bullying, MONROIA WKLY. (Sept. 27, 2018), https://www.monroviaweekly.com/education/musd-defines-bullying/ .}
\footnote{\textsuperscript{136} Id.}
\footnote{\textsuperscript{137} Id.}
\footnote{\textsuperscript{138} Id.}
\footnote{\textsuperscript{139} Id.}
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\footnote{\textsuperscript{151} Id.}
\footnote{\textsuperscript{152} Id.}
\end{footnotesize}
2017. On the last day of school, N.K. got off the bus with blood down his shirt.

When sixth grade started, A.S. approached N.K. in a hallway at school. A.S. told N.K. he should kill himself. N.K. became suicidal and went to the hospital that day.

**RELATIONAL BULLYING**

Relational bullying involves hurting someone’s reputation or relationships. It includes telling a target’s secrets, talking behind their back, setting them up to look foolish, and spreading rumors. It includes leaving a target out on purpose, instructing other children not to be friends with them, and instigating attacks.

Rebecca Sedwick (12) loved her mom, being silly, and making up dance moves. At Crystal Lake Middle School (“Crystal Lake”), Female Student 1, Female Student 2, and

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153 Id. at 13.
154 Id. at 17.
155 Id. at 18.
156 Id.
157 Id.
159 CARRIE GOLUS, TAKE A STAND! 26 (2013).
160 BREZINA, supra note 130, at 18.
162 What Is Bullying, supra note 158.
163 Id.
166 Rebecca AntiBT, becca video to mom, YOUTUBE (Aug. 31, 2016), https://www.youtube.com/watch?v=DJi5mYdU2MQ.
167 Abigail Pesta, Who Are You Calling a Bully?, COSMOPOLITAN, May 2014, at 162, 166 (Rebecca’s Instagram screenname was _whuuuuut_).
Rebecca started off friends. After Female Student 1 turned on Rebecca, she convinced Female Student 2 to do the same. In October 2012, Female Student 2 started a physical fight with Rebecca in between classes. The next month, Rebecca told her mom that she was being bullied. In December, Rebecca was involuntarily committed for three days after cutting her wrists to relieve stress.

In January 2013, an unknown student struck Rebecca on the arm as she passed a large group at Crystal Lake. In February, Female Student 2 started another fight with Rebecca. Rebecca left Crystal Lake later that month because of accumulating harassment. She attended a new middle school in August 2013.
On August 12, anonymous posts appeared on Rebecca’s Ask.fm social media account. Someone asked, “can u die plese.” Rebecca answered, “nope but I can live.” The next post told Rebecca, “go die.” She declined, “no thanks, I think i’ll live my life, just to make you mad.” A third post claimed, “nobody likes u”. Rebecca’s riposte: “pfft. Spongebob does.” On August 26, Rebecca ended a page in her diary with one word – “suicidal.”

On 6 September 2013, an unidentified poster under the mantle of Ask.fm tried to deceive Rebecca with “you seriously deserve to die”. Rebecca responded, “LIESSSSSSSS xDD Whateevvuuurrrrr”. On September 9, Rebecca leapt to her death from a cement silo at an abandoned concrete plant where she used to play with stray cats. Police detectives found her remains the next day.

Students told police that Female Student 1 constantly bullied Rebecca at Crystal Lake. Female Student 1 called

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181 Weirdnews2, Rebecca Ann Sedwick, 12-Year-Old Florida Girl, Commits Suicide After Online Bullying (VIDEO), YOUTUBE (Sept. 12, 2013), https://www.youtube.com/watch?v=j-kj6FL_tB0 [hereinafter Channel 10 Broadcast].
182 Id.
183 Id.
184 Id.
185 Id.
186 Id.
187 Id.
188 Tamara Lush, Case File Reveals Bullied Girl Had Personal Problems, Too, FLA. TODAY, Apr. 8, 2014, at 10A.
189 Channel 10 Broadcast, supra note 181.
191 Cops Probe Cyber Bullying in Death of 12-Year-Old Girl, supra note 165.
192 Stephanie Allen & Matthew Pleasant, Lakeland Girl Commits Suicide After 1½ Years of Being Bullied, LEDGER (Sept. 10, 2013), https://www.theledger.com/article/LK/20130910/News/608089639/LL.
193 Sandra Sobieraj Westfall with Steve Helling, Florida Bullying Case: A Mother’s Anguish, PEOPLE, Nov. 4, 2013, at 83, 83.
Rebecca ugly,\textsuperscript{196} threatened to fight her,\textsuperscript{197} solicited student H.M. to instigate a physical fight with Rebecca,\textsuperscript{198} and told Rebecca to “drink bleach and die”.\textsuperscript{199} Student M.V. said no one wanted to be friends with Rebecca because Female Student 1 would bully them.\textsuperscript{200} Rebecca told student N.R. that she received messages from Female Student 1 telling her to kill herself.\textsuperscript{201} For her part, Female Student 1 admitted sending Rebecca a Facebook message that read, “Nobody likes you”.\textsuperscript{202} Female Student 2 admitted sending Rebecca a message after a fight in February that said something like, “No one will miss you if you die.”\textsuperscript{203} In electronic communications made after Rebecca’s suicide, someone asked Female Student 2, “So your telling me for the past few weeks you’ve been bullying her online.”\textsuperscript{204} Female Student 2 responded, “Yeah im bully I deserve to die I wish it was me and not her.”\textsuperscript{205}

**CYBER BULLYING**

Cyber bullying goes by several names including cyberbullying, electronic bullying,\textsuperscript{206} and online bullying.\textsuperscript{207} “Cyber bullying involves individuals using technology as a

\textsuperscript{196} Id.
\textsuperscript{197} Tamara Lush, *Florida Bullying Case Raises Questions for Parents*, TALLAHASSEE DEMOCRAT, Oct. 17, 2013, at 2C.
\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
\textsuperscript{203} Id.
\textsuperscript{204} Pesta, supra note 167, at 167.
\textsuperscript{205} Id.
\textsuperscript{206} SAMEER HINDUJA & JUSTIN W. PATCHIN, *BULLYING BEYOND THE SCHOOLYARD* 12 (2d ed. 2015).
\textsuperscript{207} ANDREW ADESMAN & CHRISTINE ADAMEC, *THE GRANDFAMILY GUIDEBOOK* 188 (2018).
medium to bully others.” Bullies use phones, computers, and other electronic devices to target children in various ways. Sending mean messages directly to a target is a frequent form of cyber bullying. Cyber bullying also includes threats, assailment, name-calling, rumor-spreading, and the posting of hurtful comments, photos or videos online. It includes nasty phone calls, silent calls, and abusive or threatening voicemails. Some cyber bullies create insulting webpages and fake social media profiles to make a victim look bad.

“Exclusion” is intentionally keeping a target out of an online group, activity, or conversation. “Outing” refers to telling people a target’s personal and embarrassing information when the information was never supposed to be shared. With “impersonation,” a cyber bully obtains the target’s

210 Jennifer Landau, Dealing with Bullies, Cliques, and Social Stress 41 (2013); Betts, supra note 208, at 4246.
211 Derek Miller, Dealing with Cyberbullying 8 (2020); Tom Jacobs, Teen Cyberbullying Investigated 3 (2010).
215 Jones, supra note 213, at 10.
217 Id. at 35.
218 Coloroso, supra note 124, at 65.
219 Id.
221 Larry D. Rosen, Me, MySpace, and I 194 (2007).
223 Lindeen, supra note 214, at 8.
224 Robin M. Kowalski et al., Cyber Bullying 49 (2008).
225 Robin M. Kowalski et al., Cyber Bullying 64 (2d ed. 2012).
password and then sends or posts content the target would never send or post. Cyber bullies sometimes remain anonymous. This can “generate considerable fear on the part of the recipient.” “Not knowing who an aggressor is can cause adolescents to be hypervigilant in terms of surveying their social environment, both cyber and real.” Victims may “find themselves suspecting everyone, thus damaging relationships.”

Francie Diep met “Amanda” on the very first day of junior high. The girls became close. Amanda brought grade school friends to the proverbial table whereas Francie liked books and fantasy. All got along for about a year and a half.

When Francie fell out of favor, former friends dialed up the silent treatment at school. They pretended to whisper about Francie in the hall and sent her nasty emails. Someone hacked Francie’s Yahoo account and set up calendar reminders for her to commit suicide. “Throw myself off [so-and-so] Bridge,” the notifications read. An imaginative child,

227 Id.
228 MILLER, supra note 211, at 8.
229 Campbell & Bauman, supra note 226, at 8.
231 Campbell & Bauman, supra note 226, at 8.
232 Maeve Filbin, Journalist Speaks out Against Cyber Bullying, OBSERVER, Sept. 14, 2018, at 1.
233 Id.
235 Filbin, supra note 232.
236 Id.
237 Id.
239 Diep, supra note 234.
240 Id.
Francie would see her “own hands on the bridge railing, the darkness of the water below.”

Now a journalist, Francie says, “[o]ne thing I really wish I’d done is save those emails and taken screenshots.”

“It’s hard to do in the moment . . . but if this ever happens to you, save screenshots. That’s the most powerful thing you can do to make sure this doesn’t happen again . . . and to make sure that the person who does this will see some kind of consequences.”

In December 2017, a California twelve-year-old became suicidal. She climbed downstairs at home crying, fell to her knees, and said, “I’m done. I can’t do this anymore. I’m ready. I’m done to end my life.” It was a voicemail from a gutter-mouthed classmate and his followers that pushed her to the edge.

“You deserve to die,” the voicemail began. “I hope you [expletive] get hit by a bus you [expletive expletive],” the recorded message continued. In another vile snippet, one of the deviants said, “She look like [expletive] she came out of a used condom.” The call lasted one minute and five seconds.

The girl did not keep the voicemail private. Her parents called police and played the message for a reporter. The reporter described the voicemail as being “laced with

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241 Id.
242 Id.
243 Id.
245 Id.
246 Id.
247 Id.
248 Id.
249 Id.
251 Zendehnam, supra note 244.
252 Id.
253 Id.
disgusting comments.” The school took disciplinary action. Police said the boy who left the voicemail would be referred to a diversion program.

HAND-WRITTEN BULLYING

Middle school student S.L. found an anonymous note in her locker. It read, “your life Sucks it will be for the rest of the year if you remain here die in a hole because no one likes you You’re a bitch ass whore leave the School”. A fake Instagram account used S.L.’s picture and was entitled, “bitchyourugly_.” The first comment read. The message ran on, “no one likes you kill yourself no one will miss you die whore”.

S.L. attempted suicide on summer break at the age of fourteen. The thought of going back to school in the fall frightened her. She explained to a reporter, “I just feel like nothing was, like, going to get better because like honestly thought I was gonna’ have to go back to school and deal with it.”

PHYSICAL BULLYING

Physical bullying involves the use of force to “diminish or harm another repeatedly.” “Pushing, shoving,

254 Id.
255 Bammer, supra note 250.
256 Id.
258 Compare id., with WCPO 9, Former Fairfield Middle School Student: I Was Targeted by Bullies Like Emilie Olsen, YOUTUBE (July 23, 2015), https://www.youtube.com/watch?v=mFlOvdthprw.
259 Law & Robinette, supra note 257.
260 Compare id., with WCPO 9, supra note 258.
261 Law & Robinette, supra note 257.
262 Id.
263 Id.
264 Id.
265 Id.
266 WCPO 9, supra note 258.
267 JOANNE MATTERN, BULLYING 6 (2009).
268 ALEXANDRA HANSON-HARDING, HOW TO BEAT PHYSICAL BULLYING 4 (2013).
and hitting are kinds of physical bullying.” This type of bullying also includes punching, kicking, spitting, slapping, choking and twisting limbs into painful positions. Knocking books out of someone’s hands counts. So does throwing objects such as food and trash.

Bartlomiej “Bart” Palosz (15) experienced all manner of physical abuse at the hands and feet of other children. Bullies shoved Bart into thorn bushes on the way to school, slapped the nape of his neck in class, pushed him down a

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268 **SANDY DONOVAN, HOW CAN I DEAL WITH BULLYING?** 7 (2014).
269 **Mattern, supra** note 266, at 6.
270 **CINDY MILLER & CYNTHIA LOWEN, BULLYING PREVENTION AND INTERVENTION** 5 (2012).
272 **MILLER & LOWEN, supra** note 270, at 5.
273 **COLOROSO, supra** note 124, at 73.
275 **LAURA PERDEW, BULLYING** 21 (2015).
276 **MILLER & LOWEN, supra** note 270, at 5.
277 **MELISSA HIGGINS, I AM CARING** 17 (2014).
281 Amended Complaint, supra note 279, at 14.
staircase, and kicked him. One boy split Bart’s forehead open with the corner of a metal locker door. Students who witnessed the incident said a bully did it on purpose. Bart’s Connecticut middle school called it an accident. A Connecticut attorney remarked, “Smashing someone’s head into the corner of a locker, that’s assault and battery. That’s a crime.”

“Physical bullying usually escalates over time and often involves groups of abusers” but it “is rarely the first means employed by bullies.” “Usually they will verbally and/or relationally bully the targeted child and, seeing that they can get away with such abuse, then move on to physical [bullying].” Taking a target’s belongings and theft have been categorized as forms of physical bullying.

McKenzie Adams (9) won a grocery store coloring contest at age eight. At age nine, she was being called the “n

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282 Lyte, supra note 280.
283 Amended Complaint, supra note 279, at 14.
284 Timothy Dumas, Not in Vain, GREENWICH MAGAZINE, June 1, 2014, at 81, 82.
285 Lyte, supra note 280.
286 Staš Kmieć, A Polish Boy’s Struggle with Bullying, POLISH AM. J., Oct. 2013, at 1, 5.
287 Id. at 5.
289 ROMEO VITELLI, DEPRESSION 35 (2019).
290 COLOROSO, supra note 124, at 73.
291 Id.
292 LOUISE SPILSBURY, BULLYING 11 (2020).
293 BREZINA, supra note 120, at 8; HILE, supra note 123, at 10; KATHRYN SEIFERT, YOUTH VIOLENCE 120 (2012); ELAINE SLAVENS, BULLYING 3 (2d ed. 2014); LOUISE SPILSBURY, AVOIDING BULLIES?: SKILLS TO OUTSMART AND STOP THEM 7 (2019).
295 Id.
word” and “black bitch” by fourth-grade classmates. McKenzie lived in Linden, Alabama. She car-pooled to and from an elementary school in Demopolis where student bullies would ask, “Why you riding with white people?” The bullies stole McKenzie’s clothes, assailed her in writing, and said, “You ugly.”

McKenzie died December 3, 2018. She completed suicide in a bathroom at home. Two police departments

296 CBS THIS MORNING (CBS television broadcast Dec. 12, 2018).
300 CBS THIS MORNING, supra note 296.
304 Taylor, supra note 297.
306 Adams, supra note 301.
307 Taylor, supra note 297.
investigated her death.308 Although McKenzie was bullied,309 school officials said no complaint was ever made.310 An aunt who cherished McKenzie311 said, “[W]hen you’re in the face of your bully, you’re not ‘gonna go and try to run and tell somebody that, ‘Uh hey! I’m getting bullied!’ Because once you go back, the bully’s ‘gonna jump you.”312

Bart Palosz would return home from middle school with “no backpack, no books, no jacket.”313 When his mother asked about the missing items, Bart said he did not know where they were or claimed forgetfulness.314 “In fact,” said a friend of the Palosz family, “some boys were taking them.”315

The destruction of personal property is considered physical bullying.316 It includes things like “making marks on clothing, books, or backpacks.”317 Such vandalism is intended to intimidate victims.318

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311 Harris, supra note 303.


313 Dumas, supra note 284, at 86.

314 Id.

315 Id.

316 BREZINA, supra note 120, at 8; GOLUS, supra note 159, at 9; MELISSA HIGGINS, PUSHING ISN’T FUNNY Note to Parents and Educators (2016); SEIFERT, supra note 293, at 120; SPILSBURY, supra note 293, at 6.

317 MILLER & LOWEN, supra note 270, at 5.

318 VITELLI, supra note 289, at 35.
In January 2019, somebody used black Sharpie to scribble on a sixth-grader’s yellow backpack.\textsuperscript{319} Trina, the victim’s mother, suspected a bully who had begun targeting her daughter in fifth grade with snarky comments.\textsuperscript{320} Aware of the escalation, the elementary school principal recommended police.\textsuperscript{321} After police were unable to establish who wrote on the backpack,\textsuperscript{322} school officials tried next.\textsuperscript{323}

During the school district’s February investigation, the bully admitted to “gossiping, pointing, staring, glaring, making faces, posting on social media, and not following [the principal’s] recess schedule.”\textsuperscript{324} However, “[t]his was not just girls being dramatic,” said Trina during a television news interview.\textsuperscript{325} “This was an eleven-year-old being told to kill herself.”\textsuperscript{326}

On Tuesday March 19, the bully yelled at the victim and the victim’s friend.\textsuperscript{327} She yelled from her foul mouth, “f-ing retards!”\textsuperscript{328} The principal emailed Trina that afternoon.\textsuperscript{329} He wrote, “[The bully] will not be in attendance at school for at least the remainder of the week. Her attendance moving forward is dependent upon the compliance of the parents meeting with me . . . on April 1.”\textsuperscript{330}

\textsuperscript{320} Id.
\textsuperscript{321} Id. Police investigate on-campus vandalism in Medford, Oregon. Todd Sales, Neighborhood Watch Newsletter, MEDFORD POLICE DEP’T (Sept. 2016), available at https://www.ci.medford.or.us/Files/September%202016%20Neighborhood%20Watch%20Newsletter.pdf.
\textsuperscript{322} Rose, supra note 319.
\textsuperscript{323} Id.
\textsuperscript{324} Id.
\textsuperscript{325} Id.
\textsuperscript{326} Id.
\textsuperscript{328} Id.
\textsuperscript{329} Id.
\textsuperscript{330} Id. There was no school that Friday and Spring Break was the following week. Lone Pine Elementary Calendar: March 2019,
A friend of the bully approached Trina’s daughter on the playground April 2. Trina told a reporter what happened next. “And this little girl walked up to my daughter and said, ‘I just want you to know that nobody likes you. They call you a rat that follows them around.’” “I sat in my car for an hour with my daughter while she cried and told me that she hated herself. That she didn’t know if she wanted to live anymore. That what had happened had made her hate school, and hate the people around her, and hate herself.”

In freshman biology, a bully took away Bart’s new cell phone and broke it with the help of others. Bart’s sister, at the time a high school senior, identified one of the students and questioned him, “Do you think this okay? Do you think it’s okay to be smashing people’s phones?” The boy and others he sat with just laughed. Bart’s family reported the incident to a school counselor. No bullies were disciplined. No charges were filed. No restitution was made.

Bart’s sister was furious about another incident in Bart’s freshman year. A boy on a bus ride home grabbed a beverage container from Bart and chucked the mug out a window. Bart’s sister marched up the street and confronted

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MEDFORD SCH. DIST.,
https://www.medford.k12.or.us/Page/26#calendar537/20190328/month. The bully would thus miss two days of school.

331 Rose, supra note 327.
332 Id.
333 Id.
334 Id.
335 Lyte, supra note 280.
336 Dumas, supra note 284, at 83-84.
337 Id. at 83.
338 Id. at 84.
339 Id.
340 Id.
341 Id.
342 Id.
343 Id.
344 Id. at 82.
345 Id.
346 Id.
the boy. The boy said, “Bart’s a weirdo, so it’s okay.” He then locked the door in the sister’s face.

B. WHEN CHILDREN BULLY

THE SCHOOL YEAR

A gentle giant, Bart did not and would not fight back against his bullies. Instead, he became teary-eyed when taunted, cried under the covers at home, and bit his hands during class. In the end, a once-enthusiastic young boy who did not always feel worthless did what some classmates told him to do. After the first day of high school his sophomore year, Bart killed himself.

347 Id.
348 Id.
349 Id.
350 Kmieć, supra note 286, at 1. Bart stood six-foot, three. Id.
352 Dumas, supra note 284, at 83.
354 Dumas, supra note 284, at 83.
357 Lyte, supra note 353.
358 Dumas, supra note 284, at 82.
Bullying begins around fourth grade and increases during the late elementary years. It peaks in middle school and usually decreases by tenth grade. Although bullying is somewhat less frequent in high school, it does not disappear. Verbal abuse remains consistent across all grades and high school seniors report the highest rates of cyber bullying.

According to twenty-five years of data (1980–2004) from around the U.S., the suicide rate for people aged 14 to 18 is lowest during the months of June, July, and August. Fourteen years of data (2004–2017) out of Wisconsin showed that the suicide numbers for youth through age 18 were lowest in June and July. Eight years of data (2008–2015) from thirty-one U.S. children’s hospitals found that July had the fewest number of visits for suicidal thoughts and attempts. Children

361 Jodi Burrus Newman et al., *Factors Influencing Teacher Interventions in Bullying Situations*, in HANDBOOK OF YOUTH PREVENTION SCIENCE 218 (Beth Doll et al. eds., 2010).
368 Rory Linnane & Devi Shastri, *Fight Back*, J. SENTINEL (Wis.), Aug. 20, 2018, at 1A.
have time off from school during summer\textsuperscript{370} but bullying still happens.

**SUMMER VACATION**

S.J.\textsuperscript{371} attended middle school in Kentucky.\textsuperscript{372} According to a lawsuit, five students bullied S.J. during the 2015-2016 school year.\textsuperscript{373} S.J. was choked in class, thrown down stairs, attacked with a Taser,\textsuperscript{374} and told to kill herself.\textsuperscript{375} One of the alleged bullies faced criminal charges for making threats on Facebook.\textsuperscript{376}

S.J. withdrew from school after a February incident.\textsuperscript{377} She attempted suicide in July.\textsuperscript{378} “Social media played a huge role in my daughter trying to commit suicide,” said her mother Debra over a year later.\textsuperscript{379} A grandfather said, “They keep sending, ‘[S.J.] kill yourself! Kill yourself and do the world a

\begin{flushleft}
\textsuperscript{370} Nikhil Goyal, Schools on Trial 29 (2016).
\textsuperscript{373} Darcy Costello, Suit: Defendant’s Sister Was Bullied, COURIER-J. (Ky.), Aug. 20, 2018, at 3A.
\textsuperscript{374} Wheatley, supra note 372.
\textsuperscript{375} Costello, supra note 373.
\textsuperscript{376} Wheatley, supra note 372.
\textsuperscript{377} Id.
\textsuperscript{378} Id.
\end{flushleft}
favor!’”

Tiffany said her younger sister had been through a lot.

Two of the alleged bullies followed Tiffany and S.J. to a gas station convenience store on June 26, 2017. While Tiffany and S.J. shopped, Madison Branch and C.O. orbited outside. Tiffany and S.J. exited the store when their eldest sister Megan arrived. Debra arrived on scene shortly thereafter. Video surveillance of the gas station parking lot suggests words were exchanged before S.J. charged at C.O. Madison stood back holding a cell phone in both hands as S.J. and C.O. fought. A passerby was filming as all hell broke loose.

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382 Costello, supra note 373.


385 Kentucky Criminal Jury Trials, supra note 383.

386 Id.

387 Id.

388 Dozier, supra note 384.

389 Id.
loose.\textsuperscript{390} The passerby captured on video the exact moment Tiffany stabbed Madison in the stomach.\textsuperscript{391} “You stabbed me bro!” Madison screamed, “You stabbed me!”\textsuperscript{392} Debra called 911.\textsuperscript{393} Tiffany tried to render medical aid\textsuperscript{394} but an expert testified that the only way Madison would have survived the injury is if it happened in the operating room.\textsuperscript{395} Madison was fourteen\textsuperscript{396} and had just graduated middle school.\textsuperscript{397}

\textsuperscript{392} Teenage Murder Suspect’s Louisville Home Shot Up Following 14-Year-Old’s Stabbing Death, supra note 380.
\textsuperscript{394} Mark Vanderhoff, Police: Suspect Told LMPD Stabbing of Teen Girl Was Accident, WLKY (July 14, 2017), https://www.wlky.com/article/police-suspect-told-lmpd-stabbing-of-teen-girl-was-accident/10309369.
\textsuperscript{395} McAlister, supra note 383.
Tiffany was charged with murder. She claimed self-defense at trial. A jury convicted her of reckless homicide. The judge called the case “sad” and “depressing.” Madison’s grandmother said the justice system was broken after Tiffany got probation.

Prior to trial, Madison’s aunt agreed that S.J. had been victimized on social media. Police said bullying is partially responsible for a spike in violence. Tiffany’s grandmother said, “I don’t like fighting, but like I said, it’s a shame bullying had to go this far.”

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398 Thomas Novelly, *Deadly Fight Between Teens Shakes Families*, Courier-J. (Ky.), July 4, 2017, at 3A.
402 Id.
During the school year, “[b]ullying is most common during times when there aren’t a lot of adults around. This is usually at lunch, before and after class, and at recess.”

“Recess is often identified as the time when bullying is most frequent.” Cyber bullying can happen on any day of the week at any hour of the day.

**WEEKENDS**

Colorado high school student K.A. was hit with wave after murky wave of cruel, hateful comments via social media and text. As a result, K.A. attempted suicide on a Sunday at home in April 2013. She was found hanging in a garage. Lack of oxygen left her unable to speak.

K.A.’s bullying began in October 2012 but the week and the night before her attempt was “when it turned nasty.” K.A. was told she should commit suicide. The messengers said they would help by snapping her neck. Days after the

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407 GOLUS, supra note 159, at 18.
408 BORBA, supra note 222, at 21. See also TODD MIGLIACCIO & JULIANA RASKAUSKAS, BULLYING AS A SOCIAL EXPERIENCE 36 (2015).
410 Tommy Simmons, Cyberbullies Be Warned, MIRROR, Mar. 2, 2015, at 5.
413 Id.
415 Denver7, supra note 412.
416 Chris Michlewicz, Local Show Examines Cyberbullying, CASTLE PINES NEWS-PRESS (Colo.), Jan. 28, 2016, at 1.
418 Id.
attempt.\textsuperscript{420} K.A.’s friends came forward with the messages that had been sent on social media.\textsuperscript{421}

**DAY AND NIGHT**

A.M. lived in New York when Hurricane Katrina struck.\textsuperscript{422} The seven-year-old donated tooth fairy money to relief efforts\textsuperscript{423} and an additional $3,300 made selling lemonade.\textsuperscript{424} When A.M. was eight years old,\textsuperscript{425} kids began to target her weight.\textsuperscript{426}

The bullying persisted in the fourth and fifth grades when a popular boy waged an effort to get everyone to hate A.M.\textsuperscript{427} “He would ban me, with his little guy friends, from the jungle gym . . . saying I was going to . . . bend the bars . . . and that I should go away,”\textsuperscript{428} “They would tell me I was too fat to play on the swings and I would break them.”\textsuperscript{429}

The bullying was worse in eighth grade.\textsuperscript{430} A group of guys threw food at A.M. during lunch.\textsuperscript{431} She was shoved into lockers, spit on, tripped in the classroom, and pushed down

\textsuperscript{421} Michlewicz, supra note 417.
\textsuperscript{422} Ken Valenti, *Hurricane Relief Funds Multiply*, J. NEWS (N.Y.), Sept. 2, 2005, at 5A.
\textsuperscript{423} Id.
\textsuperscript{427} Id.
\textsuperscript{429} Smith et al., supra note 425.
\textsuperscript{430} Del Monte, supra note 428.
\textsuperscript{431} Id.
stairs. “Everyone here hates you,” a bully told A.M. face-to-face. “Why can’t you just fuckin’ fall down the stairs and break your neck?”

Bullies texted and phoned A.M. outside of school. They told her she was pathetic, worthless, and should have been aborted. They would scream into the phone, “Kill yourself!” They tried to convince A.M. that no one would care if she died and the world would be a better place.

A.M. cut and burned herself which the bullies encouraged. One night, the bullies assailed A.M. online. “Drink bleach, please.” “Did you cut yourself?” “Did you drink the bleach?” “Taking the pills?” “Kill yourself.” A.M. finally said, “Okay.” A.M. was attempting suicide when her mother walked in.

“Mom, I don’t think I want to live anymore,” 13-year-old A.M. said. A.M. was taken to a crisis center and withdrawn from school. She slept on an air mattress in her
parents’ room for months.\textsuperscript{453} Her internet usage was monitored.\textsuperscript{454} Things eventually improved.\textsuperscript{455}

In Washington state, the North Thurston School District and City of Lacey police got federal grant money in 1999 to study the who, what, when, where, and why of bullying.\textsuperscript{456} “Most crime starts out with a little bullying,” a school board member said back then.\textsuperscript{457} Cellphones with built-in cameras became publicly available three years later.\textsuperscript{458}

In December 2009, a North Thurston middle school student took a nude selfie with her phone and sent the picture to a boy.\textsuperscript{459} A former friend of the girl pressured the boy for the photo saying she just wanted to look at it.\textsuperscript{460} He forwarded it.\textsuperscript{461} The former friend typed, “Ho Alert!” and then texted the message and photo to many others.\textsuperscript{462}

In January 2010, the middle school student’s phone began vibrating around one a.m.\textsuperscript{463} She was being bombarded with texts in regard to the nude photo.\textsuperscript{464} Lacey police arrested the boy and former friend later that month.\textsuperscript{465} The state pressed charges.\textsuperscript{466}

\textsuperscript{453} Grinberg, supra note 436.
\textsuperscript{454} Id.
\textsuperscript{455} Id.
\textsuperscript{457} Id.
\textsuperscript{460} Id.
\textsuperscript{461} Id.
\textsuperscript{462} Id.
\textsuperscript{463} Id.
\textsuperscript{464} Id.
\textsuperscript{466} Jeremy Pawloski, Three Middle School Students Charged in ‘Sexting’ Case, DAILY NEWS (Jan. 29, 2010), https://www.tdn.com/news/state-and-regional/three-middle-school-students-charged-in-sexing-case/article_8b8c989a-0d21-
“The idea of forwarding that picture was bad enough,” said a prosecutor.467 “But the text elevated it to something far more serious. It was mean-girl drama, an all-out attempt to destroy someone without thinking about the implications.”468

**BETWEEN CLASSES**

L.S. attended a North Thurston middle school in Lacey.469 One student manhandled him on the campus outdoors.470 Another swiped a cap right off of his head.471 Indoors, a bully would not let L.S. sit down at lunch.472 A classmate threatened to throw L.S. out a window.473

The following handwritten messages appeared on a classroom whiteboard in April 2017: “suck it”, “fuck you”, and “KYS”474 – a known acronym meaning “kill yourself.”475 The imperatives were allegedly directed at L.S.476 L.S. attempted

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467 Hoffman, *supra* note 459.
468 Id.
469 Id.
471 Clancy, *supra* note 469.
472 Swearingin, 2020 WL 2219440, at *2; Clancy, *supra* note 469.
473 Swearingin, 2020 WL 2219440, at *2; Clancy, *supra* note 469.
474 Swearingin, supra note 469.
475 Clancy, *supra* note 469.
476 Clancy, *supra* note 469.
suicide in October when he threw himself off a second-story balcony at school.477

RECESS

Kevin Reese, Jr. (10) attended an elementary school in Texas.478 The fifth-grader loved to draw and is described affectionately by his mother, “He’s my little goof-troop, I call him.”479 In November 2018, Kevin came home from school crying because a boy punched him several times on the way back from recess.480 Kevin hanged himself to death on January 21, 2019.481 Bullies at school told him to do it when they wrote on his tablet, “kill yourself.”482

LUNCH

During the examination of a witness at trial, it is unprofessional for a lawyer to ask a question unless there is a good faith basis for believing the question is proper.483 “It is also unethical to ask a question, knowing that it will be objected to and ruled inadmissible, purely in order to implant an impression.”484 The “when did you stop beating your wife?” school of cross-examination “drew gasps from the crowd on

477 Id.
479 Id.
480 Id.
481 Id.
482 Id.
483 EDWARD J. IMWINKELRIED, EVIDENTIARY FOUNDATIONS § 6.02 (11th ed. 2020).
484 Meredith Blake & Andrew Ashworth, Ethics and the Criminal Defence Lawyer, 7 LEGAL ETHICS 167, 184 (2004).
"Perry Mason" but has been deemed in real life pugnacious, inappropriate, and sometimes actionable.

Mallory Grossman (12) was a former gymnast and cheerleader. Her parents claim in a wrongful death lawsuit that she was bullied by four students at school. The defendant board of education threw shade at six. However the number of students that bullied Mallory, humiliation was the name of the game.

A group of girls tricked Mallory at the end of fifth grade. They said they were all going to wear denim overalls

487 Jeff Gorman, Old-Age Home’s Lawyer Must Face Claims of Bullying, COURTHOUSE NEWS SERV. (Dec. 23, 2014), https://www.courthousenews.com/old-age-homes-lawyer-must-face-claims-of-bullying/. “When did you stop beating your wife?” is improper because it assumes facts not in evidence. Gerald Lebovits, Say It Ain’t So: Leading Logical Fallacies in Legal Argument – Part 2, 88 N.Y. STATE BAR ASSOC. J. 64, 57 (Sept. 2016). It assumes (1) that the witness is married, (2) that the witness used to beat his wife, and (3) that the witness has stopped. Id.
and a pink tee shirt to school the next day and asked Mallory to do the same. Only Mallory wore the outfit.

In sixth grade, bullies called Mallory a loser for months. She transferred out of music class because one of them persistently tapped the back of her chair. Then a bully surreptitiously took photographs of Mallory at school without permission.

One photo was of Mallory walking by herself. A second was of her sitting alone on a bench. Someone superimposed the words “U have no friends” on the first photo and “Poor Mal” on the second. The images were sent to many at school including Mallory.

Mallory tried but was not allowed to sit at three separate lunch tables on June 13, 2017. That’s when one of the bullies asked Mallory out loud, “When are you going to kill yourself?” “Since you were so concerned about it,” says

494 Kane in Your Corner, supra note 492.
497 Nader, supra note 495.
498 MALLORY (Generic Brand Human 2020).
499 Nader, supra note 495.
500 Id.
501 Id.
502 Id.
503 First Amended Complaint and Jury Demand, supra note 489, at 14.
504 Nader, supra note 495.
Mallory’s mom, “the answer is June fourteenth.” Mallory hanged herself at home on June 14, 2017.

C. WHERE CHILDREN BULLY

“Bullying can happen almost anywhere.” “Victims can be targeted when they are walking down the street, waiting for the bus, or shopping in a store.” In grade school, the hot spots are typically the playground, cafeteria, and buses. Older children bully most often in classrooms, hallways, and stairwells. Locker rooms and lavatories are known bullying locations. Cyber bullying typically takes place away from school and can happen wherever a victim has access to a phone or computer, including home.

506 Chloe Morgan & Anna Roberts, ‘Pure Poison’: My 12-Year-Old Girl Killed Herself After Twisted Snapchat Bullies Told Her to Do It, SUN (Nov. 6, 2018), https://www.thesun.co.uk/fabulous/7609464/mallory-grossman-suicide-12/.
508 FRANK MURPHY, STAND UP TO BULLYING 15 (2020).
509 MATTERN, supra note 266, at 10.
510 MICHAEL CARPENTER & ROBIN D’ANTONA, BULLYING SOLUTIONS 10 (2014).
512 ANNE ROONEY, BULLYING 8 (2010).
513 BORBA, supra note 222, at 4; LOIS SEPAHABAN, CYBERBULLYING 16 (2016).
PHOTO AND INTERNET

Sophomore Annik a Stenglein (16) participated fully in the life of her Minnesota high school. She made good grades, competed in sports, sang in choir, and played instruments in both band and orchestra. An aspiring actress, her credits included a middle school production of Alice in Wonderland Jr. and Xanadu.

In November 2015, authorities locked down Annika’s high school after a fight broke out over an anonymous Facebook page. The page included inappropriate and hurtful comments about students at the school. Annika spearheaded an Instagram account to serve as counterprogramming. She anonymously posted photos of classmates to the account and wrote about how smart and beautiful they were.


517 Vanderwerf, supra note 515.


520 Annika Stenglein, supra note 518.


522 Id.


524 Linda Vanderwerf, Willmar Family Wants to Find Ways to Help Families of Troubled Teens, W. CENT. TRIB. (Mar. 4, 2017),
Around March 2016, some teens posted embarrassing photos of Annika on a Facebook page. Annika tried to report them at school and to Facebook. The photos were eventually taken down but the bullying did not stop. Annika took her own life December 12, 2016. Much of what Annika’s parents knew “about the bullying they found by going through Annika’s phone after her death. It included messages urging her to kill herself.”

THE PLAYGROUND

A California girl attempted suicide on May 15, 2001. The seven-year-old was found on a playground “putting a rope around her neck.” She testified about what a boy had told her that day: “I should die and I should hang because [n----s] should hang.” “Okay,” the girl responded. She grabbed a jump rope and tied it to a set of monkey bars. It wasn’t the only time a boy used a racial slur against her. School officials documented another occasion in which two boys called her “blacky.”


525 Id.
526 Id.
527 Id.
528 Id.
529 Id.
532 Id.
533 Id.
534 Murillo, supra note 530.
535 Murillo, supra note 531.
536 Id.
THE CAFETERIA

Aaron Fuller of Ohio (13)\(^{537}\) had friends\(^{538}\) but four bullies.\(^{539}\) Rather than break bread with Aaron, the bullies picked on him over everything and said he should kill himself.\(^{540}\) Teachers said they would separate the bullies from Aaron at lunch but it did not work.\(^{541}\) Aaron hanged himself to death on January 11, 2019.\(^{542}\) An experienced Ohio attorney said this about bullying: “Schools can’t be ever-present, and bullies are sneaky.”\(^{543}\)

THE BUS

The school bus is one “place for bullies to carry out their devious ways.”\(^{544}\) Bullies played “pig races” in Alabama.\(^{545}\) The objective was for senior boys to kiss on the cheek a girl they

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\(^{540}\) Id.

\(^{541}\) Id.


\(^{543}\) Eric Robinette, Irate Parents Push to Combat Bullying, J.-NEWS (Ohio), May 23, 2015, at A1.

\(^{544}\) ANNE MARIE, STOP BULLIES NOW loc. 133 (2014) (ebook).

deemed least attractive. On the day a target jumped to her death, a kid at school screamed, “She deserved to die!”

Middle school students in New York for ten minutes straight called their elderly bus monitor fat, dumb, old, ugly, and poor. The students made fun of the woman’s wrinkles, chin, and stomach. They accused her of being a child rapist with herpes, repeatedly touched her body, and told her to “shut the fuck up.” One student threatened to ejaculate in her mouth. Another ended the barrage with, “You don’t have a family ‘cause they all killed themselves because they didn’t want to be near you.”

Luke Nugent (14) of Missouri, a budding scientist, played bass drum in the junior high marching band, enjoyed telling jokes, and rocked a fedora. Lumped onto a school

549 Four 7th-Graders Suspended, STAR-GAZETTE (Elmira, NY), July 1, 2012, at 14A.
551 Id.
552 Id.
553 Id.
554 Id.
556 Luke Nugent, JOPLIN GLOBE (Mo.), Mar. 21, 2013, at 2A.
558 Ryan Richardson, Family Tells Board of Bullying Concern, JOPLIN GLOBE (Mo.), Apr. 23, 2013, at 5B.
bus with older kids, Luke became the target of bullies. They called him a faggot, took his hat, tossed one of his toys out a window and threatened to “break [a] foot off in [his] ass.” On 14 March 2013, the bus dropped Luke off at his stop one last time. From inside the bus, a student barked out a window to Luke that he should do everyone a favor and hang himself. Luke hanged himself to death on March 16, 2013.

HALLWAYS

“Joy” attended a Maine middle school and was bullied there. In 2016, a student told Joy to kill herself. In 2017, a student repeatedly walked by Joy in the hall and whispered that she should commit suicide. “Jane” in Massachusetts experienced some of the same during the 2017-2018 school year.

“From around the first month of high school going forward, a group of ninth grade girls . . . regularly called [Jane] a bitch while passing her in the hallway [and] told her that she

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560 Lamb, supra note 557.
563 Id.
565 See Lindsay Tice, One Lewiston Student’s Experience with Bullying, SUN J. (Me.), June 25, 2017, at A5.
566 Id.
567 Id.
should not come to school.” A lawsuit claims the minatory group of girls included E.S. and J.E.

E.S. allegedly gave Jane dirty looks and along with several others sent threatening messages to Jane in March. One of the messages read, “KILL YOURSELF.” J.E. assaulted and battered Jane after gym class in June. The attack was recorded and posted online.

CLASSROOMS

Chandler Barnwell (16) attended an Arkansas high school in 2010. Bullies there followed the freshman around and knocked books out of his hands in between classes. They made fun of the way he walked and girls in drama class

569 Id. at 3.
570 Id. at 3-4.
571 Id. at 3.
572 Id.
579 Estate of Barnwell ex rel. Barnwell v. Watson, 880 F.3d 998, 1002 (8th Cir. 2018).
580 Sonders, supra note 578.
made fun of the way he talked. When Chandler introduced himself to a substitute teacher on October 7, a classmate told him he sounded “fruity” and called him a “faggot.” However, “[t]he incident that presumably precipitated Chandler’s suicide occurred in class on December 7.” Chandler was “taunted, targeted and called a faggot the entire period by a number of students. In fact, one student . . . told Chandler that he should ‘just get it over and go shoot yourself.’” Chandler shot and killed himself that evening.

**STAIRWELLS**

When Las Vegas police responded to a domestic dispute at a two-story hotel, they found a woman with an apparent head injury. An earwitness said, “I heard her bang

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581 880 F.3d at 1003.
582 Id.
585 880 F.3d at 1002.
586 Id. at 1003.
591 Joyce Lupiani, *Man Arrested for Girlfriend’s Death After She Falls Down Stairs*, 13 KTNV LAS VEGAS (July 17, 2018),
against the railing upstairs and I heard a huge thud.” A man told police the woman fell down stairs as she was pushing his arm away but police say surveillance video showed him run up to the woman at which point a forceful collision led to the female tumbling down. The man and woman were in a relationship. She died of blunt force head trauma. He was charged with murder.

Bullies pushed a 13-year-old down the stairs at a two-story charter school in Los Angeles. She cried because of a sprained ankle. The bullies also spit in her lunch, pulled her


593 Lupiani, supra note 591.


595 Nelson & Amhara, supra note 592.


597 Lupiani, supra note 591.

598 Woman Who Died from Push Down Stairs ID’D, LAS VEGAS REV.-J., July 17, 2018, at 1B.


600 Id.

601 Id.
hair,\textsuperscript{602} stole her things,\textsuperscript{603} told her how ugly she was,\textsuperscript{604} and asked her, “Why don’t you go kill yourself?”\textsuperscript{605} The girl attempted suicide\textsuperscript{606} by drinking bleach\textsuperscript{607} in March 2018.\textsuperscript{608}

Destinee Krebs (14) of Pennsylvania\textsuperscript{609} first came under attack in seventh grade.\textsuperscript{610} As a result, her “self-esteem and body image worsened to such a degree that she lost over thirty pounds throughout the year, moving from healthy to underweight.”\textsuperscript{611}

The attack on Destinee’s physical appearance, sexuality, and intelligence carried over into eighth grade.\textsuperscript{612} Students called Destinee fat, ugly, slut, skank, stupid, dumb, bitch, worthless, and whore.\textsuperscript{613} They told Destinee, “Go kill yourself.”\textsuperscript{614}


\textsuperscript{604} Healy & Ahmed, supra note 602.


\textsuperscript{606} Healy & Ahmed, supra note 602.

\textsuperscript{607} Jacqueline García, Demandan al Distrito Escolar por Bullying Contra Alumnos, LA OPINIÓN, May 16, 2018, at 6A.

\textsuperscript{608} Healy & Ahmed, supra note 602.


\textsuperscript{611} Id. at ¶ 26.

\textsuperscript{612} Id. at ¶ 40.

\textsuperscript{613} Id. at ¶¶ 40, 45.

\textsuperscript{614} Id. at ¶ 40.
Ninth grade was unimaginable. When the 2014-2015 school year began, a female student ("F.S.") sent Destinee a text message image of a bloody wrist. In October, F.S. fractured Destinee’s nose. In November, students at lunchtime tricked Destinee into snorting drugs. Destinee said that evening she wanted to die and began thrashing uncontrollably. Emergency room doctors committed her to a psychiatric hospital.

When Destinee returned to school, a male student intentionally dumped milk over her in the cafeteria. In addition, F.S.’s sister and friends harassed Destinee as to (1) charges that had been filed against F.S. and (2) an upcoming hearing at which Destinee was to testify.

Destinee testified at the hearing on February 3, 2015. She killed herself the next day. At a candlelight vigil, Destinee’s parents learned that the same students who verbally harassed their daughter had shoved her down a stairwell at school.

**LOCKER ROOMS**

L.O. played youth soccer in 2016. His team finished first, lost only once, and took home a sportsmanship award.

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615 Id. at ¶ 76.
617 Complaint, supra note 610, at ¶ 57.
618 Id. at ¶ 60.
619 Id.
620 Memorandum, supra note 616, at 3.
621 Complaint, supra note 610, at ¶ 70.
622 Id. at ¶ 76.
623 Id. at ¶ 77.
624 Memorandum, supra note 616, at 4.
625 Complaint, supra note 610, at ¶ 84.
627 The Garden City Cosmos, GARDEN CITY NEWS, Nov. 25, 2016, at 58.
628 Id.
L.O. tried out for middle school soccer that autumn and earned a coveted spot on the seventh-grade squad. Two think-they-knew-it-all teammates told L.O. he sucked and did not belong.

L.O. had a horrible seventh grade because of bullies. They made fun of his freckles, said his eyebrows were weird, and called him fat. They used what his mom described as horrible language. L.O. was punched on the way to the bus at the end of the school year.

At the start of eighth grade, a student bashed L.O.’s face into a gym locker.

L.O. refused to attend school the following Monday. He required hospitalization for depression and an eating disorder.

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631 Id.


634 Id.

635 Allison Slater Tate, Family Fights Back After Bullied Son Spirals into Weight Loss, Depression, TODAY (Oct. 25, 2017), https://www.today.com/parents/mom-uses-facebook-show-effects-bullying-her-son-t117933.

636 McGoldrick, supra note 630.


“Your life is a waste,” a bully told L.O. sixty-nine. “Why don’t you just kill yourself?” L.O.’s father asked in bewilderment, “How does a twelve-year-old say that to another twelve-year-old?”

D. Why Children Bully

Evil made its presence felt at an elementary school in Kindred, North Dakota. Two boys terrorized a girl in the fourth grade. One tore into the ten-year-old with constant criticism while the other tried to get her to commit suicide. “Go kill yourself,” he commanded. “Take pills and just die,” he ordered.

The girl was at one time happy-go-lucky and a very good student. “Always a hundred, five percent,” said Heather, the girl’s mother. But the girl became crabby. Her grades dropped. She tried to avoid school. “My stomach hurts.” “I don’t want to go.” The girl said she hated herself.

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639 Tate, supra note 635.
640 Id.
641 Hickey, supra note 632.
644 Itzcovitz, supra note 642.
645 Id.
646 Id.
647 Id.
648 Id.
649 Id.
650 Id.
651 Id.
652 Id.
653 Id.
654 Id.
655 Id.
Heather discovered the source of her daughter’s decline one school day. The girl had asked about why kids bully. She then talked about the assailment and started drawing lines on her wrist.

Heather reached out to the school. Someone spoke to the assailant but put him back in class with the girl and other bully. Heather said to a reporter, “I would think that telling people to go kill themselves should be a no tolerance kind of thing.”

Children bully for any number of reasons. “There’s not a one-size-fits-all,” says an associate professor of school psychology. “Some kids bully in response to academic stress. They might be jealous of kids who do well.” Other kids bully because they are mean-spirited. “[B]ullying is actually enjoyable to them.” They find happiness in the misery of others and want their targets to feel bad, hurt, and embarrassed.

Some bullies lack self-esteem and have to compensate for their own feelings of inadequacy. They “put someone

656 Id.
657 Id.
658 Id.
659 Id.
660 Id.
661 Id.
662 ANGELA C. MATTKE, MAYO CLINIC GUIDE TO RAISING A HEALTHY CHILD 273 (2019).
663 Texas A&M Professor’s Research Highlights Different Sides to Bullying, FORNEY MESSENGER (Tex.), Dec. 3, 2015, at 20.
666 Id.
667 Id.
668 DAVID J. JAKUBIAK, A SMART KID’S GUIDE TO ONLINE BULLYING 4 (2010).
669 SEPAHBAN, supra note 513, at 10.
670 JONES, supra note 213, at 12.
671 SPILSBURY, supra note 293, at 32.
down so they can feel ‘up.’”673 There are bullies with few friends.674 “Getting a laugh at someone else’s expense makes them feel better, and getting other people to join with them makes them feel more popular.”675

Other bullies may view a particular student as a threat to their status.676 Bullying helps eliminate the threat. “When bullying happens over and over, other kids can develop a low opinion of the victim.”677 “This is because he or she appears weak to the others. It shouldn’t be this way, but studies have shown that it’s true.”678

A professor of child and youth studies says children who bully “want to get something out of it – popularity, sex, resources.”679 It is true that bullying can sometimes lead to such rewards.680 For example, there is material gain when a victim hands over lunch money.681

Barbara Coloroso says bullying “[i]s about contempt – a powerful feeling of dislike or disdain toward somebody considered to be worthless, inferior, or undeserving of respect.”682

Other research tells us that the prime motivator for bullying is a need for power.”683 “Some children want to

673 COLOROSO, supra note 124, at 44.
674 SPILSBURY, supra note 293, at 32.
675 Id.
676 COLOROSO, supra note 124, at 108.
677 GOLUS, supra note 159, at 44.
678 Id.
679 Sheryl Ubelacker, What to Do If Your Kid Is a Bully, CHRONICLE-HERALD (Halifax, N.S.), Aug. 28, 2010, at D3. One bully told a 10-year-old girl if she didn’t have sex with him, he would tell everybody not to be friends with her. Roger Neumann, Elmira Mother Rebels Against School, STAR-GAZETTE (N.Y.), Jan. 22, 2012, at 10A.
681 PERDEW, supra note 275, at 17.
682 COLOROSO, supra note 124, at 42.
683 NAOMI DREW, NO KIDDING ABOUT BULLYING 131 (2017).
experiment with power.” Others fall in love with it. “The more power they get, the more they want.” Hurting others make bullies feel powerful.” Kids who bully think they’ve hit the jackpot when they make you cry.” For them, “it feels good to be in control over other people’s emotions.”

“Sometimes children bully because they hold a grudge against a particular child such as an estranged friend or a rival, and want to get even.” They “see themselves as giving the ‘real’ bullies a taste of their own medicine.” Other children bully at the request of a friend or because of peer pressure. Still others may see bullying as a way of showing off or making themselves look tough.

Phoebe Prince (15) started at South Hadley High School (“South Hadley”) in September 2009. The freshman from Ireland got popular quick. “She was new. She was pretty.”

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684 Barbara Jones, Does Your Child Bully?, TAOS NEWS (N.M.), May 14-20, 2015, at B9. Bullying a sixth-grade girl back in the day made one author feel “terrific!” Amy Goldman Koss, Carol, in DEAR BULLY: 70 AUTHORS TELL THEIR STORIES, supra note 274, at 145, 145-46. It made the author’s “whole body practically vibrate with life and power.” Id. at 146.

685 TREvor ROMAIN, BULLying IS A PAIN IN THE BRAIN 25 (2016).

686 Id.


688 ROMAIN, supra note 685, at 25.

689 Texas A&M Professor’s Research Highlights Different Sides to Bullying, supra note 663.


691 SAM NAVARRE, MASCULINITY, BULLYING, AND AGGRESSION 44 (2012).


693 GLASER & PETERSON, supra note 216, at 10.


695 BULLIED TO DEATH: THE TRAGEDY OF PHOEBE PRINCE (TV3 Television Network 2010) [hereinafter PRINCE DOCUMENTARY].


697 Today (NBC television broadcast Apr. 6, 2010).
“[K]ids were always trying to get her to say something so they could hear the lovely lilt.”

Phoebe’s popularity did not last long. She became the victim of verbal, nonverbal, relational, cyber, hand-written, and physical bullying. She also suffered assailment.

Phoebe and S.M. became close in November. S.M. was a senior and very popular. He was good academically and a star on the football team. S.M. had previously dated junior K.N.

Phoebe turned fifteen on November 24. S.M. ended things between them three days later. Phoebe immediately attempted suicide, went into organ failure, and was hospitalized for a week.

When Phoebe returned to school, S.M. and K.N. were together again. Phoebe approached K.N. on December 10 and

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698 Giacobbe, supra note 696.
699 PRINCE DOCUMENTARY, supra note 695.
700 Liz McNeil et al., Bullied to Death?, PEOPLE, Feb. 22, 2010, at 62, 64 (“Go kill yourself,” students taunted); Jessica Van Sack et al., Pal: Suicide Victim Target of Bullies, BOS. HERALD, Jan. 26, 2010, at 6 (“Go kill yourself,” a bully told Phoebe); Nightline (ABC television broadcast Apr. 6, 2010) (“Someone told [Phoebe] to go hang herself and I really don’t know who that was,” said a student).
701 EMILY BAZELON, STICKS AND STONES 85, 87 (2014).
705 PRINCE DOCUMENTARY, supra note 695.
706 BAZELON, supra note 701, at 88-89, 172.
707 Id. at 89-90.
709 BAZELON, supra note 701, at 90.
Irrespective of whether K.N. spoke directly to Phoebe, Phoebe apologized for being intimate with S.M.

Senior A.R. spent time with Phoebe over Christmas break. His girlfriend was F.M. F.M. was almost two years older than Phoebe. She became suspicious of Phoebe when school started back up in January.

On January 6, a girl from F.M.’s chemistry class paid Phoebe a visit. S.V. says she “posted very nicely” and asked, “Are you and [A.R.] doing anything?” When Phoebe took offense, S.V. got mad.


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710 Id. at 90, 181.
712 BAZELON, supra note 701, at 90, 181; Dateline, supra note 702.
713 BAZELON, supra note 701, at 92.
714 Id. at 82, 93.
716 BAZELON, supra note 701, at 93-94.
717 Id. at 94-95.
718 Dateline, supra note 702.
719 Id.
720 BAZELON, supra note 701, at 96.
On January 8, S.V. confronted Phoebe in the lunchroom.723 “You have to stop being a ho.”724 “Don’t call me a ho,” Phoebe said.725 “Well, I just did, so do something about it.”726 Other students told S.V. to beat Phoebe up.727 Phoebe reported S.V. and went to class.728

Before the bell rang,729 S.V. entered the classroom.730 “It was very clear,” the teacher said.731 “They were not having a conversation. Phoebe was in a defensive position and S.V. was in her face with her finger pointing.”732 The school suspended S.V.733

On January 13, Phoebe told a friend, “School has been close to intolerable lately.”734

On January 14, Phoebe was in the library at lunch735 when S.M., K.N., and A.L. showed up.736 S.M. and K.N. made

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724 Jill Smolowe et al., Inside Her Torment, PEOPLE, Apr. 26, 2010, at 66, 68, 70.
725 Id. at 70.
726 Id.
727 Dateline, supra note 702.
728 Id.
729 BAZELON, supra note 701, at 96.
730 Compare id., and Giacobbe, supra note 696, with Press Release, supra note 721.
731 Dateline, supra note 702.
732 Id.
733 Id.; Giacobbe, supra note 696.
736 PRINCE DOCUMENTARY, supra note 695. Somebody wrote on the library sign-in sheet next to Phoebe’s name: “Irish bitch...is a cunt.” Giacobbe, supra note 696.
out while A.L. shouted at Phoebe on and off for about five minutes. “Close your legs!” “I hate stupid sluts!”

Later, S.M., K.N., and A.L. stood in a hallway where others were gathered when school let out. “Here she comes,” S.M. said, nodding in Phoebe’s direction. He tried to get A.L. to fight Phoebe. A.L. screamed instead. “Whore!”

All of the student chatter fell silent. Phoebe pretended not to hear. “I’m fucking talking to you!” Phoebe made a peace sign but did not break stride. “Why don’t you just open your legs?” A.L. said. K.N. started to laugh. Phoebe started to cry.

As Phoebe walked home, a car approached. Passenger A.L. threw an empty can at Phoebe and verbal

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737 Giacobbe, supra note 696.
739 Smolowe et al., supra note 724, at 70.
740 Id.
742 Giacobbe, supra note 696.
743 Id.
744 Contrada, supra note 704.
745 Compare id., with Giacobbe, supra note 696.
746 Giacobbe, supra note 696.
747 Id.
748 Bazelon, supra note 701, at 98-99.
749 Id. at 98.
750 Id. at 99.
751 Giacobbe, supra note 696.
752 Id.
753 Bazelon, supra note 701, at 99.
754 Bazelon, supra note 723.
755 Prince Documentary, supra note 695.
756 Giacobbe, supra note 696.
abuse\textsuperscript{758} shot out from inside the car.\textsuperscript{759} A witness heard laughter from the car as it sped away.\textsuperscript{760} Phoebe later hanged herself between 2:48 and 4:30 p.m.\textsuperscript{761}

Phoebe was regularly texted abuse.\textsuperscript{762} Students knocked books out of her hands.\textsuperscript{763} At least three days before she died,\textsuperscript{764} someone scribbled out her face on a student body photograph mounted in a classroom\textsuperscript{765} and drew an obscene picture over her image.\textsuperscript{766}

The Commonwealth of Massachusetts charged S.M. and seven girls.\textsuperscript{767} K.N., F.M., S.V., and A.L. were four of the girls.\textsuperscript{768} The other three were younger in age\textsuperscript{769} but all attended South Hadley.\textsuperscript{770}

S.M. admitted in court that he got mad because he believed Phoebe caused friction for himself and K.N.\textsuperscript{771} K.N. said in court that she was angry, hurt, and jealous.\textsuperscript{772} She became hostile toward Phoebe after hearing about A.R.\textsuperscript{773}

F.M. was told by a ninth-grade girl – supposedly Phoebe’s best friend – to watch out: “Phoebe is trying to get

\textsuperscript{758} Court Documents Detail Hurtful Interactions Between Alleged Bullies and Phoebe Prince, supra note 738.
\textsuperscript{759} PRINCE DOCUMENTARY, supra note 695.
\textsuperscript{760} Ronald Quinlan, School Must Be ‘Held to Account’ in Phoebe Case, SUNDAY INDEP. (Ir.), Apr. 11, 2010, at 23.
\textsuperscript{761} Contrada, supra note 735.
\textsuperscript{762} PRINCE DOCUMENTARY, supra note 695.
\textsuperscript{763} Id.
\textsuperscript{764} Marie Szaniszlo & Laura Crimaldi, Parent Details Phoebe’s Agonizing Final Moments, BOS. HERALD (Apr. 2, 2010), at 4.
\textsuperscript{765} Sandra Constantine, South Hadley Schools Discipline Two Students Said to Have Bullied Phoebe Prince Prior to Her Suicide, MASS LIVE (Jan. 26, 2010), https://www.masslive.com/news/2010/01/south_hadley_disciplines_two_h.html.
\textsuperscript{766} Szaniszlo & Crimaldi, supra note 764.
\textsuperscript{767} Compare Nancy Gibbs, When Bullying Goes Criminal, TIME (Apr. 19 2010), http://content.time.com/time/magazine/article/0,9171,1978773,00.html, with PRINCE DOCUMENTARY, supra note 695.
\textsuperscript{768} PRINCE DOCUMENTARY, supra note 695.
\textsuperscript{769} Id.
\textsuperscript{771} Bazelon, supra note 741.
\textsuperscript{772} BAZELON, supra note 701, at 181.
\textsuperscript{773} Contrada, supra note 704.
with [A.R.], and she’s saying that he likes her back.” S.M. had been with A.R. for more than a year and said it was “extremely hurtful.”

S.V. said it was the impulse to help a friend that caused her to “argue” with Phoebe three times. S.V.’s mother said, “My daughter never fought with [Phoebe] or said, ‘Go harm yourself.’”

A.L. had been friends with S.M. since childhood. S.M. encouraged her to be mean to Phoebe.

E. WHY BULLIED CHILDREN MAY NOT REPORT

Jacobe Taras (13) of New York was born one week after the terrorist attacks of September 11, 2001. He left this world by way of suicide in April 2015. Jacobe did not speak to his parents about some of the problems he was having but did document them.

Jacobe wrote on social media in March 2015, “I don’t love myself. I hate me. I am a loser. I am a fuck up.” Two weeks later, he referenced an image of a person shooting

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774 BAZELON, supra note 701, at 94.
775 Id.
776 Dateline, supra note 702; Today, supra note 697.
778 Giacobbe, supra note 696.
779 Contrada, supra note 708.
784 Bump, supra note 782.
himself with the caption, “This is what people say to me every day, suicide.”

Jacobe left a suicide note found by his mother. It read:

Dear mom and Dad
I’m sorry but I can not live anymore. I just can’t deal with all of the bullies, being called gay, asshole, being told to go kill myself. I’m also done with being pushed, punched, tripped. I’m sorry for all that I put you through by. I LOVE YOU

Jacobe contended with numerous school bullies. While most of the bullying occurred in hallways and the lunch room, Jacobe rode the bus with S.B. When the school district sat them further apart, S.B. used an intermediary to do his dirty work. The district eventually put Jacobe and S.B. on different buses but like a bad penny, S.B. would reappear.

786 Id. at ¶ 47.
787 Bump, supra note 782.
789 Bump, supra note 782.
794 Affidavit in Support of Summary Judgment Motion, supra note 788, at ¶ 18.
795 Amended Complaint, supra note 790, at ¶ 44.
J.F. – popular, but mean – was the ringleader. After the suicide, a female student overheard J.F. talk about how he had bullied Jacobe. During civil proceedings brought by Jacobe’s parents against the school district, J.F. testified that he may have pushed Jacobe in class; he just couldn’t remember.

J.V. called Jacobe “little fag boy” and was witnessed knocking books out of Jacobe’s hands. Nobody could recall, however, who it was in second period that tossed Jacobe’s binder into a running locker room shower. And when Jacobe was asked by his mother how he got bruises, he would lie.

The majority of bullied students do not report their victimization. “Bullying can be a humiliating experience. Kids may not want adults to know what is being said about [or

797 Id. at ¶ 43.
798 Affirmation in Opposition to Defendants’ Summary Judgment Motion, supra note 785, at ¶ 34.
799 Id. at ¶ 76.
800 Id. at ¶ 34.
801 Affidavit in Support of Summary Judgment Motion, supra note 788, at ¶ 34.
803 Affirmation in Opposition to Defendants’ Summary Judgment Motion, supra note 785, at ¶ 115.
804 Id. at ¶ 37.
805 Id. at ¶ 22.
806 Affidavit in Support of Summary Judgment Motion, supra note 788, at ¶ 77.
807 Id. at ¶ 66.
808 Id. at ¶ 77.
809 Affirmation in Support of Plaintiff’s Motion to Set Aside the Jury Verdict and to Order a New Trial, supra note 791, at ¶ 17.
810 Affidavit in Support of Summary Judgment Motion, supra note 788, at ¶ 77.
811 Goot, supra note 794.
812 BORBA, supra note 222, at 2; see also Carter Davis, Address Bullying Head-On, PRINCIPAL LEADERSHIP, Nov. 2014, at 18, 18; NCES 2019-054, STUDENT REPORTS OF BULLYING: RESULTS FROM THE 2017 SCHOOL CRIME SUPPLEMENT TO THE NATIONAL CRIME VICTIMIZATION SURVEY, supra note 511, at T-2.7.
done to] them.”\textsuperscript{813} They feel ashamed and embarrassed.\textsuperscript{814} In the words of one author, “How do you tell your mother you’ve become a target, a loser, a failure, a lunchtime joke?”\textsuperscript{815}

Some kids remain recalcitrant because “they’re afraid Mom or Dad will contact the bully or the bully’s parents, sparking further embarrassment or retaliation.”\textsuperscript{816} Indeed, fear of retaliation is an oft-cited reason for why bullied children do not report.\textsuperscript{817} Some kids think the bully “will actually escalate their behavior.”\textsuperscript{818} “In reality, reporting can have the opposite effect”\textsuperscript{819} and usually helps.\textsuperscript{820}

The code of silence among children is a factor in nonreporting.\textsuperscript{821} Kids fear being labeled a “snitch” or a “rat”\textsuperscript{822} and think that their “tattling”\textsuperscript{823} might entail a risk of “serious social payback.”\textsuperscript{824}

“One of the biggest issues with [cyber bullying] is that victims hardly report that it is happening to them.”\textsuperscript{825} Worse yet, “[p]arents are often the last to know.”\textsuperscript{826} Some kids want “a social world apart from adults, one that is private about what

\textsuperscript{813} Bullying, in CHILD ABUSE SOURCEBOOK 55, 55 (Angela L. Williams ed., 5th ed. 2019).
\textsuperscript{814} BORBA, supra note 222, at 131.
\textsuperscript{815} Deborah Kerbel, The Curtain, in DEAR BULLY: 70 AUTHORS TELL THEIR STORIES, supra note 274, at 120, 122.
\textsuperscript{816} Sue Shellenbarger, When Your Child Is a Target of Bullying, WALL STREET J., Sept. 14, 2016, at D1.
\textsuperscript{817} BORBA, supra note 222, at 131; COLOROSO, supra note 124, at 123; HILE, supra note 123, at 39; FAYE MISHNA, BULLYING 20 (2012); Bullying, supra note 813, at 55.
\textsuperscript{819} URBANSKI & PERMUTH, supra note 274, at 191.
\textsuperscript{820} HILE, supra note 123, at 42.
\textsuperscript{821} CARPENTER, supra note 132, at 11.
\textsuperscript{822} BORBA, supra note 222, at 131.
\textsuperscript{823} DAVID R. DUPPER, SCHOOL BULLYING 18 (2013).
\textsuperscript{824} CARL PICKHARDT, WHY GOOD KIDS ACT CRUEL 4 (2010).
\textsuperscript{825} Simmons, supra note 411, at 5. Only 1 in 10 children will report cyberbullying to a trusted adult or parent. David Franklin, 5 Signs of Cyberbullying, PRINCIPAL’S DESK (Jan. 7, 2020), https://principalsdesk.org/2020/01/07/5-signs-of-cyberbullying/.
\textsuperscript{826} Michlewicz, supra note 417.
happens, and that includes incidents of social cruelty.”

Others fear parents will take away their technology or monitor its use.

Some children believe they deserve to be bullied and blame themselves for their victimization. Others view reporting as admitting defeat. They do not report because it “would require the[m] to acknowledge him or herself as powerless.”

Some children do not know where to go for assistance with bullying. Those that do may view reporting as futile. Either “[t]hey don’t think anyone can help them” or “[t]hey don’t think anyone will help them.”

Not all targets are shrinking violets, however.

A beleaguered New York high school student reprimanded her assistant principal in March 2014. “You are not doing anything,” A.T. said. “You are not going to do a fucking thing until I am dead.” A.T. spoke up after a villainous bully claimed victory over her.

Two sisters victimized A.T. in middle school. Among other things, J.K. warned A.T. to run if she ever saw them because they would hurt her. The older sibling told A.T. to

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827 PICKHARDT, supra note 824, at 4.
829 Justine Miller, Bullying Cited as Problem, HARTFORD COURANT, Oct. 20, 2011, at B8.
830 BORBA, supra note 222, at 132.
831 MISHNA, supra note 817, at 128.
832 Bullying, supra note 813, at 55.
833 DUPPER, supra note 823, at 18.
834 Bullying, supra note 813, at 55.
835 MISHNA, supra note 817, at 128.
836 BORBA, supra note 222, at 132.
837 JUSTIN W. PATCHIN & SAMEER HINDUJA, WORDS WOUND 34 (2014).
838 COLORO, supra note 124, at 123 (emphaes in original).
840 Id. at *7.
841 Id.
842 Id.
843 Id. at *2-3.
844 Id.
fear for her life. A.T.’s mother took those threats right to the police.

The sisters bullied A.T. again when she started high school in 2013. A.T.’s mother met with the assistant principal in December as a result. Soon after, J.K. recruited a student to beat up A.T. A.T.’s mother notified the assistant principal of this plan when she found out.

A hospital admitted A.T. for suicidal thoughts in January 2014. A.T.’s mother met with the assistant principal a week later but the harassment continued. Girls called A.T. “trash” and a “piece of shit.” They told A.T. on a regular basis that she should kill herself. J.K. boasted at school that she had destroyed A.T. and left her life in ruins.

Phoebe Prince’s mother discovered her daughter’s bullying in mid-November. Phoebe was very agitated and getting reams of texts. “What’s going on?” the mother asked. “Oh, the girls are at me,” Phoebe answered. “Who?” “Oh, you don’t want to know, you don’t want to know. It will blow over, Mummy, it’ll blow over.”

South Hadley had a police officer on its premises. He was familiar with Phoebe but was not made aware of bullying. Police were not part of Phoebe’s coping strategy in

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845 Id. at *3.
846 Id.
847 Id. at *2-3.
848 Id. at *3.
849 Id. at *4.
850 Id.
851 Id. at *6.
852 Id.
853 Plaintiffs’ Memorandum of Law in Opposition to Defendant’s Motion to Dismiss at 9, Tryon v. East Islip Union Free Sch. Dist., No. 15-CV-1534 (JS) (GRB) (E.D.N.Y. June 12, 2015), 2015 WL 12914155.
855 Id.
856 Id. at *7.
857 Piers Morgan Tonight (CNN television broadcast Dec. 4, 2011).
858 Id.
859 Id.
860 Id.
861 Id.
862 Id.
863 Giacobbe, supra note 696.
864 Id.
any event. She texted that strategy to a friend in Ireland.

When it came to bullying, Phoebe was going to “keep her head high, smile and just let it go past her.”

III. LAWS AGAINST BULLYING

A. HIGH SCHOOL HAZING

It is unusual for a head coach to get involved in hazing at a National Football League training camp but that didn’t stop Jim Fassel of the New York Giants. He wanted to have fun with new arrival Jeremy Shockey, a rookie tight end.

Fassel secretly told the offense to run a play on the second snap count but instructed the quarterback to say in huddle that the count was “on one.” The players lined up, the quarterback yelled, “Hut!” and “[s]ure enough, Shockey jumped offside and I jumped him,” Fassel said. “I jumped right at him, saying, ‘How stupid can you be? Don’t start jumping offsides.’” Other guys were saying things, too.

Hazing is the practice of “physically or emotionally abusing newcomers to an organization as a means of initiation. Veteran professional football players haze rookies

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865 Smolowe et al., supra note 724, at 70.
866 Id.
867 Id.
868 Fassel Involved in Rookie Hazing, FLA. TIMES-UNION, Aug. 4, 2002, at C.
870 Id.
871 Fassel Involved in Rookie Hazing, supra note 868.
873 Id.
874 Fassel Involved in Rookie Hazing, supra note 868.
875 Altavilla, supra note 872.
876 Tara Sullivan, Giants’ Top Pick Has Long First Day, RECORD (N.J.), July 31, 2002, at S-1. They were on Shockey for a while but did eventually tell him. Altavilla, supra note 872.
877 Hazing, BLACK’S LAW DICTIONARY (9th ed. 2009).
to inject humor, maintain hierarchy, build camaraderie, and keep tradition. Rookies may have to sing their college fight songs, carry extra equipment, and pay for food. Most rookies play along. A few do not.

Rookie defensive end Alan Page arrived at the Minnesota Vikings training camp on August 5, 1967. Jim Marshall, a veteran lineman and team leader, right away showed Page some of his pass-rushing moves. There was also a fair amount of rookie hazing.

What Marshall called “ritualistic indoctrination” was lots of beer and a lodge out in the country. Veterans would fill the rookies full of booze and then enjoy watching them at

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879 Nicholas J. Cotsonika, Hazing Ritual Gets the Old Heave-Ho, DETROIT FREE PRESS, Aug. 13, 2009, at 6C.
880 Scott Michaux, Panthers Coach Puts the Kibosh on Traditional Hazing of Rookies, GREENSBORO NEWS REC., July 21, 2000, at C4.
883 Jon Heath, Fangio Bans Crazy Rookie Haircuts, FORT COLLINS COLORADOAN, Aug. 16, 2019, at 2B.
885 Id.; Ricci Graham, Porter Catches Some Breaks, S.F. EXAMINER, Jan. 24, 2003, at 5B (“Carry your own bag,” said one player to another. “You brought them out, you bring them back in.”).
887 MARK CRAIG, 100 THINGS VIKINGS FANS SHOULD KNOW BEFORE THEY DIE 30, 34 (2016).
889 Jon Roe, Grim’s Fairy-Tale Career Provides Fond Memories, STAR TRIB. (Minn.), Sept. 24, 1989, at 25C.
890 Curt Brown, Purple People Eaters No More; Now Just People, STAR TRIB. (Minn.), Sept. 24, 1989, at 1C.
891 Id.
practice the next day. The primary issue for Page was that he did not drink alcohol.

“Drink some beer,” Marshall told Page. Page said, “I don’t drink.” Marshall followed up with “Just drink one pitcher,” “One drink and it’s over,” and “All the other rooks are doing it.” Page still would not compromise. Marshall lectured Page about becoming a teammate and then told him “he’d better get the hell out of there.”

Students at Reed-Custer High School (“Reed”) told A.B. to kill himself. A.B. began playing football at the age of seven and loved the sport. He attended Reed’s football summer camp before his freshman year. Upperclassmen at camp told A.B. they would rape his mom and sister while forcing him to watch.

Upperclassmen at the football camp later assaulted A.B. after a practice. The sadistic nature of the attack brought police. The fourteen-year-old had been placed in mortal

892 Mark Craig, Still Hazing, but Without the Hating, STAR TRIB. (Minn.), Aug. 17, 2016, at C3.
894 BILL MCMGRANE, ALL RISE: THE REMARKABLE JOURNEY OF ALAN PAGE 75 (2010).
895 Id.
896 Id.
897 Id.
898 Brown, supra note 890.
899 MCMGRANE, supra note 894, at 75.
901 Id.
904 Id. at 12.
905 Id. at 2.
fear of being digitally penetrated through a hazing ritual called "smoke." 907 Students at Reed sided against A.B. and assailed him face-to-face. 908

“They would tell me to kill myself. I’m a little bitch. My family’s psychotic. I’m going to go nowhere in life. I’m worthless.” 909 A.B. stopped playing football and became suicidal. 910 “It destroys you as a parent,” said A.B.’s mother. 911 “All I can say is sheer anger. Just anger.” 912

There are anti-hazing laws in forty-four states. 913 These laws have been on the books since at least 2005. 914 Most make hazing a misdemeanor. 915 Twelve make it a felony in cases of serious injury or death. 916 Some of the laws apply only to colleges. 917 Seventy-seven (77) people have died in fraternity-related incidents since 2005. 918

B. ANTI-BULLYING LAWS

All fifty states have anti-bullying laws. 919 Georgia was the first state to enact such a law and did so in 1999. 920 Montana

907 Savini, supra note 902.
908 Id.
909 2 Investigators: Hazing Victim Speaks Out, supra note 900.
910 Id.
911 Id.
912 Id.
914 Susan R. Miller, Students Warned Against Hazing, PALM BEACH POST (Fla.), Sept. 29, 2005, at 1B.
918 Bianchi & Levine, supra note 916, at 53.
920 Farley Andersen, Comment, Pacifism in a Dog-Eat-Dog World: Potential Solutions to School Bullying, 64 MERCER L. REV. 753, 774 (2013).
was last in 2015. Since 2006, all states have enacted either initial or additional legislation aimed at preventing bullying and protecting students.

North Carolina state lawmakers tried but were unable to pass an anti-bullying law during their 2007-2008 legislative session. They succeeded in 2009. The School Violence Prevention Act required school districts to adopt policies prohibiting bullying. Suicide is now North Carolina’s second-leading cause of death for children 10 to 17 years old. Forty-four (44) children and teens took their lives in 2017 compared to twenty-two (22) in 2008.

Anti-bullying laws in nearly every state define bullying. The legal definitions vary but most require repeated incidents.

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921 Lisa Baumann, ‘A Long Time Coming’: Gov. Bullock Signs Anti-Bullying Bill into State Law, GREAT FALLS TRIB. (Mont.), Apr. 22, 2015, at 1M.
924 Lynn Bonner et al., Students Say They Need a Law to Stop the Bullies, House Barely Agrees, 58-57, to Send the Bill to Perdue, NEWS OBSERVER (N.C.), June 24, 2009, at 1A.
925 N.C. GEN. STAT. § 115C-407.16 (2019).
926 Bruce Henderson, NC’s Child Suicide Nearly Doubled in a Decade, CHARLOTTE OBSERVER, Mar. 20, 2019, at 1A.
927 Id.
928 Matt Markgraf, [Audio] Susan & Morgan Guess on How Bullying Has Changed in Kentucky, 91.3 FM WKMS (Feb. 16, 2016), https://www.wkms.org/post/audio-susan-morgan-guess-how-bullying-has-changed-kentucky#stream/0.
concern that anti-bullying laws should focus on patterns of behavior, not single incidents.”

Most anti-bullying laws do not make bullying a crime. Technically speaking, many do make bullying “illegal.” But that’s only because they require schools to adopt policies “prohibiting” bullying. For example, when Georgia passed its law, each school board was required to adopt policies that prohibited bullying in grades six through twelve. Thus, if you bullied a high school freshman, what you were doing was “against the law.” But saying “bullying is prohibited” and saying “bullying is a crime” are two different things.

In reality, very few anti-bullying laws make bullying a crime. Kentucky’s Golden Rule Act makes it a misdemeanor for a student to harass another student in writing or electronically. Nevada’s anti-bullying law makes it a misdemeanor to threaten a pupil with death or bodily harm. A bully may be “guilty” of an infraction in Idaho.

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931 JAMES C. HANKS, SCHOOL BULLYING 106 (2d ed. 2015).
933 Bullying Not Just Mean; It’s Illegal, LAUREL OUTLOOK (Mont.), Mar. 15, 2018, at A6.
934 HANKS, supra note 931, at 23.
935 1999 GA. LAWS 362.
937 NEV. REV. STAT. § 392.915 (2019); Ed Vogel, Cyberbully Tactics Are Focus of State Law, LAS VEGAS REV.-J., July 1, 2010, at 1A.
938 IDAHO CODE ANN. § 18-917A (2020). An infraction is “[a] violation, usu. of a rule or local ordinance, and usu. not punishable by incarceration.” Infraction, BLACK’S LAW DICTIONARY, supra note 876. In Idaho, an infraction is “a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding three hundred dollars.” IDAHO CODE ANN. § 18-111 (2020).
C. CRIMINAL LAWS AND TRADITIONAL BULLYING

State legislators for the most part do not want to criminalize bullying.\(^{939}\) And for the most part, they don’t have to. Traditional bullying can easily constitute a variety of crimes.\(^{940}\) The Maricopa County Attorney’s Office in Arizona has set forth a laundry list of bullying behaviors that might constitute criminal acts and the list includes assault.\(^{941}\) Going on thirty years in Massachusetts,

[\text{\[w\]hoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment.}\(^{942}\)]

“All states make it a crime to damage the property of another person.”\(^{943}\) “The laws that criminalize the destruction of property are most commonly labeled criminal mischief.”\(^{944}\)

\(^{939}\) Compare, e.g., Marissa Kendall, Bullying Has Target on Back, NEWS-PRESS (Fla.), Feb. 27, 2014, at A3, with Chris Umpierre, Cyclists vs. Cyberbullying, NEWS-PRESS (Fla.), Nov. 16, 2014, at A3.


\(^{944}\) Id. at 641-42.
Stealing is “a crime even if the person doing it is a schoolkid” and can constitute robbery. Importantly, anti-bullying laws do not take away the right of students or parents to contact police. Although children may be afraid of retaliation if they tell an adult, “[t]he hard truth is that it’s almost impossible to stop bullying without some kind of help.” Furthermore, “[b]ullying often gets worse once it has started.” A child should turn to police for help if a school does not stop bullying immediately.

“Certainly, it is essential to bring [bullying] to the attention of the school” but “[t]here is a point at which bullying crosses a line and becomes a police matter.” When physical battery is involved, call law enforcement. Parents are well within their rights to do so. Children can also seek help from police after being roughed up by a bully – or even beforehand if they feel threatened.

Attorneys Travis and Trinity Townsend explain how some states consider assault and battery two different crimes.
“For instance, if you punch a person in the face, when the person sees the punch coming, that is assault. When the punch connects, that is battery.”⁹⁵⁹ “[S]hoving another person without justification is [also] battery.”⁹⁶⁰ “In other words, engaging in bullying may . . . mean engaging in an underlying crime.”⁹⁶¹

“Tell an adult if someone has stolen from you,” says author Trevor Romain in a book intended for elementary school children.⁹⁶² Romain lists police officers as adults who can help.⁹⁶³ Police can review security camera footage,⁹⁶⁴ interview leads,⁹⁶⁵ recover stolen property,⁹⁶⁶ and give testimony.⁹⁶⁷

In one case, a student stole a high school teacher’s digital camera.⁹⁶⁸ The teacher notified police and they recovered the camera.⁹⁶⁹ In another case, a teacher saw a middle school student looking into her personal effects during class.⁹⁷⁰ When the teacher discovered her iPhone was missing, she “looked up [the student’s address] on the school system” and called police.⁹⁷¹ The student – who did not surrender the phone when police went to his house – was held accountable in juvenile court for theft.⁹⁷²

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⁹⁵⁹ Id.
⁹⁶⁰ Id. at 83.
⁹⁶¹ Id. at 49.
⁹⁶² Romain, supra note 685, at 27.
⁹⁶³ Id. at 49.
⁹⁶⁶ Public Record: Lebanon Police Department, LEBANON EXPRESS (Or.), May 1, 2013, at A2.
⁹⁶⁹ Id.
⁹⁷¹ Id.
⁹⁷² Id. at *1-2.
D. CRIMINAL LAWS AND CYBER BULLYING

Almost every state makes electronic harassment a crime.973 “What constitutes online harassment and violates the law is a state-by-state question.”974 Alaska amended its laws in 2014.975 The new law makes it a crime for anyone to send or publish repeated electronic messages that place a child in reasonable fear of physical injury.976 “Cyber harassment of a child was made a third degree misdemeanor in Pennsylvania in 2015.”977 Utah makes it a crime for anyone to harass a minor by telephone or computer.978 The list could go on.979

Most states have laws that criminalize cyber bullying behavior.980 Louisiana’s anti-bullying law prohibits electronic bullying981 but the state also has a criminal law against “cyberbullying.”982 California makes it a misdemeanor to post

976 ALASKA STAT. § 11.61.120(a)(7) (2019).
978 UTAH CODE ANN. § 76-9-201 (West, Westlaw through 2020 Sixth Special Session).
981 LA. REV. STAT. ANN. § 17:416.13(B), (C)(b) (West, Westlaw through 2019 Regular Session).
982 Id. at § 14:40.7; Adam Duvernay, La. Cyberbullying Law Takes Effect, TIMES (La.), Aug. 15, 2010, at 1A. “Cyberbullying” is also an enumerated crime in Arkansas, ARK. CODE ANN. § 5-71-217 (2016); Rachel Hoffmeyer & Joan Early, When Cyberbullying Becomes Criminal, ABC 7 (May 11, 2012),
messages which would incite others to injure a target. Mississippi makes it a misdemeanor to impersonate someone online for the purpose of harming a person. Nebraska makes it a misdemeanor to intimidate someone over the phone by means of a threat. This list could go on.

“Contact police immediately if [cyber bullying] involves threatening violence, extortion, obscene calls, . . . harassment, stalking, hate crimes, or pornography.” The extent to which police and prosecutors are filing criminal charges against cyber bullies varies widely.

Ohio authorities charged two teens with telecommunication harassment after they bullied a girl into cutting her own hair. New Jersey police arrested a high school student for cyber harassment after he sent messages encouraging suicide to an elementary school girl and another student.


Emily Wagster Pettus, New Statutes Begin Today, CLARION-LEDGER (Miss.), July 1, 2011, at 2A.


Carpenter & D’Antona, supra note 510, at 206.

Cyberbullying: Should Cyberbullying Be Prosecuted?, supra note 973.


In Vermont, fourteen-year-old J.B. was told on social media “KILL YOURSELF FATTY” and “You just aim the blade at your heart and kill yourself.”992 Another message read, “Imma throw a rock @ your head when your cheerleading you suck at it anyways. You troll.”993 Paranoia set in and the freshman994 no longer wanted to attend school.995 Her grades plummeted and she attempted suicide.996 Vermont law enforcement would only investigate the rock-throwing comment997 because legislators have not criminalized assailment.998

IV. LAWS PERTAINING TO ASSAILMENT

A. THE COMMON LAW

Eve gave birth to Cain and Abel followed.999 In the process of time, the brothers brought offerings unto the Lord.1000 The Lord had respect for Abel and his offering “[b]ut unto Cain and to his offering, He had no respect.”1001 Cain was wroth; his countenance fell.1002 Cain later talked with Abel.1003 “And it came to pass, when they were in the field . . . Cain rose up against Abel his brother and slew him.”1004

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995 Monroe, supra note 992.
996 Nightline, supra note 994.
998 Monroe, supra note 992.
1000 Id. at 4:3-4.
1001 Id. at 4:4-5.
1002 Id. at 4:5.
1003 Id. at 4:8.
1004 Id.
The Lord God subsequently said unto Cain, “Where is Abel thy brother?”  
“I know not,” Cain answered.  
“Am I my brother’s keeper?” God asked again, “What hast thou done? The voice of thy brother’s blood crieth unto me from the ground.”  
Cain knew he’d been caught and was punished.  

Murder is against the law in all fifty states. It is a crime. We all know that. “The intentional killing of another human being is the ultimate expression of violence.”  
Attempted murder is a crime, too. But is suicide? If it is, can an assailant be charged criminally as some sort of accomplice? 

More people die from suicide than murder in the U.S. but no state has a statute making suicide a crime. Suicide is a crime under the common law in Florida, Idaho, 

1005 Id. at 4:9. 
1006 Id. 
1007 Id. 
1008 Id. at 4:10. 
1009 See id. at 4:11. 
1010 United States. v. Marrero, 677 F.3d 155, 166 n.2 (3d Cir. 2012). 
1017 The “common law” is the “body of law derived from judicial decision, rather than from statutes or constitutions.” Common Law, BLACK’S LAW DICTIONARY (10th ed. 2014). 
1019 See Margaret K. Dore, Aid in Dying: Not Legal in Idaho; Not About Choice, 53 ADVOCATE 18, 19 (2010).
Massachusetts, Mississippi, North Carolina, Rhode Island, South Carolina, and Virginia. It may be a crime in Connecticut and Maryland. Suicide is unlawful in Indiana and West Virginia.

Whether a crime or unlawful, suicide is no longer punished because its penalties have long been abolished. Not being punishable, suicide is “not strictly-speaking a crime” but the illegal classification does matter for other

1030 Adam J. MacLeod, A Gift Worth Dying for?: Debating the Volitional Nature of Suicide in the Law of Personal Property, 45 IDAHO L. REV. 93, 94 (2008).
1032 WAYNE LAFAVE & AUSTIN W. SCOTT, JR., HANDBOOK ON CRIMINAL LAW 569 (1972).
purposes such as insurance and determining the criminal liability of persons connected to a suicide.  

At common law ‘an instigator of suicide is a principal in the second degree to murder (i.e., to the self-murder of the person committing suicide) if he is present when it takes place, and an accessory before the fact if he is absent.’"  

Christian Taylor (16) wore black clothing, listened to metal music, and could skateboard on a half-pipe. He relocated with his military family from Texas to Virginia in December 2009 and started school after the new year. Things went well at first. He made a best friend in January and began dating. Several students were anything but welcoming, however.

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1034 83 C.J.S. Suicide § 5 (2010).
1042 Amanda Kerr, School Bullying Lawsuit Dismissed, DAILY PRESS (Va.), Apr. 27, 2013, at 5.
Bullies began making fun of Christian in February\textsuperscript{1043} and treated him badly for months.\textsuperscript{1044} They told Christian (who wore ripped-up pants)\textsuperscript{1045} that he was “too poor to afford clothes”\textsuperscript{1046} and poked fun of his fingerless gloves.\textsuperscript{1047} They called him “emo,” “freak,”\textsuperscript{1048} and “loser.”\textsuperscript{1049} When Christian began cutting in April,\textsuperscript{1050} the bullies goaded him about it and advised him to commit suicide.\textsuperscript{1051}

On May 7, a concerned teacher sent Christian to the school nurse.\textsuperscript{1052} The nurse observed more than a dozen self-inflicted self-harm injuries.\textsuperscript{1053} The wounds were several days old and had scabbed over.\textsuperscript{1054} Christian told the nurse he had used a razor to cut himself.\textsuperscript{1055}

On May 10, an assistant principal sternly admonished the bullies.\textsuperscript{1056} He told them that if they were bullying Christian they needed to stop, and if they weren’t, they needed to never start.\textsuperscript{1057} On May 11, the bullies ridiculed Christian at school by pretending to cut themselves.\textsuperscript{1058} One told Christian, “You need


\textsuperscript{1044} Jennifer L. Williams, York Mom: Bullied Son Hanged Self, DAILY PRESS (Va.), June 2, 2010, at 1.

\textsuperscript{1045} Connolly, supra note 1043.

\textsuperscript{1046} Kerr, supra note 1042.

\textsuperscript{1047} Connolly, supra note 1043.

\textsuperscript{1048} Amanda Kerr, Grafton High Students Recall Bullying of Friend, DAILY PRESS (Va.), Apr. 24, 2013, at 7.

\textsuperscript{1049} Kerr, supra note 1042.

\textsuperscript{1050} Williams, supra note 1044.


\textsuperscript{1052} Id. at https://www.cvn.com/sessions/10191/play?playFrom=4872000 (trial testimony of witness Nora Gillespie).

\textsuperscript{1053} Id.

\textsuperscript{1054} Id.

\textsuperscript{1055} Id.

\textsuperscript{1056} Connolly, supra note 1043.

\textsuperscript{1057} Id.

\textsuperscript{1058} Williams v. Hopkins, supra note 1051.
to just go commit suicide and get it over with.’’ On May 12, the assistant principal made two of the bullies sign a behavioral contract but the bullying persisted.

Christian hanged himself on May 31. His mother had met with law enforcement weeks before and complained about the assailment. A sheriff’s deputy decided during the meeting that no crime had been committed. The sheriff’s department reinvestigated but concluded before year’s end, “There is no bullying statute in the state of Virginia, so we are not investigating a crime.” The bullies, meanwhile, started harassing Christian’s brother.

B. ADVISE OR ENCOURAGE STATUTES

A teen college student threatened suicide from the top of a water tank in Campbell, California. One hundred feet below, an adult male yelled, “Jump!” Police arrested the adult male and booked him into jail. “That kind of behavior

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1061 Connolly, supra note 1043.
1062 Amanda Kerr, Employees of School Say They Tried to Stop Bullying, DAILY PRESS (Va.), Apr. 25, 2013, at 6.
1063 Compare Williams & Cawley, supra note 1039, with Amanda Kerr, Wrongful Death Suit Heads to Trial, DAILY PRESS (Va.), Apr. 23, 2013, at 5.
1064 Williams & Cawley, supra note 1039.
1066 Dvorak, supra note 1036.
1067 Adam Ebbin, Opinion, It’s Time to Take Bullying Seriously in Schools, ALEXANDRIA GAZETTE PACKET (Va.), Jan. 27, 2011, at 25.
1070 Man Arrested for Exhorting Teen to Jump, supra note 1068.
is poor citizenship and extremely irresponsible,” said a police sergeant.1071 “It’s also against the law.”1072

California made the encouragement of suicide a felony in 1891.1073 “Any person who deliberately aids, advises, or encourages another to commit suicide is guilty.”1074 Four other states make it a crime to advise or encourage suicide1075 and so do several Native American Indian Tribes.1076 Arkansas makes it a crime to encourage suicide with “persistent” language.1077 All of the laws have problems.

California’s law has been interpreted to require more than verbal solicitation.1078 Louisiana punishes too harshly.1079 Mississippi imposes strict liability.1080 The Arkansas statute does not define “persistent.”1081 The remaining laws may be unconstitutional.1082

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1071 Cruelty May Bring Jail Term, SIGNAL (Cal.), Dec. 12, 1984, at 10.
1072 Id.
1073 Work for Legislators, REC.-UNION (Cal.), Jan. 20, 1891, at 3; Bills Signed, MORNING CALL (Cal.), Feb. 4, 1891, at 8.
1074 CAL. PENAL CODE, § 401 (Deering 2020).
1076 E.g., CHOCTAW NATION CRIM. CODE, ch. 7, §§ 812, 816 (2018); see also, e.g., 1 RENO-SPARKS INDIAN COLONY LAW & ORDER CODE, tit. IV, ch. 5, § 4-5-202 (2018).
1079 LA. STAT. ANN. § 14:32:12(A)(1), (D) (authorizing ten years of imprisonment for the encouragement of suicide).
1080 MISS. CODE ANN. § 97-3-49 (“A person who . . . in any manner . . . encourages . . . another person to take . . . the latter’s life, is guilty of a felony.”).
1081 See ARK. CODE ANN. § 5:10-107.
C. SOLICITING SUICIDE

Santana Marie Janis (12) was a natural talent when it came to horses.\(^{1083}\) She lived on the Pine Ridge Indian Reservation in South Dakota,\(^{1084}\) home of the Oglala Sioux Tribe.\(^{1085}\) Santana was happy in early August 2014\(^{1086}\) but spoke of suicide by years’ end.\(^{1087}\) She hanged herself to death on February 4, 2015.\(^{1088}\) Santana had experienced bullying\(^{1089}\) and “shortly before [she] committed suicide, another girl at school had written to her on Facebook, urging her to kill herself.”\(^{1090}\)

The Oglala Sioux Tribe makes it a crime to “intentionally . . . solicit another to attempt or commit suicide.”\(^{1091}\) Other tribes have similar laws\(^{1092}\) and so do four states.\(^{1093}\) All of these laws have problems.

Maine does not address suicidal thoughts as a social harm.\(^{1094}\) Montana would punish a solicitor if a suicide fails but

\(^{1083}\) Inila4wakan@hotmail.com, Santana Memorial Feb 4th, YOUTUBE (Jan. 25, 2016), https://www.youtube.com/watch?v=l-cJfrk1j2I.


\(^{1086}\) Potter, supra note 1084.

\(^{1087}\) Julie Bosman, Youth Suicide Reaches Crisis on Reservation, N.Y. TIMES, May 4, 2015, at A11.

\(^{1088}\) Potter, supra note 1084.


\(^{1090}\) Potter, supra note 1084.

\(^{1091}\) Julie Bosman, Pine Ridge Indian Reservation Struggles with Suicides Among Its Youth, N.Y. TIMES, May 1, 2015, at A1.

\(^{1092}\) OGLALA SIOUX TRIBE CRIM. OFFENSES CODE, ch. 2, § 214 (2002).

\(^{1093}\) E.g., CHITIMACHA COMPREHENSIVE CODES OF JUST., tit. III, ch. 3, § 304 (2017).


not punish if an attempt succeeds. New Hampshire may not cover the use of words. North Dakota uses “commit” in its statute but in 1975 repealed laws making suicide a crime. The mens rea component of the Oglala Sioux provision is both too much and too little.

“Nearly every crime includes within its definition a culpable mental state (also referred to as mens rea).” Mens rea – Latin for guilty mind – is the state of mind a criminal defendant must possess in order to be guilty of a crime. There are various statutory mental states such as intent and knowledge. Recklessness is a less culpable mental state.

Suppose a popular middle school mean girl (“M.G.”) wants a quiet classmate (“Q.C.”) to kill herself. Suppose further that they are in the same physical education class and their gym lockers are situated so neither girl can see the other but close enough so that Q.C. can hear M.G. M.G. would not be charged under an intent standard if she stood at her locker and bellowed

is “[a]n adverse effect on any social interest that is protected by the criminal law.” Social Harm, BLACK’S LAW DICTIONARY, supra note 1017. The “broad aim of the criminal law is, of course, to prevent . . . injury to the health, safety, morals and welfare of the public.” WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 1.2(e) (3d ed. 2018).


In re Goodwin, 366 N.W.2d 809, 811 n.3 (N.D. 1985).

1 CLIFFORD S. FISHMAN & ANNE T. McKENNA, JONES ON EVIDENCE § 5:38 (7th ed. 2008).


Id. at § 32.
out to her friends, “Q.C. is such a loser! Would you do me a favor and just kill yourself tonight, Q.C?” M.G. could be prosecuted under a recklessness standard.

Professor Glanville Williams said “one who incites a young person to suicide . . . is properly punishable.” A Colorado police chief said, “We certainly don’t want to criminalize everything a person does that’s part of the typical growing up process.” “On the other hand,” the police chief said, “there are some instances we can all point to and agree are extreme, and the damage done is extreme.” The right approach is to add a malice mens rea component to any criminal law against ass ailment.

D. GRACE’S LAW 2.0

The Maryland General Assembly passed the Safe Schools Reporting Act (the “Act”) in 2005. Some referred to the Act as an “anti-bullying bill” but the legislation did not include the term “bullying” until amendments made three

1104 ME. REV. STAT. ANN. tit. 17-A, § 35(3) (2006) (defining the intent mens rea as follows: “A person acts intentionally with respect to attendant circumstances when the person is aware of the existence of such circumstances or believes that they exist.”).
1105 See e.g., id. at § 35(3)(B) (“A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.”).
1107 Kevin Simpson, Colorado Harassment Law Tweaked to Impose Fines, Jail for Cyberbullying, DENVER POST, July 14, 2015, at 1A.
1108 Id.
1110 Conservatives Petition Against Measures They See as Gay Rights Bills, STAR DEMOCRAT (Md.), Apr. 26, 2005, at A6; Andrew A. Green, Ehrlich Says He’ll Seek Gay-Rights Compromise, SUN (Md.), May 31, 2005, at 1B.
years later. The Act requires public school systems to (1) have a standardized complaint form for student victims of harassment and intimidation, (2) maintain records in regard to harassment and intimidation, and (3) report annually to the Maryland State Department of Education as to those incidents of harassment and intimidation. The Act itself has never criminalized bullying but that does not mean Maryland lawmakers sit on their hands.

In 1998, Maryland made it a crime to send a harassing email. The state expanded its electronic harassment law in 2012 to include other modes of communication. Maryland's top law enforcement officer explained on television why the change was necessary:

[Previously,] the only way you could be accused of cyber bullying, you know, get in trouble for harassing somebody electronically, was by email. Now, how many kids or how many victims of cyber bullying are using email? We had to update that to include social networking websites, texts, and so forth.

1112 Last Week in Brief, FREDERICK NEWS-POST (Md.), May 6, 2006, at A5.
1113 Erica L. Green, Surge in Bullying Reports Attributed to Awareness, BALT. SUN, Oct. 17, 2011, at 1.
1114 Tom Stuckey, Laws on Parkland, Bullying Go into Effect, SUN (Md.), June 30, 2005, at 2B.
1117 Donati, 84 A.3d at 180-81.
Growing up in Maryland, Grace McComas (15)\textsuperscript{1119} once covered a groundhog trapped in her backyard with a blanket so it would not get cold overnight.\textsuperscript{1120} When a sibling and cousins were hurting slugs with salt,\textsuperscript{1121} Grace scraped one from the sidewalk and hurried indoors.\textsuperscript{1122} She couldn’t remove the salt with water so she tried licking it off.\textsuperscript{1123} Whereas Grace’s mother called her daughter a “little lamb because of the curls and sweetness,”\textsuperscript{1124} a backbiting high school boy dubbed Grace a “cunt,” “snitch,”\textsuperscript{1125} “bitch,” and “whore.”\textsuperscript{1126}

When Grace was fourteen, she twice snuck into her neighbors’ house and drank from a liquor cabinet.\textsuperscript{1127} On the second occasion, she did so with the boy.\textsuperscript{1128} Grace apologized to the neighbors when they returned home from vacation.\textsuperscript{1129} A police officer showed up days later on June 30, 2011.\textsuperscript{1130} Grace confessed and authorities charged her and the boy\textsuperscript{1131} with the exact same felony offenses.\textsuperscript{1132}

\begin{footnotesize}
\textsuperscript{1119} Nick Alexopulos, \textit{In Grace’s Honor}, \textsc{loyola} (Mar. 27, 2013), https://www.loyola.edu/explore/magazine/stories/2013/in-graces-honor.
\textsuperscript{1120} \textit{Id}.
\textsuperscript{1121} \textit{Id}.
\textsuperscript{1122} \textit{Id}.
\textsuperscript{1123} \textit{Id}.
\textsuperscript{1124} Leigh Lesniak, \textit{Grace’s Story}, \textsc{youtube} (Dec. 30, 2015), https://www.youtube.com/watch?v=F0FuPl4RL6g.
\textsuperscript{1126} *Caution* Language, \textsc{mccomastruth}: \textit{The Story of Grace} (Oct. 30, 2014), https://mccomastruth.wordpress.com/2014/10/30/caution-language/.
\textsuperscript{1127} \textit{The Beginning of the End}, \textsc{mccomastruth}: \textit{The Story of Grace} (Oct. 29, 2014), https://mccomastruth.wordpress.com/2014/10/29/the-beginning-of-the-end/.
\textsuperscript{1128} \textit{Id}.
\textsuperscript{1130} \textit{Id}.
\textsuperscript{1131} \textit{Id}.
\textsuperscript{1132} Lesniak, \textit{supra} note 1124.
\end{footnotesize}
When authorities placed Grace under subpoena for the boy’s adjudication, the boy lashed out on Twitter – without using Grace’s name. An August fusillade included, “I hope you somehow see this and cry yourself to sleep then kill yourself...might as well your just a worthless piece of shit.” A week before the October 11 adjudication, he wrote, “Like your own fucking lawyer is helping me out. No one fucking likes you. It’s just sad and I kind of feel bad for you. See you Tuesday bitches.”

Grace testified at the adjudication but the pressure got to her at the end of October; inside a hospital emergency room, Grace said she wanted to die. She attempted suicide in December. Grace made another attempt on Easter Sunday 2012 and died as a result.

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1133 Karlis, supra note 1124; SquareOffMD, Square Off, Sunday, June 9th, YOUTUBE (June 14, 2013), https://www.youtube.com/watch?v=T9TQptxBtWQ. Grace did not have a Twitter account, Alexopoulos, supra note 1119, but friends apprised her of the messages. Susan Reimer, Journey in Grief Leads to New Curbs on Bullying, BALTIMORE SUN, May 2, 2013, at 1; HCPSS Video, Tireless Advocate Christine McComas Testifying in Support of Grace’s Law 2.0, YOUTUBE (Mar. 4, 2018), https://www.youtube.com/watch?v=9LVML0tGgvM.

1134 Lesniak, supra note 1124; Christine Phister McComas, GRACE K. MCCOMAS MEMORIAL WEBPAGE (May 6, 2016), https://www.facebook.com/GraceMcComasMemorial/posts/this-is-where-it-all-began-i-don’t-recall-seeing-this-write-up-before-but-it-beau/1375973829094928/; see also WBAL Radio, Christine McComas on Cyberbullying, YOUTUBE (Feb. 27, 2013), https://www.youtube.com/watch?v=sFqlk9TdO0c.

1135 *Caution* Language, supra note 1126.


1137 Id.


In 2013, Maryland’s General Assembly passed House Bill 396. The bill, known as “Grace’s Law,” criminalized the malicious and continuous making of online posts that inflict serious emotional distress on a minor. A person could commit the crime even if he or she did not send offending messages directly to a victim. The governor signed the bill and it went into effect on October 1, 2013.

The General Assembly acted again in 2019 when it passed “Grace’s Law 2.0.” Grace’s Law 2.0 took effect October 1, 2019. It criminalizes a single significant act of cyber bullying made with the intent to induce a minor to commit suicide. Grace’s Law 2.0 is underinclusive because it does not cover face-to-face or hand-written assailment. The State of Texas also makes cyber assailment a crime but its statute requires repeated electronic communications.

1140 Alex Jackson, Cyber-Bullying Bill Passes General Assembly, CAPITAL GAZETTE (Md.), Apr. 5, 2013, at A11.
1142 Reimer, supra note 113.
1143 Arthur Hirsch, Bullying is Target of New Howard County Program, BALTIMORE SUN, May 9, 2013, at T10.
1147 MD. CODE ANN., CRIM. LAW § 3-805(b) (West Supp. 2020).
1148 TEX. PENAL CODE ANN. § 42.07(a)(7), (c)(2) (West 2017).
V. LACK OF LAW & ECONOMICS

A. LEGAL LIABILITY

The University of Arkansas in 2018 completed a study of lawsuits filed to collect on delinquent credit card debt. It found approximately half the consumer defendants who lost in court paid their debt off within two years. “Of course, if a [debt collector] can convince an alleged debtor to give them money without incurring the time and expense of going to court, all the better for them.” There are, however, “some ground rules for the world of out-of-court collection attempts.” The Fair Debt Collection Practices Act prohibits a debt collector from “engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass.”

When a Connecticut man was telephonically harassed in regard to a debt, he recorded the calls. According to a lawsuit he filed against the debt collection company, collectors repeatedly made harassing statements during calls to his home number. For instance, “You’re just a loser. You’re a loser. That’s why you in collections. ‘Cause you owe money and you can’t pay it. Why don’t you just go jump in front of a train? Why don’t you do that? Get it over with.” One of the man’s

1150 Id.
1152 Id.
1154 Alex Henderson, ‘Am I Going to Have to Kill You?’: The Horrific Ways Abusive Debt Collectors Threaten and Harass Their Victims, ALTERNET (Apr. 17, 2011), http://www.alexvhenderson.com/articles_on_political_social_legal_and_business_topics/alternet_1_the_horrific_ways_abusive_debt_collectors_threatened_and_harass_their_victims.
1156 Compare Rellau1, Debt Collectors Gone Wild ABC News, YOUTUBE (June 19, 2009), https://www.youtube.com/watch?v=_dDArejnquI&t=1s, with
attorneys, Joseph Mauro of New York, appeared on a nationally televised news broadcast.\textsuperscript{1157} So far as Mauro was concerned, the call crossed the line, did not fall into a legal gray area, and was socially unacceptable.\textsuperscript{1158} An investigative reporter asked, “Mister Mauro, that’s an ugly call, but is it illegal?”\textsuperscript{1159} Mauro answered, “Oh, certainly, yes. And obviously, it’s improper to call anybody and urge them to commit suicide. But certainly it’s a violation of federal law.”\textsuperscript{1160} The collection company settled the lawsuit for $200,000.\textsuperscript{1161} Mauro said in 2011, “There are to my knowledge, about four or five cases of suicide coming from debt collection harassment.”\textsuperscript{1162}

Wyatt Lansberry (12)\textsuperscript{1163} enjoyed history,\textsuperscript{1164} collected flags from around the world, and aspired to be a Marine like his brother.\textsuperscript{1165} Wyatt’s first day of junior high was Monday August 29, 2016;\textsuperscript{1166} his last was May 18, 2017\textsuperscript{1167} – ten days before
classes were dismissed. Wyatt died that Thursday at his father’s residence from a self-inflicted wound after a student told him to “go home and shoot [your]self.”

A police detective determined that one boy made a routine habit out of bullying Wyatt. Students harassed Wyatt on his phone and computer. In the month leading up to Wyatt’s suicide, he was twice observed crying at school and physically assaulted in a stairwell three separate times by a group of boys. “I can’t live any longer,” Wyatt wrote on a piece of paper. “People at school tell me to kill myself.”

A federal judge in Pennsylvania – one with an extensive military background and who attended West Point – described Wyatt’s junior high experience as “dreadful” and his bullying “appalling.” Although the judge dismissed a case filed against the school district on constitutional grounds, he recognized “the possibility that bullying might eventually result . . . in tragic harm to the bullied student.” He further believes “bullied students and their families should have some recourse against school officials who fail to create a safe learning environment and repeatedly fail to protect students from known dangers.”

1170 O’Reilly, supra note 1168.
1171 Lansberry, 356 F. Supp. 3d at 490-91.
1172 Id. at 491.
1173 Id. at 503.
1174 Id. at 490-91.
1175 Id. at 491.
1177 Id.
1178 Vicki Rock, Somerset Attorney an Army Reserve Colonel, DAILY AM. (Pa.), Apr. 18, 1994, at 11.
1180 Id. at 503-05.
1181 Id. at 502.
1182 Id. at 503.
Freshman Spencer Tate (16)\textsuperscript{1183} attended a private high school\textsuperscript{1184} in Tennessee.\textsuperscript{1185} Students there called Spencer “faggot,” “fag,” and “gay.”\textsuperscript{1186} They also whipped him with belts.\textsuperscript{1187} After a trio of troublemakers told Spencer to “go home and kill [your]self,”\textsuperscript{1188} he did just that on February 25, 2014.\textsuperscript{1189} Although a judge dismissed a lawsuit filed by Spencer’s mother against the school,\textsuperscript{1190} a circuit court of appeals wrote this in regard to the link between bullying and suicide: “If a school is aware of a student being bullied but does nothing to prevent the bullying, it is reasonably foreseeable that the victim of the bullying might resort to self-harm, even suicide.”\textsuperscript{1191}

B. SOME OF THE SETTLEMENTS

When 12-year-old N.M. stopped working on a classroom art project, his school teacher allegedly became enraged.\textsuperscript{1192} In the presence of other students, she allegedly yelled at N.M., “Why don’t you go kill yourself?”\textsuperscript{1193} A lawsuit says she then ripped the project from N.M.’s hands and threatened to lock him in a room.\textsuperscript{1194} N.M. claimed intentional infliction of emotional distress and monetary damages.\textsuperscript{1195}

The trial court dismissed N.M.’s case\textsuperscript{1196} reasoning that the alleged conduct was not “extreme and outrageous” as a

\begin{footnotesize}
\begin{enumerate}
\item[1183] Spencer Adams Tate, TENNESSEAN, Feb. 28, 2014, at 11A.
\item[1186] Id.
\item[1187] Id.
\item[1188] Tumminello v. Father Ryan High Sch., Inc., 678 F. App’x 281, 283 (6th Cir. 2017).
\item[1189] 2015 WL 13215456, at *1.
\item[1190] Id.
\item[1191] 678 F. App’x at 288.
\item[1194] Id.
\item[1195] Gentilozzi, supra note 1192.
\item[1196] Student Wins Appeal in Suit over Humiliation, LANSING ST. J., June 23, 2014, at 3A.
\end{enumerate}
\end{footnotesize}
matter of law. The Michigan Court of Appeals disagreed, reversed, and remanded. It said the case should have been sent to a jury because reasonable minds could find the conduct tortious. In regard to the alleged assailment, a Michigan Supreme Court Justice wrote, “making such a statement to one’s student cannot be defended.” The school settled the case.

Hailee Lamberth (13) was born in Las Vegas, Nevada. Hailee was a perennial straight-A student, a star on the soccer field, and an amazing sister. She started seventh grade in August 2013 and died by suicide on December 12, 2013.

Hailee’s immediate family filed a lawsuit against the Clark County School District (“CCSD”). According to the complaint, someone left a voice mail for Hailee on September

1197 Melson ex rel. Melson v. Botas, 863 N.W.2d 674, 675 (Mem.) (Markman, J., dissenting).
1198 2014 WL 2867197, at *4.
1199 Id. at *1.
1201 Case Details: Melton v Lawton Community Sch, MIC. COURTS, https://micourt.courts.michigan.gov/CaseSearch/Court/C36 (type and submit the words Lawton Community Schools; then click the hyperlink 2012-0000620436-CZ; then click “Show More” under “Parties”) (last visited Oct. 24, 2020).
1203 Jason Lamberth, Jason Lamberth’s Testimony on SB504 and SB204, Hailee’s Law, YOUTUBE (Apr. 9, 2015), https://www.youtube.com/watch?v=d39TWDCdwsg.
27, 2013.\textsuperscript{1206} The message seemed to say, “Where are you Hailee? I hope you died.”\textsuperscript{1207} A girl bullied Hailee in gym class.\textsuperscript{1208} J.J. would call Hailee a “fat ass,”\textsuperscript{1209} an “ugly bitch,” and “stupid.”\textsuperscript{1210} A student reported J.J. on November 20,\textsuperscript{1211} “This has been going on for a very long time now. [J.J.] has made Hailee cry,” wrote the student.\textsuperscript{1212} A different student said, “I have actually seen C.H. bully Hailee. I don’t remember the exact date when it happened but I know it happened at lunch around Thanksgiving time.”\textsuperscript{1213} “[C.H.] was pushing [Hailee] around and he called her ‘fat’ and ‘ugly.’”\textsuperscript{1214} C.H. deposited notes in Hailee’s locker.\textsuperscript{1215} One said, “Drink Bleach and Die.”\textsuperscript{1216} Another asked, “Why don’t you die?”\textsuperscript{1217} Las Vegas police determined that Hailee was bullied by a boy and two girls the day she took her life.\textsuperscript{1218} Hailee wrote in a farewell message, “I only ask that you tell my school I killed myself so maybe next time people like [C.H.] wants to call someone pimple face or emo ass bitch, he won’t.”\textsuperscript{1219} Police made no arrests and the case was closed as bullying is not a crime, just a definition.\textsuperscript{1220}

\textsuperscript{1207} Id.
\textsuperscript{1208} ZUIKER, supra note 120, at 44.
\textsuperscript{1209} Complaint for Declaratory Relief, Injunctive Relief, and Damages at ¶ 31, supra note 1206.
\textsuperscript{1210} Id. at ¶ 34.
\textsuperscript{1211} Id.
\textsuperscript{1212} Id.
\textsuperscript{1213} Id. at ¶ 27.
\textsuperscript{1214} Id. The school had twice suspended C.H. for bullying others.
\textsuperscript{1215} Carri Geer Thevenot, Parents Sue School District in Bullied Child’s Suicide, LAS VEGAS REV.-J., Oct. 22, 2014, at 1A.
\textsuperscript{1216} Appellants’ Opening Brief at 3, Lamberth v. Clark Cty. Sch. Dist., 698 Fed. App’x 387 (9th Cir. 2017) (No. 15-17546).
\textsuperscript{1217} Id.
\textsuperscript{1218} Trevon Milliard, Father Details Daughter’s Pain, LAS VEGAS REV.-J. (Mar. 1, 2014), at 1A.
\textsuperscript{1219} Id. at 11.
\textsuperscript{1220} Id.
In defense of the lawsuit, CCSD asserted a causation defense and lined up expert witnesses who would not acknowledge bullying as a risk factor for suicide. However, CCSD’s own training materials discussed bullying as a suicide risk factor. A judge who reviewed the issue said, “CCSD has clearly adopted the position that bullying is a risk factor for suicide.” The judge precluded CCSD from asserting at trial a lack of nexus between bullying and suicide, in part, because CCSD took almost two years to disclose the training materials.

CCSD settled. It paid $700,000 to Hailee’s family and $2,870,843.42 in defense of the suit for a total of $3,570,843.42. CCSD said the settlement money would come from “a combination of district and insurance funds.” A television news reporter said the money came from the district’s “risk management claims budget.”

A New York lawsuit partially identified by initials the classmates who were responsible for the bullying of a seventh

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1222 Meghin Delaney, Suicide-Bullying Tie Upheld, LAS VEGAS REV.-J., July 13, 2017, at 1B.
1223 Id.
1224 Id.
1228 Id.
1229 Amelia Pak-Harvey, CCSD May Settle Cases, LAS VEGAS REV.-J., Sept. 7, 2018, at 1A.
1230 Spears, supra note 1226.
grade girl.\textsuperscript{1231} The girl’s locker was repeatedly vandalized.\textsuperscript{1232} She was pushed.\textsuperscript{1233} Students wrote her messages like “Your a reject in our school and you belong on the streets” and “Why do you keep dying you hair? You look like a monster with your hair. You were so pretty 2 years ago.”\textsuperscript{1234} Students told her to commit suicide.\textsuperscript{1235} She tried and was hospitalized for twelve days.\textsuperscript{1236} The case settled during jury selection.\textsuperscript{1237} Ethan Young (14)\textsuperscript{1238} and Ryker Lewis (15)\textsuperscript{1239} attended the same schools together,\textsuperscript{1240} were best friends,\textsuperscript{1241} and suffered identical fates. Ethan took his own life\textsuperscript{1242} on 24 September 2013\textsuperscript{1243} after being told by other students to go kill himself.\textsuperscript{1244} Ryker completed suicide eight months later\textsuperscript{1245} after bullies assailed him.\textsuperscript{1246}

1231 Colleen Wilson, Byram Hills, 2 Officials Are Sued, J. NEWS (N.Y.), Feb. 10, 2016, at 1A.
1234 Verified Complaint, supra note 1232, at 8.
1235 Id. at 5.
1236 Id. at 9.
1238 Ethan Matthew Young, KAN. CITY STAR, Sept. 26, 2013, at A11.
1241 Mará Rose Williams, Mo. Ranks No. 3 in Nation for School Bullying, New Study Says, KAN. CITY STAR, Sept. 12, 2018, at 4A.
1242 Id.
1243 Wrongful Death Petition for Damages at ¶ 80, supra note 1240.
1244 Id. at ¶ 68.
1245 Williams, supra note 1241.
Ethan wrote poetry and loved to learn but was so terrified of bullies while in sixth grade he once fled on foot from a bus stop to hide. In eighth grade, Ethan walked home from school in warm temperatures because he did not want to get beat up.

Bullies told Ethan that his biological mother did not love him and that he should kill himself. Ethan attempted suicide by drinking bleach before bed on March 6, 2013. The following day, Ethan complained to the school nurse that his throat hurt and he could not taste food. After a trip to the emergency room, Ethan received inpatient treatment at a psychiatric hospital through March 11, 2013.

Bullies opened up a new line of ghoulish attack upon Ethan’s return to school. They told Ethan he should have used stronger bleach. They said, “you’re such a loser you couldn’t even kill yourself right.” Someone said, while pointing at a bleach stain on their clothing, “Hey Ethan, you want to smell this?” Buoyed by the upcoming summer break, Ethan made it out of eighth grade alive but lasted only a month his freshman year.

Ethan had a mental breakdown during his freshman year. On a particularly muddy day, he got off the bus when bullies tried to make him sit on the floor. Ethan’s stepmother found him walking to school in the rain, crying and sobbing.

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1247 Ethan Matthew Young, supra note 1238.
1248 Wrongful Death Petition for Damages at ¶ 96, supra note 1240.
1249 Id. at ¶ 167.
1250 Id. at ¶¶ 197, 203.
1251 Id. at ¶ 121.
1252 Id. at ¶¶ 121, 436.
1253 Id. at ¶¶ 121-22, 129.
1254 Id. at ¶ 131.
1255 Id. at ¶ 137.
1256 Id. at ¶¶ 433, 436.
1257 Id. at ¶ 140.
1258 Id.
1259 Id. at ¶ 159.
1260 Id.
1261 Id. at ¶¶ 170, 462.
1262 Id. at ¶ 179.
1263 Id. at ¶¶ 179-187.
1264 Id. at ¶¶ 81, 83.
1265 Id. at ¶¶ 183, 186-87.
Ryker took Tae Kwan-Do, played Dungeons & Dragons, and went to the Renaissance festival dressed as a nobleman. He dreamed of designing and owning hotels worldwide that were vacation-themed. Although the best was yet to come, bullies had other plans.

Bullies repeatedly told Ryker to kill himself like his best friend Ethan had. On a Thursday prior to Ryker attempting suicide, three students approached him in the cafeteria and said, “Kill yourself.” The assialment continued until Ryker completed suicide.

Parents of both Ethan and Ryker sued the school district. The district paid $370,000 to settle the cases.

Rylie Wagner (13) conquered a song involving a substantial degree of difficulty but could not face down girls at school “telling her to go kill herself just about every day.”

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1266 Ryker William Lewis, supra note 1239.
1267 Id.
1269 Id.
1270 Id.
1271 Id. at *1.
1272 Compare Jessica Schumaker, Blue Springs School District Settles Third 'Bullycide' Suit, MO. LAWS. WKLY., August 27, 2018, at 7, with Williams, supra note 1241.
1273 Compare Schumaker, supra note 1272, with Williams, supra note 1241.
Rylie killed herself in April 2017. The sheriff’s department found no evidence of criminal activity. Nevertheless, a no-nonsense attorney made assault as a basis for a wrongful death lawsuit against the school district in July 2018.

The school district initially denied Rylie was bullied but settled the case for $100,000 in February 2019. The school district issued a statement to the media: “As specified in the settlement agreement, the District denies any and all allegations of wrongdoing by the Board of Education, administrators, teachers, or other employees.”

William “Billy” Lucas (15) rode horses, swam with the dolphins, and tended sheep. His mother filed a lawsuit

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1281 Pratt, supra note 1278.
1285 Heidiho19, In Loving Memory of Billy Lucas, YOUTUBE (Sept. 9, 2014), https://www.youtube.com/watch?v=tzUmjQU4g_o.
1286 Jayde Renee, Billy Lucas .wmv, YOUTUBE (Sept. 29, 2010), https://www.youtube.com/watch?v=QFNuuBOhmWA.
against educators in 2012 after Billy completed suicide. The case settled. A confidentiality agreement prevents discussion of the settlement terms.

For years, school bullies mocked the way Billy walked and talked. “People would call him ‘fag’ and stuff like that. Just make fun of him because he’s different, basically,” said student D.S. Classmate N.H. said, “Sometimes in classes, kids would act like they were going to punch him and stuff and push him.” “He would try to [defend himself] but people would just try to break him down with words,” N.H. added.

Billy’s friend J.S. told police that high school bullies would call Billy “gay and tell him to go kill himself.” Billy’s best friend H.K. said, “They would always say, you know, ‘Get away from me, you gay fuck,’ or ‘Just go hang yourself.’” The bullies told Billy that God hated him and “You don’t deserve to live.” The freshman hanged himself in a barn on

\[\text{References}\]

1289 Id.
1293 Id.
1295 Calamazue, YouTube – Vigil for Billy Lucas.mp4, YOUTUBE (Sept. 26, 2010), https://www.youtube.com/watch?v=kEpO-vvgd0Q.
1296 DAN SAVAGE, AMERICAN SAVAGE 165 (2013).
1297 Ian Parker, The Story of a Suicide, NEW YORKER, Feb. 6, 2012, at 36, 37.
September 9, 2010. An adult member of the community asked afterwards, “Why couldn’t this get stopped before it happened?”

C. LAW ENFORCEMENT RESOURCES WASTED

Jamey Rodemeyer (14) first felt bullying headwinds in grade school where boys made fun of him because he spent time with girls. The bullying continued in middle school but subsided during eighth grade when Jamey “became the big fish in a little pond” and male bullies grew more accepting of him. Cyber bullies still posed a problem, however.

Anonymous posts began popping up on Jamey’s Formspring account around September 2010. One read, “I wouldn’t care if you died. No one would. So just do it :) It would make everyone WAY more happier!”

Jamey started his short-lived freshman year of high school on September 6, 2011. He wrote on Tumblr two days


1299 YouTube – Vigil for Billy Lucas.mp4, supra note 1295.


1301 Carolyn Thompson, Complexities Underlie Suicide Decisions, DEMOCRAT AND CHRONICLE (N.Y.), Oct. 3, 2011, at 2B.


1304 Sandra Tan, Teenager Struggled with Bullying Before Taking His Life, BUFFALO NEWS, Sept. 20, 2011, at B1.


1306 Tan, supra note 1304.

1307 Id.

1308 Compare Sean Kirst, Parents: Let’s Break Cycle of Solitude, POST-STANDARD (N.Y.), June 11, 2012, at A-2, with Dean Praetorius, Jamey
later, “No one in my school cares about preventing suicide, while you’re the ones calling me ‘faggot’ and tearing me down”.

On September 9, he wrote, “I always say how bullied I am, but no one listens.” On September 18, Jamey made a few final posts to the internet and then hanged himself to death in his backyard.

On September 20, a vigil for Jamey had about fifty people call for an end to hate speech in schools. At a high school homecoming dance on September 22, organizers played a song in honor of Jamey. While Jamey’s supporters sang along, danced, and chanted Jamey’s name, three of Jamey’s bullies heckled them, the flies in the ointment chanted, “You’re better off dead!” and “We’re glad you’re dead!”

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Kirst, supra note 1308.

Sandra Tan,agonizing over Teen Suicide, BUFFALO NEWS, Sept. 21, 2011, at B1.


Neale Gulley, Teen’s Death Prompts Calls for Anti-Bullying Laws, S. FLA. SUN SENTINEL, Oct. 4, 2011, at 2A.


Id.

Police spent nine weeks\textsuperscript{1319} and hundreds of hours investigating\textsuperscript{1320} Jamey’s suicide.\textsuperscript{1321} Police determined that three students targeted him in high school.\textsuperscript{1322} One bully pushed Jamey in a hallway and called him a “fag.”\textsuperscript{1323} A second made a gay slur.\textsuperscript{1324} The third – a female who had known Jamey since middle school – told Jamey, “You’re a faggot.”\textsuperscript{1325} In a separate incident, she told Jamey, “Faggot, why don’t you just kill yourself?”\textsuperscript{1326}

After consulting with prosecutors,\textsuperscript{1327} police on November 22 closed the investigation without filing criminal charges.\textsuperscript{1328} Police said none of the bullies’ comments amounted to actual threats\textsuperscript{1329} and Jamey would be necessary to prove\textsuperscript{1330} aggravated harassment.\textsuperscript{1331} In regard to this outcome, the police chief said, “I’m not satisfied, to be honest with you. I would like

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\textsuperscript{1320} Carolyn Thompson, \textit{Charges Rejected in Bullying Suicide}, BURLINGTON FREE PRESS (Vt.), Nov. 23, 2011, at 6B.
\textsuperscript{1322} Thompson, \textit{supra} note 1320.
\textsuperscript{1325} Tan, \textit{supra} note 1323.
\textsuperscript{1326} Id.
\textsuperscript{1327} No Charges in Bullied Teen’s Suicide, \textit{supra} note 1321.
\textsuperscript{1329} Tan, \textit{supra} note 1324. An education official in a neighboring district would have deemed the online messages sent to Jamey death threats and immediately contacted police. Jerry Zremski & Sandra Tan, \textit{Bullying Tragedy Casts a Wide Shadow}, BUFFALO NEWS, Sept. 23, 2011, at A1.
\textsuperscript{1330} Thompson, \textit{supra} note 1320.
\textsuperscript{1331} No Charges in Bullied Teen’s Suicide, DEMOCRAT AND CHRONICLE (N.Y.), Nov. 23, 2011, at 4B.
\end{flushleft}
to have seen something we could have done from a prosecution standpoint.”

VI. STOPGAPS

A. MOTORCYCLE ESCORTS

Casey “Box Cutter” Pigge committed three murders in southern Ohio. Pigge slit the throat of his first victim in 2008. Behind prison walls in 2016, he tricked a cellmate into wearing a blindfold and smote him with a cinder block. On a prison bus in 2017, Pigge bashed a prisoner’s head and then smothered the man’s nose and mouth. Pigge also attempted a murder in 2018 while incarcerated at a southern

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1333 Jona Ison, Deadly Ambition: Inside the Mind of a Killer, CHILlicothe GAZETTE (Ohio), Sept. 17, 2017, at 1A.

1334 Id.

1335 Id.

1336 Bob Strickley, Inmate Pleads Guilty to Killing His Cellmate, CINCINNATI ENQUIRER, Feb. 1, 2017, at 5A.

1337 Laura A. Bischoff, Guards Didn’t Even Know It Happened, DAYTON DAILY NEWS (Ohio), July 23, 2017, at A1. When the man was dead, Pigge gave high-fives, Ison, supra note 1333, shook hands, Bischoff, supra, and bragged to others on board, “I guess you never seen that on a bus before.” Andrew Welsh-Huggins, Killer Pleads Guilty to Inmate’s Death on Bus, CHRONICLE-TELEGRAM (Ohio), Sept. 28, 2017, at B1.

1338 Laura A. Bischoff, Inmate Pleads Guilty in Stabbing of Prison Guard, COLUMBUS DISPATCH (Ohio), April 19, 2019, at B5.
Ohio prison, he and another inmate used metal shanks to repeatedly stab a corrections officer.

A school district in southern Ohio probably felt like prison for one sixth-grader. Over three years, the boy was poked, pushed, punched, pinched, kicked, and pinned against a wall. He was shoved into a locker, slammed against a school bus window, and stabbed with a pencil. He was told on a school bus ride home in April 2018, “You look . . . a little like a mentally disabled monkey” and “Kill yourself.” When a concerned citizen heard about what was happening in her backyard, she organized a motorcycle ride from the boy’s home to school.

On May 1, 2018, five motorcycles accompanied the boy to school where the citizen stood on a sidewalk with a sign that read, “Be Kind”.

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1345 Id.
1346 Keith BieryGolick, Commentary, Boy Videotapes School Bus Bullying, CINCINNATI ENQUIRER, May 4, 2018, at 13A.
1347 Levi, supra note 1344.
1348 BieryGolick, supra note 1346.
1349 BieryGolick, supra note 1342.
fun of him on the bus to see us at his house and give him a ride to school,” she said. The bullied boy loved his ride to school that day. Two weeks later, the boy suffered a concussion at school when a student shoved him to the ground and he hit head first.

B. CELEBRITY ASSISTS

C.W. posted to the internet a potent message about bullying in March 2018. Ten years old at the time, she described how four kids at school ganged up on her. “They hit me, kicked me, pulled my hair, pushed me.” “They threaten to kill me, and they tell me to kill myself.” Other kids wouldn’t even go near C.W.; wherever she sat down to eat, kids got up. “I feel like I have no one. It hurts.” Actor Hugh Jackman, New York Yankee baseball players, and kids at C.W.’s school responded to the plea for help.

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1350 Levi, supra note 1344.
1351 BieryGolick, supra note 1342.
1352 Jayanth, supra note 1343.
1353 ESPN, Yankees Respond to Bullying Victim’s Video with Inspirational Video of Their Own, YOUTUBE (June 29, 2018), https://www.youtube.com/watch?v=OMnwivm1Y-Y.
1354 ABC 11, Girl’s Appeal to Stop Bullying Goes Viral, YOUTUBE (Apr. 12, 2018), https://www.youtube.com/watch?v=FG_pq8GQtRM.
1355 Id.
1356 Id.
1357 Id.
1358 Id.
1361 Peggy Lee, School District Meets with Father of Bullied Fourth-Grader After She Posts Video About Harassment at School, ABC 16 WNEP (Apr. 6, 2018), https://www.wnep.com/article/news/local/lackawanna-
Students at the elementary school hugged C.W.1362 Jackman told her she was “loved, special & smart.”1363 “Please never stop asking for help,” he said.1364 “You will find it from people and places you never thought possible.”1365 The Yankees gave C.W. the keys to the kingdom.1366 She got to play kickball with the team,1367 join players for lunch,1368 and throw out a ceremonial first pitch.1369

C.W. said she felt better because of the support.1370 Her father said, “Everybody that reached out, really lifted up her

county/school-district-meets-with-father-of-bullied-fourth-grader-after-she-posts-video-about-harassment-at-school/523-49825c2a-3ce5-4ce1-a27d-7b7f85f24d3e.
1363 Pelletiere & Tasolides, supra note 1359.
1364 Id.
1365 Id.
The bullying did not stop, however. C.W.’s mother said things did improve but went back to bad. C.W. left the school when a student pulled her hair. The other student said it was just a game.

C. PROTECTIVE ORDERS

Court protective orders go by different names including restraining orders, civil protection orders, harassment prevention orders, and injunctions against harassment.

1373 10-Year-Old’s Plea to Stop Bullying Goes Viral, supra note 1370.
1375 Id.
1376 José A. Healy, Hispanic and Immigrant Students Face Bullying, in BULLYING, supra note 546, at 117, 117.
Courts in most states will automatically hold a hearing after a protective order is sought\textsuperscript{1380} but in a few states like Arizona there is a hearing only if one is requested by the defendant.\textsuperscript{1381} School districts do not like protective orders because of enforcement difficulties.\textsuperscript{1382}

Orchard Middle School (“Orchard”) in Washington\textsuperscript{1383} spans grades six through eight.\textsuperscript{1384} When I.V. started there in 2013\textsuperscript{1385} at age twelve,\textsuperscript{1386} another sixth grade boy immediately began to bully him.\textsuperscript{1387} Y.F. would pinch I.V. and call him “fat,” “faggot,” “bitch,” “pig,” and “man boobs.”\textsuperscript{1388}

I.V. weighed 170 pounds when he tried out for football in 2014.\textsuperscript{1389} He weighed 110 in January 2015 and almost died of anorexia.\textsuperscript{1390} “You’re fucking fat,” Y.F. had told the seventh-grader.\textsuperscript{1391} Y.F. also pushed I.V. around, punched him in the arm, pinched his nipples, and texted I.V. that he should kill himself.\textsuperscript{1392} I.V. admitted being bullied but refused to name his tormentor.\textsuperscript{1393}

\textsuperscript{1380} Peter Slocum, Comment, 

\textsuperscript{1381} ARIZ. REV. STAT. ANN. § 12-1809(H) (West, Westlaw through Second Regular Session of the Fifty-Fourth Legislature (2020)).

\textsuperscript{1382} Marcum & Hoort, \textit{supra} note 1377, at 53.


\textsuperscript{1384} Id. at ¶ 8.

\textsuperscript{1385} Id. at ¶ 15.


\textsuperscript{1387} Complaint for Damages, \textit{supra} note 1383, at ¶ 15.


\textsuperscript{1389} Complaint for Damages, \textit{supra} note 1383, at ¶ 15.

\textsuperscript{1390} Id.

\textsuperscript{1391} \textit{Wenatchee}, 342 F. Supp. 3d at 1087.

\textsuperscript{1392} Id. at 1088.

\textsuperscript{1393} Complaint for Damages, \textit{supra} note 1383, at ¶ 15. Y.F. had warned I.V., “If you tell anyone I will have my brothers beat you up!” Id.
When I.V. returned to school in the fall\textsuperscript{1394} of 2015 for eighth grade, Y.F. continued to bully him.\textsuperscript{1395} Y.F. did something physical to I.V. in the classroom almost every other day.\textsuperscript{1396} Y.F. targeted I.V. in the halls and during lunch.\textsuperscript{1397} There was more punching, pushing, nipple-pinching, and name-calling.\textsuperscript{1398}

I.V. had finally had enough on January 3, 2016.\textsuperscript{1399} He told his mother April it was Y.F. who had been bullying him.\textsuperscript{1400} April met with Orchard’s principal the next afternoon.\textsuperscript{1401} I.V. burst into the room during the meeting, “Y.F. just threatened to kill me!”\textsuperscript{1402}

Y.F. aggressed against I.V. at school again on January 4 and was arrested.\textsuperscript{1403} Orchard expelled Y.F. on an emergency basis.\textsuperscript{1404} April obtained an order of protection that prohibited Y.F. from attending Orchard.\textsuperscript{1405} The school readmitted Y.F. anyway.\textsuperscript{1406} The school district soon thought better of it\textsuperscript{1407} and transferred Y.F. elsewhere.\textsuperscript{1408}

I.V. and his family sued the Wenatchee School District.\textsuperscript{1409} The Wenatchee School District paid $37,500 to settle the case.\textsuperscript{1410} The damage was done, however. In addition to the eating disorder, I.V. attempted suicide in October 2016.\textsuperscript{1411}

\textsuperscript{1394} Id.
\textsuperscript{1395} Wenatchee, 342 F. Supp. 3d at 1088-89.
\textsuperscript{1396} Id. at 1088.
\textsuperscript{1397} Id.
\textsuperscript{1398} Id. at 1088-89.
\textsuperscript{1399} Id. at 1089.
\textsuperscript{1400} Id.
\textsuperscript{1401} Id.
\textsuperscript{1402} Complaint for Damages, supra note 1383, at ¶ 15.
\textsuperscript{1403} Id.
\textsuperscript{1404} Wenatchee, 342 F. Supp. 3d at 1089.
\textsuperscript{1405} Complaint for Damages, supra note 1383, at ¶ 15.
\textsuperscript{1406} Wenatchee, 342 F. Supp. 3d at 1098 n.17.
\textsuperscript{1407} Complaint for Damages, supra note 1383, at ¶ 15.
\textsuperscript{1408} Wenatchee, 342 F. Supp. 3d at 1089.
\textsuperscript{1410} Robbins, supra note 1386.
\textsuperscript{1411} Complaint for Damages, supra note 1383, at ¶ 15.
D. SECURITY DETAILS

Bullying ran the gamut for C.M.\textsuperscript{1412} Girls texted C.M. nasty messages, battered her in a hallway at school, and said she dressed like a slut at a junior high play audition.\textsuperscript{1413} The girls eventually urged C.M. to kill herself.\textsuperscript{1414} In April 2015, C.M. told a friend on the phone that she was going to hang herself.\textsuperscript{1415} The friend’s family called 911.\textsuperscript{1416} First responders arrived at C.M.’s home without a moment to spare.\textsuperscript{1417}

When C.M. returned to school in September, the bullies picked up where they left off.\textsuperscript{1418} The school assigned C.M. a security detail between classes but it did not stop the bullying.\textsuperscript{1419} A boy told C.M. on social media, “Kill yourself.”\textsuperscript{1420} C.M.’s mother wanted her daughter to learn in peace.\textsuperscript{1421} A talented and intelligent girl, C.M. said resignedly, “I’ll just have to stay strong and not let them break me.”\textsuperscript{1422}

E. SWITCHING SCHOOLS

Samantha Johnson climbed into a bathtub and shot herself in the mouth with a hunting rifle.\textsuperscript{1423} Samantha’s life wasn’t perfect outside of Fred Moore Middle School (“Fred Moore”) but volleyball teammates didn’t help.\textsuperscript{1424} They barred

\textsuperscript{1412} Andrew Scott, Bullied Pocono Mountain Student Rebounds from ‘Dark Place’, POCONO REC. (Feb. 21, 2016), https://www.poconorecord.com/article/20160221/news/160229904.

\textsuperscript{1413} Id.

\textsuperscript{1414} Id.

\textsuperscript{1415} Id.

\textsuperscript{1416} Id.

\textsuperscript{1417} Id.

\textsuperscript{1418} Id.

\textsuperscript{1419} Id.

\textsuperscript{1420} Id.

\textsuperscript{1421} Id.

\textsuperscript{1422} Id.

\textsuperscript{1423} Sabrina Rubin Erdely, School of Hate, ROLLING STONE, Feb. 16, 2012, at 50, 52.

\textsuperscript{1424} Id. at 52, 54.
her from the locker room and yelled, “You’re a guy!” She stopped going to practice as a result.

B.”L.”G., Samantha’s best friend, was also bullied. Students at Fred Moore called her a “fat dyke” and “[w]hore.” “[W]hy don’t you go kill yourself, too?” a student asked L.G. following the suicide. L.G. left Fred Moore in February 2010 to escape the bullying.

Students at Jackson Middle School called L.G. “dyke,” “queer,” “transvestite,” and “whore.” Several boys crowded around her on a bus ride home asking questions about Samantha and splatter. “Did you see her blow her brains out?” “Was there brain all over the wall?” “You should do it, too,” one of them told L.G. “You should go blow your head off.” All the abuse led L.G. to contemplate suicide.

Jessica Laney (16) was an affectionate girl who changed high schools because of bullying. After making the switch, Jessica fended off anonymous posts on a social

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1425 Id. at 52.
1426 Id.
1427 Paul Levy, Anoka-Hennepin Makes Inroads Against Bullying, STAR TRIB. (Minn.), Feb. 16, 2013, at 1A.
1428 Erdely, supra note 1423, at 52.
1429 Id.
1431 Id. at ¶ 78.
1432 Id. at ¶ 79.
1434 Erdely, supra note 1423, at 56.
1435 Id.
1436 Id.
1437 Id.
1440 Megan Anderle, Florida Teen Jessica Laney Commits Suicide After Bullying on Social Site Ask.fm, NEWSMAX (Dec. 12, 2012), https://www.newsmax.com/TheWire/jessica-laney-suicide-bully-ask-fm/2012/12/12/id/467459/.
networking site. On 5 December 2012, she brushed off a post that told her to die. On December 7, she wrote “why…” after being asked, “can you just kill youself already”? On December 9, Jessica hanged herself.

In the wake of Jessica’s suicide, a licensed counselor said online criticism could be devastating to a young person. A clinical psychologist said the social networking site “was a trigger.” Jessica’s friends blamed bullies. Attorney David Tirella acknowledged that the online taunts could be hurtful but believed they fell below the threshold of criminal activity. The sheriff shared his doubts as well: “We don’t even know if a crime did occur. It could have just been nasty words that were said that led this young girl to take the actions that she did.”

1442 Jenna Deane, 10 News; Jessica Laney., YOUTUBE (Dec. 11, 2012), https://www.youtube.com/watch?v=mL6dLkNPIFs.
1443 Id.
1444 Ronnie Blair, Schools Aim to Improve Their Use of Social Media, TAMPA TRIB., Dec. 23, 2012, at Pasco 1.
F. WITHDRAWING FROM SCHOOL

Ted “Teddy” Molina (16) had been “picked on ever since he was a little kid.” Teddy was pushed, shoved, hit, punched, kicked, and called names like “Chinese Fat Boy.” He loved fishing but went out for football hoping that it would stop the bullying. It didn’t work. Students continued to call Teddy stupid and said he should kill himself to save them the trouble of having to do it themselves.

On 29 February 2012, Teddy answered a question incorrectly in class and at that a student told Teddy he was a “stupid chink.” Teddy responded that if he was so stupid, maybe he should just kill himself. The teacher told Teddy he should do everyone a favor and shoot himself. A parent removed Teddy from school the following week. Teddy used a hunting rifle to take his own life on the first of April.

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1452 Id.
1454 Teddy, supra note 1451.
1455 MATHANGI SUBRAMANIAN, BULLYING 158 (2014).
1456 First Amended Complaint, supra note 1453, at ¶¶ 42, 48.
1457 Id. at ¶ 74.
1458 Id.
1459 Id.
1460 Id.
1461 Id. at ¶ 81.
1462 ‘We Don’t Need Any More People Dying’: Teen’s Family Holds Anti-Bullying Protests After Boy, 16, ‘Commits Suicide After Years of Threats’, supra note 1450.
G. HOME SCHOOL

K.S. won a one-on-one physical fight but the psychological warfare waged by middle school girls was different.1463 “Everyone was telling me to kill myself so I just listened to ‘em ‘cause they said it would be better.”1464 K.S. went home and swallowed a handful of ibuprofen in September 2019.1465 The pills made her sick but did not cause severe damage.1466 When K.S. returned to school, it was horrible.1467 Wicked children told the thirteen-year-old that she should have used painkillers because they would have worked faster.1468 A parent withdrew K.S. from traditional school for online instruction.1469 K.S. had actually looked forward to the first day of traditional school back in August 2019.1470

H. SCHOOL DISCIPLINE

Star Wars fan A.V.1471 felt a great disturbance on the morning of August 27, 2018.1472 He told news reporter Vince Marino, “When the day started, I’m like, ‘I have a bad feeling about today.’”1473 The ten-year-old was right.1474

1464 Id.
1465 Id.
1466 Id.
1467 Id.
1468 Id.
1469 Id.
1470 Id.
1471 Colin Atagi & Joseph Hong, Hamill, Others Sending Gifts to DHS Child, DESERT SUN (Cal.), Aug. 31, 2018, at 1A.
1473 Id.
1474 Id.
Another fifth-grader\textsuperscript{1475} called A.V. a “fat A-double-dollar sign.”\textsuperscript{1476} Then the boy took A.V.’s backpack.\textsuperscript{1477} When A.V. tried to get it back, the boy hit him in the face.\textsuperscript{1478} A.V. sustained a three-inch laceration in his eyebrow\textsuperscript{1479} that required six stitches.\textsuperscript{1480}

Some people asked A.V.’s mother Lizette why her son “didn’t fight back?”\textsuperscript{1481} The answer is that he did – nonviolently. A.V. accompanied his mother to a school board meeting on the evening of August 28, 2018.\textsuperscript{1482} A.V. took to the podium in front of a packed house.\textsuperscript{1483} “All I want is for every single kid to be safe,” he told the school board members.\textsuperscript{1484} “All I want is for kids not to be bullied.”\textsuperscript{1485}

Lizette urged the school district to expel the student accused of injuring her son.\textsuperscript{1486} She told the board that a three-day suspension was not enough.\textsuperscript{1487} She asked, “My only option is – for my little Jedi here, who likes to read, and . . . be him – is

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\begin{itemize}
\item \textsuperscript{1475} Joseph Hong, \textit{Mother Addresses Board over Bullying}, DESERT SUN (Cal.), Aug. 30, 2018, at 1A.
\item \textsuperscript{1476} Marino, \textit{supra} note 1472.
\item \textsuperscript{1477} Id.
\item \textsuperscript{1480} Max Rodriguez, \textit{Mom Responds to International Attention, Fall-Out over Bullying Incident}, NBC PALM SPRINGS (Sept. 6, 2018), https://nbcpalmsprings.com/2018/09/06/mom-responds-to-international-attention-fall-out-over-bullying-incident/.
\item \textsuperscript{1481} Colin Atagi, \textit{Actor Mark Hamill Supports Bullied Boy}, DESERT SUN (Cal.), Aug. 30, 2018, at 3A.
\item \textsuperscript{1482} Hong, \textit{supra} note 1475.
\item \textsuperscript{1483} Id.
\item \textsuperscript{1484} Id.
\item \textsuperscript{1485} Id.
\item \textsuperscript{1486} Joseph Hong, ‘Irrony’ in School’s Anti-Bullying Plan, DESERT SUN (Cal.), Sept. 19, 2018, at 1A.
\item \textsuperscript{1487} Id.
\end{itemize}
to teach him MMA?”1488 Lizette said this before dropping the mike:

It sucks having to get three minutes. ’Cause I want to be able to tell you guys everything. I want to be able to tell you how the kids follow him and chase him and tell him to kill himself – commit suicide. Why does the school counselor not know that? She barely found that out yesterday!!1489

There were 175 suspensions at A.V.’s school during the 2017-2018 school year.1490 Many of them (118) were for threats of physical violence.1491

“A suspension is basically a vacation,” says Michigan high school student D.G.1492 Older students began bullying her at the beginning of freshman year.1493 “They’re telling me to kill myself. Call me fat. Tell me I’m too white.”1494 One student launched a physical attack.1495

“They keep coming at her,” D.G.’s mother complained.1496 The principal told her that it is his school and he disciplines how he sees fit.1497 “They don’t do nothing but suspend people,” says D.G.1498 “I’m afraid.”1499

1489 Id. 1490 Hong, supra note 1486.
1491 Id.
1493 Id. 1494 Id.
1495 Id. 1496 Id.
1497 Id. 1498 Id. 1499 Id.
A.V. did not want to go back to school but did. Police investigated the kid who hit him and said a report would go to the Juvenile Probation Department. The consequences there could range from afterschool therapy to increased supervision. “Obviously, the juvenile justice system is a little bit different than the adult system,” a police representative explained. “They’re looking at ways to prevent these things from happening again where the adult system is more as far as punishment.”

I. BULLYING PREVENTION PROGRAMS

A school must implement a bullying prevention program if a state law so requires. New Mexico’s Safe Schools for All Students Act, for example, requires school boards to have an annual bullying prevention program. Some states, like Wisconsin, have no such requirement. Nevertheless, “[m]any Wisconsin school districts offer anti-bullying curriculums as part of instruction” and have done so for years. Anti-bullying programs used by Wisconsin schools have included the following: The Keep It Safe Project.

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1500 Hong, supra note 1486.
1501 Rodriguez, supra note 1480.
1502 Joseph Hong, DHS Police Investigate Assault at School, DESERT SUN (Cal.), Aug. 29, 2018, at 3A.
1503 Id.
1504 Marino, supra note 1478.
1505 Id.
1508 See Sacco et al., supra note 1506.
1509 Melissa Siegler, Kids Told a Wisconsin Rapids Girl to ‘Go Kill Yourself’, Wausau Daily Herald (Wis.), Feb. 24, 2019, at 1A.
1510 Opinion, Anti-Bullying Law is Long Overdue, CHIPPEWA HERALD (Wis.), Apr. 28, 2010, at A4.
Steps to Respect, Bullyfree Basics, Bully-Proofing Your School, Sticks n’ Stones, Time to Act – Time to React, Act Now!, and Safe School Ambassadors. There have been others.

The fact is, “[n]o single program (not PBIS, not Olweus, not Second Step, not Responsive Classroom) provides a one-stop shop for preventing bullying and improving school climate. All programs have blind spots, biases, and flaws.” Doubling up is no panacea, either. The Janesville School District in Wisconsin used “several” anti-bullying programs but

1512 Barbara Martin, Students Learn to Take Bullies by the Horns, STEVENS POINT J. (Wis.), Nov. 20, 2002, at A1.
1513 Head of the Class 0330, SHEBOYGAN PRESS (Wis.), Mar. 30, 2008, at C1; Dani McClain, Internet Program Teaches Harms of Bullying to Elementary Students, J. SENTINEL (Wis.), July 8, 2008, at B1.
1514 Adam Wise, Schools Implement Anti-Bully Program, DAILY TRIB. (Wis.), Jan. 22, 2009, at 1A.
1515 Training Offered for Sticks ’n Stones, MARSHFIELD NEWS-HERALD (Wis.), May 31, 2003, at C8; Kathy Walsh Nufer, Schools Seek to Stomp Out Bully Actions, POST-CRESCENT (Wis.), Nov. 7, 2005, at A-1.
1517 Guest View, Act Now Good for Kids, Schools, OSHKOSH NW. (Wis.), Sept. 26, 2013, at A7; Keith Uhlig, Walker’s Budget Targets Bullying, GREEN BAY PRESS-GAZETTE, Feb. 19, 2017, at 5A.
1518 Rory Linnane, Students Trained to Step in When They See Bullying, J. SENTINEL (Wis.), Apr. 7, 2019, at 1A.
1519 Compare, e.g., Patti Zarling, Bye-Bye Bullies, GREEN BAY PRESS-GAZETTE, June 26, 2012, at A1 (discussing the “My Safe Schools” program), with PCSD Launches Kindness Crusade, PULASKI NEWS (Wis.), Feb. 21, 2013, at 1 (same).
1520 BORBA, supra note 222, at 6.
Elizabeth “Lizzy” Jacobson (12) was still told to kill herself.\textsuperscript{1522}

Lizzy called one grandparent “Pop Pop” and another “Grammy.”\textsuperscript{1524} Enthralled by all things galaxy, Lizzy colored her hair pink, purple, blue, and green.\textsuperscript{1525} She distributed artwork to family and friends.\textsuperscript{1526} When her dad passed in 2016, she made her mother Rebecka a plush blanket.\textsuperscript{1527} When a friend of the family died in 2018, Rebecka said Lizzy “was there to hold me and let me cry on her shoulder and pat my back and tell me, ‘Everything will be ok, Mom.’”\textsuperscript{1528}

School bullies chiseled away at Lizzy for two years.\textsuperscript{1529} They told Lizzie her dad died because he didn’t want to be around her anymore.\textsuperscript{1530} They kept calling her “weird” and “ugly.”\textsuperscript{1531} Lizzy feigned illness\textsuperscript{1532} and begged for homeschooling.\textsuperscript{1533} After a boy pulled Lizzy’s bra strap, Rebecka called the middle school.\textsuperscript{1534} School officials spoke with

\begin{footnotes}
\item \textsuperscript{1523} Ashley Jacobson, Public Comment at the Janesville City Council Meeting (June 11, 2018), https://www.ci.janesville.wi.us/government/public-meeting-materials-videos (under Archived Meetings, click City Council dropdown; then click 2018; then click “Video” hyperlink for City Council Meeting, June 11, 2018) (last accessed Oct. 24, 2020).
\item \textsuperscript{1524} Elizabeth Sue “EJ” Jacobson, supra note 1522.
\item \textsuperscript{1525} Jenna Middaugh, Mother Says Bullying Contributed to 12-Year-Old Daughter’s Suicide, CHANNEL 3000 (May 31, 2018), https://www.channel3000.com/news/mother-says-bullying-contributed-to-12-year-old-daughters-suicide/.
\item \textsuperscript{1526} Elizabeth Sue “EJ” Jacobson, supra note 1522.
\item \textsuperscript{1527} Frank Schultz, Mom Says Bullying Played a Role in Daughter’s Death, GAZETTEXTRA (May 29, 2018), https://www.gazettextra.com/news/local/mom-says-bullying-played-a-role-in-daughter-s-death/article_1a3d6e8d-f389-5cfb-9478-4d38d3a5dd97.html.
\item \textsuperscript{1528} Id.
\item \textsuperscript{1529} Id.
\item \textsuperscript{1530} Id.
\item \textsuperscript{1531} Middaugh, supra note 1525.
\item \textsuperscript{1532} Schultz, supra note 1527.
\item \textsuperscript{1533} Middaugh, supra note 1525.
\item \textsuperscript{1534} Idzerda, supra note 1521.
\end{footnotes}
the boy.\textsuperscript{1535} They said the boy was “very remorseful,” “didn’t realize what he had done was wrong,” and “felt bad about it.”\textsuperscript{1536} Shortly after the bra strap incident, Lizzie died by suicide.\textsuperscript{1537}

Rebecka addressed the Janesville City Council.\textsuperscript{1538} “I can tell you there’s a little boy who told my daughter that the only way she would be happy was if she went and hung herself. And that’s exactly how I found her in my back yard.”\textsuperscript{1539} Rebecka told a news reporter, “I want the kids to understand that their actions have consequences. And this is like the ultimate consequence for me.”\textsuperscript{1540} “The one thing I lived for is gone.”\textsuperscript{1541}

Kids assailed one of Lizzie’s friends.\textsuperscript{1542} During an emotional public comment, she explained to the city council how kids did it and what her own consequences were for being an assailment victim:

[They] put notes in my locker telling me to “kill myself” and “I’d be better off gone.” And I’ve had so many thoughts about it. I’ve almost attempted it. And I’ve had to deal with it so many times. And I just want it to go! I don’t

\begin{footnotes}
\item[1535] Id.
\item[1536] Id.
\item[1537] Schultz, supra note 1527.
\item[1538] Rebecka Couglin, Public Comment at the Janesville City Council Meeting (June 11, 2018), https://www.ci.janesville.wi.us/government/public-meeting-materials-videos (under Archived Meetings, click City Council dropdown; then click 2018; then click “Video” hyperlink for City Council Meeting, June 11, 2018) (last accessed Oct. 24, 2020).
\item[1539] Id.
\item[1540] Middaugh, supra note 1525.
\end{footnotes}
want kids to have to deal with what I deal with.\textsuperscript{1543}

Meanwhile, Janesville school district officials said consequences for bullies would depend on the situation.\textsuperscript{1544}

VII. SOCIAL HARM

A. SUICIDAL THOUGHTS

One of the common errors that some readers of literature make “is to assume that the author and the speaker of the literary piece are one and the same.”\textsuperscript{1545} For example, some people say that Shakespeare said, “Let’s kill all the lawyers.”\textsuperscript{1546} Although Shakespeare did write this as dialogue, “[i]t is clear [he] had no intention of taking this position.”\textsuperscript{1547} Shakespeare himself loved litigation and “stood rigorously by his rights in all his business relations.”\textsuperscript{1548}

The complete line of dialogue reads, “The first thing we do, let’s kill all the lawyers.”\textsuperscript{1549} A dissident character recites it in \textit{Henry VI} after hearing a “radical platform for redistributing wealth and abolishing private property.”\textsuperscript{1550} “On its face, the line overflows with antilawyer feeling”\textsuperscript{1551} and is “often viewed as a slight to the legal profession”\textsuperscript{1552} but many scholars believe

\begin{thebibliography}{9}
\bibitem{1543} Id.
\bibitem{1545} \textsc{Daniel J. Pukstas, The Path to Poetry} 19 (2006).
\bibitem{1546} Id.
\bibitem{1547} Id.
\bibitem{1548} \textsc{Sidney Lee}, \textit{A Life of William Shakespeare} 206 (1898).
\bibitem{1549} \textsc{William Shakespeare, The Second Part of King Henry the VI} act 4, sc. 2.
\bibitem{1550} \textsc{Daniel J. Kornstein, Kill All the Lawyers?: Shakespeare’s Legal Appeal} 25-26 (1994).
\bibitem{1551} Id. at 25.
\bibitem{1552} \textsc{Michael R. Smith, Advanced Legal Writing} 364 (3d ed. 2013).
\end{thebibliography}
“Shakespeare’s point is to portray lawyers as the guardians of the rule of law who stand in the way of a fanatical mob.”

Shakespeare wrote about suicide ideation in *The Tragedy of Hamlet, Prince of Denmark* (“Hamlet”). The play survives in three distinct early versions: the First Quarto (1603), the Second Quarto (1604), and the Folio (1623). “The First Quarto is . . . a fascinating document . . . with valuable clues about what . . . Hamlet might have looked like on the Elizabethan stage.” Immensely valuable, there are only two known surviving copies of the First Quarto. The Folio version comes from a large leather-bound book that was published by Shakespeare’s friends.

During Act One of *Hamlet*, Prince Hamlet mourns the death of his father and bemoans mother’s rapid remarriage to

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1553 Jacob Gershma, *To Kill or Not to Kill All the Lawyers? That Is the Question – Attorneys Object to Interpretation of Shakespeare’s Line; Not a Slur*, WALL STREET J., Aug. 18, 2014, at A1.


1556 THE NORTON SHAKESPEARE, supra note 1554, at 1754.

1557 Id. at 1855 (“The first of these copies is in the Huntington Library in California, the second in the British Library in London.”).

an uncle who is now king. A ghost visits Hamlet. It claims to be Hamlet’s father. Whether “a spirit of health or goblin damn’d,” the ghost wants Hamlet to take revenge against the uncle.

During Act Three, the king and lord chamberlain conspire against Hamlet in a castle room. When one of them hears Hamlet approaching, they hide. The lord chamberlain’s daughter remains but Hamlet does not see her. Upon entering, Hamlet gives what “may well be the single most recognizable passage in all English literature” – the “famous speech on suicide” that begins with the words, “To be, or not to be?” Halfway through the speech, Hamlet essentially asks, “who would put up with life’s troubles if he could end them all through suicide?”

During Act Four, the king plots to have Hamlet killed during a fencing contest. Laertes tells the king he will use a poison-tipped foil “unbated.” The king likes the idea but sets forth a contingency plan; if Laertes cannot stab Hamlet during the match, Hamlet will drink from a victory chalice laced with poison.

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1559 *William Shakespeare, The Tragedy of Hamlet, Prince of Denmark* act 1, sc. 2 [hereinafter *Hamlet*].
1560 *Id.* at act 1, sc. 4.
1561 *Id.* at act 1, sc. 5.
1562 *Id.* at act 1, sc. 4.
1563 *Id.* at act 1, sc. 5.
1564 *Id.* at act 3, sc. 1.
1565 *Id.*
1566 *Id.*
1569 *Hamlet, supra* note 1559, at act 3, sc. 1.
1570 Richard Nilsen, *To Read or Not to Read: How to Interpret Shakespeare’s 400-Year-Old Language*, ARIZ. REPUBLIC, Jan. 8, 2006, at E3.
1571 *Hamlet, supra* note 1559, at act 4, sc. 7.
1572 *Id.* A fencing foil back then would have at “the point” a button covered with leather. Compare *David Crystal & Ben Crystal, Oxford Illustrated Shakespeare Dictionary* 156 (2015), with *Unbated*, 1 Noah Webster, *A Dictionary of the English Language* (1828). “[A] foil lacking such a blunted point was said to be ‘Unbated.’” *The Tragedy of Hamlet, Prince of Denmark* 241 (David Bevington ed. 2018).
1573 *Hamlet, supra* note 1559, at act 4, sc. 7.
In the fifth and final act, Hamlet agrees to fence despite knowing the king wants him dead.\textsuperscript{1574} When Hamlet takes an early lead, his mother celebrates with a drink.\textsuperscript{1575} "O t’is the poisoned cup," the king says to himself.\textsuperscript{1576} Hamlet and Laertes continue, and in scuffling, both are wounded by the poisoned foil.\textsuperscript{1577} The mother dies proclaiming, "The drink, the drink! I am poison’d."\textsuperscript{1578} Hamlet orders the door locked and shouts, "Treachery! Seek it out."\textsuperscript{1579} Laertes, guilt-ridden, confesses:

\begin{quote}
It is here, Hamlet. Hamlet, thou art slain; no medicine in the world can do thee good. In thee there is not half an hour of life. The treacherous instrument is in thy hand, unbated and envenom’d. The foul practice hath turn’d itself on me. Lo, here I lie, never to rise again. Thy mother poison’d. I can no more. The King, the King’s to blame.\textsuperscript{1580}
\end{quote}

Hamlet kills the king with the envenomed sword and then dies from poisoning.\textsuperscript{1581}

Some contend that Hamlet is \textit{not} contemplating suicide at the beginning of the "to be or not to be" speech.\textsuperscript{1582} They posit that "the first ten lines of Hamlet’s most famous [speech] have . . . been misunderstood."\textsuperscript{1583} "Hamlet begins," it is argued, by "contemplating the alternatives of action or forbearance."\textsuperscript{1584}

\textsuperscript{1574} Id. at act 5, sc. 2.
\textsuperscript{1575} Id.
\textsuperscript{1576} Id.
\textsuperscript{1577} Id.
\textsuperscript{1578} Id.
\textsuperscript{1579} Id.
\textsuperscript{1580} Id.
\textsuperscript{1581} Id.
\textsuperscript{1582} E.g., David E. Jones, \textit{Hamlet: Quintessential Shakespeare?}, CEDAR CITY SPECTRUM (Utah), July 5, 1981, at 34.
\textsuperscript{1583} Halio, \textit{supra} note 1554, at 1135. \textit{See also} George MacDonald, \textit{Dr. George MacDonald on Hamlet}, THE COURIER AND LONDON & MIDDLESEX CNTYS. GAZETTE (London), Oct. 31, 1890, at 3 ("‘To be, or not to be’ . . . has nothing to do with suicide.").
\textsuperscript{1584} Halio, \textit{supra} note 1554, at 1135.
“Action,” according to the theory, means taking revenge against the king.

“Only later does [Hamlet] think about the consequences of either alternative that might result in his death, and the thought of death leads him to contemplate suicide.”

The contention is without merit.

“From the very beginning [of the play, Hamlet] is preoccupied with suicide.”

“Certainly, before the appearance of the [g]host, Hamlet is suffering from a depression so severe that he contemplates suicide.”

He is dressed in the “nighted colour” of “solemn black,” mourns the loss of his father “[s]o excellent a king,” and broods over his mother’s quickie marriage.

Significantly, Hamlet wishes “that the Everlasting had not fix’d his canon ’gainst self-slaughter” and states a preference for death over life, “Oh, that this too much grieved and sallied flesh would melt to nothing.”

Second, “Hamlet is characterized by an unprecedented range of dramatic techniques and styles, but the most central is that of the soliloquy.” The word “soliloquy” means “talking to oneself” and is “a device whereby Shakespeare allows his characters to share their innermost thoughts with the audience.”

“If there are other actors on stage, they do not hear the soliloquy.”

Importantly, “Hamlet invokes the canon ’gainst self-slaughter . . . in his very first soliloquy only after “[t]he court withdraws, and Hamlet is left alone.”

Hamlet also thinks he’s alone when delivering his “to be or not to be”
“soliloquy.” With some cultural exceptions, the bodily act of suicide happens in private. Similarly, “[p]eople who are contemplating suicide often do not share their ideation.”

Third, “Hamlet has some doubts about the [g]host’s authenticity.” “Is he a devil assuming the shape of Hamlet’s dead father, or is he a valid spirit from the dead?” Hamlet “knows the Devil can assume a pleasing shape and can easily mislead a person whose mind is perturbed by intense grief.” “[I]f he is a devil, he may be tempting Hamlet to commit suicide, which is what [a friend] fears . . . when Hamlet first confronts the spirit.”

Fourth, Shakespeare undoubtedly wrote what he knew. “Hamlet was probably first performed in 1601” and it “seems likeliest that Shakespeare wrote [the tragedy] in about 1600.” Shakespeare’s only son Hamnet died at the age of eleven in 1596. While “the grief of [Shakespeare’s] family must have been catastrophic . . . Shakespeare . . . never wrote of his son’s death” but did name the principal character of his play, “Hamlet.” Finally, First Quarto foreshadowing and homographic wordplay prove that Hamlet is contemplating suicide. In the

1597 Id. at 1090-91; THE OXFORD COMPANION TO SHAKESPEARE, supra note 1554, at 254.
1598 Katrina Jaworski & Daniel G. Scott, Understanding the Unfathomable in Suicide, in CRITICAL SUICIDIOLOGY 209, 212 (Jennifer White et al. eds., 2016).
1599 MARY ANN BOYD & REBECCA LUEBBERT, ESSENTIALS OF PSYCHIATRIC NURSING 230 (2d ed. 2020).
1600 READINGS ON HAMLET 39 (Don Nardo ed. 1999). In Shakespeare’s Protestant England, “ghosts were more likely to be evil spirits who tempted the bereaved to suicide.” COUSINS, supra note 1554, at 173.
1601 Halio, supra note 1554, at 1135.
1603 Halio, supra note 1554, at 1135.
1604 Lander, supra note 1554, at 361.
1605 THE OXFORD COMPANION TO SHAKESPEARE, supra note 1554, at 252; see also THE NORTON SHAKESPEARE, supra note 1554, at 1754.
1606 DAVID BEVINGTON, SHAKESPEARE’S IDEAS 1603 (2008).
1608 WILLIAM SHAKESPEARE’S HAMLET, supra note 1567, at 25.
1609 Homographs are words that are spelled the same and sound the same but don’t mean the same thing. HOMOGRAPHS & HETERONYMS: A Teaching Resource from REMEDIA PUBLICATIONS 1 (2008).
First Quarto, the Prince’s celebrated soliloquy begins, “To be, or not to be—ay, there’s the point.”\textsuperscript{1610} The word “point” was not just a synonym for “question” as some have suggested;\textsuperscript{1611} it also meant “the sharp end of any thing.”\textsuperscript{1612} Hamlet thus (1) hints as to how he could kill himself and (2) portends his actual death.

Hamlet considers \textit{hara-kiri} with the “point” of a “bare bodkin.”\textsuperscript{1613} In Hamlet’s imagined method of suicide, “bare” means “mere.”\textsuperscript{1614} In Shakespeare’s mind, “bare” also meant “uncovered.”\textsuperscript{1615} Like a sheep to slaughter, Hamlet willingly participates in a contest with swords. It was at best a game of Russian roulette and at worst suicide-by-sovereign. Either way, Hamlet died by “the point” of a sword after harmful ideation.

“Suicide is the intentional taking of one’s own life.”\textsuperscript{1616} It can “result from self-injury or from purposefully exposing oneself to immediate fatal harm.”\textsuperscript{1617} “Psychologists recognize that those most likely to commit suicide are those who have thought about it, threatened to commit it, or attempted it.”\textsuperscript{1618}

T.G. joined cross country his junior year of high school.\textsuperscript{1619} Sophomore S.H. was a teammate.\textsuperscript{1620} Coaches paired the two boys together and they became best friends.\textsuperscript{1621} S.H. also

\begin{footnotes}
\item[1610] THE NORTON SHAKESPEARE, supra note 1555, at 1754.
\item[1611] Id. at 1875 n.1.
\item[1612] \textit{Point}, EDWARD PHILLIPS, \textit{THE WORLD OF ENGLISH WORDS: OR, A GENERAL DICTIONARY} (1720).
\item[1613] \textit{Hamlet}, supra note 1559, at act 3, sc. 1. A “bodkin” is a dagger or “some other pointed weapon.” DAVID CRYSTAL & BEN CRYSTAL, \textit{SHAKESPEARE’S WORDS: A GLOSSARY AND LANGUAGE COMPANION} 47 (2002).
\item[1614] DAVID HILLMAN, \textit{SHAKESPEARE’S ENTRAILS} 213 n. 104 (2007).
\item[1615] Bare, PHILLIPS, supra note 1612.
\item[1616] \textit{Suicide (Felo de Se)}, \textit{THE WALTER KLUWER BOUVIER LAW DICTIONARY} (2012).
\item[1617] Kaslow & Dunn, supra note 47, at 964.
\item[1618] Id.
\item[1619] Prep Boys Cross Country Team Preview Capsules, SPRINGFIELD NEWS-SUN (Ohio), Aug. 27, 2010, at B5.
\item[1621] Id.
\end{footnotes}
spent time with E.C.\textsuperscript{1622} She attended a different high school twelve miles away.\textsuperscript{1623} T.G. and his friends began to bully E.C. with texts\textsuperscript{1624} and on social media.\textsuperscript{1625} T.G. and company told E.C. she was “fat,” “very ugly,” and “look[ed] like a troll.”\textsuperscript{1626} They told her she had no friends\textsuperscript{1627} and that S.H. never liked her.\textsuperscript{1628} A girl got on a phone call with E.C.\textsuperscript{1629} and said, “The world would be a better place without you. Why don’t you just kill yourself?”\textsuperscript{1630} E.C. started crying.\textsuperscript{1631} At this point, S.H. intervened.\textsuperscript{1632}

“You guys, stop. Just everybody stop.”\textsuperscript{1633} S.H. called E.C. back and apologized.\textsuperscript{1634} E.C. told S.H. she never wanted to speak to him again.\textsuperscript{1635} T.G. apologized months later.\textsuperscript{1636} T.G. wants bullies to know “if something were to happen[,] you’d have to live with that guilt for the rest of your life.”\textsuperscript{1637}

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id.
\item Meredith Reis, \textit{When Kids Are Bullied or Bullies, Parents Often Don’t Know What’s Happening}, \textsc{TODAY} (Oct. 18, 2012), https://www.today.com/parents/when-kids-are-bullied-or-bullies-parents-often-dont-know-1C6549386.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.; Steve TV Show, \textit{Stop Bullying}, \textsc{YOUTUBE} (Nov. 27, 2012), https://www.youtube.com/watch?v=MEA-hEvPYAI.
\item Thomas, \textit{supra} note 1622.
\end{enumerate}
\end{footnotesize}
B. ATTEMPTED SUICIDES

Emergency room visits for suicidal thoughts, self-harm, and attempts increased more than forty-three percent nationwide in the 10 to 19 age group from January 2017 to December 2018.\footnote{Marissa L. Zwald et al., Synergistic Surveillance of Suicidal Ideation and Self-Directed Violence – United States, January 2017–December 2018, MORBIDITY AND MORTALITY Wkly. Rep. (Jan. 31, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6904a3.htm.} Children’s Hospital Colorado in 2018 noticed the number of patients coming into its pediatric intensive care unit for suicidal behaviors had jumped 300% in seven years.\footnote{Jessica Seaman, Death of 9-Year-Old Denver Student Reflects Increase in Youth Suicides, DENVER POST, Aug. 29, 2018, at A1.} “That was a shocking number for us to see,” said a psychologist at the facility.\footnote{Id.} A psychologist in Maryland says, “It used to be suicide attempts were more common in high school. Now, I’m seeing more completed suicides in middle school and even upper elementary school.”\footnote{Sharon Jayson, Anguished Parents Speak Out After Youth Suicides, DAILY NEWS (Wash.), Mar. 22, 2020, at B8.}

had a face like Skylar Desmarais, I’d kill myself.”1646 Skylar survived two suicide attempts but not a third.1647 She ended her life June 20, 2018.1648 Skylar blamed bullying in a suicide note.1650

An eight-year-old boy in Ohio hanged himself from his bunk bed with a necktie in January 2017.1651 “Gabe” attended Carson Elementary (“Carson”).1652 According to a lawsuit filed by Gabe’s parents, a fourth grade student from the same school was beat up by students in April.1653 She was told to “go hang herself” after the attack.1654

Gabe’s parents alleged in their lawsuit that a male student was assailed at Carson.1655 The boy had been bullied for years and in October 2016 wanted to die because of bullying.1656 Students told him to “go hang yourself like Gabe” and “Go kill yourself or I’ll do it for you.”1657

1647 Dwyer, supra note 1642.
1648 Id.
1649 Tunnicliffe, supra note 1645.
1651 Mark Gillispie, Boy, 8, Assaulted at School Before Killing Self, AKRON BEACON J. (Ohio), May 12, 2017, at B3.
1652 Anne Saker, ‘No Mother Should Ever Have to Go Through That’, DELHI PRESS (Ohio), Aug. 23, 2017, at 7A.
1654 Id. at 12.
1655 Id.
1656 Id.
1657 Id.
As part of her high school leadership class, senior R.S. helped plan school-wide events in the hopes of (1) increasing school spirit and (2) developing fun and meaningful memories for students. Done and done with dance at this homecoming assembly. “Being in leadership has made high school easy for me because I have a support system,” said R.S. Middle school was different.

R.S. dreaded waking up. Bullies would “oink” at her in the hallway, chant “Piggy, piggy, piggy,” and put “kill yourself” notes in her locker. When R.S. complained, the school told her to “just ignore it.” She attempted suicide years later. “I still look in the mirror and see like, that fat girl I saw in middle school.”

Students bullied thirteen-year-old C.R. for five straight years. The nonstop harassment hurt C.R.’s feelings, wrecked her self-esteem, and caused chronic sadness. She’s been hospitalized for cutting and suicidal thoughts. In 2019, two nasty girls told C.R. to “go slit your wrists and finish the job you started.” A woman wrote on Facebook, “I know this child,

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1661 Gonzales, supra note 1658.
1662 Id.
1663 Id.
1664 Id.
1665 Id.
1666 Id. (“Well, you can’t ignore someone yelling at you across the hallway,” says R.S.).
1667 Id.
1668 Id.
1670 Id.
1671 Id.
1672 Id.
who I have coached in softball, and she does not deserve what she has been through. That’s more than most of us adults I will guarantee that.”

It was something else when R.N. laughed in June 2017! The glimpse of joy almost didn’t happen. R.N. attempted suicide in May 2017 because of bullying. She attempted suicide again in May 2018. According to a lawsuit, five students made R.N. feel unsafe.

Students kicked, punched, and hit R.N. One boy threatened to stab her. They said things like “dig a hole and bury yourself,” “you should die,” and that her mother was an “asshole” for loving a child like her. Kids told R.N., “Go kill yourself.”

Teenager D.P. of Idaho once ran with the wrong crowd. Fearing her daughter would wind up in jail, D.P.’s

1673 Id.
1676 Id.
1680 Id. at 9.
1681 Id. at 16.
1682 Id. at 9.
1683 Id. at 14.
1684 Natalia Hepworth, Middle Schooler Opens Up About Attempted Suicide, EASTIDAHONEWS (Sept. 30, 2017),
mom parented. When D.P. obeyed, a girl warned her, “If you’re not my friend, you’re going to be sorry.” Then the girls stooped lower; there were notes in D.P.’s locker saying, “You should just go kill yourself.” Then there was assailment.

D.P. started saying things like, “What’s the point? Life sucks. I’d rather just die.” She began to self-mutilate. Then one day before school, she attempted suicide. “I shouldn’t have done that,” D.P. says upon reflection. D.P.’s mom says her daughter’s attempt “is one of the hardest things I’ve ever gone through in my life.” “I love her more than anything in the world.”

C. COMPLETED SUICIDE

A fourth grader invited children from school to his birthday celebration at the park. His mother put up balloons and other decorations. Only one kid showed up that
day but it was Jack Padilla (15). Jack’s father Rick remembers:

Jack went. He stayed there for two hours. He had a ball. Him and that other kid had a great time. We went and picked him up, and [the boy’s] mom said, “He made my son’s day.” They threw water balloons. They just had a great time.

Jack was constantly bullied when he got to high school. Five other students bullied him physically and electronically. Four of the five were varsity athletes. They shoved, sat on, and yelled at the freshman. Two of the bullies told Jack to go kill himself. Jack killed himself in February 2019.

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1699 Arnold, supra note 1696.
1700 Denver Father Honors Son Through Suicide Prevention Work, supra note 1697.
1701 Id.
1705 Denver Father Honors Son Through Suicide Prevention Work, supra note 1697.
1706 Jessica Seaman, Mother Says Her Son Was Bullied, DENVER POST, Apr. 3, 2019, at 1A.
1708 Konopasek, supra note 1704.
Jack never told anybody about his victimization.1709 Rick believes bullying played a part in his son’s suicide.1710 “You know, am I saying that was why Jack did that? I think it was a contributing factor.”1711 Colorado police said there was “no indication that anyone acted with criminal culpability to cause this sad and tragic suicide.”1712

VIII. ASSAILMENT

A. GUILTY MINDED

Tyler Young (17), a high school junior, was the oldest child in a family of five.1713 Tyler maintained a high grade-point average,1714 was on course to graduate early,1715 worked at a fast food restaurant,1716 and had achieved the rank of Master Sergeant in the Army JROTC.1717 At the other end of the spectrum, students of little discipline treated Tyler like cannon fodder.

Students tripped Tyler down bleachers,1718 pushed him down stairs,1719 and spat in his food.1720 A classmate told Tyler...
in October 2009, “The world would be better off without a retard like you. Why don’t you just go home and kill yourself?”\textsuperscript{1721} Tyler completed suicide that weekend\textsuperscript{1722} by hanging himself inside a closet at home.\textsuperscript{1723}

After news of Tyler’s suicide broke, students drew a hangman’s noose on a school wall,\textsuperscript{1724} painted the words “we will not miss you” in a bathroom,\textsuperscript{1725} and wore leather belts around their necks.\textsuperscript{1726} Some photographed Tyler in his open casket and posted the pictures online with captions celebrating Halloween.\textsuperscript{1727} One person photographed Tyler’s grave saying it would make for a good Halloween card.\textsuperscript{1728}

\section*{B. Guilty Speech}

Englishman Algernon Sidney imagined the death of a king\textsuperscript{1729} when he put pen to paper in the privacy of his own home during the 1600s.\textsuperscript{1730} The writings, neither published nor circulated,\textsuperscript{1731} were found by London authorities.\textsuperscript{1732} Charged with treason, Sidney argued at trial that he didn’t do anything.\textsuperscript{1733} A notorious royalist judge\textsuperscript{1734} proclaimed, “Scibere

\begin{itemize}
\item[\textsuperscript{1722}] Id.
\item[\textsuperscript{1723}] Ollove, supra note 1713.
\item[\textsuperscript{1724}] Long, 2012 WL 2277836, at *34.
\item[\textsuperscript{1725}] Id. at *38.
\item[\textsuperscript{1726}] COLOROSO, supra note 124, at 51.
\item[\textsuperscript{1728}] Rachel Brown, ‘I Was Afraid’: Students Speak on Bullying as Panel Considers Solutions, \textit{DAILY CITIZEN} (Ga.), Dec. 2, 2009, at 1A.
\item[\textsuperscript{1729}] CHARLES SLACK, \textit{LIBERTY’S FIRST CRISIS} 95-96, 153 (2015).
\item[\textsuperscript{1730}] SCOTT A. NELSON, \textit{THE DISCOURSES OF ALGERNON SIDNEY} 28-29 (1993).
\item[\textsuperscript{1732}] SLACK, supra note 1729, at 95.
\item[\textsuperscript{1733}] WEBER, supra note 1731, at 210-11.
\item[\textsuperscript{1734}] NELSON, supra note 1730, at 25.
\end{itemize}
est agere”1735 - to write is to act.1736 Before being beheaded, Sidney was urged by friends to beg the king for a proper burial of his body parts.1737 Sidney refused saying, “he may make a snuff-box of my arse, if he pleaseth.”1738

[Nowadays], every man [and woman] that has the faintest notions of Law or Liberty, must know the position Scribere est agere . . . has been condemn’d, and that the mere writing and leaving in one’s own study, any discourse whatever, is not criminal, it being no act which the Law takes notice of; for, any [person] is at liberty to think, and to put what thoughts he [or she] pleases on paper, provided [they do] not publish them.1739

Thirteen-year-old middle school student N.H.1740 did not want a yearbook.1741 The young man harbored insecurities as to whether anyone would sign it and kids1742 had bullied him all year.1743 As a result of the bullying, N.H. did not focus on

1736 Scribere est agere, BLACK’S LAW DICTIONARY, supra note 1017.
1737 FRANCIS BIDDLE, A CASUAL PAST 100 (1961).
1738 Id.
1739 CANDOR, A LETTER FROM CANDOR, TO THE PUBLIC ADVERTISER 30 (2d ed. 1764).
1742 Id.
1743 Craig Sailor, ‘Kill Yourself,’ ‘Die’ – Mom Reacts to Outrageous Writings of Classmates in Son’s Yearbook, NEWS TRIB. (June 20, 2017),
learning; rather, he focused on whether someone would make fun of him or what was going to happen next in the halls. He would arrive late to class in order to avoid the bullies and did everything in his power to avoid school altogether.

On May 23, 2017, N.H.’s mother went to a school administrator and asked for an investigation. On May 25, students L.B. and W.L. called N.H. a racial epithet in between classes. That same day, student T.A. told N.H. to go kill himself. N.H. handed out his yearbook on the second to last day of school. Someone threw it at his back when they were done. N.H. picked it up off of the lunchroom floor and looked inside. “Fuck Yuo.” “You are a [crude sketch of penis and testicles]” “You should do the world a favor and die.” “Kill yourself.” “Piece of shit” “No balls kill yourself you wont!”

N.H. left school embarrassed and headed toward Washington’s White River to drown himself. “I just can’t


1744 Hanchard, supra note 1740.
1747 Id.
1748 Hanchard, supra note 1740.
1749 Id.
1750 Sailor, supra note 1743.
1752 Hendrickson, supra note 1745.
1753 Nolan, supra note 1741.
1755 Id.
1756 Hendrickson, supra note 1745.
take it anymore,” he texted his mother.\footnote{1757}{Eldridge, supra note 1751.} “Maybe I should just do it. Maybe they’re right. I’m sorry.”\footnote{1758}{Id.} N.H.’s mother found him in time.\footnote{1759}{Id.} Police took a report in regard to the lunchroom happenings but said potential suspects were most likely too young to face criminal action.\footnote{1760}{Id.}

Jack Isenberg (12)\footnote{1761}{Shawne K. Wickham, Beyond the Stigma: After Son’s Suicide, Orford Mom Speaks Out, Pleads for Kindness, N.H. UNION LEADER (Sept. 16, 2018), https://www.unionleader.com/news/stigma/beyond-the-stigma-after-sons-suicide-orford-mom-speaks-out-pleads-for-kindness/article_fad39da4-09fb-5b2d-b14c-580bafcecf1.html.} of New Hampshire loved Legos,\footnote{1762}{Jack K. Isenberg / 2005 – 2018 / Obituary, STOCKBRIDGE FUNERAL HOME LLC, https://www.stockbridgefh.com/obituary/jack-isenburg (last visited Oct. 23, 2020).} liked to ride his bike, and shoveled snow for his elderly neighbors.\footnote{1763}{Wickham, supra note 1761.} Jack had a few\footnote{1764}{Id.} close friends but was constantly bullied.\footnote{1765}{Amanda Thomason, Mom Sends Grave Warning After Autistic 12-Yr-Old Son Bullied Until He Took His Own Life, W. J. (Sept. 16, 2018), https://www.westernjournal.com/mom-warning-autistic-son-bullied-took-life/.} Kids bullied him in class, at recess, and on his phone.\footnote{1766}{Id.} He was kicked in the crotch and told this way he could not have “retarded” children.\footnote{1767}{Tim Callery, Families Share Stories of Pain After Children Kill Themselves, WMUR 9 (June 6, 2019), https://www.wmur.com/article/families-share-stories-of-pain-after-children-kill-themselves/27732919.} Jack got into a schoolyard fight on May 25, 2018.\footnote{1768}{Id.} As it was wrapping up, a noncombatant told Jack to go home and kill himself.\footnote{1769}{Id.} Jack killed himself the next day.\footnote{1770}{Id.}
C. ASSAILMENT BY REQUEST

The gravestone of Daniel Briggs (16) depicts a love of the great outdoors.1771 Daniel started high school in 2011.1772 During the 2013-2014 school year, student M.S. promulgated a rumor that Daniel liked to have sex with animals.1773 Another student spread that smear when he asked others – outside of Daniel’s presence – if they heard that Daniel had sexual intercourse with dogs.1774 The rumor made it back to Daniel as is evidenced by the following text he authored on February 16, 2014: “I was said to have raped my dogs.”1775

On March 3, 2014, M.S. texted Daniel, “I hope u die.”1776 Daniel responded, “u don’t have to worry bout me dying cause that’s happenin tonight haha, just thought if let u know how I felt before I pulled the trigger.”1777 M.S. texted, “And do whatever please kill your self though.”1778 Daniel died that night from a self-inflicted gunshot wound to the head.1779

1773 Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss the Complaint, and in Support of Plaintiff’s Motion to Amend the Complaint at ¶ 129, Estate of D.B. v. Thousand Islands Cent. Sch. Dist., No. 15 Civ. 484 (GTS) (N.D. N.Y. June 29, 2015), 2015 WL 13021213. But see 327 F. Supp. 3d at 498 n.38 (stating that the rumor may have started while Daniel was in eighth grade).
1774 327 F. Supp. 3d at 483.
1775 Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss the Complaint, and in Support of Plaintiff’s Motion to Amend the Complaint, supra note 1773, at ¶ 129.
1776 327 F. Supp. 3d at 520.
1777 Id.
1778 Id. at 520-21.
D. ASSAILMENT BY SOLICITATION

“Solicitation is a crime of communication, that is, the harm is the asking.”1780 Like attempt and conspiracy, solicitation is criminalized because of the risk that it could lead to a consummated crime.1781 Hence, a wife cannot offer money for the murder of her husband1782 and a man cannot ask a 15-year-old girl to masturbate and send him photographs.1783 Numerous jurisdictions make it a crime to solicit a minor to join a street gang.1784

Bullies frequently targeted C.R.’s status as a special education student.1785 The torment peaked during his freshman and sophomore years1786 when students bombarded him between classes with taunts of “retard” and “sped.”1787 C.R. experienced less bullying as an upperclassman but said the harassment of others continued.1788 “One time I saw a bunch of kids get up in a freshman’s face and say, ‘Why don’t you just go home and kill yourself?’”1789

On October 29, 2004, C.R. left a suspicious letter on a printer at his school, Menomonie High (“MHS”).1790 The letter read,

It brings me great pain to notify MHS that there is a great chance that they will lose a great quantity of its students if they do

1781 82 C.J.S. Statutes § 266 (2009).
1785 E.g. UTAH CODE ANN. § 76-9-803(1)(a) (West 2015).
1787 Id.
1788 Id.
1789 Id.
1790 Id.
not shut the **** up. I have now come down to a few options; of these options I will only list 3. a) forget about it all and go any my way; b) kill my fellow classmates with no mercy and then kill my self; c) kill myself. I have been debated on 2 of these answers to the problem. I will give the school 1 week before I answer. Thank you.\textsuperscript{1792}

As a result of the letter, MHS increased security the first week of November,\textsuperscript{1793} canceled two days of classes,\textsuperscript{1794} and had home field advantage in a football playoff game taken away.\textsuperscript{1795} Police arrested C.R. on November 9 for a misdemeanor count of disorderly conduct in connection with the letter.\textsuperscript{1796} The district attorney said at the time, “We have been scouring the statutes, trying to find something we feel provides sufficient penalty for what occurred.”\textsuperscript{1797} On November 17, prosecutors charged C.R. with a felony count of threats to injure.\textsuperscript{1798} On November 22, the school board expelled C.R. for “the remainder of his high school career.”\textsuperscript{1799} C.R. said he was sick of his friends being picked on and wrote the letter as a scare tactic.\textsuperscript{1800}

\textsuperscript{1792} Reule Faces Charges in Appearance Tuesday, DUNN CTY. NEWS (Wisc.), Dec. 5, 2004, at A1.
\textsuperscript{1794} Reule May Avoid Jury Trial, DUNN CTY. NEWS (Wisc.), Jan. 11, 2006, at A3.
\textsuperscript{1795} Don Huebscher, Editorial, How a Stupid Act Destroyed a Dream, LEADER-TELEGRAM (Wisc.), Nov. 9, 2004, at 4A.
\textsuperscript{1796} Police Arrest Teen for Threat, CHIPPEWA HERALD-TELEGRAM (Wisc.), Nov. 10, 2004, at A2.
\textsuperscript{1797} Pamela Powers, Student Arrested for Threat, LEADER-TELEGRAM (Wisc.), Nov. 10, 2004, at 1B.
\textsuperscript{1798} Barbara Lyon, Getting Back at the Bullies, DUNN CTY. NEWS (Wisc.), Nov. 21, 2004, at A1.
\textsuperscript{1799} School Board Expels Student for Letter Threat, LEADER-TELEGRAM (Wisc.), Nov. 23, 2004, at 2B.
\textsuperscript{1800} Lyon, supra note 1798.
A deputy fire chief in Connecticut ended his life on a railroad track after decades of service. He left behind a son who was eight at the time. Deviant grade school bullies made mean memes and asked the boy, “Do you like trains?” They also told him to “jump in front of a train” and said, “Why don’t you go down and do what your dad did?”

E. ASSAILMENT BY IMPERATIVE

Neither true friends nor a protective mother could shield Tori Swoape (15) from classmates who claimed she was one of two girls having sexual relations in a blurry

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1802 *Id*.
1804 *Id*.
1806 Gardner, *supra* note 1803.
1807 Michelle Kinsey, ‘*Good Days and Bad Days*’, STAR PRESS (Ind.), May 8, 2013, at 1A.
video.\footnote{When Cyber-Bullying Leads to Suicide, supra note 1810.} In an attempt to quell the rumor-mongering, Tori took to Facebook on May 7, 2012.\footnote{Sinmaz, supra note 1810.} She wrote at 7:02 p.m., “IM NOT TALKING TO NO ONE. so go ahead and spread that RUMOR around! Keep my name out of your mouth. LEAVE MY BUISNESS TO ME!”\footnote{Id.} Tori had texted with her mother after school and throughout the evening\footnote{Shuler, supra note 1808.} but the last text she received was from a female “friend” who unleashed the kiss of death.\footnote{Id.} The friend told Tori to kill herself.\footnote{Id.} Sometime between 7:33 and 7:53 p.m.,\footnote{Compare id., with When Cyber-Bullying Leads to Suicide, supra note 1810.} Tori locked her bedroom door, tied a scarf around her neck, and hanged herself.\footnote{When Cyber-Bullying Leads to Suicide, supra note 1810.}

Following the February 2019 suicide of an Indiana sixth-grader, a female student from the same school came forward to family and said, “I need help.”\footnote{Matthew McClellan, Parents Demand School Bullying Accountability, WRTV (Feb 27, 2019), https://www.wrtv.com/news/working-for-you/parents-demand-school-bullying-accountability.} She had endured months of bullying from classmates.\footnote{Id.} The attacks included imperative words.\footnote{Id.} “Kill yourself. We’d be happy to hear it the next day. If you don’t know how, razor blades work real good. Just go home and start slicing away.”\footnote{Id.}

F. ASSAILMENT BY BLACKMAIL

Tyler Garcia (14) of Texas is described as a wonderful son and “a bona fide smarty pants.”\footnote{Obituary: Tyler Andrew Garcia, DIGNITY MEMORIAL, https://www.dignitymemorial.com/obituaries/iowa-park-tx/tyler-garcia-6177738 (last visited Oct. 3, 2020).} He went through the horrifying experience of being sexually assaulted by two
neighborhood teenage boys. Tyler moved schools for a fresh start but his information fell into the wrong hands after confiding in another student about the assault.

A predatory male student slurred Tyler on a regular basis. Tyler suffered a cracked rib when the student hit him with a cowbell. On Thursday October 23, 2014, the student rode a bus with Tyler. The student told Tyler that he should go home and kill himself or else everyone would know on Monday why he was being called a fag. Tyler died at home by suicide on Sunday night October 26, 2014.

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1825 Id.
1826 Id.
1830 Original Complaint, supra note 1827, at 15.
1831 Tyler’s Story, supra note 1828.
1832 Original Complaint, supra note 1827, at 16.
Tyler’s mother helped draft the Texas cyber assialment law.\textsuperscript{1835} She also filed suit against the new school.\textsuperscript{1836} The school settled.\textsuperscript{1837} As for the predatory male student? “Nothing happened to the kid,” said Tyler’s mother.\textsuperscript{1838} “[H]e almost cost another child his life about three months after Tyler passed [and] his parents moved him out of the state.”\textsuperscript{1839}

G. ASSAILMENT BY EXTORTION

Criminal laws against extortion prohibit “conditional threats to engage in unlawful acts.”\textsuperscript{1840} Extortionists usually want money\textsuperscript{1841} but laws in most states go beyond currency and cover demands for other belongings as well.\textsuperscript{1842} “A number of statutes leave the realm of property altogether and cover threats made to induce the victim to do ‘any act against his [or her] will.’”\textsuperscript{1843} In 2017, Alabama became one of the first states to criminalize sexual extortion.\textsuperscript{1844} Its Attorney General’s Office

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{1837}] Canales, \textit{ supra} note 1835.
\item[\textsuperscript{1838}] Roxanne Lynn Jones, \textit{Tyler’s Story}, FACEBOOK (Nov. 11, 2016), https://www.facebook.com/roxanne.l.garcia/videos/975395022566310/UzpfSTE3NDkyMTk0MzIwNjMwM6mTc0OTlyNTk1MjA2MjQyMQ/ (Roxanne Lynn Jones commenting Jan. 5, 2017 at 9:52 A.M.).
\item[\textsuperscript{1839}] Id.
\item[\textsuperscript{1840}] \textsc{Paul H. Robinson & Michael T. Cahill}, \textsc{Criminal Law} § 15.7 at 593 (2d ed. 2012).
\item[\textsuperscript{1841}] State v. Begyn, 167 A.2d 161, 166 (N.J. 1967). For example, “I will throw a brick through your store window unless you pay me protection money.” Jacob A. Stein, \textit{Blackmail, Extortion, and Other Highly Questionable Tactics}, 28 LITIG. 48, 50 (2002).
\item[\textsuperscript{1842}] \textsc{3 Wayne R. LaFave}, \textsc{Substantive Criminal Law} § 20.4(a)(3) (3d ed. 2018).
\item[\textsuperscript{1843}] Id.
\item[\textsuperscript{1844}] Katy Murphy, ‘Sextortion’ Will Be a Crime in California, MERCURY NEWS (Cal.), Oct. 7, 2017, at B1.
\end{itemize}
\end{footnotesize}
summed up the felony as “the use of threatening communications, often online, to induce the victim to engage in unwanted sexual activity.”

In 2015, Alabama high school bullies were hell-bent on getting a female classmate to commit suicide. They assailed her by extortion on social media: “Kill yourself or we will kill your family.” In another message, they sent the thirteen-year-old a picture of an actual gun. The girl, an experienced pageant participant, opted out of the ultimatum and made a report to local news. The bullies stopped but their scare tactics continued to wear on the girl.

H. ASSAILMENT BY TEMPTATION

Jordan Lewis (15) attended an Illinois high school. Students there called Jordan embarrassing names and tried to push him down flights of stairs. After the school screened an

1850 Gauntt, supra note 1846.
1851 Taylor, supra note 1849.
1852 Jordan Lewis, S. ILLINOISAN, Oct. 19, 2013, at 3B.
anti-bullying film on 16 October 2013, Jordan expressed suicidal thoughts. A student told him, “You don’t have the balls to kill yourself.” Jordan killed himself the next morning with a shotgun blast to the chest. His suicide note read, “Bullying has caused me to do this. Those of you know who you are.”

“Alex” (13) attended school in Chesapeake, Virginia. Girls from school taunted Alex, teasing him about his small size and challenging him to perform physical feats he could not accomplish. In addition, kids “were trying to dare him to commit suicide.” Alex used his grandfather’s antique shotgun to kill himself in June 2014. Alex said in a suicide note, “I’m tired of this. Tell my friends what I have done.” He left another message on his computer. It read, “The only way to get the respect you deserve is to die.”

I. MODEL ASSAILMENT LAW

(A) A person commits assailment when, with intent to induce an individual under the age of eighteen to attempt or complete suicide, the person recklessly and maliciously communicates,

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1854 Robert Patrick, Father’s Lawsuit Claims District Ignored Bullying of Son at School, ST. LOUIS POST-DISPATCH, July 1, 2014, at A11.
1856 Id.
1860 Id.
1861 Id. at 152-53.
1862 Id. at 153.
1863 Id. at 152.
1864 Id. at 153.
1865 Id.
conveys, sends, or transmits to the individual, directly or indirectly:

(1) a request to attempt or complete suicide,
(2) a solicitation to attempt or complete suicide,
(3) a command to attempt or complete suicide,
(4) a threat to expose an asserted fact about the individual which would subject the individual to hatred, contempt, ridicule, or embarrassment, unless the individual attempts or completes suicide,
(5) a threat to cause unlawful bodily harm upon the individual or any member of the individual’s family unless the individual attempts or completes suicide, or
(6) a challenge or dare to attempt or complete suicide.

(B) Assailment by request, solicitation, or command is a misdemeanor.

(C) Assailment by blackmail, extortion, or temptation is a felony.

(D) In a prosecution for assailment, it shall be an affirmative defense that the person gave timely warning to a school teacher, school administrator, or law enforcement officer as to:

(1) the existence of the assailment,
(2) the identity of the individual assaulted, and
(3) the person’s participation therein.

A warning shall be presumed timely if initiated by the person within ten (10) minutes from the moment the assailment is communicated, conveyed, sent, or transmitted.

(E) In the event a person is charged with assailment in the juvenile court, the juvenile court shall make counseling services available to both the person charged and victim as soon as practically possible.

IX. TAKE-BACK DEFENSE

A. PRESSURE AND TIME

Osborne “Ozzie” Smith was born in Alabama. Smith moved with his family to Los Angeles at the age of six. As a child, Smith visited a neighborhood lumberyard and

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1867 OZZIE SMITH WITH ROB RAINS, WIZARD 6 (1988).
backflipped into mounds of sawdust.\textsuperscript{1868} In high school, he played baseball alongside future Hall of Famer Eddie Murray.\textsuperscript{1869} After graduating in 1973, Smith played at California Polytechnic State University (“Cal Poly”).\textsuperscript{1870}

The Detroit Tigers drafted Smith in 1976\textsuperscript{1871} following his junior year of college.\textsuperscript{1872} According to Sports Illustrated, Detroit offered him a $4,500 signing bonus.\textsuperscript{1873} Smith wanted $10,000.\textsuperscript{1874} Negotiations ended without a deal\textsuperscript{1875} and Smith returned to Cal Poly for his senior season.\textsuperscript{1876} Smith signed with the San Diego Padres for $5,000 in 1977.\textsuperscript{1877}

The Padres made Smith their starting shortstop in 1978.\textsuperscript{1878} He performed a backflip one game\textsuperscript{1879} and the fans loved it.\textsuperscript{1880} The ceremonial backflip became Smith’s trademark for years to come in San Diego and Saint Louis.\textsuperscript{1881} Smith also earned a nickname for his spectacular defensive play: “The Wizard.”\textsuperscript{1882}

\textsuperscript{1869} \textsc{David Magee & Philip Shirley}, \textit{Sweet Spot} 95 (2009).
\textsuperscript{1873} Ron Fimrite, \textit{No. 1 in His Field}, \textit{Sports Illustrated}, Sept. 28, 1987, at 60, 68.
\textsuperscript{1875} \textsc{Anup Sinha & Bill Lajoie}, \textit{Character Is Not a Statistic} 81 (2010).
\textsuperscript{1876} Neumann, \textit{supra} note 1874.
\textsuperscript{1877} \textit{Ozzie Smith with Rob Rains}, \textit{Ozzie Smith: The Road to Cooperstown} 21 (2002).
\textsuperscript{1878} Brosnan, \textit{supra} note 1866, at 14.
\textsuperscript{1879} \textit{Smith}, \textit{supra} note 1877, at 21.
\textsuperscript{1880} Fimrite, \textit{supra} note 1873, at 68.
\textsuperscript{1881} \textit{Smith}, \textit{supra} note 1877, at 21.
\textsuperscript{1882} \textsc{Robert W. Cohen}, \textit{The 50 Greatest Players in St. Louis Cardinals History} 75 (2013).
Lenn Haruki Sakata\textsuperscript{1883} never had a nickname during his baseball playing days.\textsuperscript{1884} Sakata was born in Honolulu\textsuperscript{1885} on June 8, 1953.\textsuperscript{1886} He drove in the run that won the high school state championship in 1970.\textsuperscript{1887} After graduation, Sakata attended Treasure Valley Community College in Oregon\textsuperscript{1888} and later Gonzaga University.\textsuperscript{1889}

The San Francisco Giants drafted Sakata in 1972 but he did not sign.\textsuperscript{1890} “I had nothing to gain by signing with the Giants . . . since my scholarship was worth more than what they offered me,” explained Sakata.\textsuperscript{1891}

Next up were the Padres.\textsuperscript{1892} They drafted the all-star second baseman in 1974.\textsuperscript{1893} Again, Sakata did not sign.\textsuperscript{1894} “The Padres offered me $7,000 . . . but I didn’t feel the offer was right.”\textsuperscript{1895}

The Milwaukee Brewers drafted Sakata with their first pick in 1975.\textsuperscript{1896} This time he signed.\textsuperscript{1897} There was controversy,
though. Gonzaga’s coach claimed Milwaukee applied heavy pressure, used psychological tricks, and wore down Sakata’s resistance. According to the coach, Sakata had been “hot-boxed.”

After Sakata reportedly told Milwaukee his plan was to stay in school, there was a long-distance phone call. Milwaukee wanted Sakata to meet with a scout to execute a release. When Sakata arrived at the Spokane airport, there were two scouts, an executive, and a contract. “Aw, this guy doesn’t want to play pro ball. Let’s forget it,” said one scout during the meeting. “Oh, yes he does,” said the other. “Give him a chance to sign.”

The Brewers denied the coach’s claim. "If you call a conversation at an airport pressure, then it was pressure,” said the executive. “A conversation doesn’t necessarily constitute a hotbox,” he added. “If [Sakata] hadn’t expressed a willingness to play professional baseball and sign a contract, we’d have offered the youngster a sandwich and dropped the whole thing.”

Sakata, who was 21 years old at the time, believed it was a pressure situation. Sakata made his big-league debut with the Brewers in 1977 and played ten more seasons in the

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1898 Costello, supra note 1883.
1899 Harry Missildine, Brewer Blitz on Sakata, SEMI-WKLY. SPOKESMAN REV. (Wash.), Jan. 27, 1975, at 10.
1901 Missildine, supra note 1899.
1902 Id.
1903 Id.
1904 Id.
1905 Id.
1906 Id.
1907 Id.
1908 Brew Officials Deny Charges, LA CROSSE TRIB. (Wis.), Jan. 29, 1975, at 15.
1909 Id.
1910 Id.
1911 Id.
1914 Brewers Rally to Earn Split, After 7-0 Loss to Yankees, STEVENS POINT J. (Wis.), July 22, 1977, at 12.
majors.\textsuperscript{1915} He managed teams afterwards over a period of three decades.\textsuperscript{1916}

g Gabriella Green (12) was born in Michigan\textsuperscript{1917} and moved with her family to Florida in 2016.\textsuperscript{1918} Fast and athletic,\textsuperscript{1919} Gabriella stole the most bases on her softball team\textsuperscript{1920} and cartwheeled in the outfield during games.\textsuperscript{1921} She got three medals on track and field day\textsuperscript{1922} finishing first in one race without even trying.\textsuperscript{1923} A coach nicknamed her “Wheels” but she also went by “Gabs,” “Gabbie,” and “Princess Peach.”\textsuperscript{1924} Gabriella wanted to be a model and meteorologist.\textsuperscript{1925}

\textsuperscript{1915} \textsc{Joel S. Franks}, \textit{Asian Pacific Americans and Baseball: A History} 172 (2008).
\textsuperscript{1919} Stephanie Byrne, \textit{Foundation and Family Host 5K in Honor of Late Panama City Beach Girl}, NBC 7 \textsc{WJHG} (Jan. 9, 2019), https://www.wjhg.com/content/news/Foundation-and-family-host-5K-in-honor-of-late-Panama-City-Beach-girl.html.
\textsuperscript{1921} Byrne, \textit{supra} note 1919.
\textsuperscript{1922} Id.
\textsuperscript{1923} Gabriella Peyton Green, \textit{supra} note 1920.
\textsuperscript{1924} Id.
\textsuperscript{1925} Wrege, \textit{supra} note 1917.
Gabriella committed suicide on January 10, 2018.\textsuperscript{1926} The seventh grader\textsuperscript{1927} hanged herself in a closet at home.\textsuperscript{1928} Classmates had been harassing her for months.\textsuperscript{1929}

One student wanted to fight Gabriella.\textsuperscript{1930} There were memes about Gabriella’s physique and a picture of a gun to her head.\textsuperscript{1931} Other electronic messages demanded\textsuperscript{1932} and dared her to commit suicide.\textsuperscript{1933} The harassing texts and social media messages were “particularly heavy” on the day that she died.\textsuperscript{1934}

After learning of Gabriella’s death, a twelve-year-old bully deleted electronic messages.\textsuperscript{1935} When questioned by police, she was willing to admit causing problems for Gabriella\textsuperscript{1936} online and in person.\textsuperscript{1937} According to police, her actions “consisted of starting rumors of the victim having sexually transmitted diseases, vulgar name-calling . . . and threats to ‘expose’ personal and sensitive details of the victim’s life.”\textsuperscript{1938}

\begin{footnotesize}
\begin{enumerate}
\item[1926] Dion, supra note 1918.
\item[1928] Wrege, supra note 1917.
\item[1930] Dion, supra note 1918.
\item[1932] Parents of 12-Year-Old Florida Girl Say She Was Bullied into Suicide, TAMPA BAY TIMES (Jan. 23, 2018), https://www.tampabay.com/news/publicsafety/Parents-of-12-year-old-Florida-girl-say-she-was-bullied-into-suicide_164774447/.
\item[1933] Dion, supra note 1918.
\item[1934] Id.
\item[1936] Id.
\item[1937] Wrege, supra note 1917.
\item[1938] Id.
\end{enumerate}
\end{footnotesize}
Police questioned another twelve-year-old bully. He spoke with Gabriella just before her death. According to him, Gabriella discussed taking her life. He told Gabriella something to the effect of, “If you’re going to do it, just do it.” The boy said “he regretted that comment and tried to message her, but did not receive a response.” He did not alert a parent or law enforcement.

After Haley “Danielle” Cox disclosed future plans to design fashion, another Louisiana high school girl scoffed at the idea; she told Danielle, an insulin-dependent diabetic, no one would hire a designer with no legs. When Danielle played soccer, a different girl said she was wasting time. On numerous occasions, Danielle ran out of class crying because bullies kept picking on her. They kept saying she was ugly and refused to stop talking about her.

When Danielle felt suicidal on the evening of 24 January 2011, a close friend asked others to text Danielle uplifting words. A computer-literate teen from school did the exact

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1939 Lynch, supra note 1935.
1940 Id.
1941 Id.
1942 Id.
1943 Id.
1944 Smith, supra note 1929.
1945 Haley “Danielle” Cox, TIMES (La.), May 24, 2011, at 8A.
1948 Second Amended Complaint and Jury Demand, supra note 1946, at 11.
1949 Id.
1950 Id. at 16.
1951 Living with Bullying, BOSSIER PRESS-TRIB. (Nov. 18, 2013), https://www.bossierpress.com/living-with-bullying/.
1952 Second Amended Complaint and Jury Demand, supra note 1946, at 13.
1953 Devin White, Online Threat: Seminar to Address Prevention of Cyberbullying, TIMES (La.), Aug. 17, 2013, at 1L.
opposite. J.T. went to clamtxt.com around 11:30 p.m. and cranked out at least forty-six messages to Danielle’s phone. The website made it seem like the texts came from different numbers. Some of the texts Danielle received included “I won’t miss u” and “ur not important.” One posed the question, “Just end it all?”

Hours later Danielle attempted suicide by overdose. Her friend called police. A sheriff’s deputy went to where Danielle lived at two in the morning and said a report was made that Danielle had taken pills. Family rushed Danielle to the emergency room and J.T. bragged online about what he had done.

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1955 Id.
1959 Second Amended Complaint and Jury Demand, supra note 1946, at 13.
1960 Id.
1962 White, supra note 1953.
1963 Canfield, supra note 1957.
1964 KSLA News 12 Investigates: Cyber-Bullying and Suicide, supra note 1954.
1965 Lucia, supra note 1958.
1966 Second Amended Complaint and Jury Demand, supra note 1946, at 13.
1967 Id. at 14.
The sheriff’s office traced the text messages back to J.T. in February 2011. He was placed under arrest and booked into jail. Authorities charged him with a felony punishable by up to ten years at hard labor. In December 2013, J.T. apologized at sentencing saying, “I’m not proud of my actions.” “Nothing was right about it.”

J.T. could not make his apology to Danielle. She completed suicide on May 20, 2011. She hanged herself in a closet a few days before school was to let out for summer break. Danielle’s mother said, “As far as the constant bullying, depression sets in. If you don’t notice it and it keeps going, they’re just going to be done with it. That’s where suicide will come in.”

Viviana Aguirre (14) played guitar, drew pictures, and spent time social networking. She was bullied for years by four other teens. The girls called Viviana “emo”

1972 Bossier City Teen Takes Plea Deal in Cyberbullying Suicide Case, supra note 1961.
1974 Bossier City Teen Takes Plea Deal in Cyberbullying Suicide Case, supra note 1961.
1975 Id.
1976 Lex Talamo, Child Helpers, TIMES (La.), May 25, 2017, at 1A.
1977 Id.
1980 Diego Murcia, Se Disparan Suicidios por Acoso Cibernético, EL DIARIO (El Paso), Sept. 12, 2016, at 1.
and “worthless.” They told her to “go cry to [your] therapist.”

The cyber bullying escalated. The girls told Viviana that nobody would miss her. Somebody told Viviana to drown in a tub with her own blood. One girl sent Facebook messages telling Viviana to kill herself.

Viviana self-harmed but immediate family members never thought she would commit suicide. Still, her sixteen-year-old sister sensed something was wrong the night of January 2, 2014. After Viviana promised not to hurt herself, she was dead in less than an hour. She hanged herself in a closet.

Viviana had an extensive conversation with online friends prior to suicide. She wrote, “Im not giving up on you guys ok im giving up on myself on life I can’t handle it might as well end it.” The friends tried to convince her otherwise. Viviana’s final post read, “Before I do this, thank

1983 Id.
1984 Id.
1985 Id.
1986 Aaron Martinez, Goodwill, Fred Loya Insurance to Open Anti-Bullying Advocacy Center to Help Victims, EL PASO TIMES, Apr. 14, 2014, at 1B.
1995 Id.
1996 Id.
1997 Id.
you all who tried to keep me up. But hey, it didn’t work. Bye.”

Viviana’s family moved from their home in El Paso’s Lower Valley. Viviana’s mother said of Viviana years later, “I miss her. I miss her terribly. I just wish she would still be here.”

Randy Tabbutt from the El Paso County Sheriff’s Office said children need to get adults involved at any possible sign of suicide. “In [Viviana’s] case, they tried to do it on their own, and they we’re doing the best they could, you know, but again, we need to let the adults know,” Tabbutt said. “Even if we’re busy, we’ll break away from whatever we’re doing to go handle those calls, and we do respond very quickly. We take it very seriously.”

B. POLICE PREPAREDNESS

A criminal law against assailment should have more than one purpose. It should punish adult assailants and allow juvenile courts to rehabilitate the young ones but the primary purpose is to preserve life. A take-back defense may let some assailants off the hook but that is by design. There can be a small window of time between assailment and suicide. Police must be prepared to address a person in crisis.

2002 Id.
2003 Id.
Dylan Yount graduated from the University of Missouri in 2000. He moved to San Francisco, made some money, and bought nice things. February 2010 ushered in a new apartment. The Lofts at One Powell stand seven stories high officially but interior spaces are so vast the structure rises 134 feet. Dylan lived there with his girlfriend in a sixth-floor penthouse.

Dylan fought with his girlfriend on February 14. Two days later, he was alone. Dylan stepped out on the ledge overlooking the popular plaza below. Someone in the crowd shouted, “Jump!” A cop yelled up, “Get back inside your apartment, you fool!” Dylan jumped to his death minutes later.

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2010 Samaha, supra note 2006.
2011 Id.
2013 Samaha, supra note 2006.
2016 Id. at *5 n.4.
Dylan’s mother blamed police.\footnote{2017} She lamented the absence of arrests for suicide encouragement,\footnote{2018} took exception to her son being called a fool,\footnote{2019} and said too few officers were trained in crisis intervention.\footnote{2020} Although her claims did not succeed in court,\footnote{2021} the police made changes.\footnote{2022} Nearly half of the San Francisco Police Department has received forty hours of training in crisis intervention.\footnote{2023}

X. DO-IT-YOURSELF DEMOCRACY

A. THE INITIATIVE PROCESS

Four states had legislation permitting physician-assisted suicide in 2016.\footnote{2024} Then there were five states,\footnote{2025} then there were six,\footnote{2026} then seven,\footnote{2027} and now there are eight.\footnote{2028} In

\footnote{2018} Id.
\footnote{2019} Id. (Kathie Yount commenting February 20, 2015).
\footnote{2020} Id. (Kathie Yount commenting February 20, 2015).
\footnote{2024} Kristin Wyatt, Colorado Voters to Consider Suicide Drugs for Terminally Ill, WINDSOR BEACON (Colo.), Aug. 21, 2016, at 5W.
\footnote{2025} Medical Aid in Dying Approved, FORT COLLINS COLORADOAN, Nov. 19, 2016, at 5A.
\footnote{2026} Nanea Kalani, Medical Aid in Dying Becomes Law, HONOLULU STAR-ADVERTISER, Apr. 6, 2018, at B1.
\footnote{2027} Nicholas Pugliese, NJ Follows Other States on Assisted Suicide, ASBURY PARK PRESS (N.J.), Apr. 12, 2019, at 11A.
a physician-assisted suicide, the doctor prescribes a drug to his or her patient who self-administers a lethal dose orally. Oregon pioneered physician-assisted suicide. More than 1,500 assisted suicides have occurred in Oregon since the law was implemented in 1997.

States permitting physician-assisted suicide impose strict regulations on its availability and accessibility. “[M]inors are not afforded the right to physician-assisted suicide.” Neither are prisoners by virtue of prison policy or regulation. Nevertheless, “it is quite possible that unofficial and undocumented assisted suicide has occurred in prison settings.”

Incarcerated individuals do commit suicide – with or without the assistance of doctors. Between 2001 and 2014, more than 3,000 inmates killed themselves while in American prisons. Some believe bullying runs rampant in institutions such as schools and prisons where people are powerless to leave. In regard to prisons, it is true that “violence is real”

2031 Sarah Zimmerman, State Removes Assisted Suicide Wait for Certain Patients, STATESMAN J. (Or.), July 25, 2019, at 3A.
2032 Messinger, supra note 2030, at 655.
2034 Messinger, supra note 2030, at 657.
and a “concern for inmates.”  Although violence is common, “even more common is the fear of victimization.”

Between 2000 and 2014, more than 4,500 individuals killed themselves while in American jails. Suicide rates are higher in jail than in prison because “suicides are most common amongst people who are having their first experience with being incarcerated.” First-time detainees fear the unknown and are anxious about their physical safety. The Denver Post found that between January 2010 and June 2016, forty-eight (48) people died by suicide in Colorado jails.

A Colorado jail held family killer Christopher Watts in protective custody because of the publicity his case received. Watts never saw other inmates but at night could hear pounding on the walls, screaming, threats, and assailment. Watts said the following during a 2019 interview from a prison outside of Colorado:

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2041 Id.
2044 Dodson & Brown, supra note 2037, at 630.
2045 Noelle Phillips & Yesenia Robles, Jail Deaths in State: Figure Soars over 4 Years, DENVER POST, Jan. 15, 2017, at A1.
2046 Sady Swanson, Watts, Who Killed Wife and Daughters, Held Temporarily in Denver, FORT COLLINS COLORADOAN, Nov. 30, 2018, at 2A.
2049 Id.
Honestly, like, when I was sittin’ in that cell, I felt like I should die. I mean, I was listening to everybody telling me like, “Hey. If you use this and this you could hang yourself from that cell.” “You could do this and that.” “You could drown yourself in the toilet if you wanted to fill your toilet bowl up” or something like that. It was un-- They’ve been there a bunch of times. And, like, I was, at one point, I was listening to them. You know, I was like, you know, you know? I just felt like maybe I could, maybe there’s a different purpose for me somewhere. You know? Maybe it’s here. I don’t know. Like I prayed to God every day that he would move me away from Colorado. Like, move me away from, like, the D.O.C. there ‘cause I just knew… Like, they were saying, there’s a hit on me! Huh! They said if I was going to a D.O.C. in Colorado, like, I’d last a week and I’d be dead.2050

Oregon’s H.W. made it out of Clatskanie Middle/High School alive but not unscathed.2051 A pair of older, male students yelled insults at her.2052 Two others joined the pair in texting H.W. to commit suicide.2053 Students pushed and

2050 Id. Watts presumably referred to other inmates when he used the contracted pronoun “They’ve.”
2053 Id. at 10, 23.
tripped her in the halls. One told her, “Your life isn’t worth living. You should just kill yourself.” As a result of the foregoing, H.W. self-mutilated with scissors, razors, and broken glass. She also threatened suicide.

Jamel Myles (9) did not survive a Colorado grade school. Jamel played with Pokémon trading cards, watched cartoons, and loved pizza. He told his mother in July 2018, “Mom, I’m gay.” Jamel hanged himself in his bedroom three days after school started on August 20.

Jamel’s mother believes that her son told someone he was gay upon returning to school. She believes that
individual decided to pick on Jamel and “it just spread and . . .
became a worse situation.” On the day Jamel died, a girl at
school pulled his hair and knocked him to the floor. Jamel
told a sibling that other kids were telling him to kill himself.

Oregon passed its physician-assisted suicide law via
initiative. “Initiative is the power of the people,
individually of the legislature, to propose and enact
legislation.” This power allows citizens to propose a law[,] place it
on the ballot, and vote to adopt it into law.” The
initiative process is available in fourteen states including
Oregon. How does it work?

A person must first write a proposed law. He or she
must submit the proposal to an authorized member of state
government and then gather signatures on a petition.

The number of signatures necessary is frequently a small percentage
of the voters who participated in the last election but will

\footnote{Id.}
still require “a dedicated band of public-spirited volunteers, committed to their cause” or enough money to hire paid signature collectors.2079

“After the signatures have been obtained, the petition must be timely filed.”2080 “Once approved, the initiative is placed on the statewide ballot.”2081 “Typically, if a statutory initiative receives a majority of votes, it quickly becomes law.”2082 “Statutes enacted by the people directly under initiative are of equal dignity with those passed by the legislature.”2083

“Initiatives provide citizens with an opportunity to address issues that may have been ignored or addressed inadequately by state legislatures.”2084 They can be used “to enact laws affecting almost every conceivable area.”2085 Citizens do propose a variety of laws but criminal justice matters make up a very small percentage of ballot measures.2086 When citizens do create criminal laws, they usually involve animals.2087

2080 Initiative and Referendum, supra note 2072, at § 146:1.
2081 Perkins, supra note 2077, at 728.
2082 Gildersleeve, supra note 2073, at 1446.
2083 Statutes, supra note 1781, at § 146.
2085 Levinson, supra note 2076, at 1021.
2086 Tanya M. Larrabee, Vote “No” on Criminal Justice Ballot Measures, 42 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 207, 212 (2016).
B. SPEAK TO LAWMAKERS

Bullies targeted A.H. of Texas for months in 2018. Two males told A.H. to kill herself. “I ended up hurting myself because I felt like worthless and like everyone hated me,” said the sixteen-year-old. Her experience is one reason the Crandall City Council approved an ordinance that made bullying a misdemeanor. A.H.’s father got the ball rolling after he told the mayor about what bullying did to his daughter.

A pillar of her Connecticut high school, M.H. supported the theater, raised money for cross country, staged a Battle of the Bands, served on Student Council, held a

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2089 Id.
2091 Id.
2092 CRANDALL, TEX., CODE OF ORDINANCES, ch. 8, §§ 8.02.061, .063 (2019).
state-wide leadership position, made Honor Roll, and spoke at graduation. M.H. also used personal experience to help fortify her state’s anti-bullying laws.

When M.H. broke up with a boy sophomore year, there was an immediate backlash: close, mutual friends shunned her. When M.H. sought an explanation, one of them made it abundantly clear: they flat-out did not like her anymore. Things got worse.

The former friends repeatedly covered M.H.’s school locker dial with gum. They pilloried M.H. on social media: they said she was ugly and selfish; they called her vulgar names like “slut” and “whore;” they described her as

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2103 Id.
2104 Id.
2105 Id.
2106 Id.
2107 Legislative Testimony, supra note 2102.
2108 Id.
2109 Id.
“fat” and “worthless.” M.H. “got up to 40 Formspring questions a day from girls calling her a bitch and a loser. She . . . received text messages telling her to kill herself.” M.H. felt helpless and alone. Then she heard about Phoebe Prince.

“Hearing about what happened to Phoebe gave me the strength to realize that what was happening to me was not right and I had to do something about it.” After suffering almost a year of abuse, M.H. pulled the meanest of the girls aside one morning and chastened her. The coward denied everything but the bullying nearly stopped. M.H. next rolled up her shirtsleeves in a student government group and testified in support of a bill that added cyberbullying to the various types of harassment specifically banned at Connecticut schools.

C. LAWMAKER INITIATIVE

K.R. probably should have won a county fair singing competition after her performance of Baby Face in the under-twelve division – she was missing a front tooth! K.R. put the loss behind her and ascended to the tiara of Miss Tooele County 2018. At Miss Utah, K.R.’s platform was “Stop the B.S. (Body Shaming).” She had been called “fat chick” for years in high school.

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2110 Id.
2112 CTHouseDemocrats, supra note 2101.
2113 Id.
2114 Id.
2115 Legislative Testimony, supra note 2102.
2116 CTHouseDemocrats, supra note 2101.
2117 Id.
2118 Hallabeck, supra note 2099.
2119 CTHouseDemocrats, supra note 2101.
2120 State Bullying Legislation Since 2008, supra note 922.
2121 Karen Lee Scott, Good Times County Fair a Big Success, TOOELE TRANSCRIPT BULLETIN (Utah), Aug. 5, 2003, at A1. She placed second. Id. at A8.
2123 Erin Alberty & Scott D. Pierce, ‘Empowering’ or ‘Exploitative’ – Miss Utah Contestants Strut in Bikinis and High Heels One Last Time, SALT LAKE TRIB. (June 17, 2018),
school and was assailed on Snapchat during her senior year with “Kill yourself now.”

Representative Steve Eliason of the Utah State Legislature “knew a boy who was bullied at school and was told by his bullies he should just go home and kill himself.” “That’s what he did,” said Eliason.

Elected in 2010, Eliason believes it is “incumbent on legislators to address suicide.” Eliason, who has lost extended family to suicide, began work on suicide prevention after the death of a middle school student in his

2124 Id.  
2125 Id.  
2127 Id.  
2128 Jeremiah Stettler, Final Vote: Salt Lake County Auditor Loses, SALT LAKE TRIB., Nov. 17, 2010, at B3.  
2129 Maggie Clark, Suicide Prevention Efforts Grow in Statehouses, MORNING J. (Ohio), Sept. 18, 2013, at B2.  
district eight years ago. He won an award for his early efforts to make assisted suicide a crime and sponsored numerous bills in 2019 to help prevent youth suicide.

Eliason’s “ultimate objective is to see [Utah’s] numbers go down.” Unfortunately, Utah’s youth suicide rate increased ninety-three percent between 2006 and 2017. Forty-two (42) children between the ages of ten and seventeen

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2139 Nixon & Ritchey, supra note 2132.
completed suicide in 2017.\textsuperscript{2141} Lily McClish (13)\textsuperscript{2142} was one of them.\textsuperscript{2143}

Lily gave good advice when she won Student of the Month for January 2017.\textsuperscript{2144} “Be attentive in class. Don’t miss school. Get missing assignments done and turned in.”\textsuperscript{2145} She completed suicide later that month\textsuperscript{2146} after multiple boys\textsuperscript{2147} pelted her with a hailstorm of assailment: “Kill yourself. Kill yourself. Do it. Do it tonight. You’re going to do it anyway. You’re a monster. You should do it. You should hang yourself. You should shoot yourself. Do it tonight.”\textsuperscript{2148} The repulsive scene played out in front of witnesses who reported it the next day.\textsuperscript{2149}

\textsuperscript{2143} In Our Opinion: The Ongoing Need for Anti-Bullying Efforts, DESERET NEWS (Oct. 12, 2017), https://www.deseret.com/2017/10/12/20621362/in-our-opinion-the-ongoing-need-for-anti-bullying-efforts.
\textsuperscript{2144} GCMS Students of the Month, MOAB SUN NEWS (Jan. 19, 2017), www.moabsunnews.com/news/article_fa2c9a2e-de67-11e6-a6f7-4bb73fbe39a4.html.
\textsuperscript{2145} Id.
\textsuperscript{2147} Id.; Lily’s Story, LILY’S HOPE FOR KINDNESS, https://www.lilyshopeforkindness.com/lily-s-story (last visited Oct. 4, 2020).
\textsuperscript{2148} Reavy, \textit{supra} note 2146.
\textsuperscript{2149} Compare id., with Lily’s Story, \textit{supra} note 2147.
Lily’s death came as a terrible blow to her parents and drew a response from law enforcement. Police homed in on three boys at Lily’s middle school. The affidavit to obtain a search warrant stated, “Because of the severe emotional distress suffered by Lily at the hands of the three individuals, she committed suicide.” Lily’s mother felt the language used against her daughter by fellow students was the “tipping point.” “The last thing [Lily] needed to hear that day was ‘kill yourself tonight – do it, do it, do it.’”

Denise Fernatt of West Virginia worked as a secretary and taught Sunday school. Friends turned against her on Facebook in April 2017. "Please, just leave that alone," Roy Fernatt begged of his wife. "If they’re not talking about

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2150 Compare Mary Shinn, Local Center, LOSS Teams Help People Cope with Trauma, DURANGO HERALD (Oct. 12, 2018), https://durangoherald.com/youth-suicide-in-la-plata-county, with Lily’s Story, supra note 2147.

2151 Reavy, supra note 2146.

2152 Id.

2153 Id.


2155 Id.


2158 Id.


you, they’re talking about somebody else. Just leave it alone.”

Denise’s former friends hatched a plot in July. “Oh I can and will be a dirty bitch!” one woman texted another on July 25. “I will make the silly blonde with a head injury want to kill her self.” The women wanted double-sided tape, tacks, and “those nasty pics” of Denise. “It’s almost picture day!” one of them texted on July 27. On July 30, she wrote, “Done. We’ll see what happens.”

On the morning of July 31, there were no less than thirty photos of Denise clad in lingerie all over town. One was outside Denise’s front gate. Another was hung outside her church. They were on stop signs, utility poles, and at other public places like the post office. Denise was suspended from her job without pay on August 1 because of the pictures. She was fired August 3. Denise jumped to her death from the New River Gorge Bridge on August 5.

Police conducted a month-long investigation into Denise’s death. Prosecutors advised them that the circumstances did not violate existing criminal laws and no

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2161 Id.
2162 Lacie Pierson, *Family Files Wrongful Death Lawsuit After Bullying Victim’s Suicide*, CHARLESTON GAZETTE-MAIL, Aug. 4, 2019, at 1A.
2163 Id.
2164 Id.
2165 Id.
2166 Id.
2167 Id.
2168 Nashrulla, *supra* note 2157.
2169 Id.
2170 Barren, *supra* note 2160.
2171 Moore, *supra* note 2159.
2172 Nashrulla, *supra* note 2157.
2174 Pierson, *supra* note 2162.
2175 Id.
2177 Pierson, *supra* note 2162.
charges were filed. Roy Fernatt filed a wrongful death lawsuit against six people he says bullied his late wife. He hopes it brings accountability.

A West Virginia state legislator wants all the bases covered for holding people accountable when a person is encouraged to commit suicide. “We’re not trying to keep people from expressing their opinions,” said Senator Patricia Rucker. “That’s a First Amendment right.” Newspaper editors agreed but even they believe the law has to intervene.

As one prosecutor said, “We all know this conduct is reprehensible.” Anybody who would drive a person to take their own life . . . it’s just nothing short of terrible.

Twelve-year-old Sarah Butler hanged herself at home on September 26, 2009. Sarah attended an Arkansas high school, played in the band, loved to read, and had lots of
friends.\textsuperscript{2190} She was of the Baptist faith\textsuperscript{2191} and had just been voted Fall Festival Queen.\textsuperscript{2192} But two local youths harassed Sarah\textsuperscript{2193} and the school rumor mill said she was promiscuous.\textsuperscript{2194}

Sarah wrote in a suicide note that she couldn’t handle what others were saying about her.\textsuperscript{2195} The last social media message Sarah read on the day she died was from one of her tormentors.\textsuperscript{2196} “It basically said that she was easily forgotten,” said Sarah’s mother.\textsuperscript{2197} “And that she was just a stupid little naïve girl and nobody would miss her.”\textsuperscript{2198}

Sarah’s suicide “provided the impetus for Arkansas to reform its cyberbullying law to strengthen penalties against those charged with such acts.”\textsuperscript{2199} The last message Sarah received, however, standing on its own, could not be “criminally prosecuted without overstepping constitutional boundaries.”\textsuperscript{2200}

XI. FREEDOM OF RELIGION AND SPEECH

A. RELIGION AS A PROTECTIVE FACTOR

“The Prophet Muhammad is reported to have stated on several occasions that taking one’s own life – whether out of fear, pain, or despair – is absolutely forbidden, and that in the afterlife, a person who commits suicide will repeatedly commit

\textsuperscript{2190} Young, supra note 2187.
\textsuperscript{2191} Sarah Lynn Butler Memorial, supra note 2188.
\textsuperscript{2192} Young, supra note 2187.
\textsuperscript{2193} Tammy Curtis, Suicide Tied to Cyber Bullying, AREAWIDE MEDIA (Dec. 3, 2009), https://www.areawidenews.com/story/1591912.html.
\textsuperscript{2194} Id.
\textsuperscript{2195} Id.
\textsuperscript{2196} Id.
\textsuperscript{2197} Id.
\textsuperscript{2198} Id.
\textsuperscript{2199} Martha McCarthy, Cyberbullying Laws and First Amendment Rulings: Can They Be Reconciled?, 83 MISS. L. 805, 811 n.22 (2014).
suicide in perpetuity.” Only God has the right to take life according to Islam. The majority of Muslim scholars throughout history are in accord; they believe the Qur’an prohibits suicide in all circumstances.

Some say the Hebrew Bible and New Testament neither prohibit nor condemn suicide. Others say suicide is not explicitly condemned; or explicitly forbidden. “The Bible,” wrote one law student, “does not prohibit or condemn suicide, but instead merely describes the instances.” Then what was Satan doing with Eve? Why did he tempt Jesus to jump? It may be best to say that “[t]he Bible does not explicitly condemn those who commit suicide.”

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2203 Ahmed, supra note 2201, at 1107.
2210 O’Mathúna & Amundsen, supra, note 2206, at 478.
Afshana Haque is an assistant professor of family therapy at the University of Houston-Clear Lake. She says when a person is drowning in pain and on the verge of suicide, “there is little benefit in trying to determine their fate in the afterlife.” The last thing they need is to be shamed, questioned or judged. Still, religion is a protective factor and according to one study, eighty-four percent of clergy had been approached by a suicidal person for help.

V.W. reached a low point during her first year of high school. Some female freshmen wanted V.W. out of the picture and onto a path of self-destruction; they slipped notes into her locker telling her to commit suicide. Unhappy and scared, V.W. did not see life as worth living. She felt fortunate, however, to have the support of a faith-based community.


V.W. learned about humanitarianism by the age of three. She attended Jewish summer camps as a grade-schooler and joined a Jewish youth group in middle school. Guided by religious values at the age of fourteen, V.W. went to the aid of another bullied high school student. It was a case of knowing what to say.

V.W. said to the student, “Look. I’m in the same boat. You matter. You’re not the words you’re called in the hallway. We’re going to get through this together.” The student told V.W. his plan was to commit suicide after school but that she gave him hope.

J.M. tried to kill her bullies with kindness. She bought them candy and prayed for their souls. “I don’t want your prayers,” a bully protested. The bully told J.M. to kill herself, soothsaying that it would not be a sin because of J.M.’s Christian faith. “God will forgive you,” the bully mocked. J.M. is now a teacher in Pennsylvania.

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2223 Blair Craddock, Jewish Federation Makes Calls for Donors to Aid Those in Need, J. NEWS (N.Y.), Feb. 4, 2002, at 1B. V.W. explained that a tzedakah box is “for the poor peoples so they can buy food, medicine or even a house if they need one.” Id.

2224 Peter D. Kramer, Anti-Bullying Project Founder Gets $36K Award, J. NEWS (N.Y.), June 28, 2016, at 8A.


2226 Gerber, supra note 2222.


2228 Gerber, supra note 2222.

2229 Kramer, supra note 2224.

2230 Id.

2231 Mcdaniel-Ogletree, supra note 2216.

2232 Kramer, supra note 2217.

2233 COUGHLIN, supra note 547, at 73.

2234 Id.

2235 Id. at 73-74.

2236 Id. at 73.

2237 Id.

2238 Id.
B. **Free Speech Jurisprudence as a Protective Factor**

Sixth-grade student P.S.\(^{2239}\) stood up for a bullied girl in Spanaway, Washington.\(^{2240}\) Classmates afterwards posted an animated video on YouTube.\(^{2241}\) *The Top 6 ways to Kill [P.S.]!* said, “First…Shoot her!”\(^{2242}\) Other methods included pushing P.S. off a cliff or making her commit suicide.\(^{2243}\) P.S. felt numb when she first viewed the video.\(^{2244}\) The school recommended a call to law enforcement.\(^{2245}\)

The sheriff did not believe that there was a real threat\(^{2246}\) and no charges were filed.\(^{2247}\) Could legislators make a criminal law to cabin this behavior?\(^{2248}\) “Here’s where the problem is,” said on-air legal analyst Lisa Green.\(^{2249}\) “It’s speech. We have a First Amendment, and . . . we gotta’ be really careful about how


\(^{2241}\) *Id.*


\(^{2243}\) *Id.*

\(^{2244}\) *Id.*


\(^{2246}\) *Id.*

\(^{2247}\) *Id.*


\(^{2249}\) *Id.*
we govern communication. Even something like this, which all parents can agree is frightening.”

There are limitations on what can be criminalized. The First Amendment of the U.S. Constitution prevents the federal government from taking away our right of free speech and that right cannot be taken by states, either.

“Nevertheless, there are categories of communication and special utterances to which the majestic protection of the First Amendment does not extend.”

“A direct solicitation of unlawful activity may of course be proscribed.” Neither does the Constitution protect fighting words nor true threats.

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2250 Id.

2251 Foucha v. Louisiana, 504 U.S. 71, 80 (1992); State v. Roberts, 779 S.W.2d 576, 578 (Mo. 1989).

2252 U.S. CONSTIT. amend. I.


FIGHTING WORDS

Emilie Olsen (13)\textsuperscript{2258} was badly bullied\textsuperscript{2259} in many ways.\textsuperscript{2260} She started sixth grade in 2013.\textsuperscript{2261} According to a lawsuit, another sixth-grader followed Emilie into a restroom, handed her a razor and said, “Go kill yourself.”\textsuperscript{2262} The lawsuit claims the other girl told Emilie on social media to “go cut one of your vanes and die cuz I will be glad.”\textsuperscript{2263}

Emilie started middle school in August 2014.\textsuperscript{2264} Students kicked Emilie and told her, “Go kill yourself.”\textsuperscript{2265} Strategically-placed restroom graffiti appeared in very large lettering: “Go kill yourself Emilie”.\textsuperscript{2266} On December 1, Emilie

\begin{itemize}
\item \textsuperscript{2259}WCPO 9, Emilie Olsen: Uncovered Evidence Shows Bullying Was Factor in 13-Year-Old’s Suicide, YOUTUBE (May 13, 2015), https://www.youtube.com/watch?v=ukoPUXSr6J8.
\item \textsuperscript{2260}HLN, Emilie Olsen Lawsuit: Is School Responsible for Her Suicide, YOUTUBE (May 25, 2016), https://www.youtube.com/watch?v=3C5c22-dIKg; WCPO 9, Family Questions School over Bullying, YOUTUBE (Dec. 15, 2014), https://www.youtube.com/watch?v=cIhFkwEB-WU.
\item \textsuperscript{2261}Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand at \textsuperscript{¶} 31, Estate of Olsen v. Fairfield City Sch. Dist. Bd. of Educ., No. 1:15CV00787 (S.D. Ohio Sep. 29, 2017), 2017 WL 5558954.
\item \textsuperscript{2262}Id. at \textsuperscript{¶} 35. But see Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand at \textsuperscript{¶} 35, Estate of Olsen v. Fairfield City Sch. Dist. Bd. of Educ., No. 1:15CV00787 (S.D. Ohio Dec. 11, 2015), 2015 WL 8517818 (alleging that student told Emilie to “end her life.”).
\item \textsuperscript{2263}Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand, supra note 2261, at \textsuperscript{¶} 36.
\item \textsuperscript{2264}Id. at \textsuperscript{¶} 32.
\item \textsuperscript{2265}Id. at \textsuperscript{¶} 384.
\item \textsuperscript{2266}Yanan Wang, After Years of Alleged Bullying, an Ohio Teen Killed Herself. Is Her School District Responsible?, WASH. POST (May 23, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/05/23/after-years-of-alleged-bullying-an-ohio-teen-killed-herself-is-her-school-district-responsible.
made a New Year’s resolution to die. “God doesn’t want me alive. I know he doesn’t.”

The assailment of Emilie during sixth grade led to a disturbance in the middle school cafeteria on October 21, 2014. A student incident report read,

A girl named […] and her friend […] sat at my table at lunch and were asking me if I said for their friend [Emilie] to kill themself last year. They were following me around asking if I really did it. I said no and she said “If you’re lying I will find you and fight you.”

Emilie killed herself December 11, 2014. An eighth-grader was asked afterwards on Instagram if she had bullied Emilie. The alleged response: “Yeah and I am happy I did. One cracker down, one more to go. Emilie is a slut and lucky I did not find her and hang her.”

TRUE THREATS

Eugene Standley died of tuberculosis at a Detroit prison in 1903. Standley was serving a lengthy sentence for train
robery and manslaughter. He was an Indian country outlaw who covered victims with his gun “in the old-fashioned highwaymen style.” The stickup artist banded with John Boyd and George Meyers in April 1890. Together, they robbed a merchant on April 5.

On April 6, Standley, Boyd, and Meyers fought others at a creek. Meyers supposedly said to a ferryman, “Lay down that chain and throw out your rusty change.” The ferryman asked, “Don’t you want to cross?” Myers, taking aim with his pistol, answered, “No. It’s your money we’re after.” Meyers and one of the ferryman’s cohorts were killed in a shootout that followed.

Standley and Boyd were tried jointly for murder in federal court. Judge Isaac C. Parker at the close of the case instructed the jury as to felony-murder. “The commission of robbery is a crime that may cause the death of an innocent person,” he said. “[I]t is a probable and natural and reasonable consequence of an attempt to commit that crime that a human life will be destroyed. The very demand of a man who robs ‘Your money or your life!’ implies that human life is in jeopardy.”

The jury convicted the men of murder and Judge Parker sentenced them to death. The Supreme Court reversed and

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2275 S.W. HARMAN, HELL ON THE BORDER 325 (1898).
2276 A Daring Outlaw, FORT WORTH DAILY GAZETTE, Apr. 22, 1890, at 2.
2277 HARMAN, supra note 2275, at 323-24.
2279 Young but Wicked, INDIAN CITIZEN (Okla.), June 28, 1890, at 1.
2280 Boyd v. United States, 142 U.S. 450, 451-52 (1892).
2281 Id. at 451.
2282 Id. at 451-52.
2283 Id. at 452.
2284 Id.
2285 Young But, Oh My!, ARK. GAZETTE, June 24, 1890, at 3.
2287 Judges of the Circuit and District Courts of the United States, 45 F. v, vii (1891).
2289 Id. at 862.
2290 Id.
2291 They Must Hang, ARK. GAZETTE, Jan. 13, 1891, at 1.
remanded for a new trial. It said Parker erred in allowing the jury to hear about other exploits of Standley and Boyd. "Proof of them only tended to prejudice the defendants with the jurors, to draw their minds away from the real issue and to produce the impression that they were wretches whose lives were of no value to the community," wrote the Court.

In 2018, U.S. Congressman Greg Stanton was held up outside a restaurant in Phoenix. He had just finished dinner. As he walked to his car, a man approached and asked for money. Stanton said he was happy to help out with a few bucks.

Stanton was in the process of pulling out his wallet when the man brandished a "hatchet-type" weapon. The man asked Stanton to go to a darker area and tried guiding him there. Stanton handed over his wallet, ran back

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2292 Boyd, 142 U.S. at 458.
2293 Compare id., with Harry Echols, The Cache Creek Robber, Turns out to Be Eugene Stanley, ARK. DEMOCRAT, Apr. 30, 1890, at 6.
2294 Boyd, 142 U.S. at 458.
2297 Id.
2298 Id.
2299 Id.
2300 Bree Burkitt, Police: Ex-Mayor Stanton Robbed at Hatchet-Point, ARIZ. REPUBLIC, Oct. 15, 2018, at 4A.
2301 Former Mayor Greg Stanton Says He Was Robbed Outside Phoenix Restaurant, supra note 2296.
2302 Burkitt, supra note 2300.
2303 Former Mayor Greg Stanton Says He Was Robbed Outside Phoenix Restaurant, supra note 2296.
2304 Id.
inside and called police. Stanton lost his wallet but was otherwise unharmed. Not everyone is as fortunate.

Andrew Urdiales got into an argument with fellow Marines at Camp Pendleton, California. He left the base with a “big ole’ hunting knife” and was “feeling aggravated, pissed off.” He snuck up on college student Robbin Brandley as she walked alone to her car late at night.

“I think I said I wanted her purse,” Urdiales told police years later. According to Urdiales, Brandley said, “You got my purse.” Urdiales then proceeded to stab Brandley forty-one times to work out his “disappointment, anger, frustration.” Urdiales said that he did not check the purse for money and the robbery “was just an excuse.”

Dangerous adults do exist. “They may match the movements of the victim, stalk them slowly, and ask for

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2306 Burkitt, supra note 2300.
2307 Stanton Responds to Union Claim that Inaction as Mayor Led to Robbery, supra note 2305.
2309 Inside Evil with Chris Cuomo: Confessions of a Serial Killer Part 2 (HLN Television Broadcast July 1, 2019).
2310 Id.
2311 Id.
2312 Id.
2313 Id.
2314 Id.
2316 Phil Rockrohr, Urdiales Describes First Murder; Attorneys Say Tape Proves Insanity, TIMES (Ind.), May 11, 2002, at B4. Urdiales said “one time the knife got stuck. I had to put my foot on her to pull it out.”
2317 Rockrohr, supra note 2316.
2318 Id. The purse did in fact remain at the scene. Steve Hawk, Slaying: Student’s Death Puzzles Police, ORANGE Cty. REGISTER, Jan. 21, 1986, at B7.
directions or a cigarette in an attempt to get closer and closer.”

“The statement ‘If you don’t give me your wallet I will shoot you in the head’ would undoubtedly [constitute a true threat] in the right circumstances (for example, when uttered by someone holding a gun).”

“Go hang yourself faggot, or you’ll get another beating tomorrow” would also count as would other utterances of assailment.

NARROW TAILORING

Stephanie Johnson (12) of Minnesota loved basketball and had an infectious smile. Kids bullied the sixth-grader and told her to commit suicide. One assailant told Stephanie to “just go to the bathroom and kill [your]self.” “And that’s what [Stephanie] did,” said her father. Stephanie was found in a school bathroom on April 27, 2018. She was airlifted to a hospital where she died four days later.

Middle-aged William Melchert-Dinkel posed online as a suicidal female nurse. Sometimes, he was “Li Dao 25 f Minnesota,” and other times, “Cami,” 31, of Minneapolis.

2324 Id.
2325 Id.
2326 Id.
2327 Obituaries, ST. CLOUD TIMES (Minn.), May 6, 2018, at 15A.
2328 NKayt Selse, Dateline Dangerous Connection Nadia Kajouji Murder Bob McKeown Reports, YOUTUBE (Jan 29, 2015), https://www.youtube.com/watch?v=xgiM4V_5qlc.
2330 Id. at 18.
Nurse “Cami” pushed hard for Nadia Kajouji, 18, to hang herself in front of a webcam in 2008 but she jumped. “Li Dao” did the same thing in 2005 with Mark Drybrough, 32, but did not get to watch him die.

Police questioned Melchert-Dinkel in 2009. Melchert-Dinkel told them he entered into five suicide pacts over the years but admitted there was no genuine plan to kill himself. (He told Kajouji and Drybrough he would commit suicide immediately after they did.) The State of Minnesota charged Melchert-Dinkel with two felony counts of advising and encouraging suicide. The convictions that followed were reversed on First Amendment grounds.

“Speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern,” ruled the Minnesota Supreme Court. The court then struck the words “advise” and “encourage” from its aiding suicide statute. The court said any law that proscribes protected speech must be narrowly drawn to serve a compelling government interest.

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2333 Melchert-Dinkel, 816 N.W.2d at 706-07.
2335 816 N.W.2d at 711.
2336 Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum, supra note 2329, at 26-27.
2337 816 N.W.2d at 712.
2338 Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum, supra note 2329, at 39.
2339 Id. at 1.
2341 844 N.W.2d at 24.
2342 Id. at 24-25.
2343 Id.
Unlike Minnesota’s statute, the model assailment law is narrowly tailored. There is an actual problem of youth suicide and curtailment of certain speech is necessary to the solution. Further, the model law will not do violence to a vast realm of protected free speech including advice, opinions or a combination thereof. Finally, if a child threatens suicide and a well-meaning individual asks a question in order to help, the mens rea requirements of the model assailment law will put the individual outside the scope of prosecution and thus not have a chilling effect.

2344 Verified Complaint at ¶ 147, S.H. v. Ardsley Union Free Sch. Dist., No. 14CV 4396 (S.D.N.Y. June 18, 2014), 2014 WL 12783858 (This one student told R.H. on the school bus that he should do everyone a favor and just kill yourself (i.e., commit suicide) because no one will miss him.”); Melanie Lawson, Bullied Girl Was 12 When She Swallowed a Bottle of Pills, NEWS4JAX (July 21, 2017), https://www.news4jax.com/news/2017/07/21/bullied-girl-was-12-when-she-swallowed-a-bottle-of-pills (“You should kill yourself.”).

2345 In re A.J.B., 929 N.W.2d 840, 844 (Minn. 2019) (Chutich, J., dissenting in part) (“The pencil has more to live for than you tho.”); Web of Lies: Friend Request (Investigation Discovery television broadcast January 28, 2015) (“The world would be a better place without you.”).

2346 Maxine Bernstein, Classmate’s Bullying over Weight Led Girl, 12, to Kill Herself, Suit Claims, OREGON LIVE (Apr. 23, 2019), https://www.oregonlive.com/education/2019/04/classmates-bullying-over-weight-led-girl-12-to-kill-herself-suit-claims.html. A boy allegedly told the girl that she should kill herself because she was a waste of space and no boy would ever like her. Id. The girl left notes attributing her suicide to the bullying boy according to an attorney. Id.

2347 TERI BREQUET, FREQUENTLY ASKED QUESTIONS ABOUT CYBERBULLYING 8-9 (2007).
“A variety of terms are used around the world for workplace bullying.”2348 Japan refers to it as power harassment.2349 Germany uses mobbing.2350 France has moral harassment.2351 The French criminalized moral harassment in 2002.2352 The maximum punishment was originally a year in prison and 15,000 euros.2353 Now the max is two years and €30,000.2354 Phone company France Télécom (or “Télécom”) made Didier Lombard its Chief Executive Officer in February 2005.2355 Lombard, an engineer,2356 had never run a business – let alone one that employed hundreds of thousands.2357 He vowed to reduce debt2358 but soon spent billions to acquire a mobile-phone operator in Spain.2359 Télécom’s stock price fell.2360

2348 Ellen Pinkos Cobb, Comparing and Contrasting Workplace Bullying and Mobbing Laws in Other Countries with the American Legal Landscape, in 2 WORKPLACE BULLYING AND MOBBING IN THE UNITED STATES 435 (Maureen Duffy & David C. Yamada, eds., 2018).
2349 Id.
2350 Id. at 435-36.
2354 CODE PÉNAL art. 222-33-2 (Fr.).
2357 Profile: Didier Lombard, SUNDAY BUS. (London), Mar. 6, 2005, at 1.
2358 Wendlandt, supra note 2356.
2359 Rudy Ruitenberg & Paul Tobin, France Telecom Moves into Spain, GAZETTE (Montreal), July 28, 2005, at B8.
Shareholders complained. A market analyst said in November, “The fashion today is not to believe anymore in telecoms, and in particular . . . France Télécom.”

In January 2006, Lombard made Louis-Pierre Wenès the head of “group transformation and French operations.” Olivier Barberot was in charge of human resources. The trio called themselves “the Good, the Bad, and the Ugly.”

During a conference call with analysts in February, Lombard announced the NExT plan along with its social component ACT. Part of the plan was to have twenty-two thousand Télécom workers voluntarily leave their employment.

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2361 Id.
2362 Id. (accentuation added).
2365 New Team for France Telecom, GLOBAL TELECOMS BUS., Jan./Feb. 2006, at 8, 8.
2366 Emeline Cazi, La Mécanique de la Chaise Vide, MONDE (Paris), Dec. 12, 2014, at 11.
over the period 2006 to 2008. Lombard had assigned a difficult task.

The staffing reduction was centered on France where Télécom employed 125,000 people. Télécom could not just fire whoever it wanted because many enjoyed the security of civil-servant status, a legacy of when the company was government-owned. That made a majority of the workers—88,000 of them—“virtually unsackable.” In addition to

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2370 Q4 2005 France Telecom Earnings Conference Call - Final, supra note 2368. Lombard said during the call that Wenès was “the father of all this cost cutting.” Id. Lombard said a year later that Barberot was in charge of the “headcount evolution” program. Q4 2006 France Telecom Earnings Conference Call - Final, FAIR DISCLOSURE WIRE, Mar. 6, 2007, https://search.proquest.com/docview/466294401/B2D71DF1A3F4007PQ/1?accountid=57841.

2371 France Telecom’s Time Frame Dulls Pain of Planned Cost Cuts, WALL STREET J. (Brussels), Feb. 15, 2006, at 17.

2372 Adam Jones, France Telecom to Cut 17,000 Jobs, FIN. TIMES (London), Feb. 14, 2006, at 1.

2373 Adam Sage, France Telecom to Cut 17,000 Jobs, TIMES (London), Feb. 15, 2006, at 47.

2374 Jones, supra note 2372.


2376 Jones, supra note 237.

2377 Sage, supra note 2373.

2378 Henry Samuel, Suicides Rock Telecom Firm, WINDSOR STAR (Ont., Can.), Oct. 5, 2009, at C3. The rest of the workers were protected by strict French labor laws. Leila Abboud, Exit Strategy: At France Telecom, Battle to Cut Jobs Breeds Odd Tactics, WALL STREET J., Aug. 14, 2006, at A1. “Unless employees are demonstrably incompetent or steal something, they rarely are fired because the process is expensive, slow and lawsuit-prone.” Id.
strong worker protections, civil servants received generous benefits. But “[o]ne does not have to be an employment expert to know that an employer can make an employee’s job undesirable or even unbearable without money or benefits ever entering the picture.” Unwanted workers can be demoted, relocated far from their homes, or given different jobs on an almost continual basis. Management can also set unobtainable goals and then scream at the unwanted when they fail to meet targets.

Lombard addressed executives and senior management on the evening of October 20, 2006. As a secretary tape recorded, Lombard did not mince words in regard to the 22,000 departures: “In 2007, I will make the departures in one way or another, by the window or by the door.” Executives asked the secretary ten days later to destroy the tape and all records from the convention. She kept a copy of the transcript in her garage, however, and police found it.

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2380 Collins v. Illinois, 830 F.2d 692, 704 (7th Cir. 1987).
2382 Sarah Waters, A Capitalism that Kills: Workplace Suicides at France Télécom, 52 FRENCH POL. CULTURE & SOC’Y 121, 141 n.48 (2014). “Whilst relocations are a well-used management technique to achieve staff cuts, [Télécom] was the first time that this technique was systematically used to slash thousands of jobs on a national scale.” Id. at 135.
2383 Id. at 121.
2384 Cazi, supra note 2366.
2386 Cazi, supra note 2366.
2387 Id.
2389 Compare id., with, Cazi, supra note 2366.
2390 Suicides à France Télécom: Un Document Accablant, supra note 2388.
French authorities charged Lombard, Wenès, and Barberot with moral harassment. The trial lasted months. A prosecutor challenged Lombard about the window or door statement, “You said these words in front of executives, the hard core, those on which everything will rest.” Another lawyer asked, “With this process of brutalizing speech, don’t you take the risk of uninhibiting managers?” The presiding judge questioned Lombard as follows: “Do the comments you are making have a performative value? It creates what it says, doesn’t it?”

Lombard: They create it when it’s written. Not when it’s oral. I have always used to speak very freely orally.
Louis-Loyant: So the choice of your words corresponds to your character?
Lombard: I make blunders, often.
Louis-Loyant: [The judge’s eyes widen] Blunders?
Lombard: Yes. Mistakes, let’s say.
Louis-Loyant: But if you let go, it’s because you say what you think.
Twenty-two thousand workers did leave Télécom between 2006 and 2008. Not all went “quietly into the night.” Many killed themselves. The trial focused on nineteen suicides, twelve attempts, and eight cases of serious depression.

The court convicted the defendants. “The methods used to reach 22,000 job cuts were illegal,” it said. A prosecutor felt the available punishment unsuitable: “The penalties foreseen by the law at the relevant time are very low. We can only ask for the maximum.” Lombard, Wenès, and Barberot each received a fine and a one-year prison sentence.

If you do not like your bullying boss in the U.S., “[y]ou’ll most likely need to find another job.” Generic verbal abuse is generally legal. You are also out of luck if you do not want children being assailed. Very few laws make assaultment a crime and those that do have significant shortcomings.

The late Sadie Riggs (15) wanted to be a firefighter or veterinarian. As the following assessment shows, she could have done either or both. Sadie loved to climb trees with her family.

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2397 Pascale Robert-Diard, Procès France Télécom: 22 000 <<Departs Naturels>> et des Questions, MONDE (Paris), May 18, 2019, at 10.
2400 Vaux-Montagny, supra note 2381.
2401 Nossiter, supra note 2399.
2402 Vaux-Montagny, supra note 2381.
2405 Maria Wollan, How to Deal with a Verbally Abusive Boss, N.Y. TIMES, Feb. 23, 2020, (Magazine), at 29.
2406 Id.
cats and was passionate about dogs. She was an honor roll student each and every year of middle school. In regard to temperament, a schoolteacher said this in eulogy: “I had the honor of being Sadie’s 8th grade English teacher. She was sweet, caring, and hard-working. She went out of her way to help others, and her smile would light up the room.”

Sadie never made it past a position at Pizza Hut. Bullies blew her off course in ninth grade and there was nothing that the school, loved ones, dramatic weight loss, social media countermeasures, truancy, self-harm, counseling, a doctor, prescribed medication, an attempt at

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2408 Cristina Rouvalis, Sadie’s Tree, PITTSBURGH MAGAZINE, July 2018, at 70, 73.
2410 Bedford Middle School Announces Honors Students for First Marking, BEDFORD/BLAIR CTY. SHOPPERS GUIDE (Pa.), Nov. 16 & 17, 2013, at 8; Bedford Middle School Students Recognized, BEDFORD/BLAIR CTY. SHOPPERS GUIDE (Pa.), June 21 & 22, 2014, at 11; Bedford Middle School Lists Honor Students for Last Marking Period, BEDFORD/BLAIR CTY. SHOPPERS GUIDE (Pa.), June 6 & 7, 2015, at 3; Bedford Middle School Pupils Make the Grades, BEDFORD/BLAIR CTY. SHOPPERS GUIDE (Pa.), Jan. 30 & 31, 2016, at 7.
2411 Bedford Middle School Students Assigned to Rooms, GAZETTE WEEKEND (Pa.), Aug. 15 & 16, 2015, at 2.
2415 Rouvalis, supra note 2408, at 76.
2416 Id. at 73, 75-76.
2417 Id. at 75.
suicide, in-patient psychiatric care, dropping out, or cardiopulmonary resuscitation could do about it.

The bullying floodgates opened in the Fall of 2016 when Sadie told a boy she had a crush on him. Students called her a “whore,” “red-headed she-devil,” “low-life,” and “bum.” In the Spring of 2017, Sadie dug a sweatshirt out from lost and found that had been there for a while. The true owner noticed Sadie wearing it and reported her to the office. Sadie apologized and took the sweatshirt off but bullies pounced; they humiliated her in the halls by shouting, “Hey, Sadie, you need my shirt? You too poor to buy one? Take mine!”

Classmates eventually told Sadie to kill herself. Sadie did that in June 2017 when she hanged herself from a tree with an extension cord. One boy said he was sorry for what he had said to Sadie but another crowed, “I’m glad she’s dead.” A year after the suicide, a high school sophomore who knew Sadie did not think her death changed anything. He added, “Bullying will never end.”

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2418 Id. at 76.
2419 Id. at 73.
2420 Id. at 75.
2421 Id.
2422 Id. at 76.
2423 Id.
2424 Id.
2425 Chuck, supra note 2409.
2426 Rouvalis, supra note 2408, at 73.
2427 Id. at 74.
2428 Id. at 77.
2429 Id.