

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 8

WINTER 2020

ISSUE 1

DEATH SENTENCE: A COMPENDIUM AGAINST ASSAILMENT

*John F. Serafine*¹

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/>.

TABLE OF CONTENTS

THE BEGINNING.....	4
I. OUR PROBLEM.....	5
A. <i>Youth Suicide</i>	5
B. <i>Suicide Provocation</i>	8
C. <i>Assailment Defined</i>	13
II. BULLYING.....	13
A. <i>How Children Bully</i>	13
B. <i>When Children Bully</i>	30
C. <i>Where Children Bully</i>	44
D. <i>Why Children Bully</i>	56
E. <i>Why Bullied Children May Not Report</i>	65
III. LAWS AGAINST BULLYING.....	71
A. <i>High School Hazing</i>	71
B. <i>Anti-Bullying Laws</i>	74
C. <i>Criminal Laws and Traditional Bullying</i>	77
D. <i>Criminal Laws and Cyber Bullying</i>	80
IV. LAWS PERTAINING TO ASSAILMENT.....	82
A. <i>The Common Law</i>	82
B. <i>Advise or Encourage Statutes</i>	87
C. <i>Soliciting Suicide</i>	89
D. <i>Grace's Law 2.0</i>	91
V. LACK OF LAW & ECONOMICS.....	96
A. <i>Legal Liability</i>	96
B. <i>Some of the Settlements</i>	99
C. <i>Law Enforcement Resources Wasted</i>	108
VI. STOPGAPS.....	111
A. <i>Motorcycle Escorts</i>	111
B. <i>Celebrity Assists</i>	113
C. <i>Protective Orders</i>	115
D. <i>Security Details</i>	118
E. <i>Switching Schools</i>	118
F. <i>Withdrawing From School</i>	121
G. <i>Home School</i>	122
H. <i>School Discipline</i>	122
I. <i>Bullying Prevention Programs</i>	125
VII. SOCIAL HARM.....	129
A. <i>Suicidal Thoughts</i>	129
B. <i>Attempted Suicides</i>	137
C. <i>Completed Suicide</i>	141
VIII. ASSAILMENT.....	143
A. <i>Guilty-Minded</i>	143

B. <i>Guilty Speech</i>	144
C. <i>Assailment by Request</i>	148
D. <i>Assailment by Solicitation</i>	149
E. <i>Assailment by Imperative</i>	151
F. <i>Assailment by Blackmail</i>	152
G. <i>Assailment by Extortion</i>	154
H. <i>Assailment by Temptation</i>	155
I. <i>Model Assailment Law</i>	156
IX. TAKE-BACK DEFENSE	157
A. <i>Pressure and Time</i>	157
B. <i>Police Preparedness</i>	167
X. DO-IT-YOURSELF DEMOCRACY	169
A. <i>The Initiative Process</i>	169
B. <i>Speak to Lawmakers</i>	176
C. <i>Lawmaker Initiative</i>	178
XI. FREEDOM OF RELIGION AND SPEECH	185
A. <i>Religion as a Protective Factor</i>	185
B. <i>Free Speech Jurisprudence as a Protective Factor</i>	189
THE END	199

THE BEGINNING

Our progenitors² were gardeners³ 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 age²⁰ and

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.

¹⁰ See *Genesis* 3:4.

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.²¹ Satan never stood a chance.

I. OUR PROBLEM

A. YOUTH SUICIDE

Unintentional injury, predominately from car wrecks, is a leading cause of death for children in the United States of America.²² So is suicide.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 2017.²⁴ Five-hundred, seventeen (517) children aged 10 to 14 completed suicide in 2017.²⁵

The suicide rate for persons aged 15 to 19 also went up.²⁶ It increased more than seventy-five percent from 2007 to 2017.²⁷ Two-thousand, four-hundred, ninety-one (2,491) people aged 15 to 19 completed suicide in 2017.²⁸

²¹ See *Philippians* 2:8.

²² Susan Perry, *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/>.

²³ *10 Leading Causes of Injury Death by Age Group Highlighting Unintentional, United States – 2018*, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL https://www.cdc.gov/injury/wisqars/pdf/leading_causes_of_death_by_age_group_2018-508.pdf (last visited Oct. 3, 2020).

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).

²⁵ Ann McAdams, *Community Looking for Answers After 14-Year-Old's Suicide*, WECT NEWS 6 (Oct. 7, 2019),

<https://www.wect.com/2019/10/07/community-looking-answers-after-year-olds-suicide/>.

²⁶ CURTIN & HERON, *supra* note 24, at 1.

²⁷ *Id.*

²⁸ Melonie Heron, *Deaths: Leading Causes for 2017*, NAT'L VITAL STAT. REP. 17 tbl. 1 (2019),

https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_06-508.pdf.

A noted psychologist called the new numbers “extremely disturbing.”²⁹ Others agreed.³⁰ “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.”³¹

Congress enacted the K.T. Safety Act of 2007.³² The law forced federal transportation officials to write a rule that would help prevent backover crashes.³³ An estimated two-hundred, twenty-eight (228) people died annually in these accidents³⁴ and close to half (111) were under the age of twenty.³⁵ As a result of the law, rearview cameras became a required feature on all new passenger vehicles starting May 1, 2018.³⁶

Meanwhile, five-hundred, ninety-six (596) children aged 10 to 14 killed themselves in 2018.³⁷ Twenty-eight were

²⁹ Rhitu Chatterjee, *CDC Finds Rising Suicide Rates for Young People*, NPR (Oct. 17, 2019), <https://www.npr.org/2019/10/17/770848694/cdc-finds-rising-suicide-rates-for-young-people>.

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.

³² See Pub. L. No. 110-189, 122 Stat. 639 (2008).

³³ Samuel D. Adkisson, *System-Levels Standards: Driverless Cars and the Future of Regulatory Design*, 40 U. HAW. L. REV. 1, 11, n.61 (2018). “A backover crash is a specifically-defined type of incident in which a non-occupant of a vehicle (most commonly, a pedestrian, but it could also be a cyclist) is struck by a vehicle moving in reverse.” Federal Motor Vehicle Safety Standard, Rearview Mirror; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements, 75 Fed. Reg. 76,186, 76,187 (Dec. 7, 2010) [hereinafter Backover Crash Regulation].

³⁴ Backover Crash Regulation, *supra* note 33, at 76,240.

³⁵ *Id.*

³⁶ Meghan Carbary, *Backup Cameras Are Now a Required Feature in All New Cars*, AUTO CREDIT EXPRESS (June 17, 2018), <https://www.autocreditexpress.com/blog/backup-cameras-are-now-a-required-feature-in-all-new-cars/>. The new regulation was expected to save 95 to 112 lives per calendar year, Backover Crash Regulation, *supra* note 33, at 76,187, and prevent many injuries. Cass R. Sunstein, *The Most Knowledgeable Branch*, 164 U. PA. L. REV. 1607, 1643 (2016).

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

from Ohio³⁸ 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

https://www.cdc.gov/injury/wisqars/pdf/leading_causes_of_death_by_age_group_2018-508.pdf (last visited Oct. 3, 2020).

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

³⁹ Olivia Fecteau, *Suicide Is Now the Leading Cause of Death for Children Ages 10 to 14 in Ohio*, ABC NEWS 5 CLEVELAND (Nov. 21, 2019), <https://www.news5cleveland.com/news/state/suicide-is-now-the-leading-cause-of-death-for-children-ages-10-to-14-in-ohio>.

⁴⁰ Rick B. Larsen & Patrice Onwuka, *Youth Mental Health Hangs in Balance. Philanthropy Can Help*, SALT LAKE TRIB. (Apr. 11, 2020), <https://www.sltrib.com/opinion/commentary/2020/04/11/rick-b-larsen-patrice/>.

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

⁴² Gracie Bonds Staples, *Ga. Must Address Epidemic of Teenage Suicide Attempts*, ATLANTA J.-CONST., Feb. 23, 2020, at B1.

⁴³ Abbott, *supra* note 30.

⁴⁴ Dennis Thompson, *Deaths Due to Suicide, Homicide on the Rise Among U.S. Youth*, HEALTH DAY (Oct. 17, 2019), <https://consumer.healthday.com/general-health-information-16/suicide-health-news-646/deaths-due-to-suicide-homicide-on-the-rise-among-u-s-youth-751349.html>.

⁴⁵ Audrey Conklin, *Experts Explain Possible Reasons Behind a 56% Jump in Youth Suicide Rate in 10 Years*, NAT’L INTEREST (Oct. 22, 2019), <https://www.nationalinterest.org/blog/buzz/experts-explain-possible-reasons-behind-56-jump-youth-suicide-rate-10-years-90096>.

⁴⁶ Anthony D. Pellegrini, *Bullying*, in 2 WORLD BOOK ENCYCLOPEDIA 698, 698 (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.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 books, faggot,” they

<https://www.timesfreepress.com/news/news/story/2010/apr/26/tackling-aggressive-behavior/14517/>.

⁴⁹ Bill Sheil, *A Mother’s Message After Losing Her Son to Bullying: ‘Force Them to Have Time with You’*, FOX 8 (May 16, 2016),

<https://www.fox8.com/news/moms-shares-painful-story-of-losing-son-to-bullying-to-help-others-force-them-to-have-time-with-you/>.

⁵⁰ REJECT (Golden Rule Films 2013).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Meghan Barr, *2 Families Sue Over Bullied Teens’ Deaths*, COLUMBUS DISPATCH, Oct. 10, 2010, at B7.

⁵⁴ Amber Patrick, *A Tribute to Eric P. Mohat*, MIDWEST ACTION (Mar. 26, 2014), <https://www.midwestaxn.com/music/a-tribute-to-eric-p-mohat/>.

⁵⁵ Compare Sara Goldenberg, *Mentor Mom Who Lost Teen Son to Suicide, Bullying Says More Needs to Be Done*, 19 NEWS (Aug. 12, 2017), <https://www.cleveland19.com/story/35419727/mentor-mom-who-lost-teen-son-to-suicide-bullying-says-more-needs-to-be-done/>, with Sheil, *supra* note 49.

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>.

⁵⁸ Mohat v. Horvath, No. 2013-L-009, 2013 WL 5450296, at *1 (Ohio Ct. App. Sept. 30, 2013).

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.⁶¹ The pair repeatedly pushed, shoved, and hit Eric.⁶² They pushed him into lockers, gave him smacks upside the head, threw things at him, flicked his ear,⁶³ and jabbed him with pencils.⁶⁴ “For several months before [Eric]’s death, he was constantly bullied and harassed.”⁶⁵ Eric attended an Ohio high school but kids said his math class was “hell on earth.”⁶⁶

“I get picked on every day and I’ve got a whole nine weeks left,” Eric told his mother.⁶⁷ Eric pleaded with his teacher, “I can’t take it anymore, I can’t take it anymore.”⁶⁸ The teacher intervened.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.”⁷⁰ Eric left school, went home, and shot himself to death at 4:16 p.m., March 29, 2007.⁷¹

Rosalie “Rosie” Avila (13)⁷² attended middle school in Calimesa, California.⁷³ Some students there⁷⁴ bullied her for

⁶¹ Meghan Barr, *1 School, 4 Bullied Teens – All Dead by Their Own Hand*, CINCINNATI ENQUIRER, Oct. 10, 2010, at A18.

⁶² Mohat, 2013 WL 5450296, at *1.

⁶³ MENTOR (Garden Thieves Pictures 2014).

⁶⁴ REJECT, *supra* note 50.

⁶⁵ Mohat, 2013 WL 5450296, at *1.

⁶⁶ Susan Donaldson James, *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>.

⁶⁷ *Id.*

⁶⁸ Goldenberg, *supra* note 55.

⁶⁹ REJECT, *supra* note 50.

⁷⁰ First Amended Complaint with Jury Demand at ¶ 14, Mohat v. Mentor Pub. Sch. Dist. Bd. of Educ., No. 1:09CV688, 2009 WL 2207653 (N.D. Ohio July 14, 2009).

⁷¹ MENTOR, *supra* note 63.

⁷² Edward Leon, *Rosalie Avila*, YOUTUBE (Mar. 9, 2018), <https://www.youtube.com/watch?v=aX8S-ocFZHQ>.

⁷³ Julia Jacobo & Sabina Ghebremedhin, *Family of 13-Year-Old California Girl Who Committed Suicide After Months of Bullying to File Wrongful Death Lawsuit Against the School District, Attorney Says*, ABC NEWS (Dec. 15, 2017), <https://abcnews.go.com/US/family-13-year-california-girl-committed-suicide-months/story?id=51820650>.

⁷⁴ Beth Dalbey, *Bullied to Death: When Kids Kill with Words*, PATCH (Aug. 7, 2019), <https://www.patch.com/us/across-america/bullied-death-when-kids-kill-words>.

months.⁷⁵ They called Rosalie a “wannabe,” said she tried too hard to fit in,⁷⁶ and claimed that her shoes were swap meet.⁷⁷ They made fun of Rosalie’s teeth,⁷⁸ said she was ugly,⁷⁹ and assassinated her character.⁸⁰ “They’re calling me a whore,” Rosalie complained.⁸¹ “They’re telling me that I have herpes [and other bad stuff].”⁸²

Rosalie began cutting herself in October 2017.⁸³ Family were supposed to meet with the principal about the bullying on November 26.⁸⁴ Rosalie did not want to face her bully, however.⁸⁵ Not yet in full bloom, Rosalie hanged herself at home on November 27, 2017.⁸⁶

⁷⁵ *Are Teens Being Bullied to Death*, DOCTORS (July 31, 2018), <https://www.thedoctorstv.com/articles/4649-are-teens-being-bullied-to-death>.

⁷⁶ Beth Dalbey, *13-Year-Old Hangs Herself, but Bullying Killed Her*, PATCH (Dec. 6, 2017), <https://www.patch.com/california/banning-beaumont/bullied-california-teen-hangs-herself-dad-vows-justice>.

⁷⁷ *Id.*

⁷⁸ Rob McMillan, *13-Year-Old Inland Empire Girl Who Committed Suicide Was Victim of Bullying, Family Says*, ABC 7 EYEWITNESS NEWS (Dec. 1, 2017), <https://www.abc7.com/bullying-leads-to-13-year-old-girls-suicide-ie-family-says/2724705/>.

⁷⁹ Boo2Bullying, *Charlene & Freddie Avila Parents of Rosalie RIP*, YOUTUBE (Feb. 7, 2018), <https://www.youtube.com/watch?v=D08JpYNJQjU>.

⁸⁰ Char Adams, *Bullied Teen Who Killed Herself Apologized for Being Ugly, Didn't Want Any Photos at Funeral*, PEOPLE (Dec. 20, 2017), <https://www.people.com/human-interest/bullied-teen-suicide-photo-funeral/>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Howard Blume, *Teen's Suicide Under Inquiry*, L.A. TIMES, Dec. 19, 2017, at B3.

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.redlandsdailyfacts.com/2018/05/15/bullying-that-led-to-suicide-attempts-death-at-la-inland-empire-schools-could-have-been-stopped-parents-say/>.

⁸⁵ *Id.*

⁸⁶ *Dad of IE Bullied Girl Who Killed Herself: 'Right Now Was Going to Be Her Time to Shine'*, ABC 7 (Dec. 18, 2017), <https://www.abc7.com/2795861/>.

A coroner declared Rosalie brain dead on December 1.⁸⁷ At a candlelight vigil⁸⁸ attended by hundreds,⁸⁹ police escorted two bullies from the assembly.⁹⁰ One had said, "I'm glad she's dead."⁹¹ At Rosalie's funeral, a classmate came forward and conveyed how "it was one girl who really just did her;"⁹² the ringleader told Rosalie, "You should just go kill yourself."⁹³

Valerie Carlson (15) lived in Aledo, Illinois.⁹⁴ Valerie loved animals, visited the elderly, and helped care for her twin sisters.⁹⁵ The toddlers looked up to "Sissie"⁹⁶ but high school students did just the opposite.⁹⁷

Boys and girls alike made fun of Valerie's short stature, sense of style, and sexual orientation.⁹⁸ The bullying sent the freshman into a tailspin of self-harm and time away from

⁸⁷ Suzanne Hurt, *Yucaipa Girl's Suicide Inspires Community Awareness Event Against Bullying*, REDLANDS DAILY FACTS (Dec. 15, 2017), <https://www.redlandsdailyfacts.com/2017/12/15/yucaipa-girls-suicide-inspires-community-awareness-event-against-bullying/>.

⁸⁸ Elizabeth Chuck, *Bullying Drove 13-Year-Old Rosalie Avila to Kill Herself, Parents Say*, NBC NEWS (Dec. 5, 2017), <https://www.nbcnews.com/news/us-news/bullying-drove-13-year-old-rosalie-avila-kill-herself-parents-n826281>.

⁸⁹ Hetty Chang, *Family to Donate Teen's Organs Following Tragic Death*, NBC 4 (Dec. 4, 2017), <https://www.nbclosangeles.com/news/13-year-old-girl-kills-herself-after-years-of-being-bullied/28544/>.

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.*

⁹⁴ Valerie Carlson, SPEER FUNERAL HOME, <https://www.speerfuneralhome.com/obituary/valerie-carlson> (last visited Oct. 3, 2020).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Jonathan Turner, *Friends Seeking Law as Tribute*, DISPATCH (Ill.), July 5, 2018, at A1.

⁹⁸ *Id.*

school.⁹⁹ A male student delivered the coup de grâce when she returned.¹⁰⁰ He yelled, “You’re worthless! The world would be better off without you! Kill yourself!”¹⁰¹ Valerie headed home and ended her life that day, March 28, 2018.¹⁰²

The assailant’s brazen words did not go unnoticed. A reporter quoted the boy in front-page news.¹⁰³ The boy’s mother wasted no time contacting the paper with picayune claims of factual inaccuracies¹⁰⁴ and said Valerie “was not a victim” while simultaneously pointing the finger at mental illness.¹⁰⁵ The mother said her son “knows he was wrong for what he did” and “was wailing on the floor . . . saying, ‘No, no.’”¹⁰⁶

Whether Jekyll stood “aghast before the acts of . . . Hyde” mattered not one iota to the family of a child¹⁰⁷ he trampled in the street.¹⁰⁸ The child’s family members loathed and hated Jekyll.¹⁰⁹ Jekyll paid them off out of fear for his own life.¹¹⁰ 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.¹¹¹

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Jonathan Turner, *Parent Disputes Account of Teen*, DISPATCH (Ill.), July 6, 2018, at A1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ ROBERT LOUIS STEVENSON, STRANGE CASE OF DR JEKYLL AND MR HYDE 116-17 (1886).

¹⁰⁸ *Id.* at 5-7.

¹⁰⁹ *Id.* at 6-7.

¹¹⁰ *Id.* at 117.

¹¹¹ Madison Conner, *Teens Fight Against Bullying After the Loss of a Friend*, WQAD 8 ABC (June 2, 2018),

<https://www.wqad.com/article/news/local/drone/8-in-the-air/teens-fight-against-bullying-after-the-loss-of-a-friend/526-ca46ebb2-603b-4f96-9176-4c8a2efc19fc>.

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

¹¹² 22 C.J.S. *Criminal Law: Substantive Principles* § 2 (2016).

¹¹³ 21 AM. 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.*

¹¹⁷ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 164 (3d ed. 1993).

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.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

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).

¹²³ LORI HILE, *BULLYING* 11 (2013).

¹²⁴ BARBARA COLOROSO, *THE BULLY, THE BULLIED, AND THE NOT-SO-INNOCENT BYSTANDER* 72 (2016).

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.

¹²⁸ Erica Breunlin, *‘Go Kill Yourself’ Is Popular Teen Expression. Is Bullying Culture Unavoidable?*, *KNOXVILLE NEWS SENTINEL* (Dec. 3, 2018),

<https://www.knoxnews.com/story/news/education/2018/12/03/teens-suicide-bullying-culture-kill-yourself/2161784002/>.

¹²⁹ EDWARD F. DRAGAN, *THE BULLY ACTION GUIDE* 17 (2011).

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 stalk¹³⁵ in order to demean, distress, or frighten another child.¹³⁶ It includes dirty looks and the implication of physical threat by gesture.¹³⁷ Nonverbal bullying does not involve a physical attack or actual words¹³⁸ but can be part of a process that reinforces bullying already going on.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.”¹⁴⁰

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

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

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

¹³⁵ *MUSD Defines Bullying*, MONROVIA WKLY. (Sept. 27, 2018), <https://www.monroviaweekly.com/education/musd-defines-bullying/>.

¹³⁶ *Id.*

¹³⁷ MARK PREVER, *MENTAL HEALTH IN SCHOOLS* 35 (2006).

¹³⁸ Giovanni Albanese Jr., *Beauty Pageant Winner on Mission to Counter Nonverbal Bullying*, INDIA-WEST, May 27, 2016, at A21.

¹³⁹ KEITH SULLIVAN, *ANTI-BULLYING HANDBOOK* 13 (2d ed. 2011).

¹⁴⁰ KEITH SULLIVAN ET AL., *BULLYING IN SECONDARY SCHOOLS* 4 (2005).

¹⁴¹ Complaint at 2, 5, *Keyser v. Bristol Warren Regional School District*, No. 1:19-cv-003516 (D. R.I. June 30, 2019).

¹⁴² *Id.* at 5.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 6.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 7.

¹⁴⁸ *Id.* at 8.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 8, 13.

¹⁵¹ *Id.* at 14.

¹⁵² *Id.* at 8.

2017.¹⁵³ On the last day of school, N.K. got off the bus with blood down his shirt.¹⁵⁴

When sixth grade started, A.S. approached N.K. in a hallway at school.¹⁵⁵ A.S. told N.K. he should kill himself.¹⁵⁶ N.K. became suicidal and went to the hospital that day.¹⁵⁷

RELATIONAL BULLYING

Relational bullying involves hurting someone's reputation or relationships.¹⁵⁸ It includes telling a target's secrets,¹⁵⁹ talking behind their back,¹⁶⁰ setting them up to look foolish,¹⁶¹ and spreading rumors.¹⁶² It includes leaving a target out on purpose, instructing other children not to be friends with them,¹⁶³ and instigating attacks.¹⁶⁴

Rebecca Sedwick (12)¹⁶⁵ loved her mom,¹⁶⁶ being silly,¹⁶⁷ and making up dance moves.¹⁶⁸ At Crystal Lake Middle School ("Crystal Lake"), Female Student 1, Female Student 2, and

¹⁵³ *Id.* at 13.

¹⁵⁴ *Id.* at 17.

¹⁵⁵ *Id.* at 18.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *What Is Bullying*, STOPBULLYING.GOV, <https://www.stopbullying.gov/bullying/what-is-bullying> (last visited Oct. 3, 2020).

¹⁵⁹ CARRIE GOLUS, TAKE A STAND! 26 (2013).

¹⁶⁰ BREZINA, *supra* note 130, at 18.

¹⁶¹ PAUL TIMM, SCHOOL SECURITY 110 (2015).

¹⁶² *What Is Bullying*, *supra* note 158.

¹⁶³ *Id.*

¹⁶⁴ PENNY LOW DEINER, INCLUSIVE EARLY CHILDHOOD EDUCATION 218 (6th ed. 2013).

¹⁶⁵ *Cops Probe Cyber Bullying in Death of 12-Year-Old Girl*, N.Y. POST (Sept. 13, 2013), <https://www.nypost.com/2013/09/13/cops-probe-cyber-bullying-in-death-of-12-year-old-girl>.

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_).

¹⁶⁸ *Funeral Held for Bullied Girl*, TAMPA TRIB., Sept. 17, 2013, at M2.

Rebecca started off friends.¹⁶⁹ After Female Student 1 turned on Rebecca,¹⁷⁰ she convinced Female Student 2 to do the same.¹⁷¹

In October 2012, Female Student 2 started a physical fight with Rebecca in between classes.¹⁷² The next month, Rebecca told her mom that she was being bullied.¹⁷³ In December, Rebecca was involuntarily committed for three days after cutting her wrists¹⁷⁴ to relieve stress.¹⁷⁵

In January 2013, an unknown student struck Rebecca on the arm as she passed a large group at Crystal Lake.¹⁷⁶ In February, Female Student 2 started another fight with Rebecca.¹⁷⁷ Rebecca left Crystal Lake later that month¹⁷⁸ because of accumulating harassment.¹⁷⁹ She attended a new middle school in August 2013.¹⁸⁰

¹⁶⁹ Pesta, *supra* note 167, at 165.

¹⁷⁰ Affidavit of Jonathan McKinney, Polk County Sheriff's Office, INTERNET ARCHIVE (Oct. 14, 2013), <https://www.archive.org/details/805066-shaw-and-roman-affidavits/page/n3/mode/2up> [hereinafter Sheriff's Office Affidavit].

¹⁷¹ *She Killed Herself 'But IDGAF'; 'Bullies' Busted*, N.Y. POST (Oct. 15, 2013), <https://www.nypost.com/2013/10/15/she-killed-herself-but-idgaf-i-dont-give-a-f-bully-teen-charged-in-girls-suicide/>.

¹⁷² Pesta, *supra* note 167, at 165; Arise America International, *11/22/13, Arise America, Florida Teen Bullying Case*, YOUTUBE (Nov. 25, 2013), <https://www.youtube.com/watch?v=9PX3HDRvfzA>.

¹⁷³ Pesta, *supra* note 167, at 166.

¹⁷⁴ *Sheriff Judd: Bullied Lakeland Girl Jumped to Her Death*, BAY NEWS 9 (Sept. 12, 2013), https://www.baynews9.com/fl/tampa/news/2013/9/12/sheriff_g rady_judd_t.

¹⁷⁵ Pesta, *supra* note 167, at 166.

¹⁷⁶ Paul Farrell, *Katelyn Roman & Guadalupe Shaw, Bully Suspects in Teen's Suicide: 5 Fast Facts You Need to Know*, HEAVY (Oct. 16, 2013), <https://www.heavy.com/news/2013/10/katelyn-roman-guadalupe-shaw-rebecca-sedwick-bullying-suicide/>.

¹⁷⁷ Sheriff's Office Affidavit, *supra* note 170.

¹⁷⁸ John Chambliss, *Part of Suit in Bullying Death of Rebecca Sedwick Is Thrown Out*, LEDGER (May 21, 2015), <https://www.theledger.com/news/20150521/part-of-suit-in-bullying-death-of-rebecca-sedwick-is-thrown-out>.

¹⁷⁹ Ryan Broderick, *"That Dead Girl"*, BUZZFEED (Dec. 5, 2013), <https://www.buzzfeed.com/ryanhatesthis/that-dead-girl-what-happens-to-a-family-and-a-town-after-a-c>.

¹⁸⁰ Pesta, *supra* note 167, at 166.

On August 12, anonymous posts appeared on Rebecca's Ask.fm social media account.¹⁸¹ Someone asked, "can u die plese."¹⁸² Rebecca answered, "nope but I can live".¹⁸³ The next post told Rebecca, "go die."¹⁸⁴ She declined, "no thanks, I think i'll live my life, just to make you mad".¹⁸⁵ A third post claimed, "nobody likes u".¹⁸⁶ Rebecca's riposte: "pfft. Spongebob does."¹⁸⁷ On August 26, Rebecca ended a page in her diary with one word – "suicidal."¹⁸⁸

On 6 September 2013, an unidentified poster under the mantle of Ask.fm tried to deceive Rebecca with "you seriously deserve to die".¹⁸⁹ Rebecca responded, "LIESSSSSSSS xDD Whateevvuurr".¹⁹⁰ On September 9, Rebecca leapt to her death¹⁹¹ from a cement silo at an abandoned concrete plant¹⁹² where she used to play with stray cats.¹⁹³ Police detectives found her remains the next day.¹⁹⁴

Students told police that Female Student 1 constantly bullied Rebecca at Crystal Lake.¹⁹⁵ Female Student 1 called

¹⁸¹ Weirnews2, *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.

¹⁹⁰ *Id.* The emoticon "xDD" means "laughing especially hard." XD, SLANGIT (Dec. 1, 2016), <https://www.slangit.com/meaning/xdd>.

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.

¹⁹⁴ Amy Pavuk, *12-Year-Old Girl Is Found Dead Near Home*, ORLANDO SENTINEL, Sept. 11, 2013, at B2.

¹⁹⁵ Sheriff's Office Affidavit, *supra* note 170, at <https://www.archive.org/details/805066-shaw-and-roman-affidavits/page/n1/mode/2up>.

Rebecca ugly,¹⁹⁶ threatened to fight her,¹⁹⁷ solicited student H.M. to instigate a physical fight with Rebecca,¹⁹⁸ and told Rebecca to “drink bleach and die”.¹⁹⁹ Student M.V. said no one wanted to be friends with Rebecca because Female Student 1 would bully them.²⁰⁰ Rebecca told student N.R. that she received messages from Female Student 1 telling her to kill herself.²⁰¹ For her part, Female Student 1 admitted sending Rebecca a Facebook message that read, “Nobody likes you”.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.”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.”²⁰⁴ Female Student 2 responded, “Yeah im bully I deserve to die I wish it was me and not her.”²⁰⁵

CYBER BULLYING

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

¹⁹⁶ *Id.*

¹⁹⁷ Tamara Lush, *Florida Bullying Case Raises Questions for Parents*, TALLAHASSEE DEMOCRAT, Oct. 17, 2013, at 2C.

¹⁹⁸ Sheriff’s Office Affidavit, *supra* note 170, at <https://www.archive.org/details/805066-shaw-and-roman-affidavits/page/n1/mode/2up> (last visited Oct. 3, 2020).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Kelly Wallace, *Police File Raises Questions About Bullying in Rebecca Sedwick’s Suicide*, CNN (Apr. 21, 2014), <https://www.cnn.com/2014/04/18/living/rebecca-sedwick-bullying-suicide-follow-parents/index.html>.

²⁰³ *Id.*

²⁰⁴ Pesta, *supra* note 167, at 167.

²⁰⁵ *Id.*

²⁰⁶ SAMEER HINDUJA & JUSTIN W. PATCHIN, BULLYING BEYOND THE SCHOOLYARD 12 (2d ed. 2015).

²⁰⁷ ANDREW ADESMAN & CHRISTINE ADAMEC, THE GRANDFAMILY GUIDEBOOK 188 (2018).

medium to bully others.”²⁰⁸ Bullies use phones, computers, and other electronic devices²⁰⁹ to target children in various ways.²¹⁰

Sending mean messages directly to a target is a frequent form of cyber bullying.²¹¹ Cyber bullying also includes threats, assaillment,²¹² name-calling,²¹³ rumor-spreading,²¹⁴ and the posting of hurtful comments,²¹⁵ photos or videos online.²¹⁶ It includes nasty phone calls,²¹⁷ silent calls,²¹⁸ and abusive or threatening voicemails.²¹⁹ Some cyber bullies create insulting webpages²²⁰ and fake social media profiles to make a victim look bad.²²¹

“Exclusion” is intentionally keeping a target out of an online group,²²² activity, or conversation.²²³ “Outing” refers to telling people a target’s personal and embarrassing information when the information was never supposed to be shared.²²⁴ With “impersonation,”²²⁵ a cyber bully obtains the target’s

²⁰⁸ Lucy R. Betts, *The Nature of Cyber Bullying Behaviours*, in VI ENCYCLOPEDIA OF INFORMATION SCIENCE AND TECHNOLOGY 4245, 4245 (Mehdi Khosrow-Pour, ed., 4th ed. 2018).

²⁰⁹ JUDY MONROE PETERSON, HOW TO BEAT CYBERBULLYING 4 (2013).

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).

²¹² *Cyberbullying Tactics*, STOPBULLYING.GOV (May 10, 2018), <https://www.stopbullying.gov/cyberbullying/cyberbullying-tactics>.

²¹³ EMMA JONES, WHAT’S CYBERBULLYING? 10 (2019).

²¹⁴ MARY LINDEEN, DIGITAL SAFETY SMARTS 9 (2016).

²¹⁵ JONES, *supra* note 213, at 10.

²¹⁶ PAM T. GLASER & JUDY MONROE PETERSON, SHUTTING DOWN CYBERBULLIES 9 (2020).

²¹⁷ *Id.* at 35.

²¹⁸ COLOROSO, *supra* note 124, at 65.

²¹⁹ *Id.*

²²⁰ GLASER & PETERSON, *supra* note 216, at 9.

²²¹ LARRY D. ROSEN, ME, MYSPACE, AND I 194 (2007).

²²² MICHELE BORBA, END PEER CRUELTY, BUILD EMPATHY 115 (2018).

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).

password²²⁶ and then sends or posts content the target would never send or post.²²⁷

Cyber bullies sometimes remain anonymous.²²⁸ This can “generate considerable fear on the part of the recipient.”²²⁹ “Not knowing who an aggressor is can cause adolescents to be hypervigilant in terms of surveying their social environment, both cyber and real.”²³⁰ Victims may “find themselves suspecting everyone, thus damaging relationships.”²³¹

Francie Diep met “Amanda” on the very first day of junior high.²³² The girls became close.²³³ Amanda brought grade school friends to the proverbial table whereas Francie liked books and fantasy.²³⁴ All got along for about a year and a half.²³⁵

When Francie fell out of favor, former friends dialed up the silent treatment at school.²³⁶ They pretended to whisper about Francie in the hall²³⁷ and sent her nasty emails.²³⁸ Someone hacked Francie’s Yahoo account and set up calendar reminders for her to commit suicide.²³⁹ “Throw myself off [so-and-so] Bridge,” the notifications read.²⁴⁰ An imaginative child,

²²⁶ Marilyn Campbell & Sheri Bauman, *Cyberbullying: Definition, Consequences, Prevalence, in REDUCING CYBERBULLYING IN SCHOOLS* 8 (Marilyn Campbell & Sheri Bauman, eds., 2018).

²²⁷ *Id.*

²²⁸ MILLER, *supra* note 211, at 8.

²²⁹ Campbell & Bauman, *supra* note 226, at 8.

²³⁰ Ted Feinberg & Nicole Robey, *Cyberbullying*, 74 EDUC. DIG. 26, 29 (Mar. 2009).

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.*

²³⁴ Francie Diep, *Confronting My Cyberbully, 13 Years Later*, ATLANTIC (Sept. 30, 2014), <https://www.theatlantic.com/technology/archive/2014/09/confronting-my-cyberbully-thirteen-years-later/380888/>.

²³⁵ Filbin, *supra* note 232.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Jeremy Hobson, *Bullying; From Both Sides: Former Perpetrator and Former Victim Reflect on Past*, WBUR (Mar. 20, 2018), <https://www.wbur.org/hereandnow/2018/03/20/bullying-cyberbully-victim>.

²³⁹ Diep, *supra* note 234.

²⁴⁰ *Id.*

Francie would see her “own hands on the bridge railing, the darkness of the water below.”²⁴¹

Now a journalist, Francie says, “[o]ne thing I really wish I’d done is save those emails and taken screenshots.”²⁴² “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.”²⁴³

In December 2017, a California twelve-year-old became suicidal.²⁴⁴ 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.”²⁴⁵ It was a voicemail from a gutter-mouthed classmate and his followers that pushed her to the edge.²⁴⁶

“You deserve to die,” the voicemail began.²⁴⁷ “I hope you [expletive] get hit by a bus you [expletive expletive],” the recorded message continued.²⁴⁸ In another vile snippet, one of the deviants said, “She look like [expletive] she came out of a used condom.”²⁴⁹ The call lasted one minute and five seconds.²⁵⁰

The girl did not keep the voicemail private.²⁵¹ Her parents called police²⁵² and played the message for a reporter.²⁵³ The reporter described the voicemail as being “laced with

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Sara Zendehtnam, *Parents Speak Out After 12-Year-Old Girl Receives Disturbing Voicemail from Classmate*, FOX 40 (Dec. 12, 2017), <https://www.fox40.com/2017/12/12/parents-speak-out-after-12-year-old-girl-receives-disturbing-voicemail-from-classmate>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Richard Bammer, *Cellphone Bullying Episode Stuns Vaca Pena Student, Parents, District Leaders*, REP. (Aug. 29, 2018), <https://www.thereporter.com/2017/12/13/cellphone-bullying-episode-stuns-vaca-pena-student-parents-district-leaders>.

²⁵¹ Zendehtnam, *supra* note 244.

²⁵² *Id.*

²⁵³ *Id.*

disgusting comments."²⁵⁴ The school took disciplinary action.²⁵⁵ Police said the boy who left the voicemail would be referred to a diversion program.²⁵⁶

HAND-WRITTEN BULLYING

Middle school student S.L. found an anonymous note in her locker.²⁵⁷ 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".²⁵⁸ A fake Instagram account used S.L.'s picture²⁵⁹ and was entitled, "bitchyourugly_".²⁶⁰ "Look at yourself ur a fat bitch," the first comment read.²⁶¹ The message ran on, "no one likes you kill yourself no one will miss you die whore".²⁶²

S.L. attempted suicide on summer break at the age of fourteen.²⁶³ The thought of going back to school in the fall frightened her.²⁶⁴ 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."²⁶⁵

PHYSICAL BULLYING

Physical bullying involves the use of force²⁶⁶ to "diminish or harm another repeatedly."²⁶⁷ "Pushing, shoving,

²⁵⁴ *Id.*

²⁵⁵ Bammer, *supra* note 250.

²⁵⁶ *Id.*

²⁵⁷ Jason Law & Eric Robinette, *No Changes to Bullying Policies, Official Says*, J. NEWS (Ohio), July 25, 2015, at A1.

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=mFl0vdthprw>.

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 WCPO 9, *supra* note 258.

²⁶⁶ JOANNE MATTERN, BULLYING 6 (2009).

²⁶⁷ ALEXANDRA HANSON-HARDING, HOW TO BEAT PHYSICAL BULLYING 4 (2013).

and hitting are kinds of physical bullying.²⁶⁸ This type of bullying also includes punching, kicking,²⁶⁹ tripping,²⁷⁰ spitting,²⁷¹ slapping, choking,²⁷² and twisting limbs into painful positions.²⁷³ Knocking books out of someone's hands counts.²⁷⁴ So does throwing objects²⁷⁵ such as food²⁷⁶ and trash.²⁷⁷

Bartłomiej "Bart" Palosz (15)²⁷⁸ experienced all manner of physical abuse at the hands and feet of other children.²⁷⁹ Bullies shoved Bart into thorn bushes on the way to school,²⁸⁰ slapped the nape of his neck in class,²⁸¹ pushed him down a

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).

²⁷¹ Kathy Hargrove, *Stop School Bullying: A Tale of Two Girls*, GIFTED CHILD TODAY, Oct. 1, 2010, at 39, 40.

²⁷² MILLER & LOWEN, *supra* note 270, at 5.

²⁷³ COLOROSO, *supra* note 124, at 73.

²⁷⁴ JENNY MACKAY, BULLYING 15 (2013). "Book-checking," JAN URBANSKI & STEVE PERMUTH, THE TRUTH ABOUT BULLYING 34 (2009), is a very common physical bullying behavior. JONATHAN MCKEE, THE BULLYING BREAKTHROUGH 124 (2018) ("One of the telltale behaviors of bullies is knocking books out of others' hands. It's probably the most common element I heard in . . . interviews I conducted."). See also R.A. Nelson, *Hiding Me*, in DEAR BULLY: 70 AUTHORS TELL THEIR STORIES 49, 50 (Megan Kelley Hall & Carrie Jones, eds., 2011) ("I had books knocked out of my hands in crowded hallways.") and Laura Kasischke, *The Alphabet*, in DEAR BULLY: 70 AUTHORS TELL THEIR STORIES, *supra*, at 159, 160 (describing books being kicked out of her arms).

²⁷⁵ LAURA PERDEW, BULLYING 21 (2015).

²⁷⁶ MILLER & LOWEN, *supra* note 270, at 5.

²⁷⁷ MELISSA HIGGINS, I AM CARING 17 (2014).

²⁷⁸ Rachele Blidner, *Family of Connecticut Teen Who Killed Self After School Bullying Sues Board of Education*, N.Y. DAILY NEWS (Aug. 14, 2015), <https://www.nydailynews.com/news/national/conn-family-teen-killed-sues-board-education-article-1.2325884>.

²⁷⁹ Amended Complaint at 12-15, *Palosz v. Town of Greenwich*, Docket No.: FST-CV-15-6026131 S (Super. Ct. Conn. May 6, 2016).

²⁸⁰ Brittany Lyte, *Sister Talks About Palosz, Bullying*, CT POST (Aug. 30, 2013), <https://www.ctpost.com/news/article/Sister-talks-about-Palosz-bullying-4773591.php>.

²⁸¹ Amended Complaint, *supra* note 279, at 14.

staircase,²⁸² and kicked him.²⁸³ One boy²⁸⁴ split Bart's forehead open with the corner of a metal locker door.²⁸⁵ Students who witnessed the incident said a bully did it on purpose.²⁸⁶ Bart's Connecticut middle school called it an accident.²⁸⁷ A Connecticut attorney remarked, "Smashing someone's head into the corner of a locker, that's assault and battery. That's a crime."²⁸⁸

"Physical bullying usually escalates over time and often involves groups of abusers"²⁸⁹ but it "is rarely the first means employed by bullies."²⁹⁰ "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]."²⁹¹ Taking a target's belongings²⁹² and theft have been categorized as forms of physical bullying.²⁹³

McKenzie Adams (9)²⁹⁴ won a grocery store coloring contest at age eight.²⁹⁵ At age nine, she was being called the "n

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 Staś Kmieć, *A Polish Boy's Struggle with Bullying*, POLISH AM. J., Oct. 2013, at 1, 5.

²⁸⁷ *Id.* at 5.

²⁸⁸ Justin Pottle, *Criminal Charges Rare in Bullying Cases*, CT POST (Sept. 16, 2013), <https://www.ctpost.com/news/article/Criminal-charges-rare-in-bullying-cases-4819766.php>.

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).

²⁹⁴ Robert Blankenship, *Elementary Student Commits Suicide*, DEMOPOLIS TIMES (Dec. 11, 2018), <https://www.demopolistimes.com/2018/12/11/elementary-student-commits-suicide-family-officials-at-odds-over-school-bullying>.

²⁹⁵ *Id.*

word"²⁹⁶ and "black bitch" by fourth-grade classmates.²⁹⁷ McKenzie lived in Linden, Alabama.²⁹⁸ She car-pooled²⁹⁹ to and from an elementary school in Demopolis³⁰⁰ where student bullies would ask, "Why you riding with white people?"³⁰¹ The bullies stole McKenzie's clothes,³⁰² assailed her in writing,³⁰³ and said, "You ugly."³⁰⁴

McKenzie died December 3, 2018.³⁰⁵ She completed suicide in a bathroom³⁰⁶ at home.³⁰⁷ Two police departments

²⁹⁶ CBS *THIS MORNING* (CBS television broadcast Dec. 12, 2018).

²⁹⁷ Stephanie Taylor, *Linden Family Mourns 9-Year-Old Who Took Her Own Life*, TUSCALOOSA NEWS (Dec. 11, 2018), <https://www.tuscaloosaneews.com/news/20181208/linden-family-mourns-9-year-old-who-took-her-own-life>.

²⁹⁸ Kelvin Reynolds, *Family of 9-Year-Old Suicide Victim Wants Bullying Investigation Reopened*, 6 WBRC (Jan. 4, 2019), <https://www.wbrc.com/2019/01/05/family-year-old-suicide-victim-wants-bullying-investigation-reopened>.

²⁹⁹ Tim Reid & Cory McGinnis, *West Alabama Mother Blames Bullying in Her Daughter's Suicide*, CBS 42 (Dec. 11, 2018), <https://www.cbs42.com/news/local/west-alabama-mother-blames-bullying-in-her-daughters-suicide>.

³⁰⁰ CBS *THIS MORNING*, *supra* note 296.

³⁰¹ Char Adams, *9-Year-Old Alabama Girl Dies by Suicide After Months of Bullying, Says Family: 'We're Heartbroken'*, PEOPLE (Dec. 12, 2018), <https://www.people.com/human-interest/mckenzie-adams-suicide-bullying/>.

³⁰² Sophia San Filippo, *'We Found McKenzie in the Bathroom. She Hung Herself. Get Here Now! It Was Too Late.': 9-Year-Old Girl Commits Suicide After Relentless Bullying, Family's Grief Inspires 'Anti-Bullying' Foundation*, LOVE WHAT MATTERS, <https://www.lovewhatmatters.com/i-was-getting-food-when-my-sister-called-hysterically-crying-whats-wrong-then-the-news-came-mama-said-she-found-mckenzie-in-the-bathroom-get-here-now-i-was-frozen-in-sh/> (last visited Oct. 21, 2020).

³⁰³ Glenn Beck Program, OMNY STUDIO (Dec. 13, 2018), <https://www.omny.fm/shows/the-glenn-beck-program/the-glenn-beck-program-hour-3-12-13-18> (interview of Eddwina Harris); Complaint at ¶ 46, *Adams v. U.S. Jones Elementary Sch.*, Civ. Action No. 2:20-cv-00027-TFM-N (S.D. Ala. Jan. 16, 2020).

³⁰⁴ Taylor, *supra* note 297.

³⁰⁵ Drew Taylor, *Family Lays 9-Year-Old McKenzie Adams to Rest*, TUSCALOOSA NEWS (Dec. 15, 2018), <https://www.tuscaloosaneews.com/news/20181215/family-lays-9-year-old-mckenzie-adams-to-rest>.

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

³⁰⁸ Kalhan Rosenblatt & Minyvonne Burke, *Alabama 9-Year-Old’s Family Says Bullying Drove Her to Suicide, Officials Are Investigating*, NBC NEWS (Dec. 11, 2018), <https://www.nbcnews.com/news/us-news/alabama-9-year-old-dies-suicide-after-racist-taunts-bullying-n946411>. State law enforcement also did work on the case. Drew Taylor, *Police Close Investigation of 9-Year-Old McKenzie Adams’ Suicide*, TUSCALOOSA NEWS (Jan. 1, 2019), <https://www.tuscaloosaneews.com/news/20190101/police-close-investigation-of-9-year-old-mckenzie-adams-suicide>.

³⁰⁹ Sarah Verser, *‘Tiny Be Mighty’ Founder Determined to Change Bullying Culture*, 6 WBRC (Feb. 28, 2019), <https://www.wbrc.com/2019/02/28/tiny-be-mighty-founder-determined-change-bullying-culture>.

³¹⁰ *Police Investigating 9-Year-Old Girl’s Apparent Suicide from Alleged Bullying*, ABC 7 EYEWITNESS NEWS (Dec. 12, 2018), <https://www.abc7.com/police-investigating-bullying-in-9-year-old-girls-suicide/4886851/>.

³¹¹ Harris, *supra* note 303.

³¹² Jonathan Hardison, *Is Alabama’s New Anti-Bullying Law Working*, 6 WBRC (Feb. 27, 2019), <https://www.wbrc.com/2019/02/27/is-alabamas-new-anti-bullying-law-working/>.

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.³¹⁹ Trina, the victim's mother, suspected a bully who had begun targeting her daughter in fifth grade with snarky comments.³²⁰ Aware of the escalation, the elementary school principal recommended police.³²¹ After police were unable to establish who wrote on the backpack,³²² school officials tried next.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."³²⁴ However, "[t]his was not just girls being dramatic," said Trina during a television news interview.³²⁵ "This was an eleven-year-old being told to kill herself."³²⁶

On Tuesday March 19, the bully yelled at the victim and the victim's friend.³²⁷ She yelled from her foul mouth, "f-ing retards!"³²⁸ The principal emailed Trina that afternoon.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."³³⁰

³¹⁹ Amanda Rose, *Mother Says Medford Schools Didn't Do Enough to Stop Bullying*, NBC 52 (May 21, 2019), <https://www.kobi5.com/news/mother-says-medford-schools-didnt-do-enough-to-stop-bullying-102476/>.

³²⁰ *Id.*

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>.

³²² Rose, *supra* note 319.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Amanda Rose, *Medford Bullying Pt. 2*, NBC 52 (May 22, 2019), <https://www.kobi5.com/news/Medford-bullying-pt-2-mother-says-bully-got-exactly-what-she-wanted-102568/>.

³²⁸ *Id.*

³²⁹ *Id.*

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 2.³³¹ Trina told a reporter what happened next.³³² "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.'"³³³ "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."³³⁴

In freshman biology, a bully took away Bart's new cell phone³³⁵ and broke it with the help of others.³³⁶ Bart's sister, at the time a high school senior,³³⁷ 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?"³³⁸ The boy and others he sat with just laughed.³³⁹ Bart's family reported the incident to a school counselor.³⁴⁰ No bullies were disciplined.³⁴¹ No charges were filed.³⁴² No restitution was made.³⁴³

Bart's sister was furious³⁴⁴ about another incident in Bart's freshman year.³⁴⁵ A boy on a bus ride home grabbed a beverage container from Bart and chucked the mug out a window.³⁴⁶ Bart's sister marched up the street and confronted

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.³⁴⁷ The boy said, “Bart’s a weirdo, so it’s okay.”³⁴⁸ He then locked the door in the sister’s face.³⁴⁹

B. WHEN CHILDREN BULLY

THE SCHOOL YEAR

A gentle giant,³⁵⁰ Bart did not³⁵¹ and would not fight back against his bullies.³⁵² Instead, he became teary-eyed when taunted,³⁵³ cried under the covers at home,³⁵⁴ and bit his hands during class.³⁵⁵ In the end, a once-enthusiastic young boy³⁵⁶ who did not always feel worthless³⁵⁷ did what some classmates told him to do.³⁵⁸ After the first day of high school his sophomore year, Bart killed himself.³⁵⁹

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Kmieć, *supra* note 286, at 1. Bart stood six-foot, three. *Id.*

³⁵¹ Paul Schott, *Family of Bart Palosz Sues Greenwich, Public Schools for Failing to Protect Him from Bullying*, GREENWICH TIME (Aug. 13, 2015), <https://www.greenwichtime.com/news/article/Family-of-Bart-Palosz-sues-Greenwich-public-6440176.php>.

³⁵² Dumas, *supra* note 284, at 83.

³⁵³ Brittany Lyte, *A Boy Lost: Bartłomiej Palosz, 1998-2013*, GREENWICH TIME (May 25, 2014), <https://www.greenwichtime.com/local/article/A-boy-lost-Bartłomiej-Palosz-1998-2013-5504174.php>.

³⁵⁴ Dumas, *supra* note 284, at 83.

³⁵⁵ Amended Complaint at 17, *Palosz v. Town of Greenwich*, Docket No.: FST-CV-15-6026131 S (Super. Ct. Conn. May 6, 2016).

³⁵⁶ Neil Vigdor, *Scouts Honor: Greenwich Youths Celebrate 100 Years of Tradition with 100 Community Service Projects*, GREENWICH TIME (May 10, 2010), <https://www.greenwichtime.com/local/article/scouts-honor-greenwich-youths-celebrate-100-481264.php#photo-177261>.

³⁵⁷ Lyte, *supra* note 353.

³⁵⁸ Dumas, *supra* note 284, at 82.

³⁵⁹ Brittany Lyte & Paul Schott, *Bullied GHS Student Commits Suicide After First Day of School*, GREENWICH TIME (Aug. 29, 2013), <https://www.greenwichtime.com/local/article/Bullied-GHS-student-commits-suicide-after-first-4767997.php>.

Bullying begins around fourth grade³⁶⁰ and increases during the late elementary years.³⁶¹ It peaks in middle school and usually decreases by tenth grade.³⁶² Although bullying is somewhat less frequent in high school,³⁶³ it does not disappear.³⁶⁴ Verbal abuse remains consistent across all grades³⁶⁵ and high school seniors report the highest rates of cyber bullying.³⁶⁶

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.³⁶⁷ 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.³⁶⁸ 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.³⁶⁹ Children

³⁶⁰ Barbara Blake, *Parents Can Help Kids Fight Bullies*, ASHEVILLE CITIZEN-TIMES (N.C.), Jan. 14, 2013, at B1.

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).

³⁶² 1 GALE ENCYCLOPEDIA OF PSYCHOLOGY 162 (Jacqueline L. Longe ed., 3d ed. 2016).

³⁶³ NANCY BOYD WEBB, SOCIAL WORK PRACTICE WITH CHILDREN 336 (4th ed. 2019).

³⁶⁴ Katherine Nelson, *Schools Must Take Action to End Bullying*, TIMES-NEWS (May 6, 2010), <https://www.blueridgenow.com/news/20100506/schools-must-take-action-to-end-bullying>.

³⁶⁵ JEAN WELCH SOLOMON & JANE CLIFFORD O'BRIEN, PEDIATRIC SKILLS FOR OCCUPATIONAL THERAPY ASSISTANTS 130 (4th ed. 2016); Azadeh F. Osanloo & Jonathan P. Schwartz, *What Is Bullying? Using Social Norming and Ecological Theories to Better Understand the Pandemic*, in CREATING AND NEGOTIATING COLLABORATIVE SPACES FOR SOCIALLY JUST ANTI-BULLYING INTERVENTIONS FOR K-12 SCHOOLS 7 (Azadeh F. Osanloo et al. eds., 2017).

³⁶⁶ April D. Johnston et al., *A Mixed Methods Evaluation of the "Aged-Up" STAC Bullying Bystander Intervention for High School Students*, PROF'L COUNSELOR, Mar. 2018, at 73, 73.

³⁶⁷ Benjamin Hansen & Matthew Lang, *Back to School Blues: Seasonality of Youth Suicide and the Academic Calendar*, 30 ECONOMICS OF EDU. REV. 850, 851-52 (2011).

³⁶⁸ Rory Linnane & Devi Shastri, *Fight Back*, J. SENTINEL (Wis.), Aug. 20, 2018, at 1A.

³⁶⁹ Gregory Plemmons et al., *Hospitalization for Suicide Ideation or Attempt: 2008-2015*, 141 PEDIATRICS, no. 6, 2018, at 1, 6.

have time off from school during summer³⁷⁰ but bullying still happens.

SUMMER VACATION

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

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

³⁷⁰ NIKHIL GOYAL, *SCHOOLS ON TRIAL* 29 (2016).

³⁷¹ *Expert Witnesses Testify in Trial of Woman Accused of Stabbing Teen in West Louisville*, WDRB (Sept. 6, 2018), https://www.wdrb.com/expert-witnesses-testify-in-trial-of-woman-accused-of-stabbing-teen-in-west-louisville/video_c72a6c34-e27d-535d-a26d-2fa5e639cc9e.html.

³⁷² Kevin Wheatley, *Mom Sues Counselor, 5 Students After Daughter Bullied into Suicide Attempt*, WDRB (Aug. 16, 2018), https://www.wdrb.com/news/education/mom-sues-counselor-students-after-daughter-bullied-into-suicide-attempt/article_fa302508-ca8f-57a1-92be-43e27a9fa0f7.html.

³⁷³ Darcy Costello, *Suit: Defendant's Sister Was Bullied*, COURIER-J. (Ky.), Aug. 20, 2018, at 3A.

³⁷⁴ Wheatley, *supra* note 372.

³⁷⁵ Costello, *supra* note 373.

³⁷⁶ Wheatley, *supra* note 372.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ Kasey Cunningham, *Stabbing Suspect's Mother Claims Daughter Was Bullied; Victim's Family Says Not True*, WAVE 3 NEWS (Aug. 10, 2017), <https://www.wave3.com/story/35760343/stabbing-suspects-mother-claims-daughter-was-bullied-victims-family-says-not-true/>.

favor!"³⁸⁰ Tiffany said her younger sister had been through a lot.³⁸¹

Two of the alleged bullies³⁸² followed Tiffany and S.J. to a gas station convenience store on June 26, 2017.³⁸³ While Tiffany and S.J. shopped, Madison Branch and C.O. orbited outside.³⁸⁴ Tiffany and S.J. exited the store when their eldest sister Megan arrived.³⁸⁵ Debra arrived on scene shortly thereafter.³⁸⁶

Video surveillance of the gas station parking lot suggests words were exchanged before S.J. charged at C.O.³⁸⁷ Madison stood back holding a cell phone in both hands as S.J. and C.O. fought.³⁸⁸ A passerby was filming³⁸⁹ as all hell broke

³⁸⁰ *Teenage Murder Suspect's Louisville Home Shot Up Following 14-Year-Old's Stabbing Death*, WDRB (June 29, 2017), https://www.wdrb.com/news/teenage-murder-suspect-s-louisville-home-shot-up-following-/article_4c063ca2-839d-5016-813b-ff877ea92527.html.

³⁸¹ *Woman Charged with Killing Teen in Portland Found Guilty of Reckless Homicide*, WDRB (Sept. 7, 2018), https://www.wdrb.com/news/woman-charged-with-killing-teen-in-portland-found-guilty-of/article_df6459bf-6844-54d6-a423-4b24beed735.html.

³⁸² Costello, *supra* note 373.

³⁸³ Shay McAlister, *Murder Trial Continues in Portland Stabbing Case Involving Teenage Girls*, WHAS (Sept. 6, 2018), <https://www.whas11.com/article/news/crime/murder-trial-continues-in-portland-stabbing-case-involving-teenage-girls/417-591575425>; Kentucky Criminal Jury Trials, *Tiffany James Murder Trial – Speedway Video in Portland*, YOUTUBE (Sept. 9, 2018), <https://www.youtube.com/watch?v=9MiYeVIvnUg>.

³⁸⁴ Tabnie Dozier, *'I Didn't Think I Hit Her': Louisville Murder Suspect Recounts Stabbing*, WHAS (July 17, 2017), <https://www.whas11.com/article/news/local/i-didnt-think-i-hit-her-louisville-murder-suspect-recounts-stabbing/457413701>; McAlister, *supra* note 383; Kentucky Criminal Jury Trials, *supra* note 383.

³⁸⁵ Kentucky Criminal Jury Trials, *supra* note 383.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ Dozier, *supra* note 384.

³⁸⁹ *Id.*

loose.³⁹⁰ The passerby captured on video the exact moment Tiffany stabbed Madison in the stomach.³⁹¹

“You stabbed me bro!” Madison screamed, “You stabbed me!”³⁹² Debra called 911.³⁹³ Tiffany tried to render medical aid³⁹⁴ but an expert testified that the only way Madison would have survived the injury is if it happened in the operating room.³⁹⁵ Madison was fourteen³⁹⁶ and had just graduated middle school.³⁹⁷

³⁹⁰ *14-Year-Old Stabbed to Death Trying to Help Friend, Family Says*, WLKY (June 27, 2017), <https://www.wlky.com/article/stabbing-reported-at-21st-and-rowan-streets/10225131>.

³⁹¹ Mike Fussell, *Trial of Teen Accused in Deadly Stabbing Continues*, WAVE 3 NEWS (Sept. 6, 2018), <https://www.wave3.com/2018/09/07/trial-teen-accused-deadly-stabbing-continues>.

³⁹² *Teenage Murder Suspect's Louisville Home Shot Up Following 14-Year-Old's Stabbing Death*, *supra* note 380.

³⁹³ Natalia Martinez, *Testimony Begins in Trial of Teen Accused in Deadly Stabbing*, WAVE 3 NEWS (Sept. 5, 2018), <https://www.wave3.com/2018/09/05/testimony-begins-trial-teen-accused-deadly-stabbing/>.

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>.

³⁹⁵ McAlister, *supra* note 383.

³⁹⁶ Matthew Rand, *Vigil Held in Portland for 14-Year-Old Stabbing Victim*, WLKY (July 1, 2017), <https://www.wlky.com/article/vigil-held-in-portland-for-14-year-old-stabbing-victim/10250866>.

³⁹⁷ *Update: Coroner Releases Name of 14-Year-Old Girl Stabbed to Death Near Speedway Gas Station*, WDRB (June 26, 2017), https://www.wdrb.com/news/crime-reports/update-coroner-releases-name-of--year-old-girl-stabbed/article_7c4d7266-e3b4-5452-a02c-432800e72937.html.

Tiffany was charged with murder.³⁹⁸ She claimed self-defense at trial.³⁹⁹ A jury convicted her of reckless homicide.⁴⁰⁰ The judge called the case “sad” and “depressing.”⁴⁰¹ Madison’s grandmother said the justice system was broken⁴⁰² after Tiffany got probation.⁴⁰³

Prior to trial, Madison’s aunt agreed that S.J. had been victimized on social media.⁴⁰⁴ Police said bullying is partially responsible for a spike in violence.⁴⁰⁵ Tiffany’s grandmother said, “I don’t like fighting, but like I said, it’s a shame bullying had to go this far.”⁴⁰⁶

³⁹⁸ Thomas Novelly, *Deadly Fight Between Teens Shakes Families*, COURIER-J. (Ky.), July 4, 2017, at 3A.

³⁹⁹ Shay McAlister, *Lou. Teen on Trial for Murder, Claims Self-Defense After Stabbing Another Teen*, WHAS (Sept. 6, 2018), <https://www.whas11.com/article/news/crime/lou-teen-on-trial-for-murder-claims-self-defense-after-stabbing-another-teen/417-591211440>.

⁴⁰⁰ Natalia Martinez, *Verdict Returned in Tiffany James Trial*, WAVE 3 NEWS (Sept. 8, 2018), <https://www.wave3.com/2018/09/07/verdict-returned-tiffany-james-trial/>.

⁴⁰¹ Kevin Trager, *Woman Who Fatally Stabbed Teen in Fight Avoids Jail Time*, WLKY (Oct. 30, 2019), <https://www.wlky.com/article/woman-who-stabbed-teen-in-fight-avoids-jail-time/24442312>.

⁴⁰² *Id.*

⁴⁰³ Natalia Martinez, *Tiffany James to Serve No Prison Time in Stabbing Death of 14-Year-Old*, WAVE 3 NEWS (Oct. 30, 2018), <https://www.wave3.com/2018/10/30/tiffany-james-serve-no-prison-time-stabbing-death-year-old/>.

⁴⁰⁴ *Families of Suspect and Victim Tell Different Stories After 14-Year-Old Louisville Girl Stabbed to Death*, WDRB (June 27, 2017), https://www.wdrb.com/news/crime-reports/families-of-suspect-and-victim-tell-different-stories-after-/article_84d26952-b5b1-5f68-96c2-39e051f40fe9.html.

⁴⁰⁵ *Girl, 14, Dies of Stab Wound; 19-Year-Old Woman Charged with Murder*, WAVE 3 NEWS (Aug. 10, 2017), <https://www.wave3.com/story/35753426/girl-14-dies-of-stab-wound-19-year-old-woman-charged-with-murder>.

⁴⁰⁶ Bethanni Williams, *19-Year-Old Charged with Murder After Stabbing; 14-Year-Old Victim ID’d*, WHAS (June 27, 2017), <https://www.whas11.com/article/news/crime/19-year-old-charged-with-murder-after-stabbing-14-year-old-victim-idd/417-452269326>.

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.”⁴⁰⁷ “Recess is often identified as the time when bullying is most frequent.”⁴⁰⁸ Cyber bullying can happen on any day of the week at any hour of the day.⁴⁰⁹

WEEKENDS

Colorado high school student K.A.⁴¹⁰ was hit with wave after murky wave of cruel, hateful comments via social media and text.⁴¹¹ As a result, K.A. attempted suicide on a Sunday at home in April 2013.⁴¹² She was found hanging in a garage.⁴¹³ Lack of oxygen⁴¹⁴ left her unable to speak.⁴¹⁵

K.A.’s bullying began in October 2012⁴¹⁶ but the week and the night before her attempt was “when it turned nasty.”⁴¹⁷ K.A. was told she should commit suicide.⁴¹⁸ The messengers said they would help by snapping her neck.⁴¹⁹ Days after the

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).

⁴⁰⁹ JEFF MAPUA, *COPING WITH CYBERBULLYING* 4 (2018).

⁴¹⁰ *Cyberbullying Bill Clears Hurdle in Colorado Senate After Mother’s Emotional Story*, 4 CBS DENVER (Mar. 4, 2015), <https://denver.cbslocal.com/2015/03/04/cyberbullying-bill-faces-tough-road-in-colorado-senate/>.

⁴¹¹ Tommy Simmons, *Cyberbullies Be Warned*, MIRROR, Mar. 2, 2015, at 5.

⁴¹² Denver7 – The Denver Channel, *Kiana’s Law Takes Effect Wednesday*, YOUTUBE (June 30, 2015), <https://www.youtube.com/watch?v=aMVBtjZPPzg>.

⁴¹³ Ivan Moreno, *Bill Seeks Cyberbullying Punishment*, FORT COLLINS COLORADOAN, Feb. 14, 2015, at A2.

⁴¹⁴ *Id.*

⁴¹⁵ Joey Bunch, *House Sets Its Sights on Cyberbullying*, DENVER POST, Feb. 14, 2015, at 4A.

⁴¹⁶ Denver7, *supra* note 412.

⁴¹⁷ Chris Michlewicz, *Local Show Examines Cyberbullying*, CASTLE PINES NEWS-PRESS (Colo.), Jan. 28, 2016, at 1.

⁴¹⁸ Andrea Dukakis, *Mom Recounts How Cyberbullying Nearly Killed Her Daughter*, COLO. PUB. RADIO (Jan. 27, 2016), <https://www.cpr.org/show-segment/mom-recounts-how-cyberbullying-nearly-killed-her-daughter/>.

⁴¹⁹ *Id.*

attempt,⁴²⁰ K.A.'s friends came forward with the messages that had been sent on social media.⁴²¹

DAY AND NIGHT

A.M. lived in New York when Hurricane Katrina struck.⁴²² The seven-year-old donated tooth fairy money to relief efforts⁴²³ and an additional \$3,300 made selling lemonade.⁴²⁴ When A.M. was eight years old,⁴²⁵ kids began to target her weight.⁴²⁶

The bullying persisted in the fourth and fifth grades when a popular boy waged an effort to get everyone to hate A.M.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."⁴²⁸ "They would tell me I was too fat to play on the swings and I would break them."⁴²⁹

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

⁴²⁰ TaRhonda Thomas, *Cyberbullying Survivor Hopes to Help Others*, HERALD TIMES REP. (July 31, 2015), <https://www.htrnews.com/story/life/moms/2015/07/31/cyberbullying-survivor-helps/30924643>.

⁴²¹ Michlewicz, *supra* note 417.

⁴²² Ken Valenti, *Hurricane Relief Funds Multiply*, J. NEWS (N.Y.), Sept. 2, 2005, at 5A.

⁴²³ *Id.*

⁴²⁴ Nanci G. Hutson, *New Milford Sixth-Grader Writes and Illustrates Book to Promote Animal Rescue*, NEWS TIMES (Feb. 16, 2010), <https://www.newstimes.com/local/article/New-Milford-sixth-grader-writes-and-illustrates-367504.php>.

⁴²⁵ Ryan Smith et al., *When the Pain, Torment of Cyberbullying Lingers Years Later*, ABC NEWS (Mar. 24, 2015), <https://abcnews.go.com/Health/pain-torment-cyberbullying-lingers-years/story?id=29867617>.

⁴²⁶ Marcela Rojas, *From Bullied to Bravery*, USA TODAY (Oct. 24, 2013), <https://www.usatoday.com/story/news/nation/2013/10/24/from-bullied-to-bravery-one-girls-story/3184789>.

⁴²⁷ *Id.*

⁴²⁸ Allyne Del Monte, *Bullied: Ally's Story*, YOUTUBE (Oct. 9, 2013), <https://www.youtube.com/watch?v=GlKM3RE8aaw>.

⁴²⁹ Smith et al., *supra* note 425.

⁴³⁰ Del Monte, *supra* note 428.

⁴³¹ *Id.*

stairs.⁴³² “Everyone here hates you,” a bully told A.M. face-to-face.⁴³³ “Why can’t you just fuckin’ fall down the stairs and break your neck?”⁴³⁴

Bullies texted⁴³⁵ and phoned A.M. outside of school.⁴³⁶ They told her she was pathetic, worthless, and should have been aborted.⁴³⁷ They would scream into the phone, “Kill yourself!”⁴³⁸ They tried to convince A.M. that no one would care if she died and the world would be a better place.⁴³⁹

A.M. cut and burned herself⁴⁴⁰ which the bullies encouraged.⁴⁴¹ One night, the bullies assailed A.M. online.⁴⁴² “Drink bleach, please.”⁴⁴³ “Did you cut yourself?”⁴⁴⁴ “Did you drink the bleach?”⁴⁴⁵ “Taking the pills?”⁴⁴⁶ “Killurself.”⁴⁴⁷ A.M. finally said, “Okay.”⁴⁴⁸ A.M. was attempting suicide when her mother walked in.⁴⁴⁹

“Mom, I don’t think I want to live anymore,” 13-year-old A.M. said.⁴⁵⁰ A.M. was taken to a crisis center⁴⁵¹ and withdrawn from school.⁴⁵² She slept on an air mattress in her

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ Rojas, *supra* note 426.

⁴³⁶ Emanuella Grinberg, *When Friends Become Bullies*, CNN (Oct. 29, 2013), <https://www.cnn.com/2013/10/29/living/bullying-friends/index.html>.

⁴³⁷ Rojas, *supra* note 426.

⁴³⁸ Del Monte, *supra* note 428.

⁴³⁹ *Id.*

⁴⁴⁰ Rojas, *supra* note 426.

⁴⁴¹ *New Milford Teen Fights Bullying*, NBC CONN. (Feb. 1, 2013), <https://www.nbcconnecticut.com/news/local/new-milford-teen-fights-bullying/1936778/>.

⁴⁴² Smith et al., *supra* note 425.

⁴⁴³ *Id.*

⁴⁴⁴ *Transitioning into Summer*, MOM TALK RADIO (July 13, 2015), <https://www.iheart.com/podcast/256-momtalkradios-podcast-30964143/episode/transitioning-into-summer-39387618/>.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ Smith et al., *supra* note 425.

⁴⁴⁸ *Id.*

⁴⁴⁹ Grinberg, *supra* note 436.

⁴⁵⁰ Rojas, *supra* note 426.

⁴⁵¹ Grinberg, *supra* note 436.

⁴⁵² Smith et al., *supra* note 425.

parents' room for months.⁴⁵³ Her internet usage was monitored.⁴⁵⁴ Things eventually improved.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.⁴⁵⁶ "Most crime starts out with a little bullying," a school board member said back then.⁴⁵⁷ Cellphones with built-in cameras became publicly available three years later.⁴⁵⁸

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

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

⁴⁵³ Grinberg, *supra* note 436.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ Karen Hucks, *Taking a Closer Look at Bullies*, NEWS TRIB. (Wash.), Dec. 19, 1998, at A1.

⁴⁵⁷ *Id.*

⁴⁵⁸ *5 Major Moments in Cellphone History*, CBC NEWS (Apr. 3, 2013), <https://www.cbc.ca/news/technology/5-major-moments-in-cellphone-history-1.1407352>.

⁴⁵⁹ Jan Hoffman, *A Girl's Nude Photo, and Altered Lives: When Texting Turns Explicit at Fourteen, Repercussions Last*, N.Y. TIMES, Mar. 27, 2011, at A1.

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ Jeremy Pawloski, *Two Lacey Teens Arrested in Sexting Case*, SEATTLE TIMES (Jan. 29, 2010), <https://www.seattletimes.com/seattle-news/two-lacey-teens-arrested-in-sexting-case/>.

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-sexting-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

11df-94e0-001cc4c002e0.html; Graham Johnson, *Watch It: ‘Sexting’ Expert Meets with Lacey Parents*, KIRO 7 (Sept. 26, 2011), https://www.kiro7.com/video/archive/watch-it-sexting-expert-meets-with-lacey-parents/XQ7TFMZ65OLQJV4PKWSONXASLM/?_website=cmg-tv-10090; *Charges Reduced in Sexting Case Against 3 Teens*, BELLINGHAM HERALD (Wash.), Feb. 18, 2010, at A3; Hoffman, *supra* note 459.

⁴⁶⁷ Hoffman, *supra* note 459.

⁴⁶⁸ *Id.*

⁴⁶⁹ Amy Clancy, *Student Reports Bullying to School Counselor, Threatens Suicide; Parents Not Notified*, KIRO 7 (Feb. 4, 2019), <https://www.kiro7.com/news/local/monday-at-5-student-reports-bullying-to-school-counselor-threatens-suicide-parents-not-notified/913225958/>.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Swearingin v. North Thurston Sch. Dist.*, Case No. 3:18-cv-05727-RBL, 2020 WL 2219440, at *2 (W.D. Wash. May 7, 2020).

⁴⁷³ Clancy, *supra* note 469.

⁴⁷⁴ *Swearingin*, 2020 WL 2219440, at *2; Clancy, *supra* note 469.

⁴⁷⁵ Courtney Harris Bond, *How Apps Can Be Used to Fight Teen Suicide*, PHILA. INQUIRER, July 9, 2017, at G5; Charles Keeshan & Bob Susnjara, *Police Investigate Vandalism as Hate Crime*, DAILY HERALD (Ill.), June 11, 2019, at 4; Tonya Maxwell, *Shutting Down Cyberbullies*, ASHEVILLE CITIZEN-TIMES (N.C.), Mar. 29, 2016, at A6.

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.*

⁴⁷⁸ Chauncy Glover, *10-Year-Old Kills Himself After Relentless Bullying, Mom Says*, ABC 13 (Mar. 26, 2019), <https://www.abc13.com/health/10-year-old-kills-himself-after-relentless-bullying-mom-says/5217456/>.

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,⁴⁸⁵ inappropriate,⁴⁸⁶ and sometimes actionable.⁴⁸⁷

Mallory Grossman (12) was a former gymnast and cheerleader.⁴⁸⁸ Her parents claim in a wrongful death lawsuit that she was bullied by four students at school.⁴⁸⁹ The defendant board of education threw shade at six.⁴⁹⁰ However the number of students that bullied Mallory, humiliation was the name of the game.⁴⁹¹

A group of girls tricked Mallory at the end of fifth grade.⁴⁹² They said they were all going to wear denim overalls

⁴⁸⁵ Francis J. O'Brien, *Maritime Arbitration*, 7 FORUM 222, 227 (1978).

⁴⁸⁶ Robert Cooter, *Hand Rule Damages for Incompensable Losses*, 40 SAN DIEGO L. REV. 1097, 1101 (2003).

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.*

⁴⁸⁸ Justin Zaremba, *The Tragic Suicide of 12-Year-Old Mallory Grossman: A Timeline*, NJ (May 15, 2019), https://www.nj.com/morris/2017/08/timeline_mallory_grossman_death.html.

⁴⁸⁹ First Amended Complaint and Jury Demand at 5, 11, 13, *Grossman v. Rockaway Township*, MRS-L-1173-18 (Super. Ct. N.J. Apr. 1, 2019).

⁴⁹⁰ Gene Myers, *Mallory Grossman's Mother Reacts to School's Response to Lawsuit*, NORTHJERSEY.COM (Aug. 20, 2018), <https://www.northjersey.com/story/news/morris/rockaway-township/2018/08/20/mallory-grossmans-mom-reacts-rockaway-twp-school-response-suit/940480002/>.

⁴⁹¹ Katie Kausch, *Mallory Grossman's Mom Shares Painful New Bullying Details*, PATCH (Oct. 5, 2018), <https://www.patch.com/new-jersey/longvalley/mallory-grossmans-mom-shares-painful-new-bullying-details>.

⁴⁹² Kane in Your Corner, *Full Interview with Dianne Grossman*, NEWS 12 (Aug. 29, 2019), <https://newjersey.news12.com/full-interview-with-dianne-grossman-40981558>.

and a pink tee shirt to school the next day and asked Mallory to do the same.⁴⁹³ Only Mallory wore the outfit.⁴⁹⁴

In sixth grade,⁴⁹⁵ bullies called Mallory a loser for months.⁴⁹⁶ She transferred out of music class because one of them⁴⁹⁷ persistently tapped the back of her chair.⁴⁹⁸ Then a bully surreptitiously took photographs of Mallory at school without permission.⁴⁹⁹

One photo was of Mallory walking by herself.⁵⁰⁰ A second was of her sitting alone on a bench.⁵⁰¹ Someone superimposed the words “U have no friends” on the first photo and “Poor Mal” on the second.⁵⁰² The images were sent to many at school including Mallory.⁵⁰³

Mallory tried but was not allowed to sit at three separate lunch tables on June 13, 2017.⁵⁰⁴ That’s when one of the bullies asked Mallory out loud, “When are you going to kill yourself?”⁵⁰⁵ “Since you were so concerned about it,” says

⁴⁹³ Steve Strunsky, *Bullied with a Pink T-Shirt: A Mother Tells of Her 12-Year-Old’s Suicide*, NY (Oct. 4, 2018), https://www.nj.com/union/2018/10/bullied_with_a_pink_t-shirt_a_mother_tells_of_her.html.

⁴⁹⁴ Kane in Your Corner, *supra* note 492.

⁴⁹⁵ Elizabeth Nader, *MYMR 35: A Story of Resilience: An Interview with Dianne Grossman*, ELIZABETH NADER (Apr. 21, 2020), <https://www.elizabethnader.com/podcast/episode/1b342974/my-mr-35-a-story-of-resilience-an-interview-with-dianne-grossman>.

⁴⁹⁶ Jen Maxfield, *Mother of Bullied Girl Who Died by Suicide: Mallory ‘Had a Target on Her Back,’* 4 N.Y. (Aug. 2, 2017), <https://www.nbcnewyork.com/news/local/new-jersey-family-12-year-old-mallory-grossman-bullying-suicide-sues-school/229195/>.

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.

⁵⁰⁵ Telina Cuppari, “Mallory” Releases on Vimeo: Q & A with the Founder of Mallory’s Army, BEAUTY NEWS NYC (Apr. 22, 2020), <https://www.beautynewsnyc.com/featured/mallory-releases-on-vimeo-q-a-with-the-founder-of-mallorys-army/>.

Mallory's mom, "the answer is June fourteenth."⁵⁰⁶ Mallory hanged herself at home on June 14, 2017.⁵⁰⁷

C. WHERE CHILDREN BULLY

"Bullying can happen almost anywhere."⁵⁰⁸ "Victims can be targeted when they are walking down the street, waiting for the bus, or shopping in a store."⁵⁰⁹ In grade school, the hot spots are typically the playground, cafeteria, and buses.⁵¹⁰ Older children bully most often in classrooms, hallways, and stairwells.⁵¹¹ Locker rooms and lavatories are known bullying locations.⁵¹² Cyber bullying typically takes place away from school⁵¹³ and can happen wherever a victim has access to a phone or computer, including home.⁵¹⁴

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/>.

⁵⁰⁷ Mary Elizabeth Gillis, *Cyberbullying on Rise in US: 12-Year-Old Was 'All-American Little Girl' Before Suicide*, FOX NEWS (Sept. 21, 2019), <https://www.foxnews.com/health/cyberbullying-all-american-little-girl-suicide>. One of the mean girls posed with an anti-bullying bracelet created in remembrance of Mallory and said, "If you listen close you can hear me not caring." Steve Adubato, *The Tragic Impact of Bullying on Young Children*, STEVE ADUBATO ON THE AIR (Sept. 19, 2019), <https://www.steveadubato.org/the-tragic-impact-of-bullying-on-young-children.html>.

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).

⁵¹¹ U.S. DEP'T OF EDUC., NCES 2019-054, STUDENT REPORTS OF BULLYING: RESULTS FROM THE 2017 SCHOOL CRIME SUPPLEMENT TO THE NATIONAL CRIME VICTIMIZATION SURVEY at T-2.1 (July 2019), <https://www.nces.ed.gov/pubs2019/2019054.pdf>.

⁵¹² ANNE ROONEY, BULLYING 8 (2010).

⁵¹³ BORBA, *supra* note 222, at 4; LOIS SEPAHBAN, CYBERBULLYING 16 (2016).

⁵¹⁴ Feinberg & Robey, *supra* note 230, at 26.

PHONE AND INTERNET

Sophomore Annika Stenglein (16) participated fully in the life of her Minnesota high school.⁵¹⁵ She made good grades,⁵¹⁶ competed in sports, sang in choir, and played instruments in both band and orchestra.⁵¹⁷ An aspiring actress,⁵¹⁸ her credits included a middle school production of *Alice in Wonderland Jr.*⁵¹⁹ and *Xanadu*.⁵²⁰

In November 2015, authorities locked down Annika's high school after a fight broke out over an anonymous Facebook page.⁵²¹ The page included inappropriate and hurtful comments about students at the school.⁵²² Annika spearheaded an Instagram account to serve as counterprogramming.⁵²³ She anonymously posted photos of classmates to the account and wrote about how smart and beautiful they were.⁵²⁴

⁵¹⁵ Linda Vanderwerf, *Willmar Crisis Team Helps Students, Staff Deal with Teen's Death*, W. CENT. TRIB. (Dec. 16, 2016), <https://www.wctrib.com/news/4181419-willmar-crisis-team-helps-students-staff-deal-teens-death>.

⁵¹⁶ Donna Middleton, *Willmar Senior High Announces First-Term Honor Roll*, W. CENT. TRIB. (Nov. 29, 2016), <https://www.wctrib.com/lifestyle/4169230-willmar-senior-high-announces-first-term-honor-roll>.

⁵¹⁷ Vanderwerf, *supra* note 515.

⁵¹⁸ *Annika Stenglein*, HARVEY ANDERSON & JOHNSON FUNERAL HOME, <https://www.hafh.org/obituary/Annika-Stenglein> (last visited Oct. 3, 2020).

⁵¹⁹ *Willmar, Minn., Middle School Stage Production 'Alice in Wonderland Jr.' Opens Run Tonight*, W. CENT. TRIB. (Feb. 27, 2014), <https://www.wctrib.com/entertainment/2350201-willmar-minn-middle-school-stage-production-alice-wonderland-jr-opens-run>.

⁵²⁰ *Annika Stenglein*, *supra* note 518.

⁵²¹ Linda Vanderwerf, *Willmar Senior High School Moves on After Fight*, W. CENT. TRIB. (Nov. 23, 2015), <https://www.wctrib.com/news/3889370-willmar-senior-high-school-moves-after-fight>.

⁵²² *Id.*

⁵²³ JP Cola, *Spicer Teen Who Started Positive Instagram Account Remembered*, LAKELAND BROAD., Dec. 15, 2016, https://www.willmarradio.com/news/spicer-teen-who-started-positive-instagram-account-remembered/article_b6bca652-c2ca-11e6-b75e-cbabade7b0b4.html.

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.⁵²⁵ Annika tried to report them at school and to Facebook.⁵²⁶ The photos were eventually taken down but the bullying did not stop.⁵²⁷ Annika took her own life December 12, 2016.⁵²⁸ 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."⁵²⁹

THE PLAYGROUND

A California girl attempted suicide on May 15, 2001.⁵³⁰ The seven-year-old was found on a playground "putting a rope around her neck."⁵³¹ She testified about what a boy had told her that day: "I should die and I should hang because [n----s] should hang."⁵³² "Okay," the girl responded.⁵³³ She grabbed a jump rope and tied it to a set of monkey bars.⁵³⁴ It wasn't the only time a boy used a racial slur against her.⁵³⁵ School officials documented another occasion in which two boys called her "blacky."⁵³⁶

<https://www.wctrib.com/news/4228910-willmar-family-wants-find-ways-help-families-troubled-teens>.

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ Sandra Murillo, *Redlands Unified Found Not at Fault in Alleged Suicide Try*, L.A. TIMES, Jan. 31, 2004, at B5.

⁵³¹ Sandra Murillo, *Final Arguments Heard in Suit over Racial Taunting of Girl*, 7, L.A. TIMES, Jan. 30, 2004, at B5.

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 friends⁵³⁸ 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

⁵³⁷ Aaron R. Fuller, FIND A GRAVE, https://www.findagrave.com/memorial/196021647/aaron-r_-fuller (last visited Sept. 16, 2020).

⁵³⁸ Aaron R Fuller, NEWCOMER CREMATIONS, FUNERALS, & RECEPTIONS, <https://www.newcomertoledo.com/Obituary/167501/Aaron-Fuller/Toledo-OH> (last visited Sept. 16, 2020) (memories and condolences from friends Gavin, Will, Riley, Cadence, Jay, Kenedie, and Dakota); see also Debbie Rogers, *Counselors Available at Lake Schools After Student’s Death*, SENTINEL-TRIB. (Mar. 10, 2010), https://www.sent-trib.com/news/counselors-available-at-lake-schools-after-student-s-death-article_1858ea0c-184a-11e9-bccc-d3442422920e.html (friend Chloe mourning).

⁵³⁹ *School Boy Commits Suicide After School Bullies Aren’t Stopped*, CRIME STORIES WITH NANCY GRACE (May 3, 2019), <https://www.stitcher.com/podcast/mrw-productions-llc/crime-stories-with-nancy-grace/e/60466804>.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² Jeremy Schneider, *Grieving Northwood Family Says Bullying Drove Their Son to Suicide*, TOLEDO BLADE (Jan. 19, 2019), <https://www.toledoblade.com/local/suburbs/2019/01/19/suicide-aaron-fuller-northwood-family-pain-questions-lake-local-schools/stories/20190117133>.

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).

⁵⁴⁵ *Moore v. Chilton Cty. Bd. of Edu.*, 936 F. Supp. 2d 1300, 1304 n.1 (M.D. Ala. 2013).

deemed least attractive.⁵⁴⁶ “Whoever got to the ‘pig’ first” won the “game.”⁵⁴⁷ On the day a target jumped to her death, a kid at school screamed, “She deserved to die!”⁵⁴⁸

Middle school students in New York for ten minutes straight⁵⁴⁹ called their elderly bus monitor fat, dumb, old, ugly, and poor.⁵⁵⁰ The students made fun of the woman’s wrinkles, chin, and stomach.⁵⁵¹ They accused her of being a child rapist with herpes, repeatedly touched her body, and told her to “shut the fuck up.”⁵⁵² One student threatened to ejaculate in her mouth.⁵⁵³ 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.”⁵⁵⁴

Luke Nugent (14) of Missouri,⁵⁵⁵ a budding scientist, played bass drum in the junior high marching band,⁵⁵⁶ enjoyed telling jokes,⁵⁵⁷ and rocked a fedora.⁵⁵⁸ Lumped onto a school

⁵⁴⁶ Jeremy Byellin, *Parents Should Be Held Liable When Kids Bully*, in BULLYING 40, 41 (Noah Berlatsky ed. 2015).

⁵⁴⁷ PAUL T. COUGHLIN, *FREE US FROM BULLYING* 35 (2018).

⁵⁴⁸ Compare Melynda Schauer, *Alex Moore’s Parents File Wrongful Death Lawsuit*, 6 WBRC (June 27, 2012), <https://www.wbrc.com/story/18558814/alex-moores-parents-file-wrongful-death-lawsuit/>, with COUGHLIN, *supra* note 547, at 37.

⁵⁴⁹ *Four 7th-Graders Suspended*, STAR-GAZETTE (Elmira, NY), July 1, 2012, at 14A.

⁵⁵⁰ CapitalTrigga, *Making the Bus Monitor Cry*, YOUTUBE (June 19, 2012), <https://www.youtube.com/watch?v=I93wAqnPQwk>.

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ See *Suicide: The Silent Epidemic – a KMBZ Cover Story*, 98.1 FM KMBZ (Apr. 20, 2017), <https://webcache.googleusercontent.com/search?q=cache:wSWaoIKxgJwJ:https://kmbz.radio.com/articles/suicide-silent-epidemic+&cd=1&hl=en&ct=clnk&gl=us>.

⁵⁵⁶ *Luke Nugent*, JOPLIN GLOBE (Mo.), Mar. 21, 2013, at 2A.

⁵⁵⁷ Katie Lamb, *Bullying Lawsuit Proceeds, but Both Sides Work to Eliminate Problem*, JOPLIN GLOBE (Jan. 18, 2015), https://www.joplinglobe.com/news/local_news/bullying-lawsuit-proceeds-but-both-sides-work-to-eliminate-problem/article_6d5fa00d-2ee6-55d5-9d54-6d8d84ef6454.html.

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.⁵⁵⁹ They called him a faggot, took his hat, tossed one of his toys out a window,⁵⁶⁰ and threatened to “break [a] foot off in [his] ass.”⁵⁶¹ On 14 March 2013, the bus dropped Luke off at his stop one last time.⁵⁶² From inside the bus, a student barked out a window to Luke that he should do everyone a favor and hang himself.⁵⁶³ Luke hanged himself to death on March 16, 2013.⁵⁶⁴

HALLWAYS

“Joy” attended a Maine middle school and was bullied there.⁵⁶⁵ In 2016, a student told Joy to kill herself.⁵⁶⁶ In 2017, a student repeatedly walked by Joy in the hall and whispered that she should commit suicide.⁵⁶⁷ “Jane” in Massachusetts experienced some of the same during the 2017-2018 school year.⁵⁶⁸

“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

⁵⁵⁹ *Suicide: The Silent Epidemic – a KMBZ Cover Story*, RADIO.COM (Apr. 20, 2017), <https://www.radio.com/media/audio-channel/suicide-the-silent-epidemic-a-kmbz-cover-story>.

⁵⁶⁰ Lamb, *supra* note 557.

⁵⁶¹ Transcript of Video Deposition of Scott Sawyer at 35-36, Nugent v. Carl Junction R-1 Sch. Dist., Case No. 3:13-cv-05089-MJW (W.D. Mo. Apr. 16, 2014), ECF No. 112-6. A principal rode the unruly bus in November 2012. Petition for Damages at 4, 6-7, Nugent v. Carl Junction R-1 Sch. Dist., No. 13AP-CC00033 (Cty. Cir. Ct. Mo. May 15, 2013). A student taunted him, “Clean my butt.” *Id.*

⁵⁶² Order at 3, Nugent v. Carl Junction R-1 Sch. Dist., No. 13-5089-CV-SW-MJW (W.D. Mo. Sept. 30, 2014), ECF No. 82.

⁵⁶³ *Id.*

⁵⁶⁴ *Coroner to Rule Teenager’s Death a Case of Suicide*, JOPLIN GLOBE (Mar. 19, 2013), https://www.joplinglobe.com/news/local_news/coroner-to-rule-teenager-s-death-a-case-of-suicide/article_4a089cec-341c-5c0b-b38a-199056544514.html.

⁵⁶⁵ See Lindsay Tice, *One Lewiston Student’s Experience with Bullying*, SUN J. (Me.), June 25, 2017, at A5.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ Complaint, Preliminary and Permanent Injunctive Relief, and Jury Demand at 1-3, Doe v. Town of Walpole, Case No.: 1-18-CV-11713 (D. Mass. Aug. 14, 2018).

should not come to school.”⁵⁶⁹ A lawsuit claims the minatory group of girls included E.S. and J.E.⁵⁷⁰

E.S. allegedly gave Jane dirty looks⁵⁷¹ and along with several others sent threatening messages to Jane in March.⁵⁷² One of the messages read, “KILL YOURSelf.”⁵⁷³ J.E. assaulted and battered Jane after gym class in June.⁵⁷⁴ The attack was recorded and posted online.⁵⁷⁵

CLASSROOMS

Chandler Barnwell (16)⁵⁷⁶ attended an Arkansas high school in 2010.⁵⁷⁷ Bullies there followed the freshman around and knocked books out of his hands⁵⁷⁸ in between classes.⁵⁷⁹ They made fun of the way he walked⁵⁸⁰ and girls in drama class

⁵⁶⁹ *Id.* at 3.

⁵⁷⁰ *Id.* at 3-4.

⁵⁷¹ *Id.* at 3.

⁵⁷² *Id.*

⁵⁷³ Daniel Libon, *Walpole HS Didn't Protect Teen from Vicious Bullying: Lawsuit*, PATCH (Aug. 15, 2018),

<https://www.patch.com/massachusetts/walpole/walpole-hs-didnt-protect-teen-vicious-bullying-court-docs>.

⁵⁷⁴ Beth Germano, *Walpole Teen Says School Did Nothing to Stop Bullying*, 4 WBZ CBS Bos. (Aug. 15, 2018),

<https://boston.cbslocal.com/2018/08/15/walpole-high-school-bullying-lawsuit/>.

⁵⁷⁵ Malini Basu, *Bullied Teen Speaks Out After Beating Was Caught on School Cameras*, BOS. 25 NEWS (June 7, 2018),

<https://www.boston25news.com/news/bullied-teen-speaks-out-after-beating-was-caught-on-school-cameras-1/764512149/>.

⁵⁷⁶ Chandler J. “CJ” Barnwell, LEGACY,

http://glhr.tributes.com/our_obituaries/Chandler-J.-CJ-Barnwell-90098119 (last visited Oct. 24, 2020).

⁵⁷⁷ *Estate of Barnwell ex rel. Barnwell v. Watson*, 44 F. Supp. 3d 859, 861 (E.D. Ark. 2014).

⁵⁷⁸ Holly Sonders, *Friends Say Bullying Led to Suicide of LR Teen*, ABC 7 (Dec. 10, 2010), <https://www.katv.com/archive/bullying-leads-to-suicide-of-lr-teen>.

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.⁵⁸¹ Chandler was bullied before and after school on a campus courtyard “almost daily.”⁵⁸²

When Chandler introduced himself to a substitute teacher on October 7,⁵⁸³ a classmate told him he sounded “fruity”⁵⁸⁴ and called him a “faggot.”⁵⁸⁵ However, “[t]he incident that presumably precipitated Chandler’s suicide occurred in class on December 7.”⁵⁸⁶ 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.’”⁵⁸⁷ Chandler shot and killed himself that evening.⁵⁸⁸

STAIRWELLS

When Las Vegas police responded to a domestic dispute⁵⁸⁹ at a two-story hotel,⁵⁹⁰ they found a woman with an apparent head injury.⁵⁹¹ An earwitness said, “I heard her bang

⁵⁸¹ 880 F.3d at 1003.

⁵⁸² *Id.*

⁵⁸³ Appellant’s Brief on the Merits at ¶ 13, *Estate of Barnwell ex rel. Barnwell v. Watson*, No. 16-3067 (8th Cir. Sept. 13, 2016), 2016 WL 5372040.

⁵⁸⁴ *Estate of Barnwell ex rel. Barnwell v. Watson*, 44 F. Supp. 3d 859, 862 (E.D. Ark. 2014).

⁵⁸⁵ 880 F.3d at 1002.

⁵⁸⁶ *Id.* at 1003.

⁵⁸⁷ Response to Defendant’s Motion to Dismiss at ¶ 21, *Estate of Barnwell ex rel. Barnwell v. Watson*, No. 4:13-cv-00681-JMM (E.D. Ark. May 12, 2014), 2014 WL 12787773.

⁵⁸⁸ Heather Crawford, *Little Rock Teen Commits Suicide After Being Bullied*, KATV (Dec. 17, 2010), <https://www.katv.com/archive/little-rock-teen-commits-suicide-after-being-bullied>.

⁵⁸⁹ Ashley Forest, *LVMPD: Woman Dies After Domestic Dispute, Suspect in Custody*, 3 NEWS LAS VEGAS (July 16, 2018), <https://www.news3lv.com/news/local/lvmpd-woman-dies-after-falling-down-a-flight-of-stairs-suspect-in-custody>.

⁵⁹⁰ Christy Wilcox, *Family Says Domestic Violence Victim Yelled for Help but No One Responded*, 3 NEWS LAS VEGAS (July 17, 2018), <https://www.news3lv.com/news/local/family-says-domestic-violence-victim-yelled-for-help-but-no-one-responded>.

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.”⁵⁹² A man told police the woman fell down stairs as she was pushing his arm away⁵⁹³ but police say surveillance video showed him run up to the woman at which point a forceful collision led to the female⁵⁹⁴ tumbling down.⁵⁹⁵ The man and woman were in a relationship.⁵⁹⁶ She died of blunt force head trauma.⁵⁹⁷ He was charged with murder.⁵⁹⁸

Bullies pushed a 13-year-old down the stairs at a two-story charter school in Los Angeles.⁵⁹⁹ She cried because of a sprained ankle.⁶⁰⁰ The bullies also spit in her lunch,⁶⁰¹ pulled her

<https://www.ktnv.com/news/crime/man-arrested-for-girlfriend-s-death-after-she-falls-down-stairs>.

⁵⁹² Joe Nelson & Cherney Amhara, *Police: Boyfriend Charged After Woman ‘Tumbled’ Down Stairs to Her Death in Northeast Valley*, FOX 5 KVVU-TV (July 16, 2018),

https://www.fox5vegas.com/news/police-boyfriend-charged-after-woman-tumbled-down-stairs-to-her-death-in-northeast-valley/article_34fce9f0-4903-5981-89af-677484964f79.html.

⁵⁹³ Lupiani, *supra* note 591.

⁵⁹⁴ Brenda Yahm, *Report: Couple Had Argument Before Woman ‘Fell’ Down Stairs in Las Vegas*, FOX 5 KVVU-TV (July 20, 2018),

https://www.fox5vegas.com/news/report-couple-had-argument-before-woman-fell-down-stairs-in-las-vegas/article_14448e3d-2824-5b5a-9c25-5fcd4f98d8ad.html.

⁵⁹⁵ Nelson & Amhara, *supra* note 592.

⁵⁹⁶ Gabby Hart, *Amid a Deadly Week in Vegas, Experts Say Domestic Violence Spikes in the Summer*, 3 NEWS LAS VEGAS (July 21, 2018),

<https://www.news3lv.com/news/local/amid-a-deadly-week-in-vegas-experts-say-domestic-violence-spikes-in-the-summer>.

⁵⁹⁷ Lupiani, *supra* note 591.

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

⁵⁹⁹ Sid Garcia, *Families Sue LAUSD, San Bernardino School District After Kids Who Were Bullied Attempt Suicide*, ABC 7 EYEWITNESS NEWS (May 15, 2018), <https://www.abc7.com/3480296/>.

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

hair,⁶⁰² stole her things,⁶⁰³ told her how ugly she was,⁶⁰⁴ and asked her, “Why don’t you go kill yourself?”⁶⁰⁵ The girl attempted suicide⁶⁰⁶ by drinking bleach⁶⁰⁷ in March 2018.⁶⁰⁸

Destinee Krebs (14) of Pennsylvania⁶⁰⁹ first came under attack in seventh grade.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.”⁶¹¹

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

⁶⁰² Patrick Healy & Shahan Ahmed, *Families Fault Schools for Failing to Quash Bullying Prior to Suicide Attempts*, NBC 4 (May 15, 2018), <https://www.nbclosangeles.com/news/school-bullying-lawsuits-lausd-san-bernardino/15914>.

⁶⁰³ *Family Suing LAUSD for Not Protecting Child from Bullies*, KNX1070 NEWS RADIO (May 15, 2018), <https://webcache.googleusercontent.com/search?q=cache:LUTA-GnhSGsJ:https://knx1070.radio.com/tag/lawsuit%3Fpage%3D0%252C14+%26cd=4&hl=en&ct=clnk&gl=us> (last accessed Oct. 24, 2020).

⁶⁰⁴ Healy & Ahmed, *supra* note 602.

⁶⁰⁵ Dave Lopez, *3 SoCal School Districts Sued over Alleged Inaction on Bullying that Led to Suicide, Attempts*, KCAL 9 CBS L.A. (May 15, 2018), <https://losangeles.cbslocal.com/video/3864682-3-social-school-districts-sued-over-alleged-inaction-on-bullying-that-led-to-suicide-attempts/>.

⁶⁰⁶ Healy & Ahmed, *supra* note 602.

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

⁶⁰⁸ Healy & Ahmed, *supra* note 602.

⁶⁰⁹ *Destinee A. Krebs*, VALLEY NEWS DISPATCH, <https://www.legacy.com/obituaries/triblive-valley-news-dispatch/obituary.aspx?page=lifestory&pid=176429293> (last visited Oct. 3, 2020).

⁶¹⁰ Complaint at ¶¶ 24-25, *Krebs v. New Kensington-Arnold Sch. Dist.*, No. 2:16-cv-00610-NBF (W.D. Penn. May 13, 2016), 2016 WL 2854205.

⁶¹¹ *Id.* at ¶ 26.

⁶¹² *Id.* at ¶ 40.

⁶¹³ *Id.* at ¶¶ 40, 45.

⁶¹⁴ *Id.* at ¶ 40.

Ninth grade was unimaginable. When the 2014-2015 school year began, a female student (“F.S.”)⁶¹⁵ sent Destinee a text message image of a bloody wrist.⁶¹⁶ In October, F.S. fractured Destinee’s nose.⁶¹⁷ In November, students at lunchtime tricked Destinee into snorting drugs.⁶¹⁸ Destinee said that evening she wanted to die and began thrashing uncontrollably.⁶¹⁹ Emergency room doctors committed her to a psychiatric hospital.⁶²⁰

When Destinee returned to school, a male student intentionally dumped milk over her in the cafeteria.⁶²¹ 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.⁶²²

Destinee testified at the hearing on February 3, 2015.⁶²³ She killed herself the next day.⁶²⁴ At a candlelight vigil,⁶²⁵ Destinee’s parents learned that the same students who verbally harassed their daughter had shoved her down a stairwell at school.⁶²⁶

LOCKER ROOMS

L.O. played youth soccer in 2016.⁶²⁷ His team finished first, lost only once, and took home a sportsmanship award.⁶²⁸

⁶¹⁵ *Id.* at ¶ 76.

⁶¹⁶ Memorandum at 3, *Krebs v. New Kensington-Arnold Sch. Dist.*, No. 2:16-cv-00610-NBF (W.D. Penn. Nov. 16, 2016), 2016 WL 6820402.

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.

⁶²⁶ Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and for Lack of Jurisdiction, *Krebs v. New Kensington-Arnold Sch. Dist.*, No. 2:16-cv 00610 NBF (W.D. Penn. Oct. 19, 2016), 2016 WL 10951821.

⁶²⁷ *The Garden City Cosmos*, GARDEN CITY NEWS, Nov. 25, 2016, at 58.

⁶²⁸ *Id.*

L.O. tried out for middle school soccer that autumn⁶²⁹ and earned a coveted spot on the seventh-grade squad.⁶³⁰ Two think-they-knew-it-all teammates told L.O. he sucked and did not belong.⁶³¹

L.O. had a horrible seventh grade because of bullies.⁶³² They made fun of his freckles, said his eyebrows were weird, and called him fat.⁶³³ They used what his mom described as horrible language.⁶³⁴ L.O. was punched on the way to the bus at the end of the school year.⁶³⁵

At the start of eighth grade, a student bashed L.O.'s face into a gym locker.⁶³⁶ L.O. refused to attend school the following Monday.⁶³⁷ He required hospitalization for depression and an eating disorder.⁶³⁸

⁶²⁹ Pei-Sze Cheng, *Long Island Mom Pens Viral Facebook Post on Bullying After Son Stops Eating*, 4 N.Y. (Oct. 21, 2017), <https://www.nbcnewyork.com/news/local/facebook-viral-bullying-ny-long-island-mom/317003/>.

⁶³⁰ Debbie McGoldrick, *"We're Lucky Liam Is Still with Us" – Bullies Torture Irish American Teen*, IRISH CENT. (Oct. 25, 2017), <https://www.irishcentral.com/news/irishvoice/we-re-lucky-liam-is-still-with-us-bullies-torture-irish-american-teen>.

⁶³¹ *Id.*

⁶³² Magee Hickey, *Long Island Mother Says Teen Son Developed Eating Disorder from Being Bullied*, PIX 11 (Oct. 21, 2017), <https://www.pix11.com/2017/10/20/long-island-mother-says-teen-son-developed-eating-disorder-from-being-bullied/>.

⁶³³ Deirdre Fell-O'Brien, FACEBOOK (Oct. 18, 2017, 7:08 P.M.), <https://www.facebook.com/deirdre.f.obrien/posts/10155197168259891>.

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.

⁶³⁷ Compare Deirdre Fell-O'Brien & Lauren Urban, *I Shared My Son's Story About Being Bullied on Social Media*, WELL (Jan. 2, 2019), <https://thewell.northwell.edu/true-story/i-shared-my-sons-story-about-being-bullied-social-media> with Fell-O'Brien, *supra* note 633.

⁶³⁸ Catherine Thorbecke, *Family Says Their 13-Year-Old Son Was Hospitalized After Being Bullied at School*, ABC NEWS (Oct. 26, 2017), <https://abcnews.go.com/Lifestyle/family-13-year-son-hospitalized-bullied-school/story?id=50718881>.

“Your life is a waste,” a bully told L.O.⁶³⁹ “Why don’t you just kill yourself?”⁶⁴⁰ L.O.’s father asked in bewilderment, “How does a twelve-year-old say that to another twelve-year-old?”⁶⁴¹

D. WHY CHILDREN BULLY

Evil made its presence felt at an elementary school in Kindred, North Dakota.⁶⁴² Two boys terrorized a girl in the fourth grade.⁶⁴³ One tore into the ten-year-old with constant criticism⁶⁴⁴ while the other tried to get her to commit suicide.⁶⁴⁵ “Go kill yourself,” he commanded.⁶⁴⁶ “Take pills and just die,” he ordered.⁶⁴⁷

The girl was at one time happy-go-lucky and a very good student.⁶⁴⁸ “Always a hundred, five percent,” said Heather, the girl’s mother.⁶⁴⁹ But the girl became crabby.⁶⁵⁰ Her grades dropped.⁶⁵¹ She tried to avoid school.⁶⁵² “My stomach hurts.”⁶⁵³ “I don’t want to go.”⁶⁵⁴ The girl said she hated herself.⁶⁵⁵

⁶³⁹ Tate, *supra* note 635.

⁶⁴⁰ *Id.*

⁶⁴¹ Hickey, *supra* note 632.

⁶⁴² Rose Itzcovitz, *North Dakota Mother Moves Her Daughter Because of Bullying*, VALLEY NEWS LIVE (Mar. 28, 2018), <https://www.valleynewslive.com/content/news/ND-mother-moves-her-daughter-because-of-bullying--478233993.html>.

⁶⁴³ *Valley News Live*, FACEBOOK (Mar. 29, 2018, 4:52 PM), <https://www.facebook.com/ValleyNewsLive/posts/10155630135742326> (post of Heather A. Leavitt).

⁶⁴⁴ Itzcovitz, *supra* note 642.

⁶⁴⁵ *Id.*

⁶⁴⁶ *Valley News Live*, FACEBOOK (Mar. 29, 2018, 4:49 PM), <https://www.facebook.com/ValleyNewsLive/posts/10155630135742326> (post of Heather A. Leavitt).

⁶⁴⁷ *Id.*

⁶⁴⁸ Itzcovitz, *supra* note 642.

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.⁶⁵⁶ The girl had asked about why kids bully.⁶⁵⁷ She then talked about the assailment and started drawing lines on her wrist.⁶⁵⁸

Heather reached out to the school.⁶⁵⁹ Someone spoke to the assailant but put him back in class with the girl and other bully.⁶⁶⁰ Heather said to a reporter, "I would think that telling people to go kill themselves should be a no tolerance kind of thing."⁶⁶¹

Children bully for any number of reasons.⁶⁶² "There's not a one-size-fits-all," says an associate professor of school psychology.⁶⁶³ "Some kids bully in response to academic stress. They might be jealous of kids who do well."⁶⁶⁴ Other kids bully because they are mean-spirited.⁶⁶⁵ "[B]ullying is actually enjoyable to them."⁶⁶⁶ They find happiness in the misery of others⁶⁶⁷ and want their targets to feel bad,⁶⁶⁸ hurt,⁶⁶⁹ and embarrassed.⁶⁷⁰

Some bullies lack self-esteem⁶⁷¹ and have to compensate for their own feelings of inadequacy.⁶⁷² 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.

⁶⁶⁴ Caroline Bologna, *What Kids Who Bully Often Have in Common*, HUFFINGTON POST (Aug. 30, 2019), https://www.huffpost.com/entry/bullies-common-characteristics_1_5d668b39e4b063c341f8e4ba.

⁶⁶⁵ PAUL ROARK, EFFECTS OF BULLYING 27 (2017) (ebook).

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.

⁶⁷² Jeff Williams, *Bullies: A Fact of School Life*, NEWS J. (Del.), Aug. 28, 2010, at DP8.

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.

⁶⁸⁰ MATT MONTEVERDE, MAKING SMART CHOICES ABOUT VIOLENCE, GANGS, AND BULLYING 14 (2008).

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.”⁶⁸⁴ Others fall in love with it.⁶⁸⁵ “The more power they get, the more they want.”⁶⁸⁶ “Hurting others make bullies feel powerful.”⁶⁸⁷ “Kids who bully think they’ve hit the jackpot when they make you cry.”⁶⁸⁸ For them, “it feels good to be in control over other people’s emotions.”⁶⁸⁹

“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.”⁶⁹⁰ They “see themselves as giving the ‘real’ bullies a taste of their own medicine.”⁶⁹¹ Other children bully at the request of a friend⁶⁹² or because of peer pressure.⁶⁹³ Still others may see bullying as a way of showing off or making themselves look tough.⁶⁹⁴

Phoebe Prince (15) started at South Hadley High School (“South Hadley”) in September 2009.⁶⁹⁵ The freshman from Ireland got popular quick.⁶⁹⁶ “She was new. She was pretty.”⁶⁹⁷

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.*

⁶⁸⁷ JEN JONES, BULLIES 12 (2008).

⁶⁸⁸ ROMAIN, *supra* note 685, at 25.

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

⁶⁹⁰ MARTHA MAEDA, 101 SUNDAY SCHOOL ACTIVITIES ON A TINY BUDGET 53 (2013).

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

⁶⁹² *Beat Bullying: Signs Your Child May Be a Bully and What to Do About It*, FOX 6 NEWS (Oct. 23, 2019), <https://www.fox6now.com/real-milwaukee/beat-bullying-signs-your-child-may-be-a-bully-and-what-to-do-about-it>.

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

⁶⁹⁴ *Bullying: What Can Parents Do?* BROWN U. CHILD & ADOLESCENT BEHAVIOR LETTER, Apr. 2004, at 4, 4.

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

⁶⁹⁶ Alyssa Giacobbe, *Who Failed Phoebe Prince?*, BOS. MAGAZINE (May 23, 2010), <https://www.bostonmagazine.com/news/2010/05/23/phoebe-prince/>.

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.”⁶⁹⁸

Phoebe’s popularity did not last long. She became the victim of verbal, nonverbal, relational, cyber, hand-written, and physical bullying.⁶⁹⁹ She also suffered assaultment.⁷⁰⁰

Phoebe and S.M. became close in November.⁷⁰¹ S.M. was a senior and very popular.⁷⁰² He was good academically and a star on the football team.⁷⁰³ S.M. had previously dated junior K.N.⁷⁰⁴

Phoebe turned fifteen on November 24.⁷⁰⁵ S.M. ended things between them three days later.⁷⁰⁶ Phoebe immediately attempted suicide, went into organ failure,⁷⁰⁷ and was hospitalized for a week.⁷⁰⁸

When Phoebe returned to school, S.M. and K.N. were together again.⁷⁰⁹ Phoebe approached K.N. on December 10 and

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).

⁷⁰² *Dateline: What Happened to Phoebe Prince* (NBC television broadcast Apr. 1, 2012) [hereinafter *Dateline*].

⁷⁰³ Deborah Becker, *In South Hadley, a Community Copes with Bullying Aftermath*, WBUR NEWS (Apr. 9, 2010),

<https://www.wbur.org/news/2010/04/09/bullying-3>.

⁷⁰⁴ Fred Contrada, *Sean Mulveyhill, Kayla Narey Get Probation in Phoebe Prince Bullying Case*, MASS LIVE (Mar. 25, 2019),

https://www.masslive.com/news/2011/05/mulveyhill_and_narey_get_proba.html.

⁷⁰⁵ PRINCE DOCUMENTARY, *supra* note 695.

⁷⁰⁶ BAZELON, *supra* note 701, at 88-89, 172.

⁷⁰⁷ *Id.* at 89-90.

⁷⁰⁸ Fred Contrada, *Prince Defendants Request Her Medical Records*, MASS LIVE (Mar. 25, 2019),

https://www.masslive.com/news/2010/08/prince_defendants_request_her.html.

⁷⁰⁹ BAZELON, *supra* note 701, at 90.

11.⁷¹⁰ Irrespective of whether K.N. spoke directly to Phoebe,⁷¹¹ Phoebe apologized for being intimate with S.M.⁷¹²

Senior A.R. spent time with Phoebe over Christmas break.⁷¹³ His girlfriend was F.M.⁷¹⁴ F.M. was almost two years older than Phoebe.⁷¹⁵ She became suspicious of Phoebe when school started back up in January.⁷¹⁶

On January 6, a girl from F.M.'s chemistry class paid Phoebe a visit.⁷¹⁷ S.V. says she "posted very nicely" and asked, "Are you and [A.R.] doing anything?"⁷¹⁸ When Phoebe took offense, S.V. got mad.⁷¹⁹

On January 7, F.M. said in gym class, "Someone ought to kick [Phoebe's] ass."⁷²⁰ The gym teacher reported F.M.⁷²¹ A principal told F.M. to stay away from Phoebe.⁷²²

⁷¹⁰ *Id.* at 90, 181.

⁷¹¹ Stephanie Reitz, *Bullying Suspect Seeks Dismissal*, TELEGRAM (Sept. 16, 2010),

<https://www.telegram.com/article/20100916/NEWS/9160813> ("Actually, [K.N.] never said anything to Phoebe.").

⁷¹² BAZELON, *supra* note 701, at 90, 181; *Dateline*, *supra* note 702.

⁷¹³ BAZELON, *supra* note 701, at 92.

⁷¹⁴ *Id.* at 82, 93.

⁷¹⁵ Fred Contrada, *A Legal Scorecard of Plea Agreements in the Phoebe Prince Bullying Cases*, MASS LIVE (Mar. 25, 2019),

https://www.masslive.com/news/2011/05/a_legal_scorecard_of_plea_agre.html.

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.

⁷²¹ Giacobbe, *supra* note 696; Press Release, South Hadley Public Schools Office of the Superintendent (Apr. 14, 2010),

<http://media.masslive.com/breakingnews/other/20100414213650.pdf>.

⁷²² Compare BAZELON, *supra* note 701, at 96-97, and Press Release, *supra* note 721, with CNN, 2010: *Phoebe Prince's School Responds*, YOUTUBE (Apr. 2, 2010),

<https://www.youtube.com/watch?v=cGpa2bbpE5c>.

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

⁷²³ Emily Bazelon, *It’s Over*, SLATE (May 5, 2011),

<https://www.slate.com/human-interest/2011/05/the-phoebe-prince-case-none-of-the-six-teens-charged-in-connection-with-the-suicide-will-go-to-jail.html>.

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.

⁷³⁴ Ann O’Neill, *Court Filing Reveals Taunted Teen’s Anguish in Final Hours*, CNN (Apr. 9, 2010), https://www.cnn.com/2010/CRIME/04/09/massachusetts.bullyin_g.suicide/index.html.

⁷³⁵ Fred Contrada, *Phoebe Prince’s Final Day Described by Northwestern District Attorney Elizabeth D Scheibel*, MASS LIVE (Mar. 25, 2019), https://www.masslive.com/news/2010/03/phoebe_princes_final_day_descr.html.

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.

out⁷³⁷ while A.L. shouted at Phoebe on and off for about five minutes.⁷³⁸ “Close your legs!”⁷³⁹ “I hate stupid sluts!”⁷⁴⁰

Later, S.M., K.N., and A.L. stood in a hallway⁷⁴¹ where others were gathered when school let out.⁷⁴² “Here she comes,” S.M. said, nodding in Phoebe’s direction.⁷⁴³ He tried to get A.L. to fight Phoebe.⁷⁴⁴ A.L. screamed instead.⁷⁴⁵

“Whore!”⁷⁴⁶

All of the student chatter fell silent.⁷⁴⁷ Phoebe pretended not to hear.⁷⁴⁸ “I’m fucking talking to you!”⁷⁴⁹ Phoebe made a peace sign but did not break stride.⁷⁵⁰ “Why don’t you just open your legs?” A.L. said.⁷⁵¹ K.N. started to laugh.⁷⁵² Phoebe started to cry.⁷⁵³

As Phoebe walked home,⁷⁵⁴ a car approached.⁷⁵⁵ Passenger A.L.⁷⁵⁶ threw an empty can at Phoebe⁷⁵⁷ and verbal

⁷³⁷ Giacobbe, *supra* note 696.

⁷³⁸ *Court Documents Detail Hurtful Interactions Between Alleged Bullies and Phoebe Prince*, MASS LIVE (Mar. 25, 2019), https://www.masslive.com/news/2010/04/court_documents_detail_hurtful.html.

⁷³⁹ Smolowe et al., *supra* note 724, at 70.

⁷⁴⁰ *Id.*

⁷⁴¹ Emily Bazelon, “An Acknowledgement of Wrongdoing”, SLATE (May 4, 2011), <https://www.slate.com/human-interest/2011/05/the-phoebe-prince-case-two-of-the-teens-charged-in-connection-with-phoebe-prince-s-suicide-resolve-their-cases.html>.

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.

⁷⁵⁷ Fred Contrada, *Phoebe Prince Bullying Cases Over*, MASS LIVE (Mar. 25, 2019), https://www.masslive.com/news/2011/05/phoebe_prince_bullying_cases_o.html.

abuse⁷⁵⁸ shot out from inside the car.⁷⁵⁹ A witness heard laughter from the car as it sped away.⁷⁶⁰ Phoebe later hanged herself between 2:48 and 4:30 p.m.⁷⁶¹

Phoebe was regularly texted abuse.⁷⁶² Students knocked books out of her hands.⁷⁶³ At least three days before she died,⁷⁶⁴ someone scribbled out her face on a student body photograph mounted in a classroom⁷⁶⁵ and drew an obscene picture over her image.⁷⁶⁶

The Commonwealth of Massachusetts charged S.M. and seven girls.⁷⁶⁷ K.N., F.M., S.V., and A.L. were four of the girls.⁷⁶⁸ The other three were younger in age⁷⁶⁹ but all attended South Hadley.⁷⁷⁰

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

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

⁷⁵⁸ *Court Documents Detail Hurtful Interactions Between Alleged Bullies and Phoebe Prince*, *supra* note 738.

⁷⁵⁹ PRINCE DOCUMENTARY, *supra* note 695.

⁷⁶⁰ Ronald Quinlan, *School Must Be ‘Held to Account’ in Phoebe Case*, SUNDAY INDEP. (Ir.), Apr. 11, 2010, at 23.

⁷⁶¹ Contrada, *supra* note 735.

⁷⁶² PRINCE DOCUMENTARY, *supra* note 695.

⁷⁶³ *Id.*

⁷⁶⁴ Marie Szaniszlo & Laura Crimaldi, *Parent Details Phoebe’s Agonizing Final Moments*, BOS. HERALD (Apr. 2, 2010), at 4.

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.

⁷⁶⁶ Szaniszlo & Crimaldi, *supra* note 764.

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.

⁷⁶⁸ PRINCE DOCUMENTARY, *supra* note 695.

⁷⁶⁹ *Id.*

⁷⁷⁰ Jessica Van Sack et al., *Nine Students Charged in Death*, BOS. HERALD, Mar. 30, 2010, at 4.

⁷⁷¹ Bazelon, *supra* note 741.

⁷⁷² BAZELON, *supra* note 701, at 181.

⁷⁷³ Contrada, *supra* note 704.

with [A.R.], and she's saying that he likes her back."⁷⁷⁴ F.M. had been with A.R. for more than a year and said it was "extremely hurtful."⁷⁷⁵

S.V. said it was the impulse to help a friend that caused her to "argue" with Phoebe three times.⁷⁷⁶ S.V.'s mother said, "My daughter never fought with [Phoebe] or said, 'Go harm yourself.'"⁷⁷⁷

A.L. had been friends with S.M. since childhood.⁷⁷⁸ S.M. encouraged her to be mean to Phoebe.⁷⁷⁹

E. WHY BULLIED CHILDREN MAY NOT REPORT

Jacobe Taras (13)⁷⁸⁰ of New York was born one week after the terrorist attacks of September 11, 2001.⁷⁸¹ He left this world by way of suicide in April 2015.⁷⁸² Jacobe did not speak to his parents about some of the problems he was having⁷⁸³ but did document them.⁷⁸⁴

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."⁷⁸⁵ Two weeks later, he referenced an image of a person shooting

⁷⁷⁴ BAZELON, *supra* note 701, at 94.

⁷⁷⁵ *Id.*

⁷⁷⁶ *Dateline*, *supra* note 702; *Today*, *supra* note 697.

⁷⁷⁷ Laura Crimaldi, *Suspect's Mother: 'My Daughter Never Fought with Her'*, BOS. HERALD, Mar. 30, 2010, at 5.

⁷⁷⁸ Giacobbe, *supra* note 696.

⁷⁷⁹ Contrada, *supra* note 708.

⁷⁸⁰ Robert Gavin, *Wrongful-Death, Bullying Trial to Begin*, TIMES UNION (May 22, 2018),

<https://www.timesunion.com/news/article/Wrongful-death-bullying-trial-to-begin-12932100.php>.

⁷⁸¹ *Births*, POST-STAR (N.Y.), Sept. 30, 2011, at A1, B3.

⁷⁸² Bethany Bump, *Parents Sue South Glens Falls Schools After Bullied Son Kills Himself*, TIMES UNION (May 28, 2016),

<https://www.timesunion.com/tuplus-local/article/Parents-sue-South-Glens-Falls-schools-after-7951546.php>.

⁷⁸³ See Robert Gavin, *Jury Finds School District Negligent in Addressing Bullying*, TIMES UNION (May 31, 2018),

<https://www.timesunion.com/7dayarchive/article/Jury-begins-deliberating-in-case-prompted-by-12944211.php#photo-10157414>.

⁷⁸⁴ Bump, *supra* note 782.

⁷⁸⁵ Affirmation in Opposition to Defendants' Summary Judgment Motion at ¶ 45, *C.T. v. Bd. of Educ. of S. Glens Falls Cent. Sch. Dist.*, No. 2016829 (Sup. Ct. N.Y. Cty. May 21, 2018), 2018 WL 4901811.

himself with the caption, “This is what people say to me every day, suicide.”⁷⁸⁶ Jacobe left a suicide note⁷⁸⁷ found by his mother.⁷⁸⁸ 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 YOU⁷⁸⁹

Jacobe contended with numerous school bullies.⁷⁹⁰ While most of the bullying occurred in hallways and the lunch room,⁷⁹¹ Jacobe rode the bus⁷⁹² with S.B.⁷⁹³ When the school district sat them further apart, S.B. used an intermediary to do his dirty work.⁷⁹⁴ The district eventually put Jacobe and S.B. on different buses⁷⁹⁵ but like a bad penny, S.B. would reappear.⁷⁹⁶

⁷⁸⁶ *Id.* at ¶ 47.

⁷⁸⁷ Bump, *supra* note 782.

⁷⁸⁸ Affidavit in Support of Summary Judgment Motion at ¶ 52, C.T. v. Bd. of Educ. of S. Glens Falls Cent. Sch. Dist., No. 2016/829 (Sup. Ct. N.Y. Cty. Mar. 21, 2018), 2018 WL 4901810.

⁷⁸⁹ Bump, *supra* note 782.

⁷⁹⁰ Amended Complaint at ¶¶ 42-43, C.T. v. Bd. of Educ. of S. Glens Falls Cent. Sch. Dist., No. 2016829 (Sup. Ct. N.Y. Cty. June 7, 2016), 2016 WL 11501355.

⁷⁹¹ Affirmation in Support of Plaintiff’s Motion to Set Aside the Jury Verdict and to Order a New Trial at ¶ 15, C.T. v. Bd. of Educ. of S. Glens Falls Cent. Sch. Dist., No. 2016829 (Sup. Ct. N.Y. Cty. June 12, 2018), 2016 WL 4901814.

⁷⁹² *Parents of Bullied Teen Speaking Out, Suing School*, CBS 6 NEWS (June 3, 2016), <https://cbs6albany.com/news/local/parents-of-bullied-teen-speaking-out-suing-school>.

⁷⁹³ Amended Complaint, *supra* note 790, at ¶¶ 42, 44.

⁷⁹⁴ Michael Goot, *South Glens Falls Parents File Lawsuit in Son’s Suicide*, POST-STAR (Apr. 9, 2016), https://poststar.com/news/local/south-glens-falls-parents-file-lawsuit-in-son-s-suicide/article_03f18f40-edeb-5427-92cb-83dc821cefb1.html.

⁷⁹⁵ Affidavit in Support of Summary Judgment Motion, *supra* note 788, at ¶ 18.

⁷⁹⁶ Amended Complaint, *supra* note 790, at ¶ 44.

J.F.⁷⁹⁷ – popular,⁷⁹⁸ but mean⁷⁹⁹ – was the ringleader.⁸⁰⁰ After the suicide, a female student overheard J.F. talk about how he had bullied Jacobe.⁸⁰¹ During civil proceedings brought by Jacobe’s parents against the school district, J.F. testified that he may have pushed Jacobe in class;⁸⁰² he just couldn’t remember.⁸⁰³

J.V. called Jacobe “little fag boy”⁸⁰⁴ and was witnessed knocking books out of Jacobe’s hands.⁸⁰⁵ Nobody could recall, however, who it was⁸⁰⁶ in second period⁸⁰⁷ that tossed Jacobe’s binder⁸⁰⁸ into a running⁸⁰⁹ locker room shower.⁸¹⁰ And when Jacobe was asked by his mother how he got bruises, he would lie.⁸¹¹

The majority of bullied students do not report their victimization.⁸¹² “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 ¶ 78.

⁸⁰² *C.T. v. Bd. of Educ. of S. Glens Falls Cent. Sch. Dist.*, No. 2016829, 2018 WL 4932202, at *2 (Sup. Ct. N.Y. Aug. 16, 2018).

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.”⁸¹³ They feel ashamed and embarrassed.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?”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.”⁸¹⁶ Indeed, fear of retaliation is an oft-cited reason for why bullied children do not report.⁸¹⁷ Some kids think the bully “will actually escalate their behavior.”⁸¹⁸ “In reality, reporting can have the opposite effect”⁸¹⁹ and usually helps.⁸²⁰

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

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

⁸¹³ *Bullying*, in CHILD ABUSE SOURCEBOOK 55, 55 (Angela L. Williams ed., 5th ed. 2019).

⁸¹⁴ BORBA, *supra* note 222, at 131.

⁸¹⁵ Deborah Kerbel, *The Curtain*, in DEAR BULLY: 70 AUTHORS TELL THEIR STORIES, *supra* note 274, at 120, 122.

⁸¹⁶ Sue Shellenbarger, *When Your Child Is a Target of Bullying*, WALL STREET J., Sept. 14, 2016, at D1.

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.

⁸¹⁸ Janice Petrella Lynch, *Kids Don’t Just Grow Out of Their Mental Health Issues*, NURSE (Nov. 1, 2018), <https://www.nurse.com/blog/2018/11/01/kids-dont-just-grow-out-of-their-mental-health-issues/>.

⁸¹⁹ URBANSKI & PERMUTH, *supra* note 274, at 191.

⁸²⁰ HILE, *supra* note 123, at 42.

⁸²¹ CARPENTER, *supra* note 132, at 11.

⁸²² BORBA, *supra* note 222, at 131.

⁸²³ DAVID R. DUPPER, SCHOOL BULLYING 18 (2013).

⁸²⁴ CARL PICKHARDT, WHY GOOD KIDS ACT CRUEL 4 (2010).

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/>.

⁸²⁶ Michlewicz, *supra* note 417.

happens, and that includes incidents of social cruelty.”⁸²⁷ Others fear parents will take away their technology⁸²⁸ or monitor its use.⁸²⁹

Some children believe they deserve to be bullied⁸³⁰ and blame themselves for their victimization.⁸³¹ Others view reporting as admitting defeat.⁸³² They do not report because it “would require the[m] to acknowledge him or herself as powerless.”⁸³³ They want to handle bullying on their own⁸³⁴ or at least think that they should.⁸³⁵

Some children do not know where to go for assistance with bullying.⁸³⁶ Those that do may view reporting as futile.⁸³⁷ Either “[t]hey don’t think anyone *can* help them” or “[t]hey don’t think anyone *will* help them.”⁸³⁸ Not all targets are shrinking violets, however.

A beleaguered New York high school student reprimanded her assistant principal in March 2014.⁸³⁹ “You are not doing anything,” A.T. said.⁸⁴⁰ “You are not going to do a fucking thing until I am dead.”⁸⁴¹ A.T. spoke up after a villainous bully claimed victory over her.⁸⁴²

Two sisters victimized A.T. in middle school.⁸⁴³ Among other things, J.K. warned A.T. to run if she ever saw them because they would hurt her.⁸⁴⁴ The older sibling told A.T. to

⁸²⁷ PICKHARDT, *supra* note 824, at 4.

⁸²⁸ Edward Dillon et al., “Is This Cyberbullying or Not?”, in *ADVANCES IN HUMAN FACTORS IN CYBERSECURITY* 337, 338 (Denise Nicholson ed. 2016).

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 COLOROSO, *supra* note 124, at 123 (emphases in original).

⁸³⁹ Tryon v. E. Islip Union Free Sch. Dist., No. 15-CV-1534 (JS) (GRB), 2015 WL 7312910, at *2-3, 7 (E.D.N.Y. Nov. 19, 2015).

⁸⁴⁰ *Id.* at *7.

⁸⁴¹ *Id.*

⁸⁴² *Id.*

⁸⁴³ *Id.* at *2-3.

⁸⁴⁴ *Id.*

fear for her life.⁸⁴⁵ A.T.'s mother took those threats right to the police.⁸⁴⁶

The sisters bullied A.T. again when she started high school in 2013.⁸⁴⁷ A.T.'s mother met with the assistant principal in December as a result.⁸⁴⁸ Soon after, J.K. recruited a student to beat up A.T.⁸⁴⁹ A.T.'s mother notified the assistant principal of this plan when she found out.⁸⁵⁰

A hospital admitted A.T. for suicidal thoughts in January 2014.⁸⁵¹ A.T.'s mother met with the assistant principal a week later but the harassment continued.⁸⁵² Girls⁸⁵³ called A.T. "trash" and a "piece of shit."⁸⁵⁴ They told A.T. on a regular basis that she should kill herself.⁸⁵⁵ J.K. boasted at school that she had destroyed A.T. and left her life in ruins.⁸⁵⁶

Phoebe Prince's mother discovered her daughter's bullying in mid-November.⁸⁵⁷ Phoebe was very agitated and getting reams of texts.⁸⁵⁸ "What's going on?" the mother asked.⁸⁵⁹ "Oh, the girls are at me," Phoebe answered.⁸⁶⁰ "Who?"⁸⁶¹ "Oh, you don't want to know, you don't want to know. It will blow over, Mummy, it'll blow over."⁸⁶²

South Hadley had a police officer on its premises.⁸⁶³ He was familiar with Phoebe but was not made aware of bullying.⁸⁶⁴ Police were not part of Phoebe's coping strategy in

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.

⁸⁵⁴ *Tryon*, 2015 WL 7312910, at *6.

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.⁸⁶⁵ She texted that strategy to a friend in Ireland.⁸⁶⁶ When it came to bullying, Phoebe was going to “keep her head high, smile and just let it go past her.”⁸⁶⁷

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.⁸⁶⁸ He wanted to have fun with new arrival Jeremy Shockey, a rookie tight end.⁸⁶⁹

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.”⁸⁷⁰ The players lined up,⁸⁷¹ the quarterback yelled, “Hut!”⁸⁷² and “[s]ure enough, Shockey jumped offside and I jumped him,” Fassel said.⁸⁷³ “I jumped right at him, saying, ‘How stupid can you be? Don't start jumping offsides.’”⁸⁷⁴ Other guys were saying things, too.⁸⁷⁵

Hazing is the practice of “physically or emotionally abusing newcomers to an organization as a means of initiation.”⁸⁷⁶ Veteran professional football players haze rookies

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.

⁸⁶⁹ Brian Heyman, *Memorable Start to Shockey's Career*, ASBURY PARK PRESS (N.J.), July 31, 2002, at C7.

⁸⁷⁰ *Id.*

⁸⁷¹ *Fassel Involved in Rookie Hazing*, *supra* note 868.

⁸⁷² John Altavilla, *Great Expectations*, HARTFORD COURANT, July 31, 2002, at C3.

⁸⁷³ *Fassel Involved in Rookie Hazing*, *supra* note 868.

⁸⁷⁴ Altavilla, *supra* note 872.

⁸⁷⁵ 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.

⁸⁷⁶ *Hazing*, BLACK'S LAW DICTIONARY (9th ed. 2009).

to inject humor,⁸⁷⁷ maintain hierarchy,⁸⁷⁸ build camaraderie,⁸⁷⁹ and keep tradition.⁸⁸⁰ Rookies may have to sing their college fight songs,⁸⁸¹ carry extra equipment,⁸⁸² and pay for food.⁸⁸³ Most rookies play along.⁸⁸⁴ A few do not.⁸⁸⁵

Rookie defensive end Alan Page arrived at the Minnesota Vikings training camp on August 5, 1967.⁸⁸⁶ Jim Marshall, a veteran lineman and team leader,⁸⁸⁷ right away showed Page some of his pass-rushing moves.⁸⁸⁸ There was also a fair amount of rookie hazing.⁸⁸⁹

What Marshall called “ritualistic indoctrination”⁸⁹⁰ was lots of beer and a lodge out in the country.⁸⁹¹ Veterans would fill the rookies full of booze and then enjoy watching them at

⁸⁷⁷ Josh Robbins, *Dog Days of Camp Finally Over for the Bucs*, ORLANDO SENTINEL, Aug. 17, 2007, at D1.

⁸⁷⁸ John D’Anna, *Beyond the Hamilton Scandal: ‘Who’s Supposed to Be in Charge?’*, ARIZ. REPUBLIC, Jan. 20, 2020, at A1.

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.

⁸⁸¹ Ed Barkowitz, *Don’t Stop Believin’ – That’s the Mantra for McSorley*, MORNING CALL (Pa.), Aug. 21, 2019, at 4.

⁸⁸² Doug Tucker, *Freshly Signed Berry Shows Up at Chiefs Practice*, SIOUX CITY J., Aug. 1, 2010, at D7.

⁸⁸³ Jon Heath, *Fangio Bans Crazy Rookie Haircuts*, FORT COLLINS COLORADOAN, Aug. 16, 2019, at 2B.

⁸⁸⁴ John Dove, *The NFL’s Top 10 Training Camp Traditions*, BLEACHER REPORT (July 11, 2002), <https://www.bleacherreport.com/articles/1249197-power-ranking-the-top-10-training-camp-traditions#slide1>.

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.”).

⁸⁸⁶ Jon Roe, *Defense Outshines Offense in Viking Intra-Squad*, ST. CLOUD DAILY TIMES, Aug. 7, 1967, at 22.

⁸⁸⁷ MARK CRAIG, 100 THINGS VIKINGS FANS SHOULD KNOW BEFORE THEY DIE 30, 34 (2016).

⁸⁸⁸ Dick Gordon, *Viking Redshirts Turn Tables*, MINNEAPOLIS STAR, Aug. 9, 1967, at 1E; Merrill Swanson, *Big, Strong – Now Page Seeks Finesse*, STAR TRIB. (Minn.), Aug. 10, 1967, at 28.

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.⁸⁹² The primary issue for Page was that he did not drink alcohol.⁸⁹³

“Drink some beer,” Marshall told Page.⁸⁹⁴ Page said, “I don’t drink.”⁸⁹⁵ Marshall followed up with “Just drink one pitcher,” “One drink and it’s over,” and “All the other rooks are doing it.”⁸⁹⁶ Page still would not compromise.⁸⁹⁷ Marshall lectured Page about becoming a teammate⁸⁹⁸ and then told him “he’d better get the hell out of there.”⁸⁹⁹

Students at Reed-Custer High School (“Reed”) told A.B. to kill himself.⁹⁰⁰ A.B. began playing football at the age of seven and loved the sport.⁹⁰¹ He attended Reed’s football summer camp before his freshman year.⁹⁰² Upperclassmen at camp told A.B. they would rape his mom and sister while forcing him to watch.⁹⁰³

Upperclassmen at the football camp later assaulted A.B. after a practice.⁹⁰⁴ The sadistic nature of the attack brought police.⁹⁰⁵ The fourteen-year-old⁹⁰⁶ had been placed in mortal

⁸⁹² Mark Craig, *Still Hazing, but Without the Hating*, STAR TRIB. (Minn.), Aug. 17, 2016, at C3.

⁸⁹³ FRITZ KNAPP, *THE BOOK OF SPORTS VIRTUES – YOUTH EDITION* loc. 895 (2012) (ebook).

⁸⁹⁴ BILL MCGRANE, *ALL RISE: THE REMARKABLE JOURNEY OF ALAN PAGE* 75 (2010).

⁸⁹⁵ *Id.*

⁸⁹⁶ *Id.*

⁸⁹⁷ *Id.*

⁸⁹⁸ Brown, *supra* note 890.

⁸⁹⁹ MCGRANE, *supra* note 894, at 75.

⁹⁰⁰ CBS Chicago, *2 Investigators: Hazing Victim Speaks Out*, YOUTUBE (Nov. 20, 2018), <https://www.youtube.com/watch?v=Vdu-Y16WgLc>.

⁹⁰¹ *Id.*

⁹⁰² Dave Savini, *Hazing Victim Speaks Out About Brutality at High School Football Camp*, CBS 2 CHIC. (Nov. 20, 2018), <https://chicago.cbslocal.com/2018/11/20/hazing-victim-speaks-out/>.

⁹⁰³ Complaint at Law at 11, *Brookman v. Reed-Custer Cmty. Unit Sch. Dist.* 255, 1:18-cv-07836 (N. D. Ill. Nov. 28, 2018).

⁹⁰⁴ *Id.* at 12.

⁹⁰⁵ *Id.* at 2.

⁹⁰⁶ Dave Savini, *Former Will County High School Head Coach Allegedly Told Players to “Unleash Their Inner Rapist” During Pre-Game Pep Talks Lawsuit Says*, CBS 2 CHIC. (Nov. 28, 2018), <https://chicago.cbslocal.com/2018/11/28/reed-custer-high-school-hazing-braidwood/>.

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.*

⁹¹³ Gregory S. Parks & Sarah J. Spangenburg, *Hazing in “White” Sororities: Explanations at the Organizational-Level*, 30 HASTINGS WOMEN’S L.J. 55, 55 (2019).

⁹¹⁴ Susan R. Miller, *Students Warned Against Hazing*, PALM BEACH POST (Fla.), Sept. 29, 2005, at 1B.

⁹¹⁵ Nicholas Bittner, Comment, *A Hazy Shade of Winter: The Chilling Issues Surrounding Hazing in School Sports and the Litigation that Follows*, 23 JEFFREY S. MOORAD SPORTS L.J. 211, 218-220 (2019).

⁹¹⁶ David W. Bianchi & Michael E. Levine, *Hazing Horrors: Who’s Accountable?*, 55 TRIAL 52, 53-54 (2019).

⁹¹⁷ *E.g.*, DEL. CODE ANN. tit. 14, § 9302 (2015).

⁹¹⁸ Bianchi & Levine, *supra* note 916, at 53.

⁹¹⁹ Ari Ezra Waldman, *Are Anti-Bullying Laws Effective?*, 103 CORNELL L. REV. ONLINE 86, 90 (2017).

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 2015.⁹²¹ Since 2006, all states have enacted either initial or additional legislation aimed at preventing bullying and protecting students.⁹²²

North Carolina state lawmakers tried but were unable to pass an anti-bullying law during their 2007-2008 legislative session.⁹²³ They succeeded in 2009.⁹²⁴ The School Violence Prevention Act required school districts to adopt policies prohibiting bullying.⁹²⁵ Suicide is now North Carolina's second-leading cause of death for children 10 to 17 years old.⁹²⁶ Forty-four (44) children and teens took their lives in 2017 compared to twenty-two (22) in 2008.⁹²⁷

Anti-bullying laws in nearly every state define bullying.⁹²⁸ The legal definitions vary⁹²⁹ but most require repeated incidents.⁹³⁰ "The requirement of something more than a single act is not unique and likely reflects the legislative

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.

⁹²² See *State Bullying Legislation Since 2008*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 18, 2013), <https://www.ncsl.org/research/education/bullying-legislation-since-2008.aspx> (erroneously attributing North Carolina legislation to New Mexico).

⁹²³ Paul Woolverton, *Bullying Bill Faces Scrutiny*, FAYETTEVILLE OBSERVER (Mar. 12, 2009), <https://search.proquest.com/docview/464874020/E464CBEE090D46ECPQ/1?accountid=57841>.

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>.

⁹²⁹ Emily Bazelon, Op-Ed, *Defining Bullying Down*, N.Y. TIMES, Mar. 12, 2013, at A23.

⁹³⁰ *Bullying: Should Congress and State Governments Pass Laws Requiring Educational Institutions to Implement Anti-Bullying Measures?*, INFOBASE (Oct. 11, 2019), <http://icof.infobaselearning.com/icofprintarticle.aspx?articleID=14807aa&citation=mla>.

concern that anti-bullying laws should focus on patterns of behavior, not single incidents.”⁹³¹

Most anti-bullying laws do not make bullying a crime.⁹³² Technically speaking, many do make bullying “illegal.”⁹³³ But that’s only because they require schools to adopt policies “prohibiting” bullying.⁹³⁴ For example, when Georgia passed its law, each school board was required to adopt policies that prohibited bullying in grades six through twelve.⁹³⁵ 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.⁹³⁶ Nevada’s anti-bullying law makes it a misdemeanor to threaten a pupil with death or bodily harm.⁹³⁷ A bully may be “guilty” of an infraction in Idaho.⁹³⁸

⁹³¹ JAMES C. HANKS, *SCHOOL BULLYING* 106 (2d ed. 2015).

⁹³² *E.g.*, *People v. Marquan M.*, 19 N.E.3d 480, 483 (N.Y. 2014); Alicia K. Albertson, Note, *Criminalizing Bullying: Why Indiana Should Hold the Bully Responsible*, 48 IND. L. REV. 243, 249 (2014); Andrew Marra, *When Is Bullying a Crime? Suicide Magnifies Legal Puzzle*, PALM BEACH POST (Fla.), June 6, 2010, at 1A; Shaylee Ragar, *Bill Would Criminalize Bullying in Schools; ACLU Says It’s Unnecessary*, MONT. PUB. RADIO (Jan. 21, 2019), <https://www.mtpr.org/post/bill-would-criminalize-bullying-schools-aclu-says-it-s-unnecessary>.

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.

⁹³⁶ KENTUCKY YOUTH BULLYING PREVENTION TASK FORCE REPORT 4, 28 (Oct. 20, 2015), <https://education.ky.gov/school/sdfs/Documents/Kentucky%20Youth%20Bullying%20Prevention%20Task%20Force%20Report.pdf>; *see also* KY. REV. STAT. ANN. § 525.080(1)(c), (2) (West 2016).

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,

[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.

⁹⁴⁰ Kerrin C. Wolf, *Booking Students: An Analysis of School Arrests and Court Outcomes*, 9 NW. J. L. & SOC. POL'Y 58, 75 n.110 (2012).

⁹⁴¹ *It's Time to Stand up to Bullying*, KTAR NEWS 92.3 FM (Oct. 25 2019), <https://www.ktar.com/story/2068120/its-time-to-stand-up-to-bullying>.

⁹⁴² MASS. GEN. LAWS ch. 265, § 43A; *Commonwealth v. Clemens*, 814 N.E.2d 384, 385 n.2 (Mass. App. Ct. 2004).

⁹⁴³ Victoria L. Lutz & Cara M. Bonomolo, *My Husband Just Trashed Our Home; What Do You Mean that's Not a Crime?*, 48 S.C. L. REV. 641, 641 (1997).

⁹⁴⁴ *Id.* at 641-42.

Stealing is “a crime even if the person doing it is a schoolkid”⁹⁴⁵ and can constitute robbery.⁹⁴⁶

Importantly, anti-bullying laws do not take away the right of students or parents to contact police.⁹⁴⁷ Although children may be afraid of retaliation if they tell an adult,⁹⁴⁸ “[t]he hard truth is that it’s almost impossible to stop bullying without some kind of help.”⁹⁴⁹ Furthermore, “[b]ullying often gets worse once it has started.”⁹⁵⁰ A child should turn to police for help if a school does not stop bullying immediately.⁹⁵¹

“Certainly, it is essential to bring [bullying] to the attention of the school”⁹⁵² but “[t]here is a point at which bullying crosses a line and becomes a police matter.”⁹⁵³ “When physical battery is involved, call law enforcement.”⁹⁵⁴ Parents are well within their rights to do so.⁹⁵⁵ Children can also seek help from police after being roughed up by a bully – or even beforehand if they feel threatened.⁹⁵⁶

Attorneys Travis and Trinity Townsend⁹⁵⁷ explain how some states consider assault and battery two different crimes.⁹⁵⁸

⁹⁴⁵ ROMAIN, *supra* note 685, at 27.

⁹⁴⁶ TRINITY TOWNSEND & TRAVIS TOWNSEND, JR., *WHEN THE COPS COME KNOCKIN’: AN ILLUSTRATED GUIDE TO CRIMINAL LAW 16* (2d ed. 2017).

⁹⁴⁷ Kimberly Dudik, *Montana’s Bully-Free Act in Action*, BILLINGS GAZETTE (Mont.), Sept. 6, 2019, at A7.

⁹⁴⁸ COLOROSO, *supra* note 124, at 221.

⁹⁴⁹ GOLUS, *supra* note 159, at 44.

⁹⁵⁰ ROMAIN, *supra* note 685, at 78.

⁹⁵¹ Suzanne Hurt, *Youths Encouraged to Report Bullying to Parents, Teachers, Police or Someone They Trust*, REDLANDS DAILY FACTS (Dec. 18, 2017),

<https://www.redlandsdailyfacts.com/2017/12/18/youths-encouraged-to-report-bullying-to-parents-teachers-police-or-someone-they-trust/>.

⁹⁵² BORBA, *supra* note 222, at 205.

⁹⁵³ CARPENTER & D’ANTONA, *supra* note 510, at 205.

⁹⁵⁴ *Id.* at 206; *see also* BORBA, *supra* note 222, at 146 (“Law enforcement or the school resource officer should be notified for any bullying action deemed to be an infraction of the law, an assault, or a threat.”).

⁹⁵⁵ CARPENTER & D’ANTONA, *supra* note 510, at 206.

⁹⁵⁶ MONTEVERDE, *supra* note 680, at 27.

⁹⁵⁷ WGBHForum, *Travis and Trinity Townsend: When the Cops Come Knockin’*, YOUTUBE (May 8, 2014), <https://www.youtube.com/watch?v=CYj-lm6AFjI>.

⁹⁵⁸ TOWNSEND & TOWNSEND, JR., *supra* note 946, at 34.

“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

⁹⁵⁹ *Id.*

⁹⁶⁰ *Id.* at 83.

⁹⁶¹ *Id.*

⁹⁶² ROMAIN, *supra* note 685, at 27.

⁹⁶³ *Id.* at 49.

⁹⁶⁴ *In re* B.S.K., No. A08-0836, 2009 WL 1586802, at *2 (Minn. Ct. App. June 9, 2009).

⁹⁶⁵ *In re* Miller, No. 2007CA00073, 2008 WL 2571403, at *1-3 (Ohio Ct. App. May 15, 2008).

⁹⁶⁶ *Public Record: Lebanon Police Department*, LEBANON EXPRESS (Or.), May 1, 2013, at A2.

⁹⁶⁷ *In re* J.N, A-1516-13T4, 2015 WL 1609914, at *1-2 (N.J. Super. Ct. App. Div. Apr. 10, 2015).

⁹⁶⁸ *In re* J.W, 198 S.W.3d 327, 329 (Tex. App. 2006).

⁹⁶⁹ *Id.*

⁹⁷⁰ *In re* J.L., Docket No. A-3879-15T3, 2017 WL 4558469, at *1 (N.J. Super. Ct. App. Div. Oct. 13, 2017).

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

⁹⁷³ *Cyberbullying: Should Cyberbullying Be Prosecuted?*, INFOBASE (Dec. 3, 2019), <http://icof.infobaselearning.com/icofprintarticle.aspx?articleID=1682aa&citation=mla>.

⁹⁷⁴ John T. Holden et al., *The #E-Too Movement: Fighting Back Against Sexual Harassment in Electronic Sports*, 52 ARIZ. ST. L.J. 1, 30 (2020).

⁹⁷⁵ *Parnell Signs Crime, Electronic Bullying Bills*, FAIRBANKS DAILY NEWS-MINER, July 18, 2014, at A2.

⁹⁷⁶ ALASKA STAT. § 11.61.120(a)(7) (2019).

⁹⁷⁷ Justin Heinze, *Menace of Bullies: What PA Is Doing to Stop Cyberbullying*, PATCH (May 30, 2019), <https://www.patch.com/pennsylvania/limerick/menace-bullies-what-pa-doing-stop-cyberbullying>.

⁹⁷⁸ UTAH CODE ANN. § 76-9-201 (West, Westlaw through 2020 Sixth Special Session).

⁹⁷⁹ E.g., *W. Va. Gov. Jim Justice Signs Grace’s Law to Make Cyberbullying a Crime Statewide*, WTAP (Mar. 29, 2018), <https://www.wtap.com/content/news/WVa-Gov-Jim-Justice-signs-Graces-Law-to-make-cyberbullying-a-crime-statewide-478316513.html>.

⁹⁸⁰ Jamie Mosser, *Cyberbullying and the Law*, 36 N. ILL. U. L. REV. 79, 81 (2016).

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.⁹⁸³ Mississippi makes it a misdemeanor to impersonate someone online for the purpose of harming a person.⁹⁸⁴ Nebraska makes it a misdemeanor to intimidate someone over the phone by means of a threat.⁹⁸⁵ This list could go on.⁹⁸⁶

“Contact police immediately if [cyber bullying] involves threatening violence, extortion, obscene calls, . . . harassment, stalking, hate crimes, or pornography.”⁹⁸⁷ The extent to which police and prosecutors are filing criminal charges against cyber bullies varies widely.⁹⁸⁸ Ohio authorities charged two teens with telecommunication harassment after they bullied a girl into cutting her own hair.⁹⁸⁹ New Jersey police arrested a high school student for cyber harassment after he sent messages encouraging suicide to an elementary school girl⁹⁹⁰ and another student.⁹⁹¹

<https://www.katv.com/archive/when-cyberbullying-becomes-criminal>; and Michigan. MICH. COMP. LAWS § 750.411x; *In re JP*, 944 N.W.2d 422, 426 n.4 (Mich. Ct. App. 2019).

⁹⁸³ CAL. PENAL CODE § 653.2 (West 2020); *People v. Shivers*, 186 Cal. Rptr.3d 352, 356 (Cal. App. Dep’t Super. Ct. 2015).

⁹⁸⁴ Emily Wagster Pettus, *New Statutes Begin Today*, CLARION-LEDGER (Miss.), July 1, 2011, at 2A.

⁹⁸⁵ NEB. REV. STAT. ANN. § 28-1310(1)(b); *State v. Methe*, 422 N.W.2d 803, 806 (Neb. 1988); Lauren Kummer, *New Law Aims to Prevent Cyberbullying, Makes It Illegal to Own Card-Scanning Device*, NTV ABC (Apr. 5, 2018), <https://www.nebraska.tv/news/local/new-law-aims-to-prevent-cyberbullying-makes-it-illegal-to-own-card-scanning-device>.

⁹⁸⁶ *E.g.*, ALA. CODE § 13A-11-8(b)(2) (2015) (making a telephone call with no purpose of legitimate communication a misdemeanor whether or not a conversation ensues).

⁹⁸⁷ CARPENTER & D’ANTONA, *supra* note 510, at 206.

⁹⁸⁸ *Cyberbullying: Should Cyberbullying Be Prosecuted?*, *supra* note 973.

⁹⁸⁹ Jessica Schmidt, *Teens Accused of Cyberbullying Girl with Special Needs Now Facing Criminal Charges*, FOX 19 NOW (Feb. 21, 2020), <https://www.fox19.com/2020/02/21/teens-accused-cyberbullying-girl-with-special-needs-now-facing-criminal-charges>.

⁹⁹⁰ Lisa Rozner, *N.J. High School Student Accused of Encouraging Elementary School Student to Kill Herself*, WLNY CBS NEW YORK (Oct. 22, 2019), <https://newyork.cbslocal.com/2019/10/22/franklin-new-jersey-encouraging-suicide-cyber-harassment/>.

⁹⁹¹ Jeff Goldman, *HS Student Encouraged Suicide to Elementary School Girl, Faces Cyber Harassment Charge, Cops Say*, NJ (Oct. 22, 2019), <https://www.nj.com/sussex-county/2019/10/hs-student>

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

encouraged-suicide-to-elementary-school-girl-faces-cyber-harassment-charge-cops-say.html.

⁹⁹² Michelle Monroe, *Cyberbullying: Swanton Girl Withstands Harassment*, ST. ALBANS MESSENGER (Nov. 18, 2013), https://www.samessenger.com/cyberbullying-swanton-girl-withstands-harassment/article_ebea3bc0-e7c4-5a82-8378-361350b3b9e3.html.

⁹⁹³ *Id.*

⁹⁹⁴ *Nightline* (ABC television broadcast Mar. 3, 2015).

⁹⁹⁵ Monroe, *supra* note 992.

⁹⁹⁶ *Nightline*, *supra* note 994.

⁹⁹⁷ David Charns, *Bullying Victim Speaks Out*, NBC 5 (Oct. 15, 2013), <https://www.mynbc5.com/article/bullying-victim-speaks-out/3312218>; Monroe, *supra* note 992.

⁹⁹⁸ Monroe, *supra* note 992.

⁹⁹⁹ *Genesis* 4:1-2.

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?"¹⁰⁰⁵ "I know not," Cain answered.¹⁰⁰⁶ "Am I my brother's keeper?"¹⁰⁰⁷ God asked again, "What hast thou done? The voice of thy brother's blood crieth unto me from the ground."¹⁰⁰⁸ Cain knew he'd been caught and was punished.¹⁰⁰⁹

Murder is against the law in all fifty states.¹⁰¹⁰ It is a crime.¹⁰¹¹ We all know that.¹⁰¹² "The intentional killing of another human being is the ultimate expression of violence."¹⁰¹³ Attempted murder is a crime, too.¹⁰¹⁴ 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.¹⁰¹⁵ but no state has a statute making suicide a crime.¹⁰¹⁶ Suicide is a crime under the common law¹⁰¹⁷ in Florida,¹⁰¹⁸ Idaho,¹⁰¹⁹

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).

¹⁰¹¹ Rory K. Little, *The Federal Death Penalty: History and Some Thoughts About the Department of Justice's Role*, 26 *FORDHAM URBAN L.J.* 347, 413 (1999).

¹⁰¹² Eric E. Johnson, *The Misadventure of Copyrighting State Law*, 107 *KY. L.J.* 593, 622 (2019).

¹⁰¹³ *People v. Eshelman*, 225 Cal. App. 3d 1513, 1524 (Cal. Ct. App. 1990).

¹⁰¹⁴ *Sussman v. Wells Fargo Bank, N.A.*, Case No. 2:16-cv-01094-JNP-PMW, 2017 WL 4216981, at *5 (D. Utah Aug. 31, 2017).

¹⁰¹⁵ *See Mental Health Information: Statistics: Suicide*, NAT'L INST.

MENTAL HEALTH,

<https://www.nimh.nih.gov/health/statistics/suicide.shtml> (last visited Oct. 3, 2020).

¹⁰¹⁶ Deborah F. Buckman, Annotation, *Validity of Criminalization of Urging or Assisting Suicide Under State Statutes and Common Law*, 96 *A.L.R.* 6th 475, 481 (2014).

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).

¹⁰¹⁸ *State v. Adams*, 683 So.2d 517, 521-22 (Fla. Dist. Ct. App. 1996); *AIDS Patient Takes Stand in Right-to-Die Case*, *PENSACOLA NEWS J.* (Fla.), Jan. 7, 1997, at 2A.

¹⁰¹⁹ *See Margaret K. Dore, Aid in Dying: Not Legal in Idaho; Not About Choice*, 53 *ADVOCATE* 18, 19 (2010).

Massachusetts,¹⁰²⁰ Mississippi,¹⁰²¹ North Carolina,¹⁰²² Rhode Island,¹⁰²³ South Carolina,¹⁰²⁴ and Virginia.¹⁰²⁵ It may be a crime in Connecticut¹⁰²⁶ and Maryland.¹⁰²⁷ Suicide is unlawful in Indiana¹⁰²⁸ and West Virginia.¹⁰²⁹

Whether a crime or unlawful, suicide is no longer punished¹⁰³⁰ because its penalties have long been abolished.¹⁰³¹ Not being punishable, suicide is “not strictly-speaking a crime”¹⁰³² but the illegal classification does matter for other

¹⁰²⁰ *Commonwealth v. Mink*, 123 Mass. 422, 428-29 (1877); Thomas J. Marzen et al., *Suicide: A Constitutional Right?*, 424 DUQUESNE L. REV. 1, 182-84 (1983).

¹⁰²¹ *Nicholson ex rel. Gollott v. State*, 672 So. 2d 744 (Miss. 1996); *Shamburger v. Grand Casino of Miss.*, 84 F. Supp. 2d 794, 798 (S.D. Miss. 1998).

¹⁰²² *State v. Willis*, 121 S.E.2d 854, 856-57 (N.C. 1961).

¹⁰²³ *Cliff v. Narragansett Television L.P.*, 688 A.2d 805, 808 (R.I. 1996).

¹⁰²⁴ *State v. Levelle*, 13 S.E. 319, 321 (S.C. 1891), *overruled on other grounds by State v. Burdette*, 832 S.E.2d 575, 583 n.3 (S.C. 2019).

¹⁰²⁵ *Hill v. Nicodemus*, 755 F. Supp. 692, 693 (W.D. Va. 1991); Kathy Hieatt, *Effort to Strike Virginia's Fornication Law Fails*, VIRGINIAN-PILOT (Feb. 6, 2014), https://www.pilotonline.com/government/virginia/article_da2b5c98-69c0-58e7-bdbc-95000f0740d6.html.

¹⁰²⁶ See PAUL H. ROBINSON & TYLER SCOT WILLIAMS, *MAPPING AMERICAN CRIMINAL LAW* 39 (2018). *But see Iannantuoni v. Yale-New Haven Hosp.*, No. CV116024700, 2014 WL 660630, at *2 (Super. Ct. Conn. Jan. 28, 2014) (“[S]uicide appears to have never been a crime in Connecticut.”).

¹⁰²⁷ 78 Md. Op. Atty. Gen. 109, 116-17 (1993). Maryland prosecuted attempted suicide at least ten times in recent years, Arelis R. Hernández, *Bill Would Roll Back Attempted Suicide Law*, WASH. POST, Feb. 5, 2019, at B1, but the state will no longer do so, *New Laws Take Effect on Oct. 1 in Maryland*, SUNDAY CAP. (Md.), Sept. 29, 2019, at B1, because its legislature repealed the offense in 2019. See MD. CODE ANN., CRIM. LAW § 3-101.1(a) (West Supp. 2020).

¹⁰²⁸ *Wallace v. State*, 116 N.E.2d 100, 101 (Ind. 1953).

¹⁰²⁹ *Moats v. Preston Cty. Comm'n*, 521 S.E.2d 180, 188 (W. Va. 2007).

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).

¹⁰³¹ Richard S. Myers, *An Analysis of the Constitutionality of Laws Banning Assisted Suicide from the Perspective of Catholic Moral Teaching*, 72 U. DET. MERCY L. REV. 771, 775 (1995). The penalties included forfeiture of property and ignominious burial. *Id.*

¹⁰³² WAYNE LAFAVE & AUSTIN W. SCOTT, JR., *HANDBOOK ON CRIMINAL LAW* 569 (1972).

purposes such as insurance¹⁰³³ and determining the criminal liability of persons connected to a suicide.¹⁰³⁴ “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.’”¹⁰³⁵

Christian Taylor (16) wore black clothing, listened to metal music, and could skateboard on a half-pipe.¹⁰³⁶ He relocated with his military family from Texas to Virginia¹⁰³⁷ in December 2009¹⁰³⁸ and started school after the new year.¹⁰³⁹ Things went well at first. He made a best friend in January¹⁰⁴⁰ and began dating.¹⁰⁴¹ Several students were anything but welcoming, however.¹⁰⁴²

¹⁰³³ Susan K. Jezewski, Note, *Can a Suicide Machine Trigger the Murder Statute?*, 37 WAYNE L. REV. 1921, 1926 n. 31 (1991).

¹⁰³⁴ 83 C.J.S. *Suicide* § 5 (2010).

¹⁰³⁵ John Vincent Barry, *Suicide and the Law*, 5 MELB. U. L. REV. 1, 4 (1965) citing GLANVILLE WILLIAMS, CRIMINAL LAW: THE GENERAL PART 393 (2d ed. 1961); see also Richard Wolfrom, *The Criminal Aspect of Suicide*, 39 DICK. L. REV. 42, 47, 53 (1934).

¹⁰³⁶ Petula Dvorak, *A Grim Birthday Party for Va. Teen Who Couldn't Outlast Cruelty*, WASH. POST, Nov. 9, 2010, at B1.

¹⁰³⁷ Tamara Dietrich, Opinion, *Zero Tolerance for School Bullies*, DAILY PRESS (Va.), June 9, 2010, at 2.

¹⁰³⁸ Kimberly K. Fritz, *Popularity Puzzle: Some Thrive, Others Survive in the Classrooms*, U.S. ARMY (Feb. 3, 2011), https://www.army.mil/article/51287/popularity_puzzlesome_thrive_others_survive_in_the_classrooms.

¹⁰³⁹ Jennifer L. Williams & Jon Cawley, *Tough Questions After Teen Suicide*, DAILY PRESS (Va.), June 3, 2010, at 1.

¹⁰⁴⁰ Gregory Connolly, *Arguments Continue in York Wrongful Death Lawsuit*, WILLIAMSBURG YORKTOWN DAILY (Apr. 25, 2013), <https://www.wydaily.com/local-news-old/2013/04/25/arguments-continue-in-york-wrongful-death-lawsuit/>.

¹⁰⁴¹ *Williams v. Hopkins*, COURTROOM VIEW NETWORK (Apr. 25, 2013), <https://www.cvn.com/sessions/10195/play?playFrom=6316000> (trial testimony of witness K. Lowder).

¹⁰⁴² Amanda Kerr, *School Bullying Lawsuit Dismissed*, DAILY PRESS (Va.), Apr. 27, 2013, at 5.

Bullies began making fun of Christian in February¹⁰⁴³ and treated him badly for months.¹⁰⁴⁴ They told Christian (who wore ripped-up pants)¹⁰⁴⁵ that he was “too poor to afford clothes”¹⁰⁴⁶ and poked fun of his fingerless gloves.¹⁰⁴⁷ They called him “emo,” “freak,”¹⁰⁴⁸ and “loser.”¹⁰⁴⁹ When Christian began cutting in April,¹⁰⁵⁰ the bullies goaded him about it and advised him to commit suicide.¹⁰⁵¹

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

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

¹⁰⁴³ Gregory Connolly, *Jury Hears Opening Arguments, First Testimonies in York Wrongful Death Lawsuit*, WILLIAMSBURG YORKTOWN DAILY (Apr. 24, 2013), <https://www.wydaily.com/local-news-old/2013/04/24/jury-hears-opening-arguments-first-testimonies-in-york-wrongful-death-lawsuit>.

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

¹⁰⁴⁵ Connolly, *supra* note 1043.

¹⁰⁴⁶ Kerr, *supra* note 1042.

¹⁰⁴⁷ Connolly, *supra* note 1043.

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

¹⁰⁴⁹ Kerr, *supra* note 1042.

¹⁰⁵⁰ Williams, *supra* note 1044.

¹⁰⁵¹ *Williams v. Hopkins*, COURTROOM VIEW NETWORK (Apr. 23, 2013), <https://www.cvn.com/sessions/10191/play?playFrom=5894000> (trial testimony of witness A. Vigil).

¹⁰⁵² *Id.* at

<https://www.cvn.com/sessions/10191/play?playFrom=4872000> (trial testimony of witness Nora Gillespie).

¹⁰⁵³ *Id.*

¹⁰⁵⁴ *Id.*

¹⁰⁵⁵ *Id.*

¹⁰⁵⁶ Connolly, *supra* note 1043.

¹⁰⁵⁷ *Id.*

¹⁰⁵⁸ *Williams v. Hopkins*, *supra* note 1051.

to just go commit suicide and get it over with.”¹⁰⁵⁹ On May 12, the assistant principal made two of the bullies sign a behavioral contract¹⁰⁶⁰ but the bullying persisted.¹⁰⁶¹

Christian hanged himself on May 31.¹⁰⁶² His mother had met with law enforcement weeks before and complained about the assault.¹⁰⁶³ A sheriff’s deputy decided during the meeting that no crime had been committed.¹⁰⁶⁴ The sheriff’s department reinvestigated¹⁰⁶⁵ but concluded before year’s end, “There is no bullying statute in the state of Virginia, so we are not investigating a crime.”¹⁰⁶⁶ The bullies, meanwhile, started harassing Christian’s brother.¹⁰⁶⁷

B. ADVISE OR ENCOURAGE STATUTES

A teen college student threatened suicide from the top of a water tank in Campbell, California.¹⁰⁶⁸ One hundred feet below, an adult male yelled, “Jump!”¹⁰⁶⁹ Police arrested the adult male and booked him into jail.¹⁰⁷⁰ “That kind of behavior

¹⁰⁵⁹ Williams, *supra* note 1044; accord Williams v. Hopkins, COURTROOM VIEW NETWORK (Apr. 23, 2013), <https://www.cvn.com/sessions/10191/play?playFrom=8217000> (testimony of witness R. Toth).

¹⁰⁶⁰ Williams v. Hopkins, COURTROOM VIEW NETWORK (Apr. 24, 2013), <https://www.cvn.com/sessions/> (trial testimony of witness Craig Reed).

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.

¹⁰⁶⁵ *Id.*; Larry O’Dell, *Va. Mom Blames Teen Son’s Suicide on Bullying*, NBC NEWS (June 2, 2010), https://www.nbcnews.com/id/37478219/ns/us_news-crime_and-courts/t/va-mom/blames-teen-sons-suicide-bullying/.

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.

¹⁰⁶⁸ *Man Arrested for Exhorting Teen to Jump*, SANTA MARIA TIMES (Cal.), Dec. 7, 1984, at 21.

¹⁰⁶⁹ *Don’t Say Jump*, SACRAMENTO BEE, Dec. 7, 1984, at B16.

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

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).

¹⁰⁷⁵ LA. REV. STAT. ANN. § 14:32:12 (West, Westlaw through 2020 First Extraordinary Session); MISS. CODE ANN. § 97-3-49 (2014); OKLA. STAT. ANN. tit. 21, § 813 (West 2015); S.D. CODIFIED LAWS § 22-16-37 (2017).

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).

¹⁰⁷⁷ ARK. CODE ANN. § 5:10-107 (Supp. 2019).

¹⁰⁷⁸ *In re Ryan N.*, 112 Cal. Rptr. 2d 620, 632 (Cal. Ct. App. 2001).

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.

¹⁰⁸² *See State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014) (holding unconstitutional portions of a criminal law statute that prohibited advising or encouraging suicide); *see also* Anthony W. Joyce, Note, *Prosecuting Fatal Speech: What Minnesota’s State v. Final Exit Network Means for Assisted-Suicide Laws Across the Country*, 71 OKLA. L. REV. 1229, 1243-45 (2019).

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 2014¹⁰⁸⁶ but spoke of suicide by years' end.¹⁰⁸⁷ She hanged herself to death¹⁰⁸⁸ on February 4, 2015.¹⁰⁸⁹ Santana had experienced bullying¹⁰⁹⁰ and "shortly before [she] committed suicide, another girl at school had written to her on Facebook, urging her to kill herself."¹⁰⁹¹

The Oglala Sioux Tribe makes it a crime to "intentionally . . . solicit another to attempt or commit suicide."¹⁰⁹² Other tribes have similar laws¹⁰⁹³ and so do four states.¹⁰⁹⁴ All of these laws have problems.

Maine does not address suicidal thoughts as a social harm.¹⁰⁹⁵ 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>.

¹⁰⁸⁴ Alex Potter, *Gone Girl: Life in Pine Ridge After the Suicide of 12-Year-Old Santana Janis*, AL JAZEERA AM. (Feb. 26, 2016), <http://projects.aljazeera.com/2016/02/pine-ridge-teen-suicide/>.

¹⁰⁸⁵ Richie Richards, *Pine Ridge Indian Reservation: Home of the Oglala Sioux Tribe*, RAPID CITY J. (May 30, 2019), https://www.rapidcityjournal.com/news/latest/pine-ridge-indian-reservation-home-of-the-oglaala-sioux-tribe/article_88852e26-25f5-591a-a650-16b02dc58e3f.html.

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.

¹⁰⁸⁹ *Santana Marie Janis*, LAKOTA TIMES (Feb. 12, 2015), <https://www.lakotatimes.com/articles/santana-marie-janis/>.

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).

¹⁰⁹⁴ ME. REV. STAT. ANN. tit. 17-A, § 204(1), (2) (West, Westlaw through 2019 Second Regular Session of the 129th Legislature); MONT. CODE ANN. § 45-5-105(1), (2) (1999); N.H. REV. STAT. ANN. § 630:4(I), (II) (2016); N.D. CENT. CODE § 12.1-16-04(1) (2019).

¹⁰⁹⁵ ME. REV. STAT. ANN. tit. 17-A, § 204(1) (West, Westlaw through 2019 Second Regular Session of the 129th Legislature). "Social harm"

not punish if an attempt succeeds.¹⁰⁹⁶ New Hampshire may not cover the use of words.¹⁰⁹⁷ North Dakota uses “commit” in its statute¹⁰⁹⁸ but in 1975 repealed laws making suicide a crime.¹⁰⁹⁹ 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*).”¹¹⁰⁰ *Mens rea* – Latin for guilty mind – is the state of mind a criminal defendant must possess in order to be guilty of a crime.¹¹⁰¹ There are various statutory mental states such as intent and knowledge.¹¹⁰² Recklessness is a less culpable mental state.¹¹⁰³

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.” 1 WAYNE R. LAFAYE, SUBSTANTIVE CRIMINAL LAW § 1.2(e) (3d ed. 2018).
¹⁰⁹⁶ MONT. CODE ANN. § 45-5-105(1). “The assumption is that all successful cases could constitute homicide.” Lyn Carson & Brette Blakely, *What Can Oregon Teach Australia About Dying?*, 6 J. POL. & L. 30, 35 (2013).

¹⁰⁹⁷ N.H. REV. STAT. ANN. § 630:4(I), (II) (2016). *But see* *Renderos v. State*, 213 S.W.3d 37 (Ark. Ct. App. 2005). A jury convicted *Renderos* of soliciting sex from a child. *Id.* at 38. *Renderos* admitted to pulling the child’s pants down but argued nonverbal conduct was insufficient proof of solicitation. *Id.* at 38-39. The court rejected his argument: “The act of forcibly and persistently pulling a girl’s pants down against her wishes while alone with her in a garage attic is unmistakably [solicit]ing her to commit sexual indecency.” *Id.* at 39. *See also* *People ex rel. Friedman v. Framer*, 208 Misc. 236, 241, 139 N.Y.S.2d 331 (Magis. Ct. 1954) (stating that a “collection box” could constitute solicitation when a law does not distinguish between oral and mute conduct).

¹⁰⁹⁸ N.D. CENT. CODE § 12.1-16-04(1).

¹⁰⁹⁹ *In re Goodwin*, 366 N.W.2d 809, 811 n.3 (N.D. 1985).

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

¹¹⁰¹ *Commonwealth v. Andre*, 17 A.3d 951, 958 (Pa. Super. Ct. 2011).

¹¹⁰² *Criminal Law: Substantive Principles*, *supra* note 112, at § 28.

¹¹⁰³ *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?”¹¹⁰⁴ M.G. could be prosecuted under a recklessness standard.¹¹⁰⁵

Professor Glanville Williams said “one who incites a young person to suicide . . . is properly punishable.”¹¹⁰⁶ 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.”¹¹⁰⁷ “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.”¹¹⁰⁸ The right approach is to add a malice *mens rea* component to any criminal law against assaultment.

D. GRACE’S LAW 2.0

The Maryland General Assembly passed the Safe Schools Reporting Act (the “Act”) in 2005.¹¹⁰⁹ Some referred to the Act as an “anti-bullying bill”¹¹¹⁰ 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.”).

¹¹⁰⁶ John Keown, *Williams Versus Kamisar on Euthanasia: A Classic Debate Revisited*, in *THE SANCTITY OF LIFE AND THE CRIMINAL LAW: THE LEGACY OF GLANVILLE WILLIAMS* at 247, 247, 249 (Dennis J. Baker & Jeremy Horder eds., 2013) citing *GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW* 274 (1958).

¹¹⁰⁷ Kevin Simpson, *Colorado Harassment Law Tweaked to Impose Fines, Jail for Cyberbullying*, DENVER POST, July 14, 2015, at 1A.

¹¹⁰⁸ *Id.*

¹¹⁰⁹ Eugene W. Goll, *Report: 12-Year-Olds Most Victimized, 13-Year-Olds Do Most Bullying*, STAR DEMOCRAT (Md.), Apr. 22, 2008, at A13.

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.¹¹¹¹ The Act requires public school systems¹¹¹² to (1) have a standardized complaint form for student victims of harassment and intimidation,¹¹¹³ (2) maintain records in regard to harassment and intimidation,¹¹¹⁴ and (3) report annually to the Maryland State Department of Education as to those incidents of harassment and intimidation.¹¹¹⁵ 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.¹¹¹⁶ The state expanded its electronic harassment law in 2012 to include other modes of communication.¹¹¹⁷ 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.¹¹¹⁸

¹¹¹¹ Lizzy McLellan, *Dating Violence May Become Bullying Issue in Maryland Schools*, STAR DEMOCRAT (Md.), Mar. 7, 2012, at A3.

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*, BALTIMORE SUN, Oct. 17, 2011, at 1.

¹¹¹⁴ Tom Stuckey, *Laws on Parkland, Bullying Go into Effect*, SUN (Md.), June 30, 2005, at 2B.

¹¹¹⁵ Jennifer Raley, *In Allegany County, Motive for Most Bullies Is 'Just to Be Mean'*, CUMBERLAND TIMES-NEWS (Md.), Apr. 20, 2016, at A1.

¹¹¹⁶ *Donati v. State*, 84 A.3d 156, 179 n.9 (Md. Ct. Spec. App. 2014); Sara Marsh, *New Laws Target Hit-and-Run Drivers, E-Mail Misuse*, CAPITAL (Md.), May 22, 1998, at B1.

¹¹¹⁷ *Donati*, 84 A.3d at 180-81.

¹¹¹⁸ *The Communicators: With Douglas Gansler* (C-SPAN2 television broadcast Aug. 15, 2012), <https://www.c-span.org/video/?307537-1/communicators-doug-gansler>.

Growing up in Maryland, Grace McComas (15)¹¹¹⁹ once covered a groundhog trapped in her backyard with a blanket so it would not get cold overnight.¹¹²⁰ When a sibling and cousins were hurting slugs with salt,¹¹²¹ Grace scraped one from the sidewalk and hurried indoors.¹¹²² She couldn't remove the salt with water so she tried licking it off.¹¹²³ Whereas Grace's mother called her daughter a "little lamb because of the curls and sweetness,"¹¹²⁴ a backbiting high school boy dubbed Grace a "cunt," "snitch,"¹¹²⁵ "bitch," and "whore."¹¹²⁶

When Grace was fourteen, she twice snuck into her neighbors' house and drank from a liquor cabinet.¹¹²⁷ On the second occasion, she did so with the boy.¹¹²⁸ Grace apologized to the neighbors when they returned home from vacation.¹¹²⁹ A police officer showed up days later on June 30, 2011.¹¹³⁰ Grace confessed and authorities charged her and the boy¹¹³¹ with the exact same felony offenses.¹¹³²

¹¹¹⁹ Nick Alexopoulos, *In Grace's Honor*, LOYOLA (Mar. 27, 2013), <https://www.loyola.edu/explore/magazine/stories/2013/in-graces-honor>.

¹¹²⁰ *Id.*

¹¹²¹ *Id.*

¹¹²² *Id.*

¹¹²³ *Id.*

¹¹²⁴ Leigh Lesniak, *Grace's Story*, YOUTUBE (Dec. 30, 2015), <https://www.youtube.com/watch?v=F0FuP14RL6g>.

¹¹²⁵ See Nicole Karlis, *Teen Suicides Rise in Tandem with Cyberbullying - and Advocates Have Had Enough*, SALON (Mar. 11, 2018), <https://www.salon.com/2018/03/11/teen-suicides-rise-in-tandem-with-cyberbullying-and-advocates-have-had-enough/>.

¹¹²⁶ *Caution* *Language*, MCCOMASTRUTH: THE STORY OF GRACE (Oct. 30, 2014), <https://mccomast ruth.wordpress.com/2014/10/30/caution-language/>.

¹¹²⁷ *The Beginning of the End*, MCCOMASTRUTH: THE STORY OF GRACE (Oct. 29, 2014), <https://mccomast ruth.wordpress.com/2014/10/29/the-beginning-of-the-end/>.

¹¹²⁸ *Id.*

¹¹²⁹ *Crowning Blows and Betrayals*, MCCOMASTRUTH: THE STORY OF GRACE (Oct. 30, 2014), <https://mccomast ruth.wordpress.com/2014/10/30/crowning-blows-and-betrayals/>.

¹¹³⁰ *Id.*

¹¹³¹ *Id.*

¹¹³² Lesniak, *supra* note 1124.

When authorities placed Grace under subpoena for the boy's adjudication, the boy lashed out on Twitter - without using Grace's name.¹¹³³ 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."¹¹³⁴ 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."¹¹³⁵

Grace testified at the adjudication¹¹³⁶ but the pressure got to her at the end of October; inside a hospital emergency room, Grace said she wanted to die.¹¹³⁷ She attempted suicide in December.¹¹³⁸ Grace made another attempt on Easter Sunday 2012 and died as a result.¹¹³⁹

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, Alexopulos, *supra* note 1119, but friends apprised her of the messages. Susan Reimer, *Journey in Grief Leads to New Curbs on Bullying*, BALT. 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=sFqIk9TdO0c>.

¹¹³⁵ *Caution* Language, *supra* note 1126.

¹¹³⁶ *Trial & Tribulation*, MCCOMASTRUTH: THE STORY OF GRACE (Nov. 9, 2014), <https://mccomastruth.wordpress.com/2014/11/09/trial-tribulation/>.

¹¹³⁷ *Id.*

¹¹³⁸ Christine Phister McComas, GRACE K. MCCOMAS MEMORIAL WEBPAGE (Dec. 13, 2015), <https://www.facebook.com/GraceMcComasMemorial/posts/i-recently-shared-the-document-showing-initial-social-media-abuse-of-grace-via-t/1253090468049932/>.

¹¹³⁹ *The Struggle to Save Grace...*, MCCOMASTRUTH: THE STORY OF GRACE (Oct. 22, 2014), <https://mccomastruth.wordpress.com/2014/10/22/the-struggle-to-save-grace/>.

In 2013, Maryland's General Assembly passed House Bill 396.¹¹⁴⁰ The bill, known as "Grace's Law," criminalized the malicious and continuous making of online posts that inflict serious emotional distress on a minor.¹¹⁴¹ A person could commit the crime even if he or she did not send offending messages directly to a victim.¹¹⁴² The governor signed the bill¹¹⁴³ and it went into effect on October 1, 2013.¹¹⁴⁴

The General Assembly acted again in 2019 when it passed "Grace's Law 2.0."¹¹⁴⁵ Grace's Law 2.0 took effect October 1, 2019.¹¹⁴⁶ It criminalizes a single significant act of cyber bullying made with the intent to induce a minor to commit suicide.¹¹⁴⁷ 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.¹¹⁴⁸

¹¹⁴⁰ Alex Jackson, *Cyber-Bullying Bill Passes General Assembly*, CAPITAL GAZETTE (Md.), Apr. 5, 2013, at A11.

¹¹⁴¹ Jenny Inglee, *Should Kids Go to Jail for Cyberbullying?*, YAHOO NEWS (Apr. 18, 2013), <https://www.news.yahoo.com/kids-jail-cyberbullying-002006395.html>.

¹¹⁴² Reimer, *supra* note 1133.

¹¹⁴³ Arthur Hirsch, *Bullying is Target of New Howard County Program*, BALTIMORE SUN, May 9, 2013, at T10.

¹¹⁴⁴ Meghan McCorkell, *11 Annapolis High School Students Disciplined for Cyberbullying*, WJZ 13 CBS BALTIMORE (Oct. 30, 2013), <https://baltimore.cbslocal.com/2013/10/30/11-annapolis-high-school-students-disciplined-for-cyberbullying/>.

¹¹⁴⁵ Pat Warren, *Maryland House Unanimously Passes 'Grace's Law' 2.0 Anti-Cyberbullying Bill*, WJZ 13 CBS BALTIMORE (Mar. 14, 2019), <https://baltimore.cbslocal.com/2019/03/14/maryland-house-unanimously-passes-graces-law-2-0-anti-cyberbullying-bill/>.

¹¹⁴⁶ Mike Ursery, *New State Laws Might Be Game Changers*, DUNDALK EAGLE (Md.), Oct. 3, 2019, at 8.

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.¹¹⁴⁹ It found approximately half the consumer defendants who lost in court paid their debt off within two years.¹¹⁵⁰ “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.”¹¹⁵¹ There are, however, “some ground rules for the world of out-of-court collection attempts.”¹¹⁵² 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.”¹¹⁵³

When a Connecticut man was telephonically harassed in regard to a debt, he recorded the calls.¹¹⁵⁴ According to a lawsuit he filed against the debt collection company, collectors repeatedly made harassing statements during calls to his home number.¹¹⁵⁵ 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.”¹¹⁵⁶ One of the man’s

¹¹⁴⁹ Kim Petrone & Vernon J. Richardson, *The Conundrum of Default Judgment Damages in Credit Card Debt Buyer Lawsuits*, 54 ARK. LAW. 34, 35 (2019).

¹¹⁵⁰ *Id.*

¹¹⁵¹ Jay Willis, *Do You Know Who Owns Your Debt?*, GQ (Oct. 11, 2019), <https://www.gq.com/story/debt-buying-collectors>.

¹¹⁵² *Id.*

¹¹⁵³ 15 U.S.C. § 1692d(5) (2018).

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.

¹¹⁵⁵ Order at *1, *Bryant v. Allied Account Serv.*, No. CV 05-5565(JBW)(ARL) (E.D.N.Y. Sept. 13, 2006), 2006 WL 2620376.

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.¹¹⁵⁷

So far as Mauro was concerned, the call crossed the line, did not fall into a legal gray area, and was socially unacceptable.¹¹⁵⁸ An investigative reporter asked, “Mister Mauro, that’s an ugly call, but is it illegal?”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.”¹¹⁶⁰ The collection company settled the lawsuit for \$200,000.¹¹⁶¹ Mauro said in 2011, “There are to my knowledge, about four or five cases of suicide coming from debt collection harassment.”¹¹⁶²

Wyatt Lansberry (12)¹¹⁶³ enjoyed history,¹¹⁶⁴ collected flags from around the world, and aspired to be a Marine like his brother.¹¹⁶⁵ Wyatt’s first day of junior high was Monday August 29, 2016;¹¹⁶⁶ his last was May 18, 2017¹¹⁶⁷ – ten days before

Complaint and Demand for Jury Trial at ¶ 28(k), *Bryant v. Allied Account Serv.*, Docket No. 05-5565 (E.D.N.Y. Sept. 1, 2006), 2006 U.S. Dist. Ct. Pleadings LEXIS 8631.

¹¹⁵⁷ *Debt Collectors Gone Wild ABC News*, *supra* note 1156.

¹¹⁵⁸ *Id.*

¹¹⁵⁹ *Id.*

¹¹⁶⁰ *Id.*

¹¹⁶¹ *Case Results*, WILCOX L. FIRM, P.C.,

<https://www.reportcollectionabuse.com/case-results/> (last visited Oct. 3, 2020).

¹¹⁶² *Working Americans Suffer Most as Debt Collectors Go Wild*, RT (May 2, 2011), <https://www.rt.com/news/americans-debt-collectors-abuse/>.

¹¹⁶³ *Wyatt James Lansberry*, ALTOONA MIRROR (May 21, 2017),

<https://www.altoonamirror.com/obituaries/2017/05/wyatt-james-lansberry>.

¹¹⁶⁴ Russ O’Reilly, *Answers Sought in Death of Altoona Student*,

ALTOONA MIRROR (Mar. 23, 2017),

<https://www.altoonamirror.com/news/local-news/2017/05/answers-sought-in-death-of-altoona-student/>.

¹¹⁶⁵ *Wyatt James Lansberry*, ALTOONA MIRROR (Pa.), May 21, 2017, at A11.

¹¹⁶⁶ *Altoona Area Junior High School Homeroom Listings*, ALTOONA

MIRROR (Pa.), Aug. 15, 2016, at 4.

¹¹⁶⁷ *Lansberry v. Altoona Area Sch. Dist.*, 356 F. Supp. 3d 486, 490 (W.D. Pa. 2018).

classes were dismissed.¹¹⁶⁸ Wyatt died that Thursday at his father's residence¹¹⁶⁹ from a self-inflicted wound¹¹⁷⁰ after a student told him to "go home and shoot [your]self."¹¹⁷¹

A police detective determined that one boy made a routine habit out of bullying Wyatt.¹¹⁷² Students harassed Wyatt on his phone and computer.¹¹⁷³ In the month leading up to Wyatt's suicide, he was twice observed crying at school¹¹⁷⁴ and physically assaulted in a stairwell three separate times by a group of boys.¹¹⁷⁵ "I can't live any longer," Wyatt wrote on a piece of paper.¹¹⁷⁶ "People at school tell me to kill myself."¹¹⁷⁷

A federal judge in Pennsylvania – one with an extensive military background and who attended West Point¹¹⁷⁸ – described Wyatt's junior high experience as "dreadful" and his bullying "appalling."¹¹⁷⁹ Although the judge dismissed a case filed against the school district on constitutional grounds,¹¹⁸⁰ he recognized "the possibility that bullying might eventually result . . . in tragic harm to the bullied student."¹¹⁸¹ 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."¹¹⁸²

¹¹⁶⁸ Russ O'Reilly, *Trying to Look Ahead: Grieving Local Family Wants to Help Schools Stop Cycle of Bullying*, ALTOONA MIRROR (Pa.), July 2, 2017, at A10.

¹¹⁶⁹ Amended Complaint at ¶ 12, *Lansberry v. Altoona Area Sch. Dist.*, No. 3:18-cv-19 (W.D. Pa. May 18, 2018).

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.

¹¹⁷⁶ *Child Bullied to Death, Family Searches for Solutions (Part 1)*, WTAJ (Feb. 12, 2020), <https://www.wearecentralpa.com/news/child-bullied-to-death-family-search-for-solutions-part-1/>.

¹¹⁷⁷ *Id.*

¹¹⁷⁸ Vicki Rock, *Somerset Attorney an Army Reserve Colonel*, DAILY AM. (Pa.), Apr. 18, 1994, at 11.

¹¹⁷⁹ *Lansberry*, 356 F. Supp. 3d at 502.

¹¹⁸⁰ *Id.* at 503-05.

¹¹⁸¹ *Id.* at 502.

¹¹⁸² *Id.* at 503.

Freshman Spencer Tate (16)¹¹⁸³ attended a private high school¹¹⁸⁴ in Tennessee.¹¹⁸⁵ Students there called Spencer “faggot,” “fag,” and “gay.”¹¹⁸⁶ They also whipped him with belts.¹¹⁸⁷ After a trio of troublemakers told Spencer to “go home and kill [your]self,”¹¹⁸⁸ he did just that on February 25, 2014.¹¹⁸⁹

Although a judge dismissed a lawsuit filed by Spencer’s mother against the school,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.”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.¹¹⁹² In the presence of other students, she allegedly yelled at N.M., “Why don’t you go kill yourself?”¹¹⁹³ A lawsuit says she then ripped the project from N.M.’s hands and threatened to lock him in a room.¹¹⁹⁴ N.M. claimed intentional infliction of emotional distress and monetary damages.¹¹⁹⁵

The trial court dismissed N.M.’s case¹¹⁹⁶ reasoning that the alleged conduct was not “extreme and outrageous” as a

¹¹⁸³ *Spencer Adams Tate*, TENNESSEAN, Feb. 28, 2014, at 11A.

¹¹⁸⁴ Perry A. Zirkel & Richard Fossey, *Liability for Student Suicide: An Update of the Caselaw*, 354 ED. LAW REP. 628, 629-30 n.16 (2018).

¹¹⁸⁵ *Tumminello v. Father Ryan High Sch., Inc.*, No. 3:15-cv-00684, 2015 WL 13215456, at *1 (M.D. Tenn. 2015).

¹¹⁸⁶ *Id.*

¹¹⁸⁷ *Id.*

¹¹⁸⁸ *Tumminello v. Father Ryan High Sch., Inc.*, 678 F. App’x 281, 283 (6th Cir. 2017).

¹¹⁸⁹ 2015 WL 13215456, at *1.

¹¹⁹⁰ *Id.*

¹¹⁹¹ 678 F. App’x at 288.

¹¹⁹² Traci R. Gentilozzi, *Student’s Emotional Distress Suit Gets to Jury*, MICH. LAWS. WKLY., June 30, 2014, at 2.

¹¹⁹³ *Melson ex rel. Melson v. Botas*, No. 315014, 2014 WL 2867197, at *2 (Mich. Ct. App. June 19, 2014).

¹¹⁹⁴ *Id.*

¹¹⁹⁵ *Gentilozzi*, *supra* note 1192.

¹¹⁹⁶ *Student Wins Appeal in Suit over Humiliation*, LANSING ST. J., June 23, 2014, at 3A.

matter of law.¹¹⁹⁷ The Michigan Court of Appeals disagreed, reversed, and remanded.¹¹⁹⁸ It said the case should have been sent to a jury because reasonable minds could find the conduct tortious.¹¹⁹⁹ In regard to the alleged assailment, a Michigan Supreme Court Justice wrote, “making such a statement to one’s student cannot be defended.”¹²⁰⁰ The school settled the case.¹²⁰¹

Hailee Lamberth (13) was born in Las Vegas, Nevada.¹²⁰² Hailee was a perennial straight-A student, a star on the soccer field, and an amazing sister.¹²⁰³ She started seventh grade in August 2013 and died by suicide on December 12, 2013.¹²⁰⁴

Hailee’s immediate family filed a lawsuit against the Clark County School District (“CCSD”).¹²⁰⁵ 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.

¹²⁰⁰ 863 N.W.2d at 675 (Markman, J., dissenting). The Vermont judiciary found in an employment case that a high school lawfully parted ways with a teacher, *Azagoh-Kouadio v. Roman Catholic Diocese of Burlington*, No. 2016-266, 2016 WL 7364740, at *1 (Vt. Dec. 16, 2016), who told a student in jest, “Well, go kill yourself.” Plaintiff St. Ambrose Azagoh-Kouadio Motion for Summary Judgement Memorandum, *Azagoh-Kouadio v. Roman Catholic Diocese of Burlington*, No. 1131-10-14 (Sup. Ct. Vt. Mar. 14, 2016), 2016 WL 11447597.

¹²⁰¹ *Case Details: Melton v Lawton Community Sch*, MICH. 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).

¹²⁰² ANTHONY E. ZUIKER, *GOODBYE: A STORY OF SUICIDE* 75 (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>.

¹²⁰⁴ Mike Heuer, *Parents Blame Bullying for Daughter’s Suicide*, COURTHOUSE NEWS SERV. (Oct. 24, 2014), <https://www.courthousenews.com/parents-blame-bullying-for-daughters-suicide>.

¹²⁰⁵ Order Dismissing Federal Claims and Remanding Case to State Court at 1, *Lamberth v. Clark Cty. Sch. Dist.*, No. 2:14-cv-02044-APG-GWF (D. Nev. Aug. 12, 2015).

27, 2013.¹²⁰⁶ The message seemed to say, “Where are you Hailee? I hope you died.”¹²⁰⁷

A girl bullied Hailee in gym class.¹²⁰⁸ J.J. would call Hailee a “fat ass,”¹²⁰⁹ an “ugly bitch,” and “stupid.”¹²¹⁰ A student reported J.J. on November 20.¹²¹¹ “This has been going on for a very long time now. [J.J.] has made Hailee cry,” wrote the student.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.”¹²¹³ “[C.H.] was pushing [Hailee] around and he called her ‘fat’ and ‘ugly.’”¹²¹⁴ C.H. deposited notes in Hailee’s locker.¹²¹⁵ One said, “Drink Bleach and Die.”¹²¹⁶ Another asked, “Why don’t you die?”¹²¹⁷

Las Vegas police determined that Hailee was bullied by a boy and two girls the day she took her life.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.”¹²¹⁹ Police made no arrests and the case was closed as bullying is not a crime, just a definition.¹²²⁰

¹²⁰⁶ Complaint for Declaratory Relief, Injunctive Relief, and Damages at ¶ 26, *Lamberth v. Clark Cty. Sch. Dist.*, No. 14-A-708849 (Dist. Ct. Nev. Oct. 22, 2014), 2014 WL 12883579.

¹²⁰⁷ *Id.*

¹²⁰⁸ ZUIKER, *supra* note 1202, at 44.

¹²⁰⁹ Complaint for Declaratory Relief, Injunctive Relief, and Damages at ¶ 31, *supra* note 1206.

¹²¹⁰ *Id.* at ¶ 34.

¹²¹¹ *Id.*

¹²¹² *Id.*

¹²¹³ *Id.* at ¶ 27.

¹²¹⁴ *Id.* The school had twice suspended C.H. for bullying others. Trevon Milliard, *Hailee’s Family Shocked by Language, Timing of Motion*, LAS VEGAS REV.-J., Dec. 16, 2014, at 1A.

¹²¹⁵ Carri Geer Thevenot, *Parents Sue School District in Bullied Child’s Suicide*, LAS VEGAS REV.-J., Oct. 22, 2014, at 1A.

¹²¹⁶ Appellants’ Opening Brief at 3, *Lamberth v. Clark Cty. Sch. Dist.*, 698 Fed. App’x 387 (9th Cir. 2017) (No. 15-17546).

¹²¹⁷ *Id.*

¹²¹⁸ Trevon Milliard, *Father Details Daughter’s Pain*, LAS VEGAS REV.-J. (Mar. 1, 2014), at 1A.

¹²¹⁹ *Id.* at 11.

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.¹²²¹ However, CCSD's own training materials discussed bullying as a suicide risk factor.¹²²² A judge who reviewed the issue said, "CCSD has clearly adopted the position that bullying is a risk factor for suicide."¹²²³ 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.¹²²⁴

CCSD settled.¹²²⁵ It paid \$700,000 to Hailee's family¹²²⁶ and \$2,870,843.42 in defense of the suit¹²²⁷ for a total of \$3,570,843.42.¹²²⁸ CCSD said the settlement money would come from "a combination of district and insurance funds."¹²²⁹ A television news reporter said the money came from the district's "risk management claims budget."¹²³⁰

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

¹²²¹ See generally Defendants' Opposition to Plaintiffs' Motion for NRC37(c)(1) Sanctions Against Defendants, *Lamberth v. Clark Cty. Sch. Dist.*, Case No. A-14-708849-C (D. Nev. Aug. 12, 2015), 2017 WL 9473496.

¹²²² Meghan Delaney, *Suicide-Bullying Tie Upheld*, LAS VEGAS REV.-J., July 13, 2017, at 1B.

¹²²³ *Id.*

¹²²⁴ *Id.*

¹²²⁵ Nikki Bowers, *CCSD Board of Trustees Approve \$700K Settlement for Hailee Lamberth's Family*, 8 NEWS NOW (Sept. 14, 2018), <https://www.8newsnow.com/news/local-news/ccsd-board-of-trustees-approve-700k-settlement-for-hailee-lamberths-family/>.

¹²²⁶ Darcy Spears, *CCSD Legal Settlements Come at High Cost to Whistle-Blowers and Taxpayers*, ABC 13 KTNV (Jan. 21, 2019), <https://www.ktnv.com/news/investigations/ccsd-legal-settlements-come-at-high-cost-to-whistle-blowers-and-taxpayers>.

¹²²⁷ *Litigated Claim Settlements from 2015 to Present*, <https://ewscripps.brightspotcdn.com/98/ea/509b14bb438f92f230900e42b119/record-request-for-litigated-claim-settlements-2015-to-present.pdf> (last visited Oct. 3, 2020).

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.¹²³¹ The girl's locker was repeatedly vandalized.¹²³² She was pushed.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."¹²³⁴ Students told her to commit suicide.¹²³⁵ She tried and was hospitalized for twelve days.¹²³⁶ The case settled during jury selection.¹²³⁷

Ethan Young (14)¹²³⁸ and Ryker Lewis (15)¹²³⁹ attended the same schools together,¹²⁴⁰ were best friends,¹²⁴¹ and suffered identical fates. Ethan took his own life¹²⁴² on 24 September 2013¹²⁴³ after being told by other students to go kill himself.¹²⁴⁴ Ryker completed suicide eight months later¹²⁴⁵ after bullies assailed him.¹²⁴⁶

¹²³¹ Colleen Wilson, *Byram Hills, 2 Officials Are Sued*, J. NEWS (N.Y.), Feb. 10, 2016, at 1A.

¹²³² Verified Complaint at 7, *Milton v. Byram Hills Cent. Sch. Dist.*, No. 51404/2016 (Sup. Ct. N.Y. Cty. Feb. 4, 2016).

¹²³³ Colleen Wilson, *Byram Hills Sued over Bullying Claims*, LOHUD (Feb. 9, 2016),

<https://www.lohud.com/story/news/education/2016/02/09/bullying-lawsuit-byram-hills/80071162/>.

¹²³⁴ Verified Complaint, *supra* note 1232, at 8.

¹²³⁵ *Id.* at 5.

¹²³⁶ *Id.* at 9.

¹²³⁷ Sophie Grosserode, *Byram Hills Bullying Lawsuit, Four Years in the Making Resolved the Day Before Trial*, LOHUD (Feb. 28, 2020),

<https://www.lohud.com/story/news/education/2020/02/28/byram-hills-bullying-lawsuit-resolved-day-before-trial/4903459002/>.

¹²³⁸ *Ethan Matthew Young*, KAN. CITY STAR, Sept. 26, 2013, at A11.

¹²³⁹ *Ryker William Lewis*, MEYERS FUNERAL CHAPEL INC (May 21, 2014), <https://www.meyersfuneralchapel.com/2014/05/21/ryker-william-lewis/>.

¹²⁴⁰ *Compare* Wrongful Death Petition for Damages at ¶¶ 78-79, *Young v. Blue Springs Sch. Dist.*, 1716-CV27416, (Cir. Ct. Mo. Nov. 29, 2017), 2017 WL 7735113, *with* *Lewis v. Blue Springs Sch. Dist.*, No. 4:17-cv-00538-NKL, 2017 U.S. Dist. LEXIS 181671, at *3 (W.D. Mo. Nov. 2, 2017).

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.

¹²⁴⁶ *Lewis v. Blue Springs Sch. Dist.*, No. 4:17-cv-00538-NKL, 2017 U.S. Dist. LEXIS 181671, at *6 (W.D. Mo. Nov. 2, 2017).

Ethan wrote poetry and loved to learn¹²⁴⁷ but was so terrified of bullies while in sixth grade he once fled on foot from a bus stop to hide.¹²⁴⁸ In eighth grade, Ethan walked home from school in warm temperatures because he did not want to get beat up.¹²⁴⁹

Bullies told Ethan that his biological mother did not love him and that he should kill himself.¹²⁵⁰ Ethan attempted suicide by drinking bleach before bed¹²⁵¹ on March 6, 2013.¹²⁵² The following day, Ethan complained to the school nurse that his throat hurt and he could not taste food.¹²⁵³ After a trip to the emergency room,¹²⁵⁴ Ethan received inpatient treatment at a psychiatric hospital¹²⁵⁵ through March 11, 2013.¹²⁵⁶

Bullies opened up a new line of ghoulish attack upon Ethan's return to school.¹²⁵⁷ They told Ethan he should have used stronger bleach.¹²⁵⁸ They said, "you're such a loser you couldn't even kill yourself right."¹²⁵⁹ Someone said, while pointing at a bleach stain on their clothing, "Hey Ethan, you want to smell this?"¹²⁶⁰ Buoyed by the upcoming summer break, Ethan made it out of eighth grade alive¹²⁶¹ but lasted only a month his freshman year.¹²⁶²

Ethan had a mental breakdown during his freshman year.¹²⁶³ On a particularly muddy day, he got off the bus when bullies tried to make him sit on the floor.¹²⁶⁴ Ethan's stepmother found him walking to school in the rain, crying and sobbing.¹²⁶⁵

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.¹²⁶⁶ He dreamed of designing and owning hotels worldwide that were vacation-themed.¹²⁶⁷ Although the best was yet to come, bullies had other plans.

Bullies repeatedly told Ryker to kill himself like his best friend Ethan had.¹²⁶⁸ On a Thursday prior to Ryker attempting suicide, three students approached him in the cafeteria and said, "Kill yourself."¹²⁶⁹ The assailment continued¹²⁷⁰ until Ryker completed suicide.¹²⁷¹

Parents of both Ethan and Ryker sued the school district.¹²⁷² The district paid \$370,000 to settle the cases.¹²⁷³

Rylie Wagner (13)¹²⁷⁴ conquered a song involving a substantial degree of difficulty¹²⁷⁵ but could not face down girls at school "telling her to go kill herself just about every day."¹²⁷⁶

¹²⁶⁶ *Ryker William Lewis*, *supra* note 1239.

¹²⁶⁷ *Id.*

¹²⁶⁸ *Lewis v. Blue Springs Sch. Dist.*, No. 4:17-cv-00538-NKL, 2017 U.S. Dist. LEXIS 181671, at *6 (W.D. Mo. Nov. 2, 2017).

¹²⁶⁹ *Id.*

¹²⁷⁰ *Id.*

¹²⁷¹ *Id.* at *1.

¹²⁷² Compare Jessica Schumaker, *Blue Springs School District Settles Third 'Bullicide' 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.

¹²⁷⁴ *Rylie Dawn Wagner*, BACH-YAGER FUNERAL HOME, <https://www.carryager.com/notices/Rylie-Wagner> (last visited Oct. 3, 2020).

¹²⁷⁵ Elizabeth Overstreet, *Hallelujah*, YOUTUBE (Mar. 18, 2017), <https://www.youtube.com/watch?v=dTJz4pJmcxc>.

¹²⁷⁶ Lauren Barnas, *Hallsville Suicide Raises Questions About Missouri Schools' Bullying Policies*, 8 KOMU (May 22, 2017), <https://www.komu.com/news/target-8-hallsville-suicide-raises-questions-about-missouri-schools-bullying-policies>; see also Deborah Kendrick, *Parents Say Bullying at School Caused Death of 13-Year-Old Girl in Hallsville*, ABC 17 (Apr. 11, 2017), <https://abc17news.com/news/2017/04/11/parents-say-bullying-at-school-caused-death-of-13-year-old-girl-in-hallsville/> ("The girls would come up to her in school almost every day and say, 'Why don't you just go kill yourself?').

Rylie killed herself in April 2017.¹²⁷⁷ The sheriff's department found no evidence of criminal activity.¹²⁷⁸ Nevertheless, a no-nonsense attorney¹²⁷⁹ made assailment a basis for a wrongful death lawsuit against the school district¹²⁸⁰ in July 2018.¹²⁸¹

The school district initially denied Rylie was bullied¹²⁸² but settled the case for \$100,000 in February 2019.¹²⁸³ 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."¹²⁸⁴

William "Billy" Lucas (15) rode horses, swam with the dolphins,¹²⁸⁵ and tended sheep.¹²⁸⁶ His mother filed a lawsuit

¹²⁷⁷ Megan Sanchez, *Remembering Rylie: One Year After Daughter's Death, Parents Fight for Awareness*, 13 KRCCG (Apr. 4, 2018), <https://krcgtv.com/news/local/remembering-rylie-one-year-after-daughters-death-parents-fight-for-awareness>.

¹²⁷⁸ Pat Pratt, *Mother of Bullied Teen Who Committed Suicide Sues Hallsville Schools*, COLUM. DAILY TRIB. (Aug. 20, 2018), <https://www.columbiatribune.com/news/20180820/mother-of-bullied-teen-who-committed-suicide-sues-hallsville-schools>.

¹²⁷⁹ Angela Underwood, *Anti-Bullying Policies at Heart of Suit Against Hallsville Schools Regarding Teen's Death, Attorney Says*, ST. LOUIS REC. (Aug. 27, 2018), <https://www.stlrecord.com/stories/511544848-anti-bullying-policies-at-heart-of-suit-against-hallsville-schools-regarding-teen-s-death-attorney-says>.

¹²⁸⁰ Wrongful Death Petition for Damages at 13, *Overstreet v. Hallsville R-IV Sch. Dist.*, 18BA-CV02843 (Cir. Ct. Mo. July 17, 2018) (alleging that Rylie experienced bullying "regarding killing herself").

¹²⁸¹ Pratt, *supra* note 1278.

¹²⁸² Sam A. Manas, *Hallsville School District Denies Negligence in 13-Year-Old's Suicide*, COLUM. MISSOURIAN (Sept. 4, 2018), https://www.columbiamissourian.com/news/local/hallsville-school-district-denies-negligence-in-13-year-olds-suicide/article_7684e2f8-b070-11e8-8847-0f33126b249b.html.

¹²⁸³ *Hallsville Schools to Pay \$100,000 to Family of Bullied Teen*, 13 KRCCG (Mar. 1, 2019), <https://krcgtv.com/news/local/hallsville-schools-to-pay-100000-to-family-of-bullied-teen>.

¹²⁸⁴ See Press Release, Hallsville R-IV School District, Media Statement (Feb. 26, 2019), <https://www.scribd.com/document/400579016/Hallsville-School-District-Statement-2-26-19>.

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.¹²⁸⁷ The case settled.¹²⁸⁸ A confidentiality agreement prevents discussion of the settlement terms.¹²⁸⁹

For years, school bullies mocked the way Billy walked and talked.¹²⁹⁰ "People would call him 'fag' and stuff like that. Just make fun of him because he's different, basically," said student D.S.¹²⁹¹ Classmate N.H. said, "Sometimes in classes, kids would act like they were going to punch him and stuff and push him."¹²⁹² "He would try to [defend himself] but people would just try to break him down with words," N.H. added.¹²⁹³

Billy's friend J.S. told police that high school bullies would call Billy "gay and tell him to go kill himself."¹²⁹⁴ 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.'"¹²⁹⁵ The bullies told Billy that God hated him¹²⁹⁶ and "You don't deserve to live."¹²⁹⁷ The freshman hanged himself in a barn on

¹²⁸⁷ Brent Brown, *Lucas Suit Seeks Compensation, Damages*, GREENSBURG DAILY NEWS (Sept. 7, 2012), https://www.greensburgdailynews.com/news/local_news/lucas-suit-seeks-compensation-damages/article_fdd1f537-1b09-53bf-81c3-032032587661.html.

¹²⁸⁸ *Remembering Billy Lucas, the Boy Whose Suicide Inspired a Movement*, LGBTQ NATION (Sept. 9, 2013), <https://www.lgbtqnation.com/2013/09/remembering-billy-lucas-the-boy-whose-suicide-inspired-a-movement/>.

¹²⁸⁹ *Id.*

¹²⁹⁰ Editorial, *Tell Gay Teens: It Gets Better*, CHI. SUN-TIMES, Sept. 24, 2010, at 21.

¹²⁹¹ *Bullied Greensburg Student Takes His Own Life*, LIVE LEAK, https://www.liveleak.com/view?i=d64_1284735920 (last visited Oct. 3, 2020).

¹²⁹² *Indiana Teen's Suicide Thought to Be Result of Anti-Gay Bullying*, LGBTQ NATION (Sept. 14, 2010), <https://www.lgbtqnation.com/2010/09/indiana-teens-suicide-thought-to-be-result-of-anti-gay-bullying/>.

¹²⁹³ *Id.*

¹²⁹⁴ Lyn Cockburn, *Opinion, Still a Long Way to Acceptance of Gays*, MAPLE RIDGE & PITT MEADOWS TIMES (Brit. Colum.), Oct. 15, 2010, at 10.

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, 2010.¹²⁹⁸ An adult member of the community asked afterwards, “Why couldn’t this get stopped before it happened?”¹²⁹⁹

C. LAW ENFORCEMENT RESOURCES WASTED

Jamey Rodemeyer (14)¹³⁰⁰ first felt bullying headwinds in grade school where boys made fun of him because he spent time with girls.¹³⁰¹ The bullying continued in middle school but subsided during eighth grade¹³⁰² when Jamey “became the big fish in a little pond”¹³⁰³ and male bullies grew more accepting of him.¹³⁰⁴ Cyber bullies still posed a problem, however.¹³⁰⁵

Anonymous posts began popping up on Jamey’s Formspring account around September 2010.¹³⁰⁶ One read, “I wouldn’t care if you died. No one would. So just do it :) It would make everyone WAY more happier!”¹³⁰⁷

Jamey started his short-lived freshman year of high school on September 6, 2011.¹³⁰⁸ He wrote on Tumblr two days

¹²⁹⁸ *The Deadly Cost of Bullying*, CBS NEWS, <https://www.cbsnews.com/pictures/the-deadly-cost-of-bullying/10/> (last visited Oct. 3, 2020).

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

¹³⁰⁰ *Jamey T. Rodemeyer*, AMIGONE FUNERAL HOME, INC., <https://www.amigone.com/obituaries/Jamey-T-Rodemeyer?obId=12439008#/obituaryInfo> (last visited Oct. 3, 2020).

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

¹³⁰² *Rodemeyer: The Bullying Needs to Stop*, CNN (Sept. 21, 2011), <https://www.cnn.com/videos/bestoftv/2011/09/21/bts-rodemeyer-family-bullying-suicide.cnn>.

¹³⁰³ Michael Mroziak, *Experts Discuss Cyberbullying and How to Tackle a 24/7 Torment*, WBFO (May 9, 2017), <https://news.wbfo.org/post/experts-discuss-cyberbullying-and-how-tackle-247-torment>.

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

¹³⁰⁵ *Transcripts: Anderson Cooper 360 Degrees, Bullied to Death*, CNN (Sept. 20, 2011), <http://transcripts.cnn.com/TRANSCRIPTS/1109/20/acd.01.html>.

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”.¹³⁰⁹ On September 9, he wrote, “I always say how bullied I am, but no one listens.”¹³¹⁰ On September 18, Jamey made a few final posts to the internet¹³¹¹ and then hanged himself to death in his backyard.¹³¹²

On September 20, a vigil for Jamey had about fifty people call for an end to hate speech in schools.¹³¹³ At a high school homecoming dance on September 22,¹³¹⁴ organizers played a song in honor of Jamey.¹³¹⁵ While Jamey’s supporters sang along, danced, and chanted Jamey’s name,¹³¹⁶ three of Jamey’s bullies heckled them;¹³¹⁷ the flies in the ointment chanted, “You’re better off dead!” and “We’re glad you’re dead!”¹³¹⁸

Rodemeyer, 14-Year-Old-Boy, Commits Suicide After Gay Bullying, Parents Carry on Message (Video), HUFFINGTON POST (Sept. 20, 2011), https://www.huffpost.com/entry/jamey-rodemeyer-suicide-gay-bullying_n_972023.

¹³⁰⁹ *Parents of Teen Suicide Victim Speak Out on Bullying*, ADVOCATE (Sept. 22, 2011), <https://www.advocate.com/news/daily-news/2011/09/22/parents-teen-suicide-victim-speak-out-bullying>.

¹³¹⁰ Lucas Grindley, *Jamey Rodemeyer, 14, Dies in Suicide*, ADVOCATE (Sept. 21, 2011), <https://www.advocate.com/news/daily-news/2011/09/21/jamey-rodemeyer-14-dies-suicide>.

¹³¹¹ Rachel Quigley, *‘What Do I Have to Do for People to Listen?’ Boy, 14, Kills Himself After ‘Gay’ Taunts and Thanks Lady Gaga in His Final Post*, DAILY MAIL (Sept. 21, 2011), <https://www.dailymail.co.uk/news/article-2039801/Bullied-gay-teen-Jamey-Rodemeyer-commits-suicide-Thanks-Lady-Gaga-post.html>.

¹³¹² Kirst, *supra* note 1308.

¹³¹³ Sandra Tan, *Agonizing over Teen Suicide*, BUFFALO NEWS, Sept. 21, 2011, at B1.

¹³¹⁴ Kevin Bargnes, *Emotions in Suicide Continue to Run Raw*, BUFFALO NEWS, Sept. 24, 2011, at A1.

¹³¹⁵ Neale Gulley, *Teen’s Death Prompts Calls for Anti-Bullying Laws*, S. FLA. SUN SENTINEL, Oct. 4, 2011, at 2A.

¹³¹⁶ SuchIsLiveVideos, *AC360 – Jamey Rodemeyer’s Sister Taunted at School Dance*, YOUTUBE (Sept. 27, 2011), <https://www.youtube.com/watch?v=4gGkSskh3ws>.

¹³¹⁷ *Id.*

¹³¹⁸ *Parents of Teen Blame Suicide on Bullies*, TODAY (Sept. 26, 2011), <https://www.today.com/video/parents-of-teen-blame-suicide-on-bullies-44519491707>.

Police spent nine weeks¹³¹⁹ and hundreds of hours investigating¹³²⁰ Jamey's suicide.¹³²¹ Police determined that three students targeted him in high school.¹³²² One bully pushed Jamey in a hallway and called him a "fag."¹³²³ A second made a gay slur.¹³²⁴ The third – a female who had known Jamey since middle school – told Jamey, "You're a faggot."¹³²⁵ In a separate incident, she told Jamey, "Faggot, why don't you just kill yourself?"¹³²⁶

After consulting with prosecutors,¹³²⁷ police on November 22 closed the investigation without filing criminal charges.¹³²⁸ Police said none of the bullies' comments amounted to actual threats¹³²⁹ and Jamey would be necessary to prove¹³³⁰ aggravated harassment.¹³³¹ In regard to this outcome, the police chief said, "I'm not satisfied, to be honest with you. I would like

¹³¹⁹ Keaton T. Depriest, *Police Determine Rodemeyer Incidents Not Prosecutable*, AMHERST BEE (N.Y.), Nov. 30, 2011, at 1.

¹³²⁰ Carolyn Thompson, *Charges Rejected in Bullying Suicide*, BURLINGTON FREE PRESS (Vt.), Nov. 23, 2011, at 6B.

¹³²¹ *No Charges in Bullied Teen's Suicide*, CNN (Nov. 22, 2011), <https://www.cnn.com/videos/crime/2011/11/22/bts-askey-rodemeyer-bullying-no-charges.wgrz>.

¹³²² Thompson, *supra* note 1320.

¹³²³ Sandra Tan, *Williamsville North Students Suspended*, BUFFALO NEWS, Dec. 5, 2011, at A1.

¹³²⁴ Sandra Tan, *Rodemeyer Suspensions Up to 5 Days*, BUFFALO NEWS, Dec. 15, 2011, at B1.

¹³²⁵ Tan, *supra* note 1323.

¹³²⁶ *Id.*

¹³²⁷ *No Charges in Bullied Teen's Suicide*, *supra* note 1321.

¹³²⁸ Eileen Buckley, *Williamsville North Students Suspended In Rodemeyer Case*, WBFO (Dec. 5, 2011), <https://news.wbfo.org/post/williamsville-north-students-suspended-rodemeyer-case>.

¹³²⁹ Tan, *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, *Bullying Tragedy Casts a Wide Shadow*, BUFFALO NEWS, Sept. 23, 2011, at A1.

¹³³⁰ Thompson, *supra* note 1320.

¹³³¹ *No Charges in Bullied Teen's Suicide*, DEMOCRAT AND CHRONICLE (N.Y.), Nov. 23, 2011, at 4B.

to have seen something we could have done from a prosecution standpoint.”¹³³²

VI. STOPGAPS

A. MOTORCYCLE ESCORTS

Casey “Box Cutter” Pigge committed three murders in southern Ohio.¹³³³ Pigge slit the throat of his first victim in 2008.¹³³⁴ Behind prison walls in 2016, he tricked a cellmate¹³³⁵ into wearing a blindfold and smote him with a cinder block.¹³³⁶ On a prison bus in 2017, Pigge bashed a prisoner’s head and then smothered the man’s nose and mouth.¹³³⁷ Pigge also attempted a murder in 2018;¹³³⁸ while incarcerated at a southern

¹³³² WIVBTB, *No Charges in Jamey Rodemeyer’s Death*, YOUTUBE (Nov. 22, 2011), <https://www.youtube.com/watch?v=YeXK4gWcSUc>. Police did share information with the school district. Philip Caulfield, *Students Suspended for Bullying Jamey Rodemeyer, Gay Teen Who Committed Suicide*, N.Y. DAILY NEWS (Dec. 5, 2011), <https://www.nydailynews.com/news/national/students-suspended-bullying-jamey-rodemeyer-gay-teen-committed-suicide-article-1.987006>. The district suspended students for making “inappropriate comments” to Jamey in high school. Compare Keaton T. Depriest, *‘Inappropriate Comments’ Spark Action*, AMHERST BEE (N.Y.), Dec. 7, 2011, at 1, and Jon Hand, *Classmates, Parents Take Part in Protests*, DEMOCRAT AND CHRONICLE (N.Y.), Dec. 6, 2011, at 1B, with Tan, *supra* note 1324.

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,¹³³⁹ he and another inmate used metal shanks¹³⁴⁰ to repeatedly stab a corrections officer.¹³⁴¹

A school district in southern Ohio probably felt like prison for one sixth-grader.¹³⁴² Over three years, the boy was poked, pushed,¹³⁴³ punched, pinched, kicked, and pinned against a wall.¹³⁴⁴ He was shoved into a locker, slammed against a school bus window, and stabbed with a pencil.¹³⁴⁵ He was told on a school bus ride home in April 2018, “You look . . . a little like a mentally disabled monkey” and “Kill yourself.”¹³⁴⁶ When a concerned citizen heard about what was happening in her backyard, she organized a motorcycle ride from the boy’s home to school.¹³⁴⁷

On May 1, 2018, five motorcycles accompanied the boy to school¹³⁴⁸ where the citizen stood on a sidewalk with a sign that read, “Be Kind”.¹³⁴⁹ “I wanted the kids that were making

¹³³⁹ Andrew Welsh-Huggins, *Prosecutor: Prison Stabbing Suspect Is Three-Time Killer*, CHRONICLE-TELEGRAM (Ohio), Feb. 22, 2018, at C2.

¹³⁴⁰ Jona Ison, *Videos, Records Reveal How a 2018 Attack on a Lucasville CO Unfolded*, CHILLICOTHE GAZETTE (May 10, 2019), <https://www.chillicothegazette.com/story/news/2019/05/10/videos-records-reveal-how-2018-attack-lucasville-co-unfolded/1128917001/>.

¹³⁴¹ Marty Schladen, *Union: Attack on Prison Guard Avoidable*, DAYTON DAILY NEWS (Ohio), Feb. 26, 2018, at B2. Pigge wrote in a letter how he relished his role in the attack: “I had a 12 inch knife and I at least put 9 inch in with a turn. Intoxicating.” Ison, *supra* note 1333.

¹³⁴² Keith BieryGolick, *‘You Look Like a Mentally Disabled Monkey’: Kings Student Videotapes School Bus Bullying*, CINCINNATI (May 2, 2018), <https://www.cincinnati.com/story/news/2018/05/02/you-look-like-mentally-disabled-monkey-kings-student-videotapes-school-bus-bullying/572003002/>.

¹³⁴³ Amber Jayanth, *Parents Confront Kings Local School Board: Enough with the Bullying*, FOX 19 NOW (Aug. 14, 2018), <https://www.fox19.com/story/38199026/parents-confront-kings-local-school-board-enough-with-the-bullying/>.

¹³⁴⁴ Maytal Levi, *Boy Gets Motorcycle Escort to School After Alleged Bus Bullying*, FOX 19 NOW (Aug. 14, 2018), <https://www.fox19.com/story/38089722/boy-gets-motorcycle-escort-to-school-after-alleged-kings-local-bus-bullying>.

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.¹³⁵⁰ The bullied boy loved his ride to school that day.¹³⁵¹ Two weeks later, the boy suffered a concussion at school when a student shoved him to the ground and he hit head first.¹³⁵²

B. CELEBRITY ASSISTS

C.W. posted to the internet a potent message about bullying in March 2018.¹³⁵³ Ten years old at the time, she described how four kids at school ganged up on her.¹³⁵⁴ "They hit me, kicked me, pulled my hair, pushed me."¹³⁵⁵ "They threaten to kill me, and they tell me to kill myself."¹³⁵⁶ Other kids wouldn't even go near C.W.; wherever she sat down to eat, kids got up.¹³⁵⁷ "I feel like I have no one. It hurts."¹³⁵⁸ Actor Hugh Jackman,¹³⁵⁹ New York Yankee baseball players,¹³⁶⁰ and kids at C.W.'s school responded to the plea for help.¹³⁶¹

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.*

¹³⁵⁹ Nicole Pelletiere & Justin Tasolides, *10-Year-Old's Heartbreaking Plea on Facebook to Stop Bullying Sparks Support Nationwide*, ABC NEWS (Apr. 11, 2018), <https://www.goodmorningamerica.com/family/story/10-year-olds-heartbreaking-plea-facebook-stop-bullying-54397617>.

¹³⁶⁰ Ari Gilberg, *See It: Yankees Comfort 10-Year-Old Bullying Victim in Emotional Video*, N.Y. DAILY NEWS (Apr. 18, 2018), <https://www.nydailynews.com/sports/baseball/yankees/yankees-comfort-10-year-old-bullying-victim-emotional-video-article-1.3942335>.

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.

¹³⁶² Samantha Williams, *New York Yankees Post Message of Support for Bullied 10-Year-Old Girl*, INSIDE EDITION (Apr. 19, 2018), <https://www.insideedition.com/new-york-yankees-post-message-support-bullied-10-year-old-girl-got-your-back-42603>.

¹³⁶³ Pelletiere & Tasolides, *supra* note 1359.

¹³⁶⁴ *Id.*

¹³⁶⁵ *Id.*

¹³⁶⁶ Mandy Bell, *Yanks Spread HOPE, Stand Up to Bullying*, YANKEES.COM (June 12, 2018), <https://www.mlb.com/yankees/news/yankees-players-team-up-to-fight-bullying-c280944272>. “HOPE” stands for “Helping Others Preserve & Excel.” Adam Stern, *The Yankees Mark the 10th Anniversary of Its HOPE Week*, N.Y. BUS. J. (June 20, 2019), <https://www.bizjournals.com/newyork/news/2019/06/20/the-yankees-mark-the-10th-anniversary-of-its-hope.html>.

¹³⁶⁷ *Hope Week Day 2: No Bully*, MLB (June 13, 2018), <https://www.mlb.com/yankees/video/hope-week-day-2-no-bully-c2148810283>.

¹³⁶⁸ NEW YORK YANKEES 2019 OFFICIAL MEDIA GUIDE & RECORD BOOK 14 (2019).

¹³⁶⁹ Karen Rogers, *NY Yankees Hold Special Day for Bullied Pennsylvania Teen*, ABC 6 ACTION NEWS (June 13, 2018), <https://www.6abc.com/sports/ny-yankees-hold-special-day-for-bullied-pa-teen-/3597205/>.

¹³⁷⁰ *10-Year-Old's Plea to Stop Bullying Goes Viral*, FACEBOOK (May 15, 2018), <https://www.facebook.com/watch/?v=2132994460270299>.

spirits.”¹³⁷¹ The bullying did not stop, however.¹³⁷² C.W.’s mother said things did improve but went back to bad.¹³⁷³ C.W. left the school when a student pulled her hair.¹³⁷⁴ The other student said it was just a game.¹³⁷⁵

C. PROTECTIVE ORDERS

Court protective orders go by different names including restraining orders,¹³⁷⁶ civil protection orders,¹³⁷⁷ harassment prevention orders,¹³⁷⁸ and injunctions against harassment.¹³⁷⁹

¹³⁷¹ Chase Senior, *Cassidy Warner Teams Up with Yankees for Anti-Bullying Event in the Big Apple*, ABC 16 WNEP (June 12, 2018), <https://www.wnep.com/article/news/local/lackawanna-county/cassidy-warner-teams-up-with-yankees-for-anti-bullying-event-in-the-big-apple/523-dc47088d-f7d6-4f9b-a627-c767273f42ae>.

¹³⁷² *Pa. Girl Who Posted Anti-Bullying Video Appears on CNN*, GETTYSBURG TIMES (Pa.), Apr. 14, 2018, at B5; *10-Year-Old Makes Public Plea to Stop Bullying*, CNN, <https://www.cnn.com/videos/us/2018/04/13/cassidy-warner-intv-bullied-girl-plea-on-facebook-sot-newday.cnn> (last visited Sept. 19, 2020).

¹³⁷³ *10-Year-Old’s Plea to Stop Bullying Goes Viral*, *supra* note 1370.

¹³⁷⁴ Peggy Lee, *Bullied Student Gets Motorcade Escort to Meet with State Representative About House Bills on Bullying*, ABC 16 WNEP (June 8, 2018), <https://www.wnep.com/article/news/local/lackawanna-county/bullied-students-gets-motorcade-escort-to-meet-with-state-representative-about-house-bills-on-bullying/523-bb97271b-b42e-448f-a9a1-2046c0fdbbfa>.

¹³⁷⁵ *Id.*

¹³⁷⁶ José A. Healy, *Hispanic and Immigrant Students Face Bullying*, in BULLYING, *supra* note 546, at 117, 117.

¹³⁷⁷ Tanya M. Marcum & Catherine Davies Hoort, *Alert: Be on the Lookout for Protection Orders in the Educational Setting*, 30 T.M. COOLEY L. REV. 39, 41 (2013).

¹³⁷⁸ Brief for the Commonwealth at 11, *Commw. v. Lugo*, No. 14-P-192 (Mass. App. Ct. Aug. 1, 2014), 2014 WL 3977256. In *Commonwealth v. Lugo*, a verbally abusive neighbor harassed a married couple for months. *Commonwealth v. Lugo*, 14-P-192, 2015 Mass. App. Unpub. LEXIS 621, at *1-3 (Mass. App. Ct. June 11, 2015). On one occasion, he walked to the property line, pointed at the husband and said, “Fuck you. Kill yourself, fucking faggot.” Brief and Record Appendix for the Defendant at 5-6, *Commw. v. Lugo*, No. 2014-P-0192 (Mass. App. Ct. Mar. 26, 2014), 2014 WL 1457601.

¹³⁷⁹ John Keegan, *Opinion, Restraining Order Just a Piece of Paper*, SURPRISE REPUBLIC (Ariz.), Apr. 20, 2007, at 46.

Courts in most states will automatically hold a hearing after a protective order is sought¹³⁸⁰ but in a few states like Arizona there is a hearing only if one is requested by the defendant.¹³⁸¹ School districts do not like protective orders because of enforcement difficulties.¹³⁸²

Orchard Middle School (“Orchard”) in Washington¹³⁸³ spans grades six through eight.¹³⁸⁴ When I.V. started there in 2013¹³⁸⁵ at age twelve,¹³⁸⁶ another sixth grade boy immediately began to bully him.¹³⁸⁷ Y.F. would pinch I.V. and call him “fat,” “faggot,” “bitch,” “pig,” and “man boobs.”¹³⁸⁸

I.V. weighed 170 pounds when he tried out for football in 2014.¹³⁸⁹ He weighed 110 in January 2015 and almost died of anorexia.¹³⁹⁰ “You’re fucking fat,” Y.F. had told the seventh-grader.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.¹³⁹² I.V. admitted being bullied but refused to name his tormentor.¹³⁹³

¹³⁸⁰ Peter Slocum, Comment, *Biting the D.V. Bullet: Are Domestic-Violence Restraining Orders Trampling on Second Amendment Rights?*, 40 SETON HALL L. REV. 639, 644 (2010).

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

¹³⁸² Marcum & Hoort, *supra* note 1377, at 53.

¹³⁸³ Complaint for Damages at ¶ 3, I.V. v. Y.A.F., No. 2:15-CV-00283-TOR (E.D. Wash. Mar. 30, 2017).

¹³⁸⁴ *Id.* at ¶ 8.

¹³⁸⁵ *Id.* at ¶ 15.

¹³⁸⁶ Jefferson Robbins, *Wenatchee Schools to Pay \$20,000 to Victim of Long-Term Bullying*, WENATCHEE WORLD (Dec. 31, 2018), https://www.ifiberone.com/columbia_basin/wenatchee-schools-to-pay-to-victim-of-long-term-bullying/article_af90f1f6-0d2a-11e9-bd8e-279ab1093207.html.

¹³⁸⁷ Complaint for Damages, *supra* note 1383, at ¶ 15.

¹³⁸⁸ I.V. v. Wenatchee Sch. Dist. No. 246, 342 F. Supp. 3d 1083, 1087 (E.D. Wash. 2018).

¹³⁸⁹ Complaint for Damages, *supra* note 1383, at ¶ 15.

¹³⁹⁰ *Id.*

¹³⁹¹ *Wenatchee*, 342 F. Supp. 3d at 1087.

¹³⁹² *Id.* at 1088.

¹³⁹³ Complaint for Damages, *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 fall¹³⁹⁴ of 2015 for eighth grade, Y.F. continued to bully him.¹³⁹⁵ Y.F. did something physical to I.V. in the classroom almost every other day.¹³⁹⁶ Y.F. targeted I.V. in the halls and during lunch.¹³⁹⁷ There was more punching, pushing, nipple-pinching, and name-calling.¹³⁹⁸

I.V. had finally had enough on January 3, 2016.¹³⁹⁹ He told his mother April it was Y.F. who had been bullying him.¹⁴⁰⁰ April met with Orchard's principal the next afternoon.¹⁴⁰¹ I.V. burst into the room during the meeting, "Y.F. just threatened to kill me!"¹⁴⁰²

Y.F. aggressed against I.V. at school again on January 4 and was arrested.¹⁴⁰³ Orchard expelled Y.F. on an emergency basis.¹⁴⁰⁴ April obtained an order of protection that prohibited Y.F. from attending Orchard.¹⁴⁰⁵ The school readmitted Y.F. anyway.¹⁴⁰⁶ The school district soon thought better of it¹⁴⁰⁷ and transferred Y.F. elsewhere.¹⁴⁰⁸

I.V. and his family sued the Wenatchee School District.¹⁴⁰⁹ The Wenatchee School District paid \$37,500 to settle the case.¹⁴¹⁰ The damage was done, however. In addition to the eating disorder, I.V. attempted suicide in October 2016.¹⁴¹¹

¹³⁹⁴ *Id.*

¹³⁹⁵ *Wenatchee*, 342 F. Supp. 3d at 1088-89.

¹³⁹⁶ *Id.* at 1088.

¹³⁹⁷ *Id.*

¹³⁹⁸ *Id.* at 1088-89.

¹³⁹⁹ *Id.* at 1089.

¹⁴⁰⁰ *Id.*

¹⁴⁰¹ *Id.*

¹⁴⁰² Complaint for Damages, *supra* note 1383, at ¶ 15.

¹⁴⁰³ *Id.*

¹⁴⁰⁴ *Wenatchee*, 342 F. Supp. 3d at 1089.

¹⁴⁰⁵ Complaint for Damages, *supra* note 1383, at ¶ 15.

¹⁴⁰⁶ *Wenatchee*, 342 F. Supp. 3d at 1098 n.17.

¹⁴⁰⁷ Complaint for Damages, *supra* note 1383, at ¶ 15.

¹⁴⁰⁸ *Wenatchee*, 342 F. Supp. 3d at 1089.

¹⁴⁰⁹ Jefferson Robbins, *Wenatchee Schools Sued over Student's Bullying*, WENATCHEE WORLD (Nov. 10, 2017), https://www.wenatcheeworld.com/news/local/wenatchee-schools-sued-over-students-bullying/article_83ab432a-fe63-5527-8479-94b182d27888.html.

¹⁴¹⁰ Robbins, *supra* note 1386.

¹⁴¹¹ Complaint for Damages, *supra* note 1383, at ¶ 15.

D. SECURITY DETAILS

Bullying ran the gamut for C.M.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.¹⁴¹³ The girls eventually urged C.M. to kill herself.¹⁴¹⁴ In April 2015, C.M. told a friend on the phone that she was going to hang herself.¹⁴¹⁵ The friend's family called 911.¹⁴¹⁶ First responders arrived at C.M.'s home without a moment to spare.¹⁴¹⁷

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

E. SWITCHING SCHOOLS

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

¹⁴¹² Andrew Scott, *Bullied Pocono Mountain Student Rebounds from 'Dark Place'*, POCONO REC. (Feb. 21, 2016), <https://www.poconorecord.com/article/20160221/news/160229904>.

¹⁴¹³ *Id.*

¹⁴¹⁴ *Id.*

¹⁴¹⁵ *Id.*

¹⁴¹⁶ *Id.*

¹⁴¹⁷ *Id.*

¹⁴¹⁸ *Id.*

¹⁴¹⁹ *Id.*

¹⁴²⁰ *Id.*

¹⁴²¹ *Id.*

¹⁴²² *Id.*

¹⁴²³ Sabrina Rubin Erdely, *School of Hate*, ROLLING STONE, Feb. 16, 2012, at 50, 52.

¹⁴²⁴ *Id.* at 52, 54.

her from the locker room and yelled, “You’re a guy!”¹⁴²⁵ She stopped going to practice as a result.¹⁴²⁶

B. “L.G.”¹⁴²⁷ Samantha’s best friend, was also bullied.¹⁴²⁸ Students at Fred Moore called her a “fat dyke” and “[w]hore.”¹⁴²⁹ “[W]hy don’t you go kill yourself, too?” a student asked L.G. following the suicide.¹⁴³⁰ L.G. left Fred Moore in February 2010 to escape the bullying.¹⁴³¹

Students at Jackson Middle School called L.G. “dyke,” “queer,” “transvestite,” and “whore.”¹⁴³² Several boys crowded around her on a bus ride home asking questions about Samantha and splatter.¹⁴³³ “Did you see her blow her brains out?”¹⁴³⁴ “Was there brain all over the wall?”¹⁴³⁵ “You should do it, too,” one of them told L.G.¹⁴³⁶ “You should go blow your head off.”¹⁴³⁷ All the abuse led L.G. to contemplate suicide.¹⁴³⁸

Jessica Laney (16) was an affectionate girl¹⁴³⁹ who changed high schools because of bullying.¹⁴⁴⁰ After making the switch, Jessica fended off anonymous posts on a social

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.*

¹⁴³⁰ Complaint at ¶ 77, *Doe v. Anoka-Hennepin Sch. Dist. No. 11*, No. 11-cv-01999-JNE-SER (D. Minn. July 21, 2011).

¹⁴³¹ *Id.* at ¶ 78.

¹⁴³² *Id.* at ¶ 79.

¹⁴³³ Erdely, *supra* note 1423, at 56; *see also* Maria Elena Baca, *Anoka-Hennepin School Settlement Hailed as ‘Blueprint’*, STAR TRIB. (Mar. 6, 2012), <https://www.startribune.com/anoka-hennepin-school-settlement-ailed-as-blueprint/141627793/>.

¹⁴³⁴ Erdely, *supra* note 1423, at 56.

¹⁴³⁵ *Id.*

¹⁴³⁶ *Id.*

¹⁴³⁷ *Id.*

¹⁴³⁸ Sarah Horner, *Plaintiffs in Anoka-Hennepin Bullying Lawsuits Happy with Settlement*, TWIN CITIES PIONEER PRESS (Nov. 9, 2015), <https://www.twincities.com/2012/03/05/plaintiffs-in-anoka-hennepin-bullying-lawsuits-happy-with-settlement/>.

¹⁴³⁹ Cheyenne Christine, *RIP Jessica Marie Laney.*, YOUTUBE (Dec. 22, 2012), <https://www.youtube.com/watch?v=MhVJhisBwpl>.

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.¹⁴⁴¹ On 5 December 2012, she brushed off a post that told her to die.¹⁴⁴² On December 7, she wrote “why..” after being asked, “can you just kill yourself already?”¹⁴⁴³ On December 9, Jessica hanged herself.¹⁴⁴⁴

In the wake of Jessica’s suicide, a licensed counselor said online criticism could be devastating to a young person.¹⁴⁴⁵ A clinical psychologist said the social networking site “was a trigger.”¹⁴⁴⁶ Jessica’s friends blamed bullies.¹⁴⁴⁷ Attorney David Tirella acknowledged that the online taunts could be hurtful but believed they fell below the threshold of criminal activity.¹⁴⁴⁸ 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.”¹⁴⁴⁹

¹⁴⁴¹ See Erin Sullivan, *Teenager Kills Herself After Online Bullying*, HERALD-TRIB. (Dec. 13, 2012), <https://www.heraldtribune.com/article/LK/20121213/News/605227991/SH>.

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.

¹⁴⁴⁵ *Friends Blame Online Comments for Florida Teen’s Suicide*, FOX NEWS (Nov. 28, 2015), <http://hollistercanada.com/us/friends-blame-online-comments-for-florida-teens-suicide>.

¹⁴⁴⁶ Liberty O’Neill et al., *Anonymous Online Comments: Why Subject Yourself?*, TAMPA BAY TIMES, Jan. 24, 2013, at tb-two* 10.

¹⁴⁴⁷ Steve Robson & Lydia Warren, *‘Can You Kill Yourself Already?’: The Vile Online Messages from Internet Trolls ‘That Led Girl, 16, to Hang Herself’*, DAILY MAIL (Dec. 12, 2012), <https://www.dailymail.co.uk/news/article-2246896/Jessica-Laney-16-committed-suicide-internet-trolls-taunted-told-kill-herself.html>.

¹⁴⁴⁸ Isabel Mascarenas, *Experts: Anti-Bullying Law Doesn’t Apply in Jessica Laney Case*, WTSP 10 News (Dec. 13, 2012), <http://pascocounty.wtsp.com/news/news/156809-experts-anti-bullying-law-doesnt-apply-jessica-laney-case> (“‘There has to be a pattern – like chronic over time threatening, harassing, humiliating electronic communications. Not one, not two.’ he said.”).

¹⁴⁴⁹ ABC Action News, *Sheriff Urges Parents to Be Vigilant After Pasco County Teen Hangs Herself*, YOUTUBE (Dec. 11, 2012), https://www.youtube.com/watch?v=SDb_dh7AJ3g.

F. WITHDRAWING FROM SCHOOL

Ted “Teddy” Molina (16)¹⁴⁵⁰ had been “picked on ever since he was a little kid.”¹⁴⁵¹ Teddy was pushed, shoved, hit, punched, kicked,¹⁴⁵² and called names like “Chinese Fat Boy.”¹⁴⁵³ He loved fishing¹⁴⁵⁴ but went out for football hoping that it would stop the bullying.¹⁴⁵⁵ It didn’t work. Students continued to call Teddy stupid¹⁴⁵⁶ and said he should kill himself to save them the trouble of having to do it themselves.¹⁴⁵⁷

On 29 February 2012, Teddy answered a question incorrectly in class and at that a student told Teddy he was a “stupid chink.”¹⁴⁵⁸ Teddy responded that if he was so stupid, maybe he should just kill himself.¹⁴⁵⁹ The teacher told Teddy he should do everyone a favor and shoot himself.¹⁴⁶⁰ A parent removed Teddy from school the following week.¹⁴⁶¹ Teddy used a hunting rifle to take his own life on the first of April.¹⁴⁶²

¹⁴⁵⁰ *‘We Don’t Need Any More People Dying’: Teen’s Family Holds Anti-Bullying Protests After Boy, 16, ‘Commits Suicide After Years of Threats’*, DAILY MAIL (Apr. 11, 2012), <https://www.dailymail.co.uk/news/article-2128036/Teddy-Molina-Teens-family-holds-anti-bullying-protests-boy-16-commits-suicide-years-threats.html>.

¹⁴⁵¹ Light the World Productions, *Teddy*, VIMEO (Mar. 18, 2013), <https://www.vimeo.com/62121386>.

¹⁴⁵² *Id.*

¹⁴⁵³ First Amended Complaint at ¶ 42, *Molina v. Flour Bluff Indep. Sch. Dist.*, No. 2:14-cv-00063 (S.D. Tex. Sept. 2, 2014), 2014 WL 5147876.

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

¹⁴⁶³ Lisa Rantala, *Teens & Suicide: 13-Year-Old Wants to Empower Others After Trying to End Her Own Life*, ABC 6 (Nov. 20, 2019), <https://www.abc6onyourside.com/on-your-side/scoring-our-schools/teens-suicide-13-year-old-wants-to-empower-others-after-trying-to-end-her-own-life>.

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.

¹⁴⁷² See Vince Marino, *Ten-Year-Old Boy Lands in Emergency Room After Bullying Incident at Elementary School*, NBC PALM SPRINGS (Aug. 27, 2018), <https://nbcpalmsprings.com/2018/08/27/ten-year-old-boy-lands-in-emergency-room-after-bullying-incident-at-elementary-school/>.

¹⁴⁷³ *Id.*

¹⁴⁷⁴ *Id.*

Another fifth-grader¹⁴⁷⁵ called A.V. a “fat A-double-dollar sign.”¹⁴⁷⁶ Then the boy took A.V.’s backpack.¹⁴⁷⁷ When A.V. tried to get it back, the boy hit him in the face.¹⁴⁷⁸ A.V. sustained a three-inch laceration in his eyebrow¹⁴⁷⁹ that required six stitches.¹⁴⁸⁰

Some people asked A.V.’s mother Lizette why her son “didn’t fight back?”¹⁴⁸¹ The answer is that he did – nonviolently. A.V. accompanied his mother to a school board meeting on the evening of August 28, 2018.¹⁴⁸² A.V. took to the podium in front of a packed house.¹⁴⁸³ “All I want is for every single kid to be safe,” he told the school board members.¹⁴⁸⁴ “All I want is for kids not to be bullied.”¹⁴⁸⁵

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

¹⁴⁷⁵ Joseph Hong, *Mother Addresses Board over Bullying*, DESERT SUN (Cal.), Aug. 30, 2018, at 1A.

¹⁴⁷⁶ Marino, *supra* note 1472.

¹⁴⁷⁷ *Id.*

¹⁴⁷⁸ Vincenzo Marino, *Desert Hot Springs Police Investigating Bullying Incident at Elementary School*, NBC PALM SPRINGS (Aug. 28, 2018), <https://nbcpalmsprings.com/2018/08/28/desert-hot-springs-police-investigating-bullying-incident-at-elementary-school/>.

¹⁴⁷⁹ Chris Perez, *Bullied Kid Refuses to Fight Back Because ‘It’s Not the Jedi Way’*, N.Y. POST (Aug. 28, 2018), <https://www.nypost.com/2018/08/28/bullied-kid-refuses-to-fight-back-because-its-not-the-jedi-way/>.

¹⁴⁸⁰ Max Rodriguez, *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/>.

¹⁴⁸¹ Colin Atagi, *Actor Mark Hamill Supports Bullied Boy*, DESERT SUN (Cal.), Aug. 30, 2018, at 3A.

¹⁴⁸² Hong, *supra* note 1475.

¹⁴⁸³ *Id.*

¹⁴⁸⁴ *Id.*

¹⁴⁸⁵ *Id.*

¹⁴⁸⁶ Joseph Hong, *‘Irony’ in School’s Anti-Bullying Plan*, DESERT SUN (Cal.), Sept. 19, 2018, at 1A.

¹⁴⁸⁷ *Id.*

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

¹⁴⁸⁸ Joseph Hong, *How Do Parents Fight Bullying?*, DESERT SUN (Aug. 31, 2018), <https://www.desertsun.com/story/news/education/2018/08/28/parent-injured-student-address-school-board/1123746002/>.

¹⁴⁸⁹ *Id.*

¹⁴⁹⁰ Hong, *supra* note 1486.

¹⁴⁹¹ *Id.*

¹⁴⁹² Simon Shaykhet, *Only On 7: 15-Year-Old Bullying Victim Speaks Out over Alleged Abuse at High School*, WXYZ 7 (May 1, 2018), <https://www.wxyz.com/news/only-on-7-15-year-old-bullying-victim-speaks-out-over-alleged-abuse-at-high-school>.

¹⁴⁹³ *Id.*

¹⁴⁹⁴ *Id.*

¹⁴⁹⁵ *Id.*

¹⁴⁹⁶ *Id.*

¹⁴⁹⁷ *Id.*

¹⁴⁹⁸ *Id.*

¹⁴⁹⁹ *Id.*

A.V. did not want to go back to school¹⁵⁰⁰ but did.¹⁵⁰¹ Police investigated the kid who hit him and said a report would go to the Juvenile Probation Department.¹⁵⁰² The consequences there could range from afterschool therapy to increased supervision.¹⁵⁰³ “Obviously, the juvenile justice system is a little bit different than the adult system,” a police representative explained.¹⁵⁰⁴ “They’re looking at ways to prevent these things from happening again where the adult system is more as far as punishment.”¹⁵⁰⁵

I. BULLYING PREVENTION PROGRAMS

A school must implement a bullying prevention program if a state law so requires.¹⁵⁰⁶ New Mexico’s Safe Schools for All Students Act, for example, requires school boards to have an annual bullying prevention program.¹⁵⁰⁷ Some states, like Wisconsin, have no such requirement.¹⁵⁰⁸ Nevertheless, “[m]any Wisconsin school districts offer anti-bullying curriculums as part of instruction”¹⁵⁰⁹ and have done so for years.¹⁵¹⁰ Anti-bullying programs used by Wisconsin schools have included the following: *The Keep It Safe Project*,¹⁵¹¹

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.*

¹⁵⁰⁶ DENA T. SACCO ET AL., AN OVERVIEW OF STATE ANTI-BULLYING LEGISLATION AND OTHER RELATED LAWS A-68 (2012), https://cyber.harvard.edu/sites/cyber.law.harvard.edu/files/State_Anti_bullying_Legislation_Overview.pdf (last visited Oct. 3, 2020).

¹⁵⁰⁷ Shelby Perea, *New Law Acts to Curb School Bullying*, ALBUQUERQUE J., Apr. 18, 2019, at A1.

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.

¹⁵¹¹ *Profile: School District of Lomira*, REP. (Wis.), Mar. 23, 2003, at H2.

Steps to Respect,¹⁵¹² *Bullyfree Basics*,¹⁵¹³ *Bully-Proofing Your School*,¹⁵¹⁴ *Sticks n' Stones*,¹⁵¹⁵ *Time to Act – Time to React*,¹⁵¹⁶ *Act Now!*,¹⁵¹⁷ and *Safe School Ambassadors*.¹⁵¹⁸ There have been others.¹⁵¹⁹

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.”¹⁵²⁰ Doubling up is no panacea, either. The Janesville School District in Wisconsin used “several” anti-bullying programs¹⁵²¹ 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.

¹⁵¹⁶ *Compare*, Jessica Opoien, *Superintendent Candidates Spar at Public Forum*, OSHKOSH NW. (Wis.), Mar. 3, 2013, at A3, and Sue Klang & Fred Evert, *Let's Help Teachers Solve Bullying Problem at Public Schools*, WIS. ST. J., Oct. 18, 2009, at B3, with *News Conference: Addressing Bullying in Wisconsin Schools*, WIS. EYE (Oct. 6, 2009), <https://www.wiseye.org/2009/10/06/news-conference-addressing-bullying-in-wisconsin-schools/>.

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.

¹⁵²¹ Catherine W. Idzerda, *Child Who Took Her Own Life Had Suicide Prevention Plan at School*, GAZETTEEXTRA (May 30, 2018), https://www.gazetteextra.com/news/education/child-who-took-her-own-life-had-suicide-prevention-plan-article_398b61de-f3db-51f2-b30c-00d10cdef5c8.html; Memorandum from the Janesville City Attorney's Office to City Council (Sept. 10, 2018), http://janesville.granicus.com/MetaViewer.php?view_id=5&event_id=21551&meta_id=68068.

Elizabeth “Lizzy” Jacobson (12)¹⁵²² was still told to kill herself.¹⁵²³

Lizzy called one grandparent “Pop Pop” and another “Grammy.”¹⁵²⁴ Enthralled by all things galaxy, Lizzy colored her hair pink, purple, blue, and green.¹⁵²⁵ She distributed artwork to family and friends.¹⁵²⁶ When her dad passed in 2016, she made her mother Rebecka a plush blanket.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.’”¹⁵²⁸

School bullies chiseled away at Lizzy for two years.¹⁵²⁹ They told Lizzie her dad died because he didn’t want to be around her anymore.¹⁵³⁰ They kept calling her “weird” and “ugly.”¹⁵³¹ Lizzy feigned illness¹⁵³² and begged for homeschooling.¹⁵³³ After a boy pulled Lizzy’s bra strap, Rebecka called the middle school.¹⁵³⁴ School officials spoke with

¹⁵²² *Elizabeth Sue “EJ” Jacobson*, WHITCOMB-LYNCH FUNERAL HOME & CREMATION SERVICES, <https://www.whitcomb-lynch.com/book-of-memories/3513645/jacobson-elizabeth/obituary.php> (last visited Oct. 3, 2020).

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).

¹⁵²⁴ *Elizabeth Sue “EJ” Jacobson*, *supra* note 1522.

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/>.

¹⁵²⁶ *Elizabeth Sue “EJ” Jacobson*, *supra* note 1522.

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.

¹⁵²⁸ *Id.*

¹⁵²⁹ *Id.*

¹⁵³⁰ *Id.*

¹⁵³¹ Middaugh, *supra* note 1525.

¹⁵³² Schultz, *supra* note 1527.

¹⁵³³ Middaugh, *supra* note 1525.

¹⁵³⁴ Idzerda, *supra* note 1521.

the boy.¹⁵³⁵ They said the boy was “very remorseful,” “didn’t realize what he had done was wrong,” and “felt bad about it.”¹⁵³⁶ Shortly after the bra strap incident, Lizzie died by suicide.¹⁵³⁷

Rebecka addressed the Janesville City Council.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.”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.”¹⁵⁴⁰ “The one thing I lived for is gone.”¹⁵⁴¹

Kids assailed one of Lizzie’s friends.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

¹⁵³⁵ *Id.*

¹⁵³⁶ *Id.*

¹⁵³⁷ Schultz, *supra* note 1527.

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).

¹⁵³⁹ *Id.*

¹⁵⁴⁰ Middaugh, *supra* note 1525.

¹⁵⁴¹ *Janesville Mother Mourns Loss of 12-Year-Old Daughter*, NBC 15 (May 30, 2018), <https://www.nbc15.com/content/news/Janesville-mother-mourns-loss-of-12-year-old-daughter--484101711.html>.

¹⁵⁴² C.M., Public Comment at the Janesville City Council Meeting (Sept. 24, 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, Sept. 24, 2018) (last accessed Oct. 24, 2020).

want kids to have to deal with
what I deal with.¹⁵⁴³

Meanwhile, Janesville school district officials said consequences for bullies would depend on the situation.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.”¹⁵⁴⁵ For example, some people say that Shakespeare said, “Let’s kill all the lawyers.”¹⁵⁴⁶ Although Shakespeare did write this as dialogue, “[i]t is clear [he] had no intention of taking this position.”¹⁵⁴⁷ Shakespeare himself loved litigation and “stood rigorously by his rights in all his business relations.”¹⁵⁴⁸

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

¹⁵⁴³ *Id.*

¹⁵⁴⁴ Catherine W. Idzerda, *Janesville School District Officials Explain Bullying Policies*, GAZETTEXTRA (Sept. 21, 2018), https://www.gazettextra.com/news/education/janesville-school-district-officials-explain-bullying-policies/article_693f3296-7888-5f4b-afdb-905f290ad020.html.

¹⁵⁴⁵ DANIEL J. PUKSTAS, *THE PATH TO POETRY* 19 (2006).

¹⁵⁴⁶ *Id.*

¹⁵⁴⁷ *Id.*

¹⁵⁴⁸ SIDNEY LEE, *A LIFE OF WILLIAM SHAKESPEARE* 206 (1898).

¹⁵⁴⁹ WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE VI* act 4, sc. 2.

¹⁵⁵⁰ DANIEL J. KORNSTEIN, *KILL ALL THE LAWYERS?: SHAKESPEARE’S LEGAL APPEAL* 25-26 (1994).

¹⁵⁵¹ *Id.* at 25.

¹⁵⁵² MICHAEL R. SMITH, *ADVANCED LEGAL WRITING* 364 (3d ed. 2013).

“Shakespeare’s point is to portray lawyers as the guardians of the rule of law who stand in the way of a fanatical mob.”¹⁵⁵³

Shakespeare wrote about suicide ideation in *The Tragedy of Hamlet, Prince of Denmark* (“*Hamlet*”).¹⁵⁵⁴ The play survives in three distinct early versions: the First Quarto (1603), the Second Quarto (1604), and the Folio (1623).¹⁵⁵⁵ “The First Quarto is . . . a fascinating document . . . with valuable clues about what . . . *Hamlet* might have looked like on the Elizabethan stage.”¹⁵⁵⁶ Immensely valuable, there are only two known surviving copies of the First Quarto.¹⁵⁵⁷ The Folio version comes from a large leather-bound book that was published by Shakespeare’s friends.¹⁵⁵⁸

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

¹⁵⁵³ Jacob Gershman, *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.

¹⁵⁵⁴ PAUL A. CANTOR, SHAKESPEARE: HAMLET 38 (2d ed. 2004) (Hamlet is “preoccupied with suicide”); Jay L. Halio, *Hamlet*, in 3 THE DEFINITIVE SHAKESPEARE COMPANION: THE TRAGEDIES 1089, 1111 (Joseph Rosenblum ed. 2017) (Hamlet “would like to commit suicide”); Jesse M. Lander, *William Shakespeare*, in 17 WORLD BOOK ENCYCLOPEDIA 344, 361 (2018) (Hamlet “considers suicide”); STANLEY WELLS, SHAKESPEARE’S TRAGEDIES: A VERY SHORT INTRODUCTION 46 (2017) (Hamlet “contemplates bringing about his own death”); A.D. COUSINS, THE SHAKESPEARE ENCYCLOPEDIA 175 (2009) (Hamlet “contemplates suicide”); THE OXFORD COMPANION TO SHAKESPEARE 254 (Michael Dobson & Stanley Wells eds., 2d ed. 2015) (Hamlet “reflects on suicide”).

¹⁵⁵⁵ THE NORTON SHAKESPEARE 1760 (Stephen Greenblatt et al. eds., 3d ed. 2016). Shakespeare entitled the First Quarto, *The Tragic History of Hamlet, Prince of Denmark. Centennial Timeline: 1914*, HUNTINGTON LIBRARY, ART MUSEUM, AND BOTANICAL GARDENS, <https://www.huntington.org/timeline-item/centennial-timeline-1914> (last visited October 23, 2020).

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.”).

¹⁵⁵⁸ SEAN MCEVOY, SHAKESPEARE: THE BASICS 21 (3d ed. 2012). The Folio version was taken from the Second Quarto and Shakespeare’s own papers with some annotations by a bookkeeper. SHAKESPEARE: THE ESSENTIAL GUIDE TO THE LIFE AND WORKS OF THE BARD 113 (2007).

an uncle who is now king.¹⁵⁵⁹ A ghost visits Hamlet.¹⁵⁶⁰ It claims to be Hamlet's father.¹⁵⁶¹ Whether "a spirit of health or goblin damn'd,"¹⁵⁶² the ghost wants Hamlet to take revenge against the uncle.¹⁵⁶³

During Act Three, the king and lord chamberlain conspire against Hamlet in a castle room.¹⁵⁶⁴ When one of them hears Hamlet approaching, they hide.¹⁵⁶⁵ The lord chamberlain's daughter remains but Hamlet does not see her.¹⁵⁶⁶ Upon entering, Hamlet gives what "may well be the single most recognizable passage in all English literature"¹⁵⁶⁷ – the "famous speech on suicide"¹⁵⁶⁸ that begins with the words, "To be, or not to be?"¹⁵⁶⁹ Halfway through the speech, Hamlet essentially asks, "who would put up with life's troubles if he could end them all through suicide?"¹⁵⁷⁰

During Act Four, the king plots to have Hamlet killed during a fencing contest.¹⁵⁷¹ Laertes tells the king he will use a poison-tipped foil "unbated."¹⁵⁷² 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.¹⁵⁷³

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.*

¹⁵⁶⁷ WILLIAM SHAKESPEARE'S *HAMLET* 19 (Harold Bloom ed. 1996).

¹⁵⁶⁸ MARCHETTE CHUTE, *STORIES FROM SHAKESPEARE* 164 (1956).

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.¹⁵⁷⁴ When Hamlet takes an early lead, his mother celebrates with a drink.¹⁵⁷⁵ “‘O t’is the poisoned cup,’” the king says to himself.¹⁵⁷⁶ Hamlet and Laertes continue, and in scuffling, both are wounded by the poisoned foil.¹⁵⁷⁷ The mother dies proclaiming, “The drink, the drink! I am poison’d.”¹⁵⁷⁸ Hamlet orders the door locked and shouts, “‘Treachery! Seek it out.”¹⁵⁷⁹ Laertes, guilt-ridden, confesses:

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.¹⁵⁸⁰

Hamlet kills the king with the envenomed sword and then dies from poisoning.¹⁵⁸¹

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

¹⁵⁷⁴ *Id.* at act 5, sc. 2.

¹⁵⁷⁵ *Id.*

¹⁵⁷⁶ *Id.*

¹⁵⁷⁷ *Id.*

¹⁵⁷⁸ *Id.*

¹⁵⁷⁹ *Id.*

¹⁵⁸⁰ *Id.*

¹⁵⁸¹ *Id.*

¹⁵⁸² *E.g.*, David E. Jones, *Hamlet: Quintessential Shakespeare?*, CEDAR CITY SPECTRUM (Utah), July 5, 1981, at 34.

¹⁵⁸³ Halio, *supra* note 1554, at 1135. *See also* George MacDonald, *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.”).

¹⁵⁸⁴ Halio, *supra* note 1554, at 1135.

“Action,” according to the theory, means taking revenge against the king.¹⁵⁸⁵ “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.”¹⁵⁸⁶ The contention is without merit.

“From the very beginning [of the play, Hamlet] is preoccupied with suicide.”¹⁵⁸⁷ “Certainly, before the appearance of the [g]host, Hamlet is suffering from a depression so severe that he contemplates suicide.”¹⁵⁸⁸ 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.¹⁵⁸⁹ Significantly, Hamlet wishes “that the Everlasting had not fix’d his canon ‘gainst self-slaughter”¹⁵⁹⁰ and states a preference for death over life, “Oh, that this too much grieved and sallied flesh would melt to nothing.”¹⁵⁹¹

Second, “*Hamlet* is characterized by an unprecedented range of dramatic techniques and styles, but the most central is that of the soliloquy.”¹⁵⁹² The word “soliloquy” means “talking to oneself” and is “a device whereby Shakespeare allows his characters to share their innermost thoughts with the audience.”¹⁵⁹³ “If there are other actors on stage, they do not hear the soliloquy.”¹⁵⁹⁴ Importantly, “Hamlet invokes the canon ‘gainst self-slaughter . . . in his very first soliloquy”¹⁵⁹⁵ only *after* “[t]he court withdraws, and Hamlet is left alone.”¹⁵⁹⁶ Hamlet also thinks he’s alone when delivering his “to be or not to be”

¹⁵⁸⁵ *Id.* at 1114.

¹⁵⁸⁶ *Id.* at 1135.

¹⁵⁸⁷ CANTOR, *supra* note 1554, at 38.

¹⁵⁸⁸ COUSINS, *supra* note 1554, at 175.

¹⁵⁸⁹ HAMLET, *supra* note 1559, at act 1, sc. 2.

¹⁵⁹⁰ *Id.*

¹⁵⁹¹ WILLIAM SHAKESPEARE, *THE TRAGIC HISTORY OF HAMLET, PRINCE OF DENMARK* act 1, sc. 2 (1605). “While ‘sallied’ could mean ‘assailed,’ it is probably a variant for ‘sullied.’” HAROLD BLOOM, *HAMLET: POEM UNLIMITED* 8 (2003).

¹⁵⁹² *THE OXFORD COMPANION TO SHAKESPEARE*, *supra* note 1554, at 255.

¹⁵⁹³ LINDA GATES, *SPEAKING IN SHAKESPEARE’S VOICE* app. at 207 (2019).

¹⁵⁹⁴ *Id.*

¹⁵⁹⁵ Halio, *supra* note 1554, at 1126.

¹⁵⁹⁶ *Id.* at 1089.

soliloquy.”¹⁵⁹⁷ “With some cultural exceptions, the bodily act of suicide happens in private.”¹⁵⁹⁸ Similarly, “[p]eople who are contemplating suicide often do not share their ideation.”¹⁵⁹⁹

Third, “Hamlet has some doubts about the [g]host’s authenticity.”¹⁶⁰⁰ “Is he a devil assuming the shape of Hamlet’s dead father, or is he a valid spirit from the dead?”¹⁶⁰¹ Hamlet “knows the Devil can assume a pleasing shape and can easily mislead a person whose mind is perturbed by intense grief.”¹⁶⁰² “[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.”¹⁶⁰³

Fourth, Shakespeare undoubtedly wrote what he knew. “*Hamlet* was probably first performed in 1601”¹⁶⁰⁴ and it “seems likeliest that Shakespeare wrote [the tragedy] in about 1600.”¹⁶⁰⁵ Shakespeare’s only son Hamnet died at the age of eleven in 1596.¹⁶⁰⁶ While “the grief of [Shakespeare’s] family must have been catastrophic . . . Shakespeare . . . never wrote of his son’s death”¹⁶⁰⁷ but did name the principal character of his play, “*Hamlet*.”¹⁶⁰⁸

Finally, First Quarto foreshadowing and homographic wordplay¹⁶⁰⁹ 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 SUICIDOLOGY 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.

¹⁶⁰² SHAKESPEARE: THE ESSENTIAL GUIDE TO THE LIFE AND WORKS OF THE BARD, *supra* note 1558, at 113.

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).

¹⁶⁰⁷ KATE EMERY POGUE, SHAKESPEARE’S FAMILY 80-81 (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."¹⁶¹⁰ The word "point" was not just a synonym for "question" as some have suggested;¹⁶¹¹ it also meant "the sharp end of any thing."¹⁶¹² Hamlet thus (1) hints as to how he could kill himself and (2) portends his actual death.

Hamlet considers *hara-kiri* with the "point" of a "bare bodkin."¹⁶¹³ In Hamlet's imagined method of suicide, "bare" means "mere."¹⁶¹⁴ In Shakespeare's mind, "bare" also meant "uncovered."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."¹⁶¹⁶ It can "result from self-injury or from purposefully exposing oneself to immediate fatal harm."¹⁶¹⁷ "Psychologists recognize that those most likely to commit suicide are those who have thought about it, threatened to commit it, or attempted it."¹⁶¹⁸

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

¹⁶¹⁰ THE NORTON SHAKESPEARE, *supra* note 1555, at 1754.

¹⁶¹¹ *Id.* at 1875 n.1.

¹⁶¹² *Point*, EDWARD PHILLIPS, THE WORLD OF ENGLISH WORDS: OR, A GENERAL DICTIONARY (1720).

¹⁶¹³ HAMLET, *supra* note 1559, at act 3, sc. 1. A "bodkin" is a dagger or "some other pointed weapon." DAVID CRYSTAL & BEN CRYSTAL, SHAKESPEARE'S WORDS: A GLOSSARY AND LANGUAGE COMPANION 47 (2002).

¹⁶¹⁴ DAVID HILLMAN, SHAKESPEARE'S ENTRAILS 213 n. 104 (2007).

¹⁶¹⁵ *Bare*, PHILLIPS, *supra* note 1612.

¹⁶¹⁶ *Suicide (Felo de Se)*, THE WALTER KLUWER BOUVIER LAW DICTIONARY (2012).

¹⁶¹⁷ Kaslow & Dunn, *supra* note 47, at 964.

¹⁶¹⁸ *Id.*

¹⁶¹⁹ *Prep Boys Cross Country Team Preview Capsules*, SPRINGFIELD NEWS-SUN (Ohio), Aug. 27, 2010, at B5.

¹⁶²⁰ *Draw My Life- No Bull*, YOUTUBE (Apr. 14, 2013), <https://www.youtube.com/watch?v=8pB3MNLajhY&feature=youtu.be>.

¹⁶²¹ *Id.*

spent time with E.C.¹⁶²² She attended a different high school twelve miles away.¹⁶²³ T.G. and his friends began to bully E.C. with texts¹⁶²⁴ and on social media.¹⁶²⁵

T.G. and company told E.C. she was “fat,” “very ugly,” and “look[ed] like a troll.”¹⁶²⁶ They told her she had no friends¹⁶²⁷ and that S.H. never liked her.¹⁶²⁸ A girl got on a phone call with E.C.¹⁶²⁹ and said, “The world would be a better place without you. Why don’t you just kill yourself?”¹⁶³⁰ E.C. started crying.¹⁶³¹ At this point, S.H. intervened.¹⁶³²

“You guys, stop. Just everybody stop.”¹⁶³³ S.H. called E.C. back and apologized.¹⁶³⁴ E.C. told S.H. she never wanted to speak to him again.¹⁶³⁵ T.G. apologized months later.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.”¹⁶³⁷

¹⁶²² Marlo Thomas, *Former Bully: Lifting Other People Up Lifts Me Up*, TODAY (Oct. 17, 2012), <https://www.today.com/video/former-bully-lifting-other-people-up-lifts-me-up-44497987703>.

¹⁶²³ *Id.*

¹⁶²⁴ *Id.*

¹⁶²⁵ *Bullying; From Both Sides: Former Perpetrator and Former Victim Reflect on Past*, WBUR (Mar. 20, 2018), <https://www.wbur.org/hereandnow/2018/03/20/bullying-cyberbully-victim>.

¹⁶²⁶ Meredith Reis, *When Kids Are Bullied or Bullies, Parents Often Don’t Know What’s Happening*, TODAY (Oct. 18, 2012), <https://www.today.com/parents/when-kids-are-bullied-or-bullies-parents-often-dont-know-1C6549386>.

¹⁶²⁷ *Id.*

¹⁶²⁸ *Id.*

¹⁶²⁹ *Id.*

¹⁶³⁰ *Bullying; From Both Sides: Former Perpetrator and Former Victim Reflect on Past*, *supra* note 1625.

¹⁶³¹ Reis, *supra* note 1626.

¹⁶³² *Bullying; From Both Sides: Former Perpetrator and Former Victim Reflect on Past*, *supra* note 1625.

¹⁶³³ *Id.*

¹⁶³⁴ Reis, *supra* note 1626.

¹⁶³⁵ *Id.*

¹⁶³⁶ *Id.*; Steve TV Show, *Stop Bullying*, YOUTUBE (Nov. 27, 2012), <https://www.youtube.com/watch?v=MEA-hEvPYAI>.

¹⁶³⁷ Thomas, *supra* note 1622.

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 2018.¹⁶³⁸ 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.¹⁶³⁹ "That was a shocking number for us to see," said a psychologist at the facility.¹⁶⁴⁰ 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."¹⁶⁴¹

Skylar Desmarais (11)¹⁶⁴² "struggled daily with depression and anxiety stemming from severe verbal and cyber bullying at school."¹⁶⁴³ Fellow students directed most of their taunts at Skylar's appearance¹⁶⁴⁴ with words like "ugly" and "fat."¹⁶⁴⁵ They also drilled into her with the nasty mantra, "If I

¹⁶³⁸ Marissa L. Zwald et al., *Syndromic 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>.

¹⁶³⁹ Jessica Seaman, *Death of 9-Year-Old Denver Student Reflects Increase in Youth Suicides*, DENVER POST, Aug. 29, 2018, at A1.

¹⁶⁴⁰ *Id.*

¹⁶⁴¹ Sharon Jayson, *Anguished Parents Speak Out After Youth Suicides*, DAILY NEWS (Wash.), Mar. 22, 2020, at B8.

¹⁶⁴² Dialynn Dwyer, *'I Need This Bullying to Stop. I Need It for Her Sake': New Hampshire Family Says 11-Year-Old Endured Severe Bullying Before Taking Her Own Life*, BOSTON.COM (July 10, 2018), <https://www.boston.com/news/local-news/2018/07/10/family-says-new-hampshire-11-year-old-took-her-own-life-severe-bullying>.

¹⁶⁴³ Skylar I. Desmarais, PHANEUF FUNERAL HOMES & CREMATORIUM, <http://phaneuf.tributes.com/obituary/show/Skylar-I.-Desmarais-106199344> (last visited Oct. 3, 2020).

¹⁶⁴⁴ Mark Hayward, *NH Deaths in 2018: Some Famous, Some Obscure, All Sadly Missed*, N.H. UNION LEADER (Dec. 29, 2018), https://www.unionleader.com/nh/people/nh-deaths-in-2018-some-famous-some-obscure-all-sadly-missed/article_f6e0671f-0c02-5bf2-9f6c-f755d8be0e7f.html.

¹⁶⁴⁵ Kim Tunnicliffe, *Web Extra: Hope Shafer, Step-Mother of 11-Year-Old Who Committed Suicide Speaks Out on Bullying*, SPREAKER,

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 bullying¹⁶⁴⁹ 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 assaulted 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

<https://www.spreaker.com/user/10222905/hope-shafer-raw> (last visited Oct. 3, 2020).

¹⁶⁴⁶ Dwyer, *supra* note 1642; Todd Feathers, *Accuracy of Schools' Bullying Reports Questioned in Wake of 11-Year-Old Manchester Student's Suicide*, N.H. UNION LEADER (June 24, 2018), https://www.unionleader.com/news/safety/accuracy-of-schools-bullying-reports-questioned-in-wake-of-11-year-old-manchester-students-suicide/article_ae6b2bba-f29b-5b05-98b6-dff2115760f1.html.

¹⁶⁴⁷ Dwyer, *supra* note 1642.

¹⁶⁴⁸ *Id.*

¹⁶⁴⁹ Tunncliffe, *supra* note 1645.

¹⁶⁵⁰ Paul Feely, *'Her Pain Was Too Much to Bear'*, N.H. UNION LEADER (June 22, 2018), https://www.unionleader.com/news/education/her-pain-was-too-much-to-bear/article_8c155f38-b813-5460-ab62-f320f45e019e.html.

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.

¹⁶⁵³ First Amended Complaint and Jury Demand at 11-12, *Meyers v. Cincinnati Bd. of Educ.*, No. 1:17-cv-521 (S.D. Ohio Sept. 25, 2018).

¹⁶⁵⁴ *Id.* at 12.

¹⁶⁵⁵ *Id.*

¹⁶⁵⁶ *Id.*

¹⁶⁵⁷ *Id.*

As part of her high school leadership class, senior R.S.¹⁶⁵⁸ helped plan school-wide events in the hopes of (1) increasing school spirit and (2) developing fun and meaningful memories for students.¹⁶⁵⁹ Done *and* done with dance at this homecoming assembly.¹⁶⁶⁰ “Being in leadership has made high school easy for me because I have a support system,” said R.S.¹⁶⁶¹ Middle school was different.¹⁶⁶²

R.S. dreaded waking up.¹⁶⁶³ Bullies would “oink” at her in the hallway, chant “Piggy, piggy, piggy,”¹⁶⁶⁴ and put “kill yourself” notes in her locker.¹⁶⁶⁵ When R.S. complained, the school told her to “just ignore it.”¹⁶⁶⁶ She attempted suicide years later.¹⁶⁶⁷ “I still look in the mirror and see like, that fat girl I saw in middle school.”¹⁶⁶⁸

Students bullied thirteen-year-old C.R. for five straight years.¹⁶⁶⁹ The nonstop harassment hurt C.R.’s feelings, wrecked her self-esteem, and caused chronic sadness.¹⁶⁷⁰ She’s been hospitalized for cutting and suicidal thoughts.¹⁶⁷¹ In 2019, two nasty girls told C.R. to “go slit your wrists and finish the job you started.”¹⁶⁷² A woman wrote on Facebook, “I know this child,

¹⁶⁵⁸ Karina Gonzales, *Washoe Teen Reflects on Her Bullying Experience*, KUNR (June 24, 2019), <https://www.kunr.org/post/washoe-teen-reflects-her-bullying-experience#stream/0>.

¹⁶⁵⁹ *Leadership*, SPANISH SPRINGS HIGH SCH., <http://spanishspringshs.com/SupportingPages/Leadership.php> (last visited Oct. 3, 2020).

¹⁶⁶⁰ SSHS Cougars (@MightySshs), TWITTER (Oct. 18, 2019, 11:18 AM), <https://www.twitter.com/MightySshs/status/1185258935265087488>.

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.*

¹⁶⁶⁹ Kara Kenney, *Student and Parents File Complaint About ‘Relentless’ Bullying at School*, RTV6 INDIANAPOLIS (Dec. 13, 2019), <https://www.wrtv.com/news/call-6-investigators/student-and-parents-file-complaint-about-relentless-bullying-at-school>.

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."¹⁶⁷³

It was something else when R.N.¹⁶⁷⁴ laughed in June 2017!¹⁶⁷⁵ The glimpse of joy almost didn't happen.¹⁶⁷⁶ R.N. attempted suicide in May 2017 because of bullying.¹⁶⁷⁷ She attempted suicide again in May 2018.¹⁶⁷⁸ According to a lawsuit, five students made R.N. feel unsafe.¹⁶⁷⁹

Students kicked, punched, and hit R.N.¹⁶⁸⁰ One boy threatened to stab her.¹⁶⁸¹ 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.¹⁶⁸² Kids told R.N., "Go kill yourself."¹⁶⁸³

Teenager D.P. of Idaho once ran with the wrong crowd.¹⁶⁸⁴ Fearing her daughter would wind up in jail, D.P.'s

¹⁶⁷³ *Id.*

¹⁶⁷⁴ Kara Kenney, *Franklin Teen Sues School District for Failing to Stop 'Severe and Pervasive' Bullying*, RTV6 INDIANAPOLIS (May 29, 2019), <https://www.theindychannel.com/news/call-6-investigators/franklin-teen-sues-school-district-for-failing-to-stop-severe-and-pervasive-bullying>.

¹⁶⁷⁵ Kevin Rader, *'Riley Rocks' Share Inspiration in the Face of Bullying*, NBC 13 WTRH (June 14, 2017), <https://www.wthr.com/article/riley-rocks-share-inspiration-in-the-face-of-bullying>.

¹⁶⁷⁶ *Id.*

¹⁶⁷⁷ Holly V. Hays, *'Dig a Hole and Bury Yourself,' Students Allegedly Told a Girl with Autism.*, INDYSTAR (June 6, 2019), <https://www.indystar.com/story/news/local/johnson-county-2019/06/06/franklin-schools-deliberately-indifferent-toward-bullying-girl-autism-lawsuit-claims/1351237001/>.

¹⁶⁷⁸ Derik Thomas et al., *Parents Speak Publicly After Filing Lawsuit Against Franklin Schools for Failing to Stop Bully*, RTV6 INDIANAPOLIS (June 16, 2019), <https://www.wrtv.com/news/local-news/parents-speak-publicly-after-filing-lawsuit-against-franklin-schools-for-failing-to-stop-bullying>.

¹⁶⁷⁹ Complaint at 11, *R.N. v. Franklin Cmty. Schs. Corp.*, No. 1:19-CV-01922 (S.D. Ind. May 13, 2019).

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*, EASTIDAHO NEWS (Sept. 30, 2017),

mom parented.¹⁶⁸⁵ “I noticed the grades depleting and I was hearing just different stories and things so I told her, ‘You’re not allowed to hang out with these kids anymore.’”¹⁶⁸⁶ When D.P. obeyed, a girl warned her, “If you’re not my friend, you’re going to be sorry.”¹⁶⁸⁷ Then the girls stooped lower; there were notes in D.P.’s locker saying, “You should just go kill yourself.”¹⁶⁸⁸ Then there was assaultment.¹⁶⁸⁹

D.P. started saying things like, “What’s the point? Life sucks. I’d rather just die.”¹⁶⁹⁰ She began to self-mutilate.¹⁶⁹¹ Then one day before school, she attempted suicide.¹⁶⁹² “I shouldn’t have done that,” D.P. says upon reflection.¹⁶⁹³ D.P.’s mom says her daughter’s attempt “is one of the hardest things I’ve ever gone through in my life.”¹⁶⁹⁴ “I love her more than anything in the world.”¹⁶⁹⁵

C. COMPLETED SUICIDE

A fourth grader invited children from school to his birthday celebration¹⁶⁹⁶ at the park.¹⁶⁹⁷ His mother put up balloons and other decorations.¹⁶⁹⁸ Only one kid showed up that

<https://www.eastidahonews.com/2017/09/middle-schooler-opens-attempted-suicide/>.

¹⁶⁸⁵ *Id.*

¹⁶⁸⁶ *Id.*

¹⁶⁸⁷ *Id.*

¹⁶⁸⁸ *Id.*

¹⁶⁸⁹ *Id.*

¹⁶⁹⁰ *Id.*

¹⁶⁹¹ *Id.*

¹⁶⁹² *Id.*

¹⁶⁹³ *Id.*

¹⁶⁹⁴ *Id.*

¹⁶⁹⁵ *Id.*

¹⁶⁹⁶ Ellis Arnold, *Jack Padilla Remembered: ‘He Always Thought of Others First’*, LITTLETON INDEP. (Nov. 6, 2019),

<https://www.littletonindependent.net/stories/he-always-thought-of-others-first,289210>.

¹⁶⁹⁷ *Denver Father Honors Son Through Suicide Prevention Work*, I AM DENVER (Nov. 1, 2019),

<https://www.denvergov.org/content/denvergov/en/i-am-denver/stories/2019/denver-father-honors-son-through-suicide-prevention-work-.html>.

¹⁶⁹⁸ *Denver Father Honors Son Through Suicide Prevention Work*, *supra* note 1697.

day¹⁶⁹⁹ but it was Jack Padilla (15).¹⁷⁰⁰ 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.¹⁷⁰¹

Jack was constantly bullied when he got to high school.¹⁷⁰² Five other students¹⁷⁰³ bullied him physically and electronically.¹⁷⁰⁴ Four of the five were varsity athletes.¹⁷⁰⁵ They shoved, sat on, and yelled at the freshman.¹⁷⁰⁶ Two of the bullies told Jack to go kill himself.¹⁷⁰⁷ Jack killed himself in February 2019.¹⁷⁰⁸

¹⁶⁹⁹ Arnold, *supra* note 1696.

¹⁷⁰⁰ *Denver Father Honors Son Through Suicide Prevention Work*, *supra* note 1697.

¹⁷⁰¹ *Id.*

¹⁷⁰² Jackie Crea, *Mother, Friends Say Bullying May Have Led to Cherry Creek High School Freshman's Death*, DENVER CHANNEL (Apr. 3, 2019), <https://www.thedenverchannel.com/news/local-news/bullying-may-have-led-to-cherry-creek-high-school-freshmans-death>.

¹⁷⁰³ Monte Whaley, *Colorado Teen's Suicide Spurs Mental Health Legislation*, ST. OF REFORM (Feb. 17, 2020), <https://www.stateofreform.com/featured/2020/02/colorado-teens-suicide-spurs-mental-health-legislation/>.

¹⁷⁰⁴ Micahel Konopasek, *Dad of Local Suicide Victim Pushes Lawmakers to Mandate School Bullying Investigations*, FOX 31 DENVER (Mar. 4, 2020), <https://www.kdvr.com/news/politics/dad-of-local-suicide-victim-pushes-lawmakers-to-mandate-school-bullying-investigations/>.

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.

¹⁷⁰⁷ Marc Sallinger & Chris Hansen, *Feb. 14 Declared Jack Padilla Day in Colorado – a Year After the Teen Died by Suicide*, NBC 9 NEWS (Feb. 15, 2020), <https://www.9news.com/article/news/health/jack-padilla-day/73-15082cfc-c6be-49e9-9d15-921cdc541aca>.

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

¹⁷⁰⁹ *Denver Father Honors Son Through Suicide Prevention Work*, *supra* note 1697.

¹⁷¹⁰ *Id.*

¹⁷¹¹ *Id.*

¹⁷¹² *No Charges in Suicide of Cherry Creek High Student Whose Parents Alleged Was Bullied*, DENVER POST, May 31, 2019, at 6A.

¹⁷¹³ Michael Ollove, *Bullying and Teen Suicide: How Do We Adjust School Climate?*, CHRISTIAN SCI. MONITOR (Apr. 28, 2010), <https://www.csmonitor.com/USA/Society/2010/0428/Bullying-and-teen-suicide-How-do-we-adjust-school-climate>.

¹⁷¹⁴ *Long v. Murray Cty. Sch. Dist.*, No. 4:10-CV-00015-HLM, 2012 WL 2277836, at *14, 18 (N.D. Ga. May 21, 2012).

¹⁷¹⁵ *Talk of the Nation: Former Bullies Share What Motivated Behavior*, NAT'L PUB. RADIO (Mar. 23, 2010), <https://www.npr.org/templates/story/story.php?storyId=125065190> (interview of newspaper reporter D. Aileen Dodd).

¹⁷¹⁶ Brief in Support of Motion for Summary Judgment on Behalf of Defendants Gina Linder and Murray County School District at 7, *Long v. Murray Cty. Sch. Dist.*, No.: 4:10-CV-00015-HLM (N.D. Ga. Dec. 20, 2011).

¹⁷¹⁷ *Long*, 2012 WL 2277836, at *18.

¹⁷¹⁸ *Id.* at *19.

¹⁷¹⁹ *Id.* at *15.

¹⁷²⁰ *Id.* at *4.

in October 2009, “The world would be better off without a retard like you. Why don’t you just go home and kill yourself?”¹⁷²¹ Tyler completed suicide that weekend¹⁷²² by hanging himself inside a closet at home.¹⁷²³

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

B. GUILTY SPEECH

Englishman Algernon Sidney imagined the death of a king¹⁷²⁹ when he put pen to paper in the privacy of his own home during the 1600s.¹⁷³⁰ The writings, neither published nor circulated,¹⁷³¹ were found by London authorities.¹⁷³² Charged with treason, Sidney argued at trial that he didn’t do anything.¹⁷³³ A notorious royalist judge¹⁷³⁴ proclaimed, “*Scibere*

¹⁷²¹ Rachel Brown, *No Criminal Charges in Chatsworth Bullying Suicide Case*, ROME NEWS-TRIB. (Nov. 17, 2009), https://www.northwestgeorgianews.com/rome/news/no-criminal-charges-in-chatsworth-bullying-suicide-case/article_874333a0-8792-53a7-ad80-94fc7d38b187.html.

¹⁷²² *Id.*

¹⁷²³ Ollove, *supra* note 1713.

¹⁷²⁴ Long, 2012 WL 2277836, at *34.

¹⁷²⁵ *Id.* at *38.

¹⁷²⁶ COLOROSO, *supra* note 124, at 51.

¹⁷²⁷ Matt Cutler, *Lessons from Bullying*, TIMES UNION (Oct. 17, 2013), <https://blog.timesunion.com/rabbimattcutler/lessons-from-bullying/53/>.

¹⁷²⁸ Rachel Brown, *‘I Was Afraid’: Students Speak on Bullying as Panel Considers Solutions*, DAILY CITIZEN (Ga.), Dec. 2, 2009, at 1A.

¹⁷²⁹ CHARLES SLACK, LIBERTY’S FIRST CRISIS 95-96, 153 (2015).

¹⁷³⁰ SCOTT A. NELSON, THE DISCOURSES OF ALGERNON SIDNEY 28-29 (1993).

¹⁷³¹ HAROLD WEBER, PAPER BULLETS: PRINT AND KINGSHIP UNDER CHARLES II 209-10 (1996).

¹⁷³² SLACK, *supra* note 1729, at 95.

¹⁷³³ WEBER, *supra* note 1731, at 210-11.

¹⁷³⁴ NELSON, *supra* note 1730, at 25.

*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

¹⁷³⁵ JONATHAN SCOTT, *ALGERNON SIDNEY AND THE RESTORATION CRISIS, 1677-1683* 329 (1991).

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).

¹⁷⁴⁰ Jenna Hanchard, *Buckley Boy Told by Classmates ‘to Kill Myself,’ Family to Sue District*, K5 (June 22, 2017), <https://www.king5.com/article/news/local/buckley-boy-told-by-classmates-to-kill-myself-family-to-sue-district/281-451436568>.

¹⁷⁴¹ Caitlan Nolan, *Boy, 13, Contemplates Suicide After Notes Urging Him to Kill Himself Are Scrawled in His Yearbook*, INSIDE EDITION (June 21, 2017), <https://www.insideedition.com/headlines/24057-boy-13-contemplates-suicide-after-notes-urging-him-to-kill-himself-are-scrawled-in-his>.

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.¹⁷⁴⁴ He would arrive late to class in order to avoid the bullies¹⁷⁴⁵ and did everything in his power to avoid school altogether.¹⁷⁴⁶

On May 23, 2017, N.H.'s mother went to a school administrator and asked for an investigation.¹⁷⁴⁷ On May 25, students L.B. and W.L. called N.H. a racial epithet in between classes.¹⁷⁴⁸ That same day, student T.A. told N.H. to go kill himself.¹⁷⁴⁹

N.H. handed out his yearbook¹⁷⁵⁰ on the second to last day of school.¹⁷⁵¹ Someone threw it at his back when they were done.¹⁷⁵² N.H. picked it up off of the lunchroom floor¹⁷⁵³ and looked inside.¹⁷⁵⁴ "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!"¹⁷⁵⁵

N.H. left school embarrassed and headed toward Washington's White River to drown himself.¹⁷⁵⁶ "I just can't

<https://www.thenewstribune.com/news/local/education/article157059614.html>.

¹⁷⁴⁴ Hanchard, *supra* note 1740.

¹⁷⁴⁵ Dan Hendrickson, *13-Year-Old Plans Suicide After 'Absolutely Heartbreaking' Yearbook Bullying*, WHO 13 DES MOINES (June 19, 2017), <https://www.who13.com/news/13-year-old-plans-suicide-after-absolutely-heartbreaking-yearbook-bullying/>.

¹⁷⁴⁶ Ray Miller-Still, *Glacier Middle School Bullying Incident May Lead to Court Suit*, COURIER-HERALD (June 27, 2017), <https://www.courierherald.com/news/glacier-middle-school-bullying-incident-may-lead-to-court-suit/>.

¹⁷⁴⁷ *Id.*

¹⁷⁴⁸ Hanchard, *supra* note 1740.

¹⁷⁴⁹ *Id.*

¹⁷⁵⁰ Sailor, *supra* note 1743.

¹⁷⁵¹ Keith Eldridge, *Buckley 7th-Grader Got 'Kill Yourself' Note on Yearbook and Nearly Did*, KOMO NEWS (June 19, 2017), <https://www.komonews.com/news/local/buckley-7th-grader-got-kill-yourself-note-on-yearbook-and-nearly-did>.

¹⁷⁵² Hendrickson, *supra* note 1745.

¹⁷⁵³ Nolan, *supra* note 1741.

¹⁷⁵⁴ Christopher Koulouris, *'Kill Yourself' Buckley 7th Grader Receives Yearbook Messages Bullying Him to Die*, SCALLYWAG & VAGABOND (June 20, 2017), <https://www.scallywagandvagabond.com/2017/06/buckley-7th-grader-bullying-yearbook-glacier-middle-school/>.

¹⁷⁵⁵ *Id.*

¹⁷⁵⁶ Hendrickson, *supra* note 1745.

take it anymore,” he texted his mother.¹⁷⁵⁷ “Maybe I should just do it. Maybe they’re right. I’m sorry.”¹⁷⁵⁸ N.H.’s mother found him in time.¹⁷⁵⁹ Police took a report in regard to the lunchroom happenings but said potential suspects were most likely too young to face criminal action.¹⁷⁶⁰

Jack Isenberg (12)¹⁷⁶¹ of New Hampshire loved Legos,¹⁷⁶² liked to ride his bike, and shoveled snow for his elderly neighbors.¹⁷⁶³ Jack had a few¹⁷⁶⁴ close friends but was constantly bullied.¹⁷⁶⁵ Kids bullied him in class, at recess, and on his phone.¹⁷⁶⁶ He was kicked in the crotch and told this way he could not have “retarded” children.¹⁷⁶⁷ Jack got into a schoolyard fight on May 25, 2018.¹⁷⁶⁸ As it was wrapping up, a noncombatant told Jack to go home and kill himself.¹⁷⁶⁹ Jack killed himself the next day.¹⁷⁷⁰

¹⁷⁵⁷ Eldridge, *supra* note 1751.

¹⁷⁵⁸ *Id.*

¹⁷⁵⁹ *Id.*

¹⁷⁶⁰ *Id.* But see WASH. REV. CODE § 9A.04.050 (2016) (declaring only children under the age of eight as incapable of committing crime). Fourteen is the age below which a rebuttable presumption applies. *Id.*

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-580bafcefc1.html.

¹⁷⁶² Jack K. Isenberg / 2005 – 2018 / *Obituary*, STOCKBRIDGE FUNERAL HOME LLC, <https://www.stockbridgefh.com/obituary/jack-isenburg> (last visited Oct. 23, 2020).

¹⁷⁶³ Wickham, *supra* note 1761.

¹⁷⁶⁴ *Id.*

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/>.

¹⁷⁶⁶ Wickham, *supra* note 1761.

¹⁷⁶⁷ Thomason, *supra* note 1765.

¹⁷⁶⁸ 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>.

¹⁷⁶⁹ *Id.*

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

¹⁷⁷¹ Daniel J. Briggs, FIND A GRAVE, <https://www.findagrave.com/memorial/147109569/daniel-j-briggs> (last visited Oct. 3, 2020).

¹⁷⁷² Estate of D.B. v. Thousand Islands Cent. Sch. Dist., 327 F. Supp. 3d 477, 496, 498 (N.D. N.Y. 2018).

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.

¹⁷⁷⁹ Compare *id.*, with, Kris Wolfe, *A Dad Finds Out Son Is Being Bullied*, GOODGUYSWAG (Feb.16, 2016), <http://goodguyswag.com/dad-finds-out-son-is-being-bullied/>.

D. ASSAILMENT BY SOLICITATION

“Solicitation is a crime of communication, that is, the harm is the asking.”¹⁷⁸⁰ Like attempt and conspiracy,¹⁷⁸¹ solicitation is criminalized because of the risk that it could lead to a consummated crime.¹⁷⁸² Hence, a wife cannot offer money for the murder of her husband¹⁷⁸³ and a man cannot ask a 15-year-old girl to masturbate and send him photographs.¹⁷⁸⁴ Numerous jurisdictions make it a crime to solicit a minor to join a street gang.¹⁷⁸⁵

Bullies frequently targeted C.R.’s status as a special education student.¹⁷⁸⁶ The torment peaked during his freshman and sophomore years¹⁷⁸⁷ when students bombarded him between classes with taunts of “retard” and “sped.”¹⁷⁸⁸ C.R. experienced less bullying as an upperclassman but said the harassment of others continued.¹⁷⁸⁹ “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?’”¹⁷⁹⁰

On October 29, 2004, C.R. left a suspicious letter on a printer at his school, Menomonie High (“MHS”).¹⁷⁹¹ 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

¹⁷⁸⁰ *Criminal Law: Substantive Principles*, *supra* note 112, at § 161.

¹⁷⁸¹ 82 C.J.S. *Statutes* § 266 (2009).

¹⁷⁸² DANIEL CONWAY & GARY MYERS, *HANDBOOK OF CRIMES AND DEFENSES IN THE MILITARY* § 68.2 (2018).

¹⁷⁸³ Jessica Anderson, *Karla Porter Guilty in Contract Killing of Husband*, *JEFFERSONIAN* (Md.), Aug. 15, 2013, at 2.

¹⁷⁸⁴ *United States v. Thomas*, ARMY 20150205, 2016 WL 4729442, at *1 (A. Ct. Crim. App. Sep 9, 2016).

¹⁷⁸⁵ *E.g.* UTAH CODE ANN. § 76-9-803(1)(a) (West 2015).

¹⁷⁸⁶ Eric Lindquist, *Student: Harassment Made School Unbearable*, *LEADER-TELEGRAM* (Wisc.), Jan. 2, 2005, at 1A.

¹⁷⁸⁷ *Id.*

¹⁷⁸⁸ *Id.*

¹⁷⁸⁹ *Id.*

¹⁷⁹⁰ *Id.*

¹⁷⁹¹ Meagan Frank, *Reule Gets Three Years Probation*, *DUNN CTY. NEWS* (Wisc.), Jan. 18, 2006, at A1.

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.¹⁷⁹²

As a result of the letter, MHS increased security the first week of November,¹⁷⁹³ canceled two days of classes,¹⁷⁹⁴ and had home field advantage in a football playoff game taken away.¹⁷⁹⁵

Police arrested C.R. on November 9 for a misdemeanor count of disorderly conduct in connection with the letter.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."¹⁷⁹⁷ On November 17, prosecutors charged C.R. with a felony count of threats to injure.¹⁷⁹⁸ On November 22, the school board expelled C.R. for "the remainder of his high school career."¹⁷⁹⁹ C.R. said he was sick of his friends being picked on and wrote the letter as a scare tactic.¹⁸⁰⁰

¹⁷⁹² *Reule Faces Charges in Appearance Tuesday*, DUNN CTY. NEWS (Wisc.), Dec. 5, 2004, at A1.

¹⁷⁹³ Barbara Lyon, *Reule Faces Trial for Threat that Closed School*, DUNN CTY. NEWS (Wisc.), Jan. 30, 2005, at A1.

¹⁷⁹⁴ *Reule May Avoid Jury Trial*, DUNN CTY. NEWS (Wisc.), Jan. 11, 2006, at A3.

¹⁷⁹⁵ Don Huebscher, Editorial, *How a Stupid Act Destroyed a Dream*, LEADER-TELEGRAM (Wisc.), Nov. 9, 2004, at 4A.

¹⁷⁹⁶ *Police Arrest Teen for Threat*, CHIPPEWA HERALD-TELEGRAM (Wisc.), Nov. 10, 2004, at A2.

¹⁷⁹⁷ Pamela Powers, *Student Arrested for Threat*, LEADER-TELEGRAM (Wisc.), Nov. 10, 2004, at 1B.

¹⁷⁹⁸ Barbara Lyon, *Getting Back at the Bullies*, DUNN CTY. NEWS (Wisc.), Nov. 21, 2004, at A1.

¹⁷⁹⁹ *School Board Expels Student for Letter Threat*, LEADER-TELEGRAM (Wisc.), Nov. 23, 2004, at 2B.

¹⁸⁰⁰ Lyon, *supra* note 1798.

A deputy fire chief in Connecticut ended his life on a railroad track after decades of service.¹⁸⁰¹ He left behind a son¹⁸⁰² who was eight at the time.¹⁸⁰³ Deviant grade school bullies made mean memes and asked the boy, “Do you like trains?”¹⁸⁰⁴ They also told him to “jump in front of a train”¹⁸⁰⁵ and said, “Why don’t you go down and do what your dad did?”¹⁸⁰⁶

E. ASSAILMENT BY IMPERATIVE

Neither true friends¹⁸⁰⁷ nor a protective mother¹⁸⁰⁸ could shield Tori Swoape (15)¹⁸⁰⁹ from classmates¹⁸¹⁰ who claimed she was one of two girls having sexual relations in a blurry

¹⁸⁰¹ David Altimari, *Through Tragedy, a Strong Legacy*, HARTFORD COURANT, Oct. 25, 2015, at A1.

¹⁸⁰² *Id.*

¹⁸⁰³ Noelle Gardner, *Allegations of Bullying at an Elementary School in Branford*, NEWS 8 (May 3, 2017), <https://www.wtnh.com/news/connecticut/new-haven/allegations-of-bullying-at-an-elementary-school-in-branford/>.

¹⁸⁰⁴ *Id.*

¹⁸⁰⁵ Ike Ejiuchi, *Branford Mother Gets Help with Her Son’s Bullying from Unexpected Places*, FOX 61 (May 10, 2017), <https://www.fox61.com/article/news/local/outreach/awareness-months/branford-mother-gets-help-with-her-sons-bullying-from-unexpected-places/520-291e0906-b810-4fb9-8828-46d168fd1651>.

¹⁸⁰⁶ Gardner, *supra* note 1803.

¹⁸⁰⁷ Michelle Kinsey, ‘*Good Days and Bad Days*’, STAR PRESS (Ind.), May 8, 2013, at 1A.

¹⁸⁰⁸ Ashley Shuler, *Daughter’s Death by Suicide Spurs Mother to Action*, STATEHOUSE FILE (Apr. 28, 2017), <https://www.thestatehousefile.com/daughters-death-suicide-spurs-mother-action/31451/>.

¹⁸⁰⁹ Tori Nakol Swoape, GARDEN VIEW FUNERAL HOME, <https://www.gardenviewandgardensofmemory.com/obituary/swoape-tori> (last visited Oct. 3, 2020).

¹⁸¹⁰ Emine Sinmaz, *Parents’ Agony After Daughter, 15, Is Found Hanged in Her Bedroom After Relentless Bullying at Hands of Classmates*, DAILY MAIL (May 11, 2012), <https://www.dailymail.co.uk/news/article-2143096/Girl-15-hanging-scarf-bedroom-enduring-relentless-bullying-classmates.html>; *When Cyber-Bullying Leads to Suicide*, WLBT 3 (July 9, 2013), <https://www.wlbt.com/story/21644883/more-teens-victims-of-cyber-bullying/>.

video.¹⁸¹¹ In an attempt to quell the rumor-mongering, Tori took to Facebook on May 7, 2012.¹⁸¹² 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!”¹⁸¹³ Tori had texted with her mother after school and throughout the evening¹⁸¹⁴ but the last text she received was from a female “friend” who unleashed the kiss of death.¹⁸¹⁵ The friend told Tori to kill herself.¹⁸¹⁶ Sometime between 7:33 and 7:53 p.m.,¹⁸¹⁷ Tori locked her bedroom door, tied a scarf around her neck, and hanged herself.¹⁸¹⁸

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.”¹⁸¹⁹ She had endured months of bullying from classmates.¹⁸²⁰ The attacks included imperative words.¹⁸²¹ “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.”¹⁸²²

F. ASSAILMENT BY BLACKMAIL

Tyler Garcia (14) of Texas is described as a wonderful son and “a bona fide smarty pants.”¹⁸²³ He went through the horrifying experience of being sexually assaulted by two

¹⁸¹¹ *When Cyber-Bullying Leads to Suicide*, *supra* note 1810.

¹⁸¹² Sinmaz, *supra* note 1810.

¹⁸¹³ *Id.*

¹⁸¹⁴ Shuler, *supra* note 1808.

¹⁸¹⁵ *Id.*

¹⁸¹⁶ *Id.*

¹⁸¹⁷ Compare *id.*, with *When Cyber-Bullying Leads to Suicide*, *supra* note 1810.

¹⁸¹⁸ *When Cyber-Bullying Leads to Suicide*, *supra* note 1810.

¹⁸¹⁹ Matthew McClellan, *Parents Demand School Bullying Accountability*, WRTV (Feb 27, 2019), <https://www.wrtv.com/news/working-for-you/parents-demand-school-bullying-accountability>.

¹⁸²⁰ *Id.*

¹⁸²¹ *Id.*

¹⁸²² *Id.*

¹⁸²³ *Obituary: Tyler Andrew Garcia*, DIGNITY MEMORIAL, <https://www.dignitymemorial.com/obituaries/iowa-park-tx/tyler-garcia-6177738> (last visited Oct. 3, 2020).

neighborhood teenage boys.¹⁸²⁴ Tyler moved schools for a fresh start¹⁸²⁵ but his information fell into the wrong hands after confiding in another student about the assault.¹⁸²⁶

A predatory male student slurred Tyler on a regular basis.¹⁸²⁷ Tyler suffered a cracked rib when the student hit him with a cowbell.¹⁸²⁸ On Thursday October 23, 2014, the student rode a bus with Tyler.¹⁸²⁹ The student told Tyler that he should go home and kill himself¹⁸³⁰ or else everyone would know on Monday why he was being called a fag.¹⁸³¹ Tyler died at home¹⁸³² by suicide on Sunday night¹⁸³³ October 26, 2014.¹⁸³⁴

¹⁸²⁴ *Justice for Tyler Garcia - TAG*, FACEBOOK (Feb. 10, 2020 9:14 A.M.), https://www.facebook.com/permalink.php?story_fbid=284220118562997&id=1749219432063073&_tn_=-R.

¹⁸²⁵ *Id.*

¹⁸²⁶ *Id.*

¹⁸²⁷ Original Complaint at 15, *Jones v. Iowa Park Consol. Indep. Sch. Dist.*, No. 7:16-cv-00127-0 (N.D. Tex. Oct. 25, 2016).

¹⁸²⁸ *Compare Lynn Walker, Bullied Child's Mother Sues Texas School District over Son's Suicide*, USA TODAY (Oct. 27, 2016), <https://www.pnj.com/story/news/nation-now/2016/10/27-bullied-childs-mother-sues-texas-school-district-over-sons-suicide/92846454/>, with Roxanne Lynn Jones, *Tyler's Story*, FACEBOOK (Nov. 11, 2016), <https://www.facebook.com/roxanne.l.garcia/videos/975395022566310/UzpfSTE3NDkyMTk0MzlwNjMwNzY2M6MTc0OTlyNTk1MjA2MjQyMQ/>.

¹⁸²⁹ Ben Gaurino, *Two Years Ago, Her Son Committed Suicide. Now His Mother's Suing the School Where He Was Allegedly Bullied*, WASH. POST (Oct. 28, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/10/28/two-years-ago-her-son-committed-suicide-now-his-mothers-suing-the-school-where-he-was-allegedly-bullied/>.

¹⁸³⁰ Original Complaint, *supra* note 1827, at 15.

¹⁸³¹ *Tyler's Story*, *supra* note 1828.

¹⁸³² Original Complaint, *supra* note 1827, at 16.

¹⁸³³ *Justice For Tyler Garcia - TAG*, FACEBOOK (Jan. 18, 2017 12:29 A.M.), https://www.facebook.com/permalink.php?story_fbid=1749438265374523&id=1749219432063073&_tn_=C-R.

¹⁸³⁴ *Mother Is Suing the Iowa Park School District for Contributing to Her Son's Suicide*, TEXOMAS (Oct. 27, 2016), <https://www.texomashomepage.com/news/mother-is-suing-the-iowa-park-school-district-for-contributing-to-her-sons-suicide/#.~:text=An%20Iowa%20Park%20mother%20is,federal%20court%20in%20Wichita%20Falls.>

Tyler's mother helped draft the Texas cyber assaultment law.¹⁸³⁵ She also filed suit against the new school.¹⁸³⁶ The school settled.¹⁸³⁷ As for the predatory male student? "Nothing happened to the kid," said Tyler's mother.¹⁸³⁸ "[H]e almost cost another child his life about three months after Tyler passed [and] his parents moved him out of the state."¹⁸³⁹

G. ASSAILMENT BY EXTORTION

Criminal laws against extortion prohibit "conditional threats to engage in unlawful acts."¹⁸⁴⁰ Extortionists usually want money¹⁸⁴¹ but laws in most states go beyond currency and cover demands for other belongings as well.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.'"¹⁸⁴³ In 2017, Alabama became one of the first states to criminalize sexual extortion.¹⁸⁴⁴ Its Attorney General's Office

¹⁸³⁵ Jesse Canales, *Grieving Mother Vows to Honor Son's Life by Fighting for Anti-Bully Legislation*, NEWSCHANNEL 6 (Aug. 12, 2017), <https://www.newschannel6now.com/story/35138037/grieving-mother-vows-to-honor-sons-life-by-fighting-for-anti-bully-legislation/>.

¹⁸³⁶ Jesse Canales, *Three Years Later Family Still Mourning Loved One*, NEWSCHANNEL 6 (Aug. 15, 2018), <https://www.newschannel6now.com/story/36695805/three-years-later-family-still-mourning-loved-one/>.

¹⁸³⁷ Canales, *supra* note 1835.

¹⁸³⁸ Roxanne Lynn Jones, *Tyler's Story*, FACEBOOK (Nov. 11, 2016), <https://www.facebook.com/roxanne.l.garcia/videos/975395022566310/UzpfSTE3NDkyMTk0MzlwNjMwNzM6mTc0OTlyNTk1MjA2MjQyMQ/> (Roxanne Lynn Jones commenting Jan. 5, 2017 at 9:52 A.M.).

¹⁸³⁹ *Id.*

¹⁸⁴⁰ PAUL H. ROBINSON & MICHAEL T. CAHILL, CRIMINAL LAW § 15.7 at 593 (2d ed. 2012).

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, *Blackmail, Extortion, and Other Highly Questionable Tactics*, 28 LITIG. 48, 50 (2002).

¹⁸⁴² 3 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 20.4(a)(3) (3d ed. 2018).

¹⁸⁴³ *Id.*

¹⁸⁴⁴ Katy Murphy, *'Sextortion' Will Be a Crime in California*, MERCURY NEWS (Cal.), Oct. 7, 2017, at B1.

summed up the felony as “the use of threatening communications, often online, to induce the victim to engage in unwanted sexual activity.”¹⁸⁴⁵

In 2015, Alabama high school bullies were hell-bent on getting a female classmate to commit suicide.¹⁸⁴⁶ They assailed her by extortion on social media: “Kill yourself or we will kill your family.”¹⁸⁴⁷ In another message, they sent the thirteen-year-old a picture of an actual gun.¹⁸⁴⁸ The girl, an experienced pageant participant,¹⁸⁴⁹ opted out of the ultimatum and made a report to local news.¹⁸⁵⁰ The bullies stopped but their scare tactics continued to wear on the girl.¹⁸⁵¹

H. ASSAILMENT BY TEMPTATION

Jordan Lewis (15) attended an Illinois high school.¹⁸⁵² Students there called Jordan embarrassing names and tried to push him down flights of stairs.¹⁸⁵³ After the school screened an

¹⁸⁴⁵ Brandon Moseley, *Ivey Signs New Sex Offense Legislation*, ALA. POL. REP. (June 1, 2017), <https://www.alreporter.com/2017/06/01/ivey-signs-new-sex-offense-legislation/>.

¹⁸⁴⁶ Joshua Gauntt, ‘Kill Yourself or We Kill Your Family’: West Ala. Mom Wants More Done to Stop Bullying, WBRC FOX 6 NEWS (Aug. 28, 2015), <https://www.wbrc.com/story/28557876/kill-yourself-or-we-kill-your-family-west-ala-mom-wants-more-done-to-stop-bullying/>.

¹⁸⁴⁷ Chris Spargo, ‘Kill Yourself or We Kill Your Family’, DAILY MAIL (Mar. 19, 2015), <https://www.dailymail.co.uk/news/article-3002961/Kill-kill-family-Girl-13-makes-desperate-plea-school-stop-students-bullying-threaten-life-horrifying-messages-photo-gun.html>.

¹⁸⁴⁸ *Bullies to Teen: Kill Yourself or We Kill Your Family*, CNN, <https://www.cnn.com/videos/us/2015/03/20/pkg-mom-wants-to-stop-bullying.wbrc/video/playlists/cyberbullying/> (last visited Oct. 3, 2020).

¹⁸⁴⁹ Stephanie Taylor, *1 in 5 High-Schoolers Are Victims of Bullies*, TUSCALOOSA NEWS (July 30, 2016), <https://www.tuscaloosaneews.com/news/20160730/1-in-5-high-schoolers-are-victims-of-bullies>.

¹⁸⁵⁰ Gauntt, *supra* note 1846.

¹⁸⁵¹ Taylor, *supra* note 1849.

¹⁸⁵² *Jordan Lewis*, S. ILLINOISAN, Oct. 19, 2013, at 3B.

¹⁸⁵³ Complaint at ¶ 16, *Lewis v. Carterville Cmty. Unit Sch. Dist. #5*, No. 3:14-cv-00751-JPG-SCW (S.D. Ill. June 30, 2014), 2014 WL 2978905.

anti-bullying film on 16 October 2013,¹⁸⁵⁴ Jordan expressed suicidal thoughts.¹⁸⁵⁵ A student told him, “You don’t have the balls to kill yourself.”¹⁸⁵⁶ Jordan killed himself the next morning with a shotgun blast to the chest.¹⁸⁵⁷ His suicide note read, “Bullying has caused me to do this. Those of you know who you are.”¹⁸⁵⁸

“Alex” (13) attended school in Chesapeake, Virginia.¹⁸⁵⁹ Girls from school taunted Alex, teasing him about his small size and challenging him to perform physical feats he could not accomplish.¹⁸⁶⁰ In addition, kids “were trying to dare him to commit suicide.”¹⁸⁶¹ Alex used his grandfather’s antique shotgun to kill himself in June 2014.¹⁸⁶² Alex said in a suicide note, “I’m tired of this. Tell my friends what I have done.”¹⁸⁶³ He left another message on his computer.¹⁸⁶⁴ It read, “The only way to get the respect you deserve is to die.”¹⁸⁶⁵

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,

¹⁸⁵⁴ Robert Patrick, *Father’s Lawsuit Claims District Ignored Bullying of Son at School*, ST. LOUIS POST-DISPATCH, July 1, 2014, at A11.

¹⁸⁵⁵ Complaint at ¶ 20, *Lewis v. Carterville Cmty. Unit Sch. Dist. #5*, No. 3:14-cv-01118-JPG-SCW (S.D. Ill. Oct. 17, 2014), 2014 WL 5395201.

¹⁸⁵⁶ *Id.*

¹⁸⁵⁷ Molly Parker, *Parents Call for End to School Bullying*, S. ILLINOISAN (Nov. 2, 2014), https://thesouthern.com/news/local/parents-call-for-end-to-school-bullying/article_3c2e8089-877f-5864-a1db-4e5f4da644fb.html. Police performed a welfare check on Jordan the night before his suicide. Matt Hamilton, *Bereaved Father Battles Bullying*, L.A. TIMES, Oct. 20, 2013, at A10.

¹⁸⁵⁸ Matt Pearce & Melanie Mason, *2 Suicides Raise Questions About Anti-Bullying Videos*, CHI. TRIB., Oct. 31, 2013, at 17.

¹⁸⁵⁹ Bob Meadows et al., *The Web: The Bully’s New Playground*, PEOPLE, Mar. 14, 2005, at 152, 152.

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 assailed, 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.¹⁸⁶⁶ Smith moved with his family to Los Angeles at the age of six.¹⁸⁶⁷ As a child, Smith visited a neighborhood lumberyard and

¹⁸⁶⁶ Jim Brosnan, *Ozzie Smith: The Man with the Million Dollar Glove*, *BOY'S LIFE*, Mar. 1984, at 13, 14.

¹⁸⁶⁷ OZZIE SMITH WITH ROB RAINS, *WIZARD 6* (1988).

backflipped into mounds of sawdust.¹⁸⁶⁸ In high school, he played baseball alongside future Hall of Famer Eddie Murray.¹⁸⁶⁹ After graduating in 1973, Smith played at California Polytechnic State University (“Cal Poly”).¹⁸⁷⁰

The Detroit Tigers drafted Smith in 1976¹⁸⁷¹ following his junior year of college.¹⁸⁷² According to Sports Illustrated, Detroit offered him a \$4,500 signing bonus.¹⁸⁷³ Smith wanted \$10,000.¹⁸⁷⁴ Negotiations ended without a deal¹⁸⁷⁵ and Smith returned to Cal Poly for his senior season.¹⁸⁷⁶ Smith signed with the San Diego Padres for \$5,000 in 1977.¹⁸⁷⁷

The Padres made Smith their starting shortstop in 1978.¹⁸⁷⁸ He performed a backflip one game¹⁸⁷⁹ and the fans loved it.¹⁸⁸⁰ The ceremonial backflip became Smith’s trademark for years to come in San Diego and Saint Louis.¹⁸⁸¹ Smith also earned a nickname for his spectacular defensive play: “The Wizard.”¹⁸⁸²

¹⁸⁶⁸ John Kekis, *Smith Has One More Golden Moment at Hall*, CALIFORNIAN, July 28, 2002, at C-2.

¹⁸⁶⁹ DAVID MAGEE & PHILIP SHIRLEY, SWEET SPOT 95 (2009).

¹⁸⁷⁰ Carolyn Olson, *Ozzie Smith: The Pressure of His ‘God-Given Talents’*, ST. LOUIS POST-DISPATCH YOU, June 25, 1986, at 1.

¹⁸⁷¹ Jason Beck, *Ozzie Smith to Detroit? It Almost Happened*, MLB.COM, (May 19, 2018), <https://www.mlb.com/news/tigers-drafted-almost-signed-ozzie-smith-c278808630>.

¹⁸⁷² *Ozzie Smith*, CAL POLY ATHLETICS HALL OF FAME, <https://gopoly.com/honors/cal-poly-athletics-hall-of-fame/ozzie-smith/122> (last visited Oct. 3, 2020).

¹⁸⁷³ Ron Fimrite, *No. 1 in His Field*, SPORTS ILLUSTRATED, Sept. 28, 1987, at 60, 68.

¹⁸⁷⁴ Thomas Neumann, *Q&A: Hall of Fame Shortstop Ozzie Smith*, ESPN (May 10, 2012), https://www.espn.com/blog/playbook/fandom/post/_/id/2276/qa-hall-of-fame-shortstop-ozzie-smith.

¹⁸⁷⁵ ANUP SINHA & BILL LAJOIE, CHARACTER IS NOT A STATISTIC 81 (2010).

¹⁸⁷⁶ Neumann, *supra* note 1874.

¹⁸⁷⁷ OZZIE SMITH WITH ROB RAINS, OZZIE SMITH: THE ROAD TO COOPERSTOWN 21 (2002).

¹⁸⁷⁸ Brosnan, *supra* note 1866, at 14.

¹⁸⁷⁹ SMITH, *supra* note 1877, at 21.

¹⁸⁸⁰ Fimrite, *supra* note 1873, at 68.

¹⁸⁸¹ SMITH, *supra* note 1877, at 21.

¹⁸⁸² ROBERT W. COHEN, THE 50 GREATEST PLAYERS IN ST. LOUIS CARDINALS HISTORY 75 (2013).

Lenn Haruki Sakata¹⁸⁸³ never had a nickname during his baseball playing days.¹⁸⁸⁴ Sakata was born in Honolulu¹⁸⁸⁵ on June 8, 1953.¹⁸⁸⁶ He drove in the run that won the high school state championship in 1970.¹⁸⁸⁷ After graduation, Sakata attended Treasure Valley Community College in Oregon¹⁸⁸⁸ and later Gonzaga University.¹⁸⁸⁹

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

Next up were the Padres.¹⁸⁹² They drafted the all-star second baseman in 1974.¹⁸⁹³ Again, Sakata did not sign.¹⁸⁹⁴ "The Padres offered me \$7,000 . . . but I didn't feel the offer was right."¹⁸⁹⁵

The Milwaukee Brewers drafted Sakata with their first pick in 1975.¹⁸⁹⁶ This time he signed.¹⁸⁹⁷ There was controversy,

¹⁸⁸³ Rory Costello, *Lenn Sakata*, SOC'Y FOR AM. BASEBALL RES., <https://www.Sabr.org/bioproj/person/2f7d8220> (last visited Oct. 3, 2020).

¹⁸⁸⁴ KERRY YO NAKAGAWA, *JAPANESE AMERICAN BASEBALL IN CALIFORNIA* 175 (2014).

¹⁸⁸⁵ JOEL FRANKS, *CROSSING SIDELINES, CROSSING CULTURES* 92 (2d ed. 2010).

¹⁸⁸⁶ BREWERS FUTURE STARS: DANNY BOTIANO, WILLIE MUELLER, LENN SAKATA, TOPPS # 668 (Topps Chewing Gum, Inc. 1980); *Health Bureau Statistics: Births*, HONOLULU ADVERTISER, June 13, 1953, at 17.

¹⁸⁸⁷ Andrew Mitsukado, *Kalani State Baseball Champ, 5-1*, HONOLULU ADVERTISER, May 3, 1970, at B-2.

¹⁸⁸⁸ Costello, *supra* note 1883.

¹⁸⁸⁹ Jeff Jordan, *Bulldogs Hope to Peak Against Arizona Club*, SEMI-WKLY. SPOKESMAN-REV. (Wash.), May 18, 1973, at 24.

¹⁸⁹⁰ Al Chase, *Draft History Gives Hawaii Players Hope*, HONOLULU STAR-BULLETIN, June 1, 1998, at D-1.

¹⁸⁹¹ *Sakata Still Undecided*, HONOLULU STAR-BULLETIN, Jan. 10, 1975, at D-2.

¹⁸⁹² *Padres Draft Ex-Kalani Star*, HONOLULU ADVERTISER, June 6, 1974, at E-1.

¹⁸⁹³ *School First for Sakata*, HONOLULU ADVERTISER, June 17, 1974, at D-4.

¹⁸⁹⁴ Costello, *supra* note 1883.

¹⁸⁹⁵ *Sakata Still Undecided*, *supra* note 1891.

¹⁸⁹⁶ Costello, *supra* note 1883.

¹⁸⁹⁷ Rod Ohira, *Brewers Sign Sakata*, HONOLULU STAR-BULLETIN, Jan. 21, 1975, at D-2.

though.¹⁸⁹⁸ Gonzaga's coach claimed Milwaukee applied heavy pressure,¹⁸⁹⁹ used psychological tricks, and wore down Sakata's resistance.¹⁹⁰⁰ According to the coach, Sakata had been "hot-boxed."¹⁹⁰¹

After Sakata reportedly told Milwaukee his plan was to stay in school, there was a long-distance phone call.¹⁹⁰² Milwaukee wanted Sakata to meet with a scout to execute a release.¹⁹⁰³ When Sakata arrived at the Spokane airport, there were two scouts, an executive, and a contract.¹⁹⁰⁴ "Aw, this guy doesn't want to play pro ball. Let's forget it," said one scout during the meeting.¹⁹⁰⁵ "Oh, yes he does," said the other.¹⁹⁰⁶ "Give him a chance to sign."¹⁹⁰⁷

The Brewers denied the coach's claim.¹⁹⁰⁸ "If you call a conversation at an airport pressure, then it was pressure," said the executive.¹⁹⁰⁹ "A conversation doesn't necessarily constitute a hotbox," he added.¹⁹¹⁰ "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."¹⁹¹¹

Sakata, who was 21 years old at the time,¹⁹¹² believed it was a pressure situation.¹⁹¹³ Sakata made his big-league debut with the Brewers in 1977¹⁹¹⁴ and played ten more seasons in the

¹⁸⁹⁸ Costello, *supra* note 1883.

¹⁸⁹⁹ Harry Missildine, *Brewer Blitz on Sakata*, SEMI-WKLY. SPOKESMAN REV. (Wash.), Jan. 27, 1975, at 10.

¹⁹⁰⁰ *Brewer 'Recruiting' Irks College Coach*, WIS. S. J., Jan. 28, 1975, at 2-3.

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.*

¹⁹¹² *Brewers Pick 4*, CHIPPEWA HERALD-TELEGRAM (Wisc.), Jan. 10, 1975, at 7.

¹⁹¹³ Rod Ohira, *Mea Pa'ani: Mail Report*, HONOLULU STAR-BULLETIN, Feb. 4, 1975, at C-2.

¹⁹¹⁴ *Brewers Rally to Earn Split, After 7-0 Loss to Yankess*, STEVENS POINT J. (Wis.), July 22, 1977, at 12.

majors.¹⁹¹⁵ He managed teams afterwards over a period of three decades.¹⁹¹⁶

Gabriella Green (12) was born in Michigan¹⁹¹⁷ and moved with her family to Florida in 2016.¹⁹¹⁸ Fast and athletic,¹⁹¹⁹ Gabriella stole the most bases on her softball team¹⁹²⁰ and cartwheeled in the outfield during games.¹⁹²¹ She got three medals on track and field day¹⁹²² finishing first in one race without even trying.¹⁹²³ A coach nicknamed her “Wheels” but she also went by “Gabs,” “Gabbie,” and “Princess Peach.”¹⁹²⁴ Gabriella wanted to be a model and meteorologist.¹⁹²⁵

¹⁹¹⁵ JOEL S. FRANKS, *ASIAN PACIFIC AMERICANS AND BASEBALL: A HISTORY* 172 (2008).

¹⁹¹⁶ John Sammon, *Cal League Baseball Elects Lenn Sakata to Hall of Fame*, DISCOVER NIKKEI (Aug. 31, 2018), <http://www.discovernikkei.org/en/journal/2018/8/31/lenn-sakata/>.

¹⁹¹⁷ Louise Wrege, *Florida Cyberbullying Victim from Stevensville*, HERALD-PALLADIUM (Mich.), Jan. 29, 2018, at A1.

¹⁹¹⁸ Eryn Dion, *12-Year-Old's Suicide Stuns Family, School*, NW. FLA. DAILY NEWS (Jan. 22, 2018), <https://www.nwfdailynews.com/news/20180122/12-year-olds-suicide-stuns-family-school>.

¹⁹¹⁹ Stephanie Byrne, *Foundation and Family Host 5K in Honor of Late Panama City Beach Girl*, NBC 7 WJHG (Jan. 9, 2019), <https://www.wjhg.com/content/news/Foundation-and-family-host-5K-in-honor-of-late-Panama-City-Beach-girl.html>.

¹⁹²⁰ *Gabriella Peyton Green*, HERITAGE FUNERAL HOME & HERITAGE SHORES FUNERAL HOME, <https://www.heritagefhllc.com/obituaries/obituary-listings?obId=2874082> (last visited Oct. 3, 2020).

¹⁹²¹ Byrne, *supra* note 1919.

¹⁹²² *Id.*

¹⁹²³ *Gabriella Peyton Green*, *supra* note 1920.

¹⁹²⁴ *Id.*

¹⁹²⁵ Wrege, *supra* note 1917.

Gabriella committed suicide on January 10, 2018.¹⁹²⁶ The seventh grader¹⁹²⁷ hanged herself in a closet at home.¹⁹²⁸ Classmates had been harassing her for months.¹⁹²⁹

One student wanted to fight Gabriella.¹⁹³⁰ There were memes about Gabriella's physique and a picture of a gun to her head.¹⁹³¹ Other electronic messages demanded¹⁹³² and dared her to commit suicide.¹⁹³³ The harassing texts and social media messages were "particularly heavy" on the day that she died.¹⁹³⁴

After learning of Gabriella's death, a twelve-year-old bully deleted electronic messages.¹⁹³⁵ When questioned by police, she was willing to admit causing problems for Gabriella¹⁹³⁶ online and in person.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."¹⁹³⁸

¹⁹²⁶ Dion, *supra* note 1918.

¹⁹²⁷ Jamiel Lynch & Dianne Gallagher, *Parents, Community Seek Answers, Action After 12-Year-Old's Suicide*, CNN (Jan. 26, 2018), <https://www.cnn.com/2018/01/26/us/parents-respond-cyberstalking-suicide/index.html>.

¹⁹²⁸ Wrege, *supra* note 1917.

¹⁹²⁹ Genevieve Smith, *Vigil Planned for PC 12-Year-Old Who Took Her Own Life Due to Bullying*, NWFDAAILYNEWS (Jan. 6, 2019), <https://www.nwfdailynews.com/news/20190106/vigil-planned-for-pc-12-year-old-who-took-her-own-life-due-to-bullying>.

¹⁹³⁰ Dion, *supra* note 1918.

¹⁹³¹ ABC News, *Parents of 12-Year-Old Girl Who Committed Suicide Speak Out About Cyberbullying*, YOUTUBE (Mar. 21, 2018), <https://www.youtube.com/watch?v=HjG95wOgkk4>.

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/.

¹⁹³³ Dion, *supra* note 1918.

¹⁹³⁴ *Id.*

¹⁹³⁵ Jamiel Lynch, *Police Accuse Two Students, Age 12, of Cyberbullying in Suicide*, CNN (Jan. 24, 2018), <https://www.cnn.com/2018/01/23/us/florida-cyberstalking-charges-girl-suicide/index.html>.

¹⁹³⁶ *Id.*

¹⁹³⁷ Wrege, *supra* note 1917.

¹⁹³⁸ *Id.*

Police questioned another twelve-year-old bully.¹⁹³⁹ He spoke with Gabriella just before her death.¹⁹⁴⁰ According to him, Gabriella discussed taking her life.¹⁹⁴¹ He told Gabriella something to the effect of, "If you're going to do it, just do it."¹⁹⁴² The boy said "he regretted that comment and tried to message her, but did not receive a response."¹⁹⁴³ He did not alert a parent or law enforcement.¹⁹⁴⁴

After Haley "Danielle" Cox (15)¹⁹⁴⁵ disclosed future plans to design fashion, another Louisiana high school girl scoffed at the idea; she told Danielle,¹⁹⁴⁶ an insulin-dependent diabetic,¹⁹⁴⁷ no one would hire a designer with no legs.¹⁹⁴⁸ When Danielle played soccer, a different girl said she was wasting time.¹⁹⁴⁹ On numerous occasions, Danielle ran out of class crying because bullies kept picking on her.¹⁹⁵⁰ They kept saying she was ugly and refused to stop talking about her.¹⁹⁵¹

When Danielle felt suicidal on the evening of 24 January 2011,¹⁹⁵² a close friend¹⁹⁵³ asked others to text Danielle uplifting words.¹⁹⁵⁴ A computer-literate teen from school did the exact

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.

¹⁹⁴⁶ Second Amended Complaint and Jury Demand at 11, Morton v. Bossier Par. Sch. Bd., No. 5:12CV1218 (W.D. La. Sept. 24, 2012).

¹⁹⁴⁷ Rayborn v. Bossier Par. Sch. Sys., 198 F. Supp. 3d 747, 751 (W.D. La. 2016).

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.

¹⁹⁵⁴ *KSLA News 12 Investigates: Cyber-Bullying and Suicide [Pt. 1]*, *KSLA NEWS 12* (Aug. 26, 2019), <https://www.ksla.com/clip/6394425/ksla-news-12-investigates-cyber-bullying-and-suicide-pt-1/>.

opposite.¹⁹⁵⁵ J.T. went to clamtxt.com¹⁹⁵⁶ around 11:30 p.m. and cranked out at least forty-six messages to Danielle's phone.¹⁹⁵⁷ The website made it seem like the texts came from different numbers.¹⁹⁵⁸ Some of the texts Danielle received included "I won't miss u" and "ur not important."¹⁹⁵⁹ One posed the question, "Just end it all?"¹⁹⁶⁰

Hours later¹⁹⁶¹ Danielle attempted suicide¹⁹⁶² by overdose.¹⁹⁶³ Her friend called police.¹⁹⁶⁴ A sheriff's deputy went to where Danielle lived¹⁹⁶⁵ at two in the morning and said a report was made that Danielle had taken pills.¹⁹⁶⁶ Family rushed Danielle to the emergency room¹⁹⁶⁷ and J.T. bragged online about what he had done.¹⁹⁶⁸

¹⁹⁵⁵ *Id.*

¹⁹⁵⁶ *Id.*; *Clam TXT: Most Evil Site or Greatest Site Ever*, DVD TALK, <https://forum.dvdtalk.com/other-talk/571033-clam-txt-most-evil-site-greatest-site-ever.html> (last visited Oct. 3, 2020).

¹⁹⁵⁷ Sabrina Canfield, *Mom Tells Heartbreaking E-Bullying Tale*, COURTHOUSE NEWS SERV. (May 25, 2012), <https://www.courthousenews.com/mom-tells-heartbreaking-e-bullying-tale/>.

¹⁹⁵⁸ Andrea Lucia, *Parents Start Anti-Bullying Campaign After Teen Daughter's Suicide*, 11/21 CBS DFW (Sept. 5, 2012), <https://dfw.cbslocal.com/2012/09/05/parents-start-anti-bullying-campaign-after-teen-daughters-suicide/>.

¹⁹⁵⁹ Second Amended Complaint and Jury Demand, *supra* note 1946, at 13.

¹⁹⁶⁰ *Id.*

¹⁹⁶¹ *Bossier City Teen Takes Plea Deal in Cyberbullying Suicide Case*, KSLA NEWS 12 (July 11, 2014), <https://www.ksla.com/story/24115151/bossier-city-teen-takes-plea-deal-in-cyberbullying-suicide-case/>.

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.

¹⁹⁶⁸ *KSLA News 12 Investigates: Cyber-Bullying and Suicide [Pt. 2]*, KSLA NEWS 12 (July 11, 2018), <https://www.ksla.com/clip/6394528/ksla-news-12-investigates-cyber-bullying-and-suicide-pt-2/>.

The sheriff's office traced the text messages back to J.T. in February 2011.¹⁹⁶⁹ He was placed under arrest and booked into jail.¹⁹⁷⁰ Authorities charged him with a felony punishable by up to ten years at hard labor.¹⁹⁷¹ J.T. plea bargained down to misdemeanor cyberbullying.¹⁹⁷² In December 2013, J.T. apologized at sentencing¹⁹⁷³ saying, "I'm not proud of my actions."¹⁹⁷⁴ "Nothing was right about it."¹⁹⁷⁵

J.T. could not make his apology to Danielle. She completed suicide on May 20, 2011.¹⁹⁷⁶ She hanged herself in a closet a few days before school was to let out for summer break.¹⁹⁷⁷ 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."¹⁹⁷⁸

Viviana Aguirre (14)¹⁹⁷⁹ played guitar, drew pictures, and spent time social networking.¹⁹⁸⁰ She was bullied for years¹⁹⁸¹ by four other teens.¹⁹⁸² The girls called Viviana "emo"

¹⁹⁶⁹ Lucia, *supra* note 1958.

¹⁹⁷⁰ *Bossier City Teen Arresting for Cyberbullying*, BOSSIER SHERIFF'S OFFICE (Feb. 8, 2011), <https://www.bossiersheriff.com/news/bossier-city-teen-arresting-for-cyberbullying1>.

¹⁹⁷¹ *KSLA News 12 Investigates: Cyber-Bullying and Suicide*, KSLA NEWS 12 (Aug. 26, 2018), <https://www.ksla.com/story/15896268/ksla-news-12-investigates-cyber-bullying-and-suicide/>.

¹⁹⁷² *Bossier City Teen Takes Plea Deal in Cyberbullying Suicide Case*, *supra* note 1961.

¹⁹⁷³ Jim, *Conviction in Bullying Case*, MY BOSSIER (Dec. 3, 2013), <https://mybossier.blogspot.com/search?q=conviction+in+bullying>.

¹⁹⁷⁴ *Bossier City Teen Takes Plea Deal in Cyberbullying Suicide Case*, *supra* note 1961.

¹⁹⁷⁵ *Id.*

¹⁹⁷⁶ White, *supra* note 1953.

¹⁹⁷⁷ *Id.*

¹⁹⁷⁸ Lex Talamo, *Child Helpers*, TIMES (La.), May 25, 2017, at 1A.

¹⁹⁷⁹ *Viviana Zulema Aguirre*, MT. CARMEL FUNERAL HOME, <https://www.mtcarmelfuneralhomes.com/obituary/2374098> (last visited Oct. 3, 2020).

¹⁹⁸⁰ Ashleigh Hammer, *An Age-Old Problem Poses New Constitutional Challenges in the Digital Age: The Desperate Need for Cyberbullying Reform in Texas*, 49 TEX. TECH L. REV. 457, 458 (2017).

¹⁹⁸¹ Diego Murcia, *Se Disparan Suicidios por Acoso Cibernético*, EL DIARIO (El Paso), Sept. 12, 2016, at 1.

¹⁹⁸² Hammer, *supra* note 1980, at 458.

and “worthless.”¹⁹⁸³ They told her to “go cry to [your] therapist.”¹⁹⁸⁴

The cyber bullying escalated.¹⁹⁸⁵ The girls told Viviana that nobody would miss her.¹⁹⁸⁶ Somebody told Viviana to drown in a tub with her own blood.¹⁹⁸⁷ One girl sent Facebook messages telling Viviana to kill herself.¹⁹⁸⁸

Viviana self-harmed¹⁹⁸⁹ but immediate family members never thought she would commit suicide.¹⁹⁹⁰ Still, her sixteen-year-old sister sensed something was wrong the night of January 2, 2014.¹⁹⁹¹ After Viviana promised not to hurt herself,¹⁹⁹² she was dead in less than an hour.¹⁹⁹³ She hanged herself in a closet.¹⁹⁹⁴

Viviana had an extensive conversation with online friends prior to suicide.¹⁹⁹⁵ 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.”¹⁹⁹⁶ The friends tried to convince her otherwise.¹⁹⁹⁷ 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.

¹⁹⁸⁷ Thomas Collette, *Ysleta District Student Commits Suicide*, HANKSMEDIA (Jan. 10, 2014), <https://www.hanksmedia.com/2014/01/10/ysleta-district-student-commits-suicide/>.

¹⁹⁸⁸ Helen Yip, *Sticks and Stones Can Break Your Bones but Cyberbullying Can Kill You*, BORDERZINE (Apr. 11, 2014), <https://www.borderzine.com/2014/04/sticks-and-stones-can-break-your-bones-but-cyberbullying-can-kill-you/>.

¹⁹⁸⁹ Yip, *supra* note 1988.

¹⁹⁹⁰ Stephanie Guadian, *'13 Reasons Why': A Cautionary Tale for Parents*, KVIA (Apr. 19, 2017), <https://kvia.com/news/2017/04/19/13-reasons-why-a-cautionary-tale-for-parents/>; *Parents Say Teen Who Committed Suicide Was Cyberbullied*, KVIA (Aug. 23, 2016).

¹⁹⁹¹ Hammer, *supra* note 1980, at 458.

¹⁹⁹² Yaya Perez, *Cyberbullying*, YOUTUBE (Nov. 18, 2014), <https://www.youtube.com/watch?v=cp47HACSD6g>.

¹⁹⁹³ Hammer, *supra* note 1980, at 458.

¹⁹⁹⁴ Perez, *supra* note 1992.

¹⁹⁹⁵ *Id.*

¹⁹⁹⁶ *Id.*

¹⁹⁹⁷ *Id.*

you all who tried to keep me up. But hey, it didn't work. Bye."¹⁹⁹⁸

Viviana's family moved from their home in El Paso's Lower Valley.¹⁹⁹⁹ Viviana's mother said of Viviana years later, "I miss her. I miss her terribly. I just wish she would still be here."²⁰⁰⁰

Randy Tabbutt from the El Paso County Sheriff's Office said children need to get adults involved at any possible sign of suicide.²⁰⁰¹ "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.²⁰⁰² "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."²⁰⁰³

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.²⁰⁰⁴ Police must be prepared to address a person in crisis.

¹⁹⁹⁸ Bill Melugin, *EPCSO Talks Cyber Bullying Following Teenage Suicide in Lower Valley*, KFOX14 (June 2, 2014), <https://kfoxtv.com/community/speak-up-stop-bullying/epcso-talks-cyber-bullying-following-teenage-suicide-in-lower-valley>.

¹⁹⁹⁹ Yip, *supra* note 1988.

²⁰⁰⁰ Guadian, *supra* note 1990.

²⁰⁰¹ Melugin, *supra* note 1998.

²⁰⁰² *Id.*

²⁰⁰³ *Id.*

²⁰⁰⁴ See *A MOMENT TOO LATE* (Prime Pictures 2018) ("Don't wait for the worst, take action."), available at <https://www.youtube.com/watch?v=SUPocPaEHA4> (last visited Oct. 3, 2020). This short film left a fourth-grade girl crying for days. Sydney Edwards, *Hamilton County Man Upset After 4th Grade Daughter Shown 'Graphic' Suicide Awareness Video*, ABC NEWS CHANNEL 9 (Nov. 22, 2019), <https://www.newschannel9.com/news/local/hamilton-county-man-upset-after-4th-grade-daughter-shown-graphic-suicide-awareness-video>.

Dylan Yount graduated from the University of Missouri in 2000.²⁰⁰⁵ He moved to San Francisco, made some money, and bought nice things.²⁰⁰⁶ February 2010 ushered in a new apartment.²⁰⁰⁷ The Lofts at One Powell²⁰⁰⁸ stand seven stories high officially but interior spaces are so vast the structure rises 134 feet.²⁰⁰⁹ Dylan lived there with his girlfriend in a sixth-floor penthouse.²⁰¹⁰

Dylan fought with his girlfriend on February 14.²⁰¹¹ Two days later, he was alone.²⁰¹² Dylan stepped out on the ledge overlooking the popular plaza below.²⁰¹³ Someone in the crowd shouted, "Jump!"²⁰¹⁴ A cop yelled up, "Get back inside your apartment, you fool!"²⁰¹⁵ Dylan jumped to his death minutes later.²⁰¹⁶

²⁰⁰⁵ *Dylan Gifford Yount Memorial*, FIND A GRAVE, <https://www.findagrave.com/memorial/83953429/Dylan-gifford-yount> (last visited Oct. 3, 2020).

²⁰⁰⁶ Albert Samaha, *Public Influence: The Immortalization of an Anonymous Death*, SF WKLY. (Jan. 2, 2013), <https://www.sfweekly.com/news/public-influence-the-immortalization-of-an-anonymous-death/>.

²⁰⁰⁷ Kathie Yount, *Who's Who -- Part 2 -- Witnesses of the Suicide Baiting Death of Dylan Yount in Hallidie Plaza, San Francisco*, FACEBOOK (Mar. 1, 2016), <https://www.facebook.com/notes/kathie-yount/whos-who-part-2-witnesses-of-the-2-16-10-suicide-baiting-death-of-dylan-yount-in/994021487343542/>.

²⁰⁰⁸ *The Lofts at One Powell*, <https://www.loftsatonepowell.com> (last visited Oct. 3, 2020).

²⁰⁰⁹ John King, *Attention Shoppers -- This Building Is a Beautifully Restored Piece of History*, SF GATE (Mar. 10, 2005), <https://www.sfgate.com/entertainment/article/Attention-shoppers-This-building-is-a-3324004.php>.

²⁰¹⁰ Samaha, *supra* note 2006.

²⁰¹¹ *Id.*

²⁰¹² *Why Do People Commit Suicide in Public Places?*, QUORA, <https://www.quora.com/Why-do-people-commit-suicide-in-public-places> (last visited Oct. 24, 2020) (Kathie Yount answering June 17, 2016).

²⁰¹³ Samaha, *supra* note 2006.

²⁰¹⁴ Mooncricket, *RIP DYLAN 02/16/10/ Suicide Prevention Educational Doc/Part 1*, YOUTUBE (Feb. 16, 2011), <https://www.youtube.com/watch?v=qvpVbWsUOtc>.

²⁰¹⁵ *Yount v. City and Cty. of S.F.*, A142933, 2015 WL 7180692, at *1 (Cal. Ct. App. Aug. 28, 2015).

²⁰¹⁶ *Id.* at *5 n.4.

Dylan's mother blamed police.²⁰¹⁷ She lamented the absence of arrests for suicide encouragement,²⁰¹⁸ took exception to her son being called a fool,²⁰¹⁹ and said too few officers were trained in crisis intervention.²⁰²⁰ Although her claims did not succeed in court,²⁰²¹ the police made changes.²⁰²² Nearly half of the San Francisco Police Department has received forty hours of training in crisis intervention.²⁰²³

X. DO-IT-YOURSELF DEMOCRACY

A. THE INITIATIVE PROCESS

Four states had legislation permitting physician-assisted suicide in 2016.²⁰²⁴ Then there were five states.²⁰²⁵ Then there were six,²⁰²⁶ then seven,²⁰²⁷ and now there are eight.²⁰²⁸ In

²⁰¹⁷ Kathie Yount, *Suicide Baiting – They Cheered While My Son Jumped*, IPINION SYNDICATE (June 22, 2013), <https://www.ipinionsyndicate.com/suicide-baiting-they-cheered-while-my-son-jumped/> (Kathie Yount commenting September 25, 2014).

²⁰¹⁸ *Id.*

²⁰¹⁹ Yount, *supra* note 2017.

²⁰²⁰ *Id.* (Kathie Yount commenting February 20, 2015).

²⁰²¹ Yount v. City and Cty. of S.F., No. C11-1141 MEJ, 2013 WL 2800788, at *8 (N.D. Cal. July 19, 2013);

Yount, 2015 WL 7180692, at *7.

²⁰²² *Crisis Intervention Team (CIT)*, S.F. POLICE DEP.'T, <https://www.sanfranciscopolice.org/your-sfpd/explore-department/crisis-intervention-team-cit> (last visited Oct. 3, 2020).

²⁰²³ *San Francisco Police Department-Trained CIT*, <https://www.sanfranciscopolice.org/sites/default/files/2019-10/SFPDCITTrained40and10Sheet1.pdf> (last visited Oct. 3, 2020).

²⁰²⁴ Kristin Wyatt, *Colorado Voters to Consider Suicide Drugs for Terminally Ill*, WINDSOR BEACON (Colo.), Aug. 21, 2016, at 5W.

²⁰²⁵ *Medical Aid in Dying Approved*, FORT COLLINS COLORADOAN, Nov. 19, 2016, at 5A.

²⁰²⁶ Nanea Kalani, *Medical Aid in Dying Becomes Law*, HONOLULU STAR-ADVERTISER, Apr. 6, 2018, at B1.

²⁰²⁷ Nicholas Pugliese, *NJ Follows Other States on Assisted Suicide*, ASBURY PARK PRESS (N.J.), Apr. 12, 2019, at 11A.

²⁰²⁸ Marina Villeneuve, *Maine Becomes 8th State to Legalize Assisted Suicide*, ABC NEWS (June 12, 2019), <https://abcnews.go.com/Health/wireStory/maine-8th-state-legalize-assisted-suicide-63669484>.

a physician-assisted suicide, the doctor prescribes a drug to his or her patient who self-administers a lethal dose orally.²⁰²⁹ Oregon pioneered physician-assisted suicide.²⁰³⁰ More than 1,500 assisted suicides have occurred in Oregon since the law was implemented in 1997.²⁰³¹

States permitting physician-assisted suicide impose strict regulations on its availability and accessibility.²⁰³² “[M]inors are not afforded the right to physician-assisted suicide.”²⁰³³ Neither are prisoners by virtue of prison policy²⁰³⁴ or regulation.²⁰³⁵ Nevertheless, “it is quite possible that unofficial and undocumented assisted suicide has occurred in prison settings.”²⁰³⁶

Incarcerated individuals do commit suicide – with or without the assistance of doctors.²⁰³⁷ Between 2001 and 2014, more than 3,000 inmates killed themselves while in American prisons.²⁰³⁸ Some believe bullying runs rampant in institutions such as schools and prisons where people are powerless to leave.²⁰³⁹ In regard to prisons, it is true that “violence is real”

²⁰²⁹ L.W. SUMNER, *PHYSICIAN-ASSISTED DEATH* 34 (2017).

²⁰³⁰ Kathleen S. Messinger, Comment, *Death with Dignity for the Seemingly Undignified: Denial of Aid in Dying in Prison*, 109 J. CRIM. L. & CRIMINOLOGY 633, 657 (2019).

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.

²⁰³³ Sydni Katz, *A Minor’s Right to Die with Dignity: The Ultimate Act of Love, Compassion, Mercy, and Civil Liberty*, 48 CAL. W. INT’L L.J. 219, 220 (2018).

²⁰³⁴ Messinger, *supra* note 2030, at 657.

²⁰³⁵ COLO. DEP’T OF CORR., ADMIN. REGULATION NO. 700-27: MEDICAL DECISIONS AND ADVANCE DIRECTIVES at § IV.G. (2018).

²⁰³⁶ David Lester, *Assisted Suicide for Prisoners*, 9 SUICIDOLOGY ONLINE No. 2 at 4 (2018), <http://www.suicidology-online.com/pdf/SOL-2018-9-2.pdf> (last visited Oct. 3, 2020).

²⁰³⁷ Kimberly D. Dodson & Jerrod Brown, *Suicide in Custody*, in 2 AMERICAN PRISONS AND JAILS: AN ENCYCLOPEDIA OF CONTROVERSIES AND TRENDS 629, 629 (Vidisha Barua Worley & Robert M. Worley eds., 2019).

²⁰³⁸ MARGARET E. NOONAN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MORTALITY IN STATE PRISONS, 2001-2014 - STATISTICAL TABLES 4 tbl. 1 (2016),

<https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

²⁰³⁹ KERRY McDONALD, UNSCHOOLED: RAISING CURIOUS, WELL-EDUCATED CHILDREN OUTSIDE THE CONVENTIONAL CLASSROOM 173 (2019).

and a “concern for inmates.”²⁰⁴⁰ Although violence is common, “even more common is the fear of victimization.”²⁰⁴¹

Between 2000 and 2014, more than 4,500 individuals killed themselves while in American jails.²⁰⁴² 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.”²⁰⁴³ First-time detainees fear the unknown and are anxious about their physical safety.²⁰⁴⁴ The *Denver Post* found that between January 2010 and June 2016, forty-eight (48) people died by suicide in Colorado jails.²⁰⁴⁵

A Colorado jail held family killer Christopher Watts²⁰⁴⁶ in protective custody because of the publicity his case received.²⁰⁴⁷ Watts never saw other inmates but at night could hear pounding on the walls, screaming, threats,²⁰⁴⁸ and assaultment.²⁰⁴⁹ Watts said the following during a 2019 interview from a prison outside of Colorado:

²⁰⁴⁰ Shawn M. Rolfe & Richard Tewksbury, *Violence in Prison*, in 2 AMERICAN PRISONS AND JAILS, *supra* note 2037, at 679.

²⁰⁴¹ *Id.*

²⁰⁴² MARGARET E. NOONAN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MORTALITY IN LOCAL JAILS, 2000-2014 - STATISTICAL TABLES 5 tbl. 1 (2020). The federal government stopped tracking in-custody deaths after 2014. William Patrick, *Death Without Conviction: Feds Ignore Mandate on Tracking Jail Deaths*, PRESS-REP. (Sept. 29, 2019), https://www.pressrepublican.com/cnhi_network/feds-ignore-mandate-to-track-jail-deaths/article_85016d6e-e4ca-59ca-ae59-424722586f0c.html.

²⁰⁴³ Nick Terry Harper, *Jails Compared to Prisons*, in 1 AMERICAN PRISONS AND JAILS: AN ENCYCLOPEDIA OF CONTROVERSIES AND TRENDS 351, 353 (Vidisha Barua Worley & Robert M. Worley eds., 2019).

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.

²⁰⁴⁷ Elise Schmelzer, *Two Frederick Girls May Have Been Strangled to Death, Defense Motion Suggests*, DENVER POST (Aug. 17, 2018), <https://www.denverpost.com/2018/08/17/frederick-missing-woman-christopher-watts-arrested/>.

²⁰⁴⁸ Denver 7 - The Denver Channel, *Audio: Chris Watts Prison Interview, Part 1*, YOUTUBE (Mar. 7, 2019), <https://www.youtube.com/watch?v=duu2NePfe00>.

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."

²⁰⁵¹ Chelsea Kopta, *Fourth Plaintiff in 'Sextortion' Suit: 'This Needs to Stop'*, KATU 2 (Dec. 20, 2013), <https://www.katu.com/news/local/fourth-plaintiff-in-sextortion-suit-this-needs-to-stop>.

²⁰⁵² First Amended Complaint at 10, 21, *Harrison v. Clatskanie Sch. Dist. #6J*, No. 3:13-cv-01837-ST (D. Or. Dec. 5, 2013), 2013 WL 6684839. They yelled, "Slut!" and "Whore!" *Id.* at 10.

²⁰⁵³ *Id.* at 10, 23.

tripped her in the halls.²⁰⁵⁴ One told her, “Your life isn’t worth living. You should just kill yourself.”²⁰⁵⁵ As a result of the foregoing, H.W. self-mutilated with scissors, razors, and broken glass.²⁰⁵⁶ She also threatened suicide.²⁰⁵⁷

Jamel Myles (9)²⁰⁵⁸ did not survive a Colorado grade school.²⁰⁵⁹ Jamel played with Pokémon trading cards,²⁰⁶⁰ watched cartoons,²⁰⁶¹ and loved pizza.²⁰⁶² He told his mother²⁰⁶³ in July 2018, “Mom, I’m gay.”²⁰⁶⁴ Jamel hanged himself in his bedroom²⁰⁶⁵ three days after school started on August 20.²⁰⁶⁶

Jamel’s mother believes that her son told someone he was gay upon returning to school.²⁰⁶⁷ She believes that

²⁰⁵⁴ *Id.* at 10.

²⁰⁵⁵ *Id.*

²⁰⁵⁶ *Id.* at 10-11.

²⁰⁵⁷ *Id.* at 15. The school district paid H.W. \$75,000 to settle a case she filed against it. *School Settles ‘Sextortion’ Suit After Allegations Boys Pressured Girls for Nude Photos*, FOX NEWS (May 3, 2016), <https://www.foxnews.com/us/school-settles-sextortion-suit-after-allegations-boys-pressured-girls-for-nude-photos>.

²⁰⁵⁸ Caitlin Hendee & Jordan Chavez, *Mom of 9-Year-Old Boy Who Ended His Life Wants ‘Bullying to End’*, 9 NEWS (Aug. 28, 2018), <https://www.9news.com/article/news/local/mom-of-9-year-old-boy-who-ended-his-life-wants-bullying-to-end/73-588044970>.

²⁰⁵⁹ Seaman, *supra* note 1639.

²⁰⁶⁰ Hendee & Chavez, *supra* note 2058.

²⁰⁶¹ Julie Turkewitz, *9-Year-Old Hangs Himself, and Mother Blames School*, N.Y. TIMES, Aug. 29, 2018, at A14.

²⁰⁶² Matt Mauro, *Celebration of Life Held for 9-Year-Old Boy Who Committed Suicide*, FOX 31 DENVER (Sept. 6, 2018), <https://www.kdvr.com/2018/09/06/celebration-of-life-for-nine-year-old-boy-who-committed-suicide/>.

²⁰⁶³ *Id.*

²⁰⁶⁴ Alex Rose, *Mom Says Denver Boy Killed Himself After Being Bullied at School*, FOX 31 DENVER (Aug. 27, 2018), <https://www.kdvr.com/2018/08/26/mom-says-denver-boy-killed-himself-after-being-bullied-at-school/>.

²⁰⁶⁵ Turkewitz, *supra* note 2061.

²⁰⁶⁶ Ellie Mulder, *Denver Boy, 9, Who Killed Himself Was Bullied After Coming Out as Gay, Mom Says*, GAZETTE (Aug. 27, 2018), https://www.gazette.com/news/denver-boy-who-killed-himself-was-bullied-after-coming-out/article_e8043a82-aa0d-11e8-a7b6-0ff0673aff67.html.

²⁰⁶⁷ BBC News, *Mum’s Agony at Nine-Year-Old Son’s Suicide – BBC News*, YOUTUBE (Aug. 29, 2018), <https://www.youtube.com/watch?v=oAowx4DjBb0>.

individual decided to pick on Jamel and “it just spread and . . . became a worse situation.”²⁰⁶⁸ On the day Jamel died, a girl at school pulled his hair and knocked him to the floor.²⁰⁶⁹ Jamel told a sibling that other kids were telling him to kill himself.²⁰⁷⁰

Oregon passed its physician-assisted suicide law via initiative.²⁰⁷¹ “Initiative is the power of the people, independently of the legislature, to propose and enact legislation.”²⁰⁷² “This power allows citizens to propose a law[,] place it on the ballot, and vote to adopt it into law.”²⁰⁷³ The initiative process is available in fourteen states²⁰⁷⁴ including Oregon.²⁰⁷⁵ How does it work?

A person must first write a proposed law.²⁰⁷⁶ He or she must submit the proposal to an authorized member of state government and then gather signatures on a petition.²⁰⁷⁷ “The number of signatures necessary is frequently a small percentage of the voters who participated in the last election”²⁰⁷⁸ but will

²⁰⁶⁸ *Id.*

²⁰⁶⁹ Robert Sanchez, *Why Did Jamel Myles Die?*, 5280 (Jan. 2019), <https://www.5280.com/2019/01/why-did-jamel-myles-die/>.

²⁰⁷⁰ BBC News, *supra* note 2067.

²⁰⁷¹ Alyssa Thurston, *Physician-Assisted Death: A Selected Annotated Bibliography*, 111 LAW LIBR. J. 31, 43 (2019).

²⁰⁷² 9B AM. JUR. LEGAL FORMS 2D *Initiative and Referendum* § 146:1 (2012).

²⁰⁷³ John Gildersleeve, Note, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment?*, 107 COLUM. L. REV. 1437, 1438 (2007).

²⁰⁷⁴ Ryan A. Partelow, Note, *Decoding the “Sphinx-Like Silence”: State Residency, Petition Circulation, and the First Amendment*, 86 FORDHAM L. REV. 2553, 2558 (2018); *Initiative and Referendum States*, NAT’L CONF. ST. LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx> (last visited Oct. 4, 2020).

²⁰⁷⁵ Marvin Krislov & Daniel M. Katz, *Taking State Constitutions Seriously*, 17 CORNELL J.L. & PUB. POL’Y 295, 303 n.29 (2008). The other states are Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Utah, and Washington. *Id.*

²⁰⁷⁶ Jessica A. Levinson, *Taking the Initiative: How to Save Direct Democracy*, 18 LEWIS & CLARK L. REV. 1019, 1021 (2014).

²⁰⁷⁷ Robin E. Perkins, Comment, *A State Guide to Regulating Ballot Initiatives: Reevaluating Constitutional Analysis Eight Years After Buckley v. American Constitutional Law Foundation*, 2007 MICH. ST. L. REV. 723, 728 (2007).

²⁰⁷⁸ *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

²⁰⁷⁹ Richard J. Ellis, *Signature Gathering in the Initiative Process: How Democratic Is It?*, 64 MONT. L. REV. 35, 36-37 (2003).

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.

²⁰⁸⁴ Jennifer S. Senior, Comment, *Expanding the Court's First Amendment Accessibility Framework for Analyzing Ballot Initiative Circulator Regulations*, 1 U. CHI. LEGAL F. 529, 532 (2009). A Missouri legislator tried to make assault a crime, Megan Sanchez, *Senate Committee Hears 'Kenny's Law' Emotional Testimony from Supporters*, 13 KRCCG (Feb. 12, 2018),

<https://www.krcgtv.com/news/local/senate-committee-hears-kennys-law-emotional-testimony-from-supporters>, but the bill did not become law. MO SB 791, BILL TRACK 50, <https://www.billtrack50.com/BillDetail/900313> (last visited Oct. 4, 2020).

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).

²⁰⁸⁷ Dave Buchanan, *Voters Ban Black Bear Spring Hunt*, DAILY SENTINEL (Colo.), Nov. 4, 1992, at 7A; Enric Volante, *Voters Overrule Lawmakers with Cockfight Ban*, ARIZ. DAILY STAR, Nov. 4, 1998, at A14; Eric Brazil, *Horse Law Drives Out 'Killer Buyers'*, S.F. EXAMINER, Jan. 22, 1999, at A-1 (making it a felony to sell horses for human consumption); Roseann Moring, *Heated Debate on Proposition B Far from Over*, SPRINGFIELD NEWS-LEADER (Mo.), Dec. 12, 2010, at 1A (making “puppy mill cruelty” a misdemeanor).

B. SPEAK TO LAWMAKERS

Bullies targeted A.H. of Texas for months in 2018.²⁰⁸⁸ Two males told A.H. to kill herself.²⁰⁸⁹ “I ended up hurting myself because I felt like worthless and like everyone hated me,” said the sixteen-year-old.²⁰⁹⁰ Her experience is one reason the Crandall City Council approved an ordinance²⁰⁹¹ that made bullying a misdemeanor.²⁰⁹² A.H.’s father got the ball rolling after he told the mayor about what bullying did to his daughter.²⁰⁹³

A pillar of her Connecticut high school, M.H. supported the theater,²⁰⁹⁴ raised money for cross country,²⁰⁹⁵ staged a Battle of the Bands,²⁰⁹⁶ served on Student Council,²⁰⁹⁷ held a

²⁰⁸⁸ J.D. Miles, *Plano Police Department Compiles List of Social Media Apps Exposing Children to Predators*, 11 CBS DFW (Jan. 25, 2019), <https://dfw.cbslocal.com/2019/01/25/plano-police-department-compiles-list-social-media-apps-exposing-children-predators/>.

²⁰⁸⁹ *Id.*

²⁰⁹⁰ *North Texas City Outlaws Bullying*, 11 CBS DFW (Oct. 8, 2019), <https://dfw.cbslocal.com/2019/10/08/north-texas-city-outlaws-bullying/>.

²⁰⁹¹ *Id.*

²⁰⁹² CRANDALL, TEX., CODE OF ORDINANCES, ch. 8, §§ 8.02.061, .063 (2019).

²⁰⁹³ *Bullying Is Now Against the Law in Crandall*, NBC 5 DFW (Oct. 9, 2019), <https://www.nbcdfw.com/news/local/Bullying-is-Now-Against-the-Law-in-Crandall-562575301.html>.

²⁰⁹⁴ *‘Gypsy’ Opens Thursday on Newtown Stage*, NEWSTIMES (Mar. 10, 2010), <https://www.newstimes.com/local/article/Gypsy-opens-Thursday-on-Newtown-stage-400116.php#photo-124299>.

²⁰⁹⁵ Nancy Crevier, *49th Annual Labor Day Parade, ‘On Stage in Newtown,’ Is a Big Hit*, NEWTOWN BEE (Sept. 10, 2010), <https://www.newtownbee.com/09102010/49th-annual-labor-day-parade-on-stage-in-newtown-is-a-big-hit>.

²⁰⁹⁶ Eliza Hallabeck, *From ‘Alive in Love’ to ‘Walking Backwards’ NHS Bands Battle It Out*, NEWTOWN BEE (Mar. 4, 2011), <https://www.newtownbee.com/03042011/from-alive-in-love-to-walking-backwards-nhs-bands-battle-it-out/>.

²⁰⁹⁷ Aidan Sherman, *NHS Battle of the Bands Takes over New Cafetorium*, HAWKEYE, Mar. 2011, at 10, 10.

state-wide leadership position,²⁰⁹⁸ made Honor Roll,²⁰⁹⁹ and spoke at graduation.²¹⁰⁰ M.H. also used personal experience to help fortify her state's anti-bullying laws.²¹⁰¹

When M.H. broke up with a boy sophomore year, there was an immediate backlash: close, mutual friends shunned her.²¹⁰² When M.H. sought an explanation,²¹⁰³ one of them made it abundantly clear: they flat-out did not like her anymore.²¹⁰⁴ Things got worse.²¹⁰⁵

The former friends repeatedly covered M.H.'s school locker²¹⁰⁶ dial with gum.²¹⁰⁷ They pilloried M.H. on social media: they said she was ugly and selfish;²¹⁰⁸ they called her vulgar names like "slut" and "whore;"²¹⁰⁹ they described her as

²⁰⁹⁸ 2011-2012 CASC Officers, CONN. ASS'N OF SCHS. BULLETIN (Apr. 2011), <https://www.casciac.org/bulletins/apr11.pdf>.

²⁰⁹⁹ Eliza Hallabeck, *Twelfth Grade High Honor Roll*, NEWTOWN BEE (May 25, 2012), <https://www.newtownbee.com/05252012/twelfth-grade-high-honor-roll-3>.

²¹⁰⁰ Eliza Hallabeck, *The NHS Class of 2012, 'The Best Class Ever'*, NEWTOWN BEE (June 22, 2012), <https://www.newtownbee.com/06222012/the-nhs-class-of-2012-the-best-class-ever/>.

²¹⁰¹ *Compare* CTHouseDemocrats, *Newtown Students Testify on Cyberbullying*, YOUTUBE (Nov. 10, 2011), <https://www.youtube.com/watch?v=eDU9KRXeRjI>, and Eliza Hallabeck, *NHS Students Speak to State Legislature Education Committee on Bullying*, NEWTOWN BEE (Mar. 18, 2011), <https://www.newtownbee.com/03182011/nhs-students-speak-to-state-legislature-education-committee-on-bullying/>, with *State Bullying Legislation Since 2008*, *supra* note 922 (stating that Senate Bill 1138 expanded "school bullying laws to prohibit cyberbullying, bullying through phones, and bullying that occurs outside of school settings.").

²¹⁰² Lydia Post, *Public Hearing Testimony Concerning S.B. No. 1138*, CONN. GEN. ASSEMB. (Mar. 11, 2011), <https://www.cga.ct.gov/2011/EDdata/Tmy/2011SB-01138-R000311-Post,%20Lydia-TMY.PDF>. [hereinafter, Legislative Testimony].

²¹⁰³ *Id.*

²¹⁰⁴ *Id.*

²¹⁰⁵ CTHouseDemocrats, *supra* note 2101.

²¹⁰⁶ *Id.*

²¹⁰⁷ Legislative Testimony, *supra* note 2102.

²¹⁰⁸ *Id.*

²¹⁰⁹ *Id.*

“fat” and “worthless.”²¹¹⁰ 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.”²¹¹¹ M.H. felt helpless and alone.²¹¹² Then she heard about Phoebe Prince.²¹¹³

“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.”²¹¹⁴ After suffering almost a year of abuse,²¹¹⁵ M.H. pulled the meanest of the girls aside one morning and chastened her.²¹¹⁶ The coward denied everything but the bullying nearly stopped.²¹¹⁷ M.H. next rolled up her shirtsleeves in a student government group²¹¹⁸ and testified in support of a bill²¹¹⁹ that added cyberbullying to the various types of harassment specifically banned at Connecticut schools.²¹²⁰

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!²¹²¹ K.R. put the loss behind her and ascended to the tiara of Miss Tooele County 2018.²¹²² At Miss Utah, K.R.’s platform was “Stop the B.S. (Body Shaming).”²¹²³ She had been called “fat chick” for years in high

²¹¹⁰ *Id.*

²¹¹¹ Holly C. Corbett, *[Delete] Digital Drama*, SEVENTEEN, Aug. 18, 2011, at 156, 158.

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*, TOOLE TRANSCRIPT BULLETIN (Utah), Aug. 5, 2003, at A1. She placed second. *Id.* at A8.

²¹²² TooeleTV, *Miss Tooele County Pageant 2018 Awards*, YOUTUBE (Oct. 2, 2017), <https://www.youtube.com/watch?v=kA12Ykw0js4>.

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.”²¹²⁴ “I consider that a death threat,” said K.R.²¹²⁵

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.”²¹²⁶ “That’s what he did,” said Eliason.²¹²⁷

Elected in 2010,²¹²⁸ Eliason believes it is “incumbent on legislators to address suicide.”²¹²⁹ Eliason, who has lost extended family to suicide,²¹³⁰ began work on suicide prevention after the death of a middle school student²¹³¹ in his

<https://www.sltrib.com/news/2018/06/15/empowering-or-exploitative-miss-utah-contestants-strut-in-bikinis-and-high-heels-one-last-time/>.

²¹²⁴ *Id.*

²¹²⁵ *Id.*

²¹²⁶ Marjorie Cortez, *Utah Students Age 8 and Up Will Sign Document Acknowledging School Bullying Policies*, DESERET NEWS (Mar. 10, 2017), <https://www.deseret.com/2017/3/10/20607962/utah-students-age-8-and-up-will-sign-document-acknowledging-school-bullying-policies>.

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.

²¹³⁰ Erik Neumann, *In a Culture that Loves Guns, How Do You Talk About Suicide?*, KUER 90.1 (May 1, 2019),

<https://www.kuer.org/post/culture-loves-guns-how-do-you-talk-about-suicide#stream/0>; Lee Davidson, *What Happens When a Person in Crisis Calls a Suicide Hotline and No One Answers? House OKs Bill to Prevent That*, SALT LAKE TRIB. (Jan. 26, 2018),

<https://www.sltrib.com/news/politics/2018/01/26/what-happens-when-a-person-in-crisis-calls-a-suicide-hotline-and-no-one-answers-house-oks-bill-to-prevent-that/>.

²¹³¹ Michael Ollove, *Increase in Youth Suicide Prompts States to Act*, PEW (Sept. 28, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/28/increase-in-youth-suicide-prompts-states-to-act>.

district²¹³² eight years ago.²¹³³ He won an award for his early efforts,²¹³⁴ voted in 2018²¹³⁵ to make assisted suicide a crime,²¹³⁶ and sponsored numerous bills in 2019²¹³⁷ to help prevent youth suicide.²¹³⁸

Eliason's "ultimate objective is to see [Utah's] numbers go down."²¹³⁹ Unfortunately, Utah's youth suicide rate increased ninety-three percent between 2006 and 2017.²¹⁴⁰ Forty-two (42) children between the ages of ten and seventeen

²¹³² Nicole Nixon & Julia Ritchey, *Week 4: Air Quality, A Changing Climate & Rep. Eliason*, KUER 90.1 (Feb. 16, 2018), <https://www.kuer.org/post/week-4-air-quality-changing-climate-rep-eliason#stream/0>.

²¹³³ Lisa Schencker, *Lawmakers Debate Teen Suicides, Advance Bill*, SALT LAKE TRIB., Mar. 3, 2012, at B1.

²¹³⁴ *The American Foundation for Suicide Prevention Honors State Representative Steve Eliason (R-Sandy, UT) for Exceptional Service*, CISION PR NEWSWIRE (June 24, 2015), <https://www.prnewswire.com/news-releases/the-american-foundation-for-suicide-prevention-honors-state-representative-steve-eliason-r-sandy-ut-for-exceptional-service-300103967.html>.

²¹³⁵ *HB0086 Substitute 1 - - Passed 51 - 18 - 6, 2/6/2018 2:39 PM*, UTAH ST. LEG. (Feb. 16, 2018), <https://le.utah.gov/DynaBill/svotes.jsp?sessionid=2018GS&voteid=186&house=H>.

²¹³⁶ Jessica Miller, *House Passes Bill Which Would Criminalize Assisted Suicide - Despite Concerns It Could Target Family Members or Physicians Helping Terminally Ill Patients*, SALT LAKE TRIB. (Feb. 7, 2018), <https://www.sltrib.com/news/2018/02/07/house-passes-bill-which-would-criminalize-assisted-suicide-despite-concerns-it-could-target-family-members-or-physicians-helping-terminally-ill-patients/>.

²¹³⁷ Robert Gehrke, *Gehrke: Utah's Multiyear Effort to Curb Suicide Is Starting to Bend the Curve, and the Legislature Just Added Resources to the Fight*, SALT LAKE TRIB. (Apr. 3, 2019), <https://www.sltrib.com/news/2019/04/03/gehrke-utahs-multi-year/>.

²¹³⁸ Aley Davis, *Seven of Ten Top Suicide Prevention Bills Pass Utah Legislature*, KSL TV (Mar. 18, 2019), <https://www.ksltv.com/410072/seven-ten-top-suicide-prevention-bills-pass-utah-legislature/>.

²¹³⁹ Nixon & Ritchey, *supra* note 2132.

²¹⁴⁰ Ali Budner, *Youth Suicide Rates Soar Across Mountain West*, KUER 90.1 (Oct. 21, 2019), <https://www.kuer.org/post/youth-suicide-rates-soar-across-mountain-west#stream/0>.

completed suicide in 2017.²¹⁴¹ Lily McClish (13)²¹⁴² was one of them.²¹⁴³

Lily gave good advice when she won Student of the Month for January 2017.²¹⁴⁴ “Be attentive in class. Don’t miss school. Get missing assignments done and turned in.”²¹⁴⁵ She completed suicide later that month²¹⁴⁶ after multiple boys²¹⁴⁷ pelted her with a hailstorm of assaillment: “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.”²¹⁴⁸ The repulsive scene played out in front of witnesses who reported it the next day.²¹⁴⁹

²¹⁴¹ *Suicide Data*, UTAH DEP’T HEALTH, <https://www.health.utah.gov/vipp/data/suicide.html> (last updated Jan. 30, 2020). Forty-four (44) children aged 10 to 17 completed suicide in Utah in 2015. Brady McCombs, *Time for a Change: Task Force Will Address Teen Suicides*, DAILY SPECTRUM (Utah), Jan. 18, 2018, at 1A.

²¹⁴² *Lily McClish September 23, 2003 – January 26, 2017*, MOAB SUN NEWS (Feb. 2, 2017), www.moabsunnews.com/news/article_f3ab8f6c-e965-11e6-a488-47e7f771c33f.html.

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>.

²¹⁴⁴ *GCMS Students of the Month*, MOAB SUN NEWS (Jan. 19, 2017), www.moabsunnews.com/news/article_fa2c9a2e-de67-11e6-a6f7-4bb73fbe39a4.html.

²¹⁴⁵ *Id.*

²¹⁴⁶ Pat Reavy *The Tragic Story of 13-Year-Old Lily Clara McClish*, DESERET NEWS (Oct. 7, 2017), <https://www.deseret.com/2017/10/8/20621145/the-tragic-story-of-13-year-old-Lily-Clara-McClish#molly-mcclish-poses-for-a-photo-in-an-area-where-she-and-her-daughter-lily-used-to-ride-horses-in-moab-on-friday-sept-29-2017-mcclish-hopes-to-install-a-memorial-in-the-area-for-lily-who-killed-herself-in-january>.

²¹⁴⁷ *Id.*; *Lily’s Story*, LILY’S HOPE FOR KINDNESS, <https://www.lilyshopeforkindness.com/lily-s-story> (last visited Oct. 4, 2020).

²¹⁴⁸ Reavy, *supra* note 2146.

²¹⁴⁹ *Compare id.*, with *Lily’s Story*, *supra* note 2147.

Lily's death came as a terrible blow to her parents²¹⁵⁰ and drew a response from law enforcement.²¹⁵¹ Police homed in on three boys at Lily's middle school.²¹⁵² 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."²¹⁵³ Lily's mother felt the language used against her daughter by fellow students was the "tipping point."²¹⁵⁴ "The last thing [Lily] needed to hear that day was 'kill yourself tonight - do it, do it, do it.'"²¹⁵⁵

Denise Fernatt of West Virginia worked as a secretary²¹⁵⁶ and taught Sunday school.²¹⁵⁷ Friends turned against her on Facebook²¹⁵⁸ in April 2017.²¹⁵⁹ "Please, just leave that alone," Roy Fernatt begged of his wife.²¹⁶⁰ "If they're not talking about

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.*

²¹⁵⁴ Molly Marcello, *Survey Reveals Bullying May Be Underreported in Grand County Schools*, TIMES INDEP. (Sept. 28, 2018), <https://www.moabtimes.com/articles/survey-reveals-bullying-may-be-underreported-in-grand-county-schools/>.

²¹⁵⁵ *Id.*

²¹⁵⁶ *Man Says Wife Was Bullied to Death; Law Enforcement Says No Laws Broken*, BULLHORN, <https://www.bullhorn.fm/mountainstatemorning/posts/cAUWbWK-man-says-wife-was-bullied-to-death-law-enforcement-says-no-laws-broken> (last visited Oct. 24, 2020).

²¹⁵⁷ Tasneem Nashrulla, *A Husband Claims Bikers Caused His Wife's Suicide By Posting a "Suggestive" Photo of Her All Over Town*, BUZZFEED NEWS (Aug. 9, 2019), <https://www.buzzfeednews.com/article/tasneemnashrulla/bullying-suicide-lawsuit-west-virginia>.

²¹⁵⁸ *Id.*

²¹⁵⁹ Annie Moore, *Part II: Husband Fights for Anti-Bullying Law After Wife's Suicide*, WVVA (Aug. 7, 2019), <https://www.wvva.com/2019/08/07/part-ii-husband-fights-for-anti-bullying-law-after-wifes-suicide/>.

²¹⁶⁰ Amanda Barren, *Update / Husband Files Civil Suit in Connection with Wife's Suicide*, WSAZ NEWS CHANNEL 3 (Aug. 6, 2019), <https://www.wsaz.com/content/news/Husband-files-civil-suit-in-connection-with-wifes-suicide--521972991.html>.

you, they're talking about somebody else. Just leave it alone."²¹⁶¹

Denise's former friends hatched a plot in July.²¹⁶² "Oh I can and will be a dirty bitch!!" one woman texted another on July 25.²¹⁶³ "I will make the silly blonde with a head injury want to kill her self."²¹⁶⁴ The women wanted double-sided tape, tacks, and "those nasty pics" of Denise.²¹⁶⁵ "It's almost picture day!" one of them texted on July 27.²¹⁶⁶ On July 30, she wrote, "Done. We'll see what happens."²¹⁶⁷

On the morning of July 31, there were no less than thirty photos of Denise clad in lingerie all over town.²¹⁶⁸ One was outside Denise's front gate.²¹⁶⁹ Another was hung outside her church.²¹⁷⁰ They were on stop signs,²¹⁷¹ utility poles, and at other public places²¹⁷² like the post office.²¹⁷³ Denise was suspended from her job without pay on August 1 because of the pictures.²¹⁷⁴ She was fired August 3.²¹⁷⁵ Denise jumped to her death from the New River Gorge Bridge on August 5.²¹⁷⁶

Police conducted a month-long investigation into Denise's death.²¹⁷⁷ Prosecutors advised them that the circumstances did not violate existing criminal laws and no

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.

²¹⁷³ Plaintiffs Response to Motion to Dismiss at 2, *Fernatt v. Blankenship*, Civil Action No. 19-C-770 (Cir. Ct. W. Va. Oct. 29, 2019).

²¹⁷⁴ Pierson, *supra* note 2162.

²¹⁷⁵ *Id.*

²¹⁷⁶ Chris Dickerson, *Man Says His Wife Was Bullied Until She Killed Herself*, W. VA. REC. (Aug. 6, 2019), <https://www.wvrecord.com/stories/512875642-man-says-wife-was-bullied-until-she-killed-herself>.

²¹⁷⁷ Pierson, *supra* note 2162.

charges were filed.²¹⁷⁸ Roy Fernatt filed a wrongful death lawsuit against six people he says bullied his late wife.²¹⁷⁹ He hopes it brings accountability.²¹⁸⁰

A West Virginia state legislator wants all the bases covered for holding people accountable when a person is encouraged to commit suicide.²¹⁸¹ “We’re not trying to keep people from expressing their opinions,” said Senator Patricia Rucker.²¹⁸² “That’s a First Amendment right.”²¹⁸³ Newspaper editors agreed but even they believe the law has to intervene.²¹⁸⁴ As one prosecutor said, “We all know this conduct is reprehensible.”²¹⁸⁵ “Anybody who would drive a person to take their own life . . . it’s just nothing short of terrible.”²¹⁸⁶

Twelve-year-old Sarah Butler hanged herself at home on September 26, 2009.²¹⁸⁷ Sarah attended an Arkansas high school,²¹⁸⁸ played in the band,²¹⁸⁹ loved to read, and had lots of

²¹⁷⁸ *Id.*

²¹⁷⁹ *Id.*

²¹⁸⁰ Barren, *supra* note 2160. A claim was also filed against the West Virginia Division of Highways. Lacie Pierson, *Widower Says State Needs to Do More to Prevent Suicide Deaths on Bridges*, CHARLESTON GAZETTE-MAIL (Nov. 20, 2019), https://www.wvgazette.com/news/kanawha_valley/widower-says-state-needs-to-do-more-to-prevent-suicide-deaths-on-bridges/article_dc883e3f-f2f7-52d7-9523-7fb6953568cc.html.

²¹⁸¹ Barren, *supra* note 2160.

²¹⁸² Lacie Pierson, *Woman’s Suicide Sparks Senator to Add Adults to Bullying Law*, CHARLESTON GAZETTE-MAIL, Aug. 7, 2019, at 1A.

²¹⁸³ *Id.*

²¹⁸⁴ Editorial, *Hold All Bullies Accountable*, CHARLESTON GAZETTE-MAIL, Aug. 9, 2019, at 4A; Editorial, *Protect Bullied Adults in W. Va.*, INTELLIGENCER / WHEELING NEWS-REG. (Aug. 8, 2019), <https://www.theintelligencer.net/opinion/editorials/2019/08/protect-bullied-adults-in-w-va/>.

²¹⁸⁵ Barren, *supra* note 2160.

²¹⁸⁶ *Id.*

²¹⁸⁷ Yalanda Young, *Online Teasing Leads to Teen’s Suicide*, KAIT 8 (Nov. 24, 2009), <https://www.kait8.com/story/11566204/online-teasing-leads-to-teens-suicide/>.

²¹⁸⁸ *Sarah Lynn Butler Memorial*, FIND A GRAVE, <https://www.findagrave.com/memorial/42493065/sarah-lynn-butler> (Oct. 4, 2020). Williford High School taught grades seven through twelve. *Williford High School*, PUBLIC SCH. REV., <https://www.publicschoolreview.com/williford-high-school-profile> (last visited Oct. 4, 2020).

²¹⁸⁹ *Sarah Lynn Butler Memorial*, *supra* note 2188.

friends.²¹⁹⁰ She was of the Baptist faith²¹⁹¹ and had just been voted Fall Festival Queen.²¹⁹² But two local youths harassed Sarah²¹⁹³ and the school rumor mill said she was promiscuous.²¹⁹⁴

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

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

²¹⁹⁰ Young, *supra* note 2187.

²¹⁹¹ Sarah Lynn Butler Memorial, *supra* note 2188.

²¹⁹² Young, *supra* note 2187.

²¹⁹³ Tammy Curtis, *Suicide Tied to Cyber Bullying*, AREAWIDE MEDIA (Dec. 3, 2009), <https://www.areawideneews.com/story/1591912.html>.

²¹⁹⁴ *Id.*

²¹⁹⁵ Young, *supra* note 2187.

²¹⁹⁶ *Id.*

²¹⁹⁷ *Id.*

²¹⁹⁸ *Id.*

²¹⁹⁹ Martha McCarthy, *Cyberbullying Laws and First Amendment Rulings: Can They Be Reconciled?*, 83 MISS. L. J. 805, 811 n.22 (2014).

²²⁰⁰ S. Cal Rose, Note, *From LOL to Three Months in Jail: Examining the Validity and Constitutional Boundaries of the Arkansas Cyberbullying Act of 2011*, 65 ARK. L. REV. 1001, 1027 (2012).

suicide in perpetuity.”²²⁰¹ Only God has the right to take life according to Islam.²²⁰² The majority of Muslim scholars throughout history are in accord; they believe the Qur’an prohibits suicide in all circumstances.²²⁰³

Some say the Hebrew Bible and New Testament neither prohibit²²⁰⁴ nor condemn suicide.²²⁰⁵ Others say suicide is not explicitly condemned;²²⁰⁶ strictly condemned;²²⁰⁷ or explicitly forbidden.²²⁰⁸ “The Bible,” wrote one law student, “does not prohibit or condemn suicide, but instead merely describes the instances.”²²⁰⁹ 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.”²²¹⁰

²²⁰¹ Rumea Ahmed, *Suicide*, in 2 ENCYCLOPEDIA OF ISLAM AND THE MUSLIM WORLD 1107 (Richard C. Martin ed. 2d ed. 2016).

²²⁰² JOHN L. ESPOSITO & NATANA J. DELONG-BAS, SHARIAH: WHAT EVERYONE NEEDS TO KNOW 182 (2018).

²²⁰³ Ahmed, *supra* note 2201, at 1107.

²²⁰⁴ George Rosen, *History*, in A HANDBOOK FOR THE STUDY OF SUICIDE 3, 4 (Seymour Perlin ed., 1975); Helen Y. Chang, *A Brief History of Anglo-Western Suicide: From Legal Wrong to Civil Right*, 46 S.U. L. REV. 150, 159 (2018); Stacy L. Mojica & Dan S. Murrell, *The Right to Choose—When Should Death Be in the Individual’s Hands?*, 12 WHITTIER L. REV. 471, 471 (1991); Allen C. Schlinsog, Jr., *The Suicidal Decedent: Culpable Wrongdoer, or Wrongfully Deceased?*, 24 J. MARSHALL L. REV. 463, 469 (1991).

²²⁰⁵ CONNIE GOLDSMITH, UNDERSTANDING SUICIDE: A NATIONAL EPIDEMIC 16 (2017); Wilbur Larremore, *Suicide and the Law*, 17 HARV. L. REV. 331, 331 (1904); Maria T. CeloCruz, Note, *Aid-in-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?*, 18 AM. J.L. & MED. 369, 373 n.24 (1992).

²²⁰⁶ Dónal P. O’Mathúna & Darrel W. Amundsen, *Historical and Biblical References in Physician-Assisted Suicide Court Opinions*, 12 NOTRE DAME J.L. ETHICS & PUB. POL’Y 473, 478 (1998).

²²⁰⁷ Alexa Hansen, Note, *Unqualified Interests, Definitive Definitions: Washington v. Glucksberg and the Definition of Life*, 36 HASTINGS. CONST. L.Q. 163, 170 n.62 (2008).

²²⁰⁸ Marilyn J. Harran, *Suicide*, in 13 THE ENCYCLOPEDIA OF RELIGION 8828, 8829 (Mircea Eliade ed. 2d ed. 2005); Neil M. Gorsuch, *The Right to Assisted Suicide and Euthanasia*, 23 HARV. J.L. & PUB. POL’Y 599, 627 (2000).

²²⁰⁹ Mark D. Frederick, Comment, *Physician-Assisted Suicide: A Personal Right*, 21 S.U. L. REV. 59, 63 (1994).

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.²²¹¹ 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.”²²¹² “[T]he last thing they need is to be shamed, questioned or judged.”²²¹³ Still, religion is a protective factor²²¹⁴ and according to one study, eighty-four percent of clergy had been approached by a suicidal person for help.²²¹⁵

V.W. reached a low point during her first year of high school.²²¹⁶ Some female freshmen wanted V.W. out of the picture and onto a path of self-destruction;²²¹⁷ they slipped notes into her locker telling her to commit suicide.²²¹⁸ Unhappy²²¹⁹ and scared,²²²⁰ V.W. did not see life as worth living.²²²¹ She felt fortunate, however, to have the support of a faith-based community.²²²²

²²¹¹ Afshana Haque, *Why Suicide Happens*, ISLAMIC HORIZONS, Sept./Oct. 2018, at 54, 56.

²²¹² *Id.* at 55.

²²¹³ *Id.*

²²¹⁴ Kaslow & Dunn, *supra* note 47, at 965; Arthur Hirsch, *Howard Unveils Drive Against Online, In-Person Bullying*, BALTIMORE SUN, May 2, 2013, at A14.

²²¹⁵ KAREN MASON, PREVENTING SUICIDE: A HANDBOOK FOR PASTORS, CHAPLAINS, AND PASTORAL COUNSELORS 183 (2014).

²²¹⁶ Samantha McDaniel-Ogletree, *Turning Passion into Change*, J. COURIER (ILL.), Apr. 12, 2016, at 1A.

²²¹⁷ Peter D. Kramer, *New City Teen Turns Bullying into Bully Pulpit*, J. NEWS (N.Y.), June 3, 2016, at 2A.

²²¹⁸ Hannah Dreyfus, *Valerie Weisler, 18*, N.Y. JEWISH WEEK (May 23, 2016), <https://jewishweek.timesofisrael.com/valerie-weisler-18/>.

²²¹⁹ McDaniel-Ogletree, *supra* note 2216.

²²²⁰ *With the Validation Project, Teen Empowers Youth to Speak Up, Take Action*, POINTS OF LIGHT (Apr. 11, 2018), <https://www.pointsoflight.org/awards/with-the-validation-project-teen-empowers-youth-to-speak-up-take-action/>.

²²²¹ Carissa Dunlap, *22 Under 22 Most Inspiring College Women*, HER CAMPUS, <https://22under22.hercampus.com/2018-honorees/valerie-weisler> (last visited Oct. 4, 2020).

²²²² Drew Gerber, *Fight Against Bullying Brings Tikkun Olam Home for Budding Teen Philanthropist*, FORWARD (July 5, 2016), <https://www.forward.com/news/344142/fight-against-bullying-brings-tikkun-olam-home-for-budding-teen-philanthrop/>.

V.W. learned about humanitarianism by the age of three.²²²³ She attended Jewish summer camps²²²⁴ as a grade-schooler²²²⁵ and joined a Jewish youth group²²²⁶ in middle school.²²²⁷ Guided by religious values²²²⁸ at the age of fourteen, V.W. went to the aid of another bullied high school student.²²²⁹ 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."²²³⁰ The student told V.W. his plan was to commit suicide after school²²³¹ but that she gave him hope.²²³²

J.M. tried to kill her bullies with kindness.²²³³ She bought them candy and prayed for their souls.²²³⁴ "I don't want your prayers," a bully protested.²²³⁵ The bully told J.M. to kill herself, soothsaying that it would not be a sin because of J.M.'s Christian faith.²²³⁶ "God will forgive you," the bully mocked.²²³⁷ J.M. is now a teacher in Pennsylvania.²²³⁸

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.

²²²⁵ Gerber, *supra* note 2222.

²²²⁶ Val Weisler, *I'm Proud Because Being Different Is Not Just OK – It's Incredible*, CHARLES AND LYNN SCHUSTERMAN FAM. FOUND. (June 13, 2014), <https://www.schusterman.org/blogs/anonymous/i%E2%80%99m-proud-because-being-different-is-not-just-ok-%E2%80%93-it%E2%80%99s-incredible>.

²²²⁷ Gerber, *supra* note 2222.

²²²⁸ Abigail Klein Leichman, *Practical Goodness*, JEWISH STANDARD (Oct. 27, 2016), <https://jewishstandard.timesofisrael.com/practical-goodness/>.

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 threat²²⁴⁶ 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

²²³⁹ John de Leon, “Kill Piper” Cartoon Threatens Spanaway Sixth-Grader, SEATTLE TIMES (May 22, 2009), <https://www.seattletimes.com/news/kill-piper-cartoon-threatens-spanaway-sixth-grader/>.

²²⁴⁰ Rosie Walunas, *Carl Joseph Walker-Hoover’s Mother Featured on ‘20/20’ Report on Bullying*, MASSLIVE (Mar. 25, 2019), https://www.masslive.com/bullying/2010/10/abcs_2020_airs_feature_on_bullying.html.

²²⁴¹ *Id.*

²²⁴² Grosscrime, *Video Shows Ways to Kill Girl*, YOUTUBE (May 24, 2019), <https://www.youtube.com/watch?v=EonewWguU5k>.

²²⁴³ *Id.*

²²⁴⁴ *Mom Wants Cyber Bullies Punished*, CNN (May 27, 2009), <https://am.blogs.cnn.com/2009/05/27/mom-wants-cyber-bullies-punished/>.

²²⁴⁵ *Id.*

²²⁴⁶ *Id.*

²²⁴⁷ Melissa Santos, *No Charges in ‘Ways to Kill’ Classmate YouTube Video*, OLYMPIAN (May 23, 2009), <https://www.theolympian.com/news/local/article25233514.html>.

The school suspended three girls in connection with the video. Compare Walunas, *supra* note 2240, with Bella English, *For Many, ‘Mean Girl’ Practice Starts Early*, BOS. GLOBE, Mar. 9, 2010, at A1.

²²⁴⁸ The Manin444, *Girls’ Video Shows How to Kill Classmate*, YOUTUBE (May 24, 2009),

<https://www.youtube.com/watch?v=fmxZwCLbF48>.

²²⁴⁹ *Id.*

we govern communication. Even something like this, which all parents can agree is frightening.”²²⁵⁰

There are limitations on what can be criminalized.²²⁵¹ The First Amendment of the U.S. Constitution prevents the federal government from taking away our right of free speech²²⁵² and that right cannot be taken by states, either.²²⁵³ “Nevertheless, there are categories of communication and special utterances to which the majestic protection of the First Amendment does not extend.”²²⁵⁴ “A direct solicitation of unlawful activity may of course be proscribed.”²²⁵⁵ Neither does the Constitution protect fighting words²²⁵⁶ nor true threats.²²⁵⁷

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. CONST. amend. I.

²²⁵³ *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

²²⁵⁴ *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 504 (1984).

²²⁵⁵ *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 579 (1984) (Thomas, J., concurring).

²²⁵⁶ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); *Svedberg v. Stamness*, 525 N.W.2d 678, 683 (N.D. 1994); *State v. Clay*, No. CX-99-343, 1999 WL 711038, at *2 (Minn. Ct. App. Sept. 14, 1999). The defendant in *Clay* told police officers that he wished their mothers would die. *State v. Clay*, 1999 WL 711038, at *1. The Minnesota Court of Appeals determined that those words, under the circumstances presented, were likely to provoke a violent retaliation and not protected by the First Amendment. *Id.* at *3-4.

²²⁵⁷ *Watts v. United States*, 394 U.S. 568, 572 (1942).

FIGHTING WORDS

Emilie Olsen (13)²²⁵⁸ was badly bullied²²⁵⁹ in many ways.²²⁶⁰ She started sixth grade in 2013.²²⁶¹ According to a lawsuit, another sixth-grader followed Emilie into a restroom, handed her a razor and said, “Go kill yourself.”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.”²²⁶³

Emilie started middle school in August 2014.²²⁶⁴ Students kicked Emilie and told her, “Go kill yourself.”²²⁶⁵ Strategically-placed restroom graffiti appeared in very large lettering: “Go kill yourself Emilie”.²²⁶⁶ On December 1, Emilie

²²⁵⁸ *Emilie Grace Olsen*, DIGNITY MEMORIAL,

<https://www.dignitymemorial.com/obituaries/hamilton-oh/emilie-olsen-6234191> (last visited Oct. 4, 2020).

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>.

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>.

²²⁶¹ Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand at ¶ 31, *Estate of Olsen v. Fairfield City Sch. Dist. Bd. of Educ.*, No. 1:15CV00787 (S.D. Ohio Sep. 29, 2017), 2017 WL 5558954.

²²⁶² *Id.* at ¶ 35. *But see* Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand at ¶ 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.”).

²²⁶³ Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand, *supra* note 2261, at ¶ 36.

²²⁶⁴ *Id.* at ¶ 32.

²²⁶⁵ *Id.* at ¶ 384.

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.²²⁶⁷ "God doesn't want me alive. I know he doesn't."²²⁶⁸

The assailment of Emilie during sixth grade led to a disturbance in the middle school cafeteria on October 21, 2014.²²⁶⁹ 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."²²⁷⁰

Emilie killed herself December 11, 2014.²²⁷¹ An eighth-grader was asked afterwards on Instagram if she had bullied Emilie.²²⁷² 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."²²⁷³

TRUE THREATS

Eugene Standley died of tuberculosis at a Detroit prison in 1903.²²⁷⁴ Standley was serving a lengthy sentence for train

²²⁶⁷ Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand, *supra* note at 2261, at ¶ 196.

²²⁶⁸ *Id.*

²²⁶⁹ Compare Wang, *supra* note 2266, with Incident Reports, <https://s3.amazonaws.com/s3.documentcloud.org/documents/2081567/school-incident-reports-10-21-14.pdf> (last visited October 24, 2020).

²²⁷⁰ *Id.*

²²⁷¹ Eric Robinette, *Teen Suicide Inquiry Halted*, J. NEWS (Ohio), May 15, 2015, at A8.

²²⁷² Second Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages, with Jury Demand, *supra* note 2261, at ¶¶ 113-15.

²²⁷³ *Id.* at ¶ 115.

²²⁷⁴ *Sayings and Doings*, DETROIT FREE PRESS, May 4, 1903, at 5.

robbery and manslaughter.²²⁷⁵ He was an Indian country outlaw who covered victims with his gun “in the old-fashioned highwaymen style.”²²⁷⁶ The stickup artist banded with John Boyd and George Meyers in April 1890.²²⁷⁷ Together, they robbed a merchant on April 5.²²⁷⁸

On April 6, Standley, Boyd, and Meyers fought others²²⁷⁹ at a creek.²²⁸⁰ Meyers supposedly said to a ferryman, “Lay down that chain and throw out your rusty change.”²²⁸¹ The ferryman asked, “Don’t you want to cross?”²²⁸² Myers, taking aim with his pistol, answered, “No. It’s your money we’re after.”²²⁸³ Meyers and one of the ferryman’s cohorts were killed in a shootout that followed.²²⁸⁴

Standley and Boyd were tried jointly for murder²²⁸⁵ in federal court.²²⁸⁶ Judge Isaac C. Parker²²⁸⁷ at the close of the case instructed the jury as to felony-murder.²²⁸⁸ “The commission of robbery is a crime that may cause the death of an innocent person,”²²⁸⁹ 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.”²²⁹⁰

The jury convicted the men of murder and Judge Parker sentenced them to death.²²⁹¹ The Supreme Court reversed and

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.

²²⁷⁸ ‘Gene Standley, A Desperado Who Has Committed Much Crime’, WALNUT VALLEY TIMES, Mar. 22, 1893, at 2.

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.

²²⁸⁶ *Steeped in Crime*, ARK. GAZETTE, Oct. 25, 1890, at 1.

²²⁸⁷ *Judges of the Circuit and District Courts of the United States*, 45 F. v, vii (1891).

²²⁸⁸ *United States v. Boyd*, 45 F. 851, 860-870 (W.D. Ark. 1890), *rev’d on other grounds*, 142 U.S. 450 (1892).

²²⁸⁹ *Id.* at 862.

²²⁹⁰ *Id.*

²²⁹¹ *They Must Hang*, ARK. GAZETTE, Jan. 13, 1891, at 1.

remanded for a new trial.²²⁹² It said Parker erred in allowing the jury to hear about other exploits of Standley and Boyd.²²⁹³ “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.²²⁹⁴

In 2018, U.S. Congressman Greg Stanton²²⁹⁵ was held up outside a restaurant in Phoenix.²²⁹⁶ He had just finished dinner.²²⁹⁷ As he walked to his car, a man approached²²⁹⁸ and asked for money.²²⁹⁹ Stanton said he was happy to help out with a few bucks.²³⁰⁰

Stanton was in the process of pulling out his wallet when the man brandished a “hatchet-type” weapon.²³⁰¹ The man asked Stanton to go to a darker area²³⁰² and tried guiding him there.²³⁰³ Stanton handed over his wallet,²³⁰⁴ ran back

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.

²²⁹⁵ Meet Greg Stanton, U.S. HOUSE OF REP.,

<https://stanton.house.gov/about/meet-greg-stanton> (last visited Oct. 4, 2020).

²²⁹⁶ *Former Mayor Greg Stanton Says He Was Robbed Outside Phoenix Restaurant*, 12 NEWS (Oct. 14, 2018),

<https://www.12news.com/article/news/local/valley/former-mayor-greg-stanton-says-he-was-robbed-outside-phoenix-restaurant/75-604245389>.

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.*

inside²³⁰⁵ and called police.²³⁰⁶ Stanton lost his wallet²³⁰⁷ but was otherwise unharmed.²³⁰⁸ Not everyone is as fortunate.

Andrew Urdiales got into an argument with fellow Marines at Camp Pendleton, California.²³⁰⁹ He left the base with a “big ole’ hunting knife”²³¹⁰ and was “feeling aggravated, pissed off.”²³¹¹ He snuck up on college student Robbin Brandley as she walked alone to her car late at night.²³¹²

“I think I said I wanted her purse,” Urdiales told police years later.²³¹³ According to Urdiales, Brandley said, “You got my purse.”²³¹⁴ Urdiales then proceeded to stab Brandley forty-one times²³¹⁵ to work out his “disappointment, anger, frustration.”²³¹⁶ Urdiales said that he did not check the purse for money²³¹⁷ and the robbery “was just an excuse.”²³¹⁸

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

²³⁰⁵ *Stanton Responds to Union Claim that Inaction as Mayor Led to Robbery*, KTAR (Oct. 15, 2018), <https://www.ktar.com/story/2258633/stanton-responds-to-union-claim-that-inaction-as-mayor-led-to-robbery/>.

²³⁰⁶ Burkitt, *supra* note 2300.

²³⁰⁷ *Stanton Responds to Union Claim that Inaction as Mayor Led to Robbery*, *supra* note 2305.

²³⁰⁸ Bree Burkitt, *Former Phoenix Mayor and Congressional Candidate Greg Stanton Robbed Outside of Restaurant*, AZCENTRAL (Oct. 15, 2018), <https://www.azcentral.com/story/news/local/phoenix-breaking/2018/10/14/phoenix-former-mayor-greg-stanton-robbed-outside-restaurant/1641398002/>.

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.*

²³¹⁵ Eileen Frere, *Closing Arguments Begin in Trial of Alleged SoCal Serial Killer*, ABC 7 (May 14, 2018), <https://www.abc7.com/3473969/>.

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.” *Id.*

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.”²³¹⁹ “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).”²³²⁰ “Go hang yourself faggot, or you’ll get another beating tomorrow” would also count²³²¹ as would other utterances of assailment.

NARROW TAILORING

Stephanie Johnson (12) of Minnesota loved basketball and had an infectious smile.²³²² Kids bullied the sixth-grader and told her to commit suicide.²³²³ One assailant told Stephanie to “just go to the bathroom and kill [your]self.”²³²⁴ “And that’s what [Stephanie] did,” said her father.²³²⁵ Stephanie was found in a school bathroom on April 27, 2018.²³²⁶ She was airlifted to a hospital where she died four days later.²³²⁷

Middle-aged William Melchert-Dinkel posed online as a suicidal female nurse.²³²⁸ Sometimes, he was “Li Dao 25 f Minnesota,”²³²⁹ and other times, “Cami,” 31, of Minneapolis.²³³⁰

²³¹⁹ PHILLIP STEPHENS, *WINNING FIGHTS* 26 (2018).

²³²⁰ *New York ex rel. Spitzer v. Cain*, 418 F. Supp. 2d 457, 476 n. 12 (S.D.N.Y. 2006).

²³²¹ Ari Ezra Waldman, *Tormented: Antigay Bullying in Schools*, 84 *TEMPLE L. REV.* 385, 427 (2012).

²³²² *Stephanie Marie Johnson*, PETERSON-JOHNSON FUNERAL HOME, <https://www.pjfuneralhome.com/obituary/stephanie-johnson> (last visited Oct. 4, 2020).

²³²³ Mary Stringini, *Bullied to Death: Parents Demand Change After 12-Year-Old Kills Herself in School Bathroom*, ABC ACTION NEWS (June 11, 2018), <https://www.abcactionnews.com/news/national/bullied-to-death-parents-demand-change-after-12-year-old-kills-herself-in-school-bathroom>.

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.

²³²⁹ Findings of Fact, Conclusions of Law, Order for Judgment, and Memorandum at 10, *State v. Melchert-Dinkel*, No. 66-CR-10-1193 (Minn. Dist. Ct. Mar. 15, 2011).

²³³⁰ *Id.* at 18.

Nurse “Cami” pushed hard for Nadia Kajouji, 18,²³³¹ to hang herself in front of a webcam in 2008 but she jumped.²³³² “Li Dao” did the same thing²³³³ in 2005 with Mark Drybrough, 32, but did not get to watch him die.²³³⁴

Police questioned Melchert-Dinkel in 2009.²³³⁵ Melchert-Dinkel told them he entered into five suicide pacts over the years²³³⁶ but admitted there was no genuine plan to kill himself.²³³⁷ (He told Kajouji and Drybrough he would commit suicide immediately after they did.)²³³⁸ The State of Minnesota charged Melchert-Dinkel with two felony counts of advising and encouraging suicide.²³³⁹ The convictions that followed were reversed on First Amendment grounds.²³⁴⁰

“Speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern,” ruled the Minnesota Supreme Court.²³⁴¹ The court then struck the words “advise” and “encourage” from its aiding suicide statute.²³⁴² The court said any law that proscribes protected speech must be narrowly drawn to serve a compelling government interest.²³⁴³

²³³¹ *Nadia Mena Suzanne Kajouji*, FIND A GRAVE, https://www.findagrave.com/memorial/83297535/nadia-mena_suzanne-kajouji (last visited Oct. 4, 2020).

²³³² *State v. Melchert-Dinkel*, 816 N.W.2d 703, 708 (Minn. Ct. App. 2012), *rev'd and remanded*, *State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014).

²³³³ *Melchert-Dinkel*, 816 N.W.2d at 706-07.

²³³⁴ Sharon Churcher, *Did American Male Nurse 4,000 Miles Away Help This Man Kill Himself?*, DAILY MAIL (Mar. 7, 2009), <https://www.dailymail.co.uk/news/article-1160303/Did-American-male-nurse-4-000-miles-away-help-man-kill-himself.html>.

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.

²³⁴⁰ *State v. Melchert-Dinkel*, 844 N.W.2d 13, 24-25 (Minn. 2014).

Melchert-Dinkel was subsequently convicted of assisting in the suicide of Mister Drybrough. *State v. Melchert-Dinkel*, No. A15-0073, 2015 WL 9437351, at *9 (Minn. Ct. App. Dec. 28, 2015).

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,²³⁴⁴ opinions,²³⁴⁵ or a combination thereof.²³⁴⁶ Finally, if a child threatens suicide²³⁴⁷ 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).

THE END

“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 MOBBIING IN THE UNITED STATES 435 (Maureen Duffy & David C. Yamada, eds., 2018).

²³⁴⁹ *Id.*

²³⁵⁰ *Id.* at 435-36.

²³⁵¹ Sarah E. Morris, *Tackling Workplace Bullying in Tort: Emerging Extreme and Outrageous Conduct Test Averts Need for Statutory Solution*, 31 ABA. J. OF LAB. & EMP. L. 257, 264 (2016).

²³⁵² Maria Isabel S. Guerrero, *The Development of Moral Harassment (or Mobbing) Law in Sweden and France as a Step Towards EU Legislation*, 27 B.C. INT’L & COMP. L. REV. 477, 491 (2004).

²³⁵³ Gabrielle S. Friedman & James Q. Whitman, *The European Transformation of Harassment Law: Discrimination Versus Dignity*, 9 COLUM. J. EUR. L. 241, 261 n. 93 (2003).

²³⁵⁴ CODE PÉNAL art. 222-33-2 (Fr.).

²³⁵⁵ James Kanter, *France Télécom Names New Chief from Inside*, N.Y. TIMES (Mar. 1, 2005),

<https://www.nytimes.com/2005/03/01/business/worldbusiness/france-tlcom-names-new-chief-from-inside.html>.

²³⁵⁶ Astrid Wendlandt, *New France Telecom CEO: More of the Same*, MORNING STAR (Brit. Colum.), Feb. 28, 2005, at 6.

²³⁵⁷ *Profile: Didier Lombard*, SUNDAY BUS. (London), Mar. 6, 2005, at 1.

²³⁵⁸ Wendlandt, *supra* note 2356.

²³⁵⁹ Rudy Ruitenbergh & Paul Tobin, *France Telecom Moves into Spain*, GAZETTE (Montreal), July 28, 2005, at B8.

²³⁶⁰ Brian Lagrotteria, *France Telecom Tackles Its Credibility Problem*, WALL STREET J. (Nov. 23, 2005),

<https://www.wsj.com/articles/SB113270345218804619>.

Shareholders complained.²³⁶¹ A market analyst said in November, “The fashion today is not to believe anymore in telecoms, and in particular . . . France Télécom.”²³⁶²

In January 2006,²³⁶³ Lombard made Louis-Pierre Wenès the head of “group transformation and French operations.”²³⁶⁴ Olivier Barberot was in charge of human resources.²³⁶⁵ The trio called themselves “the Good, the Bad, and the Ugly.”²³⁶⁶

During a conference call²³⁶⁷ with analysts in February, Lombard announced the NEXT plan²³⁶⁸ along with its social component ACT.²³⁶⁹ Part of the plan was to have twenty-two thousand Télécom workers voluntarily leave their employment

²³⁶¹ *Id.*

²³⁶² *Id.* (accentuation added).

²³⁶³ Adam Jones, *Combes to Leave France Telecom Post: Management Reshuffle*, FIN. TIMES (London), Jan. 31, 2006, at 26.

²³⁶⁴ *France Telecom Picks New Finance Chief Amid Streamlining*, WALL STREET J., Jan. 31, 2006, at B8. Télécom appointed Wenès a Deputy CEO in February 2009. *France Telecom Makes New Appointments*, TOTAL TELECOM ONLINE (Feb. 24, 2009), <https://www.totaltele.com/443532/France-Telecom-makes-new-appointments>.

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.

²³⁶⁷ James Kanter, *World Business Briefing Europe: France: France Telecom to Cut Jobs*, N.Y. TIMES, Feb. 15, 2006, at C9.

²³⁶⁸ *Q4 2005 France Telecom Earnings Conference Call - Final*, FAIR DISCLOSURE WIRE, Feb. 14, 2006, <https://search.proquest.com/docview/465826153/fulltext/F18800D81EA405DPQ/1?accountid=57841>. NEXT was an acronym for *Nouvelle Expérience des Télécoms*, meaning, “New Telecom experience.” Cazi, *supra* note 2366.

²³⁶⁹ *Le Harcèlement Moral <<Transfère la Culpabilité sur la Victime>>*, MONDE (Paris), Dec. 23, 2010, at 12. ACT was a plan for restructuring human resources. Virginia Doellgast et al., *After the Social Crisis: The Transformation of Employment Relations at France Télécom*, SOCIO-ECONOMIC REV. (Feb. 11, 2020), <https://doi.org/10.1093/ser/mwaa006>.

over the period 2006 to 2008.²³⁷⁰ Lombard had assigned a difficult task.²³⁷¹

The staffing reduction was centered on France²³⁷² where Télécom employed 125,000 people.²³⁷³ Télécom could not just fire whoever it wanted because many enjoyed the security of civil-servant status,²³⁷⁴ a legacy of when the company was government-owned.²³⁷⁵ That made a majority of the workers²³⁷⁶ – 88,000 of them²³⁷⁷ – “virtually unsackable.”²³⁷⁸ In addition to

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.

²³⁷⁵ Leila Abboud, Ringing in Change at France Telecom, WALL STREET J., May 4, 2006, at B4. The French government began to privatize Télécom in 1997 when it sold off 23.2 percent of the company. *Shares Soar in France Telecom as Buying Fever Strikes*, IRISH TIMES, Oct. 21, 1997, at 17. The government sold more of Télécom in 2004. Adam Jones, French State Reduces Stake in France Telecom, FIN. TIMES (London), June 6, 2005, at 1. The government owned 35 percent of Télécom when Lombard announced his headcount reduction plan in 2006. *France Telecom to Axe Jobs Despite 89pc Profit Rise*, DAILY TELEGRAPH (London), Feb. 15, 2006, at 2.

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.²³⁷⁹

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.”²³⁸⁰ Unwanted workers can be demoted,²³⁸¹ relocated far from their homes,²³⁸² or given different jobs on an almost continual basis.²³⁸³ Management can also set unobtainable goals²³⁸⁴ and then scream at the unwanted when they fail to meet targets.²³⁸⁵

Lombard addressed executives and senior management on the evening of October 20, 2006.²³⁸⁶ As a secretary tape recorded,²³⁸⁷ 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.”²³⁸⁸ Executives asked the secretary ten days later to destroy the tape and all records from the convention.²³⁸⁹ She kept a copy of the transcript in her garage, however, and police found it.²³⁹⁰

²³⁷⁹ Leila Abboud, *France Telecom Vows to Raise Dividend, Streamline Firm*, WALL STREET J., Feb. 16, 2006, at 4.

²³⁸⁰ *Collins v. Illinois*, 830 F.2d 692, 704 (7th Cir. 1987).

²³⁸¹ Nicolas Vaux-Montagny, *French Telecom Firm Found Guilty in Suicides After Job Cuts*, HARTFORD COURANT, Dec. 21, 2019, at A7.

²³⁸² Sarah Waters, *A Capitalism that Kills: Workplace Suicides at France Télécom*, 32 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.

²³⁸⁵ John Lichfield, *Why Are So Many France Telecom Workers Dying?*, INDEP. (Sept. 30, 2009), <https://www.independent.co.uk/news/world/europe/why-are-so-many-france-telecom-workers-dying-1795171.html>.

²³⁸⁶ Cazi, *supra* note 2366.

²³⁸⁷ *Id.*

²³⁸⁸ *Suicides à France Télécom: Un Document Accablant*, PARISIEN, May 7, 2013, at 10.

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.²³⁹¹ The trial lasted months.²³⁹² 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.”²³⁹³ Another lawyer asked, “With this process of brutalizing speech, don’t you take the risk of uninhibiting managers?”²³⁹⁴ 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?”²³⁹⁵

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.²³⁹⁶

²³⁹¹ *France Télécom: Un Jugement pour Harcèlement qui Fera Date*, TÉLÉGRAMME (Paris), Dec. 21, 2019, at 3.

²³⁹² FRANCE 24 English, *France Télécom and Its Former CEO Didier Lombard Found Guilty over Worker Suicides*, YOUTUBE (Dec. 20, 2019), <https://www.youtube.com/watch?v=t6GHI8cBTaQ>.

²³⁹³ *Des Départs “par la Fenêtre ou par la Porte”: L’ex-PDG de France Télécom Confesse “une Gaffe”*, CAPITAL.FR (May 21, 2019), <https://www.capital.fr/economie-politique/par-la-fenetre-ou-par-la-porte-au-proces-de-france-telecom-lex-pdg-reconnait-une-erreur-1338990>.

²³⁹⁴ *Id.*

²³⁹⁵ *Au Procès de France Télécom, l’ex-PDG Reconnaît <<une Erreur>>*, LE FIGARO (May 21, 2019), <https://www.lefigaro.fr/flash-actu/au-proces-de-france-telecom-l-ex-pdg-reconnait-une-erreur-20190521>.

²³⁹⁶ Pascale Robert-Diard, *Procès France Télécom: Les <<Gaffes>> de Lombard*, MONDE (Paris), May 22, 2009, at 11.

Twenty-two thousand workers did leave Télécom between 2006 and 2008.²³⁹⁷ Not all went “quietly into the night.”²³⁹⁸ Many killed themselves.²³⁹⁹ The trial focused on nineteen suicides, twelve attempts, and eight cases of serious depression.²⁴⁰⁰

The court convicted the defendants.²⁴⁰¹ “The methods used to reach 22,000 job cuts were illegal,” it said.²⁴⁰² 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.”²⁴⁰³ Lombard, Wenès, and Barberot each received a fine and a one-year prison sentence.²⁴⁰⁴

If you do not like your bullying boss in the U.S., “[y]ou’ll most likely need to find another job.”²⁴⁰⁵ Generic verbal abuse is generally legal.²⁴⁰⁶ You are also out of luck if you do not want children being assailed. Very few laws make assault a crime and those that do have significant shortcomings.

The late Sadie Riggs (15) wanted to be a firefighter or veterinarian.²⁴⁰⁷ As the following assessment shows, she could have done either or both. Sadie loved to climb trees with her

²³⁹⁷ Pascale Robert-Diard, *Procès France Télécom: 22 000 <<Départs Naturels>> et des Questions*, MONDE (Paris), May 18, 2019, at 10.

²³⁹⁸ 23K Jobs to Go in France Telecom’s VoIP Revolution, TELECOMWEB NEWS DIGEST, Feb. 15, 2006, <https://link.gale.com/apps/doc/A142111050/GPS?u=phoenixpl&sid=GPS&xid=7dd72482>.

²³⁹⁹ Adam Nossiter, *Court Finds 3 French Executives Guilty in Suicides of 35 Workers*, N.Y. TIMES, Dec. 21, 2019, at A10.

²⁴⁰⁰ Vaux-Montagny, *supra* note 2381.

²⁴⁰¹ Nossiter, *supra* note 2399.

²⁴⁰² Vaux-Montagny, *supra* note 2381.

²⁴⁰³ Pascale Robert-Diard, *Proces France Telecom: Les Prévenus (Lombard, Wenes, Barberot, Leurs “Complices” ...) et les Peines Encourues*, TRIB. (Fr.), Dec. 19, 2019, at 49.

²⁴⁰⁴ Valérie de Senneville, *Harcèlement: Les Répercussions du Jugement France Télécom*, ECHOS (Fr.), Dec. 23, 2019, at 49; *Former Execs at Telecom Jailed over Suicides*, NAT’L POST (Toronto), Dec. 21, 2019, at A13.

²⁴⁰⁵ Maria Wollan, *How to Deal with a Verbally Abusive Boss*, N.Y. TIMES, Feb. 23, 2020, (Magazine), at 29.

²⁴⁰⁶ *Id.*

²⁴⁰⁷ *Family Mourns Loss of Teenager Who Killed Herself Because of Bullying*, WPXI (June 23, 2017), <https://www.wpxi.com/news/top-stories/family-mourns-loss-of-teenager-who-killed-herself-because-of-bullying/538187269>.

cats²⁴⁰⁸ and was passionate about dogs.²⁴⁰⁹ She was an honor roll student each and every year of middle school.²⁴¹⁰ In regard to temperament, a schoolteacher²⁴¹¹ 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."²⁴¹²

Sadie never made it past a position at Pizza Hut.²⁴¹³ Bullies blew her off course in ninth grade²⁴¹⁴ and there was nothing that the school,²⁴¹⁵ loved ones,²⁴¹⁶ dramatic weight loss,²⁴¹⁷ social media countermeasures, truancy, self-harm, counseling, a doctor, prescribed medication, an attempt at

²⁴⁰⁸ Cristina Rouvalis, *Sadie's Tree*, PITTSBURGH MAGAZINE, July 2018, at 70, 73.

²⁴⁰⁹ Elizabeth Chuck, *Is Social Media Contributing to Rising Teen Suicide Rate?*, NBC NEWS (Oct. 22, 2017), <https://www.nbcnews.com/news/us-news/social-media-contributing-rising-teen-suicide-rate-n812426>.

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.

²⁴¹² Sadie L. Riggs Memorial Page, GEISEL FUNERAL HOMES & CREMATORY <https://www.geiselfuneral.com/notices/Sadie-Riggs/guest-book> (last visited Oct. 4, 2020) (message from Laura Vent).

²⁴¹³ Maria A. Schaefer, *Obituary of 15-Year-Old Who Killed Self Cites School Bullies*, PITTSBURGH POST-GAZETTE (June 23, 2017), <https://www.post-gazette.com/news/state/2017/06/23/Obituary-of-15-year-old-who-killed-self-cites-school-bullies/stories/201706240053>.

²⁴¹⁴ Katie O'Toole, *High School Offers Summer Counseling After Student Kills Herself*, WJAC (June 22, 2017), <https://wjactv.com/news/local/high-school-offers-summer-counseling-after-student-kills-herself-administrators-say>.

²⁴¹⁵ Rouvalis, *supra* note 2408, at 76.

²⁴¹⁶ *Id.* at 73, 75-76.

²⁴¹⁷ *Id.* at 75.

suicide, in-patient psychiatric care, dropping out,²⁴¹⁸ or cardiopulmonary resuscitation could do about it.²⁴¹⁹

The bullying floodgates opened in the Fall of 2016 when Sadie told a boy she had a crush on him.²⁴²⁰ Students called her a “whore,” “red-headed she-devil,” “low-life,” and “bum.”²⁴²¹ In the Spring of 2017, Sadie dug a sweatshirt out from lost and found that had been there for a while.²⁴²² The true owner noticed Sadie wearing it and reported her to the office.²⁴²³ 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!”²⁴²⁴

Classmates eventually told Sadie to kill herself.²⁴²⁵ Sadie did that in June 2017 when she hanged herself from a tree with an extension cord.²⁴²⁶ One boy said he was sorry for what he had said to Sadie but another crowed, “I’m glad she’s dead.”²⁴²⁷ A year after the suicide, a high school sophomore who knew Sadie did not think her death changed anything.²⁴²⁸ He added, “Bullying will never end.”²⁴²⁹

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.*

