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Children Family and The State

AWR Assignment

**Bullying, The New Civil Rights Agenda Spreading Throughout the Nation. Embrace
It? Extinguish It? Or Contain It?**

7:30 A.M. Johnny opens his eyes and heads to take a shower. It's a school day. After getting dressed he comes down to his kitchen, dirty dishes overflowing in the sink, he grabs a bowl of cereal, slings his book bag in the living room over his shoulder where his mother is passed out. The smell of alcohol and cigarettes engulf the room. Off to school. He reaches the front steps this morning early, only one thing on his mind... Finally his moment comes, Billy's mother pulls up and out he comes, smiling as he heads towards the steps. As soon as the van pulls away Jonny approaches Billy, "Hey pig-face! Don't you know you have to be this tall to enter! Pay the toll shorty!" Billy pulls out his money and within seconds of being relived of it, a jolt of force sends him to the pavement." Next comes recess. Somehow Johnny always manages to find an opportune moment to strike. Without warning Billy's shorts are pulled down to ground. The girls start laughing, the boys pat Johnny on the back and high five him as Billy's face turns bright red. The school day comes to a close, Jonny feeling overtly satisfied with his work. As he arrives home and approaches the door he hears a woman screaming. The voice of a man inside he recognizes immediately as his mothers latest boyfriend. He runs inside to

try and break it up, but he is too late. His mom sits in the corner sobbing uncontrollably clutching her knees, broken glass covers the ground, The man yells “you dirty whore”, slams the door and speeds off. Johnny cleans the mess, does the dishes, watches some cartoons and fixes himself some dinner. Hours later he heads to bed. One thought on his mind, whom exactly was he going to “get” tomorrow?

The fictional story above occurs in one sense or another every day. It is easy enough to see Johnny as the aggressor and Billy as the victim. However the story always seems to manage a twist. What if the story ended instead with Billy returning the next day with a handgun from his father’s gun closet and shooting Johnny, the teachers who failed to protect him, and the kids who laughed at him? What if Billy posted to on a popular social media website things about Johnny’s family issues? What about Johnny’s life and lack of parental supervision or support? The evolution of violence in the school arena has ignited of study into the ways with which we can deter youth from engaging in victimizing other youth. Where it used to be a couple of scrapes and black eyes, now there are suicides, mass shootings, and ruined lives. Our country has come to a realization that the “*what ifs*” are just too costly and all too real.

The following article will focus on (1) what exactly is bullying? (2) The psychological, physical, effects it can cause. (3) Which legislatures have addressed this issue? (4) Has such legislation created change? (5) Should we create a comprehensive national policy, or leave this issue to the states? (6) Is the government overextending its constitutional power by creating new limitations for our youth? (7) Can we succeed without imposing some liability on school systems or the states for such failures? (8) Is criminalizing this behavior recommended? What are the current punishments? (9) How

else can we deter this behavior? What alternatives to a Zero-Tolerance Policy may aid in eliminating this behavior? (10) Welcome to the age of the cyber-bullying, and his new lackeys: cellphones, Twitter, and Facebook. Should we compromise privacy rights for the greater good? (11) What is the state of technology and American Pop-culture in pushing the agenda to stop bullying at? (12) Finally, are we overreacting as a society and is this issue simply a rite of passage?

I. WHAT IS BULLYING?

Bullying is the most frequent form of peer victimization in schools, impacting about 10-25% of all children across the United States.¹ The term is thrown around so occasionally that you would think most people would have an articulate response for its definition. The response one is likely to elicit is “I know it when I see it.” “Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance.”² Kids who are bullied and those who bully others may have serious, life lasting problems.³ Bullying is not the occasional teasing or insults or even physical intimidation that all children encounter as they grow up.⁴ The term Bullying refers to an “ongoing pattern of abuse that targets an individual and is sustained over weeks, months or even years... based on real or perceived imbalance of power”⁵

¹ <http://blogs.law.harvard.edu/billofhealth/2013/04/02/anti-bullying-legislation-safer-schools-through-legal-intervention/>

² See Stop Bullying, <http://www.stopbullying.gov/what-is-bullying/definition/index.html> (last visited 3/22/13)

³ *Id.*

⁴ Weddle B. Daniel, You're on Your Own Kid... But You Shouldn't Be , 44 Val. U. L. Rev. 1083, 1084 2009-2010

⁵ *Id.*

Bullying whether overt or covert is about social power.⁶ The bully's greatest tool is social isolation. "While they may physically overpower their victims, verbally abuse them, sexually harass them, or torment their victims psychologically... the bully controls his/her victim by manipulating their relationship with peers and society."⁷ Numerous scholastic articles and highly educated individuals seem to agree that the elements of bullying require a "repeated oppression... of a less powerful person by a more powerful one."⁸ Generally, "bullies are aggressive, tough, strong, confident, and impulsive. Whereas victims are usually unpopular, lonely, rejected, anxious, depressed, lacking in self esteem, and unwilling to retaliate."⁹ The most problematic issue that bullying presents is its time and place, which is usually when adult supervision is minimal.¹⁰

The difficulty in defining bullying is the nature and pervasiveness of actions required to rise to level of unacceptable social behavior. One bullying trial in Canada in response to a teen girl suicide, Judge C.J. Rounthwaite asked, "When do school yard taunts cross over the line to become a criminal offence of threatening death or bodily harm?"¹¹ No doubt that the line is blurred and schools need to act before such a line is crossed. These defining characteristics need to be spelled out through policies and laws promulgated by our government.

⁶ 7 Conn. Pub. Int. L.J. 109 2007-2008

⁷ *Id.*

⁸ Farrington, David P., Understanding And Preventing Bullying, 17 Crime & Just. 381 1993

⁹ *Id.*

¹⁰ *Id.*

¹¹ R. v. D.W., 2002 B.C.J. 627.

A. Types Of Bullying

Bullying affects the educational experience of both the victims, bullies and all members of the school community.¹² Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose.¹³ While most reported bullying happens in the school building, a significant percentage also happens in places like on the playground or the bus. It can also happen travelling to or from school, in the youth's neighborhood, or on the Internet.¹⁴ According to the National Survey of Children's Exposure to Violence (NatSCEV), there are three predominate forms of bullying: (1) physical, (2) verbal, and (3) psychological/Social.¹⁵ Physical bullying is mostly perpetrated by males includes physical contact such as hitting, spitting, pushing, and stealing belongings.¹⁶ Verbal bullying according to the survey is more predominant amongst females and includes actions such as taunting, malicious teasing, and pervasive name-calling.¹⁷ Lastly psychological bullying includes spreading rumors, excluding others from groups, manipulating social ties.¹⁸ Kids who bully use their superior power such as physical strength, access to embarrassing information, or popularity to control or harm others. Bullying however is not only confined to direct contact communication. The 2011 Youth Risk Behavior Surveillance System (Centers for Disease Control and Prevention)

¹² 7 Conn. Pub. Int. L.J. 109 2007-2008

¹³ See Stop Bullying, <http://www.stopbullying.gov/what-is-bullying/definition/index.html> (last visited 3/22/13)

¹⁴ *Id.*

¹⁵ National Youth Violence Prevention Resource Center, <http://www.safeyouth.org/scripts/faq/bullying.asp> (2009)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

indicates that, nationwide, 20% of students in grades 9–12 experienced bullying.¹⁹ 16.2% of students had been electronically bullied, including being bullied through e-mail, chat rooms, instant messaging, web sites, or texting, during the 12 months before the survey.²⁰ The explosion of technology over the last two decades has brought with it an unfathomable speed and access to information, which can and has been used in bullying youths.

II. THE PHYSICAL/PSYCHOLOGICAL, EFFECTS OF BULLYING

Today's bully may never lay a finger on his/her victim; nonetheless their blows inflict just as much pain. Retaliatory bullying pits victims against their aggressors and is believed to have been the impetus for the shootings at Columbine.²¹

Kids who are bullied can experience negative physical, school, and mental health issues. They typically experience depression and anxiety, increased feelings of sadness and loneliness, changes in sleep and eating patterns, and loss of interest in activities they used to enjoy. Decreased academic achievement.²² A very small number of bullied children might retaliate through extremely violent measures. In 12 of 15 school shooting cases in the 1990s, the shooters had a history of being bullied.²³

The pervasive relentless nature of a bullies attack is often responsible for severe erosion of a child's self-esteem and self-confidence.²⁴ They are thereby isolated, by others unwilling to associate with them in fear of gaining the bully's attention leading to

¹⁹ The National Youth Risk Behavior Survey (YRBS), http://www.cdc.gov/healthyouth/yrbs/pdf/us_overview_yrbs.pdf (2011)

²⁰ *Id.*

²¹ 7 Conn. Pub. Int. L.J. 109 2007-2008

²² <http://www.stopbullying.gov/at-risk/effects/index.html>

²³ *Id.*

²⁴ Weddle B. Daniel, You're on Your Own Kid... But You Shouldn't Be , 44 Val. U. L. Rev. 1083, 1084 2009-2010

social awkwardness.²⁵ Where retaliation occurs, one often enough does not distinguish between their tormentor and the peers who abandoned them.²⁶

A. Suicide

There has been an argument that since many teen-related suicides occur from bullying that there is direct relationship. Effects such as depression, anxiety, and psychosomatic symptoms have been linked as both effects of bullying and catalysts for suicide.²⁷ While the fact that one is bullied is not solely dispositive those that have been victimized particularly bully victims, were at increased risk for suicide ideation and self-harm. Familial factors play an important role in moderating the association between victimization and suicide ideation.²⁸

B. Lasting Effects

The shock and experiences may teens suffer lead lasting impressions on them throughout their lives. “The experience of Bullying in childhood can have profound effects on mental health even through adulthood, according to Catherine Bradshaw, deputy director of the Center for the Prevention of Youth Violence at John Hopkins University.²⁹ The research conducted found that victims of bullying in childhood were 4.3 times more likely to have an anxiety disorder as adults, compared to those with no history of bullying or being bullied.³⁰ Men who were both bullies and victims were 18.5

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Catherine M. Herba, Victimisation and Suicide Ideation in the TRAILS study, 49 *J. Child Psychol. & Psychiatry* 867, 868 (2008)

²⁸ *Id.*

²⁹ Saint Louis, Catherine. "Effects of Bullying Last Into Adulthood, Study Finds." *NY Times*, 13, Feb. 2013. Web. 01, Apr 2013

³⁰ *Id.*

times more likely to have had suicidal thoughts in adulthood, compared to the participants who had not been bullied.³¹

III. ANTI-BULLYING LEGISLATION

A. States

In the last several years States and local lawmakers have passed either laws or model policies aimed at preventing bullying and protecting children. Each state addresses bullying differently.³² Bullying, cyber-bullying, and related behaviors may be addressed in a single law or may be addressed in multiple laws. In some cases, bullying appears in the criminal code of a state that applies to juveniles.³³ Currently 49 States have Anti-bullying Legislation.³⁴

According to Deborah Baker's article in children's legal rights Journal "The most effective legislation is found where the law provides a way enforce policies, requires consistent standards for disciplinary action, and/or establish measures for evaluating a school districts progress toward reducing or eliminating bullying conduct."³⁵ These Anti-Bullying Statutes focus in particular on preventing bullying through training and educating, punishing the behavior when it occurs, and providing recourse for injured parties.³⁶ These laws implement some prevention programs, give guidelines in how to

³¹ *Id.*

³² <http://www.stopbullying.gov/laws/>

³³ *Id.*

³⁴ *Id.*

³⁵ Baker, Deborah State Legislative Responses to Peer Harassment in Schools, Child. Legal Rts J. 2009

³⁶ 37 New Eng. J. on Crim. & Civ. Confinement 271 2011

train employees, and requiring schools to develop some sort of policy and reporting system.³⁷

Colorado, in response to the Columbine Shootings was the first state to pass legislative declaration requiring schools to implement specific anti-bullying policies and practices.³⁸ Their policies and laws are one of the more comprehensive in addressing the issue.³⁹ Most states have followed suit in providing similar legislation.

Massachusetts' newly enacted law is fairly broad even including cyber-bullying.⁴⁰ The statute reads; "Bullying", the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying.⁴¹

New Jersey in particular has been praised for taking a lead role in reform of Anti-Bullying legislation.⁴² After the notorious suicide of a Rutgers student and notable media

³⁷ *Id.*

³⁸ 29 Child. Legal Rts. J. 91 2009

³⁹ http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/violence_prevention/svpm2008.pdf ("Bullying" means any written or verbal expression, or physical act or gesture, or pattern thereof, intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated school bus stop, or at school activities or sanctioned events...")

⁴⁰ Mass. Gen. Laws Ch 92 § 5

⁴¹ *Id.*

⁴² Pérez-peña, Richard. "Stricter Law On Bullying In New Jersey." The New York Times. The New York Times, 07 Jan. 2011. Web. 29 Mar. 2013.

attention the state enacted the nation's toughest law against bullying and harassment in schools.⁴³ The new law requires: the appointment of specific designate an anti-bullying specialist to investigate complaints in each school and district to run anti-bullying programs, The investigation of any episodes starting within a day after they occur, and training for teachers, administrators and school board members. Superintendents must make public reports twice a year detailing any episodes in each school, and each school will receive a letter grade to be posted on its Web site.⁴⁴ The law will also institute programs in order to incorporate the antibullying process into the culture.⁴⁵

The NY anti-bullying legislation LEAD (Law to Encourage the Acceptance of All Differences), gives New York schools the tools to help reduce bullying by requiring school employees to report incidents of bullying to principals and superintendents and adds bullying to the list of incidents for which a student can be disciplined. LEAD requires school districts to create policies and guidelines to encourage awareness of and to prohibit acts of bullying, and would increase education about bullying prevention for teachers and students.⁴⁶

States, which have been criticized for their Anti-Bullying laws, are often lax on providing discipline policies, requiring consultation with parent-teacher committees prior to creating such policies, or leaving too much deference to local school districts which prolongs any real changes and creates inefficiency in the policies effect.⁴⁷ Many States have also been criticized for not including sexual orientation protections. The problem

⁴³ *Id.*

⁴⁴ Hu, Winnie. "Bullying Law Puts New Jersey Schools on Spot." The New York Times. The New York Times, 31 Aug. 2011. Web. 28 Mar. 2013.

⁴⁵ *Id.*

⁴⁶ <http://www.nysenate.gov/press-release/senate-passes-anti-bullying-legislation>

⁴⁷ 37 New Eng. J. on Crim. & Civ. Confinement 268, 272 (2011)

with most legislation in the field is the unwillingness for lawmakers to hold school administrators accountable for failing to prevent violence in schools.⁴⁸

IV. PROGRESS SINCE LEGISLATION

The most notable progress in the field of anti-bullying legislation is the fact that nearly all the states have addressed this issue. While states have different opinions on the groups, which they provide additional protection the presence of such legislation shows tremendous progress. This progress will surely have set backs but the process is well underway and as we become more and more educated about the causes and effects of bullying the progress and new legislation will continue to become more tailored to a better solution.⁴⁹

V. CREATING A NATIONAL POLICY? DO WE EVEN NEED ONE?

There has been rampant discussion in the field of anti-bullying legislation that the national government needs to step in and ultimately create a comprehensive national policy. Laws have been countlessly introduced in front of congress in attempts to pass some uniform law. The issue is that although 49 states have legislation, only a handful of them follow best practices.⁵⁰

Leaving aside the political debate of state powers and federal powers the first issue to address is: what does the constitution protect without a national anti-bullying

⁴⁸ David Ellis Ferster, *Deliberately Different: Bullying as a Denial of a Free Appropriate Public Education Under The Individuals with Disabilities Act*, 43 GA. L. Rev. 191, 195 (2008)

⁴⁹ Criminal Justice Review Vol. 32 Num. 4, December 2007 401-414 2007

⁵⁰ Kennedy, Kerry. "The Time Is Now for a Federal Anti-Bullying Law." The Huffington Post. TheHuffingtonPost.com, 05 Mar. 2013. Web. 28 Mar. 2013.

law? Although federal laws do not specifically address bullying per se, a school or district may be charged with violation of First Amendment, Title IX of the Education Amendments of 1972, and other civil rights laws targeting equal protection.⁵¹ For example, the Supreme Court held that parents can sue a school or district for failing to take action on a sexual harassment claim it knew about, but failed to take corrective measures. Davis v. Monroe County Board of Education, the court held that under Title IX plaintiff's seeking money damages "must establish sexual harassment of students that is so severe, pervasive and objectively offensive... that the victim-students are effectively denied equal access to an institution's resources."⁵² This standard is a much tougher burden than those advanced by state anti-bullying legislation aimed at raising the constitutional protections.

Title IX unlike many of the state anti-bullying laws, does not address the issue of discrimination based on sexual orientation. The standard as displayed in many cases such as Seiwert v. Spencer Owen Community School, (where parents sued the school for failure to protect their child from bullying under Title IX), the court found that to succeed that plaintiff must show "the school acted with nefarious discriminatory purpose based on a child's membership in a protected definable class."⁵³ The court ruled that there must be some intentional nature to the Schools actions in order to find culpability under the federal law.⁵⁴

⁵¹ Marcus, Kenneth. *Bullying As a Civil Rights Violation: The U.S. Dept. Of Education's Approach to Harassment*, Federalist Society for Law. & Pub. Policy Studies. 12 Engage: J. Federalist Soc'y Prac. Groups 52, September, 2011

⁵² *Id.* Also see *Davis v. Monroe County Bd. Of Educ.*, 526 U.S. 629, 653-54 (1999)

⁵³ *Seiwert v. Spencer Owen Community School Corp.*, 497 F. Supp.2d 942 (2007)

⁵⁴ *Id.*

It is fairly predictable from the amount of media attention this issue has received, we are not far away before congress approves one of the many attempts to pass a national anti-bullying law.

VI. DO STUDENTS HAVE A CONSTITUTIONAL RIGHT TO BE SECURE? DO SCHOOLS HAVE A DUTY TO THE STUDENT?

“The right for a student to be secure and let alone.” Famous words quoted in the the two-prong-test in Tinker v. Des Moines Independent Community School District.⁵⁵ Still the question prevails does Tinker support a corresponding duty from school to student? While a students First Amendment rights are paramount the court’s decision in Tinker showed that where certain actions cause disruption or create a harmful circumstances the school is justified in protecting its students from such.⁵⁶ Given the nature of bullying and its dangers, it seems logical that a school is mandated to protect students from its effects. The school has a duty in order to meet the corresponding right of a student to be protected, and even transform the bullying culture.⁵⁷

VII. LIABILITY, IS IT NECESSARY? WHO SHOULD BE HELD ACCOUNTABLE?

Some have argued that the shortcomings with many of the older policies regarding anti-bullying legislation has been due to a failure to hold the state or the

⁵⁵ Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (1969)

⁵⁶ Barr v. Lafon, 538 F.3d 554 (6th Cir. 2008) (Quoted *Tinker* on the right to be secure and let alone”)

⁵⁷ 44 Val. U. L. Rev. 1083, 1094 2009-2010

educational institution accountable. While criminal liability and civil liability was available through the generally applicable laws, the policy, holding school systems to a higher standard has been lacking. The NJ and Massachusetts anti-bullying laws has exemplified the advantage in holding officials accountable. These laws require mandatory reporting of incidents deemed to be bullying. However school officials have little legal incentive to embrace significant reform in other states because while policies are in place there having little to no teeth.

Schools are seldom held responsible even for serious outbreaks of violence among students, much less for the ongoing harassment that occurs routinely in their halls and classrooms. Courts have been hesitant to hold teachers and administrators liable for the intentional acts of third parties leave most victims of student violence and harassment without a remedy against the adults in whose care they were injured.⁵⁸

Some laws have also been criticized as too short and bad pieces of legislation. Minnesota's Anti bullying law is one example where the law fails to define what bullying is.⁵⁹ The problem here being where we cannot define what is considered to be bullying how can a school even contemplate creating a policy to deter its occurrence? Other states required that districts develop and adopt school bullying policies, however there is no specifying policy components, leaving the law stale.⁶⁰

The newly increased regulation for schools and educators will, serve to extend legal liability for educators should they fail to observe to the letter or spirit of these laws.

⁵⁸ Cary Silverman, *School Violence: Is It Time to Hold School Districts Responsible for Inadequate Safety Measures?*, 145 EDUC. L. REE 535, 537 (2000).

⁵⁹ Birkey, Andy. "How Minnesota Got the Nation's Worst Anti-bullying Law." *Twin Cities Daily Planet*. N.p., n.d. Web. 01 Apr. 2013.

⁶⁰ *Id.*

The law specifically requires schools to create certain policies for prevention, training, and enforcement concerning behavior that may lead to bullying. Students who violate anti-bullying provisions face suspension and expulsion; whereas schools and districts may face large monetary fines arising out of civil liability claims. The problem that we still face is the discrepancy from state to state where some Anti-Bullying Policies are mandatory others are merely recommended.

VIII. CRIMINALIZING BULLYING

The criminalization of bullying has with it many social policy concerns then inhibit the act from becoming criminal in any defining sense. While protected discriminatory behaviors and criminal assault laws can account for many of the crimes as well as a majority of states now creating new legislation questions still surface. The standard for what can constitute bullying is still very grey in a legally definitive way. While the definition is clear how do prosecutors make the call for when to prosecute? The country has currently pushed this issue into every home, so why wouldn't the next step to have a uniform deterrence to better effect a widespread change in our countries culture?

IX. DETERRENCE WHAT ALTERNATIVES TO A ZERO TOLERANCE POLICY?

There is no question that when it comes to bad behavior our nations first route to deterrence is punishment. There are many words we use in defining our strategy in violence prevention. Whether it be "deterrence, retribution, reformation, incapacitation,

denunciation, and reparation.”⁶¹ Our greatest tool in combating bullying is not punishment it is education. It doesn’t take a genius to understand that the more we learn and study youth behavior, the more effective our measures will become.

According to Daniel Weddle an expert in the field of bullying research, Passive approaches to bullying guarantee its continued vitality and reinforces denial and blame shifting by school officials. As such it is time to reconsider the legal response that schools implement in preventing bully behavior. ⁶² According to Weddle the true enemy, is not the bully, rather it is the culture within schools. ⁶³ His solution is twofold: strong school administration in implementing a proven bullying prevention program, and engaging a unified school community in transforming the culture. ⁶⁴ Since a school system nor their student body are exactly alike the approach begins with gathering information. “The community aspect of Weddle’s theory suggests “bullies, run the school only as long as everyone lets them keep control.”⁶⁵ The approach begins to show some teeth when students begin to take responsibility for one another’s well being. ⁶⁶

Another approach to studying the school environment is to divide it into “crisis prone and crises prepared”⁶⁷ The crisis prone organization lacks internal communication and doesn’t collect and analyze early signs of distress. “Rather than searching the barrel

⁶¹ 17 Crime & Just. 412 1993

⁶² Weddle, Daniel B. "When will schools take bullying seriously? Children who suffer severe, long-lasting injuries at the hands of school bullies have little or no hope of recovery for the harm done. A new theory could remove the shield of immunity."

⁶³ 44 Val. U. L. Rev. 1088 2009-2010

⁶⁴ *Id.*

⁶⁵ Weddle, Daniel B. "When will schools take bullying seriously? Children who suffer severe, long-lasting injuries at the hands of school bullies have little or no hope of recovery for the harm done. A new theory could remove the shield of immunity."

⁶⁶ 44 Val. U. L. Rev. 1088 2009-2010

⁶⁷ Reducing Violence in U.S. Schools, 53-NOV Disp. Resol. J. 28 1998

for a few supposed bad apples it checks the barrel itself.”⁶⁸ Reading the behavioral and emotional signs of both victimized students and their aggressors are necessary in order to properly effectuate change.⁶⁹

A 1993 study which compiled many case studies, (including the famous Olweus program developed in Norway in the 1980s) concluded there are three methods in order to prevent bullying, By focusing primarily on: the bullies, the victims, and the environment such behavior could be more easily understood.⁷⁰ The focus on the bully suggests punishing the bully, unifying the bully with their victims in order to atone and understand their victim’s feelings, or rewarding the bully upon good behavior.⁷¹ The victim focus starts with warning children about the possibility of being bullied, developing confidence and friendship skills. Furthermore counseling victims and encouraging them to come forward is a high priority.⁷² Lastly, the focus on environment in order to deter bullying begins with improving supervision. The study found there were certain times where bullying was more prevalent; recess, lunchtime, and afterschool.⁷³ While the study found that a focus on all three of these was necessary for an effective deterrence the environment was the most important by unifying teachers parent and children in a concerted effort to rid the unwanted behavior.

Another focus on deterrence involves changing our discipline system from punishing the bully to changing the behavior of an environment. This theory is better

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Farrington, David P., *Understanding And Preventing Bullying*, 17 *Crime & Just.* 381 1993

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

known as “restorative justice”.⁷⁴ “Restorative justice is a social movement to institutionalize peaceful approaches to harm, problem solving and violations of legal and human rights.”⁷⁵ Our criminal justice is more traditional focusing on what rule has been broken and punishing the wrong doer. Restorative justice on the other, hand focuses on people and relationships and who and how the wrong committed can be repaired.⁷⁶ Restorative justice involves the offender in fashioning a solution and allowing him/her to take responsibility for their actions.⁷⁷ The family not the state is the main focus for solution and believes this will prevent future destructive conduct.⁷⁸

The opinions above suggest that violence from bullying is not an isolated incident rather it is an epidemic of bad behavior which spreads throughout the student body. A school needs to cultivate a system, which does not stand for bullying behavior, promotes role models with suitable conflict resolution skills, and has an information collection system that can manage on limited resources while nevertheless powerful in achieving a unified educational community. Our job is to identify the most effective practices and policies that prevent bullying and its adverse impacts.

X. THE AGE OF CYBERBULLYING AND HIS NEW LACKEYS, TWITTER, FACEBOOK, AND THE CELLPHONE.

The biggest issue we face in the realm of bullying is when monitoring the behavior becomes impossible. While impossible seems like a stretch the social media culture we have facilitated with the rapid transfer of information allows for not only an

⁷⁴ 37 New Eng. J. on Crim. & Civ. Confinement 273 2011

⁷⁵ *Id.*

⁷⁶ *Id.* at 276

⁷⁷ *Id.* at 277

⁷⁸ *Id.* at 279

easier path for the bully but for their damage to exacerbate. There has been an explosion over the last 10 years in the variety of technological devices available. Many times bullying takes place outside the school. "It is the epitome of covert aggression."⁷⁹ There has been considerable coverage of the recent NJ case of Tyler Clementi, 18 year old young man who committed suicide due to cyberbullying on his sexual orientation.⁸⁰ His roommate was able to post a sexual encounter between Tyler and another boy. Tyler took his life jumping off the George Washington Bridge.⁸¹ Tyler's case is not just some needle in a haystack either: Take 13 year old Ryan Halligan from Vermont, who took his life after he was barraged on Facebook, Or 13 year old Megan Meir from Missouri who hung herself after a parent posing as a teenage boy pretended to woo and then reject her on MySpace.⁸²

The rapid growth of our social media including Twitter, Facebook and other popular social online sites have made it more and more difficult to ascertain when such activity is occurring and even harder to police it. The first argument in why texting and social media makes bullying more prevalent is the lack of face-to-face contact between the aggressor and his victim. The lack of visual feedback dulls the notion that someone might be in pain.⁸³ The term "Sexting" has been adopted for the various sexual offences that often take place. Many young teens today are sharing or sending sexually explicit images of themselves to others. Cyberbullying allows the anonymity of the cellphone

⁷⁹ 7 Conn. Pub. Int. L.J. 2007-2008

⁸⁰ "Tyler Clementi." The New York Times. N.p., 16 Mar. 2012. Web.

⁸¹ Id.

⁸² 36 J. Psychiatry & L. 680 2008

⁸³ Allegations of School District Liability For Bullying, Cyberbullying, and Teen Suicides After Sexting: Are New Legal Standards Emerging in The Courts, 37 New Eng. J. on Crim. & Civ. Confinement, Summer 2011

take the place of the physically bigger and stronger individual. The bully is no longer the one we normally would expect.⁸⁴ Statistics show that 15-33% of teens ages 13-18 are cyberbullied on consistent basis. The answer to policing this behavior is the real conundrum. Schools are just not properly equipped to locate all incidents of this behavior they are not even equipped to locate ½ of the activity. Many federal government agencies have put Cyberbullying as a top priority in need of some legislation.⁸⁵ Some initiatives that are made are through discounted Internet service to schools that enforce an internet safety policy. The problem lies first and foremost with educating our youth. The story of the young girl sending her boyfriend a sexually explicit image and it winds up going viral is all too common today. The main issue with regulating online media is the constitutional right to freedom of expression. Our government must still be careful with what legislation they advance even if it for the betterment of society.

While it is sure to change, cyberbullying has not yet received the amount of deference it deserves in the legislative arena. While 49 states have bullying laws, only 25 of them account for cyberbullying.

XI. AMERICAN POP-CULTURE PUSHING THE AGENDA

To look at an issue inside a bubble of the courthouse is the biggest injustice we could commit. Our nations greatest asset is our ability to use our voice in order to effectuate a better future. As poetic as it sounds the entertainment industry has help fuel the bullying to the legislature. The sensation that is Twitter while sometimes considered vile and pretentious has nonetheless commanded substantial power over our nations

⁸⁴ Id.

⁸⁵ 32 Child Legal Rts. J. 2012.

youth. The irony, of course, is that just as activism for understanding has been made easier by social media so, has bullying. Many celebrities and athletes have spoken out about bullying and given their support. STOMP Out Bullying, a national anti-bullying and cyberbullying program for kids and teens along with other movements focuses on reducing and preventing bullying, cyberbullying, sexting and other digital abuse, educating against homophobia, racism and hatred, and deterring violence in schools, online and in communities across the country.⁸⁶

One notable figure that pioneered the movement in the sports arena is DeSean Jackson of the Philadelphia Eagles.⁸⁷ While many actors and singers have spoken out in the movement, one cannot deny the power athletes possess. They personify all that is cool. Jackson took his message on the road and gained considerable media coverage in the process.

President Obama and his wife Michelle have also expressed their concern for the movement.⁸⁸ They expressed their continued support to stop youth violence. They held a summit and released both commercials and online videos to spread the message.⁸⁹

XII. Are we overreacting as a society and is this issue simply a rite of passage?

“Dust yourself off and get back up!” This whole discussion on bullying can’t help but make one wonder are we overreacting? Have some freak isolated cases and media

⁸⁶ <http://www.looktothestars.org/charity/stomp-out-bullying>

⁸⁷ Rosenberg, Michael. "Sports Can Play a Pivotal Role in Helping Combat Bullying." Philadelphia Eagles' DeSean Jackson Takes Stand against Bullying. N.p., 07 Oct. 2011. Web. 01 Apr. 2013.

⁸⁸ <http://www.whitehouse.gov/photos-and-video/video/2011/03/10/president-obama-first-lady-address-bullying>

⁸⁹ *Id.*

attention made bullying much more than what it really is? There is no doubt that bullying is an important issue, which should be addressed, but is the whole thing overdone?

The thought that this is just some “feel good legislation” proposed more for the political gain does come creeping about. Bullying has been around since the beginning of time and now, all of a sudden it became nationally recognized? At one time we truly believed that it helped us all learn how to stand up for ourselves and deal with the reality. The true answer here is that we should not overwhelm the issue to the point where we become hypersensitive. There is a place for anti-bullying legislation and the policies by which are used to deter its occurrence. Our children are better off both in safety and academically living in a safer learning environment. Furthermore a reduction in violence and an expansion of tolerance in our children from an earlier age can only support a brighter future for this nation.

XIII. CONCLUSION

The issue of bullying deserves much of our time and attention regardless of whether one believes legislation is necessary. What we can do? We must continue to study youth interpersonal communication and understand what creates a bully. Furthermore the initiatives advanced here, are not dispositive. We should continue to implemented new strategies in school systems educating and informing students of the detriments of bullying, and safe environment they are in. Bullying is wrong. By developing young people that are smart and confident enough not to pick on others. Our society is better and safer for the future.

