

CYBERBULLIES ON CAMPUS

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I. INTRODUCTION

A new challenge facing educators is how to deal with the high-tech incivility that has crept onto our campuses. Technology has changed the way students approach learning, and has spawned new forms of rudeness. Students play computer games, check e-mail, watch DVDs, and participate in chat rooms during class. They answer ringing cell phones and dare to carry on conversations mid-lesson.

Dealing with these types of incivilities is difficult enough, but another, more sinister e-culprit—the cyberbully—has also arrived on law school campuses. Cyberbullies exploit technology to control and intimidate others on campus.¹ They use web sites, blogs, and IMs² to malign professors and classmates.³ They craft e-mails that are offensive, boorish, and cruel. They blast professors and administrators for grades given and policies passed; and, more often than not, they mix in hateful attacks on our character, motivations, physical attributes, and intellectual abilities.⁴ They disrupt classes, cause tension on campus, and interfere with our educational mission. We have cyberbullies in our midst, and we must deal with them.

My goals in this article are to introduce the law school community to the problem of cyberbullies, and to alert deans, administrators, and professors to the risks associated with this form of bullying—so that the problem can be acknowledged and addressed, and so that we may all learn and work in as safe an environment as possible. Part II will describe common characteristics of bullies

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1. See text accompanying *infra* note 42.

2. AIM is the common abbreviation for Instant message or Instant messaging.

3. See, e.g., Erin O'Connor, *Beyond Incivility at Seton Hall*, Critical Mass, http://www.erinoconnor.org/archives/2003/02/beyond_incivili.html (Feb. 14, 2003) (recounting an episode at Seton Hall in which an adjunct professor discovered that her students posted scathing comments on www.myprofessorsucks.com).

4. E.g., Jennifer Summerville & John C. Fischetti, *How to Foil Cyberbullies*, CHRON. HIGHER EDUC., June 24, 2005, available at <http://chronicle.com> (describing messages sent to professors by a student enrolled in online college courses).

and cyberbullies, how bullying affects victims, and how bystanders fit into the equation. Part III will address bullies and cyberbullies on college and law-school campuses. Part IV will present solutions law schools can adopt to reclaim our campuses and classrooms from high-tech tormentors.

II. THE PROBLEM

A. Bullies

Bullying is a type of aggression that involves a *persistent*, unwelcome pattern of intimidation and harassment by one person designed to humiliate, frighten, or isolate another.⁵ The definition most commonly used by researchers provides that A[a] person is Y bullied or victimized when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more persons.⁶ Negative actions occur when someone intentionally inflicts, or attempts to inflict, injury or discomfort upon another.⁷ Negative actions can be physical (such as pushing, punching,⁸ and stealing), verbal (such as spreading rumors, teasing,⁹ or taunting), or emotional (such as humiliating, shunning, and excluding).¹⁰ In most cases, the bully acts without being provoked or threatened by the victim.¹¹ Bullying can be direct or indirect: A direct bullying involves open attacks on a victim, while indirect bullying is often covert Y and frequently takes the form of social isolation and exclusion from a group.¹² All bullying is

5. Dorothy L. Espelage & Susan M. Swearer, *Research on School Bullying and Victimization: What Have We Learned and Where Do We Go from Here?*, 32 SCH. PSYCHOL. REV. 365, 368 (2003), available at <http://www.Ebscohost.com>; Daniel B. Weddle, *Bullying in Schools: The Disconnect between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMP. L. REV. 641, 645 (2004).

6. JOHN H. HOOVER & RONALD OLIVER, *THE BULLYING PREVENTION HANDBOOK: A GUIDE FOR PRINCIPALS, TEACHERS AND COUNSELORS* 4 (1996) (using the definition developed by Dan Olweus). See also *id.* at 5 (emphasizing that A bullying represents a chronic pattern of abuse over time, not individual or rare episodes@). Legislative definitions of A bullying@ often differ from the definition used by educational and scientific researchers. See Susan P. Limber & Mark A. Small, *State Laws and Policies to Address Bullying in Schools*, 32 SCH. PSYCHOL. REV. 445, 447 (2003), available at <http://www.Ebscohost.com>. For this article, I will use the researchers= accepted definition.

7. HOOVER & OLIVER, *supra* note 6, at 5.

8. Bullying does not include acts of A impulsive aggression Y aggression that is a spontaneous, indiscriminate striking out, with no intended target@ BARBARA COLOROSO, *THE BULLY, THE BULLIED, AND THE BYSTANDER* 39 (2003).

9. Walter B. Roberts, Jr., *The Bully as Victim: Understanding Bully Behaviors to Increase the Effectiveness of Interventions in the Bully-Victim Dyad*, PROF. SCH. COUNSELING, Dec. 2000, at 148, available at <http://www.Ebscohost.com> (explaining that teasing can be a normal part of students= interaction, but that it can escalate into bullying if it becomes persistent, malicious, or threatening).

10. See DAN OLWEUS, *BULLYING AT SCHOOL* 9-10 (1993); Denise Rinaldo, *What=s a Bully?*, 17 SCHOLASTIC CHOICES 12 (Oct. 2001), available at <http://www.Ebscohost.com>.

11. Dan Olweus, *A Profile of Bullying at School*, 60 EDUC. LEADERSHIP 12 (Mar. 2003), available at <http://www.Ebscohost.com>.

12. Zopito Marini et al., *Peer Harassment in Individuals with Developmental Disabilities:*

characterized by an imbalance of power between the bully and the bullied.¹⁴ Either physical or psychological.

Researchers have divided bullies into four groups: (1) physical bullies, (2) verbal bullies, (3) relational bullies, and (4) reactive bullies.¹⁵ Physical bullies are most often male and typically use direct actions, such as hitting and kicking.¹⁶ Verbal bullies use words to attack their victims.¹⁷ Relational bullies usually are females who exercise power to exclude others from the group.¹⁸ Reactive bullies tend to act impulsively; they taunt others into fighting, fight back, and then claim self-defense.¹⁹

All bullies want to control and intimidate their victims.²⁰ Bullies are aggressive toward peers.²¹ They tend to be “impulsive and have a low tolerance for frustration.”²² Younger bullies are often unwilling to accept others’ ideas, to be effective followers, or to negotiate.²³ Most bullies attempt to take advantage of the victim’s perceived weakness—whether it be gender, race, religion, sexual orientation, perceived strength, physical appearance or dexterity, intellectual ability, or something else.²⁴

Many bullies have been subjected to physical or emotional abuse;²⁵ in fact, some are the victims of other bullies.²⁶ Evidence exists that bullying can be an

Towards the Development of a Multi-Dimensional Bullying Identification Model, 29 DEVELOPMENTAL DISABILITIES BULL. 170, 177 (2001). See also OLWEUS, *supra* note 10, at 9.

13. Paul R. Smokowski & Kelly Holland Kopasz, *Bullying in School: An Overview of Types, Effects, Family Characteristics, and Intervention Strategies*, 27 CHILDREN & SCHS. 101, 101 (Apr. 2005).

14. Martin J. Dunn, *Break the Bullying Cycle*, 73 AM. SCH. & U. 38, 38 (June 2001), available at <http://www.Ebscohost.com>; Espelage & Swearer, *supra* note 5, at 368.

15. Smokowski & Kopasz, *supra* note 13, at 102.

16. *Id.*

17. See, e.g., COLOROSO, *supra* note 8, at 16 (“Verbal bullying can take the form of name-calling, taunting, belittling, cruel criticism, personal defamation, racist slurs, and sexually suggestive or sexually abusive remarks.”).

18. Olweus, *supra* note 11, at 14; Smokowski & Kopasz, *supra* note 13, at 102.

19. Smokowski & Kopasz, *supra* note 13, at 102.

20. John Hoover & Richard J. Hazler, *Bullies and Victims*, 25 ELEMENTARY SCH. GUIDANCE & COUNSELING 212 (Feb. 1991), available at <http://www.Ebscohost.com>.

21. OLWEUS, *supra* note 10, at 34.

22. Smokowski & Kopasz, *supra* note 13, at 102.

23. Hoover & Hazler, *supra* note 20.

24. For additional reasons why individuals may be singled out by a bully, see James Cook University, *Why Bullying Happens*, <http://www.jcu.edu.au/office/eandsd/Bullying/why.html> (last visited Oct. 11, 2005) (a sampling includes perceived over-achievement or success, over-enthusiasm, over-inquisitiveness, knowledge of personal indiscretion, and vulnerability arising from a death or maternity leave), and HOOVER & OLIVER, *supra* note 6, at 13 fig. 2.1 (A Highest Ranked Reasons for Being Bullied@) (the lists include Adidn=t fit in,@ physical weakness, clothing, facial appearance, overweight, good grades, Afriends were [bullied],@ and homosexuality or rumored homosexuality).

25. See OLWEUS, *supra* note 10, at 40 (indicating that a parent’s use of corporal punishment is a factor that can create aggression in children). See generally Ronald Oliver & I. Neal Oaks, *Family Issues and Interventions in Bully and Victim Relationships*, 41 SCH. COUNSELOR 199 (Jan. 1994), available at <http://www.Ebscohost.com> (indicating that bullies often come from a Acool-to-

inter-generational problem within families.²⁷ In a study that followed bullies as they grew up, researchers found that children who were bullies at age 14 were likely, at age 32, to have children who were bullies.²⁸ Bullies exhibit high levels of anger and have a more positive view of violence than students in general.²⁹ In addition, many bullies—especially those victimized by others—experience elevated levels of depression.³⁰ Studies also reflect that bullies frequently suffer from mental-health difficulties such as attention-deficit disorder and oppositional-conduct disorder.³¹ Moreover, children who bully others are at risk for engaging in other types of problematic behavior as adults. For example, approximately 60 percent of boys who were characterized as bullies in grades 6-9 had at least one conviction by the age of 24.³² Research also demonstrates that excessive drinking and substance abuse are common among bullies.³³

Some bullies crave attention.³⁴ Others are simply too self-absorbed to

cold emotional environment with a marginal-to-negligent lack of involvement by the primary caregiver; A[t]here will often be little in the way of family structure or rules; A[g]eneral parental conflict and disharmony is common; A[t]he parents of socially aggressive children tend to employ ineffective child management techniques; and the parents sometimes use excessive physical punishment).

26. Tara L. Kuther, *Understanding Bullying*, OUR CHILDREN: THE NATIONAL PTA MAGAZINE, Oct. 2003, available at http://www.pta.org/archive_article_details_1117637268750.html; Marianne Kolbasuk McGee, *School-Yard Bullies Add Internet to Arsenal of Pain* (May 25, 2005), <http://nwc.compliancepipeline.com/163700918> (Alronically, the Internet is also empowering former victims of physical bullying to transform themselves into new cyberbullies. Sometimes the physically smaller >geeky= kid, who=s better with technology, gets back at his or her nemesis by using the Web as a weapon. >It=s revenge of the nerds Y.=@); Bob Meadows et al., *The Web: The Bully=s New Playground*, PEOPLE, Mar. 14, 2005, at 152 (describing a situation in which a 14-year-old African American, who was subjected to racial epithets and called other names, retaliated against the classmates by writing on a web site popular with students at his school that the female name-caller was sexually promiscuous and that the male name-caller was gay).

27. See RANA SAMPSON, U.S. DEPT. JUSTICE, BULLYING IN SCHOOLS 9 (Problem-Oriented Guides for Police Series Guide No. 12, 2002), available at <http://www.cops.usdoj.gov/mime/open.pdf?Item=272>.

28. *Id.*

29. Espelage & Swearer, *supra* note 5, at 373 (Anger has consistently emerged as an important correlate of bullying.); OLWEUS, *supra* note 10, at 34.

30. Espelage & Swearer, *supra* note 5, at 373.

31. Smokowski & Kopasz, *supra* note 13, at 103. Oppositional-conduct disorder represents a broad range of behaviors in pre-adolescent (8-12 years old) and adolescent children (13-18 years old). The behaviors [that] distinguish this disorder range from relatively minor behaviors such as yelling, whining, and temper tantrums to aggression, physical destructiveness and stealing. Michael G. Conner, *Understanding and Dealing with Conduct and Oppositional Disorders* (rev. Mar. 29, 2004), <http://www.oregoncounseling.org/Handouts/ConductOppositional.htm>.

32. OLWEUS, *supra* note 10, at 36.

33. *Id.*; Riittakerttu Kaltiala-Heino et al., *Bullying at School: An Indicator of Adolescents at Risk for Mental Disorders*, 23 J. ADOLESCENCE 661, 662 (2000). See also Timothy W. Kinlock et al., *Factors Associated with Criminal Severity among Adolescents Entering Substance Abuse Treatment*, J. DRUG ISSUES, Spring 2004, at 293 (finding, in a study of 178 adolescents entering an outpatient substance abuse center, significant connections between serious illegal activities and factors such as drug use, bullying[,] and being physically cruel to people).

34. Smokowski & Kopasz, *supra* note 13, at 102.

recognize the actual impact they have on their victims.³⁵ Common misconceptions about bullies include that they emerge primarily in large classes, act based on competition for grades, and have low self-esteem.³⁶ To the contrary, the percentage of students bullied in small classes is slightly higher than those bullied in large classes.³⁷ Studies also show that low grades or lack of success in school do not cause bullies to act out,³⁸ and that most bullies have normal to high levels of self-esteem and often are popular among classmates.³⁹

Educators should also know that consumerism plays a role in enabling bullies. Consumerism causes some bullies to view education as a product to be sold or a ticket that must be punched to move to the next box in the game. Thus, they view the academic community with contempt and do not hesitate to disrupt the learning process.⁴⁰

B. Cyberbullies

With the advent of the Internet, e-mail, and other forms of e-technology, bullying has morphed into cyberbullying.⁴¹

Cyberbullying involves the use of information and communication technologies such as e-mail, cell phone and pager text messages, instant messaging, defamatory personal Web sites, and defamatory online personal polling Web sites, to support deliberate, repeated, and hostile behaviour by an individual or group, that is

35. See Joy Cranham & Annemaree Carroll, *Dynamics within the Bully/Victim Paradigm: A Qualitative Analysis*, 19 EDUC. PSYCHOL. PRAC. 113, 114 (2003) (Bullies also tend to have little empathy for the victims of bullying.); M.E. Kabay, Presentation, Anonymity and Pseudonymity in Cyberspace: Deindividuation, Incivility and Lawlessness Versus Freedom and Privacy § 3.1.1 (Annual Conference European Inst. for Computer Anti-virus Research, Munich, Germany, Mar. 16-18, 1998), available at <http://www2.norwich.edu/mkabay/overviews/anonpseudo.htm> (accessed May 28, 2005) (Sometimes it seems that e-mail flammers are engaged in their version of a video game; they give the impression of losing sight of the real human beings on the other end of their verbal aggression.); Smokowski & Kopasz, *supra* note 13, at 102.

According to Professor Pier Massimo Forni, an expert on civility, narcissism is a leading cause of bullying. Forni pins partial blame on the self-esteem movement that dominated child-rearing and education in the 1970s and >80s. >When we feed our children super-sized doses of self-esteem, we sometimes wind up with kids who are self-absorbed Y. They have trouble transcending their own immediate concerns Y. They are not considerate Y they are not kind.=@ Charlie Gillis, *Rude Awakening*, MACLEAN=S, Apr. 5, 2004, at 28.

36. Olweus, *supra* note 11, at 14.

37. OLWEUS, *supra* note 10, at 24-25.

38. *Id.* at 28, 30.

39. *Id.* at 34-35. See also Richard J. Hazler et al., *What Kids Say about Bullying*, EXEC. EDUCATOR, Nov. 1992, at 20, 21 (Many of the students we spoke with apparently believed that bullies had more social status than victims.).

40. See Patrick J. Morrisette, *Reducing Incivility in the University/College Classroom*, 5 INT'L ELECTRONIC J. FOR LEADERSHIP IN LEARNING, at AFactors Contributing to Incivility@ (May 14, 2001), <http://www.ucalgary.ca/%7Eiejll/volume5/morrisette.html>.

41. For a perceptive discussion of technology and civility, see STEPHEN L. CARTER, *CIVILITY: MANNERS, MORALS, AND ETIQUETTE OF DEMOCRACY* ch. 11 (1998).

intended to harm others.⁴²

While technology has helped advance learning and teaching, it can be used for nefarious purposes. Technology allows tormentors to act under a veil of anonymity, which only increases the maliciousness.⁴³ Technology affords bullies 24/7 access to potential victims, and opens the opportunity for persistent, unending harassment from which victims are hard-pressed to escape.⁴⁴ Technology lets bullies act instantaneously on their impulses; it has erased the reflection time between planning and commission.⁴⁵ Technology allows the instigator's venom to be spread to an international audience,⁴⁶ causing the victim tremendous embarrassment and shame. Technology provides a forum within which electronic mobs can form quickly and almost effortlessly, which draws more people into the offensive activity. In sum, technology allows bullies to be meaner, more frequently, with more allies, before an inestimable audience. It gives them a greater sense of invincibility and inhibits their fear of being caught and punished.

As noted above, cyberbullies are emboldened by the anonymity and pseudonymity that e-mail and the Internet can provide.⁴⁷ They hide behind screen names and multiple electronic addresses. Skillful cyberbullies route messages in a way that cannot easily be traced and they know that most service providers will not provide identity information to schools.⁴⁸ Unlike traditional bullies, cyberbullies do not rely on physical power differences, but they still seek to control their victims by inflicting verbal, emotional, or psychological abuse.⁴⁹

42. Bill Belsey, Explanation of Cyberbullying, <http://www.cyberbullying.ca> (last visited Oct. 13, 2005).

43. Leon Beckerman & John Nocero, *You=ve Got Hate Mail*, PRINCIPAL LEADERSHIP, Dec. 2002, at 38, 40, available at http://www.findarticles.com/p/articles/mi_qa4002/is_200212/ai_n9152057 (A[Sitting behind a computer working the keyboard gives students a sense of power and control they do not have in a face-to-face situation]. Students become bolder and say things that normally would not occur to them.@).

44. Betsy Flagler, A New Way to Bully: Cyberbullying, <http://myschoolonline.com/page/0,1871,8775-145271-8-8499,00.html> (last visited Oct. 13, 2005) (A[Victims] feel like they=re tethered to their tormentors. Unlike with bullying in the halls at school, a cyberbully can follow you through the door of your home and be with you around the clock.@ (quoting Glenn R. Stutzky, a school violence expert from Michigan State University)).

45. KATHLEEN CONN, BULLYING AND HARASSMENT: A LEGAL GUIDE FOR EDUCATORS 152 (2004); Mark Franek, *Rise of the Cyberbully Demands New Rules*, CHRISTIAN SCI. MONITOR, May 10, 2004, available at <http://www.csmonitor.com/2004/0510/p09s01-coop.htm>.

46. Jeffrey Selingo, *Facing Down the E-Maelstrom*, CHRON. HIGHER EDUC., Apr. 29, 2005, at 27, available at <http://chronicle.com> (noting that email and web blogs facilitate widespread dissemination of often erroneous information about campus incidents).

47. Kabay, *supra* note 35.

48. Most service providers will provide user identity information only if a subpoena is issued. *E.g.*, America Online, Privacy Policy, http://www.aol.com/info/p_privacy.adp (last visited Nov. 17, 2005) (AAOL.com may share such information in response to legal process, such as a court order or subpoena, or in special cases such as a physical threat to you or others.@). *See generally* CONN, *supra* note 45, at 164 (A[Internet bullying is hard to trace. Internet service providers are not routinely required to identify users of their services.@).

49. Belsey, *supra* note 42.

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Interestingly, females are more likely than males to be cyberbullies.⁵⁰ And like the teens in the movie *Mean Girls*,⁵¹ women cyberbullies tend to target other women.⁵²

Cyberbullies fall into five categories, which are akin to the categories of traditional bullies:⁵³ (1) Apower hungry@ cyberbullies, (2) Arevenge of the nerds@ cyberbullies, (3) Amean girls,@ (4) Avengeful angels,@ and (5) Ainadvertent cyberbullies.@⁵⁴ APower hungry@ cyberbullies exert authority to show they are powerful enough to control others. They want their victims to fear them, and they crave an audience. They pick on others to evoke a reaction, and they often brag about their antics.⁵⁵

AREvenge of the nerds@ cyberbullies usually are females or physically smaller males; they are often criticized by classmates for not being popular or cool. These cyberbullies want to show they can control and intimidate victims by using their superior verbal and intellectual skills. They are technically proficient and thrive on anonymity. They rarely would be traditional bullies, because they fear direct confrontation.⁵⁶

As the name implies, Amean girls@ are typically female cyberbullies. Mean girls act as a group and often bully for Afun.@ Mean girls Awant others to know who they are and that they have the power to cyberbully others.@⁵⁷ They thrive on cliques and excluding others from their group. If the victim does not react, mean girls quickly quit for lack of Aentertainment value.@⁵⁸

AVengeful angels@ are cyberbullies who adopt the role of protector or retaliator. They frequently have been bullied by another, or are friends with a victim. Vengeful angels view their victims as Abad people,@ and rationalize their conduct as legitimate and necessary. They typically work alone, but may share information with close friends.⁵⁹

AInadvertent cyberbullies@ do not consider themselves to be bullies. AThey may be pretending to be tough online, or role playing, or they may be reacting to hateful or provocative messages they have received.@⁶⁰ They typically are

50. Julie Blair, *New Breed of Bullies Torment Their Peers on the Internet*, EDUC. WEEK, Feb. 5, 2003, at 6, available at <http://www.Ebscohost.com>.

51. MEAN GIRLS (Paramount Home Studios 2004).

52. Gary Namie, *Workplace Bullying: Escalated Incivility*, IVEY BUS. J., Nov./Dec. 2003, at 1, 2 (AWomen comprise 58 percent of the perpetrator pool, while men represent 42 percent. Our research also shows that when the targeted person is a woman, she is bullied by a woman in 63 percent of cases; when the target is male, he is bullied by a man in 62 percent of incidents Y. Overall, women comprise the majority of people bullied (80 percent).@). See generally RACHEL SIMMONS, *ODD GIRL OUT: THE HIDDEN CULTURE OF AGGRESSION IN GIRLS* (2002).

53. See *supra* text accompanying notes 15-19.

54. Parry Aftab, *Why Do Kids Bully Each Other Online? Let Me Count the Ways Y*, <http://www.netbullies.com/pages/2/index.htm> (last visited Nov. 17, 2005).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

reactive, not proactive, and often respond to others without thinking about how their actions will affect others.⁶¹

Cyberbullies have a range of weapons at their disposal. They can send nasty e-mails⁶² or cell-phone text messages, and can use camera phones to snap unflattering pictures that can be quickly distributed via web or e-mail.⁶³ They can engage the victim in an IM conversation, trick the person into revealing sensitive information, and then forward that information to others as a Ajoke.⁶⁴ They can hack into the victim=s e-mail account, impersonate the account holder, and send messages that contain embarrassing or insulting information about the victim=s friends.⁶⁵

They can set up a web site that posts hateful statements, distortions, and fabrications meant to disgrace another,⁶⁶ or they can participate in chat rooms in which teachers and other students are taunted and belittled.⁶⁷ They can establish virtual polling places and voting booths on sites such as www.freevote.com and hold elections for the ugliest, fattest, or dumbest person in class.⁶⁸ They can use the technique of Aboycotting@ to intentionally exclude a person from an online group, such as a chat room or IM buddies list.⁶⁹

Cyberbullies also can use others to do their dirty digital work. This

61. *Id.*

62. These e-mail messages often are referred to as Aflame mail@ or Ahate mail.@ AFlame mail@ contains information designed to inflame or enrage the recipient; Ahate mail@ plays on prejudices and includes messages with racist and sexist comments. Urban75 Info/Legal, CyberbullyingCDealing with Cyber Bullies, Flame Mail, Hate Mail, <http://urban75.org/info/bullying.html> (last visited Nov. 17, 2005). Another form of e-mail bullying is known as Acyberstalking.@ which occurs when the bully sends messages that contain threats of harm, or messages that are Ahighly intimidating.@ Center for Safe & Responsible Internet Use, A Parents= Guide to Cyberbullying and Cyberthreats 2 (2005) [hereinafter Parents' Guide], <http://cyberbully.org/docs/cbctparents.pdf>. See generally CONN, *supra* note 45, at 166-69 (defining cyberstalking and discussing state and federal laws against cyberstalking).

63. U.K. Nat'l Workplace Bullying Advice Line, Bullying by Mobile Phone and Cell Phone, <http://www.bullyonline.org/schoolbully/mobile.htm> (last visited Nov. 17, 2005); Franek, *supra* note 45; Amanda Paulson, *Internet Bullying*, CHRISTIAN SCI. MONITOR, Dec. 30, 2003, at 11, available at <http://www.Ebscohost.com> (recounting a situation in Japan in which classmates of an overweight boy used a cell phone to snap pictures of him changing in the locker room and then widely distributed the shots).

64. Parents' Guide, *supra* note 62, at 2. This conduct is known as Aouting.@ *Id.*

65. Blair, *supra* note 50 (a sixth grade cyberbully impersonated an 11-year-old girl, wrote and sent several cruel e-mails messages using her account, and created a web site in the victim=s name that defamed the victim=s friend; as a result of this impersonation, the girl was ostracized by her peers); Jon Swartz, *Schoolyard Bullies Get Nastier Online*, USA TODAY, Mar. 7, 2005, at A1. This conduct is known as Aimpersonation.@ Parents' Guide, *supra* note 62, at 2.

66. *E.g.*, Paulson, *supra* note 63 (describing a situation in California in which gossip and racist remarks were routinely posted). These sites are often referred to as Abash boards.@ Belsey, *supra* note 42 (follow AExamples@ hyperlink, then follow "Chat Rooms/Bash Boards" hyperlink).

67. Peter F. Lake, *Cyber Bullying in Class and on Campus*, 31 LEADERSHIP EXCHANGE 22, 22 (Summer 2005). This conduct is known as Adenigration.@ Parents' Guide, *supra* note 62, at 2.

68. Belsey, *supra* note 42 (follow AExamples@ hyperlink, then follow "Polling/Voting Booths" hyperlink).

69. Parents' Guide, *supra* note 62, at 2.

phenomenon is known as *proxy* or *third-party* cyberbullying.⁷⁰ One example occurs when the bully convinces others to send messages designed to anger the victim; when the victim responds in anger or frustration, the bully forwards that e-mail to a teacher, Internet service provider, or authority, who in turn punishes the victim.

Cyberbullies can target a single victim, or can choose to torment an entire class by interfering with the learning process.⁷⁰ During class, cyberbullies might send IMs or e-mail messages that distract other students. They might participate in a chat room and coordinate activities such as directing participants to make a certain noise at a certain time that distract the teacher or student speaking. They might send messages denigrating the professor or a classmate, thus damaging the victim's reputation. During an online class, they might post remarks that chill other students' participation.⁷¹

The examples described above are just some of the current tactics cyberbullies use. Unfortunately, as technology evolves, cyberbullies undoubtedly will invent new and even more extreme ways to control and intimidate their victims.

C. Victims

The victims of bullying conduct are not a homogenous group. One paradigm divides victims into categories based on behavior that attracts bullies to target the individual. Under this approach, victims are considered to be either *passive* or *provocative*.⁷²

Research regarding traditional bullying indicates that most victims are passive.⁷³ Passive victims tend to be loners and introverts, and they tend to blame themselves for difficulties or characteristics that make them attractive targets for bullies.⁷⁴ In the K-12 setting, studies show that passive victims are more anxious and insecure than students in general; they typically suffer from low self-esteem and act in ways that signal they are not likely to retaliate if attacked.⁷⁵ Passive victims avoid aggression and confrontation and lack the confidence or skill to elicit support from peers.⁷⁶ A smaller group of victims, known as *provocative* victims, has both anxious and aggressive reaction patterns.⁷⁷ They often are disruptive and behave in ways that irritate those

70. Morrissette, *supra* note 40, at Introduction.

71. Summerville & Fischetti, *supra* note 4 (While Mr. Bully was enrolled in the online courses, his negative postings had a chilling effect on the flow of ideas. Several students reported to [the professor] that they were unwilling to post their assignments and discuss them because Mr. Bully posted derogatory comments about higher education and his peers' work in the course discussion forums.).

72. OLWEUS, *supra* note 10, at 32-33.

73. *Id.* at 32.

74. Kaltiala-Heino et al., *supra* note 33, at 662; Smokowski & Kopasz, *supra* note 13, at 104.

75. *Id.*; *Bullies and Their Victims*, HARV. MENTAL HEALTH LETTER, Nov. 2001, at 4, available at <http://www.Ebscohost.com>.

76. VALERIE E. BESAG, BULLIES AND VICTIMS IN SCHOOLS: A GUIDE TO UNDERSTANDING AND MANAGEMENT 13 (1989).

77. OLWEUS, *supra* note 10, at 33; Christina Salmivalli et al., *How Do the Victims Respond to*

around them.⁷⁸

Another study has divided victims into categories based on how they respond to bullying conduct. Under this approach, victims are considered to be Acounteraggressive,@ Ahelpless,@ or Anonchalant.@⁷⁹ Counteraggressive victims are willing to confront the bully; they will speak up when bullied, and will ask for help.⁸⁰ They also try to win over bystanders and attempt to make others hate the bully.⁸¹ Helpless victims try to avoid the conflict. They are not likely to confront the bully, are apt to cry, and may try to avoid the bully by staying home.⁸² Nonchalant victims try to stay calm and give the outward impression that they do not take the bullying seriously.⁸³

The effects of bullying on victims can be devastating. Victims of bullying can experience shame,⁸⁴ problems in school,⁸⁵ embarrassment, fear, and various stress-related problems, including panic attacks, insomnia, loss of concentration, clinical depression,⁸⁶ eating disorders,⁸⁷ and other physical ailments.⁸⁸ One study found that many victims suffer from attention-deficit disorder; the condition occurs because victims A may feel the need to constantly monitor their environment, anxiously anticipating the next victimization episode.@⁸⁹ Another study concluded that A a cycle of peer rejection, loneliness, drunkenness, self-derogation, depression, alcohol problems and being bullied can occur@ in victims.⁹⁰ The psychological harm suffered by victims of cyberbullying may be

Bullying?, 22 *AGGRESSIVE BEHAV.* 99, 100 (1996) (approximating that 14.3% to 17% of victims fall into the provocative category).

78. OLWEUS, *supra* note 10, at 33.

79. Salmivalli et al., *supra* note 77, at 101.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* See also *id.* at 108 (explaining that although nonchalant victims may feel hurt and unable to defend themselves against the bully, they react publicly in a way that will cause classmates to think they do not care about the bullying).

84. See Namie, *supra* note 52, at 3 (analogizing bullying to domestic violence).

85. HOOVER & OLIVER, *supra* note 6, at 10; Xin Ma et al., *Bullying in School: Nature, Effects and Remedies*, 16 *RESEARCH PAPERS EDUC.* 247, 251 (2001), available at http://www.educationarena.com/educationarena/sample/sample_pdfs8/red16_3.pdf (AVictims of bullying may lose interest in learning and experience a drop in academic grades because their attention is distracted from learning.@).

86. BESAG, *supra* note 76, at 54 (AVictims of bullying do appear to be trapped in the situation, frequently over a long period of time. If they can see no way of escape, depression can result.@).

87. Smokowski & Kopasz, *supra* note 13, at 104.

88. *Id.* See also Daniel B. Weddle, *When Will Schools Take Bullying Seriously?*, 39 *TRIAL* 18, 19 (Oct. 2003) (AMany bystanders experience intense feelings of vulnerability and, in some cases, suffer the same emotional problems as the targets.@).

89. Smokowski & Kopasz, *supra* note 13, at 104.

90. Emmanuel N. Kuntsche & Gerhard Gmel, *Emotional Wellbeing and Violence among Social and Solitary Risky Single Occasion Drinkers in Adolescence*, 98 *ADDICTION* 331, 337 (2004). Just as an inter-generational link may exist for bullies, one also may exist for victims. See *supra* notes 27-28 and accompanying text. One study A found that adolescent victims, once they are adults, were more likely than non-bullied adults Y to have children who are victims.@ Sampson, *supra* note 27, at 12.

even greater because it is more difficult for them to escape the tormentor, and because they often do not know the cyberbully's identity, which enhances the apprehension.⁹¹

Some victims simply suffer in silence because they fear ostracism, retaliation,⁹² or escalation in the bullying.⁹³ Some leave the environment because it a workplace or school hoping that the harassment will end when they depart.⁹⁴ Some seek help from friends, teachers, or others.⁹⁵ But others, out of desperation, exact revenge on their tormentors and those they perceive allowed the tormentor to thrive.⁹⁶ Some take their own lives.⁹⁷

Research regarding faculty members who were bullied by students reveals they are reluctant to report the problems because they fear others will view them as incompetent or unable to manage their classes:

This may be especially true for junior faculty who worry about poor teaching evaluations and the ongoing promotion/tenure review process. Colleagues have revealed that disclosing problematic student conduct may result in questions regarding their teaching ability and suitability for the university/college classroom. The private nature of teaching can contribute to a silence regarding instruction, faculty-student interaction, and student behavior. Consequently, what transpires in classrooms is rarely discussed and faculty may feel that it is their duty to resolve

91. Parents' Guide, *supra* note 62, at 5; Parenting & Child Health, What's New: Cyberbullying (Dec. 6, 2004) (citing Mary Zimmerle, Cyber Bullying), available at <http://www.cyh.sa.gov.au/Archive/NewsDetail.aspx?p=100&id=1811&np=156>.

92. Ma et al., *supra* note 85, at 254.

93. *Id.* See generally COLOROSO, *supra* note 8, at 49.

94. See, e.g., Lynne McDougall, *A Study of Bullying in Further Education*, PASTORAL CARE IN EDUC., June 1999, at 31, 32, available at <http://www.Ebscohost.com> (college-aged student withdrew from college after being physically and verbally bullied); Meadows et al., *supra* note 26, at 152 (14-year-old female victim of cyberbullying who finally switched schools when she became so anxious she could not sleep); Rinaldo, *supra* note 10, at 13 (high school student transferred to a boarding school to escape a bully).

95. See *Bullies and Their Victims*, *supra* note 75, at 5.

96. See Richard J. Hazler, *When Victims Turn Aggressors: Factors in the Development of Deadly School Violence*, PROF. SCH. COUNSELING, Dec. 2000, at 105, available at <http://www.Ebscohost.com>; BRYAN VOSSEKUIL ET AL., U.S. SECRET SERV. & U.S. DEP'T OF EDUC., THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE: IMPLICATIONS FOR THE PREVENTION OF SCHOOL ATTACKS IN THE UNITED STATES 15 (2002), available at http://www.secretservice.gov/ntac/ssi_final_report.pdf (finding that 71% of 41 school shooters between 1974 and 2000 had been targets of bullies). See also Mark Chapell et al., *Bullying in College by Students and Teachers*, ADOLESCENCE, Spring 2004, at 53, 54, available at http://www.findarticles.com/p/articles/mi_m2248/is_153_39/ai_n6143558; Kuther, *supra* note 26 (The experience of bullying is also linked with violence, as the fatal school shootings in Littleton, Colorado and Jonesborough, Arkansas have illustrated.).

97. See, e.g., Marianne D. Hurst, *When It Comes to Bullying, There Are No Boundaries*, EDUC. WEEK, Feb. 9, 2005, at 8 (Norway was the first country to seriously address bullying, but did so only after three adolescents committed suicide after being bullied); Meadows et al., *supra* note 26 (13-year-old cyber-victim committed suicide).

issues independently.⁹⁸

Others stay silent because they doubt administrators will support them, and because they fear student reprisal.⁹⁹ Of course, the reactions of younger victims are even more severe,¹⁰⁰ and studies involving child-victims show that they rarely seek help from adults or their peers.¹⁰¹

D. Bystanders

Bystanders are the third group affected by and involved in bullying. Bystanders can be passive or active.¹⁰² Passive bystanders typically observe bullying but lack the self-confidence to intervene or assist.¹⁰³ Bystanders typically choose not to intervene because they fear getting injured, dread becoming the bully's next target, worry about making the situation worse, or simply do not know what to do.¹⁰⁴

Other bystanders cheer the bully, or actively participate in the bullying.¹⁰⁵

[M]any students who persistently witness bullying begin to approve of the behavior and begin to blame the victim for the problem. Many go further and begin to participate in the bullying. One study of 164 students in a large urban area revealed that peers cooperated in more than 85% of the incidents of bullying identified in the study.¹⁰⁶

In a cyberbully situation, anonymity can increase the odds of bystanders supporting bullies and participating in their bad acts. Studies of crowd behavior show that members who perceive they are anonymous are more likely to shed their inhibitions and act in antisocial ways; they also are subject to increased

98. Morrissette, *supra* note 40, at "The Underreporting of Student Civility."

99. *Id.*

100. See COLOROSO, *supra* note 8, at 48-53.

101. BESAG, *supra* note 76, at 53. As Besag also explains:

It is too painful to admit that one is [at the] bottom of the social heap and so very disliked. Many victims prefer to keep their distress to themselves. Although the confusion and complexity of the emotional turmoil of the victims of crime is becoming better understood, victims of bullying in school can still find themselves, with the best of intentions, subjected to intense interrogation by parent or teacher and cajoled, persuaded or demanded to disclose embarrassing or even dangerous information on the spot.

Id.

102. Barbara Coloroso, *A Bully's Bystanders Are Never Innocent*, EDUC. DIG., Apr. 2005, at 49, 49-50.

103. *Id.*

104. COLOROSO, *supra* note 8, at 67.

105. *Id.*; Coloroso, *supra* note 102, at 50.

106. Weddle, *supra* note 5, at 649; Weddle, *supra* note 88, at 19 (explaining that some bystanders join in because the bully convinces them that the victim somehow deserves bad treatment).

suggestibility from the leaders.¹⁰⁷

A third group of bystanders actively intervenes to help the victim.¹⁰⁸ Little research exists about bystanders in this category or what motivates them to help. The answer likely is that they know and like the victim.¹⁰⁹

Because most students are bystanders, they can be a powerful force in either encouraging or stopping the bully.¹¹⁰ For this reason, schools should consider them for a significant role when searching for solutions to the problems of bullying and cyberbullying.

III. BULLIES AND CYBERBULLIES IN HIGHER EDUCATION

Although bullying is most common at the KB12 level, it does not end there.¹¹¹ For example, one recent study of bullies on college campuses found:

[More than] 60% of the students reported having observed a student being bullied by another student Y More than 6% of the students reported having been bullied by another student occasionally or very frequently, and Y over 5% of the students stated that they bullied students occasionally or very frequently.¹¹²

Similarly, a study conducted at a college¹¹³ in the United Kingdom found that

107. Kabay, *supra* note 35, ' 3.1.

108. Ma et al., *supra* note 85, at 256 (describing a study of elementary school students in which 54% of the bystanders passively watched the bullying, 21% actively joined the bully, and 25% intervened to help the victim). *See generally* Rona S. Atlas & Debra J. Pepler, *Observations of Bullying in the Classroom*, 92 J. EDUC. RES. 86 (Nov./Dec. 1998) (relating the various ways school-aged bystanders react to bullying behavior).

109. COLOROSO, *supra* note 8, at 66.

110. *See generally* Timothy C. Caboni et al., *Student Norms of Classroom Decorum*, 99 NEW DIRECTIONS FOR TEACHING & LEARNING 59, 64 (Fall 2004) (finding that Astudents play an important role in sanctioning the behaviors of their class peers@).

111. For a specific case involving a student enrolled in online courses at a university, see Summerville & Fischetti, *supra* note 4.

112. Chapell et al., *supra* note 96, at 59. *See also* Katie Muehlhausen, *Presentation to Address Internet Stalking, Crimes*, PURDUE EXPONENT (Feb. 20, 2002), available at <http://www.purdueexponent.org/2002/02/20/features/Cyber.html> (describing the problem of Internet harassment). *But cf.* Espelage & Swearer, *supra* note 5, at 372 (describing studies that have found that the Atypical trajectory of bullying from a developmental perspective is an increase and peak during early adolescence, and a decrease in bullying during the high school years@). Bullying in the workplace is also becoming a problem. Sarah B. Hood, *Workplace Bullying*, CANADIAN BUS., Sept. 13, 2004, at 87, available at <http://www.Ebscohost.com>; David C. Yamada, *The Phenomenon of AWorkplace Bullying@ and the Need for Status-Blind Hostile Work Environment Protection*, 88 GEO. L.J. 475, 479-81 (2000); PublicVirtues.com, *Incivility in the Workplace*, http://www.publicvirtues.com/Incivility_Study.html (last visited Nov. 15, 2005) (discussing a 1999 survey conducted by professors at the University of North Carolina business school: A[s]urvey results indicated that twelve percent of the people [who] experience[d] rude behavior quit their jobs, while 52 percent reported losing work time and 22 percent of those surveyed deliberately decreased their work effort@; more than 78 percent of survey participants reported that Aincivility has worsened in the past 10 years@). *See generally* GIOVINELLA GONTHIER, *RUDE AWAKENINGS: OVERCOMING THE CIVILITY CRISIS IN THE WORKPLACE* (2002).

113. McDougall, *supra* note 94, at 31. Most students at this college were between 16 and 18

9.6% of the students were bullied.¹¹⁴ This study also concluded that the following factors can enable bullies in the university setting: larger classes, professors without teacher training qualifications, and more unstructured time for students.¹¹⁵

Law schools are not immune from bullies and cyberbullies. In the past few years, I have noticed a handful of students who, when they communicate with professors and administrators, exhibit bullying tendencies. They send numerous messages, and the messages are little more than personal attacks. For these persistent offenders, we first try counseling; if counseling fails, we proceed with discipline under the law school's Code of Student Professionalism and Conduct.¹¹⁶

One serious incident occurred right before finals in Spring 2004 when a student spoofed an e-mail account to make it appear that I, the Dean, sent the message.¹¹⁷ The message went to about two dozen students and stated they would be prosecuted under the honor code for participating in an underground newsletter that had been circulating around campus for several months. The students who received the messages were distraught and distracted from their studies, and it took me many hours to assure them that they were not in trouble.¹¹⁸

Another example occurred during Fall 2004. Around Thanksgiving, I was given transcripts from a chat room in which about twenty first-semester students had been participating during classes. The transcripts were shocking. The participants bragged about alcohol and drug use, played games that focused on a certain male body part, threatened violence against females, ridiculed classmates based on religion and skin color, and speculated about the sexual orientation of one professor. The students also coordinated to disrupt class by making noises on cue.

Because the students made little effort to conceal their identities within the chat room, we were able to identify virtually all of the participants who were almost evenly divided between men and women and required them to participate in professionalism training and to help present programs on professionalism

years old. *Id.*

114. *Id.* at 33. Bullying in adult settings, such as a college, is likely under-reported because young adults are less likely to seek help due to a perception that, as an adult, they should be able to handle the situation alone. *Id.* at 32, 34.

115. *Id.* at 33-35. Plater College, another college in the United Kingdom, was closed in 2005 after inspectors discovered evidence of bullying, intimidation, drug use, and racial and sexual harassment. Joe Clancy, *College Axed after Report of Shame*, TIMES EDUC. SUPP., Feb. 18, 2005, available at http://www.tes.co.uk/search/story/?story_id=2074669.

116. Stetson Univ. College of L., Staff and Student Policies, Code of Student Professionalism and Conduct (Jan. 2005), <http://www.law.stetson.edu/policies/ConductCode.pdf>.

117. Although never proved, we suspected that the spoofer was the editor and publisher of the newsletter. The spoofed e-mail was sent after the newsletter editor using a pseudonym sent me an e-mail message indicating he was aware that I had read several issues. This editor also allegedly established a web site that contained negative information about the school.

118. Because the e-mail had been routed through several different providers, we did not catch the culprit.

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during new-student orientation. Most showed remorse and indicated that they did not comprehend how unprofessional and hurtful their conduct was. But the true bullies were adamant they had done nothing wrong and only wanted to know which classmate had squealed; we imposed additional disciplinary sanctions¹¹⁹ on these students and continue to closely monitor their conduct.

A third example involved both bullying and cyberbullying: two groups of students traded numerous e-mail messages, several of which could be interpreted as threatening physical violence. While the e-mail war escalated, both groups experienced property damage at their off-campus residences. One student was suspended on an interim basis pending completion of the investigation, and when the property damage occurred, local police became involved. The problems continued over a period of several weeks. Although the students did graduate due to our inability to trace the threatening e-mail messages, it ended up with black marks on their records, and it remains to be seen whether they will pass muster with the board of bar examiners.

These incidents come from a single student body in which the vast majority of students are courteous, motivated, and engaged. And these are just a sampling of the incidents about which I, as Dean, am aware.¹²⁰ Logic, therefore, dictates that the problem of cyberbullies is even greater on my campus and yours.¹²¹

IV. SOLUTIONS

Because cyberbullies threaten the health and welfare of our campus communities and the overall educational process, we must search for and implement solutions. Law schools must stop bullies. If left unchecked, they will enter the legal profession, where they undoubtedly will subject co-workers, subordinates, opposing counsel, and clients to their despicable conduct and further damage the reputation of lawyers. The bottom line is that we must not tolerate or enable bullies to survive, or thrive, on our campuses. We must, in the words of Rudolph Giuliani, stand up to bullies.¹²² Below are several solutions

119. This included moving them to a different section for all classes except for two that spanned the entire year.

120. As you might imagine, professors and other school employees can either be bullies or victims. See, e.g., Elaine Showalter, *Taming the Rampant Incivility in Academe*, CHRON. HIGHER EDUC., Jan. 15, 1999, available at <http://chronicle.com> (describing incivility the author suffered from professional colleagues during her tenure as president of the Modern Language Association). Cf. Yamada, *supra* note 112, at 485 (citing a 1995 study of university faculty and staff in which more than 50% of respondents indicated that they had experienced bullying behavior in the workplace; superiors were the most typical perpetrators).

121. Although anecdotal evidence suggests that bullying and cyberbullying are increasing in both the workplace and within educational institutions, it is not possible to determine the true extent of the problem, because no central tracking or reporting system exists. Morrissette, *supra* note 40, at A Tracking Uncivil Student Behavior. However, experts do know that bullying is one of the most underreported safety problems in schools because victims and bystanders often are reluctant to report the bully. SAMPSON, *supra* note 27, at 1. As a result, school officials may underestimate the extent of bullying in their school and may be able to identify only a portion of the actual bullies. *Id.* at 5.

122. RUDOLPH W. GIULIANI, LEADERSHIP 265 (2002).

that law schools should explore; the mix of solutions will, of course, depend on specific campus cultures.

A. *Take Back the Classroom*

Professors should ensure that bullies cannot usurp the classroom environment.¹²³ They should include in their syllabus clear expectations about mutual respect and classroom conduct. These expectations should include information about bullying conduct, and should indicate that such conduct will not be tolerated.¹²⁴ Professors should not assume that students will read or understand the syllabus, and should take time to explain expectations during class. Professors also must enforce the stated expectations; for example, they might incorporate professionalism as an element of the final grade.

In addition to holding students accountable, professors should model the conduct they expect from students.¹²⁵ If students perceive that the professor does not respect others, some will emulate the bad conduct.¹²⁶

Professors also should consider the teaching techniques they employ. While the Socratic method has its virtues, the AKingsfield version,¹²⁷ made famous in *The Paper Chase*,¹²⁷ includes bullying tendencies. For example, Professor Kingsfield used the technique to control and intimidate students—the balance of power weighed entirely in his favor. He berated and belittled students who did not understand the material, and his goal was to keep even the most prepared students off balance.¹²⁸ He emphasized doctrine and procedure and virtually ignored the individuals whose lives were affected by the case.¹²⁹ Teaching

123. See Lake, *supra* note 67. See generally Erling Roland & David Galloway, *Classroom Influences on Bullying*, 44 EDUC. RES. 299 (Winter 2002), available at <http://www.Ebscohost.com> (concluding that teachers' classroom management has a direct impact on bullying).

124. See OLWEUS, *supra* note 10, at 66 (explaining that awareness of the bullying issue is one key to solving the problem).

125. See Bob Boice, *Classroom Incivilities*, 37 RES. HIGHER EDUC. 453, 458 (1996) (The most experienced researchers on classroom incivilities assume that students and teachers are partners in generating and exacerbating it.). See also Morrissette, *supra* note 40, at ASetting a Good Example@ (AFaculty can inadvertently provoke a violent cycle by publicly debasing, humiliating, or invalidating students Y or by making snide remarks. From a systemic perspective, such antisocial behavior can invite hostile student reactions Y.@).

126. See Nathaniel J. Bray & Marietta Del Favero, *Sociological Explanations for Faculty and Student Classroom Incivilities*, 99 NEW DIRECTIONS FOR TEACHING & LEARNING 9, 10 (Fall 2004) (AFaculty and student conduct are interlocking phenomena.@).

127. JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971).

128. *Id.* See also Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118 (1999) (The most common complaint against the Socratic method is that it is cruel and psychologically abusive. Socratic professors are quick to criticize imperfect student answers, subjecting students to public degradation, humiliation, ridicule, and dehumanization.@).

129. See generally OSBORN, *supra* note 127. See also Pearl Goldman & Leslie Larkin Cooney, *Beyond Core Skills and Values Integrating Therapeutic Jurisprudence and Preventive Law into the Law School Curriculum*, 5 PSYCHOL. PUB. POL'Y & L. 1123, 1127 (1999) (AStripped of human context, the case method teaches students >that most law is a product of combat in the guise of litigation.=@ (quoting Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 65 (1992)).

students how to parse facts, develop rules, analyze, synthesize, and draw sound conclusion is critical to a sound legal education. However, other pedagogical techniques including group problem solving may help students master these key skills while increasing the level of respect and decreasing the level of incivility, or perceived incivility, in the classroom. Higher levels of mutual respect will foil most bullies.¹³⁰

Professors should take time to understand the technology available to students and should learn how students might use, and misuse, that technology. Students know that many professors are not tech-savvy, and take advantage of that fact.¹³¹

In addition, professors should disable the Internet connection during classes in which accessing the web is not necessary. If disabling the Internet is not an option, professors should tell students in the syllabus and verbally that they may not plug in Internet connections during class.¹³²

Professors should be mobile and should walk around the room. They should get to know the students; isolation and large classes erode personal connections that tend to discourage uncivil conduct.¹³³

Most students shun classroom disruptions, because classmates' bad behavior bothers them just as much as it bothers the professor. Most want a safe, respectful environment in which to learn. With this knowledge, professors can use positive peer pressure to help manage the classroom and to thwart the bullies.¹³⁴ Professors should stress that they want to know if anything or anyone is hindering students' ability to learn in the classroom. They should also discourage students from feeding the bully's ego by participating in the conduct. Professors should implore students not to watch bullying in silence¹³⁵ and should urge students to report instances of cyberbullying to the professor's

130. See Boice, *supra* note 125, at 458, 481. See generally *Addressing Faculty and Student Classroom Improprieties*, 99 NEW DIRECTIONS FOR TEACHING & LEARNING (John M. Braxton & Alan E. Bayer eds., Fall 2004).

131. It also is important to understand that many of our students use computers and other forms of technology not just as a practical tool, but as a lifeline to their peer group. Susan Keith & Michelle E. Martin, *Cyber-Bullying: Creating a Culture of Respect in a Cyber World*, 13 RECLAIMING CHILDREN & YOUTH 224, 226 (Winter 2005). Accordingly, student views about how they can and should use technology often differs from professors' perceptions of how technology should be used, particularly with regard to using computers in the classroom.

132. This solution will allow students to take notes or access outlines on their laptop most typically positive uses of technology in the classroom.

133. As new classrooms are built or as older classrooms are remodeled, design elements can be used to help curb the conduct of classroom bullies. For example, schools can design rooms in a way to include one or more aisles that would allow professors to move freely around more areas of the room. See Lake, *supra* note 67.

134. Jeffrey R. Young, *Sssshhh. We're Taking Notes Here: Colleges Look for New Ways to Discourage Disruptive Behavior in the Classroom*, CHRON. HIGHER EDUC., Aug. 8, 2003, at 29, available at <http://chronicle.com>.

135. See Margaret Sagarese & Charlene C. Giannetti, *The Bystander: A Bully's Often-Unrecognized Accomplice*, OUR CHILDREN: THE NATIONAL PTA MAGAZINE, Nov.-Dec. 2003, available at <http://www.potsdam.k12.ny.us/District/PTA/bully.htm> (emphasizing that A[b]ystanders make or break bullying episodes and providing advice to would-be bystanders).

attention, or to the attention of another school representative. To help facilitate an open dialogue about bullying, professors can ask the class to select one or two ombudspersons with whom they can communicate on a confidential basis.

Professors in online courses should be particularly sensitive to the issue of cyberbullies, because cyberbullies in online courses can quickly disrupt the learning experience for everyone involved.¹³⁶ Among other solutions, professors should consider preparing course agreements that set the conditions for the course. The agreement, which students can accept via e-mail, can include key portions of the school's computer use policy and conduct or honor code; it also can articulate conduct that is not acceptable, such as threatening, harassing, belligerent, and abusive behavior.¹³⁷ The agreement should allow professors to remove students from the course when a student violates course conduct expectations.¹³⁸

B. *Teach Students about High-Tech Courtesies*

Educators often assume that, because most law students grew up in a high-tech world, they have mastered the proper, courteous use of the Internet, e-mail, and other forms of technology. But such an assumption is false. Many young adults are self-taught, and for better or worse simply emulate what others have done.

Law schools should consider providing students, possibly at new student orientation or as part of the student handbook, with a set of expectations about computer and technology use and examples of proper netiquette.¹³⁹ Schools also should teach students effective anger management techniques, such as typing a formal response using a word-processing program just as one would prepare a letter, complete with a return address and signature block and only later copying the text to e-mail. The formalities of preparing a letter often provide the writer with time to reflect, and time to edit. Another useful anger-management technique is to draft a response, forward it to one's own account, let it sit overnight, and then reconsider whether to send the message the next day.

C. *Educate Students in the Discourse of Disagreement*

The growing incivilities on campus mirror those in society at large. Politicians spend more time attacking each other than addressing the issues our nation faces.

136. See, e.g., Summerville & Fischetti, *supra* note 4 (describing the acts of a cyberbully in online courses offered through a university).

137. *Id.*

138. *Id.*

139. Examples of web sites on "netiquette" include: NetManners.com, <http://www.netmanners.com> (last visited Oct. 25, 2005); Arlene H. Rinaldi, *The Net: User Guidelines and Netiquette*, <http://www.fau.edu/netiquette/net> (1998); Yale University Library, *What Is Netiquette?*, <http://www.library.yale.edu/training/netiquette> (last visited Oct. 25, 2005). Cornell University also has comprehensive policies and procedures regarding use of campus computing resources and a strong training program for new students. Cornell University, *Computing at Cornell, Students*, <http://www.cit.cornell.edu/computer/students/> (last visited Oct. 25, 2005).

Highly rated television shows depict people demeaning, yelling at, and even striking other participants. Many of us have experienced drivers who Aflip us off, @ pass us aggressively, or attempt to run us from the road.

These problemsCand the problem of cyberbullies on campusCare due in part to the fact that most individuals have never been taught how to disagree or manage anger. Given this void in training, many imitate what they see in the public arena. As educators, we cannot simply assume that our students know how to disagree with others in a respectful, professional way. Thus, law schools should develop programs to teach the Adiscourse of disagreement@: how to listen respectfully,¹⁴⁰ to engage in rational debate, and to state positions in a positive way without personally attacking others.¹⁴¹

As part of this training, law schools must educate students about how acts of incivility affect others. We must teach students about empathy and tolerance. Courses in legal writing, professional responsibility, alternative dispute resolution, interviewing and counseling, appellate practice, business practice, and many others are well suited to provide this type of training. Using specific examples from the civil rights movement and highlighting the work of nonviolent activists, such as Ghandi and Henry David Thoreau, can help make the theory concrete.¹⁴² In addition, sharing cases with students in which lawyers have been censured for unprofessional conduct can help them understand the importance of civility within the legal community.¹⁴³ Finally, law schools can use extracurricular programs, such as leadership development series, to teach students about civility, anger management, and conflict resolution.

D. Introduce Students to Collaborative Law and Therapeutic Jurisprudence

Collaborative law is a process in which the parties and their attorneys contractually commit, in a four-way agreement, to negotiate an out-of-court settlement through open communication and information sharing. The agreement provides incentives for everyone to aspire to a win-win solution, because if either

140. Robert L. Heinemann, Presentation at the Annual Meeting of the Speech Communication Ass'n, *Addressing Campus-Wide Communication Incivility in the Basic Course: A Case Study* 24 (Nov. 23-26, 1996), available at <http://www.eric.ed.gov> (ERIC Doc. No. ED404701) (AThe language of disagreement should be to a large extent the language of respectful listening.@).

141. See Morrissette, *supra* note 40, at AEffective Communication Skills.@

142. See Carter, *supra* note 41, at 28-29 (explaining that leaders of the Southern Christian Leadership Conference Aknew that success would be found not through incivility, but through the display of moral courage@).

143. For an article chock-full of examples regarding the lack of professionalism in documents submitted to courts, see Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers= Papers*, 31 SUFFOLK U. L. REV. 1 (1997). It is also important to alert students to local rules and customs about civility. For example, in 2003, the South Carolina Supreme Court promulgated a court rule that requires in-state lawyers to sign a civility oath and to complete a continuing legal education course on ethics and civility. Stephanie Francis Ward, *Swearing to Be Civil: South Carolina Makes Courtesy a Requirement*, 4 ABA J. EREPORT (June 10, 2005).

party initiates an adversarial proceeding, both attorneys must withdraw.¹⁴⁴ This type of training, which illustrates that attorneys who cooperate can succeed, will help downplay our tendency to glorify the adversarial process. A process within which bullies can thrive.¹⁴⁵

Therapeutic jurisprudence focuses on the law's impact on emotional life and psychological well-being. It recognizes that the law (legal rules, legal procedures, and the behavior of lawyers and judges) often produces consequences in the psychological realm.¹⁴⁶ Therapeutic jurisprudence emphasizes the human, emotional, psychological side of law and the legal process.¹⁴⁷ It also recognizes that actions by those within the legal system impact the psychological well-being and emotional life of clients, parties, and others.¹⁴⁸ Introducing students to the theory and application of therapeutic jurisprudence has the potential to increase their interpersonal sensitivities and awareness about how their conduct, both positive and negative, impacts those around them. Although bullies may not be receptive to the messages of therapeutic jurisprudence, bystanders might be. The concepts may help to empower them to stand up to the bullies by encouraging them to think more carefully about how the actions of one person psychologically affect others.

E. Use Codes and Policies and Remember the Law

Most bullies would stop if we changed the rules and punished bullying conduct.¹⁴⁹ Most schools have an honor code or conduct code. Most often, these codes were enacted to provide for a safe, secure, and respectful learning environment. These codes, therefore, should be modified to expressly prohibit and punish bullying and cyberbullying.¹⁵⁰ For situations in which the bully engages in or threatens physical violence, the codes should allow officials to impose an interim suspension while the investigation is completed. The codes also should provide for educational and counseling sessions in addition to traditional sanctions for misconduct.

Law schools also can use other policies to control cyberbullies. For example, computer policies can be designed to prohibit the improper use of campus computing resources. These policies should be broad enough to cover individuals who use a non-university e-mail account to bully students, professors,

144. Gay G. Cox & Robert J. Matlock, *The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45, 45-46 (2004).

145. Cf. OLWEUS, *supra* note 10, at 89-92 (suggesting cooperative learning as one technique to reduce bullying in schools).

146. David B. Wexler, *Therapeutic Jurisprudence and Legal Education: Where Do We Go from Here?*, 71 REV. JUR. U.P.R. 177, 178 (2002).

147. David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 125 (2000).

148. *Id.* at 126.

149. See Namie, *supra* note 52, at 4.

150. See Lake, *supra* note 67; McDougall, *supra* note 95, at 34, 36. See also Summerville & Fischetti, *supra* note 4 (suggesting that student codes expressly mention bullying in online courses).

or other university employees.¹⁵¹ Whatever policies and procedures exist, when a bully acts, the bad conduct should be addressed as quickly as possible, because “an early response [can] prevent the situation from escalating”.¹⁵²

In addition, it is worth reminding students that some forms of cyberbullying can constitute crimes, torts, or statutory violations.¹⁵³ For example, seventeen states have enacted legislation that prohibits bullying in the KB12 setting.¹⁵⁴ Moreover, when the bully targets individuals in protected groups, it may constitute sexual or racial harassment.¹⁵⁵ Depending on the content of the messages, the bully may be liable in tort for defamation, public disclosure of private facts, invasion of privacy, assault, or intentional infliction of emotional distress.¹⁵⁶ He or she also may be subject to federal or state laws concerning telecommunications, online harassment, terrorist threats,¹⁵⁷ or stalking.¹⁵⁸

For situations in which an employee or faculty member is the perpetrator, schools should ensure that workplace policies are clearly written to prohibit bullying, should provide regular training that teaches employees to recognize the signs of bullying, and should establish a grievance procedure that will permit the

151. Summerville & Fischetti, *supra* note 4 (AUser agreements should prohibit the sending of any threatening, harassing, or otherwise inappropriate message to a member of the university community by any means or medium.@).

152. Gavin Hughes, *Examples of Good Practice When Dealing with Bullying in Further/Higher Education College*, PASTORAL CARE IN EDUC., Sept. 2001, at 10, 11, available at <http://www.Ebscohost.com>.

153. See generally CONN, *supra* note 45, at 152-74.

154. Fred Hartmeister & Vickie Fix-Turkowski, *Getting Even with Schoolyard Bullies: Legislative Responses to Campus Provocateurs*, 195 EDUC. L. REP. 1, 5-6 (Mar. 24, 2005) (discussing statutes from Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Louisiana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Rhode Island, Vermont, Washington, and West Virginia). An anti-bullying law took effect in Virginia on July 1, 2005. 2005 Va. Acts ch. 461. A bill is pending in Washington state that would add cyberbullying to its current statute that addresses bullying, harassment, intimidation, and violence in schools. Wash. S.S.B. 59-5849, Reg. Sess. (Wash. Mar. 2, 2005), available at <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Senate%20Bills/5849-S.pdf> (at the time this article was written, the bill was pending in a senate committee).

155. Namie, *supra* note 52, at 2. See also Vicki Bell & Denise de La Rue, Gender Harassment on the Internet, <http://www2.gsu.edu/~lawppw/lawand.papers/harass.html> (last visited Oct. 20, 2005).

156. See Yamada, *supra* note 112, at 493-506 (discussing intentional infliction in the context of workplace bullying incidents).

157. See, e.g., Meadows et al., *supra* note 26, at 153 (reporting that in 2004, Warren, New Jersey police charged several eighth graders with harassment and making terrorist threats when they threatened another student online by warning, AYou=ll be needing an intraocular lens when I stab a skewer through your head.@).

158. See, e.g., Vanessa Ho, *Cyberstalker Enters Guilty Plea*, SEATTLE POST-INTELLIGENCER, July 30, 2004, available at http://seattlepi.nwsource.com/local/184213_cyberstalk30.html (describing a Washington case in which a cyberstalker plead guilty to two counts of federal online harassment); WiredSafety.org, Cyberstalking and Harassment, http://www.wiredsafety.org/cyberstalking_harassment/ (last visited Oct. 25, 2005). See also Anti-Bullying Act of 2005, H.R. 284, 109th Cong. (Jan. 6, 2005). See generally CONN, *supra* note 45, at 163-69 (discussing cyberbullying and cyberstalking).

victim and school to stop bullying conduct before it proceeds too far.¹⁵⁹

F. Support the Victims

One way to curb bullying is to support the victims and potential victims. Many victims avoid reporting bullies because they are embarrassed,¹⁶⁰ believe the bully will retaliate,¹⁶¹ or fear they will not be believed.¹⁶² Similarly, people who observe bullying often will not report it for fear they will be the next target.¹⁶³ Therefore, schools should encourage victims and bystanders to report bullying conduct, and to the extent possible, promise anonymity and amnesty to those who report the problem.¹⁶⁴

Schools should believe victims. Of course, it is possible for a victim to falsely accuse another student of bullying.¹⁶⁵ Thus, the best practice is to take reports of bullying seriously and to investigate the situation as quickly and as thoroughly as possible.¹⁶⁶

Law schools should establish policies and procedures that will protect victims from retaliation by the bully or the bully's allies. When a bully is subjected to discipline, school officials must be sure to address, in writing, the consequences of retaliation. They also should ensure the perpetrator understands the school will impose severe consequences for victim retaliation,¹⁶⁷ and that the school considers indirect retaliation to be as serious as direct actions.

If the bully and victim take classes together, school officials should explore ways to make the victim more comfortable. For example, they might alter seating assignments in the classroom to put the bully closer to the professor and

159. University of Iowa, News Serv., *UI Ombudsperson Reports Rise in Incivility on Campus* (Aug. 10, 2000), <http://www.uiowa.edu/~ournews/2000/august/0810ombuds.html>.

160. GERALD A. ARBUCKLE, *CONFRONTING THE DEMON* 59 (2003) (Victims of bullying can feel shame because they and others see that they are vulnerable in the presence of bullies. They are the ones chosen to be the targets of abuse, not other people.).

161. See, e.g., *High School Freshmen Report Pervasive Bullying*, PRO PRINCIPAL, May 2002, at 10, 10, available at <http://www.Ebscohost.com> (16% of high-school freshmen indicated that the situation worsened after they reported being bullied).

162. ARBUCKLE, *supra* note 160, at 58 (Victims of bullying are constantly in danger of not being believed by those to whom they report their distress or of being ignored or even blamed for the problem.); Morrissette, *supra* note 40, at *The Underreporting of Student Civility*.

163. Namie, *supra* note 52, at 2. See also *High School Freshman Report Pervasive Bullying*, *supra* note 161 (regarding underreporting of bullying).

164. See Lake, *supra* note 67. For example, amnesty might be extended to a student who participated in a chat room but now regrets his or her conduct.

165. See Cranham & Carroll, *supra* note 35, at 128-29 (Bullies were shown to have a great capacity for deflecting responsibility. Where their aggressive behaviour is concerned, bullies transpose the responsibility of their behaviour onto the individuals they are victimising.).

166. According to a 2003 article in the *Chronicle of Higher Education*, A[d]ozens of adjuncts and full-time faculty members told of being reported to the higher-ups for giving low grades or assigning demanding projects, and then of being forced to adjust their requirements by those higher-ups. Jill Carroll, *Dealing with Nasty Students: The Sequel*, CHRON. HIGHER EDUC., May 2, 2003, available at <http://chronicle.com>.

167. Smokowski & Kopasz, *supra* note 13, at 108.

farther from the victim. If the conduct occurs during the required curriculum, they also might consider moving the bully to another section after the semester ends.¹⁶⁸ Officials might also determine whether the bully should be barred from extracurricular activities in which the victim also participates. School officials should talk to the victim about services public safety might offer, such as escorts to his or her car. They should provide or facilitate counseling that will allow victims to move past the injury and to regain their self-esteem. Finally, because victims often blame themselves for what has happened, school officials also should take time to let them know this is not the case.¹⁶⁹

G. Resist Students= Consumeristic Tendencies

Deans, other administrators, and faculty must resist students= consumeristic tendencies. Just because students pay tuitionCsometimes very high tuitionCdoes not mean they can control the discourse within the community. Although students should be allowed to voice opinions and concerns, we should insist that those opinions and concerns be relevant and supported by logic and analysis. We should emphasize that the teacher-student relationship is not that of consumer and service provider, but is more akin to a physician-patient relationship.¹⁷⁰

As one author explained:

We need to keep traditional academic expectations in mind as we create a different relationship with students. Instead of letting students assume that merely paying tuition entitles them to a good grade, we must engage them in their own education, require them to take responsibility for their ultimate success, and acknowledge the role of faculty members as experts in their fields who are, nonetheless, still learning and fallible. The most appropriate analogy for such a new relationship comes from medicine, not business: Students are like patients, and professors are like doctors.

...

Thinking of students as patients makes more sense than comparing them to customers. Students should be required to be active participants in their own education. We should make it clear that, just as doctors expect patients to take their medications and follow their therapies, educational achievement requires that students attend class, complete assignments, and think. Merely paying for an education does not ensure success. When was the last time you visited a doctor and were guaranteed good health if you simply made your co-payment, even if you ignored the doctor=s advice?¹⁷¹

168. See Hughes, *supra* note 152, at 11 (indicating that moving the bully can help in some situations; in others, it makes the situation worse by drawing attention to the situation).

169. Barbara Maines & George Robinson, Presentation at the British Ass'n for the Advancement of Science 1994 Meeting, *The No Blame Approach to Bullying* 3-4 (Sept. 8, 1994), available at <http://eric.ed.gov> (ERIC Doc. No. ED414028).

170. Phillip H. Shelley, *Colleges Need to Give Students Intensive Care*, CHRON. HIGHER EDUC., Jan. 7, 2005, available at <http://chronicle.com>.

171. *Id.*

We should remind students that they are part of a community of scholars in which they have rights, but also have responsibilities.¹⁷² If students know that they cannot control or intimidate others with rude demands and bad behavior, chances are that courtesy will replace incivility.

H. Educate Professors and Administrators about Cyberbullying

A final cure is to educate professors and administrators—especially those who deal regularly with students, such as the dean of students, the dean of academic affairs, and the registrar—about cyberbullying, and make sure they know how to react if they are the victim of a cyberbully or if another person reveals that he or she is a victim. Make sure they know school policies regarding cyberbullies—including honor or conduct code provisions and computer-use policies—and to whom they should report instances of cyberbullying. Also make sure they understand and follow strategies to preserve evidence—such as establishing a paper trail of the cyberbullies' communications—and to coordinate with the law school's information technology department, which might be able to help trace the cyberbullies who use campus computing resources.

V. CONCLUSION

Cyberbullies have come to campus. They can disrupt our classrooms, inflict severe emotional trauma on victims, and hinder our educational mission. Bullies—especially ones who seek to enter the legal profession—must not be tolerated, or enabled. We must stand up to their tactics and implement programs and policies that will send a strong message that bullying is not acceptable and will be punished. We must support the victims, encourage bystanders to help stop the bullying, and establish a climate of mutual respect and support in which bullies are not likely to thrive. We must stop cyberbullies for the good of our students, our staffs, our schools, and the legal profession.

172. See generally ROBERT D. BICKEL & PETER F. LAKE, *THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE?* (1999).