

# Lucifer Goes to Law School: Towards Explaining and Minimizing Law Student Peer-to-Peer Harassment and Intimidation

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## I. INTRODUCTION

### A. Naming What We Take for Granted

An article in *The Washington Post* on March 7, 2007 exposed the rise of online bullying used to intimidate female law students.<sup>1</sup> While that statement alone hardly creates shockwaves, few in the law school community would expect that the perpetrators and victims were law students from Yale Law School.<sup>2</sup> Humiliation, intimidation, and harassment in law school have been memorialized in movies such as *The Paper Chase* and in books such as *One L*, yet few would use the word “bully” to describe law students. By avoiding the word “bully,” law schools avoid facing evils lurking in the hallways and the classrooms. Behaviors modeled by professors, intense competition among students for scarce jobs, and the relationship between class rank and employment, result in bullying behaviors as both a cause and a response to student depression, anxiety, and substance abuse. These sources of intrapersonal distress can result in external behaviors directed toward peers, family, and friends. While the focus of much research has been on the internal responses to distress and depression in law students, such as alcoholism and substance abuse, little research has focused on the external responses to distress and depression among law students. External responses to pressure only partially explain the unique prevalence of these maladies in law students; bullying is the unnamed missing link in the causal chain between the law school curriculum and the prevalence of depression and substance abuse in law schools.

Despite a plethora of anecdotal reports of humiliation and intimidation in law schools, it is difficult to measure bullying and peer intimidation with traditional quantitative techniques. Law students and ad-

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1. Ellen Nakashima, *Harsh Words Die Hard on the Web*, WASH. POST, Mar. 7, 2007, at A1.

2. *Id.*

ministrators alike accept the prevalence of games such as “asshole bingo” and derogatory labels such as “gunner.” Victims of bullies in law school fear more abuse if they report the actions of peers, peers who will later be colleagues.<sup>3</sup> The first lesson of law school seems to “be that pure, unadulterated self-interest and hardball competition are the rule.”<sup>4</sup> Research on the experience of women and students of color in law schools has repeatedly documented the deleterious impact of the law school environment on the academic achievement, self-esteem, and confidence of non-traditional students, as well as a significant minority of traditional students.<sup>5</sup>

### B. Who Is a “Bully” in Law School?

Few in the legal academy perceive law students as bullies or victims. Not many law students fit the stereotypical image of a bully; the overweight, adolescent boy ready to throw a punch to steal lunch money, or the prom queen who spreads vicious rumors about a rival for the football star’s attention. Bullying in law school is much more insidious, and rarely fits any accepted stereotype.<sup>6</sup> Law school bullies rarely leave bruises and physical evidence of abuse, yet the impact on their victims is no less damaging.

The prisoners and the guards in the Stanford Prison Experiment (SPE) were the same psychological, socially, and academically before they joined the experiment.<sup>7</sup> Similarly, law students show healthy results on psychological tests before law school.<sup>8</sup> Because bullies and victims are indistinguishable at the start of law school, and transform into bullies due to systemic pressures, it is almost impossible to identify who

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3. See Richard S. Newman et al., *Confrontation with Aggressive Peers at School: Students’ Reluctance to Seek Help from the Teacher*, 93 J. EDUC. PSYCH. 398, 398 (2001) (discussing the perception among children that seeking help from bullying behaviors is a way of avoiding, rather than resolving, conflict).

4. Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 391 (1996).

5. For a small sample of books and journal articles devoted to the inequities suffered by non-traditional law students, see LANI GUINER ET AL., *BECOMING GENTLEMEN* (1997); Allison Bowers, *Women at the University of Texas Law School: A Call for Action*, 9 TEX. J. WOMEN & L. 117 (2000); Celestial S.D. Caseman & Lisa R. Pruitt, *A Kinder, Gentler Law School?: Race, Ethnicity, and Gender at King Hall*, 38 U.C. DAVIS L. REV. 1209 (2005); Paula Gaber, *“Just Trying to Be Human in this Place”: The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Scott N. Ibrig, *Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students*, 14 LAW & INEQ. 555 (1996).

6. Cf. PHILLIP ZIMBARDO, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL* 8 (2007).

7. *Id.* at 172, 198.

8. Kennon Sheldon & Larry Krieger, *Does Legal Education Have Undermining Effects on Law Students?: Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 270 (2004); see also Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 593 (1996). See generally, Andrew H. Benjamin, et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 225.

will be a bully before the start of law school.<sup>9</sup>

The law school experience is often compared to junior high school—lockstep classes, assigned seating, locker rooms, and student mailboxes. The resemblance between junior high school and law school is more than superficial. “The graduate school experience has been characterized as resembling the developmental stage of adolescence.”<sup>10</sup> Despite these similarities, professors view law students, regardless of age or life experience, as adult learners, rather than as adolescents.<sup>11</sup> The disjunction between identifying law students as adults and comparing the experience of law school to junior high prevents law schools from identifying students whose behaviors are designed to intimidate, harm, or abuse their peers.<sup>12</sup> When law schools fail to identify bullies or bullying behaviors, the results can be measured by the high rates of depression and substance abuse that begin in law school and extend into many lawyers’ careers.<sup>13</sup>

Who will become a bully may be hard to identify, but bullying behaviors can be defined. “Bullying” is an imprecise term with many subtypes and categories. The literature, however, generally agrees that adult bullying behaviors involve repeated practices that are “directed deliberately or unconsciously, [to] cause humiliation, offence and distress, and that interfere with . . . performance and/or cause an unpleasant . . . environment.”<sup>14</sup> Most law students or administrators would agree that students experience teasing; insults; the withholding of information, such as hiding books; or excessive overwork as part of their first-year experience. Studies of workplace bullying have identified four factors that contribute to a bullying environment. They are:

- (1) [D]eficiencies in leadership behavior [such as a lack of] inadequate oversight . . . thus, not addressing what is appropriate behavior with peers . . . ;
- (2) [D]eficiencies in work design, [such as] improper supervision or no supervision of physical work environments . . . (e.g., isolated areas . . . [and] physical spatial distance from others);
- (3) [A] socially exposed position of the victim—management’s unwillingness to address bullying becomes obvious to bullies . . . who take[] advan-

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9. Cf. ZIMBARDO, *supra* note 6, at 8.

10. Fernando J. Gutierrez, *Counseling Law Students*, 64 J. COUNSELING & DEV. 130, 131 (1985).

11. See *id.* at 132 (noting that professors assume that students’ study skills are adequate).

12. See Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 112 (2002).

13. See Ann. L. Ijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 524 (1998); see also Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution*, 8 J. LEGAL WRITING INST. 229, 230 & n.6 (2002).

14. Michael G. Harvey et al., *Bullying: From the Playground To the Boardroom*, 12 J. LEADERSHIP & ORGANIZATIONAL STUD. 1, 1 (2006).

tage of . . . social inequities in the work environment . . . ; [and]

(4) [L]ow morale standard . . . — the culture of the organization learns to tolerate substandard treatment and thereby bullying is not only tolerated but transcends to being expected.<sup>15</sup>

The bullying environment describes the social and educational environment at most law schools.<sup>16</sup> Hallmarks of such an environment include professorial and administrative refusal to acknowledge bullying behaviors, lack of professorial attention to classroom antics that do not disturb lecturing, isolated library study corrals distant from supervision, and an expectation by professors and administrators that law students are meant to be either competitive and cut-throat or depressed and anxious.<sup>17</sup> Professor Alan Dershawitz at Harvard Law School reflected the private belief of many professors and administrators when he commented “these are students who got into an elite institution by clawing their way above their classmates . . . half of them are going to be [at] the bottom of the class and they don’t like it.”<sup>18</sup> These environmental cues encourage cruel bullying behavior in response to stress and pressure endemic to the law school experience.

## II. METHODOLOGY

### A. *Theoretical Approaches to Studying Bullying*

Bullying has been studied using three predominant methodologies: Theory of Mind (TOM), attachment theory across the lifespan (ATAL), and social psychology.<sup>19</sup> Two of the predominant theories, TOM and ATAL, are less useful when discussing the environmental causes of bullying in law school.

TOM refers to the specific cognitive capacity to attribute mental states to oneself and others and to acknowledge that others have beliefs, desires, and intentions that are different from one’s own.<sup>20</sup> TOM has been used extensively to study bullying in children and adolescents by researcher Dorothy Espelage of University of Illinois-Urbana.<sup>21</sup> How-

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15. *Id.* at 6.

16. This is an opinion based on my experience at law schools, and the conversations I have had with other Academic Success Professionals.

17. See Steven Prentiss-Dunn & Cashton B. Spivey, *Extreme Deindividuation in the Laboratory: It’s Magnitude and Subjective Components*, 12 PERSONALITY & SOC. PSYCHOL. BULL. 206, 206 (1986); see also Katherine S. Mangan, *Harvard Law School Tries to Figure Out Why Many of Its Students Aren’t Happy*, CHRON. HIGHER EDUC., Oct. 1, 1999, at A56, A56-57.

18. See Mangan, *supra* note 17, at A57.

19. See Tunde Paal & Tamas Bereczkei, *Adult Theory of Mind, Cooperation, Machiavellianism: The Effect of Mindreading on Social Relations*, 43 PERSONALITY & INDIVIDUAL DIFFERENCES 541, 542 (2007); Paula Pietromonaco & Lisa Feldman Barrett, *Attachment Theory as an Organizing Framework: A View from Different Levels of Analysis*, 4 REV. GEN. PSYCHOL. 107, 107-08 (2000); ZIMBARDO, *supra* note 6, at 5-11.

20. Paal & Bereczkei, *supra* note 19, at 542.

21. See College of Education Faculty Research Profiles, Dorothy Espelage,

ever, TOM primarily focuses on the psychological profile of the individual bully or the victim, not the group and social dynamics which create or reinforce bullying behaviors.<sup>22</sup> While studies have found similar psychological characteristics among bullies, it is unlikely that individuals are the cause of bullying behaviors in law school.<sup>23</sup> Research on the psychological profiles of incoming 1L's found that law students are representative of the society at large, and their psychological profiles do not differ markedly from other entering graduate students.<sup>24</sup> To understand the group dynamics that influence bullying behaviors, the analysis must extend past the individual. Bullying is triadic, not dyadic, and the bystanders play as important a role as the bully and the victim in the creation of a bullying atmosphere.

ATAL expands the analysis of bullying past the individual to look at relationship forces that shape behavior.<sup>25</sup> ATAL studies relationships throughout adulthood, including romantic relationships, close and casual relationships, and peer and family relationships.<sup>26</sup> ATAL moved from the arena of developmental psychology to social and personality psychology as attachment theory broached relationships between adults. ATAL has in many ways been subsumed by social psychology when studying group interactions and relationships.<sup>27</sup>

The behavior of law students is best analyzed through the perspective of social psychology. Social psychology is the study of the situational, rather than the dispositional, factors that impact behavior. "Social psychologists ask: To what extent can an individual's actions be traced to factors outside the actor, to [the] situational variables and environmental processes unique to a [specific] setting."<sup>28</sup> Bullies are not "bad apples" that spread their misery to others.<sup>29</sup> Rather, the environment is a "bad barrel" tainting all the apples it confines.<sup>30</sup> The "bad barrel" metaphor in social psychology is especially persuasive in light of research that law students start with normal psychological profiles, but change dramatically within their first year.<sup>31</sup> Something about the law school environment changes students, not just internally, as is the case for depression and substance abuse, but externally, in their relationships with friends, families, and colleagues.

Professor Philip Zimbardo of Stanford University conducted one of

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<http://www.ed.uiuc.edu/frp/E/espelage#biography> (last visited Jan. 27, 2008).

22. See Paal & Bereczkei, *supra* note 19, at 542.

23. See Sheldon & Krieger, *supra* note 8, at 271.

24. See *id.*

25. Pietromonaco & Feldman Barrett, *supra* note 19, at 107-08.

26. *Id.*

27. *Id.* at 107.

28. ZIMBARDO, *supra* note 6, at 8.

29. See *id.* at 181.

30. See *id.*

31. *Cf. id.*

the most influential experiments in social psychology in August 1971. The Stanford Prison Experiment (SPE) randomly assigned ten middle-class, educated men to the role of prisoner or guard in a make-shift jail for two weeks. The SPE was a part of an undergraduate research project on the psychology of imprisonment accompanied by a summer school course taught by Professor Zimbardo.<sup>32</sup> The young men assumed roles that were interchangeable at the start of the experiment.<sup>33</sup> While several, but not all, of the guards were members of the research project, the nine young “prisoners” were selected based on their answers to an advertisement placed in the *Palo Alto Times* and *The Stanford Daily*.<sup>34</sup> The research team eliminated any “obvious weirdos,” as well as applicants with prior arrests of any kind or any medical or mental problems.<sup>35</sup> However, one week into a two week experiment, the project was halted because of the severe trauma experienced by the prisoners.<sup>36</sup> Prisoners experienced two to three times more variation in their moods as compared to their guards.<sup>37</sup> Although the “prisoners” could leave at any time, after only a few days their roles had become so ingrained that they feared leaving the experiment.<sup>38</sup> The guards, several of them with training in psychology, transformed from average “good” people to guards capable of inflicting torment on innocent people being paid to accept the role of prisoner.<sup>39</sup>

Comparing law schools to prison, even one that is created for experimental purposes, may seem extreme to most people. The prison was, as Professor Zimbardo noted, “a prison filled with good, middle-class boys,” much like law schools are filled with primarily middle-class students.<sup>40</sup> Legal training in the United States, like the SPE, is an all-encompassing experience. The last time most law students experienced lockers, mailboxes, and six-to-ten hour days with the same peers was in high school. Like the SPE, students are placed in an uncomfortable, new situation with unusual dynamics. Situational power is most significant in new settings where previous models of behavior do not apply. Few law students have a model for law school success; the paradigm for success that worked through undergraduate and even graduate schools is no longer applicable. Professors do not instruct students about what they expect students to learn or understand. The method of instruction is different from any they have experienced in the past. “The . . . reward

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32. *Id.* at xv.

33. *Id.* at 172.

34. *Id.* at 20, 30.

35. *Id.* at 30.

36. *See id.* at 171-80.

37. *Id.* at 200.

38. *See id.* at 178-79, 222.

39. *Id.* at 172, 207.

40. *Id.* at 20.

structures are different and expectations are violated."<sup>41</sup> Students have no past experience that can prepare them for the new situation being encountered. In these circumstances, personality variables have little predictive utility.

Like law students, the men chosen for the SPE came to the experimental prison with normal psychological profiles.<sup>42</sup> Student behavior in law school cannot be predicted based on their psychological profiles any better than the sadism of the guards or the submissive acceptance of cruelty by the prisoners. To understand the changes in the SPE volunteers and changes experienced by law students, the analysis needs to extend beyond the individual to the common factor shared by the group—the situation. A situational analysis is best when dispositional analysis fails to explain why a group behaves contrary to previously understood paradigms of individual behavior.<sup>43</sup> Situational power is most significant in new settings where previous models of behavior do not apply. The situation—law school—is far more indicative of future behavior than any previous experience.<sup>44</sup>

Many of the psychological changes experienced by the participants in the SPE mirror the changes seen in law students during their first year of law school. The SPE prisoners did not have access to intoxicating substances, so this comparison is limited to causes of depression and personality change. After less than two weeks, the prisoners were depressed and agitated, some refusing to eat.<sup>45</sup> Prisoners made meek attempts at improving their situation, such as asking for a grievance committee, for spiritual counsel, and to speak to a lawyer. Each attempt was met with approval by Professor Zimbardo, but the guards and warden manipulated the attempts to be useless at improving the situation for the prisoners.<sup>46</sup> After failing to improve their situation, most prisoners became emotionally withdrawn.<sup>47</sup> Similarly, although law students try the various methods suggested by upperclassman and professors to improve their understanding, students find these attempts fruitless. By midterm, many law students feel their situation is hopeless, and they withdraw emotionally, and sometimes, academically.<sup>48</sup>

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41. *Id.* at 212.

42. *See* Sheldon & Krieger, *supra* note 8, at 270.

43. *See id.* at 210.

44. *See* ZIMBARDO *supra* note 6, at 210-12.

45. *Id.* at 196.

46. *See id.* at 218.

47. *See id.* at 176-78.

48. *See* McKinney, *supra* note 13, at 230.

*B. Rules, Roles, and Rationalization: How the First-Year Law School Experience Deindividualizes and Dehumanizes Students*

“Dehumanization is one of [two] central processes in the transformation of ordinary, normal people into indifferent or even wanton perpetrators of evil.”<sup>49</sup> Dehumanization fosters the belief that other people are less than human, and allows some to see others as enemies deserving of torment.<sup>50</sup> Dehumanization occurs when “others,” such as law school classmates, are “thought not to possess the same feelings, thoughts, values, and purposes in life that we do.”<sup>51</sup> The rapid pace of law school instruction and the intense pressure of ten-hour days, often spent in the company of a limited number of peers, accelerate the socialization process among law students.<sup>52</sup> The breakneck law school day allows changes in thinking to take place in a short time that would normally take months to evolve. While this transformation is necessary to succeed on exams, it has considerable negative effects on the interpersonal relationships of law students. Because of the intense competition for grades and subsequent summer clerkships, students become distrustful of their peers.<sup>53</sup> It is not unusual for students to question the motives of peers they would otherwise call friends.<sup>54</sup>

Learning to “think like a lawyer” is also dehumanizing. Thinking like a lawyer is the process of divorcing emotional responses to cases and facts and viewing them with a logical, critical eye focused on analysis.<sup>55</sup> Dehumanized relationships have the same qualities necessary to “think like a lawyer” and are “objectifying, analytical, and empty of emotional or empathetic content.”<sup>56</sup> A student’s history and personal experience are denied when “thinking like a lawyer.” Connections to community and identity are broken as one becomes analytical about people and emotion. Holding emotions in check is critical to success in law school, while holding one’s emotions in check in a prison is necessary to prevent showing vulnerability and risking abuse.<sup>57</sup> Physical violence is not a common form of law school bullying. When, however, law school success is viewed from the perspective of one inculcated with the idea that failure will mean a life of relative poverty due to crushing stu-

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49. ZIMBARDO, *supra* note 6, at xii, 219.

50. *Id.* at 222-23.

51. *Id.* at 222.

52. Full-time law students are expected to study forty-five hours a week, with an additional fifteen hours of classroom instruction, which breaks down to ten hour days if the students take one day off each week. Many law students spend considerably more than ten hours a day attending class and studying. See generally DENNIS TONSING, 1000 DAYS TO THE BAR (2003).

53. See *supra* note 4 and accompanying text.

54. See, e.g., Gutierrez, *supra* note 10, at 132.

55. See Orrin K. Ames III, *Concerns About the Lack of Professionalism: Root Causes Rather Than Symptoms Must Be Addressed*, 28 AM. J. TRIAL ADVOC. 531, 543 (2005).

56. ZIMBARDO, *supra* note 6, at 223.

57. *Id.* at 223-24.

dent loans, humiliation by peers who become colleagues, and disappointment of family and friends, it becomes a significant motivation to view success as necessary at all costs.<sup>58</sup> The unfortunate “cost” of succeeding on a bell curve is frequently law student dehumanization.

Deindividuation is the second component necessary to create a bullying environment. Group contexts facilitate uncommon acts of cruelty, exhibitionism, violence, and rage. The anonymity afforded by group membership allows individuals to act in a disinhibited manner, resulting from the low likelihood of scrutiny by victims or authority figures.<sup>59</sup> To rationalize bullying behaviors towards or by peers, a student needs to be assured there will be no immediate consequences for the anomalous behavior, either from the victim or by the law school administration.<sup>60</sup> Victims view the acquiescence of authority figures as consent to the perpetrators’ actions.

Three factors foster the process of deindividuation and dehumanization among peers. Rules created and maintained by the hierarchy of the law school as a system lock students into rigid situations with little choice or control over their environment.<sup>61</sup> These rules also create and sustain rigid roles of the students. The system may make token attempts to modify the inflexibility of roles, which only solidifies their position as creator of rules and roles.<sup>62</sup> Lastly, both the system and the participants rationalize their roles and relationship. The system rationalizes their control and inflexibility, often asserting that it operates for the participants’ own good.<sup>63</sup> The participants rationalize their subservience, accepting the rationalizations given to them by the system.<sup>64</sup>

The conditions within the law school environment that foster bullying behaviors define the rules and roles of law students, and provide rationalizations for the current system of legal education. Law students have little or no input into institutional design of law school, and therefore have little or no role in the creation of the rules that define the system. It creates the “ideology” that legitimizes the means necessary to achieve the ultimate goal.<sup>65</sup> The use of the Socratic Method, even in a modified form, creates a classroom dynamic defined by “dismissive [remarks and] sarcastic exchange[s]” modeled by the professor and imi-

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58. See Schechter, *supra* note 4, at 390-91.

59. Prentiss-Dunn & Spivey, *supra* note 17, at 206.

60. See ZIMBARDO, *supra* note 6, at 219.

61. See *id.* at 212-21.

62. Examples of attempts at modifying the roles in law school involve student tenure-review boards and student “councils” that meet with the dean or trustees of the law school. Students participate, but their participation is constricted by the rules created by the administration, faculty, and/or trustees they are petitioning for change.

63. ZIMBARDO, *supra* note 6, at 226.

64. *Id.* at 220.

65. *Id.* at 226.

tated between peers.<sup>66</sup> The bell curve—the grading scheme still used in most law schools—creates intense competition between students. The intrinsic human need for self-direction is perverted by the need to compete; this can result in either excessive need to dominate others or learned helplessness.<sup>67</sup> The competition between peers for the best grade on the bell curve undermines the interpersonal relationships that should sustain and encourage students during the most intense periods of study. Students lack control over the most basic elements of their environment, such as friends and class choice, because of rules they did not create and cannot modify. The resulting interpersonal breakdown of law students arises from the roles students are forced to adopt to be a part of system.

### III. SYSTEMIC BREAKDOWN IN LAW SCHOOL: CONDITIONS THAT FOSTER BULLYING BEHAVIORS

#### A. *Institutional Design: The Situations Created by the Rules and Roles of the System*

The Socratic Method is frequently cited as a source of distress in law students.<sup>68</sup> It represents a rigid system of rules defined by the professor where the professor asks a question, chooses a student to answer that question, and where that student must answer whether or not he feels comfortable doing so. The rules that guide this interaction between professor and student are typically rigid, even in many modified Socratic classrooms. The rules of the exchange define the role of the law student; subservient to an all-knowing legal wizard who rules the classroom.

Currently, there is no available research using the term “bullying” that has isolated the specific interactions between professors, students, and peers, which result in student deindividualization and dehumanization. A few, however, have examined how the professor uses his role to create an atmosphere of incivility. Professor Roger Schechter of George Washington Law School noted that classroom instruction frequently “slide[s] into a dismissive or sarcastic exchange in which the teacher communicates an unspoken but nonetheless powerful message that rude or mean-spirited wise cracks, and even temper tantrums, are entirely appropriate behavior.”<sup>69</sup> The incivility between professor and

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66. Schechter, *supra* note 4, at 381.

67. ZIMBARDO, *supra* note 6, at 230.

68. See, e.g., David D. Garner, *Socratic Misogyny?--Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597 (analyzing why the Socratic Method, as it is used in law school, causes distress in students).

69. Schechter, *supra* note 4, at 381.

students establishes a cycle of intimidation modeled on the demeaning exchanges between the two.<sup>70</sup> Students seek social approval, as well as the need to minimize cognitive dissonance by rationalizing inappropriate behavior of professors.<sup>71</sup> Students seek to survive a “hostile, unpredictable existence” by identifying with the aggressor, becoming complicit in the professor’s bullying.<sup>72</sup> This desire to survive encourages students to be like their professors, to bully and intimidate. Professor Schechter is the unusual doctrinal professor that addressed the role played by law schools in encouraging incivility in the legal profession, but he avoids the word “bullying.” His word choice reflects the reticence of academia to recognize that adult learners can be bullies.<sup>73</sup> The behavior that Professor Schechter describes matches the definition of professional and personal bullying word-for-word.

Another element of law school instruction that reinforces this student role in the classroom and the supremacy of the system is referred to as “hide the ball.” “Hide the ball” is a method of instruction where professors ask questions and direct the arguments, but deliberately confuse the discussion rather than guide students to an understanding of the rule, case, or theory.<sup>74</sup> The impact on the student is two fold. “Hide the ball” instruction results in student apathy; if the professor is only trying to confuse, why listen? Additionally, “hide the ball” is demeaning to the student. It condescends to students, making them “feel stupid as dirt because it’s rigged.”<sup>75</sup> As an instructional technique designed to confuse rather than illuminate, belittle rather than honor student learning, “hide the ball” succeeds at teaching students their role as subservient to the hierarchy of the system that creates the rules they must learn to follow.

The bell curve and peer ranking are frequently cited sources of law student distress and depression.<sup>76</sup> Using a bell curve to rank students pits peer against peer, by replacing collaboration and friendship with competition. Students disconnect from mastery of the law; it is not the law they need to master, but other students. Most in the legal academy, as well as most practicing attorneys, have heard the stories of students hiding books necessary to complete assignments, refusing to share notes

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70. *See id.*

71. *See* ZIMBARDO, *supra* note 6, at 220-21.

72. *Id.* at 205.

73. A Westlaw search of journal articles finds the term “bully” does not even appear in the same sentence as “law school.” A search for “bullies /s law school” yields only three results: Dean Darby Dickerson’s article on cyber-bullying, *see* Dickerson, *infra* note 96; an article about being a law school dean; and an ABA journal report on workplace sexual harassment.

74. Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or “The Fem-Crits Go to Law School,”* 38 J. LEGAL EDUC. 61, 77 (1988).

75. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 200 (2007).

76. *See generally* Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399 (1994).

with peers who missed a class, or students who “doctor” their notes in order to confuse their classmates. The methods used to gain advantage in the bell curve have been modeled by professors using “hide the ball” method of instruction. A “trust no one” ethos spreads among many students. These behaviors are often dismissed as ritual hazing that students need to endure to become part of the legal field.

Professors may paradoxically model incivility in the classroom and expect students to behave as adult learners. No research has measured professorial acknowledgement of bullying among law students. However, even secondary school teachers trained in student socialization are unlikely to report bullying.<sup>77</sup> Many teachers maintain a restricted definition of bullying; literature shows that “teachers [are] aware of physical and verbal manifestations of bullying,” but often fail to recognize social exclusion and repetitive teasing.<sup>78</sup> Law professors rarely have training in education, and it is more likely that they would limit the definition of bullying to physical abuse or verbal threats. Law professors without training in education are even less likely to recognize bullying in their classrooms when social exclusion and teasing are used as methods of instruction.<sup>79</sup> Few professors would promote teaching methods seen as bullying; however, they can be quick to rationalize why the instructional methods they use demean and belittle students.

Law school bullying becomes viewed as a form of hazing into the profession—seen as a necessary way to teach students what life will be like for them as practicing attorneys. Professors may send the message that it is okay to bully in law school because they are “soften[ing] up” students to be nonchalant about bullying when they see it in practice.<sup>80</sup> Perhaps the best example of bullying as professional hazing comes from the online blog, “Anonymous Lawyer,” created by Harvard Law School graduate Jeremy Blachman.<sup>81</sup> He created “Anonymous Lawyer” to describe his experiences as a summer clerk in a “big firm” between his second and third years at law school.<sup>82</sup> The focal point of the blog was the mean-spirited behavior of the typical partner at a large law firm. The response to the blog was overwhelming; Blachman received fifty-nine responses to one of his posts on how firm life harms families.<sup>83</sup> Professors, many of whom spent a few years at a big firm before entering academia, know this is what students will experience post-

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77. Melissa K. Holt & Melissa Keyes, *Teachers' Attitudes Towards Bullying*, in BULLYING IN AMERICAN SCHOOLS, A SOCIO-ECOLOGICAL PERSPECTIVE ON PREVENTION AND INTERVENTION 121, 122 (Dorothy L. Espelage & Susan M. Swearer eds., 2004).

78. *Id.* at 123.

79. Schechter, *supra* note 4, at 381.

80. *Id.* at 376.

81. Anonymous Lawyer, <http://www.anonymouslawyer.blogspot.com> (last visited on Jan. 27, 2008).

82. Jeremy Blachman, Op-Ed, *Job Posting*, N.Y. TIMES, Aug. 31, 2005, at A19.

83. Sara Rimer, *Revealing the Soul of a Soulless Lawyer*, N.Y. TIMES, Dec. 26, 2004, at 91.

graduation. Students vying for well-paid summer employment are taught that this is the reality of post law school life. Bullying and intimidation become a hazing ritual initiating law students into the legal profession.

One of the predominant components of legal study is the acquisition of legal logic, or “to think like a lawyer.” The ability to break down complex cases and legal problems into constituent elements and to use analogies to find similarities between past precedent and potential conflicts is perceived by the legal establishment to be value-neutral.<sup>84</sup> Many students, however, feel they must shed their core values, values that may have brought them to law school but happen to be emotionally charged. Many students come to law school fueled by a passion to change the wrongs they see in the world. They are quickly taught that passion undermines logic. The pressure to shed core values, to remain coldly rational to succeed on exams, requires students to divorce themselves from their emotions. In many cases, divorcing emotion is divorcing the student from their motivation to be a law student. Emotion is not an extraneous part of the self; “[e]motions are essential to humanness.”<sup>85</sup> The attempt to divorce emotion not only removes the passion that brought students to law school, but also alienates them from other values, such as compassion and sympathy. Without compassion or sympathy, peers are just hurdles to be removed, not colleagues in the journey to becoming lawyers. In an environment that encourages students to look at facts and rules instead of feelings, students can rationalize bullying behavior as a logical response to competition.

*B. Interpersonal Breakdown: The Situations Resulting from the System*

1. Lack of Connection with Peers

Law school removes the interpersonal buffers that protect students from intense pressure and stress. Law students are isolated from their classmates by the individual nature of classroom discussion, lack of collaboration, and competition that presents peers as hurdles, not humans. The first year curriculum can become a 1L’s sole focus, leaving students feeling more like inmates than learners. Surviving the first year of law school becomes the goal, the successful achievement of which is often measured by grades and summer job offers. The cycle continues as 2Ls focus on on-campus interviews and summer positions that can lead to permanent jobs, while 3Ls focus on permanent jobs to pay off their law

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84. Ames III, *supra* note 55, at 543.

85. ZIMBARDO, *supra* note 6, at 224.

school loans. Law school becomes a cycle of competition and disappointment for many students; only 10% can be in the “top 10%” that get the most lucrative positions. Peers become mere roadblocks for the majority of students who are not in the top 10%. Roadblocks can be hurdled or removed; neither metaphoric barriers imply empathy, respect, or collaboration.<sup>86</sup>

The physical setup of the classroom contributes to the isolation of students. The typical law school classroom is large, seating anywhere from seventy-five to five hundred students, and all seats face the podium or the front of the room. “Visual anonymity within groups has generally been considered to have negative consequences,” such as “disinhibited and aggressive behavior.”<sup>87</sup> It is less stressful and easier to bully and harm a peer without witnessing the harm caused by the bullying behavior. This was evidenced by the SPE, which used anonymity and isolation to dehumanize the prisoners.<sup>88</sup> The guard uniform was designed with large sunglasses obscuring the eyes of the guards as well as much of their face,<sup>89</sup> and prisoners were separated from each other by walls and solitary confinement cells without access to fellow prisoners.<sup>90</sup> Prisoners wore bags over their head to use bathrooms.<sup>91</sup> The result of this anonymity and isolation is emotional distance.<sup>92</sup> Emotional distance allows peers, similar to the guards and prisoners of the SPE, to act without knowledge of the impact of their actions.

The newest venue used to bully peers in law school has been the various mediums afforded by the Internet. The rise of the Internet has increased the degree of anonymity between peers.<sup>93</sup> A bully can choose to attack and be relatively sure no one can trace the attack to the perpetrator. When the SPE was designed in 1969, no one had dreamed of the Internet or other technology to facilitate instant communication anonymously through a digital system that can preserve all communication forever, often providing, or “forwarding,” the communication to parties never intended to be recipients. The Internet provides the anonymity of a group without the group, and a medium that allows for a direct attack without confrontation of any type. The rise of the Internet has provided law school bullies the most dangerous weapon, one that by

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86. Professor Schechter has noted that “changes in the job market have made the competitive stakes seem much, much higher. . . . [Students] sense that they are playing a zero-sum game in which every advantage for a classmate is a detriment to themselves.” Schechter, *supra* note 4, at 391.

87. Martin Lea, et al., *Knowing Me, Knowing You: Anonymity Effects in Social Identity Processes Within Groups*, 27 PERSONALITY & SOC. PSYCHOL. BULL. 526, 527 (2001).

88. See ZIMBARDO, *supra* note 6, at 219, 223.

89. *Id.* at 219.

90. *Id.* at 46.

91. *Id.* at 89 (discussing the bathroom routine for prisoners).

92. See *id.* at 223.

93. Tim Grant, *Bullies Take Intimidation to Cyber-Space: Using Computers, Cell Phones, They Can Inflict Pain Without Having to Catch Victims in the Schoolyard*, PITTSBURGH POST-GAZETTE, June 26, 2006, <http://www.post-gazette.com/pg/06177/701250-51.stm>.

its design dehumanizes and deindividualizes all participants by making the recipients of messages anonymous and removing immediate consequences for posting messages.<sup>94</sup> Additionally, most law school administrators and many professors attended law school well before the advent of the Internet and remain blind to the threat posed by the wireless web installed throughout classrooms and group spaces.<sup>95</sup>

Dean of Stetson Law School Darby Dickerson was the first, and so far the only, law school administrator to publicly address the problem of cyber-bullying among law students.<sup>96</sup> In her article *Cyberbullies on Campus*, Dean Dickerson wrote openly about students emailing, spoofing, instant messaging during class, and internet chats that “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.”<sup>97</sup> Although Dean Dickerson is the only administrator who has spoken out about the issue, it is quite unlikely that bullying has not ventured into cyberspace at most law schools. The ease of use and the internal design of the Internet, combined with the structural problems of law schools that allow, and at times encourage, the deindividualization and dehumanization of students, create a perfect storm of conditions for a law school bully.

## 2. Disconnection from Family and Friends

While law school does not literally separate students from family and friends as did the SPE, the environment does cause many students to feel bound and otherwise disconnected.<sup>98</sup> The amount of time a student needs to spend in class, in the law library, and studying removes law students from the buffering agents of family and community. The recommended amount of class time and study time is sixty hours a week for most full-time law programs; this provides little time for family,

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94. See ZIMBARDO, *supra* note 6, at 223; see also Prentiss-Dunn & Spivey, *supra* note 17, at 206.

95. The threat of the internet bully is not just speculative; sexist slurs via a message board were the source of a Washington Post article in March 2007. See Nakashima, *supra* note 1, at A1. The law school message board AutoAdmit, calling itself “the most prestigious law school admissions discussion board in the world,” provides a forum for degrading, mean-spirited online discussions between law students. *Id.* AutoAdmit was the forum where the subject of discussion was the “hottest law student,” a discussion which made explicit references to the size of a female law student’s breasts and in which anonymous photographs of her were posted. The student, thereafter, became afraid to go to the gym for fear of cell-phone camera pictures of her workouts being added to the AutoAdmit thread. *Id.* Randomly scrolling through the most recent posts on AutoAdmit finds three threads that would qualify as hate speech. See The Most Prestigious Law School Admissions Discussion Board in the World, [http://www.xoxoth.com/main.php?forum\\_id=2&hid=0&qu=&p=53](http://www.xoxoth.com/main.php?forum_id=2&hid=0&qu=&p=53) (last visited Jan. 27, 2007). AutoAdmit is loosely tied to a former student of University of Pennsylvania School of Law; despite complaints, the law school has not found a way to shut down the message board. See Nakashima, *supra* note 1, at A1.

96. Darby Dickerson, *Cyberbullies on Campus*, 37 U. TOL. L. REV. 51 (2005).

97. *Id.* at 65.

98. ZIMBARDO, *supra* note 6, at 223.

friends, or outside interests. Many will extend study time far beyond the minimum requirements.

Family, friends, and community provide emotional sustenance and an important reality check allowing students to reconnect with the values that lead them to law school. The current law school program isolates students from family and friends because of the time constraints, as well as the individual nature of law study. Activities such as role-playing and oral presentations would provide students with an opportunity to connect with family and invite them into the student's life at the law school. Failure to periodically break away from the law school experience encourages the feeling that law school is like a prison. As some peers model the aggressive posturing they see in class, office hours, and in the hallways, students without time to reconnect with family and friends miss reminders that life is not about winning every argument, besting every peer, or disparaging anyone who might be a challenge to academic success.

#### IV. BUILDING A BETTER BARREL: CONCLUSIONS AND SUGGESTIONS FOR THE FUTURE

Law school is a bad barrel. Dismantling law schools, as an institution, and rebuilding legal education would be the best solution; however, it is not likely, even in the distant future. Some law schools have remodeled their curriculum in light of criticism and changes to the law. Changes to the curriculum, however, do not impact the systemic failures that give rise to bullies in law school.<sup>99</sup> There are some changes that law schools can implement that would send a clear message to faculty and students that bullying is not permissible.

Honor codes, designed to provide guidance to students and faculty regarding appropriate behavior, can be modified to address bullying. By dedicating space in an official, legally binding document to the issue of bullying, law schools would send the message that civility, respect, professionalism, courtesy, and collegiality are valued by the legal profession. Additionally, provisions that require remediation and training in appropriate behavior for violating the code add "teeth" to the honor code and reinforce the seriousness of the issue.

An honor code would need to include explicit definitions of bullying behaviors; broad definitions risk being void for vagueness or impossible to implement. Appropriate behavior is always difficult to define without being over-and under-inclusive. A definition of bullying would

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99. Harvard Law School voted to change their first-year curriculum; the first changes in over 100 years, in 2006. See generally Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007; Jonathan D. Glater, *Harvard Law Decides to Steep Students in 21st-Century Issues*, N.Y. TIMES, Oct. 7, 2006.

need to be revisited each year, as technology changes rapidly, and the methods and mediums used to bully change with each entering class. Dean Dickerson identified e-mail and instant messaging as bullying mediums at Stetson Law School in 2005.<sup>100</sup> Today, a definition of bullying would need to include use of MySpace and Facebook social networking sites, listserves, message boards, and cell phones.

Professors and administrators would need to be included in the honor code, because they maintain the culture and atmosphere of a law school over time. The top-down hierarchy that governs many law schools, in conjunction with large, impersonal classes, especially during the 1L year, gives professors great power to set and maintain an atmosphere. Professors are the primary means of socializing new law students into the profession, and their model impacts how students perceive their role towards peers. The same principles of civility, respect, professionalism, courtesy, and collegiality that govern peer-to-peer interactions should govern professorial behavior. Professors that belittle, undermine, or make fun of students should be subject to remedial civility classes and training on the learning environment.

Law schools can begin the 1L year with presentations by local attorneys, judges, and bar examiners describing expectations of professional behavior and the repercussions for bullying peers. Orientation is a time before most law students have been bombarded by upper-classmen hazing and when students will be more receptive to discussions about proper behavior. Local attorneys can reinforce the message that the reputation students earn in law school will stay with them for the rest of your career, and communication over the web can impact their employment opportunities since MySpace and Facebook pages can be googled. Employers are not interested in hiring someone who would demean themselves or a classmate.<sup>101</sup>

Law schools have the opportunity to change the perception of a legal career as “golden handcuffs” or a “gilded cage[.]”<sup>102</sup> While broad changes need to be made to legal education, small changes can make a difference that extends past the three years students spend in law school. Teaching future lawyers that bullying and intimidating colleagues is not acceptable can make the profession more civil for everyone.

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100. See Dickerson, *supra* note 96, at 51, 58.

101. Katherine S. Mangan, *Etiquette for the Bar: First-Year Students at Drake U's Law School Learn the Value of Online Discretion*, CHRON. HIGHER EDUC., Jan. 12, 2007, at A31, A31-32

102. SCOTT TUROW, ONE L 275 (1977) (“[M]any lawyers do not like to practice; they regard themselves as imprisoned in gilded cages: highly paid, well regarded, and unhappy.”); Tracey I. Batt, *Were The Golden Handcuffs Supposed To Close Around My Neck?*, NAT’L L. J., Dec. 10, 2007, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1197021873117>.