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## ANTI-CYBERBULLYING LAWS

### A Sober Analysis through the Moral Panic Theory Lens

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes ... in legal and social policy or even in the way the society conceives itself.<sup>1</sup>

Polk County sits in the middle of Florida, east of Tampa, southwest of Orlando. It's probably best known for its theme parks, Cypress Gardens, which closed in 2009, and Legoland, built on the same spot. In mid-October 2013, however, the county became big news. That's when local and national television journalists turned their attention to Polk County Sheriff Grady Judd, giving him the kind of coverage No. 1 G-Man and publicity hound J. Edgar Hoover would have envied, and the story went viral, too.<sup>2</sup> For about six weeks, Polk County was the epicenter of a moral panic outbreak over cyberbullying.

First, on Tuesday, October 15, Judd, dressed in military green and gold, and flanked by flags, held a press conference carried by local and national media.<sup>3</sup> The following day, NBC's Today Show host Matt Lauer interviewed him.<sup>4</sup> Judd was talking about cyberbullying and cyberbullicide, or suicide attributable to bullying. He spoke with the righteous indignation and bulldog-like steeliness of the original G-Man crowing over an arrest of a Public Enemy One. But in these times, news media become spellbound when a minor-league sheriff claims to have snared two remorseless criminals whose online words supposedly helped to push a teenage girl to jump to her death. It didn't seem to matter that the alleged criminals were middle-school students. Or, perhaps, their youth made all the difference to the media; made the story a titillating cautionary narrative about the evils of soulless children driven astray by social media?

At the press conference, Judd announced that he was charging Katelyn Roman, 12, and Guadalupe Shaw, 14, with third-degree felony aggravated stalking in connection with the death of Rebecca Sedwick, 12, of Lakeland, Fla. The previous month, Sedwick committed suicide by jumping from a cement factory tower.<sup>5</sup> Judd, who "has long approached crime fighting as a moral quest, a clear-cut fight between good and evil, with no-nonsense punishments for offenders,"<sup>6</sup> expressed no qualms about revealing the juveniles' names and showing their mug shots. "We have these wonderful photographs of our two new felons," Judd said.<sup>7</sup> The girls faced the possibility of five-year prison sentences under the state's anti-cyberbullying law.<sup>8</sup>

The Florida sheriff said his office arrested the girls earlier than it had initially planned after Shaw, said, "Yes ik [I know] I bullied Rebecca and she killed her self but IDGAF [I don't give a (expletive)]," on her Facebook, a post that ended with a heart symbol.<sup>9</sup> The girls were "remorseless and 'cold,'" Judd said.<sup>10</sup> "We were going to arrest them anyway, but we were trying to put the entire case together, and as you know, we're having trouble getting information from (social media site) Ask.fm because they're offshore, so it was taking some time," Judd said. "But when we saw that cavalier attitude, when we saw that despite Rebecca dying, jumping to her death, being bullied by this girl and another girl, and she's back on Facebook, she can be taunting or bullying another child. We're not going to accept that."<sup>11</sup>

This is the era of the cyberbullicide scourge; a time when many believe words kill and the weapons are digital. "Sedwick's suicide is another somber reminder of the dangers of cyberbullying by peers who may be technologically literate but oblivious to the consequences of using a *keyboard as a weapon*," [italics added] opined the *Tampa Bay Times* editorial board.<sup>12</sup>

A small minority of observers, however, counseled caution. Tampa defense attorney Jeff Brown accused Judd of grandstanding, being too quick to charge the girls and indiscreet for publicly identifying the minors.

“Let’s let the system play out,” Brown said on the day of the press conference. “There may be an appropriate time to make them the example of what went on. But now is not the time. Now is the time to find out what went on, and let the professionals, not Sheriff Judd, look into this.”<sup>13</sup>

Thirty-five days later, after the “professionals,” the Polk County prosecutors, analyzed thousands of Facebook messages, no case was brought against the two girls.<sup>14</sup> Yet, the bulk of the news coverage that followed barely reflected exoneration. For instance, there was little reflection about the sheriff’s rush to judgment and grandstanding. There was little news coverage given to the voices calling for moderation.

And, typical of most coverage of bullying-related suicide cases, news media ignored or marginalized evidence of traditional bullying, while magnifying the impact of online speech.<sup>15</sup> (According to the 2012 study, “Cyberbullying and Suicide: A Retrospective Analysis of 41 Cases,” “78 percent of adolescents who committed suicide were bullied both at school and online, while 17 percent were targeted online only.”)<sup>16</sup>

Opinion writers continued the call for cyberbullying bans. News reports gave two days of coverage to Sedwick’s mother, Tricia Norman. She said the dismissal signaled that bullying is acceptable, as she announced a crusade against cyberbullying flanked by her lawyers and former Florida Gov. Charlie Crist.<sup>17</sup> Her campaign includes a long-shot wrongful death action<sup>18</sup> against the girls and the passage of “Rebecca’s Law,” which would punish underage bullies with juvenile detention.<sup>19</sup>

Meanwhile, the girls became online targets of vitriol largely thanks to Sheriff Judd’s moral crusade. “You guys are a disgrace in the human race,” one commenter wrote on Katelyn Roman’s Instagram page. “You guys deserve no happiness.”<sup>20</sup>

Were they not cyberbullied, too? Judd made no condemnation of those individuals; he did not threaten them with cyberbullying charges.

About six months later, a police report revealed that Sedwick’s suicide apparently was linked to offline-domestic turmoil and a breakup with an Internet boyfriend, among other traumas, that had little if anything to do with online harassment.<sup>21</sup> Yet, Roman and Shaw agreed to undergo counseling to get the charges dropped.<sup>22</sup> (In a similar widely covered alleged bullicide case in the United Kingdom, officials later reported that there was strong

evidence that the alleged victim, Hannah Smith, 14, had posted the messages to herself.)<sup>23</sup>

So, Katelyn Roman and Guadalupe Shaw were victims of an overzealous and moralizing police officer. Add their parents to the list of victims, because Judd announced that he was considering charging them with contributing to the delinquency of minors on ABC-TV's "Good Morning America," though it never came to fruition.<sup>24</sup> But more to the point, Roman, Shaw and their parents were victims of an outbreak of moral panic.

## Moral Panic Theory

British sociologist and criminologist Stanley Cohen, whose opening paragraph to his groundbreaking study *Folk Devils and Moral Panics* leads this chapter, coined the term "moral panic," now a well-established social deviance theory. Cohen argued that moral panics are characterized by "drama, emergency and crisis; exaggeration; cherished values threatened; an object of concern, anxiety and hostility; evil forces or people to be identified and stopped; the eventual sense of the episodic and transitory ..."<sup>25</sup>

Moral panic characterizes the overreaction by news media, opinion makers and advocates to abrupt changes in the status quo. As sociologists Richard C. Fuller and Richard R. Myers argued more than 70 years ago, sometimes societies decide that social problems require only private solutions, while other times, such as when moral panic erupts, segments of society seek government-imposed remedies for new and unsettling social disruptions. "*Social problems are what people think they are [emphasis added] and if conditions are not defined as social problems by the people involved in them, they are not problems to those people, although they may be problems to outsiders or to scientists, e.g., the condition of poor southern sharecroppers is a social problem to the braintrusters of the New Deal but not to many southern landowners.*"<sup>26</sup> Thus, moral panics are socially constructed problems that call for public solutions.

As the title of Cohen's work implies, moral panics require "folk devils,"—the demonized deviants, the "visible reminders of what we should not be,"<sup>27</sup> or, as sociologists Eric Goode and Nachman Ben-Yehuda later described them, "the agents responsible for the threat ... stereotyped and classified as deviants."<sup>28</sup> "Moral panics then," sociologist Chas Critcher says, "are a reaction to changes: bad things are happening which didn't use to."<sup>29</sup>

In his seminal work, Cohen analyzed how the British press covered brawls between the Mods and Rockers youth subcultures that took place in British

seaside resort towns in 1964. Mods and Rockers were young adults who took on different styles of dress, attitudes and vehicles, signifying their class differences in a very class-conscious Britain. Mods tended to be middle-class, and “adopted what was briefly called the ‘Italianate’ style of dressing, drifted into the world of Espresso bars and were drawn musically to rhythm and blues.”<sup>30</sup> They drove scooters. The Beatles and Rolling Stones of the 1960s British Invasion adopted many of the Mods clothing fashions. In contrast, Rockers drove motorcycles and wore leather jackets. They had the “rebel without a cause” juvenile delinquent look of the 1950s and a reputation of being loutish and scruffy.<sup>31</sup>

The news media painted the clashes between the two youth groups as gang fights. The Mods and Rockers, however, were not criminal gangs, but youth sub-culture groups. But as Cohen noted by conducting a qualitative content analysis of news reports, editorials and community leaders quotes, Mods and Rockers were labeled hooligans, thugs, wild ones, human wolves, misfits and morons.<sup>32</sup> The groups were a threat to “‘all the conventions and values of life.’ As the *Birmingham Post* (19 May 1964) put it, drawing on [Winston] Churchill’s ‘we will fight them [Nazi Germany] on the beaches’ speech: the external enemies of 1940 had been replaced on our shores in 1964 by internal enemies who ‘bring about disintegration of a nation’s character.’”<sup>33</sup>

Such rhetoric was hyperbolic and absurd, but it reflected mainstream British society’s failure to understand the youth movement phenomenon beyond its limited, reflexive and highly judgmental moral filter. In reality, they were never the deviants and threats the press made them out to be. As Cohen observed, by 1972 “these groups have all but disappeared from the public consciousness, remaining only in the collective memory of as folk devils of the past.”<sup>34</sup> In a 2014 retrospective, the British Broadcasting Corporation (BBC) noted:

Fifty years ago this month, on the Whitsun weekend of the 16–18 May 1964, the youth of Britain went mad. If you believed the newspapers, that is, who went with screaming headlines like “Battle of Brighton”, and “Wild Ones ‘Beat Up’ Margate.” Editorials fulminated with predictions of national collapse, referring to the youths as “those vermin” and “mutated locusts wreaking untold havoc on the land.”<sup>35</sup>

In *Media and Crime*, British criminologist Yvonne Jewkes reexamined the moral panic concept 40 years after its introduction by Cohen.<sup>36</sup> Jewkes’s revised moral panic thesis has five defining features, two of which are particularly relevant to understanding the roots of the illogical and exaggerated fear of cyberbullying: “... Moral panics occur during periods of rapid social change, and can be said to locate and crystallize social anxieties about risk. It is usually

*young people who are targeted* [emphasis added], as they are a metaphor for the future and their behavior is regarded as a barometer with which to test the health or sickness of a society.”<sup>37</sup>

## Moral Panic in the Age of the Social Media

The period of rapid social change that spawned the cyberbullying moral panic is, of course, the second phase of the World Wide Web, or Web 2.0, that developed in the wake of the “bursting of the dot-com bubble in the autumn of 2001.”<sup>38</sup> Web 2.0’s development is characterized by increased user interactivity—one-to-one and one-to-many communication—facilitated by social media, video sharing sites and smart phones. Teens are near habitual users of smart phones and social media.<sup>39</sup> It is not surprising then that about an average of 25% of teenagers have reported being cyberbullied in reports covering 2004–2015.<sup>40</sup> Though the bulk of the panic over cyberbullying concerns teens, “13% of social media-using adults 18 and older reported that someone had been mean or cruel to them on a social network in the last 12 months” in 2011, for example.<sup>41</sup> Nevertheless, alarm over teenage cyberbullying is mostly what fuels the panic that drives parents, anti-cyberbullying advocacy groups, educators and legislators to call for cyberbullying bans.

The hallmarks of a moral panic—the expression of outrage at unacceptable behavior that supposedly threatens the public good, and the overreaction—the nationwide public pillorying and branding of young girls—barely teenagers—and adults as social deviants by the news media and others and charging them with crimes disproportionate to their alleged misconduct—crystallized in Sheriff Judd’s failed campaign against Roman and Shaw and their parents. All the usual suspects appeared in the Polk County moral panic drama,

the media, which publishes or broadcasts stories about a supposed threat; the public at large, the members of which feel, verbalize, or act upon their concern; representatives of the law, including politicians, lawmakers, and police, who propose, enact and enforce legislation; and social movement activists, who organize, recruit, proselytize, assemble, demonstrate, and lobby on behalf of their cause against the putative threat.<sup>42</sup>

This chapter argues that legitimate concerns about the harmful effects of cyberbullying degenerated into a moral panic late in the first decade of the 21st century soon after news and entertainment media, moral entrepreneurs<sup>43</sup> and claimsmakers<sup>44</sup> erroneously identified hostile online expression as a cause of teenage suicide and labeled cyberbullying teens as deviants and threats

to the moral order. As sociologists Eric Goode and Nachman Ben-Yehuda observed, “The mass media are both an independent manifestation of moral panics as well as a causal agent in firing up the other manifestations of moral panics, specifically public concern, political and legislative activity, and social movement activism.”<sup>45</sup>

Communication scholar and moral panic analyst Chas Critcher notes that the effects of moral panics “may involve minor adjustments of law enforcement, entirely new laws or new types of law which breach long-standing constitutional principles.”<sup>46</sup> Accordingly, this chapter argues that the most troubling effect of the cyberbullying moral panic has been a spate of legislation enacted here and in Canada, which breach long-standing constitutional principles.

There is a legal maxim that says, “Hard cases, it has frequently been observed, are apt to introduce bad law.”<sup>47</sup> Likewise, moral panics are apt to introduce bad law, and that is the argument made here. In the climate of a moral panic, claimsmakers, moral entrepreneurs and the media, acting on highly selective evidence, atypical, high profile incidents and moral indignation, respond with outrage to a new and complex social phenomenon, particularly, as Cohen and others have documented, when it concerns youth subcultures. In turn, opportunistic and well-intended politicians forgo reasoned assessments of threats, and, instead, hastily draft laws mirroring the skewed views and evidence presented by the press, claimsmakers and moral entrepreneurs.

Such a process has played out in many of the states here and nations abroad since mid-2008, producing the new breed of laws specifically targeting online embarrassing and hostile speech. To a large degree, the cyberbullying moral panic climate explains why many legislators have passed laws marred with glaring constitutional defects. Arguably, under calmer circumstances, reasonable legislators would have written cyberbullying laws to conform to longstanding constitutional protections or simply not have passed such laws. For example, federal legislators in the U.S. did not succumb to the irrationality of the cyberbullying moral panic. A proposed “Megan Meier Cyberbullying Prevention Act,” a cyberharassment law, died in a House committee in 2009.<sup>48</sup>

Unfortunately, the demise of the federal proposal became the exception. Though cyberbullying laws did not exist in early 2008, by mid-2014, almost every state had enacted laws criminalizing online hostile expression whether it was labeled cyberstalking, cyberharassment, cyberbullying, sexting or revenge porn.<sup>49</sup> Some of the recently enacted cyberharassment laws have been misused to stifle political commentary; they criminalize speech that has

previously been protected under the First Amendment. Some sexting laws targeting minors and the application of child pornography laws to prosecute teenage sexters are excessive and counterproductive because they are unnecessarily brand minors as criminal deviants when education and counseling can prove more effective. Many of the so-called revenge porn criminal statutes are either unnecessary because current civil remedies are available, or excessive, because, among other defects, they criminalize pornography and other forms of speech that are protected from censorship under the First Amendment. In constitutional terms, many of these new laws are overbroad, they ban protected and unprotected speech, or they are unconstitutionally too vague for the average individual to understand which speech is protected and which is not.

Too often unheeded, civil libertarians have made such arguments to legislators in just about every state since 2008. By early 2016, civil libertarians gained some vindication as courts had struck down or blocked the enforcement of cyberbullying laws in Missouri, New York, Rhode Island, Arizona, Georgia and in the Canadian province of Nova Scotia. But there is little talk about the victims of those unconstitutional laws. Thus, a view through the lens of moral panic analysis illuminates why many branded as cyberbullies and subjected to criminal or civil sanctions warrant further consideration—if not sympathy—as underserving scapegoats of a moral panic.

### **Studies on Cyberbullying as a Moral Panic: A Literature Review**

“[M]oral panic analysis has been designed to test whether an issue is being distorted and exaggerated, prompting massive overreaction”<sup>50</sup> and, typically, scholars employ qualitative or quantitative content analysis to determine the nature and extend of media’s framing of coverage, or Eric Goode and Nachman Ben-Yehuda’s five-component analytical framework, or both, to determine whether concern over a social controversy has been distorted. News outlets frame their coverage; they select “aspects of a perceived reality and make them more salient . . . in such a way as to promote a particular definition, causal interpretation, moral evaluation, and/or treatment.”<sup>51</sup>

Building on Cohen’s seminal study, Goode and Ben-Yehuda require a finding of five crucial elements to properly characterize the overreaction of the news media, claims makers, moral entrepreneurs and legislators as a moral panic: concern, hostility, consensus, disproportionality and volatility.<sup>52</sup> In this chapter,

framing and moral panic analysis are applied to the Polk County, Fl., alleged cyberbullycide incident and cyberbullying news reports in the U.S. in general. Additionally, the findings of three studies are referenced to support the argument that the response to cyberbullying is a moral panic and a great deal of the legislative responses to criminalize it or expand public school authority to sanction are unreasonable or unnecessary. Those studies are: “Cyberbullying: The Social Construction of a Moral Panic”;<sup>53</sup> “Framing ‘Cyberbullying’: Competing Frame Coverage of Rehtaeh Parsons’ Death”;<sup>54</sup> and “The Incessant Image: How Dominant News Coverage Shaped Canadian Cyberbullying Law.”<sup>55</sup>

Political and social commentators, writing for the popular press and websites, have not been shy about labeling the campaign to punish cyberbullies a moral panic. In 2010, a writer/editor for @YouthRadio, noting how the media was framing the suicide of Massachusetts teenager Phoebe Prince, said,

If you look at the moral panic that the mainstream media seems to be manufacturing about its number one competitor—social media—in the past few weeks, you’d think pulling the plug on the Internet is our only solution. The tragic suicide of Phoebe Prince is being used as an example of how social media services are a corrosive force in our society—even when the facts may not quite back that up.<sup>56</sup>

Techdirt blog editor Mike Masnick noted in 2010 that despite a decrease in actual rates of cyberbullying, legislators were passing more laws to criminalize hostile online speech:

If you hadn’t noticed, there’s been a growing moral panic around the concept of ‘cyberbullying,’ with various states passing laws against it and Congress even considering it as well. And, of course, if you read stories in the news these days, you might think that cyberbullying is happening everywhere and that *It Must Be Stopped* at all costs *To Protect the Children*.<sup>57</sup>

Gavin Titley, a lecturer in media studies at the National University of Ireland, said Irish politicians were exploiting a moral panic concerning social media to distract attention from other issues.

Recent reporting of suicides, a corrosive debate on abortion rights and transparent attempts to stifle political criticism have been fused into a full-throated moral panic over social media. Coming from a political class still convinced that LOL promises them lots of love, the wheels are likely to fall off this bandwagon long before it trundles from tawdry to totalitarian. But as deliberate exercises in displacement, moral panics illustrate something of the dominant political culture, and this opportunistic trolling is no exception.<sup>58</sup>

Journalism teachers, press critics, scholars and at least one prominent American journalist former New York Times executive editor Bill Keller have argued that news media have played a significant role in manufacturing the cyberbullying moral panic. In *Sexting and Cyberbullying*, McGill University leadership and policy expert Shaheen Shariff tied the Canadian news media's repeated airing of the suicide of Amanda Todd, 15, to a moral panic. "It increased the pressure on politicians to come down hard on cyberbullying no matter how young the perpetrators," Shariff said. "Despite the fact that Amanda's main perpetrator was a 35-year-old male pedophile, the primary dialogue around the case was about cyberbullying by her peers."<sup>59</sup>

In a March 11, 2013 panel discussion sponsored by South by Southwest, "Digital Drama: Growing Up in the Age of Facebook," Keller, Danah Boyd, a Principal Researcher at Microsoft Research, a Visiting Researcher at New York University, and a research affiliate at Harvard's Berkman Center for Internet and Society; and Emily Bazelon, the author of *Sticks and Stones*, a book about bullying, talked about the news media coverage of cyberbullying.<sup>60</sup>

Keller said the news media had painted the complex social and technological phenomenon in Manichean terms: "I should feel obliged to leap up to the defense of media, but actually I don't," Keller said. "The fundamental problems are not created by the digital age; they're inherent in what we do. There is a tendency in media to oversimplify. Stories require protagonists and antagonists, and victims and villains, and we sometimes strain to supply them."<sup>61</sup>

Writing soon after the arrest of Roman and Shaw, Kellie McBride, a media ethicist on the St. Petersburg, Fl., -based Poynter Institute faculty, debunked the link between bullying and suicide—"There is no scientific evidence that bullying causes suicide. None at all"—while noting that, "One reason these stories gain such traction is they are easy to sensationalize and they tap into a common narrative that children today are spinning out of control as a result of technology and popular culture."<sup>62</sup> McBride identified the following common mistakes journalists making reporting on suicides linked to cyberbullying:

Perpetuating falsehoods through hyperbole or by confusing anecdotes with facts, such as stating that cyber-bullying is on the rise or is an epidemic. Implying that suicide is caused by a single factor, like a romantic breakup, a bad test score or being bullied. Suggesting, or allowing others to suggest, that bullying is criminal behavior. Allowing sources to reach beyond their anecdotal experience; parents, teachers and school administrators are rarely qualified to describe research or trends. Equating all teenage aggression as bullying, when in fact there is a specific definition that involves sustained behavior and a power imbalance. Describing an act of suicide in vivid detail

so that it creates a contagion effect among vulnerable populations. Glorifying a suicide victim in saintly or heroic terms, which could also contribute to the spread of suicides. Forgetting to link to local and national resources about suicide and bullying, including warning signs and strategies for intervention.<sup>63</sup>

Information technology executive and researcher Jonathan Bishop argued that a moral panic has stigmatized internet trolling in his scholarly article, “Representations of ‘Trolls’ in Mass Media Communication: A Review of Media-Texts and Moral Panics Relating to ‘Internet Trolling.’”<sup>64</sup> In a scholarly journal article discussing the lack of consensus among experts about the definition of online harassment, Criminologists Carla Cesaroni, Steven Downing and Shahid Avi suggest that “current concerns around cyberbullying might in fact amount to a moral panic. Certainly the way in which the interest around cyberbullying has manifested itself appears to fulfill some of the classic signs of a panic as described by Cohen, including the role of “experts” in solving what is perceived to be a new social problem.”<sup>65</sup>

A handful of scholars have conducted framing analysis of media coverage of cyberbullying in attempt to determine the media’s role in fueling the cyberbullying moral panic. A team of communication studies scholars and psychologists conducted a content analysis exploring how 43 newspapers in Australia, Belgium, Greece, Italy, Lithuania, Poland, Slovenia and the United Kingdom framed their coverage of cyberbullying in “a first large-scale content analysis designed to explore the amount and nature of the coverage on cyberbullying in 43 national, daily newspapers in eight countries (Australia, Belgium, Greece, Italy, Lithuania, Poland, Slovenia and the United Kingdom)” published between January 2004 and December 2011.<sup>66</sup> The scholars found “only a few indications of moral panic framing ... related to the negativity aspect of reported cases in the articles where cyberbullying was the main topic, and where a less reassuring and neutral tone is used in the articles on cyberbullying in the popular press.”<sup>67</sup> The study, however, did not apply Goode & Ben-Yehuda’s moral panic analysis. Nevertheless, the scholars acknowledged that an

increased attention and alarming tone [of the press coverage] may lead to a moral panic. This is especially important in the context of scientific studies suggesting that cyberbullying is an overestimated phenomenon. Inducing fear might lead to a call for repressive measures focusing on criminalizing cyberbullying and cyberbullies (e.g. by adopting new laws), or a call for restrictive and controlling measures from parents and schools (e.g. limiting youngsters’ time spent online), while a more educational, nuanced and trusting approach would probably be better-suited.<sup>68</sup>

University of Calgary doctoral student J. Mylynn Felt conducted two systematic studies of news media coverage of cyberbullying controversies in Canada spurred the passage of two highly controversial criminal statutes: Nova Scotia's Cyber-safety Act (2013) and the federal *Protecting Canadians from Online Crime Act*, or Bill C-13 (2014). In "Framing 'Cyberbullying': Competing Frame Coverage of Rehtaeh Parsons' Death," Felt analyzed news, feature and opinion articles from the Canadian newspapers *Toronto Star* and *The Globe and Mail* about Parsons between the days she died on April 7, 2013 and the day Nova Scotia proposed the Cyber-Safety Act on April 25, 2013.<sup>69</sup> Parsons, a target of alleged sexual assault, malicious sexting and months of slut shaming, died after attempting suicide.<sup>70</sup> The hastily written Cyber-Safety Act, the first Canadian law targeting cyberbullying, went into effect in the province of Nova Scotia in August 2013.<sup>71</sup> The Cyber-Safety Act allowed alleged cyberbullying victims to apply for court-order protection and to sue for civil damages, and, empowered courts to hold parents responsible for the children's online misconduct under some circumstances.<sup>72</sup> The Nova Scotia Supreme Court struck down the Act as unconstitutional in December 2015. (See Chapter Seven.)

Felt did not attempt to determine whether the news media's coverage of the Parsons tragedy stirred up a moral panic. She limited her study to framing analysis, concluding that news journalists, in contrast to opinion and feature writers, depicted "cyberbullying as a villain deserving blame for Parsons' death," and acted as "agenda setters framing cyberbullying as a social problem requiring updated legislation."<sup>73</sup>

In "The Incessant Image: How Dominant News Coverage Shaped Canadian Cyberbullying Law," another framing analysis, Felt linked news media characterization of the deaths of four teens identified as victims of cyberbullying and traditional bullying—Parsons, Todd, and 15-year-olds Jamie Hubble and Todd Loik—directly to the language of Bill C-13, though she never used the term "moral panic." (Canada's Bill C-13, essentially a combination of a revenge porn, anti-sexting and surveillance laws, authorizes government to order online intermediaries and others to track and preserve data of alleged revenge porn purveyors, and under certain circumstances, hand over such information without requiring a warrant.)<sup>74</sup> "Analysis shows that the mediated public discourse of cyberbullying as a social problem closely aligns with the image of cyberbullying as defined in the *Protecting Canadians from Online Crime Act*."<sup>75</sup>

Overall, the dominant frame in mainstream news coverage of the death of these teens focuses on cyberbullying as a social problem in need of reform. Such a frame clusters disparate cases into a recognizable pattern, minimizing attention to unique

circumstances and emphasizing common characteristics in the name of advancing a social cause. Though this frame is effective for socially constructing a recognizable problem, this treatment oversimplifies individual cases and strips these teens of personhood as they become little more than victims for a cause. Another problem with the frame of cyberbullying as a social problem is that characterizing the problem according to the most intense circumstances omits discussion addressing the most common forms. These consequences are reflected in the legislation that emerges as a direct result.<sup>76</sup>

As noted earlier, a moral panic is a socially constructed problem. The Canadian media could have branded incidents of, say, school-related verbal online harassment as a condition that deviated from the social norm and required legislative remedies. But they did not. Rather, Felt says, that by focusing on the high profile bulicide cases of Parsons and Todd, that involved nonconsensual distribution of images of teenage girls involved in sex or posing partially nude, news media and the public identified an atypical type of online expression as a social problem and a threat to fundamental societal values. In turn, C-13 codifies the socially constructed conception of cyberbullying as only nonconsensual distribution of intimate images.

Bill C-13, the *Protecting Canadians from Online Crime Act*, reflects a uniquely Canadian construction of cyberbullying as a social problem. Although the legislation does not specifically make use of the term “cyberbullying,” the Honourable Steven Blaney, Minister of Public Safety and Emergency Preparedness, and the Honourable Peter MacKay, Minister of Justice and Attorney General of Canada, connect the term to Bill C-13 ... Bill C-13 is clearly written in the image of cyberbullying as portrayed through the high profile deaths of teens such as Parsons and Todd, given that the emphasis is on distributed photos more than written or verbal harassment.<sup>77</sup>

Consequently, Felt contends, C-13 missed the mark and overreached. Like the public discourse that it echoed, the statute oversimplifies the complex phenomenon of cyberbullying and diverse types of cyberbullying cases, it erroneously makes a causal connection between suicide and hostile speech, and fails to address the fact that the roles of cyberbullying victim and bully often overlap.<sup>78</sup> In other words, offline bullying is more common than cyberbullying and the link between suicide and cyberbullying is not causal.

While Bill C-13 may fill a legal gap, it should not be seen as the solution to cyberbullying. It is time to broaden the public discourse beyond what some term bulicide, to include a more comprehensive approach. Social change is unlikely until we reconstruct the Canadian definition of cyberbullying to reflect a more complicated issue, one deeply imbedded in teen culture.<sup>79</sup>

Sociologist Linda M. Waldron analyzed 477 articles from national and local news publications in the U.S. and applied content analysis and the Goode and Ben-Yehuda criteria in an effort to determine the news media's role in constructing cyberbullying as a moral panic.<sup>80</sup> Waldron said the Goode and Ben-Yehuda model suggests that,

Although the media has certainly influenced the level or degree of concern over this issue, given the rise of new media technology and existing concern over bullying in general ... the moral panic over cyberbullying likely predated the increase in media coverage on this issue (i.e., the media did not necessarily create the moral panic). *That being said, the media does participate in fueling the moral panic by framing this issue in very particular ways, which in essence contributes to the construction of it as a moral panic [emphasis added].*<sup>81</sup>

Like Felt, Waldron voiced concern that anti-cyberbullying rhetoric has spurred simplistic, overreaching and misdirected government-created solutions, though Felt did not apply moral panic analysis.

If the problem involves everyone, it almost becomes too large to effectively deal with. On the other hand, if the problem is only caused by a few "folk devils" then punishing these individuals creates the sense that we are "solving" the problem, even if we are not. If we do not fully understand the causes or extent of the problem, it makes it equally difficult to provide thoughtful solutions. This is perhaps why educators and legislators have created sweeping and vague policies about cyberbullying, but it is unclear how these policies will be enacted to create change in the day-to-day lives of children.<sup>82</sup>

### **Content Analysis: Concern, Hostility, Consensus, Disproportionality and Volatility**

The conclusions that Waldron and Felt have drawn are shared by this author and supported by the findings below, the result of an application of Goode and Ben-Yehuda's framework and google searches of the terms "cyberbullying," "cyberbullying laws," "revenge porn" and "teenage sexting" conducted September 29, 2015. As noted above, according to Goode and Ben-Yehuda, concern, hostility, consensus, disproportionality and volatility are the conditions that determine whether a moral panic truly exists. Goode and Ben-Yehuda also subscribe to the theory that moral panics are created by one of three status groups or a combination of the three: the general public, the grassroots model; those who dominate the media, legislatures and laws

enforcement, the elite-engineered model; or by the moral crusaders, the interest group model.

Though Waldron argues that the construction of cyberbullying as a moral panic tends to fall under a “grassroots model’ for moral panics,”<sup>83</sup> the results of the “consensus” analysis here points to the interest group model, which argues “that moral panics originate neither from the top nor from the bottom, but somewhere in society’s middle rungs—professional associations, the police, the media, religious groups, educational organizations, middle-level associations, organizations, groups, institutions, sectors, and categories of every description.”<sup>84</sup> In the cyberbullying context those middle-rung parties are people such as Sheriff Judd, grieving parents such as Tricia Norman, who is fighting for the passage of a “Rebecca’s Law”<sup>85</sup> and anti-cyberbullying advocacy groups. It would appear that grass roots and middle-level groups are stoking the panic.

The google search results in this study identify news articles on cyberbullying and legal controversies and reveal how news media have highlighted, or framed, certain aspects of the cyberbullying legal issue while downplaying, distorting or ignoring other aspects. For instance, cyberbullying was characterized as causing suicide in the majority of the news articles though scientific studies reject such causality.<sup>86</sup> Because a high Google PageRank suggests that results are “pages that are well cited from many places around the web [and] are worth looking at,”<sup>87</sup> the results of the word search of “cyberbullying laws” suggest that the public has been poorly informed about the highly questionable constitutionality of many cyberbullying laws.

## Concern

Goode and Ben-Yehuda defined “concern” as “a heightened level of *concern* over the behavior of a certain group or category and the consequences that that behavior presumably causes for the rest of society. This concern should be manifested or measurable in concrete ways, through, for example, public opinion pools, public commentary in the form of media attention, proposed legislation, social movement activity, and so on.”<sup>88</sup>

Though adults have been charged with criminal offenses stemming from antagonistic online speech, cyberbullying involving minors linked to teenage suicides and school-related cyberbullying incidents—have drawn the most attention, indignation and angst from parents, activists and legislators and sensationalized coverage from the news and entertainment media.

Headline-making teenage “bullicide” tragedies like the Sedwick story have framed the cyberbullying threat narrative from as early as 2004.

- A target of offline and online harassment, Ryan Halligan, 13, of Vermont committed suicide and the state enacted a Bullying Prevention Policy Law in May 2004.<sup>89</sup>
- Megan Meier, 13, committed suicide in October 2006, leading to the passage of Missouri’s Megan Meier Law in 2008<sup>90</sup> and the proposed but failed federal Megan Meier Cyberbullying Prevention Act.<sup>91</sup>
- Jessica Logan, 18, committed suicide in 2008. As a result, Ohio enacted the Jessica Logan Act requiring schools to prohibit cyberbullying.<sup>92</sup>
- The suicide of 18-year-old Rutgers University student Tyler Clementi in 2010 inspired the Tyler Clementi Higher Education Anti-Harassment Act requiring colleges and universities receiving federal student aid funding to enact an anti-harassment policy.<sup>93</sup>
- The suicide of Canadian Amanda Todd, 15, in 2012, which spurred the enactment of Canada’s C-13.<sup>94</sup>
- The suicide of Rehtaeh Parsons, 17, in 2013, which sparked public outrage and a hastily enacted Cyber-Safety Act in Nova Scotia, Canada.<sup>95</sup>
- Phoebe Prince, 15, took her own life in 2010, which spurred Massachusetts to pass a law making anti-bullying curriculum mandatory for every student in every grade, K–12, in both public and private schools.<sup>96</sup>

The prominence teen suicide has played in the social construction of cyberbullying as a moral panic is suggested by a google search of “cyberbullying.” The second result, for instance, <http://www.meganmeierfoundation.org/resourcecenter.html>, displayed a banner toward the bottom of the page that read: “The National Suicide Prevention Lifeline 1-800-273-TALK (8255).” The third result produced [http://americanspcc.org/bullying/statistics-and-information/?gclid=CK\\_88MqshMoCFcGRHwode0kHew](http://americanspcc.org/bullying/statistics-and-information/?gclid=CK_88MqshMoCFcGRHwode0kHew), which displayed a link “About Teen Suicide & Depression.”

The 10th result, a wikipedia entry, “Cyberbullying,” mentions “suicide” 27 times: “Awareness has also risen, due in part to high-profile cases like the suicide of Tyler Clementi.” “Children have killed each other and committed suicide after having been involved in a cyberbullying incident.” “The suicide of Megan Meier is a recent example that led to the conviction of the adult perpetrator of the attacks.” “These would include the suicide of Ryan Halligan and the suicide of Megan Meier, the latter of which resulted in United States v. Lori Drew.”

According to a *New York Times* report, “Online Bullies Pull Schools into the Fray,” the 13th result, “Often, school district discipline codes say little about educators’ authority over student cellphones, home computers and off-campus speech. Reluctant to assert an authority they are not sure they have, educators can appear indifferent to parents frantic with worry, alarmed by recent adolescent suicides linked to bullying.”<sup>97</sup>

In contrast, news media coverage of exoneration of cyberbullies and judicial setbacks of anti-cyberbullying laws has been restrained, a Google search of “cyberbullying” suggests. Consider that between 2012 and mid-2015, there were six rulings in the U.S. in which courts struck down a cyberharassment or cyberstalking law in whole or in part, or limited a cyberbullying law’s application: *State v. Vaughn*, 366 S.W.3d 513 at 519 (Mo. banc 2012); *People v. Golb*, 23 N.Y.3d 455, 467 (2014); *State v. Leidecker*, P3/11-2685 (R.I. July 30, 2014); *People v. Marquan*, 24 NY 3d 1 (2014); *Chan v. Ellis*, S14A1652 (Ga. Supreme Ct., 2015); and *Minnesota v. Timothy Robert Turner*, A14-1408 (Minn. Ct. App. 2015). Similarly, a federal judge imposed a permanent injunction upon Arizona’s revenge porn law in *Antigone Books v. Brnovich*, 2:14-cv-02100 (2015). All of these are highly significant and newsworthy rulings, led by *Marquan*, the first case in which a state’s highest court struck down an entire anticiberbullying law on First Amendment grounds.

Yet, no reference to those rulings, or, for that matter, the exoneration of cyberbullying defendants—adults or minors—appears within the first 17 pages of hits from a google search of “cyberbullying.” For example, the aforementioned Wikipedia entry makes no mention of such rulings nor does it discuss First Amendment concerns raised by the new laws. Instead, the first 160 or more hits identify websites and reports mostly focusing on cyberbullying as a problem of great social concern: StopBullying.gov, Cyberbullyhelp.com, “How Schools Should Handle Cyberbully?” “Confronting My Cyberbully: 13 Years Later” and “Stalker in the Attic: The Cyberbully Who Spies on 12-Year-Old Girls in Their Home.” Not until the 18th page of hits did a *Slate.com* story discussing *People v. Marquan*, the New York Supreme Court’s July 2014 ruling striking down Albany County, N.Y.’s cyberbullying statute as unconstitutional, appear.<sup>98</sup> (See Chapters Two and Three)

A narrower search using the phrase “cyberbullying laws” produced websites and articles that identified laws that criminalized or regulated cyberbullying framed mostly as trend pieces in the first five pages of results, though the *Slate* article, “The Legal Difficulties of Fighting Cyberbullying,” which referenced the *Marquan* ruling and took a critical approach, appeared in the

first page of results. On the fifth page, a *Wall Street Journal* article, discussing the possible implications of a ruling on the *Marquan* case, appeared.<sup>99</sup> On that same page of results, an *American Bar Association Journal* article, “NY High Court Says Anti-Cyberbullying Law Won’t Pass First Amendment Muster” appeared discussing *Marquan*.<sup>100</sup> Similarly, 10 pages of hits from a search of “cyberharassment” yielded not one report on *Golb*, a ruling in which New York’s highest court struck down the state’s cyberharassment statute as unconstitutional. In contrast, a search of “Cyberbullying First Amendment” yielded reports of courts striking down anti-cyberbullying laws within the first page of results. These results suggest that the general reader would be unlikely to be exposed to news reports in which sources question the constitutionality of cyberbullying laws or reports on rulings that support the civil libertarian argument against such laws.

Though a search for “revenge porn” identified an opinion piece entitled, “Revenge Porn is Bad. Criminalizing It Is Worse,”<sup>101</sup> by the 9th hit, no mention of the significant July 2015 ruling by a federal judge imposing a permanent injunction on Arizona’s revenge porn statute could be identified until the 7th page of results. There an Associated Press news report, published on the *Arizona Capitol Times* website, reported “State to Pay Fees, Costs for Challenge to Revenge Porn Law.”<sup>102</sup> (See Chapter Six.)

In contrast, google search returns of “teenage sexting” apparently reflect society’s mixed view on imposing harsh criminal penalties, or any at all, on teenagers who share nude images of themselves. As noted in “Cyberbullying and Free Speech,” “by early 2015, seventeen states had sexting statutes on their books, many of which shielded consensual youthful sharers of sexting from child pornography prosecution.<sup>103</sup> Accordingly, the first 23 results identified stories and columns warning of the potential psychological, social and physical damages of teen sexting or reports of sexting arrests. But among those 23 results were a *Washington Post* column, “Stop Demonizing Teen Sexting. In Most Cases, it is Completely Harmless,” and an Associated Press piece, published by the *Christian Science Monitor*, discussing the prosecution of two Fayetteville, N.C., sexting teens who were charged with being child porn victims and distributors, “When does Teen Sexting Become Child Porn?” (See Chapter Six.)

In a moral panic, concern and fear are “seen by those who feel them to be a reasonable response to what is regarded as a very real and palpable threat,” Goode and Ben-Yehuda argue.<sup>104</sup> By that measure, Sheriff Judd’s actions and rhetoric, and much of the news media’s early coverage of the arrests of minors

Roman and Shaw are evidence of “concern” as defined by Goode and Ben-Yehuda. Case in point is the October 16, 2013 *NBC Today Show* host Matt Lauer’s interview of Judd, focusing on a sheriff “who has now taken a very strong stand (against teenage cyberbullies),” said Lauer at the opening of the segment.<sup>105</sup> Next, a voice of a woman reporter announced that after a month-long investigation of Sedwick’s suicide, Judd said, “enough was enough.”<sup>106</sup> The off-screen reporter’s statements of the case were interspersed with video and audio footage of Judd at a press conference announcing the arrests of Roman and Shaw. (Though Judd held up photos of the two girls, NBC blanked out their images.)

Next, video and audio footage of Sedwick’s mother, Tricia Norman at a press conference was shown, followed by an interview with her. All the reporting focused on the tragedy of Sedwick, while the accused were given no voice—neither the girls, their parents, their legal representatives nor any legal or criminal expert appeared to present the girls’ side of the arrests.

After about two minutes, Lauer returned to the screen. In the nearly three-minute interview that ensued, Lauer did not ask Judd whether the charges were excessive, or whether he could have recommended noncriminal penalties for the minors instead, nor did he question the sheriff about the propriety of identifying the minor suspects or cast any doubt on Judd’s decision to arrest the girls. Instead, he allowed Judd to tar the girls and their parents. “I can tell you the parents are in total denial ... It’s kinda like the apple doesn’t fall far from the tree. That’s what we have here.”<sup>107</sup>

Surprisingly, Lauer also never questioned the motive of the sheriff who is well known and criticized by some in Florida as a man who “envision[s] himself as not just a local enforcer of laws but a more universal arbiter of morals.”<sup>108</sup> Apparently, Lauer assumed the young girls were guilty as charged. Otherwise, he would have operated as a fair and objective reporter by asking tougher questions or aired a response from the accused or their representatives. Lauer’s sign-off to the interview was perhaps most telling. It showed that he had bought into the moral panic, and suggests that many of his viewers should do the same. Lauer: “[The threat of cyberbully by minors] has clearly struck an emotional chord with you and I think it will with a lot of parents.”<sup>109</sup>

Opinion polls have measured the public’s heightened concern over cyberbullying. According to the results of a poll conducted by Ipsos Global Public Affairs for Reuters News in 2012, 77% of global citizens (18,687 adults) said, “cyberbullying is a fundamentally different type of bullying that needs special attention from parents and schools, in addition to existing efforts to address

bullying in general.”<sup>110</sup> In Canada, results of an online survey of 1,006 representative Canadian adults conducted in 2012 revealed 90% would make it a crime to use electronic means to “coerce, intimidate, harass or cause other substantial emotional distress.”<sup>111</sup>

Finally, alone, the number of interest groups devoted to eradicating cyberbullying may constitute sufficient evidence of a finding of a heightened level of concern: the Cyberbullying Research Center, Stomp Out Bullying, End to Cyberbullying, the Megan Meier Foundation, Delete Cyberbullying, The Cybersmile Foundation, NoBully.com, Stop Bullying Now.gov, the Cyber Civil Rights Initiative, and End Revenge Porn, to name a handful. Certainly, large numbers of individuals—parents of teenagers, teenagers, themselves, and single and divorced women—are also unsettled by online abusive words and images, as the findings of the Canadian poll suggest.

In the U.S., a Pew Study found that 40% of Internet users experienced online harassment.<sup>112</sup> Their unpleasant online experiences, however, did not necessarily lead to calls for new laws. “Sixty per cent said they had ignored” the online harassment and others confronted the cyberbully online, unfriended, blocked them or reported them to online intermediaries.<sup>113</sup> There is no denying that the public’s uneasiness and fears about online harassment exist, yet many of the interest groups in the study provided, as Goode and Ben-Yehuda have said, the “appropriate triggering device and a vehicle to express [themselves] in a moral panic.”<sup>114</sup>

## Hostility

Goode and Ben-Yehuda’s second criterion requires a finding of “an enemy ... a clearly identifiable group or segment of the society must be seen as *responsible* for the threat.”<sup>115</sup> In a phrase, the enemy is a “folk devil.” Sociologists have identified moral panic folk devils as witches, welfare state mothers, recreational drug users, pornographers, child molesters, cyber-predators, illegal aliens, and, of course, young people who deviated from social norms.<sup>116</sup> Hostility towards cyberbullies as deviates is displayed in the depiction of them as far more dangerous than traditional bullies, society’s praise of celebrities who stand up to them, and the widely accepted belief that online shaming—even shaming political figures and other public figures—is a form of deviant cyberbullying.<sup>117</sup>

There are many, notably psychologists, who subscribe to the claim asserted by Elizabeth Carll in her talk, “Electronic Harassment and Cyberstalking:

Intervention, Prevention and Public Policy,” delivered before the American Psychological Association’s 119th Annual Convention in 2011, that cyberbullying victims experience higher levels of stress and trauma than their offline counterparts. “It is my observation that the symptoms related to cyberstalking and e-harassment may be more intense than in-person harassment, as the impact is more devastating due to the 24/7 nature of online communication, inability to escape to a safe place, and global access of the information,” Carll said.<sup>118</sup> Carll’s assertions, disputed by other experts,<sup>119</sup> is nevertheless repeated in the popular press and cited in government documents such as Canada’s Department of Justice’s “A Handbook for Police and Crown Prosecutors on Criminal Harassment.”<sup>120</sup> Such highly debatable assertions promoted hostility toward cyberbullies as a new and more threatening species of bully and, thus, a justification for new criminal laws.

One of the biggest distinguishing factors in determining whether malicious use of technology consists of criminal harassment in bullying-type cases will be whether the online conduct is merely annoying, or whether it causes the target to fear for his or her physical or psychological safety. In fact, recent research has shown that online harassment and bullying result in higher levels of trauma and stress for the victim than more traditional forms of stalking ... The sense of humiliation they experience is often increased due to the public nature of the bullying or harassment. This type of harm was recently recognized by the Supreme Court of Canada in the civil case of *AB v Bragg Communications*, 2012 SCC 46.<sup>121</sup>

As discussed in “Cyberbullying and Free Speech,” the term cyberbullying encompasses a wide range of expressive conduct from constitutionally protected parody, taunting, minors ridiculing other minors, flaming, caustic and robust criticism of elected officials, political candidates and celebrities to constitutionally unprotected stalking, speech integral to criminality, harassment, true threats and false defamation. Because the term encompasses a wide variety of speech—legal, illegal and ethical and unethical—tagging someone as a “cyberbully” unfairly stigmatizes. Once the label is affixed, nuance is lost.

Many in the news media and the public incorrectly assume that the accused cyberbully intended to harm absent a legitimate motive, that all types of cyberbullying inflict serious harm, and that all mean and cruel online speech is illegal, or valueless, solely because it can be emotionally disturbing. Accordingly, it is easy for many to conclude that cyberbully should be criminalized, particularly when minors are involved. NBC’s Lauer’s woeful and unnecessarily deferential questioning of Sheriff Judd—aimed more at producing an emotional impact from viewers than producing an accurate and fair

report—is indicative of the hostility the term “cyberbully,” particularly teenage cyberbully, engenders among an audience such as NBC’s *Today Show*’s mainstream coffee-and-cereal audience.

Judging from the interview of Judd, accused cyberbullies are perceived as moral degenerates, who do not deserve fair treatment from the news media. It is as though an indictment of cyberbullying is something akin to an arrest for suspicion of child molesting. The accused is guilty as charged, and even after exoneration the suspicion still lingers. In *Moral Panic: Changing Concepts of the Child Molester in Modern America*, Historian Philip Jenkins observed, “During the twentieth century ... such dangerous outsiders [predators, psychopaths and pedophiles] have attracted a vastly disproportionate share of official attention, precisely because they represent the easiest targets for anyone wishing, however sincerely, to protect children.”<sup>122</sup> The same can be said of the cyberbully accused of attacking minors.

Contempt for cyberbullies is so strong that one needs only to claim one self a victim of hostile online speech to gain sympathy. At least that is what appears to be the strategy and effect of Monica Lewinsky’s “I-was-the-world’s-first-cyberbullying-victim campaign” kicked off in 2014, 19 years after she became notorious worldwide as former President Clinton’s White House intern lover.<sup>123</sup> Lewinsky defines cyberbullying as public speech that shames. “Public shaming as a blood sport has to stop,” says Lewinsky said. “I was Patient Zero of losing a personal reputation on a global scale almost instantaneously.”<sup>124</sup>

Though her plea for compassion from online snarkers has ethical merit, there is a significant difference between speech that publicly shames an innocent teenage girl who has no public profile and ridiculing Lewinsky, who as a woman of majority age, 22, engaged in an adulterous affair with the President of U.S. Under the First Amendment, public speech about public figures enjoys a great deal of protection because the U.S. Supreme Court has recognized society’s interest in public free-wheeling discussion of public people who affect and shape public matters and policies. Consistent with that societal interest, state laws provide for civil remedies—not criminal punishment—for verbal abuse that falsely defames an individual’s reputation or amounts to the intentional infliction of serious mental or emotional distress.<sup>125</sup>

Additionally, shaming, in and of itself, is not actionable as an intentional infliction of emotion distress action because scholars and courts agree that liability under the tort “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.”<sup>126</sup> Moreover, under the First Amendment a public figure such as Lewinsky cannot recover damages for

intentional emotional distress.<sup>127</sup> Under defamation law, a public figure such as Lewinsky would have to show that shaming was false and made with reckless regard for the truth.<sup>128</sup> Accordingly, Lewinsky has no credible intentional infliction of emotional harm or defamation case. Nevertheless, Lewinsky's plea resonates with many largely because of the ambiguity of the term cyberbullying and because few can muster sympathy for cyberbullies.

Branding cyberbullies as social deviants also has allowed cyberbully disparagers to be treated as avenging heroes as seen in the coverage of former Philadelphia Phillies baseball star Curt Schilling's tracking down of two young men who posted lewd comments about his daughter<sup>129</sup> and actress and University of Kentucky basketball fan Ashley Judd telling off fans of opposing teams and threatening lawsuits, none of which materialized.<sup>130</sup>

## Consensus

“Third, there must be a certain minimal measure of agreement in society as a whole or in designated segments of the society that the threat is real, serious and caused by the wrongdoing of group members and their behavior.”<sup>131</sup> As we have seen certain segments of society—some news media, psychologists, sociologists, pundits, many parents, legislators, here and abroad, and, of course, anti-cyberbullying crusaders believe that cyberbullies pose a serious threat to society that requires intervention by school authorities and the criminal justice system.

Criminologists Sameer Hindaju and **Justin W. Patch**, heads of the Cyberbullying Research Center who have surveyed nearly 15,000 teenage students about cyberbullying, are widely recognized experts on cyberbullying. In one of their reports, the criminologists identified some of cyberbullying's harms:

There are many detrimental outcomes associated with cyberbullying ... First, many targets of cyberbullying report feeling depressed, sad, angry, and frustrated ... cyberbullying youth also report having suicidal thoughts, and there have been a number of examples in the United States where youth who were victimized ending up taking their own lives ... We also need to get everyone involved—youth, parents, educators, counselors, law enforcement, social media companies, and the community at large.<sup>132</sup>

From Child psychologist Dr. Vicki Panaccione, who writes a blog for the Better Parenting Institute: “The effects of cyberbullying are devastating and ruining lives. Lately in the news there have been reports of suicides due to cyberbullying by kids as young as 12!”<sup>133</sup>

Though the New York Court of Appeals struck down a county cyberbullying law in 2014 in *People v. Marquan*, it nevertheless acknowledged the threat of cyberbullying by quoting Pepperdine Law professor Naomi Goodno, who proposed “a comprehensive model cyberbullying policy for primary and secondary public schools that meets educational goals and considers constitutional challenges.”<sup>134</sup>

The advent of the Internet with “twenty-four hour connectivity and social networking” means that “[b]ullying that begins in school follows students home every day” and “bullying through the use of technology can begin away from school property” ... Unlike traditional bullying, victims of cyberbullying can be “relentlessly and anonymously attack[ed] twenty-four hours a day for the whole world to witness. There is simply no escape.”<sup>135</sup>

One news headline suggested that many Brits saw cyberbullying as a growing threat in 2011. “Cyberbullying is a New Threat to Children,” proclaimed a June 2011 trend piece published in *The Telegraph*.<sup>136</sup> CBS television news’ take on the Sedwick suicide treated it as a cautionary tale: “12-Year-Old’s Suicide Spotlights Cyber-Bullying Threat.”<sup>137</sup>

The Cyber Civil Rights Project, which seeks to make revenge porn illegal, plays the suicide card.

With the click of a mouse, a bitter ex or mischievous hacker can upload compromising photos or videos of a victim to public websites without the consent of the pictured individual. These sexually explicit images quickly make their way to the attention of the victim’s family members, friends, co-workers, classmates, colleagues, and employers. Victims are routinely threatened, stalked, and tormented. They have difficulty finding work and often get fired from or are forced to leave their current jobs or schools because of the severity of the harassment. *Some victims of nonconsensual pornography have even committed suicide* [emphasis added].<sup>138</sup>

## Disproportionality

Fourth, there is the implicit assumption in the use of the term moral panic that the concern is out of proportion to the nature of the threat, that it is, in fact, considerably greater than that which a sober empirical evaluation could support ... if the figures that are cited to measure the scope of the problem are grossly exaggerated, we may say that the criterion of disproportionality has been met.<sup>139</sup>

Several experts argue that prevailing claims about cyberbullying have been exaggerated. They say that it is not as prevalent and dangerous as portrayed in the media and by anti-bullying advocates, nor are such claims sufficiently supported by empirical scientific evidence.

Dan Olweus, psychologist and world-renown expert on bullying, was one of the first to debunk the conventional wisdom about cyberbullying as a threat. Olweus's study included the questioning of 450,000 U.S. students and 9,000 Norwegian students from 2007 to 2010 about their experiences with traditional verbally and cyberbullying.<sup>140</sup> He scrutinized three claims: (1) cyberbullying is a very frequent phenomenon among youth (2) the frequency or prevalence of cyberbullying has increased dramatically and (3) cyberbully has created new bullying perpetrators and victims.

The general picture created in the media—and often also by researchers and authors of books on cyberbullying—is that cyberbullying is very frequent, that it has increased dramatically over time and that this new form of bullying has created many new victims and bullies in addition to the victims and bullies involved in “traditional” bullying. In addition, it is often argued or implied that cyberbullying is very difficult for adults to discover and counteract, creating a feeling of powerlessness in adults and maybe students as well.<sup>141</sup>

According to the findings of Olweus's questionnaires, traditional verbal bullying occurred far more frequently than cyberbullying in the U.S. and Norway—“cyberbullying is actually a quite low-prevalence phenomenon, representing only some 25 to 35% of the level of traditional bullying by direct verbal means.”<sup>142</sup> With regard to the second claim, his findings showed cyberbullying did not increase from 2007 to 2010. “This is true of both cyberbullying and cyberbullying others—as well as of being bullied and bullying others by direct verbal means.”<sup>143</sup> As for the third claim, the findings of the study suggested that access to social media has created few new perpetrators and victims. “In these analyses, there was only a small percentage, about 10%, of the participants, who had only been cyberbullied or had only cyberbullied others.”<sup>144</sup>

Olweus says that some forms of cyberbullying should still be taken seriously. Nevertheless, it is necessary to have a realistic picture of its impact and prevalence because,

a distorted portrayal of reality will probably generate a lot of unnecessary anxiety and tension among parents and maybe teachers and students. It may also create feelings of powerlessness and helplessness in the face of the presumably “huge” and ubiquitous cyberbullying problem. Second, such a picture is likely to result in an unfortunate shift in the focus of anti-bullying work if digital bullying is seen as the key bullying problem in the schools. This would probably also result in funneling a lot of resources in a “wrong” direction while traditional bullying—which is clearly the most prevalent and most serious problem—would be correspondingly downgraded.<sup>145</sup>

In 2010, technology journalist Larry Magid, citing several statistical studies, concluded: “There is no question that there is a problem and I certainly don’t want to sugarcoat it, but it’s also important to look at it from the positive side as well. It’s worth pointing out that about 80 percent of teens say they have not been cyberbullied while 90 percent of teens say they haven’t cyberbullied other teens.”<sup>146</sup>

Criminologist Justin Patchin of the Cyberbullying Research Center agreed with Magid. “He is right that the public can sometimes view a particular problem as epidemic in nature simply from one or two high profile incidents (for example, the school shootings of the late 1990s, or more recently the panic over online sexual predators). And many in the media often fan the flames.”<sup>147</sup>

Stopbullying.gov, a federal government website managed by the U.S. Department of Health & Human Services, listed common errors of media coverage of cyberbullying: overstating the problem; stating or implying that bullying caused a suicide; oversimplifying issues related to a bullying incident; using under-qualified sources; blaming/criminalizing those who bully; and sensationalizing. It notes that “bullying is not an epidemic” and cyberbullying “is less prevalent than other forms of bullying.”<sup>148</sup>

Findings of a poll conducted by the Pew Research Center released in 2015, call into question the conventional belief that most parents are in a near cataleptic state over fears about their children’s online activities. “Just 12% of parents say they have ever felt uncomfortable about something a spouse, family member, or friend posted about their child on social media.”<sup>149</sup> Another Pew Research Center poll found that, “Overall, 69% of social media-using teens think that peers are mostly kind to each other on social network sites. Another 20% say that peers are mostly unkind, while 11% volunteered that ‘it depends.’ Some 15% of teen social media users have experienced such harassment themselves in the past 12 months, while 85% of them have not.”<sup>150</sup>

## Volatility

Goode and Ben-Yehuda have said, “moral panics are volatile: They erupt fairly suddenly ... and, nearly as suddenly, they subside ... and are relatively short-lived.”<sup>151</sup>

But Goode and Ben-Yehuda also acknowledge that panics can endure, erupting from time to time. “In fact, moral panics that are sustained over long periods of time are almost certainly conceptual groupings of a series of more or less discrete, more or less localized, more or less short-term panics. Likewise,

describing a concern as volatile does not mean that moral panics do not, or cannot, leave a cultural and institutional legacy.”<sup>152</sup>

For example, the black mugger panic, identified in the influential moral panic analysis, *Policing the Crisis: Mugging, the State and Law and Order*, started in the late 1960s in the United States and in 1972–1973 in Great Britain.<sup>153</sup> The afterwords section of the 2013 edition of *Policing the Crisis* argues that the stereotype of the black mugger as a folk devil has lasted over 40 years in England, and has morphed. “Arguably, the contemporary ‘folk devil’ ... is no longer black, but has widened to include all disaffected youth: the ‘under-class,’ ‘chavs,’ ‘hoodies,’ and post 9/11 terrorists.”<sup>154</sup>

The same thing can be said of the U.S. version of the phenomenon. In the U.S., the panic endured for more than 20 years. The Republican Presidential Candidate G.W. Bush tapped into the irrational fear of the violent black street criminal in his 1988 Willie Horton ad campaign and beyond.<sup>155</sup> The moral panic resurfaced again during the nationwide debate over racial profiling and stand-your-ground laws that erupted during the pretrial phase and trial exoneration of George Zimmerman for the shooting death of black teen Trayvon Martin.<sup>156</sup> It suggests that the black mugger as a folk devil persists in the U.S. in the second decade of the 21st century.

Critchler also identifies the pattern as serial:

Serial moral panics start and end more than once. Child abuse, drugs and crime all seem to have serial status in many developed societies across the world. All it takes is a new kind of abuse, type of drug or form of violent crime, as symbolized by a key event, claimed by a law enforcement agency or revealed by a commissioned report. The cycle is played out all over again until there is introduced a new law, reform of an existing one or change in the activities of enforcement agencies. Then the topic is dropped—until the next time.<sup>157</sup>

Arguably, teenager Meier’s suicide in October 2006 marks the start of the transnational cyberbullying panic, and over the years it has taken on different forms—fear of anonymous manipulative, hostile, profane, sexually explicit and insulting expression by adults and teens, including the most recent phenomenon dubbed revenge porn. Given the decades-old duration of the black mugging panic, which has re-erupted, triggered by cynical politicians, economic down turns or newsmaking white vs. black deadly street confrontations, the cyberbullying panic may persist for decades. As Goode and Ben-Yehuda noted, “elements of panics may be established at one point in time that remain in place and help stimulate incipient concerns later on, at the appropriate time.”<sup>158</sup>

## Conclusion

Since 2008, legislators have enacted laws to censor cyberbullying that too many civil libertarians raised obvious and substantial free speech concerns because the terms of the statutes were out of step with decades of well-settled First Amendment principles. It has been long settled under the First Amendment that candidates for political office are fair game for parody, satire and other forms of harsh criticism. Therefore, one would not anticipate that a labor leader's impersonation of a voter and a political candidate in email conversations between a political candidate and the fake personas would constitute illegal speech. Yet, a Rhode Island prosecutor won a conviction against the labor leader, which, not surprisingly, was overturned as unconstitutional.<sup>159</sup> (See "Cyberbullying and Free Speech," and "Censorship Redux: The 21<sup>st</sup> Century Attack on the First Amendment Right of Public Criticism by the Use of Cyberharassment, Cyberstalking and Online Impersonation Laws.")

Other recent court rulings striking down cyberbullying laws and overturning verdicts examined in this text attests to the threat the new breed of censorship poses to the right to criticize and offend without fear of imprisonment. Beyond criminal sanctions, the regulation of public school student off-campus, online speech based on brick-and-mortar era precedents and new laws passed mandating schools to punish such speech are troubling to free speech advocates, too. As examined in Chapters Two and Four, many school districts are interpreting precedents broadly, sometimes unconstitutionally so, to police off-campus speech.

Though there are many explanations for why law makers draft new constitutionally defective cyberbullying laws or why prosecutors and judges incorrectly apply old laws, moral panic theory offers a credible motive for why these errors have been repeated in state after state, and Canada. Here, based on the findings of published studies and the application of the Goode-Ben Yehuda analysis to media accounts, it is argued that a cyberbullying moral panic does exist and has directly led to the enactment of constitutionally dubious statutes and ones that courts have struck down as unconstitutional.

Admittedly, the scope of this content analysis examining whether the backlash against cyberbullying meets the Goode-Ben-Yehuda criteria of concern, hostility, consensus, disproportionality and volatility is narrow. But combined with the findings of previous studies, it is reasonable to conclude that a cyberbullying moral panic exists. The findings of previous studies and the

original analysis offered here also suggest that the media and professional and grassroots organizations have stoked the panic.

Ultimately, moral panic-generated legislation and prosecutions, because they are spawned from righteous indignation and misunderstanding and are poorly drafted, often miss their intended targets. Such is the case with the cyberbullying moral panic-fueled arrests and prosecutions. Katelyn Roman and Guadalupe Shaw never said anything that merited being treated as accused felons, but they are likely to suffer for their insensitive words and the ensuing publicity for years to come; at least that is what Michelle Gill, Katelyn's mother, fears.

"She's just a kid," Gill said about Katelyn in a magazine interview in April 2014. "This will follow her for her entire life—when she applies to college, when she looks for jobs."<sup>160</sup>

## Notes

1. Stanley Cohen, *Folk Devils and Moral Panics* (London: Routledge, 2004), 1.
2. Christopher Lydon, "J. Edgar Hoover Made the F.B.I. Formidable with Politics, Publicity and Results," *New York Times*, May 3, 1972, <https://www.nytimes.com/learning/general/onthisday/bday/0101.html> (accessed August 17, 2016).
3. Anna Werner, "Fla. Sheriff on Why He Charged Dead 12-Year-Olds' Alleged Bullies," *CBS Evening News*, October 15, 2013, 8:14 PM, <http://www.cbsnews.com/news/fla-sheriff-on-why-he-charged-dead-12-year-olds-alleged-bullies/> (accessed August 17, 2016).
4. Scott Stump, "Fed Up Sheriff: Alleged Teen Bully 'Did Something Despicable,'" *Today News*, October 16, 2013, at 9:53, <http://www.today.com/news/fed-sheriff-alleged-teen-bully-did-something-despicable-8C11401636> (accessed August 17, 2016).
5. Tamara Lush, "Florida Bullying Case Raises Questions for Parents," *Associated Press*, October 16, 2013, 8:45 PM EDT, <http://www.bigstory.ap.org/article/2-charged-fla-after-bullied-girls-suicide> (accessed August 17, 2016).
6. Lizette Alvarez, "Charges Dropped in Cyberbullying Death, but Sheriff isn't Backing Down," *New York Times*, November 21, 2014, <http://www.nytimes.com/2013/11/22/us/charges-dropped-against-florida-girls-accused-in-cyberbullying-death.html?pagewanted=all&r=0>
7. Inside Edition, "Accused Teen Bullies Identities Revealed at Press Conference," October 16, 2013, 10:44 AM EDT, <http://www.insideedition.com/headlines/7183-accused-teen-bullies-identities-revealed-at-press-conference> (accessed August 17, 2016).
8. Assault; Battery; Culpable Negligence, Florida Statutes Chapter 784.048 (2010), [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0784/Sections/0784.048.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0784/Sections/0784.048.html) (accessed August 17, 2016).
9. Arelis Hernández and Jerriann Sullivan, "Cyberbullying-suicide Suspect: Yes, I Bullied Girl Who Killed Herself," *Orlando Sentinel*, October 15, 2013, [http://articles.orlandosentinel.com/2013-10-15/news/os-rebecca-sedwick-cyber-bully-arrests-20131015\\_1\\_rebecca-ann-sedwick-12-year-old-girl-saying-rebecca](http://articles.orlandosentinel.com/2013-10-15/news/os-rebecca-sedwick-cyber-bully-arrests-20131015_1_rebecca-ann-sedwick-12-year-old-girl-saying-rebecca) (accessed August 17, 2016).

10. Amanda Paulson, "Rebecca Sedwick Suicide: Parents to Blame for their Bullying Children?" *Christian Science Monitor*, October 16, 2013, <http://www.csmonitor.com/USA/2013/1016/Rebecca-Sedwick-suicide-Parents-to-blame-for-their-bullying-children-video> (accessed July 19, 2016).
11. Stump, "Fed Up Sheriff: Alleged Teen Bully 'Did Something Despicable.'"
12. "Editorial: Terrible Toll of Cyberbullying," *Tampa Bay Times*, October 15, 2013 6:08pm, <http://www.tampabay.com/opinion/editorials/editorial-terrible-toll-of-cyberbullying/2147409> (accessed July 19, 2016).
13. "Analysis: Critics say Polk Sheriff Grady Judd is Overstepping his Bounds," *Fox 13/ WTVT-TV*, October 16, 2013, 6:25 PM EDT, <http://www.myfoxtampabay.com/story/23711135/2013/10/16/analysis-polk-sheriff-grady-judd-is-overstepping-his-bounds> (accessed July 19, 2016).
14. Alvarez, "Charges Dropped in Cyberbullying Death, but Sheriff isn't Backing Down."
15. Mallery Jean Tenore, "Why Journalists Have Trouble with Bullying," *Poynter.org* (blog), March 12, 2013, 8:36 AM, <http://www.poynter.org/news/mediawire/206723/why-journalists-have-trouble-with-bullying/> (accessed July 19, 2016); Kelly McBride, "Bullying is Not on the Rise and It Does Not Lead to Suicide," *Poynter.org* (blog), November 25, 2014, 8:08 AM, <http://www.poynter.org/news/mediawire/227095/bullying-is-not-on-the-rise-and-it-does-not-lead-to-suicide/> (accessed July 19, 2016).
16. The American Academy of Pediatrics (Press Release), "Cyberbullying Only Rarely the Sole Factor Identified in Teen Suicides," October 20, 2012, <http://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/Cyberbullying-Only-Rarely-the-Sole-Factor-Identified-in-Teen-Suicides.aspx> (accessed July 19, 2016).
17. Fabien Tepper, "Rebecca Sedwick Suicide: Mother Vows 'Crusade' for Tougher Bullying Laws," *The Christian Science Monitor*, November 25, 2013, <http://www.csmonitor.com/USA/USA-Update/2013/1125/Rebecca-Sedwick-suicide-Mother-vows-to-crusade-for-tougher-bullying-laws-video> (accessed July 19, 2016).
18. CNN Staff, "Mother of Florida Girl Who Committed Suicide Plans to Sue," *CNN.Com*, November 26, 2013, 9:19 AM ET, <http://www.cnn.com/2013/11/25/justice/rebecca-sedwick-bullying-death/index.html> (accessed August 18, 2016).
19. Tepper, "Rebecca Sedwick Suicide: Mother Vows 'Crusade' for Tougher Bullying Laws."
20. Abigail Pesta, "Who are You Calling a Bully," *Cosmopolitan*, April 8, 2014, 9:15 AM, <http://www.cosmopolitan.com/lifestyle/advice/a6303/twelve-year-old-bully> (accessed July 29, 2016); Emily Bazelon, "The Sheriff Overstepped," *Slate.com*, April 10, 2014, 6:23 PM, [http://www.slate.com/articles/news\\_and\\_politics/doublex/2014/04/rebecca\\_sedwick\\_suicide\\_sheriff\\_grady\\_judd\\_never\\_should\\_have\\_arrested\\_katelyn.html](http://www.slate.com/articles/news_and_politics/doublex/2014/04/rebecca_sedwick_suicide_sheriff_grady_judd_never_should_have_arrested_katelyn.html) (accessed July 29, 2016).
21. Associated Press, *Bullying May Not Have Caused Girl's Suicide, Report Shows*, April 7, 2014, <http://www.tampabay.com/news/nation/bullying-may-not-have-caused-girls-suicide-report-shows/2173979> (accessed July 29, 2016).
22. Christian Dem, "FL Girls Who Helped Bully Classmate to Death Agree to Counseling in Return for Charges Being Dropped," *Daily Kos.com*, November, 21, 2013, 3:04 PM PST, <http://www.dailykos.com/story/2013/11/21/1257393/-FL-girls-who-helped-bully-classmate-to-death-agree-to-counseling-in-return-for-charges-being-dropped#> (accessed July 29, 2016).

23. Caroline Davies, "Hannah Smith Wrote 'Vile' Posts to Herself Before Suicide, Say Police," *The Guardian*, May 4, 2014 17.40 EDT, <http://www.theguardian.com/uk-news/2014/may/06/hannah-smith-suicide-teenager-cyber-bullying-inquests> (accessed July 29, 2016).
24. Matt Gutman, "Sheriff Would Arrest Cyberbully Suspect's Parents If He Could," *ABC News*, October 17, 2013, <http://abcnews.go.com/US/rebecca-sedwick-suicide-sheriff-arrest-cyberbully-suspects-parents/story?id=20594342> (accessed July 29, 2016).
25. Cohen, *Folk Devils and Moral Panics*, xxvii.
26. Richard C. Fuller and Richard R. Myers, "The Natural History of a Social Problem," *American Sociological Review* 6 (June 1941): 320–28, 320.
27. Cohen, *Folk Devils and Moral Panics*, 2.
28. Eric Goode and Nachman Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," *Annual Review of Sociology* 20 (1994): 149.
29. Chas Critcher, ed., *Critical Readings: Moral Panics and the Media* (Maidenhead: Open University Press, 2006), 9.
30. Cohen, *Folk Devils and Moral Panics*, 155.
31. *Ibid.*, 156, 155.
32. *Ibid.*, 40, 41.
33. *Ibid.*, 38.
34. *Ibid.*, 2.
35. Jon Savage, "Mods v. Rockers: Two Tribes go to War," *British Broadcasting Corporation*, October 21, 2014, <http://www.bbc.com/culture/story/20140515-when-two-tribes-went-to-war> (accessed August 18, 2016).
36. Yvonne Jewkes, *Media and Crime* (London: Sage, 2011).
37. *Ibid.*, 77.
38. Tim O' Reilly, "What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software," *Communications & Strategies* 65 (March 2007): 17–37, [https://mpira.ub.uni-muenchen.de/4578/1/MPRA\\_paper\\_4578.pdf](https://mpira.ub.uni-muenchen.de/4578/1/MPRA_paper_4578.pdf) (accessed December 28, 2015).
39. Amanda Lenhart, *Teens, Social Media & Technology Overview 2015* (Washington, D.C.: Pew Research Center, April 9, 2015), <http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/> (accessed December 28, 2015).
40. Justin w. Patchin, "Cyberbullying Facts Summarizing What is Known," Cyberbullying Research Center, 2015, <http://cyberbullying.org/facts/> (accessed December 28, 2015).
41. Maeve Duggan et al., "Teens, Kindness and Cruelty on Social Network Sites," *Pew Research Center: Internet, Science & Technology*, November 9, 2011, <http://www.pew-internet.org/2011/11/09/teens-kindness-and-cruelty-on-social-network-sites/> (accessed December 28, 2015).
42. Eric Goode and Nachman Ben-Yehuda, "Grounding and Defending the Sociology of Moral Panic," in *Moral Panic and the Politics of Anxiety*, ed. Sean P. Hier (London: Routledge, 2011), 21.
43. Howard Beck, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1997), 147–63.
44. Joel Best, "Social Problems," *Oxford Bibliographies*, August 31, 2015, <http://www.oxford-bibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0052.xml> (accessed December 29, 2015).

45. Eric Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* (Malden: Wiley-Blackwell, 2009), 90.
46. Critcher, *Critical Readings: Moral Panics and the Media*, 9.
47. *Winterbottom v Wright* (1842) 10 M. & W. 109.
48. Megan Meier Cyberbullying Prevention Act of 2009, H.R.1966, 111th Cong. (2009–2010), <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1966> (accessed December 29, 2015).
49. Ashley Hauck, "Cyberbullying Laws by State," *Crime Wire*, July 1, 2014, <http://www.instantcheckmate.com/crimewire/cyberbullying-laws-by-state> (accessed December 29, 2015).
50. Chas Critcher, "Moral Panic Analysis: Past, Present and Future," *Sociology Compass* 4 (July 2008): 1127–44, 1141, <http://www.penelopeironstone.com/Critcher.pdf> (accessed December 29, 2015).
51. R. M. Entman, "Framing: Toward Clarification of a Fractured Paradigm," *Journal of Communication* 43 (1993): 51–58, 52.
52. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 156–59.
53. Linda M. Waldron, "Cyberbullying: The Social Construction of a Moral Panic," in *Communication and Information Technologies Annual*, ed. Laura Robinson, Shelia R. Cotton, and Jeremy Schulz (Bingley: Emerald Group Publishing Limited, 2014), 197–230.
54. Mylynn Felt, "Framing 'Cyberbullying': Competing Frame Coverage of Rehtaeh Parsons' Death," in *TEM 2014 Proceedings of the Technology and Emerging Media Track—Annual Conference of the Canadian Communication Association*, ed. A. Buckland and C. Caron (Ottawa), May 28–30, 2012), 4, [http://www.tem.fl.ulaval.ca/webroot/wp-content/PDF/Saint-Catharines\\_2014/FELT-TEM2014.pdf](http://www.tem.fl.ulaval.ca/webroot/wp-content/PDF/Saint-Catharines_2014/FELT-TEM2014.pdf) (accessed December 29, 2015).
55. MyLynn Felt, "The Incessant Image: How Dominant News Coverage Shaped Canadian Cyberbullying Law," *University of New Brunswick Law Journal* 66 (2015): 137–60, [http://www.academia.edu/14853196/THE\\_INCESSANT\\_IMAGE\\_HOW\\_DOMINANT\\_NEWS\\_COVERAGE](http://www.academia.edu/14853196/THE_INCESSANT_IMAGE_HOW_DOMINANT_NEWS_COVERAGE) (accessed December 29, 2015).
56. Noah Nelson, "Cyberbullying: Problem or Panic?" *Huffington Post*, May 25, 2011, 4:00 PM EDT, [http://www.huffingtonpost.com/youth-radio-youth-media-international/cyberbullying-problem-or\\_b\\_522078.html](http://www.huffingtonpost.com/youth-radio-youth-media-international/cyberbullying-problem-or_b_522078.html) (accessed December 29, 2015).
57. Mike Masnick, "As Cyberbullying Moral Panic Heats Up, Actual Rates of Cyberbullying Decreasing," *TechDirt*, April 9, 2010, 12:15 PM, <https://www.techdirt.com/articles/20100408/0218098933.shtml> (accessed December 29, 2015).
58. Gavin Titley, "The Moral Panic over Social Media in Ireland is a Convenient Distraction," *The Guardian*, January 7, 2013, 10:30 EST, <http://www.theguardian.com/commentisfree/2013/jan/07/moral-panic-social-media-ireland> (accessed December 29, 2015).
59. Shaheen Shariff, *Sexting and Cyberbullying* (New York: Cambridge University Press, 2015), 40.
60. Mallery Jean Tenore, "Why Journalists have Trouble with Bullying," *Poynter.org* (blog), March 12, 2013, 8:36 AM, <http://www.poynter.org/news/mediawire/206723/why-journalists-have-trouble-with-bullying/> (accessed January 5, 2016).
61. Ibid.
62. Kelly McBride, "Bullying Is Not on the Rise and It Does Not Lead to Suicide," *Poynter.org* (blog), updated November 25, 2014, 8:09 AM, <http://www.poynter.org/news/>

- mediawire/227095/bullying-is-not-on-the-rise-and-it-does-not-lead-to-suicide/ (accessed January 5, 2016).
63. Ibid.
  64. Jonathan Bishop, "Representations of 'Trolls' in Mass Media Communication: A Review of Media-Texts and Moral Panics Relating to 'Internet Trolling,'" *International Journal of Web Based Communities* 10 (2014): 7–24, <http://www.scribd.com/doc/190884079/Representations-of-trolls-in-mass-media-communication-A-review-of-media-texts-and-moral-panics-relating-to-internet-trolling> (accessed December 29, 2015).
  65. Carla Cesaroni, Steven Downing, and Shahid Avi, "Bullying Enters the 21st Century? Turning a Critical Eye to Cyber-bullying Research," *Youth Justice* 12 (2012): 199–211, 200.
  66. Heidi Vandebosch et al., "The Role of the Media. Coping and Guidelines," in *Cyberbullying Through the New Media: Findings from an International Network*, ed. Peter K. Smith and Georges Steffgen (London: Psychology Press, 2013), 100.
  67. Ibid., 115.
  68. Ibid., 114–15.
  69. Felt, "Framing 'Cyberbullying': Competing Frame Coverage of Rehtaeh Parsons' Death," 4.
  70. Emily Bazelon, "Sex Scourge," *Slate*, April 10, 2013, 6:43 PM, [http://www.slate.com/articles/double\\_x/doublex/2013/04/rehtaeh\\_parsons\\_rape\\_case\\_why\\_do\\_these\\_keep\\_happening.single.html](http://www.slate.com/articles/double_x/doublex/2013/04/rehtaeh_parsons_rape_case_why_do_these_keep_happening.single.html) (accessed December 29, 2015).
  71. *Cyber-safety Act*, S.N.S. 2013, c. 2, s. 3(1), <http://www.canlii.org/en/ns/laws/stat/sns-2013-c-2/latest/sns-2013-c-2.html> (accessed December 29, 2015).
  72. Ibid.
  73. Felt, "Framing 'Cyberbullying': Competing Frame Coverage of Rehtaeh Parsons' Death," 2.
  74. Parliament of Canada, "Protecting Canadians from Online Crime Act," December 9, 2014, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6830553&File=27#1> (accessed December 30, 2015).
  75. Felt, "The Incessant Image: How Dominant News Coverage Shaped Canadian Cyberbullying Law," 137.
  76. Ibid., 151–52.
  77. Ibid., 147.
  78. Ibid., 152.
  79. Ibid., 159.
  80. Waldron, "Cyberbullying: The Social Construction of a Moral Panic," 205.
  81. Ibid., 207.
  82. Ibid., 225.
  83. Ibid., 207.
  84. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 160.
  85. Julia Dahl, "'Rebecca's Law' Aims to Punish Bullying in Fla.," *CBS News*, January 17, 2014, 3:56 PM, <http://www.cbsnews.com/news/rebeccas-law-aims-to-punish-bullying-in-florida/> (accessed December 30, 2015).
  86. Sameer Hinduja and Justin Patchin, "Bullying, Cyberbullying and Suicide," *Archives of Suicide Research* 14 (2010): 206.

87. Sergey Brin and Lawrence Page, "The Anatomy of a Large-Scale Hypertextual Web Search Engine," Computer Science Department, Stanford University, <http://infolab.stanford.edu/~backrub/google.html> (accessed December 30, 2015).
88. Eric Goode and Nachman Ben-Yehuda, "Moral Panics: An Introduction," in *Critical Readings: Moral Panics and the Media*, (Maidenhead: Open University Press, 2006), ed. Chas Critcher, 51.
89. 16 V.S.A. § 570. Harassment, hazing and bullying prevention policies, [http://www.wvvermont.org/cgi-bin/vt\\_legis/fullsection.cfm?form\\_access\\_date=20151106&Title=16&Chapter=009&Section=00570](http://www.wvvermont.org/cgi-bin/vt_legis/fullsection.cfm?form_access_date=20151106&Title=16&Chapter=009&Section=00570) (accessed December 30, 2015).
90. Richard Koman, "Megan's Law: Mo. Prosecutors Using New Cyberbullying Laws," *Zdnet.com*, December 21, 2008, <http://www.zdnet.com/article/megans-law-mo-prosecutors-using-new-cyberbullying-laws/> (accessed December 30, 2015).
91. H.R.1966—Megan Meier Cyberbullying Prevention Act, 111th Congress (2009–2010).
92. Richard Wilson, "New State Law Gives School Districts Reach to Punish Cyberbullying," *The Springfield News-Sun*, February 14, 2012, 10:42 AM, <http://www.springfieldnewssun.com/news/news/local/new-state-law-gives-school-districts-reach-to-pu-1/nMyqm/> (accessed December 30, 2015).
93. Tyler Clementi Higher Education Anti-Harassment Act of 2011, S. 540, 112th Congress (2011), <https://www.congress.gov/bill/112th-congress/senate-bill/540/text/is> (accessed December 30, 2015).
94. Andre Mayer, "New Cyberbullying Law has 'Larger Agenda,' Expands Police Powers," *CBC News*, November 22, 2013, 9:51 AM ET, <http://www.cbc.ca/news/canada/new-cyberbullying-law-has-larger-agenda-expands-police-powers-1.2434797> (accessed December 30, 2015).
95. "The Top Six Unforgettable Cyberbullying Cases Ever," September 10, 2015, *NoBullying.com*, <http://nobullying.com/six-unforgettable-cyber-bullying-cases/> (accessed December 30, 2015).
96. Ann Curry, "Bullied Girl's Suicide has Ongoing Impact," *NBC News*, December 28, 2011, 5:50 PM, [http://usnews.nbcnews.com/\\_news/2011/12/28/9781587-bullied-girls-suicide-has-ongoing-impact?lite](http://usnews.nbcnews.com/_news/2011/12/28/9781587-bullied-girls-suicide-has-ongoing-impact?lite) (accessed December 30, 2015).
97. Jan Hoffman, "Online Bullies Pull Schools into the Fray," *New York Times*, June 27, 2010, <http://www.nytimes.com/2010/06/28/style/28bully.html> (accessed December 30, 2015).
98. Mark Joseph Stern, "The Legal Difficulties of Fighting Cyberbullying," *Slate*, July 9, 2014, 9:59 AM, [http://www.slate.com/blogs/outward/2014/07/09/are\\_cyberbullying\\_laws\\_unconstitutional.html](http://www.slate.com/blogs/outward/2014/07/09/are_cyberbullying_laws_unconstitutional.html) (accessed December 31, 2015).
99. Joe Palazzolla, "Cyberbullying Law Challenged in Court," *Wall Street Journal*, June 4, 2014, 7:45 PM ET, <http://www.wsj.com/articles/cyberbullying-law-challenged-in-court-1401925445> (accessed December 30, 2015).
100. David L. Hudson Jr., "NY High Court Says Anti-Cyberbullying Law Won't Pass First Amendment Muster," *American Bar Association Journal*, November 1, 2014, 5:20 AM CDT, [http://www.abajournal.com/magazine/article/bully\\_fighting\\_new\\_yorks\\_high\\_court\\_says\\_anti\\_cyberbullying\\_law\\_wont\\_pass\\_f](http://www.abajournal.com/magazine/article/bully_fighting_new_yorks_high_court_says_anti_cyberbullying_law_wont_pass_f) (accessed December 31, 2015).
101. Sarah Jeong, "Revenge Porn Is Bad. Criminalizing It Is Worse," *Wired.com*, October 28, 2013, 9:30 AM, <http://www.wired.com/2013/10/why-criminalizing-revenge-porn-is-a-bad-idea/> (accessed December 30, 2015).

102. Associated Press, "State to Pay Fees, Costs for Challenge to Revenge Porn Law," *Arizona Capitol Times*, August 4, 2015, 6:42 AM, <http://azcapitoltimes.com/news/2015/08/04/state-to-pay-fees-costs-for-challenge-to-revenge-porn-law/#ixzz3mbV8Xnsk> (accessed December 31, 2015).
103. Sameer Hinduja and Justin Patchin, "State Sexting Laws," Cyberbullying Research Center, 2015, <http://www.cyberbullying.us/state-sexting-laws.pdf> (accessed December 31, 2015).
104. Goode and Ben-Yehuda, "Moral Panics: An Introduction," 51.
105. "Breaking Point: Fed Up Sheriff Speaks Out on Bullying Arrests," *NBC Today*, October 16, 2013, <http://www.today.com/video/sheriff-we-wont-tolerate-cyberbullying-54498371841> (accessed December 31, 2015).
106. *Ibid.*
107. *Ibid.*
108. Michael Kruse, "Polk Sheriff Grady Judd Makes His Name on Moral Outrage," *Tampa Bay Times*, February 4, 2011, 12:24 PM, <http://www.tampabay.com/news/publicsafety/polk-sheriff-grady-judd-makes-his-name-on-moral-outrage/1149570> (accessed December 31, 2015).
109. *NBC Today*, "Breaking Point: Fed Up Sheriff Speaks Out on Bullying Arrests."
110. Ipsos Global Public Affairs, "One in Ten (12%) Parents Online, Around the World Say Their Child Has Been Cyberbullied, 26% Say They Know of a Child Who Has Experienced Same in Their Community," January 9, 2012, <http://www.ipsos-na.com/news-polls/press-release.aspx?id=5462> (accessed January 5, 2016).
111. "Many Canadians Believe Bullying Should Be Considered a Crime," *Angus Reid Public Opinion*, February 29, 2012, [http://angusreidglobal.com/wp-content/uploads/2012/02/2012.02.29\\_Bullying\\_CAN.pdf](http://angusreidglobal.com/wp-content/uploads/2012/02/2012.02.29_Bullying_CAN.pdf) (accessed January 5, 2016).
112. Stuart Dredge, "Online Harassment Experienced by 40% of US Internet Users, Study Says," *The Guardian*, October 22, 2014, 10:04 EDT, <http://www.theguardian.com/technology/2014/oct/22/young-women-harassment-online-pew-games> (accessed January 5, 2016).
113. *Ibid.*
114. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 167.
115. Goode and Ben-Yehuda, "Moral Panics: An Introduction," 52.
116. Mary deYoung, "Folk Devils Reconsidered," in *Moral Panic and the Politics of Anxiety*, ed. Sean P. Hier (London: Routledge, 2011), 118–20.
117. Lindsay Hoffman, "Public Shamming on the Internet," *The Blog*, [http://www.huffingtonpost.com/lindsay-hoffman/public-shaming-on-the-internet\\_b\\_6849036.html](http://www.huffingtonpost.com/lindsay-hoffman/public-shaming-on-the-internet_b_6849036.html) (accessed January 6, 2016).
118. American Psychological Association (Press Release), "Dealing with Cyberworld's Dark Side," August 6, 2011, <http://www.apa.org/news/press/releases/2011/08/cyberworld.aspx> (accessed January 6, 2016).
119. Fabio Sticca and Sonja Perrin, "Is Cyberbullying Worse Than Traditional Bullying? Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying," *Journal of Youth and Adolescence* 42 (2013): 739–50.
120. Government of Canada Department of Justice, *A Handbook for Police and Crown Prosecutors on Criminal Harassment*, July 1, 2015, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/har/part1.html> (accessed January 6, 2016).
121. *Ibid.*

122. Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998), 238.
123. Dan Merica, "Lewinsky Makes Emotional Plea to End Cyberbullying," *CNN*, October 21, 2014, Updated 12:19 ET PM, <http://www.cnn.com/2014/10/20/politics/lewinsky-cyberbullying/index.html> (accessed January 6, 2016).
124. Monica Lewinsky, "The Price of Shame," *TED*, March 2015, [https://www.ted.com/talks/monica\\_lewinsky\\_the\\_price\\_of\\_shame?language=en](https://www.ted.com/talks/monica_lewinsky_the_price_of_shame?language=en) (accessed January 6, 2015).
125. Leslie Yalof Garfield, "The Case for a Criminal Law Theory of Intentional Infliction of Emotional Distress," *American University Law Brief* 5 (2009): 33–50, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1069&context=clb> (accessed January 6, 2016).
126. John Kircher, "The Four Faces of Tort Law: Liability for Emotional Harm," *Marquette Law Review* 90 (2007): 800.
127. *Hustler Magazine v. Falwell*, 485 U.S. 770 (1984).
128. *New York Times v. Sullivan*, 376 U.S. 254 (1964).
129. Phyliss Stark, "Curt Schilling Gets Revenge on Cyber Bullies Harassing his Daughter," *Scripps Media*, March 3, 2015, <http://www.scrippsmedia.com/now-trending/Curt-Schilling-gets-revenge-on-cyber-bullies-harassing-his-teen-daughter-294878531.html> (accessed January 7, 2016).
130. David Just, "Video: Ashley Judd Says She's Pressing Charges after Twitter Threats," *Chicago Sun-Times*, March 17, 2015, 12:44 PM, <http://chicago.suntimes.com/basketball/7/71/447881/video-ashley-judd-says-shes-pressing-charges-twitter-threats> (accessed January 7, 2015).
131. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 157.
132. Sameer Hindaju and Justin W. Patch, "Cyberbullying: Identification, Prevention, and Response," Cyberbullying Research Center, [http://www.wcs.edu/gms1/wp-content/uploads/sites/87/2014/05/Cyberbullying\\_Identification\\_Prevention\\_Response\\_Fact\\_Sheet.pdf](http://www.wcs.edu/gms1/wp-content/uploads/sites/87/2014/05/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf) (accessed January 7, 2016).
133. Vicki Panaccione, "The Effects of Cyberbullying—A Real Threat to Your Children," *Better Parent Institute*, November 12, 2010, <http://www.betterparentinginstitute.com/Better-Parenting/parenting-child-raising-skills/cyberbullying-a-real-threat-to-your-kids> (accessed January 7, 2016).
134. Naomi Harlin Goodno, "How Public Schools Can Constitutionally Halt Cyberbullying," *Wake Forest Law Review* 46 (2011): 641.
135. Marquan, 24 N.Y. 3d at 5.
136. Angela Pertusini, "Cyberbullying is a New Threat to Children," *The Telegraph*, June 23, 2011, 4 PM, BST, <http://www.telegraph.co.uk/education/educationadvice/8593880/Cyberbullying-is-a-new-threat-for-children.html> (accessed January 7, 2016).
137. Don Dahler, "12-Year-Old's Suicide Spotlights Cyber-Bullying Threat," *CBSnews.com*, September 14, 2014 PM, <http://www.cbsnews.com/news/12-year-olds-suicide-spotlights-cyber-bullying-threat/> (accessed January 8, 2016).
138. Civil Rights Legal Project, "What is Revenge Porn," <https://www.cyberrightsproject.com> (accessed January 8, 2016).
139. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 158.

140. Dan Olweus, "Invited Expert Discussion Paper. Cyberbullying: An Overrated Phenomenon?," *European Journal of Developmental Psychology* 9 (2012): 520–38, 522, <http://blogs.edweek.org/edweek/inside-school-research/Cyberbullying,%20Olweus.pdf> (accessed January 8, 2016).
141. *Ibid.*, 521.
142. *Ibid.*, 528.
143. *Ibid.*, 526.
144. *Ibid.*, 529.
145. *Ibid.*, 538.
146. Larry Magid, "Let's Not Create a Cyberbullying Panic," *C/Net*, April 7, 2010, <http://www.cnet.com/news/lets-not-create-a-cyberbullying-panic> (accessed January 8, 2016).
147. Justin W. Patchin, "Cyberbullying Moral Panic?," Cyberbullying Research Center, April 8, 2010, <http://cyberbullying.org/cyberbullying-panic> (accessed January 8, 2016).
148. Stopbullying.gov, "What to Avoid," <http://www.stopbullying.gov/news/media/avoid/index.html> (accessed January 8, 2016).
149. Maeve Duggan et al., "Concerns about Children, Social Media and Technology Use," *Pew Research Center: Internet, Science and Tech*, July 16, 2015, <http://www.pewinternet.org/2015/07/16/concerns-about-children-social-media-and-technology-use> (accessed January 8, 2016).
150. Amanda Lenhart et al., "Teens, Kindness and Cruelty on Social Media Sites," *Pew Research Center Internet Science & Technology*, November 9, 2011, <http://www.pewinternet.org/2011/11/09/teens-kindness-and-cruelty-on-social-network-sites> (accessed January 9, 2016).
151. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 158.
152. *Ibid.*, 159.
153. Stuart Hall et al., *Policing the Crisis: Mugging, the State and Law and Order* (London: MacMillan, 2013).
154. *Ibid.*, 392.
155. Roger Simon, "How a Murderer and Rapist Became the Bush Campaign's Most Valuable Player," *The Baltimore Sun*, November 11, 1990, [http://articles.baltimoresun.com/1990-11-11/features/1990315149\\_1\\_willie-horton-fournier-michael-dukakis](http://articles.baltimoresun.com/1990-11-11/features/1990315149_1_willie-horton-fournier-michael-dukakis) (accessed January 8, 2016).
156. CNN Library, "Trayvon Martin Shooting Facts," *CNN.com*, February 11, 2015, 2:38 PM ET, <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html> (accessed January 9, 2016).
157. Critcher, *Critical Readings: Moral Panics and the Media*, 12.
158. Goode and Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," 159.
159. *State v. Leidecker*, P3/11-2685 (R.I. July 30, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp-content/uploads/sites/14/2014/10/Leidecker.pdf> (accessed September 7, 2016).
160. Abigail Pesta, "Who Are You Calling a Bully," *Cosmopolitan*, April 8, 2014, <http://www.cosmopolitan.com/lifestyle/advice/a6303/twelve-year-old-bully/> (accessed August 16, 2016).

