



**Changing the Culture of Youth Sports:  
An Initiative to Combat Abusive Behavior and all Forms of  
Intolerance in Order to Promote Civility and Respect Among  
Athletes**

**prepared by the**

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## **Executive Summary**

The incident involving Jonathan Martin and Richie Incognito of the Miami Dolphins during the 2013 NFL season focused public attention on the unfortunate reality that a wide range of abusive, intolerant, and bullying behavior occur quite often in the context of sports. The Martin-Incognito episode may be, it has provided an impetus for examining the larger social issue of bullying in sports. Bullying in sports is only one aspect of a larger phenomenon of harmful behavior in many spheres of society: schools, workplaces, social, and community settings. Although many government, educational, and other social institutions have done some work to curb bullying behavior in their ranks, these efforts often are not coordinated or comprehensive enough to change the existing culture. Thus, the Martin/Incognito incident offers an opportunity for relevant stakeholders to spearhead a much needed change by establishing a youth education initiative to combat racism and other types of intolerance in sports, and to promote a sports culture of mutual respect. This effort will require an original curriculum designed to educate young athletes, coaches, and parents, a uniform code of respectful conduct for adoption at all levels of youth athletics, and a pledge in which sports participants at all levels commit, on a recurring basis, to treat others with respect, identify bullying, and speak out against it.

The proposed initiative offers a comprehensive approach to (1) involve multiple segments of the community (schools, sports organizations, and athletes' homes) in confronting and rooting out all forms of abusive conduct; and (2) actively engage athletes, coaches, administrators, and parents in efforts to combat race-based and other forms of bullying in sports. Only a wide-angle approach of this type can provide genuine insight and guidance to participants in youth, college, and amateur sports, and enhance the role of sports generally in society.

The effort described in this paper requires understanding the causes and dynamics of racist and other forms of bullying and its deleterious effects, reexamining existing models for how to respond to bullying, and redesigning these models to enhance their breadth, depth, and effectiveness. It provides background on these matters and reviews existing anti-bullying and anti-hazing laws and policies, as well as other forms of intervention to prevent unacceptable conduct. The paper finally offers an integrated set of suggestions for an initiative against abusive conduct to promote civility and enforce a culture of respect in the world of youth sports. The essence of the proposal is the involvement of everyone relevant to the problem in designing and enforcing the solution. This includes identifying inappropriate behavior, speaking out against it, and pledging on a recurring basis to reject any manifestation of it. All of these undertakings are entirely consistent with a full commitment to individual freedom of speech, which is a bedrock principle in the United States. A continuing commitment to that principle is entirely consistent with adopting proactive anti-bullying efforts that seek to help spur a cultural change in sports.

## Background

On October 28, 2013, Miami Dolphins tackle Jonathan Martin reportedly sat down to eat with other members of the offensive line in the cafeteria at the club's training complex. When he took his seat, his teammates supposedly backed away from the table as a prank. Martin reportedly responded by sending his food tray to the floor, leaving the complex, and staying away for the remainder of the National Football League season. Days later, the Dolphins suspended Dolphins guard Richie Incognito, described in the press as the ringleader of a group of players who harassed and hazed Martin, often with racist overtones, since his rookie year. The team's statement explained that Incognito's behavior was inconsistent with "maintaining a culture of respect for one another."<sup>1</sup>

The Martin-Incognito incident quickly became a catalyst that generated a national conversation about how people treat each other in their workplaces, and particularly in the context of sports. Serious questions about various forms of intolerance are at the heart of that conversation. Regardless of what did or did not transpire in the Miami Dolphins cafeteria (the events are detailed in the recently released "Wells Report"<sup>2</sup>), it has focused attention all forms of intolerant or abusive behavior that are regarded in some quarters as normal and acceptable for no better reason than because they have been a part of the culture of sports for a long time. But perhaps the time has come to change that culture.

Whatever inappropriate conduct may take place in the ranks of professional sports, however, it is critical to understand that such behavior does not start there. It begins much earlier, among adults and children in communities that tolerate various types of disrespectful behavior, from racial slurs to other forms of intolerant or intimidating conduct. At the college level, for example, there was a revelation last year about physical and verbal misconduct at Rutgers University men's basketball practices. The prevention of and intervention in that behavior must begin with young athletes, their coaches, their parents, and influential members of their communities. This paper provides the background and framework for sports organizations at all levels to join government, educational, and other social institutions in confronting race-based and other forms of bullying, hazing, harassment, and other abusive conduct and changing the culture of sports to one of civility and respect. It proceeds from the premise that meaningful progress can be made on these issues while retaining a full commitment to freedom of speech as a bedrock principle in American law and society.

## Considering an Anti-Bullying Initiative

Many professional, college, and youth sports organizations, as well as school districts, workplaces, and even the White House are doing some work to curb race-based and other abusive behavior in their ranks. Although anti-bullying programs share similar themes, they lack

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1 See Miami Dolphins (2013). Miami Dolphins Statement On Jonathan Martin [Press release]. Retrieved from <http://www.miamidolphins.com/news/press-releases/article-1/Miami-Dolphins-Statement-On-Jonathan-Martin/4d417b72-ad82-4ec9-8ce2-1ce6d2a560b2>.

2 Theodore V. Wells, Jr., Brad S. Karp, Bruce Birenboim, and David W. Brown, *Report to the National Football League Concerning Issues of Workplace Conduct At the Miami Dolphins*, February 14, 2014. Retrieved at <http://i.usatoday.net/sports/nfl/miami-dolphins-ted-workplace-conduct-report.pdf>.

coordination to create broad and consistent approaches to change abusive culture. What is needed to can help spearhead this change is a youth education initiative to promote a culture of mutual respect. This effort should include an original curriculum designed to educate young athletes, coaches, and parents, and a uniform code of respectful conduct for adoption at all youth athletics levels. This initiative offers a comprehensive approach to: (1) confront abusive conduct, focusing on bullying, across multiple spheres within the community (schools, interscholastic athletics and youth sports, and athletes' homes); and (2) actively engage athletes, coaches, administrators, and parents in anti-abuse efforts.<sup>3</sup> With such an approach, sports organizations can provide genuine insight and guidance to youth, college, and amateur sports, and a great service to the role of sports generally in society. Athletes' safety, training, and education are of the utmost importance when it comes to fostering respectful behavior in the sports environment.

This paper first provides background on abusive conduct such as bullying, hazing, and harassment,<sup>4</sup> including: how such conduct is defined; the extent and nature of abusive conduct in our culture and institutions; why abusive conduct occurs and its peculiar dynamics; and the consequences for the victims and the perpetrators. The paper next reviews existing anti-bullying/hazing/harassment laws and policies, as well as other forms of intervention to prevent abusive conduct, and offers a redesign of those models to enhance their breadth, depth, and effectiveness. Essential to this redesign is involving participants in articulating the problem, and designing and enforcing the solution. Although efforts to deter abusive conduct must start at the top, a top-down approach is unlikely to have the profound impact on behavior necessary for real culture change. Vitalizing the norms of respect requires engaging the participants in the process—from design to implementation. It requires a shift in anti-bullying policy from the preemptive to the proactive during an athlete's formative years. Setting this initiative in the world of sports will illuminate how an integrated and interactive approach can check abusive conduct and enforce a culture of respect.

### **Definition of Bullying and Similar Abusive Conduct**

The efficacy of any anti-bullying effort requires a clear definition of the targeted behavior. Although many scholarly studies, as well as state statutes that target abusive conduct, use slightly different definitions, there are three generally-accepted components to bullying: harm, repetition, and power imbalance.<sup>5</sup> A widely-accepted definition describes bullying as “behavior that is intended to inflict harm or stress, occurs repeatedly over a period of time, and involves an inequity of strength or power.”<sup>6</sup> Bullying, therefore, is a means of asserting control

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3 See Amy Milsom & Laura Gallo, *Bullying in Middle Schools: Prevention and Intervention*, *Middle School Journal* 12, 14 (2006); Brett Fuller, Kim Gulbrandson & Beth Herman-Ukasick, *Bully Prevention in the Physical Education Classroom*, 26 *Strategies: J Phys Sport Educators* 1, 4-5 (2013); See Charlene Shannon, *Bullying in Recreation and Sport Settings: Exploring Risk Factors, Prevention Efforts, and Intervention Strategies*, 31 *J. Park Rec Admin* 15, 28 (2013).

4 This paper uses “abusive conduct” as a catchall phrase intended to include bullying, hazing, harassment and similar conduct. In addition, for convenience, the paper uses the term “anti-bullying” to describe efforts and policies that target all of these forms of abusive conduct.

5 See Jesse A. Steinfeldt, Ellen L. Vaughan, Julie R. LaFollette & Matthew C. Steinfeldt, *Bullying Among Adolescent Football Players: Role of Masculinity and Moral Atmosphere*, 13 *Psych Men & Masc* 340, 341 (2012); Fuller, et al., *supra* note 3, at 4; Shannon, *supra* note 3, at 15.

6 Fuller, *supra* note 3, at 15.

over another, and can be conceptualized in four categories: (1) Physical (kicking, hitting, shoving); (2) Verbal (name calling, insults, racism, harsh teasing); (3) Relational (excluding the victim from peer group through threats and rumors); (4) Reactive (when the victim responds to bullying by becoming a bully).<sup>7</sup> Much of the most harmful kind of bullying in contemporary sports and society is an expression of racial intolerance, but it can and does occur in a number of other contexts as well.

### *Bullying versus Hazing or Harassment*

Substantial overlap exists between the definitions of bullying and hazing, and media characterizations of the Martin/Incognito events are more or less evenly split in their use the terms.<sup>8</sup> Hazing tends to be a more ritualized activity associated with the induction of new members into a social group, like rookies on a sports team, by older and more established members.<sup>9</sup> It is purportedly motivated in part by desires to preserve tradition and build team cohesion<sup>10</sup>—neither of which it achieves—whereas other forms of bullying are usually intended solely to put down or isolate the victim.<sup>11</sup> But both bullying and hazing take place to preserve a social hierarchy.<sup>12</sup> Both ultimately may harm the victim and boost the perpetrator's power relative to the victim. Of course, context can be critical. Non-threatening actualized activity in the environment of a professional team may be acceptable yet constitute inappropriate hazing at the high school and even college levels.

There is even less distinction between bullying and harassment, as the two terms are often used interchangeably.<sup>13</sup> Both involve harmful behavior toward another party or parties, such as threats, intimidation, and/or humiliation.<sup>14</sup> As mentioned above, bullying requires

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7 See Milsom & Gallo, *supra* note 2, at 12. This is consistent with many state law definitions of bullying including Florida's. See F.S.A. § 1006.147(3)(a) (2012) (defining bullying as teasing, social exclusion, threat, intimidation, stalking, physical violence, theft, harassment, humiliation, destruction of property, or coercing others to bully).

8 See George Dohrmann, *Former Dolphins: Incognito Violated Code by Continuing to Haze Martin*, Sports Illustrated (Nov. 8 2013), available at <http://sportsillustrated.cnn.com/nfl/news/20131108/riche-incognito-jonathan-martin-hazing-code/>; Barry Petchesky, *NFL Hazing Victim: Incognito Was A "Scumbag" and "Locker-Room Cancer,"* Deadspin (Nov. 8 2013), available at <http://deadspin.com/nfl-hazing-victim-incognito-was-a-scumbag-and-locke-1460764880/>; Jarrett Bell, *Martin situation in Miami brings bullying to forefront*, USA Today (Nov. 3 2013), available at <http://www.usatoday.com/story/sports/nfl/2013/11/02/jonathan-martin-miami-dolphins-bullying-jarrett-bell-column/3393497/>; Michael Miller, *Richie Incognito's Year of the Bully*, Miami New Times (Dec 26 2013), available at <http://www.miaminewtimes.com/2013-12-26/news/riche-incognito-year-of-the-bully-2013/>.

9 See NCAA, *Building New Traditions: Hazing Prevention in College Athletics*, 2 (2007), available at [www.NCAA.org/health-safety](http://www.NCAA.org/health-safety).

10 Susan Stuart, *Warriors, Machismo, and Jockstraps: Sexually Exploitative Athletic Hazing and Title IX in the Public School Locker Room*, 35 W New Eng L Rev 374, 384 (2013) (explaining that hazing exists to preserve social hierarchy).

11 See Shannon, *supra* note 3, at 15; Steinfeldt, et al., *supra* note 5, at 348.

12 See Fuller, et al., *supra* note 3, at 4 (explaining that bullying exists to preserve social hierarchy); Stuart, *supra* note 10, at 384.

13 See BULLYING AND HARASSMENT IN THE WORKPLACE, 4 (Stale Arnesen et al. eds., 2d ed. 2010); Ståle Einarsen, Helge Hoel, Dieter Zapf, and Cary L. Cooper. "The concept of bullying and harassment at work: The European tradition." In *Bullying and Harassment In the Workplace: Developments In Theory, Research, and Practice* (2nd ed.), 2011; Gary and Ruth Namie, *FAQ: How is this different from harassment?*, Workplace Bullying Institute (2011), <http://www.workplacebullying.org/faq/#3> (last visited February 2, 2014).

14 See University of Sussex, *Equality and Diversity: FAQ about Harassment and Bullying*, (2014),

repetition, but harassment can be either an isolated incident or repeated behavior.<sup>15</sup> The definitions of these terms as used in Florida's current anti-bullying and anti-harassment statute are intertwined. According to Section 1006.147(3) of that statute, bullying includes sexual, religious, or racial harassment, and harassment includes threats, insults, or dehumanizing gestures, which often comprise bullying.<sup>16</sup> Incidents of harassment should be prevented or curbed before they culminate as bullying.

Racial harassment, in particular, is a prevalent and under-reported form of bullying in youth community settings, including athletics. Racial stereotypes create expectations for certain racial populations in terms of sports involvement. For example, the stereotype that Black/African Americans and Latino Americans have greater "natural" physical and athletic abilities than other groups places undue pressure to participate in school sports as a primary means toward success.<sup>17</sup> Students who identify as Black/African American or Latino American may thus experience greater pressure to perform at a certain athletic level, and when they fall short, become targets for racial harassment.<sup>18</sup> Although 17 states specifically identify race as a protected class in state anti-bullying laws,<sup>19</sup> such incidents continue to be reported in those states.<sup>20</sup>

Despite minor differences among bullying, hazing, harassment and similar abusive conduct, conflating these terms is not problematic. Bullying is characterized by repeated harmful behavior, and each incident of the behavior can be characterized as harassment. Hazing is a form of bullying and develops from the same factors that any successful anti-bullying program should target. Accordingly, such programs must help athletes understand that hazing is abusive conduct, and help them distinguish hazing from acceptable forms of team building.

There are acceptable forms of team-building activities that should not be categorized as abusive conduct. These activities are inherently respectful, do not humiliate or harm, and help new members of the team feel welcome and bonded to their senior peers. The distinction between acceptable initiation and hazing is not always an easy one and depends in part on whether the activity is in the context of professional, college, high school, or younger athletics.. This is partly because hazing may be consensual. Instead, hazing (as well as other forms of bullying) can manifest as more subtle forms of coercion, in which the victim agrees to participate

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<http://www.sussex.ac.uk/equalities/faq/harassmentandbullying> (last visited February 14, 2014); *Harassment, Discrimination, and Bullying*, Griffith University, <http://www.griffith.edu.au/equity/harassment-discrimination-bullying> (last visited February 2, 2014); P. Lutgen-Sandvik, S.J. Tracy, and J.K. Alberts, *Burned by Bullying in the American Workplace: Prevalence, Perception, Degree and Impact*. *J Manag Studies*, 44, 2007.

15 *See id.*

16 *See Fla. Stat. Ann.* §1006.147(3).

17 The stereotype usually focuses on the ability to run fast as well as maintain an extraordinary level of muscle tone and definition. *See* Anthony Peguero and Lisa Williams, *Racial and Ethnic Stereotypes and Bullying Victimization*, 20 *Youth and Society* 1, 4, 2011.

18 Surveys of British high school students identified racist name calling as the third most common form of bullying, and in one school, 25% of minority students reported experiencing racially abusive name calling. *See* Christine Oliver and Mano Candappa, *Tackling Bullying: Listening to the Views of Children and Young People*, Thomas Coram Research Unit, Research Report No. 400, 2003.

19 U.S. Department of Education, *Analysis of State Bullying Laws and Policies*, 2011 (hereafter DOE).

20 *See* Keith Sullivan, *The Anti-bullying Handbook*, Sage 2010.

or does not complain,<sup>21</sup> often for fear of further negative consequences, such as retribution.<sup>22</sup> Furthermore, some ritual practices—being required to sing on the team bus, wearing an embarrassing item of clothing, enduring an intense physical challenge—might be enjoyable and harmless for some rookies but unbearable for others.<sup>23</sup> This paper does not intend to solidify the distinction, but suggests that the three components used to define bullying above—power imbalance, harm, and repetition—are crucial to understanding hazing as a form of bullying. The absence of these factors—especially harm—likely indicates that bullying is not taking place. A successful anti-bullying initiative will target and mitigate the conditions in youth athletics that lead to harassment, bullying, and hazing.

### **Extent and Nature of Bullying, Hazing, Harassment, and Similar Abusive Conduct**

Abusive conduct takes place in the workspace and the playspace, in the classroom and on athletic fields. For this reason, anti-bullying legislation and policies can be found in many spheres—schools, places of employment, sports leagues, and community organizations. Bullying behavior appears to peak in late childhood or early adolescence, which is why it is most associated with the school setting.<sup>24</sup> In at least one study at the middle school level, 30% of students indicated more than occasional involvement as a bully, a victim, or both.<sup>25</sup> In another study, 50% of students in grades six through ten reported being impacted by bullying.<sup>26</sup> But although the participants often know each other through school, at least one third of bullying takes place beyond the school setting—and often during team sports.<sup>27</sup>

Thus, even if anti-bullying policies within schools effectively prevent abusive conduct on campuses, bullying dynamics bleed over into sports events and other community settings.<sup>28</sup> Bullies might choose to avoid harassing others at school because they know they will be punished. But if a bully and his target play in the same after-school sports league, the conflict might “spill over” into this setting.<sup>29</sup> If athletic leagues are permissive of abusive conduct or do not manage it effectively, then the efficacy of anti-bullying efforts in other realms is undermined. It is also possible that students who are bullied at school externalize their frustration by becoming bullies in other settings like their sports teams.<sup>30</sup>

Hazing statistics are equally shocking. In a survey of high school students conducted nearly 15 years ago, 48% reported being hazed, 43% reported humiliation, 29% reported illegal hazing, and 22% reported dangerous hazing.<sup>31</sup> And in a 1999 survey of 325,000 NCAA athletes,

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21 “The conduct described ... constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.” Utah Code §53A-11a-102.

22 See Fuller, et al., *supra* note 3, at 6.

23 See J.L. Van Raalte, A.E. Cornelius, D.E. Linder, & B.W. Britton, *The Relationship Between Hazing and Team Cohesion*. *J Sport Behav* 30(4), 2007.

24 See Milsom & Gallo, *supra* note 3, at 12.

25 See *id.* at 13

26 See Steinfeldt, et al., *supra* note 5, at 341.

27 See Fuller, et al., *supra* note 3, at 5; Shannon, *supra* note 2, at 16.

28 See Shannon, *supra* note 3, at 13.

29 See *id.* at 25.

30 See *id.*

31 See Stuart, *supra* note 10, at 380.

80% reported questionable or unacceptable activities as part of their initiation onto collegiate athletic teams.<sup>32</sup> It is uncertain how these figures may have changed in subsequent years. And no less uncertain is to what extent any of this relates to conditions in which members of the coaching staff—and the head coach, in particular—engage in bullying behaviors.

Abusive conduct also takes place in the workplace, although statistical reporting is scant. This is partly because people who are bullied by their co-workers are not likely to confront their attackers. They are also often dismissed as being overly-sensitive to jokes or criticism, regarded as having “personal issues,” and considered as being out-of-touch with their workplace culture and how work gets done there.<sup>33</sup> Aggressive behavior in the workplace is something that managers often find difficult to respond to, no less recognize and understand. That alone is one big reason why bullies continue to get away with pushing people around. And it is a reason why adults can be just as much the targets of abuse by those who have unchecked power over them as a kid in a schoolyard. Furthermore, bullying behavior, harassment, and intimidation in the workplace are often tolerated because, over time, they become perceived as normal. That is especially true in environments in which high-energy, high-ambition attitudes persist—for example, in a high school, college, or professional football locker room. Those in positions of power and authority fail to confront the situation not because of disregard for others, but because they didn’t think anything out of the ordinary was taking place.

There is no single identifying feature of a bully or a victim. But studies have begun to recognize patterns. Peers tend to perceive bullies as popular leaders worthy of respect.<sup>34</sup> They often have high social status, which grants them power.<sup>35</sup> Bullies often experience academic challenges, possess negative attitudes and beliefs about others, and struggle with resolving conflicts.<sup>36</sup> Thus, bullying often arises out of the instinct for self-preservation, as the aggressor receives external benefits from his behavior. Victims, on the other hand, are often perceived as individuals who will not fight back. When victims cry or show fear, this can reinforce the bullying behavior.<sup>37</sup> Victims also experience peer rejection, social isolation, and hold negative attitudes about themselves.<sup>38</sup>

Bullies and victims—perversely complimentary personalities—appear to draw in, and feed off of, each other. The victim’s low self-concept is validated by the bully’s derogatory actions and low concept of others. The victim seeks the approval of the bully, who appears to wield social capital, through acquiescence. To reduce instances of abusive conduct, these psychological underpinnings must inform the development of an anti-bullying curriculum, as well as preventive, punitive, and rehabilitative approaches to the behavior.

### **Why Bullying Occurs**

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32 Michelle Finkel, *Traumatic Injuries Caused by Hazing Practices*, 20 Am J Emerg Med 228, 229 (2002)..

33 See M. Sandy Hershcovis & Julian Barling, *Towards a Multi-foci Approach to Workplace Aggression: A Meta-analytic Review of Outcomes from Different Perpetrators*, J Org Behavior 31, 1 (2009).

34 See Fuller, et al., *supra* note 3, at 5.

35 See *id.*

36 See Shannon, *supra* note 3, at 17.

37 See Fuller, et al., *supra* note 3, at 5.

38 See Shannon, *supra* note 3, at 17.

## *Behavioral Explanations*

As we explore abusive conduct in sports, it is worth understanding why it happens in the first place. In other words, especially because many people know and say these types of situations are wrong, why do the behaviors that lead to them ever emerge? Classic experiments from social psychology show that bullying is not aberrant behavior; rather, any person may be susceptible to becoming a bully if placed in a specific type of environment.

The 1971 “prison experiment” study by Philip Zimbardo at Stanford University supports this proposition.<sup>39</sup> The study sought to explore what happens when good people are put in an evil place—does humanity win over evil, or does evil triumph? Twenty-four male college students—each of them healthy and middle-class—were randomly assigned roles of prisoners and guards in a mock prison, where Zimbardo acted as superintendent. Although the study was scheduled to run for two weeks, Zimbardo decided to end it after six days. By then, the “guards,” who had been inflicting punishments, had become sadistic. The “prisoners” were showing signs of depression and extreme stress, and some even followed guards’ orders to harass other prisoners. Zimbardo himself was affected, permitting the abuse to continue.

Zimbardo’s research showed the power environment has on human nature, leading otherwise healthy individuals to behave in ways dictated by the situation and the roles assigned, rather than their individual personalities. The study also suggests that whether environmental effects are positive or corrosive ultimately depends on the people at the top of the organization.

The Stanford Prison Experiment affirmed prior research in this vein, in particular an experiment conducted by Yale University psychologist Stanley Milgram in the early 1960s.<sup>40</sup> Milgram’s experiment could help further explain when and why bullying behavior emerges and persists. Milgram was interested in understanding why good people do bad things and, specifically, what happens when obedience to authority overtakes personal conscience. His experiment assigned the participant the role of “teacher” who would ask questions to a “student” and, at the orders of the “experimenter,” would deliver shocks of increasing voltage to the “student” for every incorrect answer. The “teacher” believed that he was administering real shocks to the “student,” though the “student,” sitting behind a wall, was actually part of the research team, and purposely providing incorrect answers. As the shocks increased, most of the “teachers” asked the experimenter whether they should continue. Each time, the experimenter commanded the “teacher” to keep going, despite pleas and fake cries from the “student.” The “teachers” responded in an agreeable, if reluctant, manner.

What Milgram discovered is that the majority of participants in the experiment—all ordinary people—were willing to inflict pain and harm on another person because an authority figure (the experimenter) told them to do so. Worse, the behavior emerged despite the fact that their victims were apparently not deserving of the punishment. In the final analysis, as Milgram

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<sup>39</sup> See Philip G. Zimbardo, *On the Ethics of Intervention in Human Psychological Research: With Special Reference to the Stanford Prison Experiment*, *Cognition*, 2(2), 1973.

<sup>40</sup> See Stanley Milgram, *Behavioral Study of Obedience*, *J Abn and Soc Psy*, 67(4), 1963.

put it, “often, it is not so much the kind of person a man is as the kind of situation in which he finds himself that determines how he will act.”

To emphasize the reasonable application of this research, recall the recent bounty program within the New Orleans Saints organization that supposedly paid players bonuses for injuring opposing team members. Four players were dealt suspensions and penalties for their involvement in the illegal bounty program, but on appeal the penalties were vacated. The appeals officer, former NFL Commissioner Paul Tagliabue, based his ruling on both fact—players tend to have generally short career spans—and assumption—players desire to contribute to the team and understand their role as instruments in the coaches’ game plan. Thus, when it comes to following orders, players may feel compelled to comply with coaches’ directions at the risk of reduced playing time or even being cut from the team.

This logic led Tagliabue to find that, although the Saints players “engaged in ‘conduct detrimental to the integrity of, and public confidence in, the game of professional football,’” ultimate responsibility and fault lies with team coaches and personnel who conceived of and condoned the bounty program. In short, the players must have felt compelled to follow orders from their superiors and, as a consequence, should not be punished.

Tagliabue's reasoning makes sense. But is doing something wrong and later trying to be exonerated for it by pleading superior orders tantamount to claiming “the devil made me do it”? What are the circumstances in which players feel effectively compelled to go along with conduct they otherwise would have known to be wrong? We cannot ignore the role of teammates, coaches, staff, and even family and friends in creating the environment within which inappropriate behavior occurs. After all, any of them could report the bullying they observe to proper authorities, but instead they often obey implicit directions to overlook the behavior even if against their better judgment, that is, the judgment of decent and clear-thinking people.

To further grasp why individuals disobey their “better selves” by becoming or tolerating bullies, consider the cognitive bias called the “hot-cold empathy gap.” The crux of this theory is that human understanding is “state dependent,” leading people to “mispredict” their own and others’ future behavior. The classic example of the empathy gap describes how, in the realm of sexual decision-making, young men in an unaroused “cold state” fail to predict that in an aroused “hot state” they will be more likely to make risky sexual decisions.<sup>41</sup> Applying the empathy gap to bullying, studies have shown that individuals who are not socially excluded consistently underestimate the pain felt by those who are excluded. And authority figures such as teachers, who don’t understand the suffering involved in being teased or excluded, are consistently less likely to punish the perpetrator or give support to the victim. The empathy gap further leads individuals to prioritize short-term gratification while discounting long-term consequences. For example, consider a young athlete who is climbing the social ladder of his team and witnesses team veterans teasing rookies. He might not appreciate the pain this is causing the victims and might even welcome how the abuse moves him up a rank in popularity. He might then choose to

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<sup>41</sup> See George Loewenstein *Out of Control: Visceral Influences on Behavior*. *Org Behavior and Hum Dec Process*, 65, 1996.

excuse or even engage in this behavior, despite having been bullied himself and disapproving of the behavior in the past.

These realities have implications for pledges and training programs in that how individuals think they will behave when posed with a hypothetical condition tends to be different than how they behave when challenged by an actual condition. It is likely that few who exhibit bullying behaviors during “hot” states would have identified themselves as bullies during preceding “cold” states. Some bullies might have even spoken out against bullying or intended to embrace the tenets of anti-bullying initiatives at the beginning of their seasons, only to fall into social dynamics where disrespectful behaviors were accepted means to gaining popularity and rank.<sup>42</sup>

### *Social Explanations*

Efforts to reduce bullying and similar abusive conduct must also acknowledge its phenomenological roots. Despite differences among bullies (and among their victims), all instances involve issues of respect.<sup>43</sup> Bullying is often an assertion of power to create or reinforce a social hierarchy within the group dimension.<sup>44</sup> Victims are selected for relegation to lower rungs of the social ladder. One common manifestation is the socially-skilled popular student, who is more athletic or established within the milieu, singling out the socially-insecure, younger, less athletic student.<sup>45</sup> Among males in aggressive sports, such as football, this hierarchical reinforcement secures an idealized notion of masculinity for the bullies.<sup>46</sup> Those perceived as less masculine are victimized through repetitive disrespectful treatment. During acts of hazing, the person being hazed often chooses to endure the treatment in order to be accepted or to earn the respect of veteran peers.<sup>47</sup> For any given team, the older members almost assuredly had to undergo similar treatment to be accepted during their rookie years, and so did their senior peers before them. There thus exists a legacy of proving one’s dedication through willingness to be subjected to humiliating and harmful treatment. This legacy wields much power over critically impressionable young people who want to belong to a group.<sup>48</sup>

When asked to justify the harmful and humiliating aspects of hazing, athletes often cite the development of bonds among players and team cohesion.<sup>49</sup> But studies show that hazing has no positive correlation to such beneficial results. The individuals being hazed end up feeling disenfranchised from their team and are sometimes less excited about participating in team

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42 Research on other unethical and immoral behaviors, such as cheating and dishonesty, may also be applied in this context. Scholarly studies show that people who engage in dishonest behavior tend to do so when they perceive some opportunity to benefit from it—even though they are aware of their actions. See Nina Mazar, On Amir, & Dan Ariely, Dan, *The Dishonesty of Honest People: A Theory of Self-Concept Maintenance*, J Marketing Research, 45(6), 2008.

43 See Shannon, *supra* note 3, at 18.

44 See Fuller, et al., *supra* note 3, at 4.

45 See *id.* at 6. In one study, those student who acknowledged poor performance in physical education class reported more exposure to bullying. See *id.*

46 See Stuart, *supra* note 10, at 377; Steinfeldt, et al., *supra* note 5, at 340.

47 See Stuart, *supra* note 10, at 389.

48 See *id.*

49 See *id.* at 384.

activities,<sup>50</sup> even when the incidence of hazing diminishes as competition ensues. Nor is there logic to the claim that the arbitrary painful and embarrassing treatment comprising most hazing is necessary to demonstrate the rookie's competitive merit, when selection to the team already establishes the requisite skills and attributes.

Perhaps most important, abusive conduct such as bullying could not exist but for an organizational culture that allows them.<sup>51</sup> Although all social environments in which the bully and victim operate (i.e. home, school, team, and greater community) can contribute to each instance of bullying,<sup>52</sup> the behavior can be effectively managed or mismanaged in any one of these environments. For example, the values, attitudes, and beliefs held by the administrators of a sports program, and embodied in organizational policies, directly influence the bullying climate on their teams.<sup>53</sup> If the organization believes that bullying is inevitable, and has no policies or procedures for identifying, preventing, and addressing it, then the organization creates a climate that tolerates or even promotes bullying.<sup>54</sup> This likely leads to a self-fulfilling prophecy: sports administrators might agree that bullying is not a good practice, but if they assume nothing can be done to prevent it, then their team leaders will not have the tools or incentive to address particular instances of bullying. This perpetuates a message for the athletes involved that bullying behavior is acceptable, rather than dangerous and defeating. So, they will continue the behavior. Lack of a reinforced safety-oriented mission statement, bullying management training and policies, and communication among administrators, staff, and parents about bullying issues will further cultivate an environment in which abusive behavior proliferates.<sup>55</sup>

Particular program elements have been observed to reinforce bullying behaviors, including high levels of competition, lack of adequate supervision, and unstructured time.<sup>56</sup> Sports programs are inherently competitive, and contact sports encourage aggressive behavior.<sup>57</sup> When athletes are rewarded for running faster, hitting harder, and throwing farther than their peers, it is understandable that these athletes, especially the younger ones, have difficulty understanding that aggressive behavior is unacceptable beyond the bounds of the game.<sup>58</sup> If youth athletes are not being watched by adults tasked in part as disciplinarians, the athletes often make poor decisions that go uncorrected. When their poor decisions manifest as unsupervised bullying, their peers are subject to physical and emotional harm without recourse. It then makes sense that students report feeling more unsafe in unsupervised areas.<sup>59</sup> Inadequate supervision is

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50 *See id.*

51 *See* Garland Allen, *Bullying Narrative*, 2013 (on file with authors). Allen is a retired teacher, coach, and director of athletics. He taught health and physical education, and coached football, basketball, and track and field. He was director of athletics for Greenwich High School (CT) for 18 years and for Ridgewood High School (NJ) for three. He served on the board of directors for the largest athletic conference in the state of Connecticut (FCIAC). He also spent eight years as director of wellness for the Ridgewood NJ Public School System, and served on the advisory board for Family Counseling Service of Ridgewood NJ.

52 *See* Shannon, *supra* note 3, at 18.

53 *See id.* at 27.

54 *See id.* at 18.

55 *See id.* at 27.

56 *See id.* at 24.

57 *See id.*

58 *See* Steinfeldt, et al., *supra* note 5, at 342.

59 *See id.* at 18.

not isolated to cases of high athlete-to-staff ratio. If staff members witness bullying and allow it to take its course, bullies receive implicit validation of their behavior.<sup>60</sup>

Coaches can also inadvertently give bullies “free passes” because these athletes might be well-liked and good at their sport. When the popular athletes tease others and call them names, coaches and other supervisors might overlook or explicitly encourage this behavior, perhaps mistaking it for appropriate peer role modeling.<sup>61</sup> Further, when programs allow athletes too much unstructured time and participants search for ways to fill the time, conflicts can arise that activate the bullying dynamic.<sup>62</sup>

Regardless of whether authority figures actually approve of abusive conduct, the bully’s perception that his most important role models would approve of his behavior plays a significant role in his decisions to bully others. In one study of over 200 high school football players, the strongest predictor of abusive behavior was whether the players thought their coaches, fathers, and brothers would find the behavior acceptable.<sup>63</sup> The athletes who believed that the most influential male in their lives had engaged in or would otherwise encourage bullying were more likely to do the same.<sup>64</sup> This is in line with Bandura’s “social learning theory” and associated research that shows children exhibiting aggressive behavior after having observed a model act in an aggressive manner.<sup>65</sup> Because role models have serious influence over athletes, the role models necessarily have great responsibility in shaping the athletes’ interpersonal skills as they relate to bullying decisions.<sup>66</sup> These figures, therefore, need to play prominent roles in any effective anti-bullying program. So, too, does specific attention to models of human, cognitive, and psychosocial development.<sup>67</sup>

Although it is critical to give attention to behaviors associated with bullying in the early stages of childhood development, it is imperative to point out how those behaviors are compounded and intensified as children grow into adolescence.<sup>68</sup> Research shows that while males and females tend to socialize in different ways, the risky behavior typical of teenagers of both genders is affected by peer influence on the still-developing brain. As teenagers spend more of their time with peers and less with their parents, the associated feedback they receive may make the brain’s reward system more sensitive to the “reward value of risky behavior.”<sup>69</sup> That, in turn, plus that the human cognitive control system matures gradually over time, could explain

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60 *See id.*

61 *See Fuller, et al., supra note 3, at 5.*

62 *See Shannon, supra note 3, at 24.*

63 *See Steinfeldt, et al., supra note 5, at 349.*

64 *See id.* at 346.

65 *See Albert Bandura, Aggression: A Social Learning Analysis, 1973; Albert Bandura. Social Learning Theory of Aggression., J Comm 28(3), 1978.*

66 *See id.* at 349.

67 *See E.H. Erikson, Childhood and Society, 1950; J. Piaget, The theory of stages in cognitive development, 1971.*

68 *See Laura M. Bogart, Marc N. Elliott, David J. Klein, Susan R. Tortolero, Sylvie Mrug, Melissa F. Peskin, Susan L. Davies, Elizabeth T. Schink and Mark A. Schuster, Peer Victimization in Fifth Grade and Health in Tenth Grade, Pediatrics (originally published online February 17, 2014). Retrieved from <http://pediatrics.aappublications.org/content/early/2014/02/11/peds.2013-3510.full.pdf+html>.*

69 *See J. Chein, D. Albert, L. O’Brien, K. Uckert, & L. Steinberg, Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain’s Reward Circuitry, Dev Sci 14, 2011.*

why teenagers frequently make risky choices, which are a short-term proposition, over safer alternatives, which require long-term projection.

More recently, research has considered the extent to which social media factors into the way teens behave, and the connection to abusive conduct. Social media is a means of human contact in which the user can selectively choose to engage with or avoid other people, but in less-connected and more-artificial ways.<sup>70</sup> This might contribute to bullying behavior in two ways. The first is that virtual, digital acquaintances do not present their histories, sensitivities, and emotions in the same ways as physical, human acquaintances. It is these human components that make people feel accountable for respecting one another.<sup>71</sup> The repercussions for being disrespectful to a digital person likely feel less serious. Written responses from a victim might not get under the skin of a cyberbully. It is also likely that victims do not always write responses, and instead just internalize the bully's harmful words. Furthermore, some forums allow the cyberbully to ignore the human aspects of his victim by "blocking" the victim's responses, or the bully can just navigate to another page or delete texts. In this way, the lack of consequences attached to cyberbullying encourages abusive behavior.

The second contribution of social media to abusive conduct is the lack of parental supervision. In a Pew Research Center study, over 90% of adolescents are engaged in online activity and 80% uses social media sites.<sup>72</sup> The study also found that little more than 10% of parents knew their adolescents were unnerved by an online experience. As the use of social media increases, the opportunities for unsupervised bullying also increase. Because young people are accessing the digital world at home, at school, and during their extracurricular lives, the line between digital experiences and reality is blurred. It is possible that the artificial connections online, which are unsupervised and susceptible to bullying dynamics, are making adolescents feel less responsible for respecting their real-world peers.

### **Consequences of Bullying and Similar Abusive Conduct**

Bullying can have serious consequences for victims, which speaks to the need for effective prevention efforts. Those who are frequently bullied are seven times more likely to be depressed than their peers and more likely to be suicidal.<sup>73</sup> This form of depression has been linked to academic problems, self-defeating behaviors, loneliness, loss of friends, and prolonged interpersonal problems.<sup>74</sup> The victim's feelings of loneliness and isolation have further negative effects on physical and mental health.<sup>75</sup>

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70 See S. Turkle, *Alone Together: Why We Expect More From Technology and Less From Each Other*, 2012.

71 See M.L. Ybarra, K.J. Mitchell, and J.D. Korchmaros. *National Trends in Exposure to and Experiences of Violence on the Internet Among Children*. *Pediatrics*, 128(6), 2011; R.D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, 2001.

72 See A. Lenhart, M. Madden, A. Smith, K. Purcell, K. Zickuhr, & L. Rainie. *Teens, Kindness and Cruelty on Social Network Sites: How American Teens Navigate the New World of Digital Citizenship*, Pew Internet & American Life Project, 2011.

73 See Fuller, et al., *supra* note 3, at 4.

74 See Milsom & Gallo, *supra* note 32, at 13-14.

75 See J.T. Cacioppo & William Patrick. *Loneliness: Human nature and the need for social connection*, 2008.

Bullying can also be a barrier to sports participation. This treatment is often directed at youth who are already marginalized for having disabilities, being immigrants, being of sexual minority, or being overweight.<sup>76</sup> Those who are bullied for their physique or perceived inabilities might choose to avoid sports because of fears of inadequacy.<sup>77</sup> And those who are bullied early on in their sports experiences are less likely to pursue sports later in life.<sup>78</sup>

Whether consequence or correlation, bullies are also at greater risk for health and instability. Those who exhibit bullying behavior have higher rates of alcohol and drug use, dropping out of school, and are three times more likely to be depressed than their peers.<sup>79</sup> There are also consequences for male bullying as a manifestation of the desire to assert and preserve masculinity, as conformity to masculine role norms is linked to low self-esteem, depression, alcohol abuse, and sexually aggressive behavior.<sup>80</sup> In the workplace, research confirms that people who have been on the receiving end of aggressive behavior by co-workers end up with lower levels of job satisfaction, supervisor satisfaction, work commitment, and psychological well-being, and higher levels of work-related stress and intent to find another job.<sup>81</sup>

Although physical bullying is less common than verbal and relational bullying, the consequences of physical bullying can be serious, especially where it involves hazing. Reported methods of hazing include beating, paddling, whipping, blood pinning, branding, tattooing, cigarette burning, confinement, consumption of nonfood substances, drowning, falling, immersion in noxious substances, and sexual assault.<sup>82</sup> Each of these carries concomitant health risks, ranging from uncomfortable to potentially fatal. On college campuses, supervisory figures, such as coaches and group leaders, are aware of the hazing in about one-quarter of the cases, while students perceive the hazing as part of the college experience, perhaps because nearly half of them had exposure to hazing prior to arriving at college.<sup>83</sup>

### **Anti-Bullying/Hazing/Harassment Laws and Policies**

Although almost every state has enacted anti-bullying legislation directed at schools,<sup>84</sup> there is virtually no legislation that specifically protects athletes from bullying or hazing during and around athletic participation. There is also no legislation requiring any sort of anti-bullying pledge.<sup>85</sup> Of the existing state statutes, many do not provide complete definitions of bullying and

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<sup>76</sup> See *id.*

<sup>77</sup> See Shannon, *supra* note 2, at 17.

<sup>78</sup> See *id.*

<sup>79</sup> See Steinfeldt, et al., *supra* note 5, at 341; See Milsom & Gallo, *supra* note 3, at 13; Fuller, et al., *supra* note 3, at 4.

<sup>80</sup> See *id.*, at 348.

<sup>81</sup> See M. Sandy Hershcovis & Julian Barling, *Towards a multi-foci approach to workplace aggression: A meta-analytic review of outcomes from different perpetrators*, *J Org Behavior* 31, 1 (2009).

<sup>82</sup> See Milsom & Gallo, *supra* note 3, at 13; Finkel, *supra* note 32, at 230.

<sup>83</sup> See Elizabeth J Allan, *Hazing in View: College Students at Risk: Initial Findings from the National Study of Student Hazing*, 2009.

<sup>84</sup> See U.S. Dep't of Education, *supra* note 19, at x.

<sup>85</sup> Massachusetts has enacted legislation that encourages the use of an anti-bullying pledge. See Ann. Law. Mass. Ch 6 §15NNNN (requiring the governor to encourage students to use positive dialogue and pledge not to use hurtful names during Massachusetts's annual "No Name Calling Day"). No state requires an anti-bullying pledge or associates it with sports programs.

some give great deference to local schools in deciding how to manage bullying.<sup>86</sup> Although these legislative paths may start out with good intentions, many narrow into policies that do little more than provide legal or political cover. Identification, prevention, and response are widely hailed as the pillars of confronting race-based and other forms of aggressive and abusive behavior. But substance and clarity are needed, as opposed to what is often left generally open to interpretation. These goals can be achieved, moreover, while retaining full commitment to the principles of free speech.

More than 40 states have established anti-bullying policies. And a review by the U.S. Department of Education has identified 11 key components common among state anti-bullying laws.<sup>87</sup> Yet not all of these states require their school districts to either adopt policies based on the official policies or develop their own principles.<sup>88</sup> Common components of the state statutes include requiring or encouraging school officials to: develop a policy prohibiting bullying; implement bullying prevention programs; train employees on bullying prevention; report bullying to authorities; and develop disciplinary actions for children who bully.<sup>89</sup> However, none of these policies require formal anti-bullying education and codes of conduct directed specifically at athletics programs.

One strong example of anti-bullying and anti-harassment legislation is the current State of Florida law, which provides a useful illustration. It requires every school district to adopt a K-12 anti-bullying policy that conforms to the Department of Education model policy, and explicitly prohibits harassment based on sex, religion, or race.<sup>90</sup> It also requires that each district's bullying policy "afford all students the same protection regardless of their status under the law."<sup>91</sup> Although it does not condition all district funding on having anti-bullying and anti-harassment measures, it does make specific "safe-school" funds contingent on the Department of Education's approval of the school district's bullying and harassment policy.<sup>92</sup> Although Florida school districts must apply their anti-bullying anti-harassment policies to public school sports programs and related activities, the legislation and resulting policies do not cover college sports or other publicly-funded community sports programs.<sup>93</sup>

Florida also has explicit anti-hazing laws for both public high schools and postsecondary education institutions, with strict punishments.<sup>94</sup> In Florida, hazing is broadly defined to include a long list of coercive measures associated with initiation into a school organization.<sup>95</sup> The act is punishable as a felony if the result is serious bodily injury or death, and a misdemeanor if it

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86 See Susan Duncan, *Restorative Justice and Bullying: A Missing Solution in the Anti-Bullying Law*, 37 Crim Civ Confinement 701, 706, 2011.

87 See U.S. Department of Health and Human Services, *Key Components in State Anti-Bullying Laws*, available at <http://www.stopbullying.gov/laws/key-components/index.html>.

88 See U.S. Dep't of Education, *supra* note 19, at x, 15.

89 See Duncan, *supra* note 86, at 705.

90 See Fla. Stat. Ann. §1006.147 (West 2012).

91 See *id.*

92 See *id.*

93 See *id.*

94 See Fla. Stat. Ann § 1006.135 (Lexis 2013) and Fla. Stat. Ann . §1006.63 (Lexis 2013).

95 See *id.* at (1)

creates a substantial risk of physical injury.<sup>96</sup> The law also explicitly precludes defenses that the victim consented to the act, that the act was not part of official organizational activity, or that the organization condoned the act.<sup>97</sup> Both public and nonpublic postsecondary schools whose students receive state student financial assistance must adopt anti-hazing policies, which prohibit student organizations from engaging in hazing.<sup>98</sup> These schools must also adopt programs for anti-hazing enforcement as well as penalties.<sup>99</sup> Hazing conduct is prohibited both on and off campus,<sup>100</sup> and each student must receive a copy of the anti-hazing rules and penalties.<sup>101</sup>

Florida's anti-bullying and anti-harassment laws contain some explicit connections to sports programs. One example is the requirement that all staff, including athletic department personnel, receive training in anti-bullying policy.<sup>102</sup> Another example is the inclusion of school-sponsored athletic events among the locations where bullying is prohibited.<sup>103</sup> And exclusion from public school sports participation is a potential punishment for bullying.<sup>104</sup>

Several professional and amateur sports leagues have developed independent anti-bullying policies.<sup>105</sup> But these vary greatly in their comprehensiveness, and are generally neither not uniformly enforced nor discussed at their highest administrative level. For example, the administration of Little League Baseball does not have an anti-bullying policy. But they do have guidelines for responding to child abuse, which could include coaches bullying children.<sup>106</sup> These guidelines predominantly instruct parents to reference state and federal laws when deciding how to intervene in, or report, child abuse.<sup>107</sup> Some local little leagues have developed their own anti-bullying policies, which include definitions of bullying and consequences.<sup>108</sup> Although these existing local policies are relatively consistent with each other, they do not

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96 *See id.* at (2)-(3).

97 *See id.* at (5).

98 *See Fla Stat Ann* § 1006.63(7)

99 *See id.* at (8).

100 *See id.* at (9).

101 *See id.* at (10).

102 *See Mass Adv Leg.* § 92.3(s) (2010).

103 *See Neb. Rev. Stat.* §79-2, 137.

104 *See, e.g.,* Flagler County Public Schools, Code of Student Conduct—2012-2013 School Year, at 26-27, [http://flaglerschools.com/sites/default/files/code\\_2012-13final.pdf](http://flaglerschools.com/sites/default/files/code_2012-13final.pdf).

105 *See generally* NCAA, *Building New Traditions: Hazing Prevention in College Athletics*, available at [www.NCAA.org/health-safety](http://www.NCAA.org/health-safety); Pop Warner Football, *Codes of Conduct*, available at Source: <http://www.popwarner.com/Assets/01-assets/admin/2011forms/CodeofConduct.pdf>; USA Lacrosse, *How to Combat Hazing and Bullying at All Levels of Your Program*, available at <http://www.uslacrosse.org/multimedia-center/blog/postid/433/how-to-combat-hazing-and-bullying-at-all-levels-of-your-program.aspx>.

106 *See* Little League Baseball, *Little League Guidelines on Reporting Abuse*, available at <http://www.littleleague.org/learn/rules/positionstatements/LLGuidelinesReportingAbuse.htm>.

107 *See id.*

108 *See* Petaluma National Little League, Board Resolution, *Authorizing the Establishment of a Formal Anti-Bullying Policy and Amends the 2013 PNLL by Laws to Include Section XIV*, April 25, 2013, available at [http://s3.amazonaws.com/teampages/documents/64757/Anti\\_Bullying\\_Policy\\_PNLL\\_Resolution.pdf?AWSAccessKeyId=0MADWNHT7KBOHYNHHQR2&Expires=1389138603&Signature=2ewYJ4qxJcWw6OmR4Cqw7s04kVc%3D](http://s3.amazonaws.com/teampages/documents/64757/Anti_Bullying_Policy_PNLL_Resolution.pdf?AWSAccessKeyId=0MADWNHT7KBOHYNHHQR2&Expires=1389138603&Signature=2ewYJ4qxJcWw6OmR4Cqw7s04kVc%3D); San Clemente Little League Anti-Bullying Policy, available at <http://www.sclittleleague.com/Rules/SCLL%20Anti-Bullying%20Policy.pdf>; San Mateo Little League American Anti-Bullying Policy, June 6 2011, available at [http://assets.ngin.com/attachments/document/0041/9102/SMLLA\\_Anti-Bullying\\_Policy.pdf](http://assets.ngin.com/attachments/document/0041/9102/SMLLA_Anti-Bullying_Policy.pdf).

indicate any strategies for effectively identifying, intervening in, or preventing bullying. Furthermore, for every county with a policy, there appear to be several counties without policies.

The NCAA does not have a uniform anti-bullying or anti-hazing policy, despite its self-avowed “shared responsibility between the NCAA national office and the NCAA member institutions to protect the health and safety of all student-athletes.”<sup>109</sup> To its credit, however, the NCAA developed a comprehensive handbook on hazing prevention, which provides thorough guidelines for identifying and preventing hazing.<sup>110</sup> Yet the adoption of the handbook policies appears to be entirely optional for NCAA membership. College and university sports programs are thus left to develop their own anti-hazing and anti-bullying programs, with some states, like Florida, requiring postsecondary institutions to adopt anti-hazing policies.

Because bullies and victims travel between multiple spheres within the community, and because of the factors within sports programs that promote or encourage bullying, an anti-bullying education initiative specific to sports, and covering all levels of sports, should be developed to complement the existing legislation directed at schools and many necessitate new legislation applicable to all youth sports. Mitigating bullying and hazing associated with sports will require preventive and educational programs, in addition to reactive and punitive laws such as those described above. The task is a significant one as it calls for the modification of existing human behavior.

### **Intervention Strategies**

A few themes emerge from the studies on bullying prevention and intervention, and should be considered when crafting sports-specific and athletic-level anti-bullying curricula and codes of conduct. Principally, they reflect the comprehensive approach necessary to protect younger athletes in a consistent manner across their schools, homes, and in the greater community.<sup>111</sup> Because bullying most often happens in unsupervised areas, classroom-based and on-field strategies are not enough.<sup>112</sup> Even if a school-wide approach is successful in preventing on-campus bullying, students carry their conflicts into the locker room and other team-oriented locations where coaches and sports program administrators are not always present. Although efforts cannot be unreasonably intrusive into student’s homes and living spaces, every effort should be made to involve parents and guardians through the creation of take-home literature and communication during school visits.<sup>113</sup>

Athletic programs should collaborate with local schools in the development of anti-bullying policies, so that all parties can adopt consistent approaches. This is especially important in smaller communities, where there are limited programs and services and in which the same group of children interact in multiple settings.<sup>114</sup> To this end, anti-bullying initiatives should require that representatives from multiple community organizations, institutions, and

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109 See NCAA, *supra* note 105, at 1.

110 See *id.*

111 See Milsom & Gallo, *supra* note 3, at 14; Fuller, et al., *supra* note 3, at 4-5; Shannon, *supra* note 3, at 28.

112 See Fuller, et al., *supra* note 3, at 7.

113 See *id.* at 7.

114 See Shannon, *supra* note 3, at 27.

constituency groups collaborate in the development of curriculum and policy. This should include a pledge that athletes and coaches must take to treat others with respect, identify bullying, and speak out against it. Furthermore, programs need to include prevention, intervention, and restoration efforts. For example, coaches and administration should make attending to the victim's needs as high a priority as intervening with bullies and transforming the program's climate of bullying tolerance.<sup>115</sup>

Towards the development of a community-based approach, the initiative should: (1) be founded on a solid policy statement; (2) require anti-bullying training of authority figures; (3) develop regular and accessible channels for communication among staff, students, and parents; and (4) involve students in the enforcement of a climate that promotes civility and respect. Any policy that is adopted must provide a clear statement of commitment to safe and positive sports engagement, define what is expected of students and staff, should directly identify bullying as unacceptable, and should outline procedures for reporting and punishing abusive conduct, and for helping victims.<sup>116</sup>

All teaching and staff members who interact with students and athletes should be trained in identification, prevention, and response of abusive conduct.<sup>117</sup> Examples of training topics include how to engage athletes in activities like trust-building exercises that promote supportive relationships, and how to recognize the development of cliques and kids who feel left out.<sup>118</sup> Opportunities for training parents and guardians should also be developed, and can be offered in conjunction with the scheduling of team practice. The more people who are trained, the greater chance of successful mitigation. And all those who are trained should correspond regularly after the development of inter-community policy, to assess the status of bullying and strategize further mitigation.<sup>119</sup>

Finally, the students themselves should be highly involved in the development of an anti-bullying culture. Instead of solely being subject to the policies, students who are involved in the creation and maintenance of the policies will likely feel responsible for upholding them. Because the student-athletes are the individuals directly experiencing the culture, they are valuable—if usually untapped—sources of information for identifying bullying behaviors, locations, patterns, and at-risk individuals.<sup>120</sup> Once policies are developed, coaches can enlist the help of particular athletes, including team captains, to enforce the norms of respect and civility.<sup>121</sup> This way, not only will the coaches encourage athletes to stand up for one another, but the athletes will carry the message when the coach is not available. Individual teams of mentors and rookies can also be valuable in creating a conduit for passing down acceptable locker room culture from the older generation to the younger generation.<sup>122</sup>

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115 See Milsom & Gallo, *supra* note 3, at 14.

116 See Shannon, *supra* note 3, at 28; Fuller, et al., *supra* note 3, at 6-7; Fran Thompson and Peter K Smith, *The Use and Effectiveness of Anti-Bullying Strategies in Schools*, Goldsmiths University of London (2011).

117 See Shannon, *supra* note 3, at 28.

118 See Shannon, *supra* note 3, at 26.

119 See Fuller, et al., *supra* note 3, at 7; Shannon, *supra* note 3, at 28.

120 See Thompson & Smith, *supra* note 116, at 9.

121 See Steinfeldt, et al., *supra* note 54, at 350.

122 See Allen, *supra* note 51, at 2.

## Current Pledges

There are presently available in print and online a significant number of examples of anti-bullying pledges used by sports organizations and in schools. Yet there does not appear to be any substantive literature on the number of organizations that use them or their effectiveness. In one successful anti-bullying program, teachers involved students in the creation of the school-wide anti-bullying rules and asked them to sign an anti-bullying pledge.<sup>123</sup> The pledge was a signed agreement to not bully, to look out for bullying behavior, and to report bullying behavior when it occurs.<sup>124</sup> Most of the pledges that are available follow a similar pattern of laying out the organization's view on bullying, followed by checklist items, and then a request for the individual's signature agreeing to treat others with respect, identify bullying, and speak out against it.<sup>125,126</sup> These examples might be effective components of anti-bullying programs if they are reinforced by the other programmatic elements laid out in the previous section. The pledges should also be re-administered over the course of the students' participation in the semester or the sport season to encourage consistently respectful behavior. If they only are signed once by the athlete at the beginning of the sports season and their content goes unaddressed or insignificantly addressed for the remainder of the season, then the pledges run the risk of yielding diminishing returns.

## Recommendations

In view of the discussion concerning the nature of race-based and other forms of abusive conduct in the sports environment and the need for effective means of prevention and intervention, this section sets out several suggestions for the development of an anti-bullying initiative specifically for promoting tolerance, civility, and respect in youth sports programs. Some of these may well be appropriate subjects for legislation.

### **1. Provide educational resources and meaningful guidelines as a basis for the initiative.**

It is critical to develop and make available an interdisciplinary, research-based curriculum that introduces younger-athletes, coaches, administrators, parents, and volunteers to practical, prudent, and productive ways of sports participation. This curriculum will include courses that examine how aspects of health, ethics, media, law, business, and human and organizational behavior work together and against each other across all levels of sports today. A feature within the curriculum is the inclusion of forums for discussion, in which figures from various sectors of sports and society—professional and amateur athletes, coaches and administrators, educators, members of the media, and business, legal, and medical professionals—offer perspectives on subjects at hand. It may well be useful to support the educational program with the formulation and distribution of a code of conduct that capsulates the central themes of the educational materials. Toward this

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123 See Milsom & Gallo, *supra* note 3, at 14.

124 See *id.*

125 See Search Institute, *Steps to Respect Anti-Bullying Pledge*, Lesson 10, Part 2, 2005, available at [www.search-institute.org/sites/default/files/a/Anti-Bullying-Pledge.pdf](http://www.search-institute.org/sites/default/files/a/Anti-Bullying-Pledge.pdf); Pacer's National Bullying Prevention Center, *Take the Pledge*, available at <http://www.pacer.org/bullying/resources/activities/take-the-pledge.asp>.

126 See Eastern Kentucky University Kentucky Center for School Safety (n.d.), *Pledge Against Bullying*. Retrieved at <http://kycss.org/pledge-new/>.

end, an “Anti-Bullying Summit” might be convened that brings together middle school and high school athletics program directors and school administrators to explore approaches for addressing abusive conduct – something that has not been done to date. During this meeting, the common themes among successful anti-abuse programs will be collected and refined into a uniform code of conduct for wide distribution to all major athletics programs.

- 2. Integrate an anti-bullying pledge into the initiative, including “booster shots.”** To have any effect, an anti-bullying pledge needs to be one component of a greater program to eliminate anti-social behavior in the sports context. Because virtually every state already has anti-bullying legislation directed toward schools, and countless sports leagues have anti-bullying policies, there exists substantial foundation for pledge integration. The pledge should support the ideals and principles of respect and civility laid out in existing policies and reinforce them through signed and verbal agreements at regular intervals throughout the competitive season. Repeated exposure to the policies—“booster shots”—within the sports organization and across the community can increase the likelihood that they will be embraced.
- 3. Involve athletes in the creation of a curriculum to prevent abusive behavior.** To make athletes feel accountable for upholding a culture of respect, they should be involved in the development of specific exercises and activities, including the creation of pledge language and administration. The athletes should be required to attend adequate that training in identification and prevention of abusive conduct. Upon completion of training, the athletes should use existing policies as guidelines for crafting their season’s specific anti-bullying pledge. Their agreement can be unique in its specific language and its administration. Students should be allowed to be creative (i.e., using song, dance, play, etc.) to make it personal and accessible—so long as the overarching message is not disturbed or lost. Within that, it is imperative to detail the specific language about what constitutes abusive conduct. Leaving less “gray area” for individuals to interpret and justify whether their actions amount to bullying or being bullied is critical. A definitive description of what constitutes bullying should be developed and its results posted in a conspicuous place within locker rooms, clubhouses, or similar team gathering sites. The objective is to make people more aware of their environment, which would in turn nudge them to become more aware of their internal standards for decent and respectful behavior.
- 4. Visible and influential figures must adhere to and promote the tenets of the anti-bullying initiative.** The key role models in the athletes’ lives, including their coaches, must explicitly embrace their commitment to generating and maintaining a culture of civility. This includes the use of positive and reaffirming language, and treating their athletes and other authority figures with consistent respect. They must administer the team-created pledge to the athletes and take it themselves. Because bullying behavior is largely influenced by the athletes’ perception of whether key role models would engage in or encourage the behavior, these critical figures must use their influence to prevent bullying. If the pledge comes top-down, from administrative powers that have little daily interaction with the athletes, the athletes may find reasons to feel unaccountable to the pledge’s tenets. Coaches, parents, and guardians must exhibit the behavior they want to

see in their athletes. As such, they should have to take the pledge and uphold it in the same manner as the athletes.

Furthermore, athletes should have safe paths for reporting any bullying behavior to appropriate administrators. Team captains must take-on an additional role of enforcing culture of respect. Because athletes are “in the trenches,” and are present among the team even when coaches are not, they are best suited to enforce appropriate locker room culture. As such, key players such as team captains should be assigned additional roles of maintaining high levels of respect. This might mean that captains take an additional pledge, or are required to renew the team’s pledge more often. These key athletes should be involved in all administrative meetings that address bullying, so that they may provide updates and contribute to continuous bullying mitigation.

- 5. Collect data on changes.** Because of the dearth of information regarding effectiveness of anti-bullying sports initiatives, sports programs should be required to monitor and record instances of bullying, and record changes to anti-bullying policies and procedure, from the start of training through the end of the athletic season. At the end of each season, athletes should be anonymously surveyed to identify their experiences with bullying, and ask for suggestions on how their experience could have been made more comfortable and appropriate. All of these data should be kept in a single database for easy comparison. As information collects over time, trends in bullying could then be compared to changes in policy, with an eye towards continuous policy improvements.