CHAPTER ONE

Cyber Misconduct: Who Is Lord of the Bullies?

“Yo Jaysus, your ass is drippin,” says Max Lechuga. He’s the stocky guy in class, you know the one. Fat, to be honest, with his inflatable mouth. “Stand clear of Jaysus’ ass, the fire department lost another four men up there last night.” The Gurrie twins huddle around him, geeing him on. . . . The class detonates through its nose. . . . Jesus abandons his desk with a crash and runs from the room. . . . Then Max Lechuga gets out of his chair, and goes to the bank of computer terminals by the window. One by one, he activates the screen-savers. Pictures jump to the screen of Jesus naked, bent over a hospital-type gurney.

(Pierre, 2003, pp. 231–233)

The courts of law would shit their pants laughing. . . . But here’s why they’d laugh: not because they couldn’t see. . . . but because they knew nobody else would buy it. You could stand before twelve good people . . . and they wouldn’t admit it. They’d forget how things really are, and slip into TV-movie mode where everything has to be obvious.

(ibid., p. 51)

INTRODUCTION

Pierre’s Vernon God Little illustrates the tortuous power of words and images; the anger, hate, and pain they can promote; and their transformation into depictions and online permanence for viewing by an infinite and global audience, from classroom to cyberspace. The narrative depicts peer classroom bullying and cyber-bullying at its core.

Not only does this narrative promote significant discomfort as we witness the bullying of a boy named Jesus, the symbolism of Jesus’ crucifixion in a school classroom by his fellow students represents the plight of all victims of bullying and cyber-bullying. The narrative is laden with antiauthority significance – a rebellion against the institutional order of the classroom, of the church, and of the state, with schools as its agents. It also symbolizes a challenge to a well-known symbol of love, peace, and order in the world.
However, the Jesus in Pierre’s book fights back, like Eric Harris and Dylan Klebold, who were responsible for the Columbine High School massacre in 1999 (Shariff, 2003). Jesus runs out, buys a gun, and returns to undertake a shooting rampage, killing the perpetrators of his bullying. His friend Vernon becomes singled out as having supported Jesus, although Vernon did not know what his friend was going to do. As I finalize and edit this chapter on September 11, 2007, I am painfully aware that a year ago this week in Montreal, young Kimveer Gill walked into Dawson College in the heart of Montreal and went on a shooting rampage, killing one student and injuring many others. It was later disclosed that Gill had posted photographs of himself with his guns on a vampires.com Web site and had endured years of bullying as a student in elementary and high school. Moreover, it does not escape me that on September 11, 2001, six years ago today, the World Trade Center towers were blown up in one of the most unforgettable acts of terrorism in Western history. Following that event, we have all become sensitized and desensitized to the endless media reports of U.S. military action in Iraq and Afghanistan, of suicide bombers, of more shooting rampages in schools, and of incessant news reports about the ills of the Internet, the dangers that lurk within it, and opinions on how it allows young people to run rampant without adult control.

In human society throughout history, there have always been perpetrators of bullying (whether they engage in it individually, in groups, or through state-sanctioned wars). Hence, there are always victims – those who are targeted by the perpetrators – and there are others who become “collateral damage” like Jesus’ friend Vernon. In the bullying and cyber-bullying context, I contend that even the bystanders who witness, reinforce, and support bullying are victims because they learn to engage in hostile behavior, following poor leadership models and being distracted from engaging in positive social relationships and beneficial learning. Whether the bullying takes place in school or in cyberspace, the fact is that it is perpetrated by human beings who act in particular social, institutional, political, and normative contexts. What changes, therefore, are the contexts, the actors, and the specific influences that affect their actions and forms of expression.

The issue of cyber-bullying and cyber misconduct currently tops the agendas of government officials, educators, parents, civil libertarians, and legal practitioners. Enter the legal system. Laws have always been necessary to maintain a certain level of social order and compliance to agreed norms of behavior in civil societies. When the boundaries of that normative order shift, traditional modes of legal control no longer apply. The transformed order requires new applications of the law, new law, or alternative means of navigating new dilemmas. This is the challenge that has emerged for educators and policy makers in an information age driven by rapid technological advancement. Maintaining civilization and civil behavior is difficult enough in organized society, even when the rule of traditional law is supposed to prevail and order and authority exist to protect innocent citizens. What happens when traditional rules and the authority are removed, as in dystopian fiction? This is the dilemma that
schools confront as they attempt to navigate the legal and moral challenges around responding to cyber-bullying and, ultimately, developing in students appropriate moral compasses for an electronic age.

This book seeks to identify legal responses to online bullying and antiauthority forms of expression that demonstrate the greatest promise to address the issues in the absence of established legal precedents related to cyber-bullying. I draw on a range of established legal frameworks and emerging judicial decisions to demonstrate that policy responses grounded in substantive law and legal pluralism, informed by critical approaches to education, show the greatest promise of success.

**Peer Cyber-Bullying: A Lord of the Flies Syndrome?**

The rapid advancement of cellular phones and Internet technologies has opened up new and infinite spaces that young people can explore with fluid boundaries that are difficult to monitor or supervise. In this regard, cyber-bullying, as I have explained elsewhere (Shariff & Hoff, 2007), is a modern-day version of Golding's (1959) *Lord of the Flies*. In this classic tale, Golding maroons a large group of schoolboys on a deserted island where no rule makers are present, compelling the boys to deal with the resulting vacuum. Their first thoughts are to look for adult authority figures:

“Where’s the man with the megaphone?” . . . “Aren’t there any grownups at all?”

“I don’t think so.” The fair boy said this solemnly; but then the delight of a realized ambition overcame him.

(Golding, 1959, p. 7)

It does not take long for relationships to deteriorate. The ruthless Jack and his gang of friends use force and intimidation to dominate the other kids on the island. Piggy, an overweight, asthmatic, bespectacled boy, becomes the natural target for these perpetrators of violence because of his perceived weaknesses. He is increasingly picked on, teased, and excluded on the basis of his shortcomings. Maligned throughout the novel, Piggy is treated as an object of derision rather than a human being. Golding builds up this objectification and brutality to an excruciating level, culminating in Piggy’s violent death at the hands of his peers:

The rock struck Piggy a glancing blow from chin to knee; the conch exploded into a thousand white fragments and ceased to exist . . . . His head opened and stuff came out and turned red. Piggy’s arms and legs twitched a bit, like a pig’s after it has been killed. Then the sea breathed out again in a long, slow sigh, the water boiled white and pink over the rock; and when it went, sucking back again, the body of Piggy was gone.

(ibid., p. 167)

I remember this book as required reading when I was a high school student in Kenya, East Africa, and I recall particularly the quote just cited. The symbolism in the book was evident to me even at age fourteen or fifteen. I remember being
deeply disturbed by Piggy’s death. As an overweight, shortsighted student confined to wearing thick eyeglasses at an all-girls’ boarding school, I often found myself bullied for my weight, shortsightedness, and academic proficiency at school. My closest friend and I were not very athletic. As soon as we began to study the book in class, the teasing “Piggy and Porky” began during physical education classes. I recall not being significantly affected by it until I read that paragraph. Afterward, I was frightened of being equated with Piggy. In revisiting this story, I am now reminded about the ironies and symbolism that Golding so cleverly incorporated and that are so important to a discussion of traditional and cyber-bullying. Some of the symbolism relating to power and disempowerment is highlighted proficiently in a paper by law student Thomas Bernard McMorrow (2007):

The rock loosened by Roger, one of Jack’s bullying cronies, signals the ultimate stage in the sacrifice of Piggy at the altar of might. Defining might is its blindness to the dignity of the persons over whom it is exercised. The inviolable value that each human being possesses is thereby ignored, denied or overridden. As philosopher Simone Weil once noted: “Might is that which makes a thing of anybody who comes under its sway. When exercised to the full, it makes a thing of man in the most literal sense, for it makes him a corpse.”

Throughout the novel, Piggy is increasingly treated, not as a person but as a thing. The callousness of this casual brutality thickens and hardens, rendering nearly all the boys but especially the likes of Jack and Roger, totally insensible to the respect that a human life, such as Piggy’s ought to evoke.

As McMorrow notes, reading about Piggy’s treatment in *Lord of the Flies* one cannot help but feel enraged, just as reading about Jesus’ treatment in *Vernon God Little* is disturbing – all the more so because the portrayal of injustice hits so close to home. The scenarios are all too familiar when we recall the recent suicide deaths of fourteen-year-old Canadian teenagers Hamed Nastoh and Dawn-Marie Wesley as a result of bullying. Hamed jumped off a bridge, and Wesley hanged herself at home. Also devastating was the cold and callous murder of teenager Reena Virk by her peers, who beat and chased her over a bridge and down to the water where they burned her face with cigarettes and drowned her in the Pacific Ocean. The primary perpetrator, Kelly Ellard, held Reena’s head under water with her foot while smoking a cigarette, until her victim breathed no more.

It strikes me that nothing has changed since Golding’s time. These are all cases of bullying that took place within the past decade. Lawyers for Kelly Ellard’s defense described Reena as dark and overweight, with hair on her back, while Kelly was depicted as a pure white girl from a middle-class neighborhood who would never do any wrong (Shariff, 2003). Just like Piggy, Reena was reduced to a thing – a subhuman and unattractive beast, thereby implying some sort of justification for the violence that befell her. As Chapter 2 demonstrates, one of the key aspects of bullying is that perpetrators gain power by defining their victims as objects – often weak, ugly, or dangerous – who deserve the
punishment. This serves as justification for exclusion, ostracism, and violence in almost every case. Moreover, in Golding’s boys, each of us might recognize ourselves, because at sometime in our lives, we have all put others down or made them feel excluded for a variety of reasons.

What frightens educators and policy makers is that cyber-bullying similarly puts students on a virtual island with no supervision and few rules. It might be assumed that this allows bullying to escalate to dangerous, even life-threatening levels. Further, the boys on the island realize that being “evil” is easier when they assume a different persona, and so they paint their faces for anonymity before they attack. Cyber perpetrators who bully their peers are no different. They hide behind pseudonyms and well-disguised IP (Internet protocol) addresses, making it difficult, if not impossible, for the victim to determine the source of the threat. This anonymous nature of cyber-bullying is perhaps the most troubling of all, for it leaves victims wondering which of their classmates might be a cyber aggressor.

Indeed, as the quote from Vernon God Little depicts, the entire class population could be involved. Yet recall from the opening narrative where the initial bullying took place: within the supervised confines of a physical space – the classroom. It then moved into cyberspace. Hence the argument that cyberspace might in and of itself cause students to engage in bullying does not carry significant weight. Bullying in the physical context has taken place throughout history for years. We cannot blame technology. What is disturbing when cyber-bullying is involved is that for victims, attending school and confronting unknown perpetrators is like being on an island – there is no escape unless they take the options adopted by Vernon’s friend Jesus, or Harris and Klebold at Columbine High School, striking back randomly and with extreme violence. Then there are always innocent or “collateral” victims like Vernon or the victims of Klebold, Harris, and Kimveer Gill.

It is important not to overlook the following two important premises that underlie Golding’s book, as reflected in his strong use of irony, because they are pertinent to the cyber-bullying context in schools.

**Adults as Bullies**

The first premise is that the young boys are no different from a group of adults, whose relationship might deteriorate in the same way if marooned on an island without rules. As television reality shows such as Survivor and Lost evidence, it is not the lack of maturity in children that can result in these conditions but the way in which human beings are prone to behave in conditions of depravity. In this regard, Golding is talking about survival of the fittest. Moreover, as McMorrow observes, the need for laws and rules that govern behavior comes from “[T]he idea that the vast majority of us is so beyond the pale and that it must be left to a cabal of enlightened law-makers to steer us to happiness in this world (or the next) conflicts with humanist values underpinning the liberal democratic political project.”2 (McMorrow, 2007, p. 5). In the context of bullying and cyber-bullying, this could explain the heavy reliance on zero-tolerance punishments, such as suspensions and expulsions, and, more recently,
the strong calls from teachers and their unions for legislation as anti-authority forms of cyber-bullying become more prevalent online. We always believe that the law will resolve everything and that after we punish the perpetrators, all will be well. Regrettably, this is never the case. Nothing is that simple. The phenomenon of bullying in and of itself is a complex one. When we add cyber-bullying to the mix, there are no simple answers and, indeed, no one legal response that will stop it.

The second, and in my view more important, premise that underlies Golding’s story is that all human beings are born with the capacity to make decisions between doing good to others and their animal capacity for committing acts of cruelty to others. If we assume that with appropriate nurturance and guidance human beings can develop a moral framework that will overcome the desire to harm others, then the focus turns to the society in which those human beings live and the extent to which its institutions and culture are able to provide that guidance and support. Whether the moral instinct to do good can survive in extreme situations such as that in which Golding’s boys found themselves is dependant on the strength of their upbringing. What kind of society did these boys come from? McMorrow explains their context:

Consider the larger context in which the novel is set. While the socio-political backdrop to the story is never drawn out explicitly, the fact that there is no explanation for why all of these English lads are on a plane so far from home and how it is that British naval personnel end up “rescuing” the boys implies that something is rotten in the state of adult affairs (i.e. the affairs of states) as well. If this is so, if the life of the boys on the island, brutish and nasty as it is, reflects life off the island, where global leaders guard their stash of arms as jealously as Jack clutches his wooden spear, then the shocking breakdown in social relations among the boys should come as no surprise.

(ibid., p. 6)

Accordingly, the message Golding conveys is that the boys come from a world that is just as violent and hostile to human dignity as the new one in which they are stranded; therefore, the only moral framework available to them in dire conditions is to emulate that of the world they already know, hence the camouflaging of their faces to attack their enemies and the insidious and dangerous power hierarchies that emerge on that island.

It is well known that children emulate the adults in their lives. In today’s world, we simply need to read a newspaper or turn on the television to witness global political conflicts that continue to destroy the infrastructures of several countries, especially in the Middle East. We see imperialist governments that talk about collateral damage when women and children are killed in wars that make no sense. Victims of war are often reduced to objects so that there is less guilt on the part of those who extinguish lives without a thought to the fact that those who died were someone’s parents, mothers, fathers, and children. On the news each day, we witness suicide bombers creating havoc in the streets of Iraq and Afghanistan and the homes of Palestinians being bulldozed. We
have witnessed people living in squalid refugee camps in which generations of children live and grow up in extreme poverty with no home, school, or country – and no one who particularly seems to care. We hear about children in Uganda and Sierra Leone who were kidnapped by adults and forced to commit murder and rape or mutilate those thought to be “the enemy.” We hear of children kidnapped from public playgrounds or their own backyards in Western countries, with their bodies turning up raped and murdered – by adults. We know about child pornography and its perpetration on the Internet yet are helpless to eradicate it.

We view Hollywood movies in which actor Bruce Willis, for example, callously shoots off a person’s arm and makes him run for his life knowing a gun is focused on his back. We repeatedly witness school shootings in which the perpetrators are students who were bullied or adults involved in school shootings who had difficulties in their lives and learn that when those perpetrators sought help, the system failed them (Dedman, 2000).

Consider the Holocaust or the genocide in Bosnia, Rwanda, or Darfur in which powerful governments took little action to stop the violence for long periods of time. Consider, too, the mere lip service that many governments pay to constitutional and human rights, even when it comes to protecting or prosecuting their own citizens. Given such realities, it seems clear that Golding’s boys could very well have come from such a world and imitate its powers on an island with no adults.

Similarly, adults fail to protect Vernon in Vernon God Little after his friend Jesus retaliates against his classmates. Vernon, the narrator, is scapegoated by community members who believe he supported Jesus’ actions, although he is entirely innocent. Vernon is as vulnerable as he is intelligent, but he is also inexperienced. He tries to run away from it all but realizes that people’s minds are already made up. The media has sensationalized his role in the tragedy, handing down a sentence that even judges cannot reverse.

The second opening quote, the “judges would shit their pants laughing,” is expressed by Vernon, who becomes resigned to the fact that adults in this world are the greatest bullies of all – the worst culprits in modeling violence through television, Hollywood movies, and sensational news stories. In his opinion, although the judges and even a jury might understand his innocence, they may not be able to stand up against the public outcry for a scapegoat. Further, although judges understand that society systemically fosters and sustains the forms of violence they must adjudicate on a regular basis, they are bound by law and precedent and have less room to maneuver than people think (Case, 1997).

The most common complaint from victims of bullying and cyber-bullying is that schools generally put up a “wall of defence” (Shariff, 2003) through which they imply that the victims brought the bullying on themselves and that cyber-bullying is a parental responsibility because it takes place outside the school on personal computers and cell phones bought by parents. School officials often argue that they already have antibullying programs in place, which absolves
them from doing more to protect victims. Moreover, few lawsuits reach the courts. Most are settled out of court because of the expense caused by delays school-board lawyers implement and the added difficulty of establishing tangible harm when injury from bullying is psychological rather than physical. I address all these issues in greater detail in upcoming chapters.

**Antiauthority Cyber Expression**

A second form of student expression, antiauthority cyber expression (which is also commonly referred to as cyber-bullying), has recently garnered substantially more attention than peer-to-peer bullying. There have been stronger calls for action from school and government officials, teachers and teachers’ unions, because this form of cyber-bullying involves student postings on social networking sites where the focus of discussion is teachers or school officials. Although most young people use social networking sites to do just what the name implies—engage in enjoyable social conversations—some students use them to demean and put down their teachers or school administrators, joke about them, modify photographs, and invite insults and comments from other students. As I have mentioned, there is disagreement among students (supported by civil libertarians and some parents) and school authorities as to whether this form of online student expression constitutes cyber-bullying. For the purposes of this book, I believe it is important to discuss it as a form of cyber-bullying because it has garnered so much attention and concern from educators and policy makers that in turn affects computer use by all students. The power differential involved in this form of student online communication is reversed. The “victims” of such expression are teachers, school principles, and college and university professors (authority figures) who are disempowered because they have little control over who sees the online comments about them. Because the jury is still out as to whether this form of student expression constitutes cyber-bullying, I also refer to it as “antiauthority cyber expression” or “antiauthority online expression.” The media have described teachers and their unions, as well as government and school officials, as being powerless at the mercy of such “cyber brats.” The issue is increasingly, and globally, depicted in news reports as a “battle.” Consider the following headlines:

- “Cyber-bullying targeting teachers: poll” (Leong, 2007)
- “A gift from the devil: Worry about on-line activities” (Soloyon, 2005);
- “Cyber-bullying: The Internet is the latest weapon in a bully’s arsenal” (Leishman, 2002)
- “Internet gives teenage bullies weapons to wound from afar” (Harmon, 2004)
- “Cyber-bullying blighting our lives” (Reading Evening Post, 2006)
- “Teachers declare war on cyber-bullying” (Brown, 2007)
- “School war against the bullies brings academic success” (Asthana, 2007)
- “Regina bylaw to target cyber-bullies” (CBC News, 2006)
“Web giants like YouTube are being urged to get tough with the cyber-bullies that use their sites to make pupils’ and teachers’ lives a misery” (Goff, 2007)

“Foiling cyberbullies in the new Wild West” (Franek, 2006)

What concerns civil libertarians is that we might also sacrifice innocent students, like Vernon, who are using technology in responsible ways and, in some cases, simply stating truths, making political statements, or making their opinions known online, believing that they have the constitutional right to do this. The words Vernon uses to describe the judicial system as being part of the problem and as powerless to help him prove his innocence might be couched in vulgar terms as shown in the quote at the beginning of the chapter; however, he makes an important point that ought to be given significant weight.

As school authorities and teachers’ unions call for governments to legislate suspensions and punishment for this type of expression, it is important to remember that the judiciary interprets the law within similar normative frameworks and contexts that inform societal hegemonies (Gramsci, 1971, 1975). In fact, some would argue they are part of the system that perpetuates the very hierarchies that sustain prejudices in society and that ultimately contribute to the forms of cyber-bullying that we see expressed by teenagers (Ehrensal, 2003). Judges make their rulings on the basis of the facts of each case, but in doing so, they often accept social or normative constructs that are already embedded in legal language (Ehrensal, 2005; Lankshear & Knobel, 2006). In this regard, the courts are merely another arm of the influential power base that governs public institutions such as schools. When normative constructs go unquestioned, courts might tacitly legitimate them, including taken-for-granted assumptions about children, school, free speech, and authority. Often they do this by refusing to open the floodgates to litigation. In educational matters, courts have often deferred to the expertise of educators, stating that courts do not get involved in matters of “public policy” (Jafaar, 2002). Given that cyber-bullying is an issue that has not yet been addressed to a great extent, some judiciaries may adopt such an approach to avoid inviting more lawsuits.

In this regard, the law wields power, both in terms of the decisions courts render and the constructs that they subtly endorse. To understand legal power, it is important to look at the language of law, for in law, language is power.

Hence the perspectives of critical theorists and pedagogues such as Giroux (2003), McLaren (1998), Lankshear and Knobel (2006), and Ehrensal (2003, 2005) draw attention to the way in which the courts conceptualize and describe learning and behavior in their reasons for judgment. This may apply to constructs of cyber-bullying, especially in its antiauthority forms, and how, in legal terms, it might ultimately become defined and embedded in legal precedent. Through the lens of critical theory and cultural studies of law, it is essential to examine the assumptions that judges make about educator authority and the fiduciary relationships of trust between teachers and their students and to examine how these relationships impinge on and restrict free speech and learning.
Once a landmark court decision in an emerging area such as cyber-bullying is handed down, the doctrine of *stare decisis* (adherence to precedent) ensures that most future decisions adhere to the landmark precedent unless the court can distinguish a case as sufficiently different in nature to move away from precedent. In this regard, the courts have a powerful influence on shaping governmental policy and practice. Schools, as government agents, must in turn adhere to the standards set out by the courts.

There is no doubt that the landscape, as observed by one learned judge (*Hill v. Church of Scientology of Toronto*, 1995), has changed so dramatically that it is difficult to know where the boundaries of authority end.

The landscape upon which the line where the balance tips from protected speech for students to permissible punitive power for school administrators has changed dramatically. The internet marks that landscape change as dramatically as the Front Range marks the end of the Great Plains. (*Beidler v. North Thurston School District Number 3*, 2000)

To reiterate, although many young people use technologies in what adults perceive to be a responsible manner, some take advantage of this seemingly unsupervised space as license to say and do what they want. Yet this is where the crux of the dilemma resides. *What* constitutes *responsible* discourse or expression (online or otherwise), and *who* decides *what content and forms of online expression* ought to be limited? Further, once there is agreement (which is a challenge in itself), *how* and *to what extent* can such speech be limited? What criteria exist to determine these invisible boundaries in a cyber society? Moreover, as rapidly evolving technologies are increasingly integrated into our everyday lives, our children are growing up with a range of technological tools and resources that were not available to the baby boomer generation when we grew up. Consequently, although some adults and corporations are in the business of creating, building, and making available such tools, online social networking tools popular with young people are less easily embraced or understood by the average parent, teacher, or lawmaker.

With adult discomfort in the use of technologies comes suspicion, a feeling of exclusion, fear of change, and fear of a loss of control over the normative status quo. There is a yearning to return to the “good old days” when children did what they were told in manageable physical spaces because the consequences (including even corporal punishment) were clear. As this fear takes hold, it becomes easier to blame the tools – technologies ironically created by adults – and to blame the kids for the way they use these tools, incorporating forms of expression that are offensive and disturbing to a public audience of adults (*Churchill*, 2007).

It is no wonder that antiauthority forms of expression continue to become increasingly lewd and obscene. Such expression is a call that society ought to heed. Although one could argue, as in the Golding’s first premise and Neil Boyd’s (2000) book *The Beast Within*, that people are naturally aggressive,