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Judith G. McMullen

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# ADDRESSING ABUSIVE CONDUCT IN YOUTH SPORTS

JUDITH G. McMULLEN\*

## I. INTRODUCTION

Participation in sports has long been regarded as a wholesome path to health, strength, and good character.<sup>1</sup> From the Olympic competitions of ancient Greece to the jousting of the Middle Ages, modern day youth sports, and the glittering world of professional sports, athletes have trained and competed with great dedication to earn glory, prizes, or both. The path to fame and other rewards, however, has always been difficult and has sometimes jeopardized the very goals of sports. Hard training and healthy eating can cross the line to exhaustion and eating disorders, encouraging players to do their best can slip into pushing players to the point of injury and harm, and attempts at team bonding can morph into bullying or hazing.

Adult athletes may well have the right to risk their physical or emotional health for their athletic careers and have arguably knowingly assumed various risks. These claims are dubious when young athletes are involved. Children and adolescents may face enormous risks from sports at a time when their physical and emotional developments are incomplete. Recent news reports about concussions, overuse injuries, and bullying or hazing of young players by coaches and other players have led to discussions about how to regulate youth sports so as to encourage growth, development, and athlete safety at the same time. While there is widespread agreement that *something* should be done, there is less agreement about what that something should be.

This article examines one aspect of the risks faced by young athletes, namely the problem of bullying, hazing, and harassment of young athletes by their teammates. This article will discuss the dynamics of such abusive behaviors and will also examine various approaches to dealing with adolescent players who are perpetrators of, victims of, or bystanders to abusive conduct. I make

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\* Professor of Law, Marquette University; B.A. University of Notre Dame; J.D. Yale Law School.

<sup>1</sup> See Angela Lumpkin, *Teaching Values Through Youth and Adolescent Sports*, 21 STRATEGIES 19, 19 (2008).

two claims. My first claim is that zero tolerance policies and severe punishments are, at best, ineffective and, at worst, harmful in the majority of bullying, hazing, or harassment cases. My second claim is that, since these sorts of abusive conduct are rooted in the culture surrounding youth sports and adolescent immaturity, behaviors such as bullying, hazing, and harassment are best addressed first by a change in the culture of youth sports coupled with intensive, consistent education about proper behaviors tailored to particular contexts and individuals. Punishment, especially punishment by juvenile or criminal authorities, should only be used as a last resort in extreme and severe cases. Instead, discipline for sports abuse should be structured so as to utilize it as a teachable moment for player-abusers and victims alike. While punishment is sometimes appropriate, adults responsible for overseeing youth sports should, in my view, focus first on teaching life lessons and thereby hopefully derail some of the harms that can befall bullies as well as victims.

My claims are based on three premises. First, I assume that bullying, hazing, harassment, and similar attacking or isolating behavior, collectively referred to as “abusive conduct,”<sup>2</sup> are serious and harmful and should be deterred in youth sports settings. This may seem obvious, but in a culture where “toughness” is valued, “sissies” are ridiculed, and a “boys will be boys” attitude prevails, it is important that I state my assumption clearly at the outset. Later in the article, I will present the evidence underlying this assumption; specifically, research showing that abusive conduct by other teammates presents not only the risk of physical harm but also the risk of various severe emotional harms.<sup>3</sup> In fact, research shows that not only the victims but also the young perpetrators of bullying and hazing are at high risk of psychological, emotional, or behavioral harm.

My second premise is that, for purposes of this discussion, “youth sports” should include all sports teams made up of players from middle school through college age. I deliberately include college students and teams in my analysis because, as I will show, young people in that age group who are in a college environment fit the definition of adolescence currently used by many researchers; these students are still vulnerable to many of the same developmental and

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<sup>2</sup> Here I follow the lead of an NYU report, NEW YORK UNIVERSITY SPORTS & SOCIETY PROGRAM, 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 4 n. 4 (2014), [hereinafter NYU REPORT], which uses “abusive conduct” as a catchall term for bullying, hazing, harassment, and similar behavior in sports.

<sup>3</sup> I note here that all of these behaviors can be, and unfortunately have been, perpetrated by coaches, as well as by other players. This article will focus specifically on player-on-player abuses; the discussion of abusive conduct by coaches involves different legal standards and, hence, desirable policies and remedies are likely to be different.

physical dangers that impact their younger counterparts, and research has shown that their brain development and consequent ability to control their impulses have not yet reached full adult levels. I do *not* specifically address abusive conduct perpetrated by much younger players (say, under the age of ten) because they are much more likely to be directly supervised by parents and coaches at every turn, and they are not yet in the throes of the various adolescent development issues that fuel much of the abusive conduct engaged in by older players.

My third premise is that, where abusive conduct such as bullying or hazing is an issue, research from a variety of fields, such as psychology, sociology, anthropology, and education, is relevant to our discussion, even though much of the research was done in classrooms or other settings rather than in settings specific to sports, such as practice fields or locker rooms. In other words, I am claiming that the behavioral, psychological, and physical aspects of bullying and similar conduct are essentially the same regardless of the specific location of the abusive conduct. I believe that the research on the dynamics of bullying and hazing discussed later in the article will clarify that the causes, effects, and behavioral patterns involved are not context-specific, but rather describe a pattern of interaction that can occur in many group settings.

Part I of this article will define abusive conduct such as bullying, hazing, and harassment and will discuss causes of abusive conduct, as well as its effects on young players. In this regard, the article will discuss research that suggests harms and risks of harm not only to victims of abusive conduct, but also on perpetrators and bystanders. The article will also discuss the reasons adolescents sometimes act abusively towards other teammates, examining both the group behavior patterns involved and current research on adolescent brain development, which suggests that there are strong sociobiological forces that increase the likelihood of many of these behaviors. Part II of the article will discuss particular laws and policies that have been adopted to cope with abusive conduct by young athletes from middle school through college. Part III will address the shortcomings of the current laws and policies in light of the research about the dynamics of abusive conduct and makes the case that education, counseling, and dispute resolution techniques will be more effective than zero tolerance punishments or criminalization in preventing abusive conduct and educating the youth who have been caught up in it.

## II. DEFINITIONS AND DYNAMICS OF ABUSIVE CONDUCT

A. *Defining Abusive Conduct*

A discussion of abuse of players in youth sports must begin with some definitions. The types of abusive conduct that can occur in a youth sport team environment are varied, and the terminology is often used interchangeably. However, there is general consensus about definitions that somewhat differentiate the behaviors in question. Bullying is “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>4</sup> It is characterized by harm to the victim, repetition of the harm, and a power imbalance between the victim and perpetrator.<sup>5</sup> Hazing is defined as “any humiliating or dangerous activity expected of a student to belong to a group, regardless of their willingness to participate.”<sup>6</sup> These two terms have substantial overlap and are often used almost interchangeably with each other and with the term “harassment.” Yet the terms do have slightly different connotations. A recent New York University Sports & Society Program Report noted that,

Hazing tends to be a more ritualized activity associated with the induction of new members into a social group . . . by older and more established members . . . [and] purportedly motivated in part by desires to preserve tradition and build team cohesion . . . whereas other forms of bullying are usually intended solely to put down or isolate the victim.<sup>7</sup>

Both of these types of abusive conduct are apparently utilized to preserve a social hierarchy.<sup>8</sup>

It can sometimes be difficult to distinguish between the imposition of high standards and discipline, whether in sports or in other pursuits, on the one hand, and unacceptable physical or emotional abuse on the other hand. Bullying and

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<sup>4</sup> NYU REPORT, *supra* note 2, at 4 (quoting Brett Fuller, Kim Gulbrandson & Beth Herman-Ukasick, *Bully Prevention in the Physical Education Classroom*, 26 STRATEGIES: J. PHYS. SPORT EDUCATORS 1, 15 (2013)).

<sup>5</sup> NYU REPORT, *supra* note 2, at 4.

<sup>6</sup> Kathy Caudill, *What Is Hazing?*, NFHS (July 24, 2014), <http://www.nfhs.org/sports-resource-content/starwhat-is-hazing>.

<sup>7</sup> NYU REPORT, *supra* note 2, at 5.

<sup>8</sup> *Id.*

hazing of some players by other players or even coaches has been well documented in recent years, but the phenomenon is not new, either in youth sports or in schools generally. The United States Military Academy, an institution that trains one of the most elite military teams in the world (and fields sports teams as well), was the scene of some brutal and well-known incidents of hazing in the early twentieth century, with Douglas MacArthur, George Patton, and Dwight D. Eisenhower among those who were abused.<sup>9</sup> Hazing practices at the time included force-feeding, sliding naked down a board full of splinters, paddling, and deep knee bends over broken glass.<sup>10</sup> MacArthur, whose own hazing caused him to faint and suffer convulsions, was called to testify before a congressional committee when another cadet died after a hazing incident.<sup>11</sup>

While there have been numerous recent examples of coaches engaging in abusive conduct in youth sports that have been reported in the media,<sup>12</sup> often, the abusive conduct is committed by other players. Typically, older players will “initiate” newer players, often with demeaning, hurtful, or dangerous practices. For example, in one case, freshman high school football players were subjected to physical and verbal abuse by upperclassmen, including insertion of a battery-controlled air pump into the rectum, being hit in the head and face with pillow cases filled with heavy objects, and being subjected to gay slurs.<sup>13</sup> While (hopefully) the assault with an air pump was unusual, physical assaults and humiliation of fellow team members is apparently common.<sup>14</sup> In a seven-year-long longitudinal study of men’s sports teams at one university in the United King-

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<sup>9</sup> Associated Press, *West Point Orders About-Face on 108-Year Tradition of Hazing Cadets*, L.A. TIMES, Nov. 18, 1990, at MN4.

<sup>10</sup> WILLIAM MANCHESTER, *AMERICAN CAESAR: DOUGLAS MACARTHUR 1880–1964* 51 (1978).

<sup>11</sup> *Id.* at 51–52.

<sup>12</sup> Some of these incidents involved physical or verbal abuse of players by coaches, such as the widely-aired video of Mike Rice, men’s basketball coach at Rutgers, throwing basketballs at players’ heads and screaming gay slurs as he did so. Liz Clarke, *2013 College Basketball Preview: Coaches Grapple with Line Between Discipline and Abuse*, WASH. POST (Nov. 2, 2013), [http://www.washingtonpost.com/sports/colleges/2013-college-basketball-preview-coaches-grapple-with-line-between-discipline-and-abuse/2013/11/01/2d7e1b60-3a55-11e3-a94f-b58017bfee6c\\_story.html](http://www.washingtonpost.com/sports/colleges/2013-college-basketball-preview-coaches-grapple-with-line-between-discipline-and-abuse/2013/11/01/2d7e1b60-3a55-11e3-a94f-b58017bfee6c_story.html). The players themselves were seen submitting to this treatment without resisting in any way. *Id.* Similarly, in Fall of 2014, Georgetown women’s basketball coach, Keith Brown, was forced to resign after he could be heard shouting profanities and racial slurs at his players. Jay Korff, *Georgetown Coach Keith Brown Resigns After Verbally Abusing Players*, WJLA (Oct. 10, 2013), <http://www.wjla.com/articles/2013/10/georgetown-coach-keith-brown-resigns-after-verbally-abusing-players-95194.html>.

<sup>13</sup> *Roe v. Gustine Unified Sch. Dist.*, 678 F. Supp. 2d 1008, 1013–1014 (E.D. Cal. 2009), *dismissed on cross motion* 2010 U.S. Dist. LEXIS 113872.

<sup>14</sup> Eric Anderson, Mark McCormack & Harry Lee, *Male Team Sport Hazing Initiations in a Culture of Decreasing Homophobia*, 27 J. ADOLESCENT RESEARCH 427, 427–28, 430 (2011) [hereinafter Anderson et al.].

dom, researchers described coerced same-sex sexual activity among team members—mainly kissing and wrestling while wearing only underwear, all observed by a loud audience of other players—and coerced binge consumption of alcohol.<sup>15</sup> Indeed, heavy alcohol consumption and drinking games are widely reported practices in sports team initiations, along with sleep deprivation, physical assault, carrying unnecessary objects, and being kidnapped, transported, and abandoned.<sup>16</sup>

Studies show that abusive conduct commonly occurs on sports teams, as well as in the context of fraternities, sororities, and general school settings. Shockingly high percentages of young people are subjected to the abusive behavior, and this appears to have been the case for some time. A 1999 survey of 10,000 college athletes from National Collegiate Athletic Association (NCAA) institutions revealed that 79% were involved in team initiation activities that were risky or otherwise unacceptable.<sup>17</sup> Younger students do not necessarily fare better. For example, the annual Youth Risk Behavior Surveillance report shows that from 2011 to 2013, the percentage of high school students who had been bullied on school property hovered around 20%.<sup>18</sup> Although the survey did not inquire whether the bullying was related to sports participation, team bullying would be included in the number since practices and games usually occur on school property.

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<sup>15</sup> *Id.* at 427, 431. The researchers observed diminishing levels of same-sex activities and an increase in binge alcohol consumption as parts of the hazing rituals over the seven-year study period, possibly because same-sex sexual activities had decreasing stigma associated with them during the study period. *Id.*

<sup>16</sup> Shelly Campo et al., *Prevalence and Profiling: Hazing Among College Students and Points of Intervention*, 29 AM. J. HEALTH BEHAV. 137, 137 (2005).

<sup>17</sup> NADINE C. HOOVER, INITIATION RITES AND ATHLETICS FOR NCAA SPORTS TEAMS 7, 12 (1999). The study grouped initiation activities into four categories: “acceptable” activities were only positive (e.g. skill testing, dressing up for team functions, doing community service as a team, etc.); “questionable” activities were humiliating or degrading, but not illegal or potentially dangerous (e.g. wearing embarrassing clothing, head shaving, acting as a servant to players off the field, consuming spicy or disgusting concoctions, etc.); “alcohol-related” activities were rituals involving overconsumption of alcoholic beverages (e.g. drinking games); and “unacceptable” behaviors were highly dangerous and could result in criminal charges (e.g. stealing property, paddling, whipping or beating, kidnapping or sexual acts). *Id.* at 8–10. 51% of athletes surveyed were involved in alcohol-related activities and 21% were involved in at least one unacceptable activity. *Id.* at 10. The 79% figure represents the student-athletes who underwent hazing through questionable, alcohol-related or other unacceptable means. *Id.* at 12.

<sup>18</sup> LAURA KANN ET AL., YOUTH RISK BEHAVIOR SURVEILLANCE – UNITED STATES, 2013 10 (2014), available at <http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>. The report shows that 20.1% of kids reported being bullied on school property in 2011, while 19.6% reported being bullied on school property in 2013: not a significant difference. *Id.* 14.8% reported having been electronically bullied in 2013. *Id.* at 9.

*B. The Troubling Effects of Bullying, Hazing, and Harassment*

Should we be concerned about bullying, hazing, or harassment in a team setting, and if so, why? Are these behaviors a normal part of growing up, as some have claimed,<sup>19</sup> or are they aberrational and harmful to adolescents? As this section will show, there are plenty of reasons to be concerned about these abusive behaviors.

Many of the negative effects of abusive conduct are obvious: victims of such conduct are at risk for physical injury and emotional harm. Players who are subjected to bullying, hazing, and similar abuses in the youth sports setting may be placed at risk of serious physical harm or even death.<sup>20</sup> Additionally, on or off the field, emotional pain can also be severe.<sup>21</sup> Even less obvious is the fact that evidence also shows significant adverse impacts on young people who engage in abusive conduct and on bystanders who witness it.<sup>22</sup>

The most obvious risk of harm in the sports setting is the risk of physical injury. Athletes have a tendency to push themselves to their physical limits, and this kind of “toughness” is often encouraged in questionable ways.<sup>23</sup> Although many of these practices do not fit the profile of abusive behaviors such as bullying or hazing, playing through pain, using performance-enhancing substances, and overtraining are examples of potentially harmful conduct that can occur when players and coaches excessively buy into a sport ethic that emphasizes victory and toughness no matter the cost.<sup>24</sup> The line is not always clear between encouragement, whether from coaches or other players, and abusive conduct that pushes a young athlete to dangerous extremes.<sup>25</sup> Overt bullying and hazing

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<sup>19</sup> See S. K. Fields et al., *Violence in Youth Sports: Hazing, Brawling and Foul Play*, 44 BRIT. J. SPORTS MED. 32, 32 (2009) (noting that violent behavior in a youth sports setting is often dismissed as “part of the game” or “just boys being boys”).

<sup>20</sup> ESPN compiled a list of sixty-eight alleged or confirmed incidents of sports hazing, including many where serious injury or death resulted. *Sports Hazing Incidents*, ESPN (June 3, 2003), <http://espn.go.com/otl/hazing/list.html>. Incidents included excessive drinking to the point of alcohol poisoning, sodomizing fellow teammates with bottles or other foreign objects, and kicking or hitting other players with hard objects. *Id.*

<sup>21</sup> S. K. Fields et al., *supra* note 19, at 32.

<sup>22</sup> *Effects of Bullying*, STOPBULLYING, <http://www.stopbullying.gov/at-risk/effects/index.html#bully> (last visited Oct. 24, 2014).

<sup>23</sup> See, e.g., Anderson et al., *supra* note 14, at 428. The authors note that the definition of an “athlete” is predicated on masculine traits such as toughness, aggressiveness, courage and ability to withstand pain. *Id.*

<sup>24</sup> Jennifer J. Waldron & Christopher L. Kowalski, *Crossing the Line: Rites of Passage, Team Aspects, and Ambiguity of Hazing*, 80 RES. Q. FOR EXERCISE AND SPORT 291, 292 (2009).

<sup>25</sup> See *id.* at 291–93. One example can be seen in the recent public discourse about concussions in youth sports; a desire on the part of players to be back in the game and a coaching culture in which players are pushed back out has apparently lead to huge numbers of concussed kids suffering re-injury



activities carry a clear risk of physical harm in many cases as well. Behaviors such as excessive consumption of alcohol, coerced drinking of substances like urine, kicking, slapping, and abandoning scantily clad players in remote locations all carry obvious risks of harm, even though in any particular instance the player may survive physically intact.<sup>26</sup>

The physical risks and harms are only part of the picture; young people who have been hazed or bullied may experience many negative emotional consequences as well.<sup>27</sup> Kids who have been bullied are at higher risk for depression, anxiety, and psychosomatic symptoms.<sup>28</sup> The resulting depression may itself cause complications such as loss of friends, isolation, and academic problems.<sup>29</sup> Victims of abusive behaviors are also at higher risk for suicide; however, rather than being a direct cause-effect relationship, this correlation is most likely due to a combination of factors, including depression and interpersonal problems, that are made worse by the bullying.<sup>30</sup> Finally, in rare instances, victims of abusive conduct may strike back with violence.<sup>31</sup>

It is not only the perpetrators who are at risk. Perhaps ironically, young people who engage in abusive behavior towards their peers are also at higher

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that could cause permanent brain damage or even death. See, e.g., Jennifer Corbett Dooren, *Report Warns of Kids Returning to Sports Too Soon After Concussions*, WSJ, <http://online.wsj.com/news/articles/SB10001424052702304073204579167540204147388> (last updated Oct. 30, 2013); Jeffrey Kluger, *Headbanger Nation*, TIME (Feb. 3, 2011), [http://content.time.com/time/specials/packages/printout/0,29239,2043395\\_2043506\\_2043494,00.htm](http://content.time.com/time/specials/packages/printout/0,29239,2043395_2043506_2043494,00.htm).

<sup>26</sup> All examples were reported by college athletes in the study by Waldron & Kowalski, *supra* note 24, at 294.

<sup>27</sup> See, e.g., *Effects of Bullying*, *supra* note 22.

<sup>28</sup> David Sallee et al., *Bullying Behavior: Threatening the Health of Adolescents*, 76 RES. Q. FOR EXERCISE & SPORT 45, 45 (2005).

<sup>29</sup> NYU REPORT, *supra* note 2, at 14.

<sup>30</sup> *Effects of Bullying*, *supra* note 22.

<sup>31</sup> See, e.g., *Kids Who Bully*, STOPBULLYING, <http://www.stopbullying.gov/at-risk/effects/index.html#bullied> (last visited Oct. 24, 2014) (claiming that in twelve out of fifteen school shootings in the United States in the 1990s, the shooters had a history of being bullied). But see Dave Cullen, *The Depressive and the Psychopath*, SLATE (April 20, 2004), [http://www.slate.com/articles/news\\_and\\_politics/assessment/2004/04/the\\_depressive\\_and\\_the\\_psychopath.html](http://www.slate.com/articles/news_and_politics/assessment/2004/04/the_depressive_and_the_psychopath.html) (reporting FBI findings that the shooters at Columbine were not bullied, but rather the depressed Klebold followed the lead of Harris, a psychopath who was bent on mass murder).

risk for bad consequences, such as depression, suicidal ideation, and delinquency.<sup>32</sup> Adolescent bullies are at greater risk for dropping out of school, delinquency, and abuse of alcohol or drugs,<sup>33</sup> and bullying behavior by college-age students has been associated with increased drug and alcohol use.<sup>34</sup> Of course, these correlations do not prove that the bullying behavior causes the adverse effects; it may be that in some young people, factors like depression and alcohol consumption lead to the abusive conduct. Nonetheless, it is fair to say that perpetrators of peer abuse are often troubled or unhappy.

Even bystanders to the abusive behavior can suffer harm.<sup>35</sup> Young people who witness bullying or hazing are more likely to be depressed or anxious, use alcohol or drugs, and miss school.<sup>36</sup> This is consistent with evidence showing that young people who witness other types of violence are more likely to suffer symptoms of post-traumatic stress.<sup>37</sup>

Even the team culture is harmed by the abusive conduct of some players towards other players.<sup>38</sup> Although hazing is often rationalized as a means of team-building, in fact, hazing practices have been shown to reduce team cohesion in sports activities.<sup>39</sup> Research shows that while *team-building* activities, such as pre-season practices or endurance tests, are associated with higher levels of social cohesiveness among team members, *hazing* practices were associated with less team cohesion on tasks related to their sports.<sup>40</sup>

### C. Causes of Abusive Conduct

Theories abound about how ordinary kids who set out to play youth sports can end up as bullies or victims in a destructive cycle. Researchers have identified certain patterns of characteristics shared by bullies and by victims,

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<sup>32</sup> See generally Marcel F. van der Wal, Cees A.M. de Wit & Remy A. Hirasing, *Psychosocial Health Among Young Victims and Offenders of Direct and Indirect Bullying*, 111 PEDIATRICS 1312, 1312, 1314 (2003) (reporting on a school-based survey of 4,811 children ages nine to thirteen in Amsterdam, the Netherlands).

<sup>33</sup> Amy Milsom & Laura L. Gallo, *Bullying in Middle Schools: Prevention and Intervention*, 2006 MIDDLE SCH. J. 12, 13 (2006).

<sup>34</sup> Jesse A. Steinfeldt et al., *Bullying Among Adolescent Football Players: Role of Masculinity and Moral Atmosphere*, 13 PSYCH. OF MEN & MASCULINITY 340, 341 (2012).

<sup>35</sup> *Effects of Bullying*, *supra* note 22.

<sup>36</sup> *Id.*

<sup>37</sup> See Springer Sci. & Bus. Media, *Witnessing Violence Affects Kids' Health*, SCIENCE DAILY (April 22, 2009), <http://www.sciencedaily.com/releases/2009/04/090421091739.htm>.

<sup>38</sup> Judy L. Van Raalte et al., *The Relationship Between Hazing and Team Cohesion*, 30 J. SPORT BEHAVIOR 491 (2007).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 500–04.

and have also applied insights from behavioral and social psychology to explain how a pattern of abusive conduct can emerge, and then become entrenched. The picture is a fairly complex one.

Although there is no litmus test for who will become a bully or a victim, abusers are often perceived as leaders by their peers.<sup>41</sup> In fact, it appears that the desire to retain power and influence within a group is a major motivating factor in abusive conduct. Young people are more likely to engage in abusive behavior if they believe that their peers view such actions positively.<sup>42</sup> Conversely, some abusers are significantly *less* popular or influential in their peer groups and may bully in an attempt to improve their low self-esteem or status in the group.<sup>43</sup> These bullies may have difficulty empathizing with the feelings or emotions of others, making it easier for them to do hurtful things without apparent remorse.<sup>44</sup> Young people who have negative opinions about other people, or who have trouble with conflict resolution in general, seem to have a greater tendency to bully others.<sup>45</sup> Young people who are aggressive, easily frustrated, or who view violence positively are also more likely to engage in abusive conduct.<sup>46</sup>

Similarly, there are some personal characteristics that make a young person more likely to be the victim of a bully. Identification of such characteristics should not be misconstrued as blaming the victim, but rather should be seen as a way to identify kids who are at greater risk of harm so that preventive measures can be adopted. In this vein, research indicates that young people who are anxious, depressed, less popular or somehow seen as “different” from their peers, or have low self-esteem are at greater risk of being objects of abusive conduct.<sup>47</sup> Victims are often seen as people who will not fight back.<sup>48</sup>

While it is improper to blame victims of abusive conduct for their plight, it is an uncomfortable fact that abusive personalities and victim personalities seem to be attracted to each other.<sup>49</sup> A bully’s derogatory actions and low concept of others confirm the victim’s own low self-esteem, and the victim acquiesces in

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<sup>41</sup>See, e.g., NYU REPORT, *supra* note 2, at 8; Campo et al., *supra* note 16, at 145.

<sup>42</sup>Campo et al., *supra* note 16, at 145.

<sup>43</sup>*Risk Factors*, STOPBULLYING, <http://www.stopbullying.gov/at-risk/factors/index.html#more-likely> (last visited Dec. 19, 2014).

<sup>44</sup>*Id.*

<sup>45</sup>NYU REPORT, *supra* note 2, at 8.

<sup>46</sup>*Risk Factors*, *supra* note 43.

<sup>47</sup>*Id.*

<sup>48</sup>NYU REPORT, *supra* note 2, at 8.

<sup>49</sup>*Id.*

the abusive behavior in order to get the approval of the apparently more powerful or popular bully.<sup>50</sup>

In addition to personal attributes that may predispose players to bullying or being bullied, there are certain social dynamics that appear to play a role. Sports culture, normal adolescent needs to bond with a group, and perceptions by young people that heroes or authority figures approve of a certain kind of toughness all contribute to an environment that can breed abusive conduct.<sup>51</sup> Researcher Eric Anderson and his colleagues have demonstrated that the expectation in sports culture that players will sacrifice and subordinate themselves to achieve victory easily morphs into hazing rituals, even ones that are extremely dangerous.<sup>52</sup>

Finally, there are issues of physical development, particularly brain development, that are important to any discussion of adolescent behavior, whether good or bad. While bullying, hazing, and harassment activities may seem obviously wrong and undesirable after the fact, studies of brain development in young people suggest that many adolescents who are in the physically and emotionally charged environment of team sports may be developmentally predisposed to make some bad decisions.<sup>53</sup> In the words of one prominent researcher:

How should we interpret data that show that a particular 16-year-old has adult capabilities to use logic and [understand] the consequences of his behavior, if we observe him, when in a group of friends, making reckless choices that the average 9-year-old would say was a pretty dumb thing to do?<sup>54</sup>

It is well known that young children have neither the cognitive capacity nor the experience to make decisions that are uniformly self-preserving, moral, or both. The Roman Catholic Church famously placed the age of moral responsibility at seven,<sup>55</sup> and child development psychologists like Piaget identified distinct stages of cognitive and emotional development, with full reasoning ability

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<sup>50</sup> *Id.*

<sup>51</sup> See, e.g., S. K. Fields et al., *supra* note 19, at 33–35 (surmising that social tolerance of violence in sporting culture may partly explain why abusive behaviors continue).

<sup>52</sup> See Anderson et al., *supra* note 14, at 428.

<sup>53</sup> Ronald E. Dahl, *Adolescent Brain Development: A Period of Vulnerabilities and Opportunities*, 1021 ANNALS N.Y. ACAD. SCI. 1, 3, 7, 18 (2004).

<sup>54</sup> *Id.* at 19.

<sup>55</sup> Joseph Delany, *Age of Reason*, CATHOLIC ENCYCLOPEDIA, <http://www.newadvent.org/cathen/01209a.htm> (last visited Dec. 22, 2014).

achieved only in adolescence.<sup>56</sup> Yet this supposed cognitive maturity has never yielded the kind of “good results” one might expect according to Ronald Dahl, M.D., a leading researcher in psychiatry and pediatrics, who lamented that while the period of adolescence is physically “a developmental period of strength and resilience,” it is also “strongly associated with an increase in risk-taking, sensation-seeking, and reckless behavior—all of which lead, far too often, to actions with dire health consequences.”<sup>57</sup> Dahl emphasizes that this is not a new phenomenon, quoting William Shakespeare’s words from *The Winter’s Tale*: “I would that there were no age between 10 and 23, for there’s nothing in between but getting wenches with child, wrongdoing the ancients, stealing, fighting . . . .”<sup>58</sup>

While the reckless behavior of youth has been noted with disapproval for centuries,<sup>59</sup> modern research has been able to identify neurological, hormonal, psychological, and social underpinnings to the impulsive and risky behaviors that often characterize adolescence.<sup>60</sup> For many years, scientists assumed that brain maturity occurred around the time of puberty, but neurological research over the past two decades has revealed that significant changes in the brain’s cortex, where memory and thought processes are based, occur late in adolescence, and that the volume of gray matter in the cortex does not resemble that of an adult until a person is in her early twenties.<sup>61</sup>

Brain development is a complex process, but it is now understood that it occurs over a much longer period of time than previously believed. Research shows that brain volume increases during adolescence as the teenage brain produces large amounts of gray matter in the prefrontal cortex.<sup>62</sup> This period of rapid growth is followed by a period of “pruning,” which results in a brain that

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<sup>56</sup> See generally Flinders University, *Piaget’s Stages of Cognitive Development*, MENTAL DEV. & EDUC., <http://ehlt.flinders.edu.au/education/DLiT/2000/Piaget/stages.htm> (last visited Dec. 19, 2014).

<sup>57</sup> Dahl, *supra* note 53, at 3. Dahl notes that overall mortality and morbidity rates increase 200% during the adolescent period (as compared to childhood), even though (compared to children) adolescents are bigger, faster, stronger, reason better, have better immune function, and are better able to withstand cold, heat, injury, and physical stress. *Id.*

<sup>58</sup> *Id.* at 5 (quoting from WILLIAM SHAKESPEARE, *THE WINTER’S TALE* act 3, sc. 7).

<sup>59</sup> Dahl also quoted Aristotle, who said “Youth are heated by Nature as drunken men by wine.” *Id.* at 5.

<sup>60</sup> See generally *id.* at 5–6.

<sup>61</sup> NAT’L INST. OF MENTAL HEALTH, *THE TEEN BRAIN: STILL UNDER CONSTRUCTION 2* (2011), available at <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml>.

<sup>62</sup> ABA JUVENILE JUSTICE CTR., *ADOLESCENCE, BRAIN DEVELOPMENT AND LEGAL CULPABILITY 1–2* (2004), available at [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_Adolescence.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf).

is adult in size, make-up, and function.<sup>63</sup> The prefrontal cortex of the human brain controls advanced brain functions including imagination, abstract thinking, anticipation of consequences, planning, and impulse control.<sup>64</sup> Research has shown that maturation in the frontal lobes of the brain correlates with cognitive functioning.<sup>65</sup>

In fact, it appears that cognitive development is not strongly correlated with sexual maturation, but instead correlates with age and experience.<sup>66</sup>

Measures of planning, logic, reasoning ability, inhibitory control, problem solving, and understanding consequences are probably not puberty-linked, but depend on age and experience. And these abilities clearly continue to develop long after puberty is over. . . . Taken together, a large body of work has shown that structural maturational changes in the brain are continuing long after the interval of puberty is over.<sup>67</sup>

Thus, a young person who looks physically mature may still have a brain that is under construction, and that young person “may not appreciate the consequences or weigh information the same way as adults do.”<sup>68</sup>

It is important to note that there are significant differences between individuals as to the rate of growth and maturity, strength of impulses, and need for stimulation. Moreover, there are broad ranges of societal influences that affect individual adolescents—education, social norms, and opportunities for risky behavior vary widely between different families, schools, cities, or countries.

If we examine the issues surrounding abusive conduct by adolescent players on youth sports teams in light of the research discussed above, a number of things become apparent. For one thing, opportunities for risky behavior abound in sports settings, where players routinely push the limits of their physical strength or endurance. Moreover, the sort of social influence that might mitigate risky behaviors in a family or classroom environment may instead encourage risky behaviors in a locker room or in off-field settings where teammates gather.

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<sup>63</sup> *Id.*, at 2.

<sup>64</sup> *Id.*, at 1.

<sup>65</sup> Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation*, 21 J. NEUROSCIENCE 8819, 8828–29 (2001).

<sup>66</sup> Dahl, *supra* note 53, at 18.

<sup>67</sup> *Id.*

<sup>68</sup> ABA JUVENILE JUSTICE CTR., *supra* note 62, at 2.

Although, theoretically, coaches or trainers will provide some social limits, this is not reliably the case in many situations; indeed, as we have seen, sometimes the coaches are active participants in the abusive behaviors, and sometimes they tacitly encourage it.<sup>69</sup> Also, the physical exertion of sports can be both physically and mentally stimulating, and high arousal levels may lead to riskier behaviors.<sup>70</sup> “Adolescents often appear to be relatively good at making decisions under conditions of low arousal and cool emotions, this same highly intelligent youth, under intense emotional arousal, can have a much more difficult time making a . . . responsible choice.”<sup>71</sup>

Although the foregoing research does not excuse abusive conduct on or off the field, it does mitigate the black-and-white notion of “bad” kids making deliberate, malicious decisions to engage in hurtful behaviors directed at their teammates. Normal but immature adolescents engaging in impulsive, potentially harmful behaviors present different issues for potential policy-makers.

### III. CURRENT LAWS AND POLICIES DEALING WITH ABUSIVE CONDUCT IN YOUTH SPORTS

Recognition of the harms and risks for harm presented by bullying and hazing in sports has led to widespread public discussion as well as legislation prohibiting these abusive practices.<sup>72</sup> As of this writing, there is no federal statute that directly addresses bullying or hazing in sports or elsewhere. However, the vast majority of states have enacted statutes addressing such abusive conduct; every state except Montana currently has an anti-bullying law applicable to grades K–12, and many states have also issued implementation policies.<sup>73</sup> These statutes are not entirely consistent with each other: a 2011 U.S. Department of Education report noted that the definitions of bullying varied considerably from state to state, with some state laws having no specific definition, some state laws using the term “harassment,” some states defining “bullying” quite specifically, and others using the terms “bullying,” “harassment,” and “intimidation” interchangeably to encompass a wide range of abusive conduct directed

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<sup>69</sup> See *Sports Hazing Incidents*, *supra* note 20 (listing several incidents where coaches were found culpable for failure to supervise players, or where coaches allegedly witnessed abusive conduct but did nothing to stop it).

<sup>70</sup> Dahl, *supra* note 53, at 18.

<sup>71</sup> *Id.* at 19.

<sup>72</sup> See *generally Policies and Laws*, STOPBULLYING, <http://www.stopbullying.gov/laws/> (last updated March 31, 2014).

<sup>73</sup> See, e.g., *id.*

at a fellow student.<sup>74</sup> The majority of states also specifically address the use of electronic communication to inflict harm, or cyberbullying.<sup>75</sup> Similarly, as of this writing, forty-four states have specific anti-hazing laws.<sup>76</sup>

For the most part, the state bullying laws require development and implementation of bullying policies by school districts.<sup>77</sup> In a significant minority of states, school districts are required to submit their policies on bullying for state review.<sup>78</sup> Laws, and the school district policies that implement them, typically include procedures for publicizing policies on bullying,<sup>79</sup> training and prevention programs,<sup>80</sup> policies for investigation of bullying allegations,<sup>81</sup> and disciplinary sanctions.<sup>82</sup> Some states also specifically allow for school districts to address the victims' needs for any mental health services.<sup>83</sup>

A significant number of states have bullying laws that enable, encourage, or even require reporting of bullying offenses that may violate criminal law.<sup>84</sup> For example, Illinois requires school districts to establish guidelines for reports to law enforcement, while Missouri has statutory penalties for school personnel who fail to report incidents that could constitute criminal offenses.<sup>85</sup> In addition, many of the states that have anti-hazing laws classify hazing as a criminal misdemeanor.<sup>86</sup>

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<sup>74</sup> U.S. DEP'T OF EDUC., ANALYSIS OF STATE BULLYING LAWS AND POLICIES 15 (2011) [hereinafter US DEPT. OF EDUC. REPORT] available at <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

<sup>75</sup> *Id.* at 27.

<sup>76</sup> See *States with Anti-Hazing Laws*, STOPHAZING, <http://www.stophazing.org/laws/states-with-anti-hazing-laws/> (last visited Dec. 19, 2014). New Mexico is one of the states currently without a separate anti-hazing law; however, "hazing" is specifically included in that state's definition of bullying. N.M. CODE R. § 6.12.7.7 (LexisNexis 2014).

<sup>77</sup> US DEPT. OF EDUC. REPORT, *supra* note 74, at 29.

<sup>78</sup> *Id.* at 31.

<sup>79</sup> Forty-two laws required this as of the 2011 report. *Id.* at 32.

<sup>80</sup> As of the 2011 report, twenty-five states mandated training for school personnel, twenty states mandated education or prevention programs for students, and eleven states used discretionary language to encourage prevention programs for students. *Id.* at 33–34.

<sup>81</sup> As of 2011, thirty-six states required school districts to have reporting procedures in place, thirty-one states required that school districts have investigation procedures established, and eighteen states required written documentation of bullying allegations and investigations. *Id.* at 36–38.

<sup>82</sup> As of 2011, forty-two states required school district policies to include clear statements about disciplinary sanctions. *Id.* at 38.

<sup>83</sup> *Id.* at 39.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See, e.g., Wisconsin, WIS. STAT. §948.51 (3) (Hazing is a Class A misdemeanor if it is behavior likely to result in bodily harm, a Class H felony if great bodily harm occurs, and a Class G felony if death results from the hazing.).



In addition to the state laws and school district rules that address bullying and hazing in school settings generally, many athletic leagues, conferences, and schools have their own athletic codes of conduct that address abusive conduct in the team context.<sup>87</sup> There is often interplay between the various regulations because, as mentioned above, many state laws require school districts to have anti-hazing policies, and the district policies or state laws are likely referenced in individual schools' athletic codes of conduct.<sup>88</sup>

Punishments may vary widely in response to abusive conduct by student athletes. Some schools may punish with removal or suspension from the team or even from participation in certain games, while other schools may suspend or expel the student athlete from the school itself. For example, the Littleton, Colorado code of athletic conduct specifies that school administrators may suspend or recommend expulsion for hazing behaviors,<sup>89</sup> while the athletic code for Mukwonago High School in Wisconsin sets out a hierarchy of penalties ranging from suspension from games and practices for 25% of the season, to a calendar year suspension from practices and competition.<sup>90</sup> To the extent that school, team, or school district anti-bullying rules or state hazing regulations address behavior that could qualify as physical assault, it may fall under the umbrella of behaviors for which the school has adopted a zero tolerance policy.<sup>91</sup> The term "zero tolerance" refers to a widely implemented approach to undesirable student or athlete behavior that "assigns explicit, predetermined punishments to specific violations of . . . rules, regardless of the situation or context of the behavior."<sup>92</sup>

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<sup>87</sup> For example, a Google search of "athletic league or conference code of conduct" on 8/14/2014 yielded 365,000 results.

<sup>88</sup> See, e.g., N. ANDOVER HIGH SCH., NORTH ANDOVER HIGH SCHOOL ATHLETIC HANDBOOK 2013-2014 16 (calling hazing "a most flagrant example of lack of respect for both self and others" and setting out the exact wording of the relevant Massachusetts law, Chapter 269, section 17-19 (1988)). See also LITTLETON PUB. SCH., HIGH SCHOOL STUDENT ATHLETE HANDBOOK AND ATHLETIC CODE OF CONDUCT 2 (2014) (referencing the "guidelines, policies, and regulations" of the Littleton Public School District and of the Colorado High School Activities Association). Here, too, hazing is specifically defined and prohibited. *Id.* at 14.

<sup>89</sup> LITTLETON PUB. SCH., *supra* note 88, at 14.

<sup>90</sup> MUKWONAGO HIGH SCH., MUKWONAGO HIGH SCHOOL ATHLETIC CODE OF CONDUCT 1-2 (2006), available at <http://files.leagueathletics.com/Text/Documents/13673/36153.pdf>.

<sup>91</sup> For example, many schools adopted zero tolerance policies for alcohol during the 1990s—clearly any hazing practices that involve alcohol could fall under the zero tolerance umbrella, even to the point of resulting in expulsion. See, e.g., Dennis Cauchon, *Schools Struggling to Balance 'Zero Tolerance,' Common Sense*, USA TODAY, April 13, 1999, at 01A.

<sup>92</sup> Christopher Boccanfuso & Megan Kuhfeld, *Multiple Responses, Promising Results: Evidence-Based Nonpunitive Alternatives to Zero Tolerance*, RESEARCH-TO-RESULTS BRIEFS 1, 1 (2011), available at <http://www.nea.org/assets/docs/alternatives-to-zero-tolerance.pdf>.

The state laws and school district rules apply only through high school; however, athletic codes of conduct also exist for college athletes. The most visible example of this is the NCAA, which published *Building New Traditions: Hazing Prevention in College Athletics* in 2007.<sup>93</sup> This handbook defines hazing as “[a]ny act committed against someone joining or becoming a member or maintaining membership in any organization that is humiliating, intimidating or demeaning, or endangers the health and safety of the person.”<sup>94</sup> The handbook goes on to state that “[h]azing includes active or passive participation in such acts and occurs regardless of the willingness to participate . . . .”<sup>95</sup> This definition of hazing is in fact so broad that it encompasses the bullying, hazing, and harassing behaviors discussed in other codes, studies, and this article. After defining the problem, the handbook discusses the dynamics and effects of hazing and provides specific strategies and resources for education and hazing prevention.<sup>96</sup> In addition, the handbook provides examples of hazing prevention efforts at specific schools such as Saint Michael’s College, Southern Methodist University, and Northwestern University.<sup>97</sup>

The NCAA handbook includes examples of anti-hazing policies at only a handful of colleges and universities, but an Internet search of school athletic codes turns up literally thousands of results.<sup>98</sup>

#### IV. FINDING A BETTER WAY

##### *A. Problems With Punishment*

We can only assess the appropriateness of current methods of addressing abusive conduct by players in youth sports by first considering the types of practices utilized, the triggers for possible punishments, and the objectives of the discipline schemes. Ultimately, we must ask whether the objectives are reasonable ones, whether current practices can achieve them in a consistent way, and whether some or all of the current consequences need to be changed.

As we have seen, statutes and athletic codes provide a wide array of methods for addressing abusive conduct in sports, including educational programs,

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<sup>93</sup> NCAA, BUILDING NEW TRADITIONS: HAZING PREVENTION IN COLLEGE ATHLETICS (2007).

<sup>94</sup> *Id.* at 2.

<sup>95</sup> *Id.*

<sup>96</sup> *See id.* at 4–28.

<sup>97</sup> *Id.* at 29–32, 39–44.

<sup>98</sup> A google search of “college and university athletic codes of conduct” on 8/8/2014 yielded 3,370,000 results. While some of these were articles rather than actual codes of conduct, it seems fair to assume that the actual codes would number in the thousands.

short suspensions from play or from the team, longer suspensions, expulsion from the team or the sponsoring school, and reporting to criminal authorities.<sup>99</sup> The triggers for any of these sanctions vary from team to team and from school to school. Some coaches may turn a blind eye towards abusive behaviors, possibly so as to ensure the continued team participation of accomplished or experienced players.<sup>100</sup> In other situations, even a fairly mild violation of the school or athletic code may result in criminal penalties, suspension from practices, games, or even the team.<sup>101</sup> It should be noted that some abusive behaviors are reported to law enforcement authorities for investigation and punishment not only in cases where the incidents are violent or egregious but also in some relatively harmless situations that are caught in the net of zero tolerance policies.<sup>102</sup>

Before we consider the appropriateness of these ways of addressing players' abusive conduct, we need to ask what the objectives of these approaches might be. In the case of ignoring the behavior, the motivations may be to keep competitive players in important games, to let the players work out their own conflicts, or both. The punishments, whether mild or severe, clearly have several objectives. One goal is deterrence: to stop the abusive behavior as quickly as possible and to prevent future abusive conduct, both by taking the offenders out of immediate circulation and by sending a message to other players. Another goal is retribution: in effect, making the abusive players suffer for the harm they have caused to fellow teammates. Finally, coaches and school officials may have the goal of rehabilitation: the students need to learn from their mistakes and develop positive, non-abusive methods of dealing with fellow teammates in particular or the rest of humanity in general.

When we consider these goals of punishment of abusive conduct in the youth sport context in light of the research about causes and effects of abusive

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<sup>99</sup> This list does not include the possibility of a civil lawsuit based on tort claims by the victims.

<sup>100</sup> See, e.g., *Roe v. Gustine*, 678 F. Supp. 2d 1008, 1031 (E.D. Cal. 2009). In this case, the coach's deposition testimony showed that he witnessed the assault where a group of teammates stuck a battery-operated air nozzle into a freshman player's shorts. *Id.* at 1015. He stated that he "considered it 'childish behavior' warranting only a verbal reprimand." *Id.* at 1031.

<sup>101</sup> For example, a fairly recent example occurred in West Allis Central High School in West Allis, Wisconsin. See *Jermont Terry, Selfie Lands Student Athlete in Hot Water*, TODAY'S TMJ4 (Mar. 12, 2014), <http://www.jrn.com/tmj4/news/Selfie-lands-student-athlete-in-hot-water-249995411.html>. A senior member of the basketball team snapped a selfie with his cell phone, not realizing that a fellow teammate was changing clothes at his locker behind the picture taker. *Id.* After obtaining the agreement of his friend (whose bare buttocks were visible in the background), the senior posted the picture on Facebook with the caption "selfie with a nude." *Id.* The picture-taker was reported to authorities, fined \$439 for disorderly conduct, and suspended for five games (including the playoffs). *Id.* The naked teammate in the background, who had agreed to the posting, was not disciplined. *Id.*

<sup>102</sup> See generally *id.*

behavior by adolescents, some problems with the current approach become apparent. It is my contention that swift, automatic, and severe punishments are counterproductive to the preventive and educational goals of youth sports. In particular, it is my contention that zero tolerance policies are harmful, and that referral of bullying and hazing incidents to outside law enforcement should be rare and not automatic. Since youth sports players are in a team environment—often one that is officially linked to a school—I believe that abusive behavior should be prevented through guidance and education where possible, and dealt with as a teachable moment where abuses occur. Although the desire to ban all behaviors remotely suggesting bullying or the desire to ban all perpetrators thereof from sports or school is understandable, automatic bans, either of specific behaviors or particular people, are not a good solution to the underlying societal problems that lead to abusive behavior in sports.

Proponents of zero tolerance policies contend that harsh and certain punishment of specified offenses sends a clear message and will deter undesirable student or athlete behavior.<sup>103</sup> However, when we consider the zero tolerance approach in light of research about adolescent development discussed earlier in this article, it makes sense that the zero tolerance approach may fall short. As we have seen, adolescents tend to act impulsively and typically do not consider the repercussions of their behaviors prior to acting.<sup>104</sup> Threats of Draconian punishment are unlikely to deter specific behaviors if the actors are acting on impulse or are motivated by adolescent concerns such as peer pressure, acceptance, or status.<sup>105</sup>

A task force of the American Psychological Association (APA Task Force) recently examined research and data on zero tolerance and concluded that zero tolerance policies have been problematic in school settings generally, and may actually lead to worse behavioral outcomes for students.<sup>106</sup> For one thing, suspension and expulsion, penalties associated with zero tolerance policies, are also associated with lots of negative outcomes, such as lower grades, lower standardized test scores, and higher drop-out rates.<sup>107</sup> The APA Task Force also found that schools with higher suspension and expulsion rates tend to have

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<sup>103</sup> See Cauchon, *supra* note 91.

<sup>104</sup> See Dahl, *supra* note 53, at 7–8.

<sup>105</sup> See Diana Divecha & Robin Stern, *Bullying: A Call to Action for an Education in Emotions*, HUFF POST IMPACT, [http://www.huffingtonpost.com/diana-divecha-phd/bullying-a-call-to-action\\_b\\_4174787.html](http://www.huffingtonpost.com/diana-divecha-phd/bullying-a-call-to-action_b_4174787.html) (last updated Jan. 23, 2014, 6:58 PM).

<sup>106</sup> RUSSELL SKIBA ET AL., ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 4–5 (2006) [hereinafter APA TASK FORCE REPORT], available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

<sup>107</sup> Boccanfuso & Kuhfeld *supra* note 92, at 2.

lower rates of school-wide academic achievement, even after controlling for lower socio-economic status or other demographic factors.<sup>108</sup> In the context of offenses such as bullying, the severity of the punishment may deter bystanders who observe the abusive behavior from reporting it.<sup>109</sup> Moreover, as educators Boccanfuso and Kuhfeld point out, since zero tolerance policies by their nature do not consider context, “a student who is bullied may face the same suspension for retaliating in a physical altercation as the bully who initiated the confrontation.”<sup>110</sup>

Just as exclusion from school can increase risks for the students left behind at school as well as for the students who are expelled or suspended, excluding players from their sports removes them from an important potential place to learn values, increase their physical fitness, and learn to be part of a team.<sup>111</sup> This might accomplish a retribution objective, but it does not rehabilitate or educate players, and it does not reliably deter future abusive behavior since the original abusive conduct is most likely a product of immaturity, poor impulse control, and peer influences, rather than a mature decision to engage in criminal behavior.<sup>112</sup>

Another trend in discipline related to zero tolerance is the increased criminalization of youthful bad behavior.<sup>113</sup> School or team infractions that used to be handled by the principal or coach are now more likely to lead to juvenile court referrals or arrests.<sup>114</sup> Such policies subject young people to the morass of the juvenile or adult justice systems, and it is not at all clear that the results of this are positive. The APA Task Force noted that while, at the time of its report, there were no longitudinal studies conclusively showing that suspension, expulsion, or referrals to the justice system lead to increased juvenile incarceration or poor outcomes in general, what we know about juvenile delinquency and at-risk youth suggests that removing them from school will reduce time under adult supervision and will likely increase their contact with anti-social peers, thus accelerating the course of offensive conduct.<sup>115</sup> Far from teaching

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<sup>108</sup> APA TASK FORCE REPORT, *supra* note 106 at 5.

<sup>109</sup> Boccanfuso & Kuhfeld, *supra* note 92, at 3.

<sup>110</sup> *Id.*

<sup>111</sup> See Lumpkin, *supra* note 1, at 19 (arguing that coaches and parents should use youth sports to teach children and adolescents important life skills, including teamwork, dedication, physical fitness, how to play fair and how to live guided by high moral values).

<sup>112</sup> Divecha & Stern, *supra* note 105.

<sup>113</sup> See APA TASK FORCE REPORT, *supra* note 106 at 76–80.

<sup>114</sup> *Id.* at 76. The report noted the increased likelihood of student arrests on school grounds not only for violent crime, but also for offenses such as theft, vandalism, or fighting on campus. *Id.*

<sup>115</sup> *Id.* at 78–79.

them to do better, this approach may result in a downward spiral that is destructive to them, their teammates, and society in general.<sup>116</sup> A more recent study is more sobering: Professor Linda Teplin of Northwestern University found that youths who were arrested and detained were more likely to die violent deaths as adults, even if those earlier arrests did not result in adjudications.<sup>117</sup>

Criminal referrals are particularly problematic because they require a level of intent and culpability that may not be entirely appropriate when dealing with adolescents and young adults.<sup>118</sup> As discussed earlier in this article, research increasingly shows that brain development in young people is slower than previously thought, and that the impulsive behavior often seen in this age group may be partly the result of changing brains and surging hormones.<sup>119</sup> Where the physical and psychosocial development of adolescents lead to poor decisions, risky behavior, and rule-breaking, it seems only fair to consider the developmental capacities as mitigating factors when assessing criminal culpability or determining appropriate punishments.<sup>120</sup> However, many punishment policies seem to be based on theories about appropriate punishment for adults, rather than on the developmental needs of children and adolescents.<sup>121</sup>

Indeed, the United States Supreme Court has taken notice of differences between adolescents and adults and has begun to incorporate this knowledge into its jurisprudence concerning juveniles. In *Roper v. Simmons*,<sup>122</sup> the Court held that imposition of the death penalty on offenders who committed their crimes while juveniles was unconstitutional.<sup>123</sup> In support of this holding, the Court recognized three differences between juveniles under eighteen and adults: 1) a lack of maturity and an underdeveloped sense of responsibility in youth, often resulting in “impetuous and ill-considered actions and decisions;” 2) greater vulnerability or susceptibility “to negative influences and outside pressures, including peer pressure;” and 3) the fact “that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are

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<sup>116</sup> See generally Divecha & Stern, *supra* note 105 (“[W]e shouldn’t be jailing children who lack the skills they need to navigate their inner lives and social worlds. We should teach them those skills.”)

<sup>117</sup> Gary Gately, *Detained Youths More Likely to Die Violent Deaths as Adults*, JUVENILE JUSTICE INFORMATION EXCHANGE (June 19, 2014), <http://jjie.org/detained-youths-more-likely-to-die-violent-deaths-as-adults/>.

<sup>118</sup> See generally *id.*

<sup>119</sup> See generally ABA JUVENILE JUSTICE CTR., *supra* note 62.

<sup>120</sup> APA TASK FORCE REPORT, *supra* note 106, at 65–71.

<sup>121</sup> *Id.* at 65.

<sup>122</sup> 543 U.S. 551 (2005).

<sup>123</sup> *Id.* at 578–79.

more transitory, less fixed.”<sup>124</sup>

Although the above research and commentary does not directly address the notion of middle or high school sports, let alone college sports, I believe that the comments are directly relevant to issues raised by bullying, hazing, and other abusive behavior committed by young players against their teammates. Since the players are on adult-supervised, school-sponsored teams, they are, by definition, in an educational environment, and are, as noted above, subject to disciplinary policies common to the school setting as a whole. Moreover, the policy of zero tolerance is alive and well in the youth sports context.<sup>125</sup> Also, as noted above, the ages of the players discussed here, ranging from approximately ages ten to twenty-three, places them squarely in the age range of adolescents who are still developing psychosocially in terms of risk-taking, peer influence, impulse control, and orientation towards the future and physically in terms of hormones, growth and brain development. Where abusive conduct in sports is the product of poor judgment resulting from social or neurological immaturity, it makes sense to impose consequences that take these factors into consideration.<sup>126</sup> Even where the behavior poses some threat to safety, as do many of the hazing behaviors, any disciplinary approach should seek to ensure the safety of victims and the education of both victims and perpetrators.

### *B. Suggestions for Reform*

Some people may argue that the risks of harm posed by bullying, hazing, and other abusive behavior directed at teammates are so serious that only severe and prompt punishment is appropriate.<sup>127</sup> The trouble with this position is that it has not proven effective. As has been discussed, since Draconian, inflexible punishments have not been shown to deter abusive behavior, and may in some cases worsen it, a better approach is to educate players to control their emotions and impulses and to act appropriately.<sup>128</sup> In the words of researcher Elizabeth Cauffman, “Instead of treating the vulnerabilities of adolescence as an *excuse* for antisocial behavior, we should view our findings as providing an *explanation*

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<sup>124</sup> *Id.* at 569–70.

<sup>125</sup> See, e.g., *Understanding Proven Methods to Preventing Bullying and Hazing*, COACH’S BOX NEWSL. (Positive Coaching Alliance, Mountain View, Cal.), Feb. 2014, available at <http://www.littleleague.org/learn/newsletters/CBNewsletter/2014/cbfeb14/preventing-bullying-and-hazing.htm>.

<sup>126</sup> APA TASK FORCE REPORT, *supra* note 106, at 67.

<sup>127</sup> See, e.g., Donna A. Lopiano & C. Zotos, *Sample Policy: Hazing, Initiation Rituals, Sexual Harassment, Bullying and Physical Punishment*, SPORTS MGMT. RESOURCES, <http://www.sportsmanagementresources.com/library/hazing-initiation-sexual-harassment-bullying-physical-punishment> (last visited Dec. 19, 2014).

<sup>128</sup> See generally Divecha & Stern, *supra* note 105.

that may enable more effective ways of encouraging healthy development.”<sup>129</sup> Therefore, team discipline should take advantage of teachable moments and utilize methods such as constructive discipline, emotional education, good role models, and alternative dispute resolution methods to help young players learn to be strong, assertive, and non-abusive.

Developmental psychologist Diana Divecha has suggested that coaches and team personnel can best address abusive behavior with a three-prong approach: education about acceptable and unacceptable behaviors, creating a positive emotional climate, working with young people to help them recognize and regulate their emotions, and helping players to develop their reasoning and decision-making skills.<sup>130</sup> Punishment alone is ineffective; it can be counterproductive and push bad behavior further underground.<sup>131</sup> The authors of the APA Task Force Report concur: “By subjecting students to automatic punishments that do not take into account extenuating or mitigating circumstances zero tolerance policies represent a lost moment to teach children respect and a missed chance to inspire their trust of authority figures.”<sup>132</sup>

Education to prevent bullying, hazing, and other abusive conduct should include not only information about what are and are not acceptable team practices, but should also include education aimed at social-emotional learning and conflict resolution skills.<sup>133</sup> In addition, the APA Task Force recommends that screening be conducted to determine which children may be at risk for problematic behavior.<sup>134</sup> When students have already engaged in violent or abusive behavior, rather than automatic exclusion, the APA Task Force also recommends interventions designed to reduce the future damage to the offender and to others.<sup>135</sup>

In terms of a response to abusive conduct that has already occurred, the APA Task Force and other authorities have also recommended the practice of restorative justice.<sup>136</sup> “Restorative justice is a theory of justice that emphasizes

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<sup>129</sup> Elizabeth Cauffman, *The Adolescent Brain: Excuse Versus Explanation*, in ADOLESCENT BRAIN DEVELOPMENT: VULNERABILITIES AND OPPORTUNITIES 161 (Ronald E. Dahl & Linda Patia Spear eds., 2004).

<sup>130</sup> Diana Divecha & Robin Stern, *What the NFL Can Learn from Four Decades of Research on Childhood Bullying*, HUFF POST SPORTS, [http://www.huffingtonpost.com/diana-divecha-phd/nfl-bullying\\_b\\_4351146.html](http://www.huffingtonpost.com/diana-divecha-phd/nfl-bullying_b_4351146.html) (last updated Jan. 31, 2014).

<sup>131</sup> *Id.*

<sup>132</sup> APA TASK FORCE REPORT, *supra* note 106, at 92.

<sup>133</sup> *Id.* at 87.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 91. See also Leah M. Christensen, *Sticks, Stones, and Schoolyard Bullies: Restorative Justice, Mediation and a New Approach to Conflict Resolution in Our Schools*, 9 NEV. L.J. 545, 550



repairing the harm caused or revealed by criminal behaviour.”<sup>137</sup> Restorative justice processes try to include all stakeholders and engage them in cooperative processes to identify and take steps to repair harm that has been done.<sup>138</sup> Although some programs that involve victims and perpetrators of bullying, such as peer mediation, have had disappointing results in studies,<sup>139</sup> utilizing class exercises, parent-teacher alliances, and circles to change the culture of the school or team may prove more effective.<sup>140</sup> Victims and bullies need not be brought together initially into the same circle: the essence of a restorative justice program is giving each stakeholder a chance to tell his or her own story, a lack of emphasis on blaming, and a group effort to foster change and make amends for harm done.<sup>141</sup>

In fact, consensus is growing that abusive behaviors cannot be addressed by punishment alone, but must be addressed in a global way. Educator John Dominguez advocates addressing bullying behaviors by changing the social environments that support it. “Bullying is not the problem but a sign of a larger issue . . . Bullying endures because it is strongly supported by the cultures in which it develops.”<sup>142</sup> In Dominguez’s view, bullies continue in their behavior because they receive higher social status and power over their environments thereby, and “bullying will persist until the resulting influence over others and heightened social status is shut down.”<sup>143</sup> To shut down the status and power rewards, Dominguez proposes focusing on supporting victims and on teaching kids in the bystander position to challenge the bullies or defend and support the

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(2009) (discussing the use of restorative justice and mediation techniques to address disputes and bullying in schools).

<sup>137</sup> *What is Restorative Justice*, RJ ONLINE, <http://www.restorativejustice.org/university-classroom/01introduction> (last visited Nov. 19, 2014).

<sup>138</sup> *Id.*

<sup>139</sup> Christensen, *supra* note 136, at 562–63 (citing John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 30, 56–57 (1999)).

<sup>140</sup> *Id.* at 563–65. Christensen advocates using an approach such as Payne’s Social Inclusion Approach, which endeavors to change the school culture towards bullying by using four steps: “First, invoke a community commitment towards the practice of inclusion, not exclusion. Second, define teasing and bullying explicitly within the school and the community. Third, ‘teach’ teachers to identify a child in need. And fourth, develop specific support networks for bullied children.” *Id.* at 564.

<sup>141</sup> *Id.* at 569–74.

<sup>142</sup> John Dominguez, *A Fresh Approach to Peer Victimization*, 22 RECLAIMING CHILD. AND YOUTH 37, 39 (2013), available at [https://reclaimingjournal.com/sites/default/files/journal-article-pdfs/22\\_3\\_Dominguez.pdf](https://reclaimingjournal.com/sites/default/files/journal-article-pdfs/22_3_Dominguez.pdf).

<sup>143</sup> *Id.*

victims in some way.<sup>144</sup> Ultimately, the goal should be to create a positive environment with clear expectations and behavioral guidance.<sup>145</sup>

Applying these suggestions to sports teams could be reasonably straightforward. First, coaches, school officials, and parents must clearly communicate the expectation that all players will treat their teammates with respect, and the conviction that safe, respectful behavior on and off the field will advance the good of the team. It should be made clear that any player witnessing abusive conduct has a responsibility to act to stop it and to support the victim. Second, disputes or suggestions of abusive conduct by any player must be confronted immediately, with all parties and bystanders allowed to tell their sides of the story. An effort should be made to allow the players to work together to resolve the dispute *with the active participation of the coaching staff*. “Work it out yourselves, boys” responses are inadequate since they are likely to be construed as a green light for the offending behavior. Instead, the coaches and other adults having influence, such as school administrators or parents, must communicate the unambiguous attitude that abusive conduct is unacceptable and bad for the team. Punishment such as team suspensions, expulsions, and juvenile or criminal referrals should be reserved for behaviors that are extremely physically or psychologically dangerous. However, even then, coaches and school administrators should remember their duties to the offending student who still needs to be educated to become a productive member of society.

## V. CONCLUSION

Youth sports teams present a unique opportunity to educate young people in body and spirit, as well as in intellect. However, responsible adults need to design athletic codes and methods of discipline only after considering the social, neurological, and psychological development of adolescent players. This article has attempted to show why mere punishment for abusive conduct in sports is counterproductive. While more research is needed to find effective ways to derail bullying, hazing, and harassment on youth sports teams, a sincere commitment to changing sports culture and using incidents of abusive conduct as teachable moments are good ways to start needed reforms.

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<sup>144</sup> *Id.* at 40. In terms of intervention, Dominguez acknowledges that most bystanders of abusive behavior hold back out of fear that they will become victims themselves. *Id.* He advocates fairly mild rebukes to the perpetrators, such as “Why do you have to be mean to that guy? I hear he is actually a pretty cool dude. You barely know him.” *Id.* Similarly, Dominguez points out that checking to be sure bully victims are okay, or reminding him that the bully tends to strike out without a lot of cause, is not likely to constitute social suicide. *Id.*

<sup>145</sup> Stephanie Francis Ward, *Less Than Zero*, 100 ABA J. 55, 56 (2014).