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# DIGITAL THREATS ON CAMPUS: EXAMINING THE DUTY OF COLLEGES TO PROTECT THEIR SOCIAL NETWORKING STUDENTS<sup>1</sup>

JAMISON BARR & EMMY LUGUS\*

## INTRODUCTION

Western society values few things more than education.<sup>2</sup> A college education is considered the bridge that must be crossed to properly start the life-long process of education. As Plato wrote, “the direction in which education starts a man will determine his future in life.”<sup>3</sup> A college experience is of high importance in Western society culture.<sup>4</sup> Parents and students amass considerable amounts of debt so that the college experience can be fully realized.<sup>5</sup>

The value of an American college education is so important to our way of life that it is almost beyond challenge. One of America’s greatest thinkers, Ralph Waldo Emerson, declared that “[t]he things taught in schools and colleges are not an education, but the means to an education.”<sup>6</sup> One of America’s most prolific presi-

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1. This Article primarily uses the term “college” to collectively refer to both colleges and universities.

2. “Without education we are in a horrible and deadly danger of taking educated people seriously.”—G.K. Chesterton. *COLLECTED WORKS OF G.K. CHESTERTON: THE ILLUSTRATED LONDON NEWS, 1905-1907* 71 (1986).

3. PLATO, *THE REPUBLIC* 106 (Benjamin Jowett trans., Book IV. 1989) (1960).

4. “The university is the archive of the Western ideal, the keeper of the Western culture, the guardian of our heritage, the dwelling of the free mind, the teacher of teachers.” Adlai Stevenson, *College Quotations*, USEFUL INFORMATION, [http://www.useful-informatin.info/quotations/college\\_quotes.html](http://www.useful-informatin.info/quotations/college_quotes.html) (last visited May 5, 2011) [hereinafter USEFUL INFORMATION].

5. Ron Lieber, *Placing the Blame as Students are Buried in Debt*, N.Y. TIMES, May 29, 2010, at B-1, available at <http://www.nytimes.com/2010/05/29/your-money/student-loans/29money.html>.

6. USEFUL INFORMATION, *supra* note 4.

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dents, Theodore Roosevelt, explained that “[a] man who has never gone to school may steal from a freight car; but if he has a university education, he may steal the whole railroad.”<sup>7</sup> One of New England’s favorite poets, Robert Frost, described college as “a refuge from hasty judgment.”<sup>8</sup>

Today, educators, politicians, and celebrities alike extol the benefits of a college experience. Even those who dropped out of college to pursue their dreams now donate considerable funds to colleges and universities and are frequent speakers at college events.<sup>9</sup> While a college education is crucial to securing future employment, liberal arts education proponents argue a college education is worth so much more.<sup>10</sup> Such proponents argue that it is instrumental in shaping how a person thinks, acts, and contributes to society.<sup>11</sup> As the proponents explain, a college education is key to developing, understanding, and fostering proper socialization in society.<sup>12</sup>

For as long as colleges and universities have existed, college administrators have tried to strike a balance between educating the student and protecting the student from potential harms associated with the transition from childhood to adulthood.<sup>13</sup> To strike what they considered a proper balance, college administrators sought to act in a way that they considered was in the best interest of the student.<sup>14</sup> Determining a student’s best interest in such manner was

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7. WILLIAM JOSEPH GRACE, *ART OF COMMUNICATING IDEAS* 389 (1952).

8. USEFUL INFORMATION, *supra* note 4.

9. Joseph Lin, *Top 10 College Dropouts*, TIME.COM, May 10, 2010, [http://www.time.com/time/specials/packages/article/0,28804,1988080\\_1988093\\_1988082,00.html](http://www.time.com/time/specials/packages/article/0,28804,1988080_1988093_1988082,00.html); ‘You’ve got to find what you love,’ Jobs says, Text of Steve Jobs’ Commencement Address, WORLDPRESS.COM (June 14, 2005), <http://kenyonsalo.wordpress.com/2008/04/23/youve-got-to-find-what-you-love-steve-jobs-says/>; Daniel Aloï, *Architect Thom Mayne, Morphosis to Design Gates Hall, New Home for Computing and Information Science*, CORNELL UNIV. CHRON. ONLINE (July 9, 2010), <http://www.news.cornell.edu/stories/July10/GatesHallArchitect.html>.

10. Stacy A. Jacob, *Liberal Arts Colleges - History of Liberal Arts Colleges, Characteristics of Liberal Arts Colleges*, STATEUNIVERSITY.COM, <http://education.stateuniversity.com/pages/2179/Liberal-Arts-Colleges.html> (last visited May 5, 2011).

11. *See id.*

12. *See id.*

13. Nalanda University established in the 5th century A.D. in Bihar, India, is considered by some to be one of the first universities. Jeffrey E. Garten, *Really Old School*, NYTIMES, Dec. 9, 2006, [http://www.nytimes.com/2006/12/09/opinion/09garten.html?\\_r=1](http://www.nytimes.com/2006/12/09/opinion/09garten.html?_r=1). Europe’s oldest university, the University of Bologna, was founded in 1088 A.D. *Our History*, Università Di Bologna, <http://www.eng.unibo.it/PortaleEn/University/Our+History/default.htm> (last visited May 5, 2011).

14. *See generally* Bradshaw v. Rawlings, 612 F.2d 135, 139-40 (3d Cir. 1979).

codified in the doctrine referred to as “*in loco parentis*.”<sup>15</sup> Literally meaning in Latin “in the place of the parent,”<sup>16</sup> the college’s role was to protect college-aged students from the harms of living apart from their parents while they transitioned from being dependent to being independent.<sup>17</sup> This doctrine empowered and authorized colleges to act in what they determined was the best interest of their students, without the students’ input.<sup>18</sup> With such empowerment, colleges highly regulated students’ dating lives, living arrangements, dress, code of conduct, and speech rights.<sup>19</sup>

After a series of challenges stemming from the various social, scientific, cultural, and political revolutions of the 1960s, courts largely expelled the doctrine of *in loco parentis*.<sup>20</sup> Recognizing in part that the college setting played a key role in fostering society’s revolutions, courts elevated the students’ rights above the college administrators’ determination of students’ best interests to free society’s much needed revolutionaries.<sup>21</sup> As a result, college students were left free to pursue revolutions.

One such revolution, social networking, is changing society faster than possibly all other revolutions combined. As it is with any societal change, society needs to properly and promptly address the harms that flow from such change. This Article discusses the duty of colleges in light of the harms stemming from social networking—what some may consider to be today’s most influential and consuming revolution.

## I. TODAY’S SOCIAL NETWORKING ENVIRONMENT AND ITS POTENTIAL HARMS

### A. *Definition of Social Networking*

Social networking, a global revolution, is defined as a means of communicating through a website or other Internet portal that al-

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15. *See id.*

16. *See* BLACK’S LAW DICTIONARY 351 (9th ed. 2009).

17. “The college undergraduate is a lot of things—many of them as familiar, predictable and responsible as the bounce of a basketball, and others as startling (and occasionally disastrous) as the bounce of a football.”—John Sloan Dickey. *See* USEFUL INFORMATION, *supra* note 4.

18. *See generally Bradshaw*, 612 F.2d at 139.

19. *Dress Codes and Student Supervision*, BALL STATE UNIV., <http://cms.bsu.edu/Academics/Libraries/CollectionsAndDept/Archives/Collections/UniversityArchives/Exhibits/StudentLife/Behavior.aspx> (last visited May 5, 2011).

20. *See generally Scheuer v. Rhodes*, 416 U.S. 232 (1974); *Healy v. James*, 408 U.S. 169, 169 (1972)

21. *See generally Bradshaw*, 612 F.2d at 139-40.

lows members to share personal information and enables personal contacts.<sup>22</sup> Member profiles on social networking websites typically “contain information and audio and visual content of a personal nature.”<sup>23</sup> “[D]ata is shared with others whom the member determines to be ‘friends.’”<sup>24</sup> Social networking combines all the new communication devices and media together on the Internet. Users can text, post, email, blog, IM, link, and Tweet through social networking. Online social networks such as Facebook.com (Facebook), Twitter.com (Twitter) and MySpace.com (MySpace) have hundreds of millions of users and have evolved to the point of being global in both nature and scope.<sup>25</sup>

Facebook started at Harvard University in 2004.<sup>26</sup> The current leader of social networking sites, Facebook had over five hundred million users in 2010.<sup>27</sup> As of December 2009, the fastest growing social networking site was Twitter, which launched in 2006 as a way to send status updates via text messages.<sup>28</sup> By 2010, “Twitter . . . attract[ed] 190 million visitors per month and generat[ed] 65 million Tweets a day.”<sup>29</sup> Other popular social networks include Myspace, LinkedIn.com, and Classmates.com.<sup>30</sup> By December 2009, there were over 300 million unique visitors per month to these social networking websites, an increase of 82% from just one year earlier.<sup>31</sup>

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22. See RICHARD RAYSMAN & PETER BROWN, *COMPUTER LAW: DRAFTING AND NEGOTIATING FORMS* § 15.06 (2010).

23. *Id.*

24. *Id.*

25. *Id.*

26. See Ellen Rosen, *Student's Start-Up Draws Attention and \$13 Million*, N.Y. TIMES, May 26, 2005, [http://www.nytimes.com/2005/05/26/business/26sbiz.html?\\_r=2&scp=1&sq=thefacebook&st=nyt](http://www.nytimes.com/2005/05/26/business/26sbiz.html?_r=2&scp=1&sq=thefacebook&st=nyt).

27. Ros Krasny, *Facebook and Twitter Say Social is the New Normal*, REUTERS.COM (Oct. 29, 2010), <http://www.reuters.com/article/idUSTRE69R54120101029>.

28. See Claire Cain Miller, *Why Twitter's C.E.O. Demoted Himself*, N.Y. TIMES, Oct. 30, 2010, <http://www.nytimes.com/2010/10/31/technology/31ev.html>. Status updates posted on Twitter are known as “Tweets,” defined as messages containing 140 characters or less. See The Twitter Help Center, *The Twitter Glossary*, TWITTER, <http://support.twitter.com/groups/31-twitter-basics/topics/104-welcome-to-twitter-support/articles/166337-the-twitter-glossary#t> (last visited Apr. 14, 2011).

29. Erik Schonfeld, *Costolo: Twitter Now Has 190 Million Users Tweeting 65 Million Times a Day*, TECHCRUNCH.COM (June 8, 2010), <http://techcrunch.com/2010/06/08/twitter-190-million-users/>.

30. *Led by Facebook, Twitter, Global Time Spent on Social Media Sites up 82% Year over Year*, NIELSENWIRE (Jan. 22, 2010), <http://blog.nielsen.com/nielsenwire/global/led-by-facebook-twitter-global-time-spent-on-social-media-sites-up-82-year-over-year/>.

31. *Id.*

### B. *Social Networking on College Campuses*

There can be no doubt that social networking is fundamentally altering college students' academic and social experience. With Facebook's start on a college campus, it is no surprise that today's college students are major users of social networking.<sup>32</sup> Social networking tools, including instant messaging and text messaging, are used by 95% of students ages eighteen to twenty-four.<sup>33</sup> Recent research on Internet usage indicates that approximately 94% of college students spend at least one hour per day on the Internet.<sup>34</sup> "In 2006, Facebook was used at over 2,000 United States colleges [and universities] and was the seventh most popular [website] with respect to total page views."<sup>35</sup> A University of Michigan study found that approximately 85% of college students spent an average of 6.2 hours per week on Facebook.<sup>36</sup> The Pew Research Center's 2010 report found that 72% of eighteen to twenty-nine year old Internet users "used social networking websites."<sup>37</sup> College students use social networking for many reasons, chief among them is to communicate with friends, family, and romantic partners.<sup>38</sup> This age bracket uses Twitter and posts status updates more than any other age group.<sup>39</sup>

### C. *Harms of Social Networking to College Students*

Although eighteen to twenty-nine year-olds are the most likely to use digital technologies for communication, they give little atten-

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32. Mary Beth Marklein, *Social Networks Could Help Community College Students*, USATODAY, Nov. 16, 2009, [http://www.usatoday.com/news/education/2009-11-16-ccsse16\\_ST\\_N.htm](http://www.usatoday.com/news/education/2009-11-16-ccsse16_ST_N.htm); see Rosen, *supra* note 26.

33. See Marklein, *supra* note 32.

34. Steve Jones et al., *Everyday Life, Online: U.S. Students' Use of the Internet*, FIRST MONDAY, Oct. 5, 2009, at 6, available at <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/issue/view/295>.

35. Nicole B. Ellison, Charles Steinfield & Cliff Lampe, *The Benefit of Facebook "Friends:" Social Capital and College Students' Use of Online Social Network Sites*, 12 J. COMPUTER-MEDIATED COMM. 1143, 1144 (2007).

36. ANA M. MARTÍNEZ ALEMÁN & KATHERINE LYNK WARTMAN, *ONLINE SOCIAL NETWORKING ON CAMPUS: UNDERSTANDING WHAT MATTERS IN STUDENT CULTURE* 7 (2009).

37. Amanda Lenhart et al., *Social Media & Mobile Internet Use Among Teens and Young Adults*, PEWINTERNET, Feb. 3, 2010, at 2, available at [http://pewinternet.org/~media/Files/Reports/2010/PIP\\_Social\\_Media\\_and\\_Young\\_Adults\\_Report\\_Final\\_with\\_toplines.pdf](http://pewinternet.org/~media/Files/Reports/2010/PIP_Social_Media_and_Young_Adults_Report_Final_with_toplines.pdf).

38. See Jones et al., *supra* note 34, at 7 (stating that "about one in five . . . college students said they had formed a romantic relationship with someone on line before meeting them in person").

39. Lenhart et al., *supra* note 37, at 3.

tion to the potential dangers inherent in social networking.<sup>40</sup> These harms are real and can have disastrous consequences. The first major harm is the altering effect of social networking to the information communicated. For example, information posted online is transformed to a potentially eternal state. It may continue to exist indefinitely on the Internet and may not be able to be removed. Even after the information is removed, it could exist as a “permalink” or be cached or archived by search engines.<sup>41</sup> “Twitter, Facebook and other social media sites sell . . . posts to search engines,” storing deleted information permanently.<sup>42</sup> Even deleted data can be stored in search engines and be assessable over the Internet.<sup>43</sup> Search engines can pull up years’ worth of information on an individual with the click of a button.<sup>44</sup>

Another example of the altering effect of social networking to online information is the transformation of information to a viral state.<sup>45</sup> Online information may be directed towards specific individuals but has the potential to be disseminated to hundreds of millions in just one click.<sup>46</sup> This power to infect all of the Internet with a click can have damaging and immediate consequences that cannot be easily undone, as countless examples have shown when an online communication goes “viral.”<sup>47</sup> Take for instance, Karen Owen, the 2010 Duke University graduate who emailed a few friends a spoof thesis rating her sexual experiences with well known Duke University athletes.<sup>48</sup> Within months, the thesis had been shared across the Internet, and Miss Owen was being discussed on television and in the press.<sup>49</sup> Not only did her email result in mass exposure and humiliation for Miss Owen, but she faced potential lawsuits by her

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40. Sonya Padgett, *Being Too Chatty on Social Networking Sites Can Cause Personal, Work Woes*, LAS VEGAS REVIEW-JOURNAL (Oct. 10, 2010), <http://www.lvrj.com/living/being-too-chatty-on-social-networking-sites-can-cause-person-work-woes-104659389.html>.

41. Jamison Barr & Edward Naughton, *Wikis, Bloggers and Lawyers—Oh My!*, ACC DOCKET, May 2007, at 58.

42. Padgett, *supra* note 40.

43. *Id.*

44. *Id.*

45. See Katharine Q. Seelye & Liz Robbins, *Duke Winces as a Private Joke Slips Out of Control*, N.Y. TIMES, Oct. 7, 2010, [http://www.nytimes.com/2010/10/08/us/08duke.html?\\_r=3](http://www.nytimes.com/2010/10/08/us/08duke.html?_r=3).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

named partners for privacy violations and harassment claims.<sup>50</sup> The popular sports website Deadspin.com published the thesis including the student athletes' names.<sup>51</sup> The scandal even brought negative press to Duke University as a whole, which had yet to recover its reputation from the 2006 alleged rape of a woman by the lacrosse team.<sup>52</sup>

Today's college students are at risk for sharing more than just embarrassing information online. The information publicized through social networking exposes college students to the risk of identity theft, the second major harm of social networking.<sup>53</sup> The United States Department of Justice defines the act of identity theft as:

knowingly transfer[ing] or us[ing], without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.<sup>54</sup>

College-aged students are deemed particularly vulnerable to identity theft because college students are far less likely than the general public to be concerned with the security of their online data.<sup>55</sup> Recently, "[t]he Federal Trade Commission discovered that 31 percent of identity-theft victims fall" between the ages of eighteen and twenty-nine year olds, making this age bracket the group most commonly victimized by identity theft.<sup>56</sup> Experts agree that naivety makes college students the most likely targets of identity thieves.<sup>57</sup> College-aged people have been using social networking sites and shopping online since they were old enough to type, and close to half of today's college students "used the Internet before

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50. See Michael Inbar, *Duke Coed's Scandalous Sex Ratings are Viral Sensation*, TODAY (Oct. 7, 2010), <http://today.msnbc.msn.com/id/39552862>.

51. Seelye & Robbins, *supra* note 45. Deadspin's editor, A.J. Daulerio explained that because Deadspin was a sports website, "running the names seemed pertinent to the story. Plus, it had been forwarded so many times and shown up on so many message boards that it seemed silly not to run them." *Id.*

52. *Id.*

53. See Steve Lohr, *How Privacy Vanishes Online*, N.Y. TIMES, Mar. 16, 2010, at A1, available at <http://www.nytimes.com/2010/03/17/technology/17privacy.html>.

54. The Identity Theft Act, 18 U.S.C. § 1028(A)(7) (2006).

55. Brian Dakss, *College Students Prime Targets for ID Theft*, CBSNEWS.COM (Aug. 21, 2007), <http://www.cbsnews.com/stories/2007/08/21/earlyshow/contributors/daveramsey/main3188716.shtml>.

56. *Id.*

57. *Id.*

their parents learned to use it.”<sup>58</sup> “In [one] survey of Internet us[age] among the general U.S. population, online security [was] a priority”; 88% of the “users employed some form of virus protection” and 56 percent “used firewall software.”<sup>59</sup> Conversely, “almost half . . . of college students surveyed said that they took no security measures to protect their data.”<sup>60</sup> Furthermore, “[t]he use of real names to (re)present an account profile to the rest of the online community may be *encouraged*” by the registration process and the cultural norms of social networking websites.<sup>61</sup> A 2005 survey conducted among students at Carnegie Mellon University revealed that 89% of the students’ Facebook profiles contained the students’ real names.<sup>62</sup> Close to 91% (90.8%) of the profiles contained an image, of which 61% were “suitable for direct identification” of the student.<sup>63</sup> Additionally, of the Carnegie Mellon students’ profiles, 87.8% included the users’ birthdates, 77.7% divulged their AIM screen names, 39.9% listed phone numbers, and over half included their current residences.<sup>64</sup> Information in online profiles such as birthdates, hometowns, current residences, email addresses, and phone numbers “can be used to estimate [and gain access to] a person’s social security number and exposes [him or] her to [the risk of] identity theft.”<sup>65</sup> Social security numbers are assigned based on geographic location and time of application.<sup>66</sup> Additionally, by disclosing contact information, identity thieves can employ the communication means that legitimate financial institutions or credit agencies use to contact individuals.<sup>67</sup>

In one recent example of a very simple identity theft scheme, college students responded to an email from an alleged bank “ask-

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58. Jones et al., *supra* note 34, at 6.

59. *Id.* at 10-11.

60. *Id.* at 11.

61. Ralph Gross & Alessandro Acquisti, *Information Revelation and Privacy in Online Social Networks (The Facebook case)*, ACM WORKSHOP ON PRIVACY IN THE ELECTRONIC SOCIETY (WPES) § 2 (2005), available at <http://www.heinz.cmu.edu/~acquisti/papers/privacy-facebook-gross-acquisti.pdf>.

62. *Id.* § 3.4.1. The names could “be matched to the [college] email address provided as login.” *Id.*

63. *Id.* § 3.4.2.

64. *Id.* §§ 3.3, 4.1. Of the profiles that included a birthdate, 98.5% included the day, month, and year of the birthday. *Id.* § 3.4.1.

65. *Id.* § 4.2.3. Social security numbers “are determined by the ZIP code” on the application for the number, “group identifiers, which are assigned according to a peculiar but predictable temporal order . . . [and] progressive serial numbers.” *Id.*

66. *Id.*

67. *Id.*

ing them to 'verify' personal information."<sup>68</sup> Once they responded, identity thieves "promptly cleaned out" the students' bank accounts.<sup>69</sup>

The ease with which college students are willing to share their personal information prompted the Office of the Inspector General at the U.S. Department of Education to post a warning about a scholarship telemarketing fraud scheme in 2005.<sup>70</sup> The scheme involved persons representing themselves as being from the U.S. Department of Education.<sup>71</sup> Students were contacted and offered scholarships or grants.<sup>72</sup> The students were asked to give a bank or credit card account number allegedly for a processing fee, when in fact this information was used to steal their identities.<sup>73</sup> Inspector General John. P. Higgins, Jr. warned students to protect their social security numbers and other personal information.<sup>74</sup>

The third major harm and perhaps the worst threat created by social networking, the threat of online harassment, can harm the mental, psychological, and physical health of today's college students.<sup>75</sup> While thousands of students are victimized by identity theft every year, even more students may be harmed by online harassment, something that is not easy to quantify.<sup>76</sup> Online harassment can be accomplished by posting defamatory or embarrassing personal information about others, impersonating others online,

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68. Dakss, *supra* note 55.

69. *Id.*

70. Office of the Inspector Gen., *Scholarship Telemarketing Fraud Scheme!*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/oig/misused/index.html> (last visited May 5, 2011).

71. *Id.*

72. *Id.*

73. *Id.* Inspector General Higgins warned that identity thieves could rob students of their educational future. *Id.*

74. *Id.* Unfortunately, for a large amount of the identity theft that threatens college students, there is not much that the student can personally do to protect the sensitive information that is stored digitally. In 2006, hackers accessed the database at the University of California at Los Angeles, which contained the personal information of approximately 800,000 current and former students and staff. Dakss, *supra* note 55. In another security breach at Ohio State University, a hacker gained access to the names, social security numbers, and grades of 3,500 former students. Jones et al., *supra* note 34, at 14. Colleges and universities are a logical target for identity thieves because of the multiple offices and computers that contain information that can be hacked into, as well as the large pool of potential victims. Dakss, *supra* note 55.

75. M. Alexis Kennedy & Melanie A. Taylor, *Online Harassment and Victimization of College Students*, 7 JUST. POL'Y J. 2, 5 (2005), available at [http://www.cjcj.org/files/online\\_harassment.pdf](http://www.cjcj.org/files/online_harassment.pdf).

76. *Id.* at 4-5.

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threatening violence, and inflicting emotional harm.<sup>77</sup> While not yet recognized in traditional English dictionaries, the terms “cyberbullying” and “cyberstalking” have become part of the lexicon in recent years.<sup>78</sup>

The term “cyberstalking” is used to describe a variety of behaviors that involve repeated threats or harassment by the use of electronic mail or other computer-based communications that would make a reasonable person afraid or concerned for their safety.<sup>79</sup> Because of the relatively closed communities that college students live in, where their email addresses and phone numbers are easy to find, experts have hypothesized that college students may be especially vulnerable to cyberstalking.<sup>80</sup> Approximately 10% to 15% of participating students at the University of New Hampshire in a 2004 study reported receiving “repeated messages that threatened, insulted or harassed” over the Internet.<sup>81</sup> Another study at a large university in the southwest United States found that over 23% of respondents had been sexually harassed online and approximately 25% had been verbally attacked or harassed online.<sup>82</sup> Statistics on the Working to Halt Online Abuse (WHOA) website show that over the period of 2000 to 2009, over 40% (40.5%) of cyberstalking victims were aged eighteen to thirty.<sup>83</sup> Most college students are eighteen to twenty-nine years of age, which fits the stalking victim profile.<sup>84</sup>

“Cyberbullying,” on the other hand, has generally been associated with children and teenagers.<sup>85</sup> It is only very recently and in light of terrible tragedies that the cyberbullying prevalent on college campuses is being recognized.<sup>86</sup> One definition of “cyberbully-

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77. *Id.* at 5.

78. Jerry Finn, *A Survey of Online Harassment at a University Campus*, 19 J. OF INTERPERSONAL VIOLENCE 468, 469 (2004); Gia E. Barboza, *The Behavioral, Socio-Legal and Institutional Antecedents of Peer Harassment and Bullying in School: How Do Legal Norms Interact with the Multiples Contexts of Childhood Aggression?*, 45 No. 3 CRIM. L. BULL. Art. 8 (2009).

79. Finn, *supra* note 78, at 469.

80. *Id.* at 470.

81. *Id.* at 474.

82. Kennedy & Taylor, *supra* note 75, at 11.

83. *Cyberstalking Statistics*, WORKING TO HALT ONLINE ABUSE(WHO@), <http://www.haltabuse.org> (last visited May 5, 2011).

84. Finn, *supra* note 78, at 470.

85. Sameer Hinduja & Justin W. Patchin, *Cyberbullying: Identification, Prevention, and Response*, CYBERBULLING RES. CTR. 1 (2010), [http://www.cyberbullying.us/Cyberbullying\\_Identification\\_Prevention\\_Response\\_Fact\\_Sheet.pdf](http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf).

86. Edward A. Brown, *Cyberbullying on the Rise on Campus*, BOSTONIA WEB EXCLUSIVES, <http://www.bu.edu/bostonia/web/cyberbullying> (last visited May 5, 2011).

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ing” describes it as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.”<sup>87</sup> When cyberbullying does occur on campus, it often involves the dissemination of rumors and gossip, often of a sexual nature.<sup>88</sup>

Cyberbullying on college campuses can present itself as anonymous or pseudo-anonymous online posts that serve to embarrass or defame individuals. In 2007, two Yale Law School students were the targets of sexually violent rants, among other attacks, in the comments section of AutoAdmit.com (AutoAdmit), an online college admissions discussion board.<sup>89</sup> The students’ photographs along with defamatory and threatening remarks were posted by anonymous writers using pseudonyms.<sup>90</sup> The victims filed a lawsuit alleging that the posts caused psychological and economic injury.<sup>91</sup> Their damages included harm to their future employment opportunities, physical illness, and in the case of one victim, resulted in a leave of absence from school.<sup>92</sup>

The Yale Law School incident is far from an isolated case. The website JuicyCampus.com (Juicy Campus) was created in 2007 with the intent to post anonymous gossip about students from colleges around the globe.<sup>93</sup> By the time the website shut down in February of 2009, it was sharing gossip from more than five hundred college campuses.<sup>94</sup> In just one example, after several negative comments about a Boston University student, his dormitory room number was shared via the website, leaving the student feeling shocked and unsettled.<sup>95</sup> Juicy Campus had also come under legal scrutiny from several states’ attorneys general, had been blocked by numerous campuses, and was the target of a federal lawsuit filed by a student

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87. News, CYBERBULLYING RES. CTR., <http://www.cyberbullying.us/> (last visited May 5, 2011).

88. Brown, *supra* note 86.

89. Caleb Daniloff, *Cyberbullying Goes to College*, BOSTONIA (Spring 2009), <http://www.bu.edu/bostonia/spring09/bully/>.

90. Amir Efrati, *Students File Suit Against Ex-Auto Admit Director, Others*, WALL ST. J. (June 12, 2007), <http://blogs.wsj.com/law/2007/06/12/students-file-suit-against-autoadmit-director-others/>.

91. *See id.*

92. *See id.* The “students argued that a prospective employer would inevitably Google their names and find the lewd discussions . . . [and] photographs.” *Id.* One of the victims disclosed that she had “16 interviews with law firms for summer jobs . . . [yet] received no offers.” *Id.*

93. *See* Daniloff, *supra* note 89.

94. *Id.*

95. *Id.*

demanding the identities of those writing about her.<sup>96</sup> The demise of Juicy Campus did not mean the end of anonymous campus websites. Within days of the end of Juicy Campus, the website College Anonymous Confession Board popped up with the same premise.<sup>97</sup>

Unfortunately, research indicates that cyberstalking and cyberbullying will only continue to become more pervasive as cultural norms shift. A recent study from the University of Michigan shows that college students today are far less empathetic than they were thirty years ago.<sup>98</sup> Researchers suggest that the problem stems from today's culture of impersonal confrontation.<sup>99</sup> Interactions occur increasingly over texts, emails, and Facebook posts, and difficult or awkward face-to-face conversations are avoided.<sup>100</sup> Nielsen analyzed cell phone bills and found that the number of monthly calls in 2010 was down 25% from the same period in 2007.<sup>101</sup> Among eighteen to twenty-four year olds, "[a]verage monthly 'talk minutes' fell . . . 17%" from just one year ago."<sup>102</sup> This avoidance of actual conversation is changing the way young people interact. Young people "who use computers and cell phones to harass [other individuals] cannot see or hear the effects of their

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96. *Id.*

97. *Id.*

98. Keith O'Brien, *The Empathy Deficit*, BOS. GLOBE, Oct. 17, 2010, [http://www.boston.com/lifestyle/articles/2010/10/17/the\\_empathy\\_deficit](http://www.boston.com/lifestyle/articles/2010/10/17/the_empathy_deficit). The study "found that college students in today are 40 percent less empathetic than they were in 1979." *See id.* Initially there was little change in the survey: "[i]t's looking sort of flat, or no real pattern, up until 2000," said research assistant professor at University of Michigan and the lead author of the study Sara Konrath, "and then there's this sudden, sharp drop." *Id.*

99. Mary Kate Cary, *To End Bullying, Grownups Must Act Like Grownups, Starting in Politics*, U.S. NEWS & WORLD REP. (Oct. 13, 2010), <http://politics.usnews.com/opinion/articles/2010/10/13/to-end-bullying-grownups-must-act-like-grownups-starting-in-politics.html>.

100. *Id.*

101. Katherine Rosman, *Y U Luv Texts, H8 Calls*, WALL ST. J., Oct. 14, 2010, <http://online.wsj.com/article/SB10001424052748703673604575550201949192336.html>. Anne McAndrews, a twenty-one year old student at Boston's Emerson College, "says she and her friends almost never talk on the phone. 'If I were to call someone, it would have to be urgent . . . . Otherwise, it's sort of rude and invasive.'" *Id.*

102. *Id.* Another interesting trend is the increasing attenuation from actual conversations. "In October 2009, 400 million text alert[s]" of Twitter updates were sent across the AT&T wireless network. *Id.* By September 2010, this number had increased to one billion per month. *Id.* The messages are not messages from one person to another; instead, the message is an alert that an impersonal message has been disseminated across the Internet. *Id.*

actions . . . and can do it anonymously.”<sup>103</sup> Bullying is much easier when it is from behind a computer screen and much harder to combat.

“[T]he psychological impact of . . . [online harassment in its various forms] can be intense.”<sup>104</sup> This type of abuse is “very intrusive . . . [and] leaves . . . [victims] unable to concentrate on their academic or professional work.”<sup>105</sup> Victims “feel helpless, foolish, [and] vulnerable” and are unable to “suffer in silence” because their public humiliation is broadcast via the Internet.<sup>106</sup>

Unfortunately, in the most extreme cases, online abuse that is facilitated via social media outlets is not limited to mere psychological or emotional damages. The availability of students’ class schedules and AOL Instant Messenger (AIM) names on Facebook profiles provides information as to the students’ physical location that would otherwise be unknown.<sup>107</sup> Furthermore, a common practice amongst college students is to post updates on their current locations directed towards their friends, but available to all.<sup>108</sup> Cyberstalking can turn into physical stalking through the use of this information. Similarly, as in the case of the Boston University student whose dorm room was disclosed on a global website, virtual threats can turn into actual ones in a single post.<sup>109</sup>

In possibly the most tragic example of college cyberbullying, on September 19, 2010, a freshman at Rutgers University set up a webcam in his dormitory room and used it to secretly “stream [his] roommate’s intimate encounter” over Twitter.<sup>110</sup> Three days later,

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103. Edward Dragan, *Edward Dragan on Cyberbullying and the Law*, OURBLOOK, <http://www.ourblook.com/The-Internet-Society/Edward-Dragan-on-Cyber-bullying-and-the-Law.html> (last visited May 5, 2011).

104. Danilof, *supra* note 89.

105. *Id.* (quoting Boston University’s Faculty and Staff Assistance Office Director, Bonnie Teitleman).

106. *Id.*

107. See Gross & Acquisti, *supra* note 61, § 4.1. A person can view the AIM profile of an individual without that individual’s knowledge. See *id.*

108. See Jon Brodtkin, *Facebook and Twitter Banned by Pa. College*, NETWORK WORLD (Sep. 14, 2010, 1:07 PM), <http://www.networkworld.com/news/2010/091410-social-media-ban.html>. When Harrisburg University provost Eric Darr planned an experimental weeklong block of Facebook, Twitter, instant messaging, and other social networks on his college network, student Ashley Harris remarked, “I’m going to have a hard time not being able to tell people where I’m at, being able to find people. I use Facebook and Twitter to find people at school, to see where they’re at, where they’re studying.” *Id.*

109. See Daniloff, *supra* note 89.

110. Lisa W. Foderaro, *Private Moment Made Public, Then a Fatal Jump*, N.Y. TIMES, Sep. 29, 2010, <http://www.nytimes.com/2010/09/30/nyregion/30suicide.html?page>

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eighteen-year-old Tyler Clementi, “the roommate who had been surreptitiously broadcast,” leapt to his death from the George Washington Bridge.<sup>111</sup> As the news of this tragedy spread across the globe, questions were raised as to what should have been done to prevent it, and by whom.<sup>112</sup>

## II. A BRIEF REVIEW OF THE LAW AS IT RELATES TO COLLEGES, STUDENTS AND SOCIAL NETWORKING

### A. *Case Law, Statutes, and a Need for Reform*

In what may be considered a simpler time, American colleges assumed the role *in loco parentis* of their students.<sup>113</sup> Because students were considered minors in flux on their journey to adulthood, courts recognized “[a] special relationship . . . between college and student that imposed a duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the [school].”<sup>114</sup> Over the course of the twentieth century, American courts largely expelled this doctrine to protect students’ individual freedoms.<sup>115</sup> In 1972, in his concurrence of the *Healy* Supreme Court decision, Justice Douglas wrote:

Students—who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age—are adults who are members of the college or university community. Their interests and concerns are often quite different from those of the faculty. They often have values, views, and ideologies that are at war with the ones which the college has traditionally espoused or indoctrinated.<sup>116</sup>

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wanted+print. Dharun Ravi’s Twitter message on September 19 stated, “Roommate asked for the room till midnight. I went into [M]olly’s room and turned on my webcam. I saw him making out with a dude. Yay.” *Id.* (quoting the Twitter message). Mr. Ravi made a second attempt to broadcast Mr. Clementi on September 21, 2010. *Id.* “‘Anyone with iChat,’ he wrote on Sept. 21, ‘I dare you to video chat me between the hours of 9:30 and 12. Yes, it’s happening again.’” *Id.* (quoting the Twitter messages).

111. *Id.* “The Star-Ledger of Newark reported that Mr. Clementi posted a note on his Facebook page the day of his death: “Jumping off the gw bridge sorry.” *Id.*

112. *See, e.g.,* Jesse Solomon, *Parents of Gay Student Suicide Tell University They May Sue*, CNN (Dec. 22, 2010), [http://articles.cnn.com/2010-12-22/justice/new.jersey.rutgers.parents\\_1\\_anti-harassment-federal-student-aid-rutgers-university?\\_s=PM:CRIME](http://articles.cnn.com/2010-12-22/justice/new.jersey.rutgers.parents_1_anti-harassment-federal-student-aid-rutgers-university?_s=PM:CRIME).

113. *See generally* Bradshaw v. Rawlings, 612 F.2d 135, 139-40 (3d Cir. 1979).

114. *See id.* at 139.

115. *See* Healy v. James, 408 U.S. 169, 197 (1972) (Douglas, J., concurring).

116. *Id.*

For nearly forty years since the *Healy* decision, courts throughout the country have continued to resist imposing a broad duty on colleges and universities in regard to their students.<sup>117</sup> Courts have found duties only in particular instances and have been careful to limit these holdings to the specific cases. For example, the Third Circuit imposed a special duty on colleges in relation to student athletes.<sup>118</sup> The Eastern District of Virginia court held a special duty existed where the college had received warnings and eventually took actions in regard to a student's suicide.<sup>119</sup> In addition, various jurisdictions have found a duty in the context of fraternity hazing,<sup>120</sup> sexual assaults by third parties,<sup>121</sup> and university sponsored safe ride programs.<sup>122</sup>

When it comes to a college's duty with respect to social networking, to date, courts in the United States have yet to consider imposing a duty on a college stemming only from social networking harms.<sup>123</sup> From legal scholars, social networking has received scant attention.<sup>124</sup> Additionally, to date, federal and state statutes and regulations specifically targeting the harms of social networking have yet to be enacted into law.

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117. See, e.g., *Freeman v. Busch*, 349 F.3d 582, 588 (8th Cir. 2003) (holding that the general rule, followed by courts since the late 1970s, "is that no special relationship exists between a college and its own students because a college is not an insurer of the safety of its students"); *Bradshaw*, 612 F.2d at 138-40 (holding that the time in which colleges "assumed a role *in loco parentis*" no longer exists and as a result no special "custodial duty" between a college and its students exists); *Rabel v. Illinois Wesleyan Univ.*, 514 N.E.2d 552, 560-61 (Ill. App. Ct. 1987) (holding that the responsibility of a university "is to properly educate" its students, not to act as their custodian).

118. See *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360, 1368 (3d Cir. 1993).

119. See *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 609 (W.D. Va. 2002) (holding that normally the university did not owe a duty to the student, but the specific case was an exception to the general rule).

120. See *Furek v. Univ. of Del.*, 594 A.2d 506, 521-22 (Del. 1991).

121. See *Miller v. State*, 467 N.E.2d 493, 513-14 (N.Y. 1984); *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 449 (Mass. 1983).

122. See *McClure v. Fairfield Univ.*, No. CV000159028, 2003 WL 21524786, at \*8 (Conn. Super. Ct. June 19, 2003) (holding that the rule of *Bradshaw* is not absolute and that a university had a duty to its students). The court found that "the university, by offering the shuttle service, had assumed a responsibility for the safety of students while traveling between the beach area and the university campus." *Id.*

123. A Canadian court found that "[t]he University of Calgary infringed upon the charter rights of [students] when it sanctioned them for nonacademic conduct for criticizing their professor on . . . Facebook." See Daryl Slade, *Students Win Facebook Battle with U of C*, CALGARY HERALD, Oct. 14, 2010, <http://www2.canada.com/calgaryherald/news/story.html?id=b27cc4fc-de60-4541-9f18-7e86242227a9>.

124. See Eric M. Fink, *Law School & the Web of Group Affiliation: Socializing, Socialization, and Social Network Site Use Among Law Students*, 27 J. MARSHALL J. COMPUTER & INFO. L. 325, 325 (2010).

Current federal and state regulations, along with various other existing and developing rules and regulations, attempt to protect certain types of information from specific dangers and impose certain duties on colleges in regard to particular information.<sup>125</sup> The state and federal regulations regarding personal data strive to protect individuals from certain risks posed in our digital society and provide some guidance, as well as liability, for colleges and universities to properly protect their student's information.<sup>126</sup> These regulations, however, do not address specific harms of social networking, such as identity theft and cyber harassment on college campuses.

Thus, the current state of law in general does not adequately address social networking—leaving colleges questioning what they should do in terms of the serious harms of social networking and leaving parents and students questioning what protection and recourse they have. In this rapidly developing digital world, new is-

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125. Certain existing state and federal regulations do obligate colleges to protect their students in various ways. In 1974, Congress enacted The Family Educational Rights and Privacy Act (FERPA) to safeguard students' information. *See* 34 C.F.R. § 99 (2010). FERPA applies to all colleges and universities that receive funding from the U.S. Department of Education and guarantees students the right to have some control over the disclosure of information from their education records, among other things. *Id.* §§ 99.1(a), 99.30. The types of information protected by FERPA include grades, as well as social security numbers, demographic information, and emergency contact names. *Id.* § 99.2. The protection of data is also being addressed by state laws and regulations which can be applied to colleges. Recently, Massachusetts, for example, has enacted data privacy regulations that seek to standardize the treatment and transmission of personal information. *See* 201 MASS. CODE REGS. 17.00 (2010). In March 2010, Massachusetts enacted regulations establishing minimum standards for the safeguarding of the personal information of any resident of the Commonwealth. *Id.* Accordingly, the Massachusetts regulation applies to any college or university with at least one Massachusetts resident in attendance. *Id.*

126. It remains an open issue as to how the judicial system will interpret regulations designed towards the protection of data, especially data stored electronically. In an eagerly awaited decision regarding a public employee's privacy rights in text messages, the Supreme Court expressly avoided addressing the application of Constitutional rights to new communication technologies, stating that:

[r]apid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior . . . . The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear.

*City of Ontario, Cal. v. Quon*, 130 S. Ct. 2619, 2629, (2010). The Court's resistance inspired Justice Scalia's concurrence, wherein he wrote "[t]he-times-they-are-a-changin' is a feeble excuse for disregard of duty." *Id.* at 2635 (Scalia, J., concurring). While the *Quon* case addressed a public employee's Fourth Amendment rights, it was widely heralded as the Court's first opportunity to comment on emerging technologies, which the Court decided not to take.

sues and threats from social networking that affect college students are becoming more and more evident, and more protection is needed.

To address data privacy, current regulations could be specifically tailored to address colleges and students in the social networking context. Taking a cue from the California College and University Social Security Number Task Force, for example, federal regulations could prohibit the use of social security numbers as college ID numbers.<sup>127</sup> Educating students about protecting their own personal data, both physically and digitally, could also be a mandatory part of compliance with the regulation. Current regulations provide for fines to be levied against institutions for security breaches.<sup>128</sup> Perhaps regulations directed towards colleges could provide for a direct cause of action for a victimized student against the college. For example, in the case of a security breach of the campus network that resulted in the theft of students' identities, not only would the school be subjected to state or federal fines, but victimized students could file lawsuits against the school.

To address online harassment including cyberbullying and cyberstalking, new federal and state statutes could be enacted and federal guidelines could provide guidance for best practices in combating these new dangers. Federal guidelines could also codify colleges' actions. Research shows that bullying behaviors are not effectively stopped by intervening on a haphazard, case-by-case basis.<sup>129</sup> Currently, there is a developing trend of states enacting anti-bullying policies with attention to cyberbullying directed towards elementary and high schools.<sup>130</sup> Accordingly, these cyberbullying statutes can be expanded to address the unique situation of cyberbullying on college campuses. Higher education institutions could be provided with benchmarks on reporting, responses, and treatment for mandatory college policies against this type of harassment.

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127. See The Cal. Coll. and Univ. Soc. Sec. Number Task Force, *The Use of Social Security Numbers in California Colleges and Universities*, CAL. OFFICE OF PRIVACY PROTECTION, 15 (2010), available at <http://www.privacy.ca.gov/res/docs/pdf/SSN%20Report%20FINAL.pdf>.

128. See generally 201 MASS. CODE REGS. 17.00 (2010).

129. See Daniloff, *supra* note 89. Boston University Associate Director of the Faculty and Staff Assistance Office, Thierry Guedj was quoted as saying, "[i]solated supervisors and department heads who have little to no experience in such matters are usually in way over their heads." *Id.*

130. See Dragan, *supra* note 103.

While American society awaits legislative reform, perhaps federal and state agencies should seek to address these specific dangers. Some such agencies have started to act in other arenas in education. In October 2010, the Federal Communications Commission announced its requirement that schools receiving certain subsidies will have to educate students on the harms of cyberbullying and responsible use of social networking sites.<sup>131</sup>

B. *College Students' Recourse to Address Social Networking Harms*

While colleges are questioning what they should do in light of the current state of the law with respect to the harms of social networking, parents and college students are questioning what recourse they have to address these harms.<sup>132</sup> Overall, parents and college students have little recourse. What recourse does exist, such as the traditional civil and criminal responses to defamation, invasion of privacy, or harassment, do not specifically address the unique threats posed to college students social networking. Because of the unique risks posed to college students, self-regulation or specific governmental directives can only help students so far.

Cyber harassment continues to torment college students throughout the country.<sup>133</sup> Unfortunately, little if any legal recourse exists for an individual who has been harassed online. As with the Yale Law School students who sued the administrator of AutoAdmit, the victims could bring a civil lawsuit against their online harasser(s).<sup>134</sup> However, as with many of the instances of online abuse, the victim may not know his or her victimizer. In that case, there is very little that could be done.<sup>135</sup> A legal hurdle facing Internet victims is the protection provided to websites by the 1996 Communications Decency Act.<sup>136</sup> Under the Communications Decency Act, website operators are considered to be distributors

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131. See *FCC Taking on Cyberbullying in Schools*, FOXNEWS.COM (Oct. 29, 2010), <http://www.foxnews.com/scitech/2010/10/29/fcc-taking-cyberbullying-schools/?test=latestnews>.

132. See Dragan, *supra* note 103.

133. See Daniloff, *supra* note 89.

134. *Id.*

135. *Id.* (quoting Urs Gasser, executive director of Harvard's Berkman Center for Internet and Society).

136. Caleb Daniloff, *Fighting Back or Not*, BOSTONIA 24 (2009), [http://www.bu.edu/bostonia/spring\\_09/bully/bully.pdf](http://www.bu.edu/bostonia/spring_09/bully/bully.pdf) [hereinafter *Fighting Back or Not*].

rather than publishers of content, protecting them from liability for unmonitored posts.<sup>137</sup>

In the case of an offensive photograph posted on a social networking website such as Facebook, an individual could contact the website and allege that the image is inappropriate content in violation of the terms of service.<sup>138</sup> Without cooperation from a social networking site, the victim must sue for the Internet Protocol address, but that approach is time consuming and, in the meantime, the offensive messages may remain on the site.<sup>139</sup> Additionally, filing a lawsuit could lead to more attention to the online harassment and drive even more traffic to the offensive post.<sup>140</sup>

While students have little recourse, some recourse does exist.<sup>141</sup> The tragic events at Rutgers University in September 2010 drew the nation's attention to the issue of privacy in today's digital age.<sup>142</sup> People were shocked by the devious actions of Mr. Cle-

137. See 47 U.S.C. § 230 (2006) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."). The Communications Decency Act is clear that websites are included in the definition of interactive computer service, defining the term as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that .provides access to the Internet and such systems operated or services offered by libraries or educational institutions." *Id.*

138. See *General Safety*, FACEBOOK, <http://www.facebook.com/help/?safety=general> (last visited May 5, 2011) (stating that "[y]ou can anonymously report offensive profile pictures and content").

139. Daniloff, *supra* note 89.

140. *Fighting Back or Not*, *supra* note 136

141. This Article is limited to what colleges and students can do in the civil liability context. It should be noted that as is the case with civil action, prosecutors are also challenged to find applicable law under which to prosecute Internet criminals. *Cf.* Communications Decency Act, 47 U.S.C. § 230 (2006). While the express policy of the Communications Decency Act is "to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer," it does not alone provide a legal basis for a cause of action against cyber abuse. See *id.* Technology has outpaced the legal process and "much of [today's body of criminal law] relate[d] to the [i]nternet pertains to commerce, not to criminal statutes." *Fighting Back or Not*, *supra* note 136; see Brown, *supra* note 86. Cyberbullying violates criminal law if it includes threats of death, violence, or is based on race, religion, gender or sexual orientation, excessive intimidation or sexual exploitation. Dragan, *supra* note 103. There is also potential action for criminal libel or invasion of privacy. The burden of proof is set very high in libel and criminal harassment cases, however. See *id.*; see also Daniloff, *supra* note 89. Aggressive and abusive behaviors online may "not rise to the standard of a criminal offense." *Fighting Back or Not*, *supra* note 136. "The law is [intended] to protect [individuals'] safety," but while cyber abuse "may be every bit as troublesome and [terrifying] as [physical] stalking" or bullying, there often is no way of legally addressing it until someone is physically hurt. *Id.*

142. See *supra* notes 110-111 and accompanying text.

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menti's roommate, Dharun Ravi.<sup>143</sup> Shortly after Mr. Clementi's suicide, the Middlesex County prosecutor said that Dharun Ravi and Molly Wei, the classmate from whose dorm room the images were broadcast, "had each been charged with two counts of [criminal] invasion of privacy for using 'the camera to view and transmit a live image' of Mr. Clementi."<sup>144</sup> "Mr. Ravi was [also] charged with two additional counts of invasion of privacy for trying a [second] live feed on the Internet."<sup>145</sup>

It could be argued, however, that Mr. Ravi and Ms. Wei are not the only ones who should share the responsibility in this sad case. The question of whether Rutgers should be responsible will be raised, no doubt, and debated either in society at large or in the courts. While courts have consistently held that the doctrine of *in loco parentis*, which imposed a broad duty on colleges to protect students, is no longer recognized, courts are not abhorrent to imposing this special duty in specific circumstances and finding colleges tortuously liable to injured students.<sup>146</sup>

Under general tort theory, liability can only be imposed upon a finding of four elements: (i) duty; (ii) breach of that duty; (iii) injury; and (iv) that the defendant's negligence and breach of duty was the proximate cause of the injury.<sup>147</sup> A duty of care may stem from knowledge that injury to the plaintiff was foreseeable.<sup>148</sup> Accordingly, courts have found colleges liable despite the erosion of the *in loco parentis* doctrine in modern case law.<sup>149</sup> Citing the fact

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143. Foderaro, *supra* note 110.

144. *Id.*

145. *Id.*

146. See *Ingato v. Wilmington Coll., Inc.*, No. 92, 2005, 2005 WL 2475750, at \*1 (Del. Aug. 22, 2005) (stating that even though courts no longer acknowledge "the doctrine of *in loco parentis* . . . the relationship between colleges and students is close enough to require that colleges 'regulate and supervise foreseeable dangerous activities occurring on [their] property'" (quoting *Furek v. Univ. of Del.*, 594 A.2d 506, 552 (Del. 1991))).

147. See W. PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS § 30, at 164-65 (5th ed. 1984).

148. See generally *Scheffer v. Washington City, V.M. & G.S.R. Co.*, 105 U.S. 249, 252 (1881) (holding that "in order to warrant a finding that negligence or an act not amounting to wanton wrong is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances" (quoting *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876))).

149. See, e.g., *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360, 1367 (3d Cir. 1993); *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 614 (W.D. Va. 2002); *McClure v. Fairfield Univ.*, No. CV000159028, 2003 WL 21524786, at \*8 (Conn. Super. Ct. June 19, 2003); *Furek*, 594 A.2d at 522; *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 335 (Mass. 1983).

that the school knew of specific dangers and had a policy against those dangers, one court found the school to be liable for breaching its special duty to protect its students from such express danger.<sup>150</sup> Similarly, Rutgers' awareness of the dangers of online privacy violations might be inferred from its "Project Civility" campaign.<sup>151</sup> It is sadly ironic that the suicide death of Rutgers freshman Clementi was discovered "on the same day that Rutgers [began] a two-year, campuswide project to teach the importance of civility, with special attention to the use and abuse of new technology."<sup>152</sup> Additionally, the fact that the invasive video was streamed three days before the suicide and that a second broadcast was planned by Mr. Ravi indicate that the injury to Mr. Clementi could have been foreseeable.<sup>153</sup>

Under current tort theory, assuming *arguendo* that a broad *in loco parentis* duty does not exist, a student's claim against a college for injuries resulting from online harassment would most likely not succeed for failure to find a special duty owed to the student. Traditional tort theory includes the concept of premises liability, however, wherein:

the owner or occupant of land who, by invitation, express or implied, induces or leads others to come upon his premises, for any lawful purpose, is liable in damages to such persons—they using due care—for injuries occasioned by the unsafe condition of the land or its approaches, if such condition was known to him and not to them, and was negligently suffered to exist, without timely notice to the public, or to those who were likely to act upon such invitation.<sup>154</sup>

This concept of premises liability has yet to be successfully applied to a virtual environment, but perhaps it can provide an avenue for legal recourse for Internet harms occurring on campus.

In finding that a college was liable to a plaintiff for injuries incurred as a result of fraternity hazing, one court deemed the student an invitee; therefore the college's duty extended to protecting

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150. See *Furek*, 594 A.2d at 521-22 (discussing the finding of a special duty owed by the University of Delaware to its students to protect them from hazing dangers because of the University's knowledge of the dangers and policy against fraternity hazing).

151. Foderaro, *supra* note 110.

152. *Id.* "At the end of the inaugural event for [Rutgers] [U]niversity's 'Project Civility' campaign . . . nearly 100 demonstrators gathered outside the student center . . . chant[ing] '[c]ivility without safety—over our queer bodies!'" *Id.*

153. *Id.*

154. *Bennett v. Louisville & N.R. Co.*, 102 U.S. 577, 580 (1880).

him from dangerous conditions.<sup>155</sup> That court found that the college's known history of hazing created a duty on behalf of the college to take precautions against potential hazing injuries, regardless of the fact that the college had no reason to expect harmful conduct on the part of any particular individual.<sup>156</sup> The existence of hazing activities was the foreseeable dangerous activity that the school had a duty to protect students from.<sup>157</sup> The court's analysis also grappled with the question of control. Defining control as "authority to direct, restrict and regulate," the court found that the university's significant involvement in regulation of fraternity life was sufficient for a finding of control.<sup>158</sup>

Such two-part analysis may be applicable to injuries to students occurring on college campuses through digital media, but it appears to be a very high standard to meet. The first inquiry would examine the college's knowledge of the risk of the particular harm, and not of the particular actor.<sup>159</sup> In a case of online harassment, prior reports, incidents, and actions taken would be evidence of the col-

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155. See *Furek*, 594 A.2d at 521 (finding that "[w]hile [the plaintiff] may be deemed an invitee, the University's duty to protect him from dangerous conditions under Restatement § 344 is not absolute. The duty extends only to the acts of third persons which are both foreseeable and subject to university control."); see also *Peterson v. San Francisco Comm. Coll. Dist.*, 685 P.2d 1193, 1198 (Cal. 1984) (finding that a student pursuing a claim for assault by a third party on university property was considered an invitee "to whom the possessor of the premises would ordinarily owe a duty of due care" (citations omitted)); *Miller v. State*, 467 N.E.2d 493, 496 (N.Y. 1984) (holding that when a public school "acts in a proprietary capacity as a landlord, it is subject to the same principles of tort law as is a private landlord").

156. See *Furek*, 594 A.2d at 521.

Since the possessor is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of the third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection.

RESTATEMENT (SECOND) OF TORTS § 344 cmt. f (1965).

157. *Furek*, 594 A.2d at 521-22. The *Furek* court decided it was "equally reasonable to conclude that university supervision of potentially dangerous student activities is not fundamentally at odds with the nature of the parties' relationship, particularly if such supervision advances the health and safety of at least some students." *Id.* at 518.

158. *Id.* at 522.

159. See RESTATEMENT (SECOND) OF TORTS § 344 cmt. f. The danger would also have to be distinguished from one that is obvious. See, e.g., *Shimer v. Bowling Green*

lege's knowledge of the danger.<sup>160</sup> The second prong appears extremely difficult to meet in the digital media context. Using the *Furek* court's definition of control, it would have to be shown that the college had the "authority to direct, restrict and regulate" the potentially harmful behaviors of unknown third parties.<sup>161</sup>

With Internet access not limited to the college's network, as well as students' ability to access the Internet via smartphones, iPads, and laptops off of the college's network, it would be very hard to show control on behalf of the college. Additionally, in the event that a college does make any sort of attempt to direct, restrict, or regulate the networking environment, it may face new issues relating to potential infringement upon students' constitutional freedoms. Such backlash is a disincentive for a college to attempt to assert any control over its students' Internet usage. However, as online threats to college students become more and more prevalent, new and acceptable avenues of control and technology may present themselves to colleges and universities. As the threat of online harassment grows, perhaps public policy reasoning will motivate and allow colleges to do all that they can to curb it.

Although current federal and state law has very few, if any, criminal statutes directed specifically at online harassment, the perpetrators in the Rutgers incident were charged with criminal invasion of privacy.<sup>162</sup> In light of this criminal charge, it is possible that Rutgers will be sued, under a basis different from premises liability, for not protecting Mr. Clementi against a foreseeable criminal act of a third party on its campus. The general rule is that a landowner has no duty to protect an invitee on the landowner's premises from a third party's criminal attack unless the attack is reasonably foreseeable.<sup>163</sup> Prior similar acts committed upon invitees furnish ac-

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State Univ., 708 N.E. 2d 305, 308 (Ohio Ct. Cl. 1999) (finding that a fall into an opera pit by a student familiar with the campus theatre was obvious).

160. A college's knowledge could not be inferred from the mere knowledge of the fact that online harassment occurs. There would have to be specific knowledge of students actually being harassed.

161. See *Furek*, 594 A.2d at 522.

162. See *Foderaro*, *supra* note 110.

163. See *Nero v. Kan. State Univ.*, 861 P.2d 768, 779-80 (Kan. 1993).

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

tual or constructive notice to a landowner.<sup>164</sup> A college owes student tenants the same duty to exercise due care for their protection as a private landowner owes its tenants. A university has a duty of reasonable care to protect a student against certain dangers, including criminal actions against a student by another student or a third party if the criminal act is reasonably foreseeable and within the university's control.<sup>165</sup>

In holding that the college was liable to a student when she was raped on campus, the *Mullins* court found that the college community's security precautions indicated that the community recognized its obligation to protect resident students from the criminal acts of third parties.<sup>166</sup> The *Mullins* holding hit on the fact that the threat of criminal acts of third parties to resident students was self-evident because of the concentration of young women on the female-only campus.<sup>167</sup> The court continued that the college is the only party in position to ensure the safety of the students, expanding on the fact that students are unable to install security systems and may even be barred from installing locks or chains in dorm rooms.<sup>168</sup> The court also touched on the naivety of the students who are living in residence halls without supervision for the first time.<sup>169</sup>

Accordingly, this type of analysis can weigh in favor of imposing liability on colleges for the harm incurred from criminal online acts. In the context of the Rutgers incident, the criminal act was one of an invasion of privacy. It would be argued that Rutgers stood in the best position to protect Mr. Clementi's privacy.

The small existing body of modern case law that has imposed liability on a college for harms incurred by a student includes legal analysis hinged on the foreseeability of the harms.<sup>170</sup> Under the notions of premises liability and a duty to protect persons from

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RESTATEMENT (SECOND) OF TORTS § 344 (1965).

164. *Nero*, 861 P.2d at 779-80 (holding that a university owes student tenants the same duty to exercise due care for their protection as a private landowner owes its tenants); see also *Peterson v. S.F. Comm. Coll. Dist.*, 685 P.2d 1193, 1197-98 (Cal. 1984).

165. See *Nero*, 861 P.2d at 780.

166. *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 335 (Mass. 1983). The court was moved by testimony of established security standards followed by colleges and universities, finding that the imposition of a duty of care is firmly embedded in a community consensus. See *id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. See e.g., *McClure v. Fairfield Univ.*, No. CV000159028, 2003 WL 21524786 (Conn. Super. Ct. June 19, 2003); *Furek v. Univ. of Del.*, 594 A.2d 506 (Del. 1991); *Mullins*, 449 N.E.2d at 331.

foreseeable criminal acts by third parties, the question of foreseeability is always a major one. Several courts found that foreseeability could be inferred when a college's policy prohibited certain activities.<sup>171</sup> Finding foreseeability just because a college implemented a policy is troubling. Such reasoning could be a disincentive to colleges implementing policies intended to protect students. If simply having policies meant that the harm was foreseeable, then colleges might opt out of having any policies addressing dangers.

However, a more practical approach to policies has been followed by several courts. The *Millard* court, for example, noted that the college accorded certain amounts of responsibility to college students as intelligent, responsible members of society and that the policy in question did not create a special duty to control the actions of the students.<sup>172</sup> In another case, a finding of liability on behalf of a student injured by a BB gun was predicated on the university's failure to enforce its rules forbidding the use of BB guns on campus.<sup>173</sup> Such reasoning is applicable today. The existence of a policy alone provides no insight into foreseeability; the question is one of enforcement. If policies against certain harms are not enforced, then the occurrence of such harms should be considered foreseeable.

Additionally, in today's digital age, it would be very difficult to argue that harms resulting from online activities are not foreseeable. The tragic incident at Rutgers in September 2010 garnered worldwide attention. Furthermore, the absence of or failure to comply with reasonable policies may be strong evidence of negligence on the part of a college. A distinction can easily be made between a college taking active steps by implementing a policy and a decision by a school to remain idle in the face of known dangers.<sup>174</sup> Any question of foreseeability should assume that grave

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171. See e.g., *Furek*, 594 A.2d at 506.

172. See *Millard v. Osborne*, 611 A.2d 715, 721 (Pa. Super. Ct. 1992) (holding that the college's alcohol policy did not create a special duty to control the behaviors of an underage student who was killed in a motorcycle accident while intoxicated); see also *Benefield ex rel. Benefield v. Bd. of Trs. of Univ. of Ala. at Birmingham*, 214 F. Supp. 2d 1212, 1224 (N.D. Ala. 2002).

173. See *Stockwell v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 148 P.2d 405, 407-08 (Cal. Dist. Ct. App. 1944). While this case was decided at a time when the broad *in loco parentis* duty was recognized, the court predicated its decision on premises liability theory, holding that the injured party was an invitee and that the premises were not maintained in a safe condition. *Id.* at 406-07.

174. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 n.9 (1999) (stating that a high school student could not pursue a cause of action against her school district because of another student's actions, but rather that the cause of action resulted from

harms are possible and examine the reasonableness of the schools' actions to curtail injury.

### III. A COLLEGE'S RESPONSE TO THE HARMS OF SOCIAL NETWORKING

With the prevalence, use, and rapid growth of social networking, it is an even braver and newer world than ever before, and students need protection. Because the threat to college students is severe, someone needs to be looking out for them. The likely source for that protection appears to be the colleges themselves. Given a college's proximity to and relationship with its students, the core socialization aspect of the college experience, the high percentage of the population attending colleges,<sup>175</sup> and the tuition paid to colleges,<sup>176</sup> most will expect colleges to do more.

Colleges themselves are using social networking to do more. Almost every college in America has a Facebook page and uses social networking to recruit students and fundraise.<sup>177</sup> It is now the

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the school's "own decision to remain idle in the face of known student-on-student harassment"); *see also Benefield*, 214 F. Supp. 2d at 1225-26 (quoting *Davis*, 526 U.S. at 640 n.9). The *Benefield* court applied the *Davis* reasoning to the college setting. *See id.*

175. Approximately 23.7 million undergraduate students were enrolled in U.S. colleges and universities for the 2008-2009 academic year. *See* LAURA G. KNAPP, JANICE E. KELLY-REID & SCOTT A. GINDER, NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., POSTSECONDARY INSTITUTIONS AND PRICE OF ATTENDANCE IN THE UNITED STATES: FALL 2009, DEGREES AND OTHER AWARDS CONFERRED: 2008-09, AND 12-MONTH ENROLLMENT: 2008-09 5 (Aug. 2010).

176. For the academic year 2009 to 2010, yearly tuitions and required fees alone averaged out to approximately \$15,900 per undergraduate student. *Id.* at tbl. 3. This figure is based on the reporting of 652 public schools of average tuition and required fees for in-state undergraduate of \$6,393 and out-of-state undergraduate of \$15,078. *Id.* Twelve hundred ninety-seven private not-for-profit schools reported an average of \$21,050 for yearly tuition and required fees. *Id.* Five hundred thirteen private for-profit schools reported \$15,715 in average tuition and fees. *Id.* The average of all yearly tuition and fees was calculated based on the pro-rata portion of each category of school. *Id.*

177. *See generally* Alison Damast, *The Admissions Office Finds Facebook*, BLOOMBERG BUSINESS WEEK, (Sept. 28, 2008), [http://www.businessweek.com/bschools/content/sep2008/bs20080928\\_509398.htm](http://www.businessweek.com/bschools/content/sep2008/bs20080928_509398.htm) (discussing how admissions offices "are aggressively using Facebook to recruit students for their programs"); Sara Lipka, *Colleges Using Technology to Recruit Students Try to Hang on to the Conversation*, THE CHRON. OF HIGHER EDUC., May 1, 2009, <http://chronicle.com/article/Admissions-Offices-Struggle/47230/> (discussing how colleges are adjusting to the use of social media in recruiting); Michael Staton, *Social Media for Student Retention: Gates Foundation Hones in on Possibilities*, INIGRAL BLOG (Apr. 3, 2010), <http://blog.inigral.com/social-media-for-student-retention-gates-foundation-hones-in-on-possibilities/> (discussing the Gates-Foundation's post-secondary initiatives online); *Educational*, FUNDLY.COM, <https://www.fundly.com/pro/educational> (last visited May 5, 2011).

case that many of the students' interactions with the colleges they attend first occurred online.<sup>178</sup> For colleges who are reaping the benefits themselves of social networking, to share no responsibility may seem fundamentally unfair.

As with any organization's likely reaction to a change, some may advocate that colleges do nothing to change and argue that the status quo affords all the protection that a college needs when faced with potential liability from an incident involving social networking. Colleges could do nothing and wait for the law to evolve, but colleges may not have time to wait. It will be a very long time before Duke and Rutgers are no longer associated with the negative consequences of the incidents from social networking that occurred on their campuses. Colleges must be proactive.

Presently, colleges are recognizing the harms of social networking and have attempted to protect themselves in various ways. One leading university, for example, enforces a policy on computer ethics and forbids the transmission of offensive, annoying, or harassing material.<sup>179</sup> By implementing policies, colleges would be acting proactively. The policy should be the college's first line of defense. A policy prohibiting abuse online can penalize victimizers or regulate abusive situations before any actual damages are incurred.<sup>180</sup>

Colleges not only need to have policies regarding social networking, but also must update these policies regularly, must consider how they address potential threats and harms, must communicate them to their students regularly, and must train their faculty and staff on these policies. College must also take special care to develop and adhere to policies regarding the actions the administration takes when notified of online harassment. College students

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178. See, e.g., Maya T. Prabhu, *Schools Reach Out to Prospective Students Via Facebook*, ECAMPUS NEWS (June 21, 2010), <http://www.ecampusnews.com/top-news/schools-reach-out-to-prospective-students-via-facebook> (discussing how colleges are increasingly using social media to recruit students).

179. Daniloff, *supra* note 89 (discussing Boston University's "policy on computer ethics, . . . code of ethics for faculty and staff and comparable guidelines for students").

180. See Edecio Martinez, *Tyler Clementi Suicide: Rutgers Student Apparently Sought Room Change*, CBSNEWS CRIMESIDER (Oct. 4, 2010), [http://www.cbsnews.com/8301-504083\\_162-20018385-504083.html](http://www.cbsnews.com/8301-504083_162-20018385-504083.html). In online postings that are believed to have been written by Tyler Clementi, the author reported that he asked an RA for a new roommate on the afternoon of his suicide. *Id.* Unfortunately, Mr. Clementi was not provided any assurance of a change and chillingly posted "[w]e'll see what happens." *Id.*

must have assurances that if they report a social networking related issue, colleges will act to protect them.

All colleges should institute policies regarding prohibited on-line activities that allow for strict penalties for violations. Potentially, students would sign honor codes or pledges addressing online harassment. Part of these codes could be a requirement to report any witnessed incidents of cyberabuse. Colleges must be diligent in enforcing their policies to respond to online harassment.

Many athletic departments at major American colleges have recognized the dangers of social media and have implemented relevant policies for their student athletes.<sup>181</sup> These social networking policies express guidelines for social networking and iterate consequences through written handbooks, meetings, discussions, and letters.<sup>182</sup> The intent in implementing these policies is to educate student athletes about the highly public nature of information disseminated on the Internet.<sup>183</sup> In the case of high profile athletes, public safety is a major concern. Therefore, the inclusion of personal information such as phone numbers and addresses is prohibited from profiles.<sup>184</sup> These athletic departments acknowledge that information disseminated over the Internet can affect the students' lives forever, as well as hurt the school's reputation.<sup>185</sup> To enforce the policies at the University of New Mexico and Ohio State University, for example, students were required to "friend" the coaching staff or have public profiles and to make all Twitter accounts available.<sup>186</sup> Similarly, the motivation behind these athletic departments' policies can be applied to all departments throughout colleges. The public safety of students should be a concern for all higher education administrators, as online information can affect both the individual as well as the school forever.

In developing such policies regarding the colleges' actions, some may have the option of blocking websites from their networks, just as the University of New Mexico banned Facebook from

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181. See Rick Wright, *Tweets Can Be for the Birds*, ALBUQUERQUE J. (Oct. 17, 2010), <http://www.abqjournal.com/sports/live/component/content/article/6224.html> (discussing the University of New Mexico's policy for student athletes and how its policy affects what athletes may or may not post on social networking sites).

182. Kyle Oppenhuizen, *Schools Creating New Rules for Social Networking Policies*, USA TODAY, July 28, 2008, [http://www.usatoday.com/sports/college/2008-07-27-social-networks\\_N.htm](http://www.usatoday.com/sports/college/2008-07-27-social-networks_N.htm).

183. See Wright, *supra* note 181.

184. *Id.*

185. Oppenhuizen, *supra* note 182.

186. *Id.*; Wright, *supra* note 181.

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its network in 2005 and the University of Tennessee banned Juicy Campus in 2008.<sup>187</sup> The University of New Mexico blocked Facebook over concerns that the website was poorly secured and that students were encouraged to use their campus ID number to log in.<sup>188</sup> Once it became aware of the block, Facebook worked with the university to improve security.<sup>189</sup> On campus access was restored after several months.<sup>190</sup>

The banning of a website from a college network may not always have such positive results. Once the University of Tennessee banned Juicy Campus, it faced widespread backlash.<sup>191</sup> Because the website was “not hosted on campus[ ],” the University of Tennessee had no jurisdiction over the site.<sup>192</sup> Its blockage potentially piqued interest in the website and gathered more attention to the offensive material.<sup>193</sup> Additionally, the ubiquitous use of Internet-capable mobile digital devices on the university’s campus did not limit students to accessing the Internet over its intranet.<sup>194</sup> Access could be gained over smart phones or off-campus. Blocking the website may have discouraged students from accessing the Internet through the campus network, but it did not prevent them from using the unregulated Internet services offered by cable, telephone, and cellular companies.<sup>195</sup> Finally, and most importantly, the University of Tennessee, as well as any college that decides to block certain websites from its network, could face far-reaching ramifications. When a college makes a decision to block one offensive site, it will immediately be faced with the decision whether to block additional websites. It may be scrutinized for blocking a gossip site but not racist or homophobic sites, as was the University of Tennessee.<sup>196</sup> “Free speech is so central to the [college] experience . . . that a process of blocking offensive sites would quickly lead college administrators

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187. *News Release: Popular Web Site, Facebook.com, Back Online at UNM*, UNIV. OF N.M., Jan. 19, 2006, <http://www.unm.edu/news/06JanNewsReleases/06-01-19facebook.htm> [hereinafter *News Release*]; Joseph Storch, *In Loco Parentis, Post-Juicy Campus*, INSIDE HIGHER ED (Sep. 17, 2009), <http://www.insidehighered.com/views/2009/09/17/storch>.

188. *News Release*, *supra* note 187.

189. *Id.*

190. *Id.*

191. Storch, *supra* note 187.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *See id.*

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down the garden path,” potentially infringing on their students’ constitutional rights.<sup>197</sup>

In response to these new and evolving threats from social networking, it may not be enough, however, for colleges to self-regulate. Colleges should actively educate students about responsible use of social networking. Students should also be educated about the risk of identity theft. Many students just do not comprehend the dangers of releasing their information over the Internet.<sup>198</sup> Colleges need to educate their students on how to protect their information online. Students should be informed that identity thieves could deduce social security numbers from online data that may be considered innocuous, such as birthdates and hometowns.<sup>199</sup> Identity theft can have lasting negative effects on victims, potentially ruining background checks and credit scores for years after the theft occurs. Colleges must take on the task of working to prevent identity theft as well as helping victims with remedial measures in the cases where it does occur.

As recent tragic events reveal, students should be educated on the dangers of online harassment. As freshmen move onto campus, it is common for them to receive information regarding alcohol, physical threats, and social activities. The threats posed by social networking must be included in these informative sessions.

College should also educate their students about the huge impact that students’ online information can have on the rest of their lives. For example, college career centers should educate their students on how to use social networking to find jobs, as well as explaining steps on protecting themselves from elimination from consideration because of posts on social networking sites. In a 2006 survey by a leading recruiting network, 77% of recruiters admitted to using search engines to learn about applicants.<sup>200</sup> Every photograph or sarcastic update could potentially rule out a candidate from a job that he or she may otherwise be eligible for. Thirty-five percent of respondents in the 2006 survey “eliminated a candidate [from consideration] based on the information uncovered” online.<sup>201</sup> Low hire rates of graduates hurt college reputations as well.

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197. *Id.* Some may liken website blocking to book banning.

198. *See* Dakss, *supra* note 55.

199. *See* Gross & Acquisti, *supra* note 61, at 9.

200. *Press Release, ExecuNet, Growing Number of Job Searches Disrupted by Digital Dirt*, (June 12, 2006), [http://www.execunet.com/m\\_releases\\_content.cfm?id=3348](http://www.execunet.com/m_releases_content.cfm?id=3348).

201. *Id.*

College career centers should be technically savvy, advising on privacy settings and showing students that negative information revealed by an Internet search can be moved lower in the results list by adding positive entries.<sup>202</sup>

In addition to policies and education, colleges may want to require students to use software applications to combat online harassment. As of 2010, cyberbullying related “apps” were starting to be released. SafetyWeb.com, a leading online monitoring software provider, introduced the “Find Help” application on Facebook in October 2010.<sup>203</sup> The application provided “an easy way for [users] to report violations to Facebook officials [and] connect with safety and crisis support organizations.”<sup>204</sup> MTV’s “Over the Line” application invited users to share and vote on stories of harassment.<sup>205</sup> Colleges may consider having their IT departments develop applications that meet the specific needs of their campuses.

While colleges can only do so much with limited resources, colleges may want to consider framing the debate on what reforms are needed and how best to accomplish reform. With such a high percentage of their constituents using social networking, colleges may be best poised to help guide this social networking revolution so that individuals are better protected from the harms and threats of social networking.

#### CONCLUSION

While courts largely expelled the *in loco parentis* doctrine because of its inconsistency with the needs of modern education, perhaps, in light of this next evolution in modern life and the associated threats for college students, a return to the *in loco parentis* doctrine may be needed to address such threats. Stretching existing concepts of liability to address the harms of social networking may not be appropriate. The presence of new and constantly evol-

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202. Phyllis Korkki, *Is Your Online Identity Spoiling Your Chances*, N.Y. TIMES, Oct. 10, 2010, at BU8, available at [http://www.nytimes.com/2010/10/10/jobs/10search.html?\\_r+1](http://www.nytimes.com/2010/10/10/jobs/10search.html?_r+1).

203. See *New Facebook Application Tries to Combat Bullying*, RADAR ONLINE.COM (Oct. 30, 2010), <http://www.radaronline.com/exclusives/2010/10/new-facebook-application-tries-combat-bullying>.

204. *Id.*

205. Samuel Axon, *MTV Unleashes an iPhone App to Combat Bullying*, MASHABLE.COM, <http://mashable.com/2010/10/04/mtv-over-the-line-bullying-app/> (last visited Feb. 5, 2011). The intent of the “Over the Line” app is to “encourage young people to think critically about . . . their” communications. See *id.*

ing threats from social networking may demand the resurgence of a broad special duty between colleges and students.

Colleges need to act, and students need to be protected. The new and developing harms to college students posed by social networking expose students to dangers unknown fifty years ago when courts limited a college's duty to its students. Modern society, which now extends to a virtual world, must decide who should and who is in the best position to provide the protection that students need and what protection should be provided.

As courts decide how the law should respond to the social networking revolution, the likely source of reform to address the threats posed by social networking may be federal and state legislators. In light of the amount of federal and state funding to colleges, such legislators could swiftly act to protect social networking college students. Until that happens, courts, colleges, parents and students alike will continue to struggle to address and to protect students from the harms of social networking.