

# 2020 JUVENILE JUSTICE VIRTUAL CONFERENCE

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## **First Amendment: Speech vs. Threats with Emphasis on School Settings**

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Distributed by:

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### First Amendment: *Speech vs. Threats in Schools*

IM gonna  
**BOMB**  
THIS school.  
just you wait

**Jonathan Holbrook**  
UNC Chapel Hill  
School of Government  
September 25, 2020

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### Roadmap

- **Overview**
  - Background, issues, stats
  - What's at stake?
- **Law on Threatening Speech**
  - Disruptive speech, true threats
  - Court cases and statutes
- **Practical Applications**
  - Apply factors, make charging decision
  - Real world examples
- **Wrap-up, questions, and tips**

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### Real Concern

**Anonymous Student**

We starting shooting with the slow kids first. I REPEAT SLOW KIDS first! 7:25AM OW PLEASE BE READY #RURGE

What y'all rather a shooting or fire? now for I decide to do a bus

**PsychologyTah Kade**

I bet I could get at least 12 unarmed sitting ducks if I decide to go on a killing spree in a school

Sounds better than being a wage slave

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## True Threats in Arizona



- **In re Kyle M., 200 Ariz. 447 (App. 2001)**
- **Facts:**
  - Juvenile upset that his girlfriend dumped him, threatens a “Columbine thing”
  - Threatens to kill another girl if she tells anyone what he said
- **Key Holdings:**
  - Adopts “true threat” analysis/framework for Arizona statute
  - Sufficient evidence in this case

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## “True Threat”

- Under *Watts, Black, etc.*

Thus, in order for the government to establish a “true threat” it must demonstrate that the defendant made a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or to take the life of [a person].



- Under *Kyle M.*

He expressed such a threat if, under the circumstances, a reasonable person would foresee that his words would be taken as a serious expression of an intent to inflict bodily harm, and his statements were not the result of mistake, duress, or coercion. The State was not required to demonstrate Kyle had the ability to carry out his threat or that he actually intended to do so.

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## Relevant Statutes



- **A.R.S. 13-1202**
  - Threatening/intimidating by words or conduct
  - Physical injury, property damage
- **A.R.S. 13-2911**
  - Intentionally/knowingly/recklessly disrupting
  - Educational institution
  - Threatening injury, property damage
- **A.R.S. 13-2907**
  - False report of bomb, fire, emergency
  - Evacuation, emergency response, fear of imminent serious physical injury

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### North Carolina: Recent Cases

- *State v. Taylor*, \_\_ N.C. App. \_\_, 841 S.E.2d 776 (2020), *rev. allowed*, 374 N.C. 428 (2020)
  - Threatening a court official on Facebook
  - Not a "true threat," based on context, format, intent, history between parties
- *In re D.W.L.B.*, \_\_ N.C. App. \_\_, 832 S.E.2d 565 (2019)
  - School bathroom graffiti: "bomb incoming"
  - Not a false report of mass violence on educational property – not directed/reported, not a credible threat





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### Example #1



- Victim at home, car drives by
- Vulgar death threat yelled out
- Victim doesn't hear it, mother does, tells victim what was said
- Mother is upset, victim is not scared
- History of harassment

True threat...?



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### Case #1

#### *In re Ryan A.*, 202 Ariz. 19 (App. 2002)





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### Example #2



- Juvenile suspended from school
- Other parents tell crossing guard their kids heard juvenile making threats
- Reported to principal
- Principal interviews students, who say juvenile cursed, said "something" about blowing up school, "wished" he could bring a gun to school
- Directed at teacher and principal

▪ True threat...?

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### Case #2

*In re Dakota R.*, 2013 WL 209751 (Ariz. App. 2013) (memorandum)



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### Example #3



- High school class discussion about school violence
- Juvenile tells teacher "you shouldn't come to school tomorrow because I'm going to ... bring a gun and shoot up the school."
- Teacher doesn't take it seriously, but notifies administration as required
- Report passed on to police

▪ True threat...?

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### Case #3

*In re Steven M.*, 2018 WL 4374402 (Ariz. App. 2018) (memorandum)



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### Example #4



- Students riding on school bus
- 8-year-old student reports juvenile said he "wanted to shoot him" with a "22"
- Student is scared, tells his mother, stays home from school for two weeks
- Juvenile admits statement, but says he was only joking, talking about a BB gun
- Juvenile also says he was talking about having an "airsoft war" with another boy

True threat...?



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### Case #4

*In re Jacob Z.*, 2009 WL 624348 (Ariz. App. 2009) (memorandum)



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### Example #5



- Juvenile and victim broke up 18 months ago
- Victim and her friend are sitting outside a church, juvenile accuses her of spreading lies about him
- Juvenile says she better watch out or it will be her worst nightmare – he will kill her, her family, and her dog
- History of similar statements since break-up, but juvenile never acted on any of them

True threat...?



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### Case #5

*In re Sochise F.*, 2011 WL 1312307 (Ariz. App. 2011) (memorandum)



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### Facts and Factors

- Threat
- Context
- Circumstances
- Reasonable Person
- Interpret
- Serious Intent
- Inflict Harm



- Specificity
- History
- Relationship
- Capability
- Fear
- Age
- Format/Means



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### What's the Point?

- Deferral Considerations
- Additional Investigation
- Witness Prep
- Convincing the Court
- Motions to Dismiss
- Anticipating the Appeal
- Using the Cases You Have
- Educating Your Partners



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### Questions/Discussion?

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