
Extreme American Neighborhood Law

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Abstract

This Article explores extreme narratives of Americans acting badly—to their neighbors and to the police. Starting with a philosophical-religious-psychological assessment of the neighbor as tragic construct, the Article quantifies and analyzes American neighbor jurisprudence in the opening years of the twenty-first century. The cautionary tales reveal ongoing, serious, and destructive meltdowns involving neighbors throughout the United States. The Article notes that, while state and federal judges have done a fair job in resolving these vexing disputes under traditional criminal law, tort, and property principles, it is high time for some new approaches. In formulating an epistemic theory of extreme neighborhood conflict, the Article closes with an overarching gestalt, suggests a mapping of American neighborhood law, and concludes with a few ideas for potential pragmatic policy responses.

TABLE OF CONTENTS

I. INTRODUCTION	336
II. THE NEIGHBOR AS TRAGIC CONSTRUCT.....	340
A. Overview	340
B. Kenneth Reinhard's Political Theology of the Neighbor	342
C. Eric L. Santer's Musings on Creatureliness	343
D. Slavoj Zizek's Neighborly Monsters	343
III. AMERICAN NEIGHBOR JURISPRUDENCE, 2000–2006.....	345
A. Methodology	345
B. 2000.....	346
1. The Case of the Confiscated Driveway.....	347
2. The Case of the Angry Citizen Who Protesteth Too Much	350
3. The Case of the Frustrated "Artist"	353
4. Synoptic Comments	355
C. 2001.....	356
1. The Case of Rabbit Droppings, Water Spraying, and Wrongful Deaths.....	358
2. The Case of the Mississippi Houseboat	361

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3. The Case of the Unethical Lawyer	363
4. Synoptic Comments	364
D. 2002.....	365
1. California Dreaming #1: The Case of the Psycho Boundary Dispute	369
2. California Dreaming #2: The Case of the Obsessive Lover	372
3. California Dreaming #3: The Case of the Harassed Inter- Racial Couple.....	376
4. Synoptic Comments	378
E. 2003.....	380
1. The Case of the “FA-Q” Serial Condemner.....	385
2. The Case of the Post-Traumatic Stressed-Out Neighbor	386
3. The Case of the Incarcerated Farm Stand Lady	388
4. Synoptic Comments	390
F. 2004.....	391
1. The Case of the Serial Shooter Who Always Claimed Self- Defense.....	396
2. The Case of the Bullying Neighbors	399
3. The Case of the Chainsaw Harrasser.....	405
4. Synoptical Comments	407
G. 2005.....	408
1. The Case of the Free-Roaming Children and Dogs in the Road.....	411
2. The Case of the Officious Homeowners Association Director....	415
3. The Case of the Armed Home Invaders	417
4. Synoptical Comments	419
H. 2006.....	420
1. The Case of the Corrupt Shrink and the Abusive Deputy Sheriff.....	424
2. The Case of the Annoying “Junk Artists”	426
3. The Case of the Cut Down Spite Gate	427
4. Synoptical Comments	429
IV. AN EPISTEMIC THEORY OF EXTREME NEIGHBORHOOD CONFLICT AND A CALL FOR PRAGMATIC LEGAL RESPONSES	430
A. <i>An Overarching Gestalt</i>	430
B. <i>Mapping American Neighborhood Law</i>	431
C. <i>Potential Pragmatic Responses</i>	432
V. CONCLUSION	434

I. INTRODUCTION

When I was in law school a wise professor once told the class that, when we graduated and went out in the world to practice law, we would be practicing a lot of

“friends and neighbors law.” The allusion, I think, was to the multiplicity of questions we could expect on issues like fences and trees and boundaries and noise—problems that come about just from being a human and living in a neighborhood.

My professor was right. During the course of three decades of practicing and teaching law, I have encountered a miscellaneous array of questions from people who experience flooding from the landscaping of a neighbor’s yard to folks who have a beef with a common driveway between properties; from persons who don’t like the all night parties of their fellow citizens to individuals aggrieved by barking dogs.

By way of illustration of the crazy world of neighbor disputes, consider the following accounts described in a recent Chicago-area newspaper article:

- Building inspector Diana LaCalimita has witnessed the same [recurring] neighbor rivalry on occasion . . . The feud starts when one person parks in front of the neighbor’s house instead of in their own driveway. The other responds by doing the same thing. The dispute escalates with each trying to do something to aggravate the other, perhaps shining a spotlight into their neighbor’s yard, calling the village for some minor complaint or partially blocking the neighbor’s driveway with their car.
It’s tit for tat. If you’re going to do it, I’m going to do it too . . .¹
- One of the more infamous tree-cutting incidents on the North Shore involved the former actor known as Mr. T, who cut down hundreds of mature trees on his property in Lake Forest in the 1980s, setting off a firestorm of protests from neighbors and the community . . . Some good may have come out of the Mr. T incident, though. As a result, Lake Forest and many other suburban communities adopted tree ordinances, requiring residents to seek permits when cutting down trees on their property.²
- Liz Karns, an Evanston attorney . . . said she heard about one case in Connecticut where a dispute between two neighbors over a clump of birch trees lasted for 10 years and cost the parties \$500,000 in litigation. . . . Karns said she has also heard of neighbors who have raked all of the leaves that have fallen from another person’s tree back onto the other’s property. . . . This spring she received a telephone inquiry from a Wilmette family who had just returned from vacation

1. John Roszkowski, *Love Thy Neighbor?*, OAK PARK OAK LEAVES, June 21, 2006, at 72 (internal quotation marks omitted).

2. *Id.*

to find that all of their neighbor's trees, and some of their own, had been cut down by the contractor who was working for the neighbor.³

In the Chicago area, it seems different communities have both common and unique problems that "most irks neighbors."⁴ Within the Chicago city limits, for instance, major beefs by one neighbor against another entail "[n]oise complaints, children running in neighbor's yards, barking dogs, parking issues, [and] smoke from outdoor barbeques traveling into neighbor's windows or property."⁵ In Harwood Heights, near Chicago, the most frequent neighborhood peeves involve "[g]arbage complaints; parking issues; too many people living in one house; water from downspouts running onto neighbor's property; boundary disputes; too tall grass; barking dogs."⁶ And, in Park Ridge, near the Chicago O'Hare Airport, key concerns are "property maintenance complaints such as gutters falling down and peeling paint on houses" and "health violations" such as litter or open refuse containers in yards.⁷

Attorney Cora Jordan has written a fascinating book on the topic of disputes between neighbors entitled *Neighbor Law*.⁸ Jordan takes a positive, commonsense and upbeat approach, observing: "Like it or not, we're all neighbors—and we ought to get better at it."⁹ As she goes on to explain:

With good neighborly relations, you can live more safely, comfortably, sociably, and happily. Human beings, after all, are not solitary creatures like cats; we're a sociable species, made for each other's company. And in a period of our history when many of us live alone, or are single parents, a lack of good neighborly relations is likely to make life lonely, dangerous, and expensive.¹⁰

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. John Roszhowski, *Love Thy Neighbor?*, OAK PARK OAK LEAVES, June 21, 2006, at 72. Some Chicago-area neighborhood disputes appear to be sui generis. See, e.g., Susan Kuczka, *Neighbors Squeal E-I-E-I-NO!*, CHI. TRIB., July 12, 2006, at A1, available at 2006 WL 11986319 ("Three not-so-little pigs have created a ruckus among Lake Forest residents who contend farm animals don't belong in their storybook community. Nearly 250 residents ... signed a petition asking the city to force the removal of the pigs from ... [a] \$3.3 million colonial-style mansion [in] ... one of the poshest addresses on the North Shore.").

8. EMILY DOSKOW & CORA JORDAN, *NEIGHBOR LAW: FENCES, TREES, BOUNDARIES & NOISE* (Emily Doskow ed., 6th ed. 2008) (1991).

9. *Id.* at Foreword, p.1.

10. *Id.* Jordan adds the following helpful advice:

Good neighbors share other things too: wisdom, time, vegetables, old car parts, you

The theoretical range of legal (or potential legal) problems with neighbors is astounding. Neighbor disputes can involve noise,¹¹ trees (encroachments, unsound structure, boundaries, ownership of fruits and nuts),¹² obstruction of views, boundary lines, use of land issues (e.g., trespass and easements),¹³ fences (including spite fences),¹⁴ dangers to children (attractive nuisances),¹⁵ rural neighbors and the right to farm, water, business neighbors,¹⁶ blighted property, garbage, weeds, drug dealers, animal problems, secondhand smoke, vehicles, and outdoor lights.¹⁷

This article shall proceed in three principal parts. First, in Part II, we establish a tragic foundation for exploring relations between neighbors as propounded in the 2005 book, *The Neighbor: Three Inquiries in Political Theory*.¹⁸ Second, in Part III, the discussion turns from abstract presuppositions to concrete particulars. We shall consider numerous judicial opinions concerning disputes between American neighbors during the seven-year timeframe at the start of the present century, 2000

name it. They also share surveillance of their neighborhood. Neighborhood Watch programs are wonderful not only because they deter criminals, but because they get people together in the process of drawing up a neighborhood map and picking a block captain. Often they go on to have block parties and clean-up days, and work together to get the attention of city hall.

Id. Cf. Robert F. Blomquist, *American "Road Rage": A Scary and Tangled Cultural-Legal Pastiche*, 80 NEB. L. REV. 17, 18-19 (2001) (detailing social pathologies of motorists acting violently on the roadways); Susan Carey, *Cranky Skies: Fliers Behave Badly Again as 9/11 Era Fades – Airline Personnel Bear Brunt of Dissatisfaction*, WALL ST. J., Sept. 12, 2007, at A1; Ben Casselman, *The Invasion of the Renters: Housing Slump Spurs Rentals and Complaints; Bikes on the Balcony*, WALL ST. J., Sept. 21, 2007, at W1; *Fixing Finance*, ECONOMIST, Apr. 5, 2008, at 13 (discussing "home rage" involving "[b]orrowers vent[ing] their fury on the system that is repossessing their propert[y] by smashing holes in walls and tipping paint over living-room carpets").

11. DOSKOW & JORDAN, *supra* note 8, at 28-46.

12. *Id.* at 49-130.

13. *Id.* at 133-93.

14. *Id.* at 196-244.

15. *Id.* at 246-54.

16. *Id.* at 256-314.

17. *Id.* at 316-26. Cf. Sara Schaefer Muñoz, *Abominable Snowmen: The War on Lawn Decorations -- Over-the-Top Displays Inspire Loud Complaints, Even Rage; An Inflatable Santa Beheaded*, WALL. ST. J., Dec. 20, 2007, at D1 (describing a neighborhood dispute regarding Christmas decorations); Kelly K. Spors, *Green Acres II: When Neighbors Become Farmers: Suburban Arugula is Organic, but About That Manure...*, WALL ST. J., Apr. 22, 2008, at A1 (describing a neighborhood dispute regarding farms in residential areas).

18. SLAVOJ ZIZEK, ERIC L. SANTNER & KENNETH REINHARD, *THE NEIGHBOR: THREE INQUIRIES IN POLITICAL THEOLOGY* (2005) [hereinafter *THE NEIGHBOR*]; *see infra* notes 21-57 and accompanying text.

through 2006.¹⁹ This seven-year survey of American neighborhood jurisprudence provides both a systematic accounting of types of neighbor problems as well as a bracing sample of cherry-picked *extreme* cases that allows us to taste the bitter fruit of legal responses to truly troubling conflicts between neighbors. Third, in Part IV, we attempt a tentative fit between neighbor theory and neighbor praxis in American law by teasing out some cautionary insights and lessons from the material: what I call an epistemic theory of extreme neighborhood conflict.²⁰

II. THE NEIGHBOR AS TRAGIC CONSTRUCT

A. Overview

Professors Zizek, Santner, and Reinhard begin what they describe as “[t]hree [i]nquiries in [p]olitical [t]heology” concerning the Neighbor with a joint introduction that quotes Sigmund Freud’s classic book, *Civilization and its Discontents*.²¹ As explained in their introduction, in *Civilization and its Discontents*:

Freud made abundantly clear what he thought about the biblical injunction, first articulated in Leviticus 19:18 and then elaborated in the Christian teaching, to love one’s neighbor as oneself. “Let us adopt a naive attitude towards it,” Freud proposes, “as though we were hearing it for the first time; we shall be unable then to suppress a feeling of surprise and bewilderment.”²²

Freud was skeptical about the ability of a rational human being to truly love his neighbor in the same way that he would love himself. As Freud asked rhetorically: “Why would we do it? What good will it do us? But, above all, how shall we achieve it? How can it be possible?”²³ Moreover, Freud articulated a paradigm of a bargained for exchange of co-equal consideration in neighbor-to-neighbor relations, writing: “My love is something valuable to me which I ought not to throw away without reflection. It imposes duties on me for whose fulfillment I must be ready to make sacrifices. If I love someone, he must deserve it in some way.”²⁴ As Freud saw things, a neighbor must learn love and respect, observing that a neighbor qualifies for love “if he is like me in important ways that I can love myself in him;

19. See *infra* notes 58–712 and accompanying text.

20. See *infra* notes 713–725 and accompanying text.

21. THE NEIGHBOR, *supra* note 18, at 1.

22. THE NEIGHBOR, *supra* note 18, at 1.

23. THE NEIGHBOR, *supra* note 18, at 1.

24. THE NEIGHBOR, *supra* note 18, at 1.

and he deserves it if he is so much more perfect than myself that I can love my ideal of my own self in him.”²⁵

Furthermore, as powerfully pointed out by professors Zizek, Santner, and Reinhard, Freud argued that not only is a neighbor-stranger unworthy of his love but “he has more claim to my hostility and even my hatred” because “[h]e seems not to have the least trace of love for me and shows me not the slightest consideration”; and “[i]f it will do him any good he has no hesitation in injuring me, nor does he ask himself whether the amount of advantage he gains bears any proportion to the extent of the harm he does to me.”²⁶ Indeed, Freud complained that a neighbor need not even stand to gain a concrete advantage to be motivated to harass a fellow neighbor because “if he can satisfy any sort of desire by it, he thinks nothing of jeering at me, insulting me, slandering me and showing his superior power,” while “the more secure he feels and the more helpless I am, the more certainly I can expect him to behave like this to me.”²⁷ As Freud saw things, there is a “persistence, in human beings, of a fundamental inclination toward aggression, a primary mutual hostility” between people.²⁸

Despite Freud’s language in *Civilization and Its Discontents*, Zizek, Santner, and Reinhard claim that their book is an “attempt to make psychoanalysis a key resource in the project of reanimating the ethical urgency and significance of neighbor-love in contemporary society and culture.”²⁹ The authors of *The Neighbor* inform us at the outset that the biblical injunction to “love your neighbor as yourself” (Lev. 19:18) and the question “who is my neighbor?” (Luke 10:29) involve “interpretive and practical aporias in *all* . . . individual terms, and even more so as an utterance.”³⁰ Moreover, they concede that “[d]espite its seemingly universal dissemination, despite its appropriation in the name of various moral and political agendas, something in the call to neighbor-love remains opaque and does not give itself up willingly to univocal interpretation.”³¹ And “[y]et it remains always in the imperative and presses on us with an urgency that seems to go beyond both its religious origins and its modern [Kantian] appropriations as universal Reason.”³²

Freud’s neighbor-love skepticism raises four overarching analytical questions that the authors of *The Neighbor* claim are critical. First, “who is my neighbor?”³³ Should this concept be expansively construed (to include everyone as asserted by

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25. THE NEIGHBOR, *supra* note 18, at 1.
 26. THE NEIGHBOR, *supra* note 18, at 2.
 27. THE NEIGHBOR, *supra* note 18, at 2.
 28. THE NEIGHBOR, *supra* note 18, at 2.
 29. THE NEIGHBOR, *supra* note 18, at 2.
 30. *Id.* at 4, 5 (internal quotation marks omitted).
 31. *Id.* at 5.
 32. *Id.*
 33. *See, e.g., id.* at 6.

Christian universalism) or strictly construed (to focus on membership in a particular religious sect)? Second, is it correct to view the neighbor-love commandment to be an “excessive and even inappropriate injunction,” connoting romantic and sexual love, or to consider the norm as a mere “figure of speech”—really just an “overstatement”?³⁴ In this regard, should we adopt Kierkegaard’s insight that the biblical neighbor-love edict should “be confronted as enigma” since “love cannot be commanded, cannot be produced by imperative or necessity”?³⁵ Third, “what does the commandment’s apparent reflexivity, the call to love the neighbor as *yourself*, imply about the nature of self-love and, by extension, about subjectivity?”³⁶ Along these lines, “[i]s the neighbor understood as an extension of the category of the self, the familial, and the friend, that is, as someone *like* me whom I am obligated to give preferential treatment to,” or does the word “imply the inclusion of the other into my circle of responsibility, extending to the stranger, even the enemy?”³⁷ And finally, “does the commandment call us to expand the range of our identifications or does it urge us to come closer, become answerable to, an alterity that remains radically inassimilable?”³⁸

B. *Kenneth Reinhard’s Political Theology of the Neighbor*

Professor Reinhard advocates enlarging the traditional binary paradigm of the political formulated by Carl Schmitt in his classical work, *The Concept of the Political*, the relations between those we view as friends and those we regard as enemies.³⁹ Reinhard argues that “a political theology of the neighbor must come as a *supplement* to the [Schmittian] political theology of the friend and the enemy.”⁴⁰ According to Reinhard, a more complete and robust “politics can be located in the figure of the neighbor—the figure that materializes the uncertain division between the friend/family/self and the enemy/stranger/other.”⁴¹ Furthermore, Reinhard draws on the work of Derrida to “point[] out a possibility of semantic slippage and

34. *Id.* (internal quotation marks omitted).

35. *Id.*

36. *Id.*

37. *Id.* at 6-7. Interestingly, the demographic phenomenon of “clustering”—a preference of Americans “for living with like-minded neighbors”—might involve a psychological urge to live among people of similar cultural views. See *Political Segregation: The Big Sort*, *ECONOMIST*, June 21, 2008, at 41, available at 2008 WLNR 11572270 (citing BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* (2008)).

38. *THE NEIGHBOR*, *supra* note 18, at 7.

39. See KENNETH REINHARD, *Toward a Political Theology of the Neighbor*, in *THE NEIGHBOR*, *supra* note 18, at 16.

40. *Id.* at 14.

41. *Id.* at 18.

inversion in Schmitt's political theology" to the effect that "the enemy can also be a friend, and the friend is sometimes an enemy."⁴² Thus, "[t]he border between them, and between the public and private realms they are associated with, is fragile, porous, contestable, and to this extent the Schmittian discourse collapses and against the threat of that ruin, it takes form."⁴³

C. Eric L. Santner's Musings on Creatureliness

Eric Santner covers much intellectual ground in his essay—examining the philosophical-theological writings of Walter Benjamin and Franz Rosenzweig.⁴⁴ Starting with the concept of historical materialism mediated by theology, Santner argues that, in order for humans to achieve the theological commandment of neighbor-love, they must become attuned to other's "creatureliness"⁴⁵ by being open to "miracles"⁴⁶ that allow the transcendence of boundaries involving "the possibility of releasing the energies contained there, opening them to genuinely new destinies."⁴⁷

D. Slavoj Zizek's Neighborly Monsters

Using the resources of German dialectics and hermeneutics, psychoanalysis and modern interpretations of the Jewish tradition, Professor Zizek wants us to confront what he calls "our era of oversensitivity for 'harassment' by the Other" instead of this subjective oversensitivity to what bothers us about other people.⁴⁸ Zizek urges the practice of "true art" whereby "the artist has to undergo a radical self-objectivization, he has to die *in and for himself*, turn into a kind of living dead."⁴⁹ What Zizek has in mind is a rejection of "an ethics of finitude" as well as a disavowal of our "making a virtue out of our very weakness" or "in other words, of [resisting] elevating into the highest ethical value the respect of our very inability to act with full responsibility."⁵⁰

42. *Id.* at 19 (internal quotation marks omitted).

43. *Id.* (internal quotation marks omitted) (citing JACQUES DERRIDA, *POLITICS OF FRIENDSHIP* 88 (George Collins trans., 1997)).

44. ERIC L. SANTNER, *Miracles Happen: Benjamin Rosenzweig, Freud, and the Matter of the Neighbor*, in *THE NEIGHBOR*, *supra* note 18, at 76-77.

45. *THE NEIGHBOR*, *supra* note 18, at 8.

46. *Id.* at 9.

47. *Id.*

48. SLAVOJ ZIZEK, *Neighbors and Other Monsters: A Plea for Ethical Violence*, in *THE NEIGHBOR*, *supra* note 18, at 134.

49. *Id.* at 135 (footnote omitted).

50. *Id.* at 137 (emphasis added).

Zizek sketches out the contours of what he envisions as full ethical responsibility as “ethical violence” (mentioned in the subtitle of his essay). For Zizek, being an ethical human being in this world of other people is not and should not be easy. Thus, he advocates a “properly ethical relation of individuals who accept and respect each other’s vulnerability and limitation,” implying, as he says, “a stance of fundamental forgiveness and a tolerant ‘live and let live’ attitude.”⁵¹ This stance of fundamental forgiveness and tolerance is summarized by Zizek in the following political theological terms:

I will never be able to account for myself in front of the Other, because I am already nontransparent to myself, and I will never get from the Other a full answer to “who are you?” because the Other is a mystery also for him/herself. To recognize the Other is thus not primarily or ultimately to recognize the Other in a certain well-defined capacity (“I recognize you as . . . rational, good, lovable”), but to recognize you in the abyss of your very impenetrability and opacity. *This mutual recognition of limitation thus opens up a space of sociality that is the solidarity of the vulnerable.*⁵²

Strikingly, Professor Zizek classifies the “most precious and revolutionary aspect of the Jewish legacy” of Mosaic Law extended by Christianity as a prescription for “ethical violence.”⁵³ Zizek opines:

The Judeo-Christian tradition is thus to be strictly opposed to the New Age Gnostic problematic of self-realization or self-fulfillment, and the cause of this need for a violent imposition of the Law is that *the very terrain covered by the Law is that of an even more fundamental violence, that of encountering a neighbor*: far from brutally disturbing a preceding harmonious social interaction, the imposition of the Law endeavors to introduce a minimum of regulation onto a stressful ‘impossible’ relationship . . . Judaism [in the Old Testament injunction to love and respect your neighbor] opens up a tradition in which an alien traumatic kernel forever persists in my Neighbor—the Neighbor remains an inert, impenetrable, enigmatic presence that [necessarily] hystericizes me.⁵⁴

The violent ethical continuing encounter with our Neighbor is, according to Zizek’s analysis, the resistance to our solipsistic egocentric preoccupation with “salvation,” which, in effect, causes us to turn our backs to God since the Judeo-Christian God wants us to prove our love for Him in the messy, here-and-now

51. *Id.* at 138.

52. *Id.* at 138–39 (emphasis added).

53. *Id.* at 140.

54. *Id.* at 140–41 (emphasis added).

world in the way we relate to our neighbors.⁵⁵ To Žizek, this is the hard reality of “the most elementary ethical lesson of the West against Eastern spirituality.”⁵⁶

Žizek’s essay ties together the other two essays in *The Neighbor* into what can only be viewed as a tragedy: while our “best selves” may, through meditation on the Judeo-Christian tradition, come to comprehend the “ethical urgency and significance of neighbor-love in contemporary society and culture,”⁵⁷ we are, to paraphrase Nietzsche, far too human in our psychological preoccupation with self-realization and self-fulfillment to meet this political-theological challenge. Indeed, the jurisprudence of extreme American neighborhood disputes in the few short years of the 21st century serves to dramatize this tragedy.

III. AMERICAN NEIGHBOR JURISPRUDENCE, 2000–2006

A. Methodology

At the outset of this Part a methodological note is in order. In order to focus on disputes that judges themselves viewed as involving disputes between neighbors as well as to limit the cases for analysis to a reasonable number, I have utilized the search “neighbor!/3 dispute!” for the WESTLAW “allcases” database. Separate, date restricted searches were conducted for each year during the seven year time frame of 2000 through 2006. The raw number of cases for the years 2000–2006, broken down by year and category of opinions is detailed in the following table.

TABLE 1: TOTAL CASES 2000–2006

Year	State Published	State Unpublished	Federal Published	Federal Unpublished	Total
2000	20	8	7	7	42
2001	35	18	4	4	61
2002	33	38	9	5	85
2003	15	35	10	2	62
2004	26	40	8	12	86
2005	25	40	13	4	82
2006	21	31	12	18	82
TOTALS	175	210	63	52	500

My review and categorization of cases considers all cases on the aforementioned WESTLAW search query. Many fascinating cases were not officially published in case reporters but do appear in the copious WESTLAW

55. *Id.* at 141.

56. *Id.*

57. *See* THE NEIGHBOR, *supra* note 18, at 2 (footnote omitted)

database. At the beginning of each annual section, I include a table that provides a categorical enumeration of the types of neighbor disputes decided by officially published or unpublished judicial decisions for the year in question. This categorical breakdown assigns a particular case to only one predominant type of dispute even though the case might entail more than one possible category. Following the yearly categorical table, I summarize noteworthy cases decided during the relevant year and then, in more detail, highlight, and analyze three selective extreme cases for each year.

B. 2000

TABLE 2: 2000 CASES

Predominant Type of Neighbor Disputes	Number of Cases
Adverse Possession	2
Boundary or Title	7
Criminal Complaint by Neighbor	5
Development/Land Use/Zoning	4
Easements	5
Landscaping/Runoff	2
Non-violent Nuisances	4
Riparian/Water Disagreements	2
Violent Confrontations	5
Miscellaneous	6
TOTAL	42

During the initial year of the new millennium, a variety of disputes among neighbors ended up being addressed by judicial opinions. Notable cases involved: a longstanding feud between two female cousins that led to an arrest by police of one of the women who then sued the police for a strip search under a federal civil rights theory;⁵⁸ a commercial parking lot misunderstanding between an adjourning Hooters restaurant and Olive Garden restaurant;⁵⁹ a civil contempt citation against a Tennessee land owner who disobeyed a trial court order (finding an access easement over the property for the benefit of adjoining land owners) by such acts as placing a barbed wire fence in the middle of the easement road and digging trenches across the road;⁶⁰ a running battle by adjoining Florida neighbors over the

58. *Ciraolo v. City of New York*, No. 97 Civ. 8208 (RPP), 2000 WL 1521180, at *1 (S.D.N.Y. Oct. 13, 2000).

59. *Gen. Mills Restaurants v. Texas Wings*, 12 S.W.3d 827, 831 (Tex. App. 2000).

60. *Reed v. Hamilton*, 39 S.W.3d 115, 117-20 (Tenn. Ct. App. 2000).

noise created by the defendant's chickens;⁶¹ a woman who played loud music, which disturbed her neighbor, resulted in the woman's arrest by police and ended with her civil rights suit against the police for fondling her genitals;⁶² an action by a Kansas livestock owner against his neighbor to recover part of the costs of erecting and maintaining a fence between the respective properties;⁶³ a battle between ocean-adjacent neighbors involving, on the one hand, a woman property owner who wanted to develop a residential subdivision sewage disposal system on her property and, on the other hand, nearby landowners who wanted to prevent the development project;⁶⁴ and a matter that began with disgruntled, spiteful neighbors who picked up telephone conversations of their annoying neighbor (via a police scanner that intercepted a cordless phone call), and ended with a full blown federal lawsuit against a television station that broadcast recorded telephone conversations on television.⁶⁵

The three cases I have chosen for extended discussion, decided by courts during 2000, share themes of escalation, excessiveness and communication breakdown. I analyze each of the cases. Then, I provide synoptic commentary about all three cases. This approach will, likewise, be followed for subsequent years.

1. The Case of the Confiscated Driveway

The first remarkable thing about *Montgomery v. Carter County*⁶⁶ is the focus of the lawsuit: a driveway "slightly more than one-tenth of a mile long . . . roughly eleven feet wide" built by a man named Queen Nave.⁶⁷ But this was no ordinary driveway—it ran over two bridges that spanned streams.⁶⁸ Moreover, various local and federal governmental actions had occurred over the years involving Queen Nave's driveway in Carter County, Tennessee.⁶⁹ Carter County road crews paved the driveway "[t]he Nave family insist[ed] that the only reason why a county road crew paved the driveway was because the crew had a large amount of leftover asphalt after paving a nearby public road" and received permission from Mr. Nave "to get rid of the excess asphalt by laying it down on the then-unpaved driveway."⁷⁰ In 1969, years after the county paved the driveway, Queen Nave's congressman filed a postal petition on his behalf that authorized the U.S. Postal

61. Erwin v. Alvarez, 752 So. 2d 1261, 1262 (Fla. Dist. Ct. App. 2000).

62. Amaechi v. West, 87 F. Supp. 2d 556, 559-60 (E.D. Va. 2000).

63. Kaplan v. Bd. of County Comm'rs, 3 P.3d 1270, 1271 (Kan. 2000).

64. Vittands v. Sudduth, 730 N.E.2d 325, 329-30 (Mass. App. Ct. 2000).

65. Peavy v. WFAA-TV, 221 F.3d 158, 164, 166 (5th Cir. 2000).

66. *Montgomery v. Carter County, Tenn.*, 226 F.3d 758 (6th Cir. 2000).

67. *Id.* at 761.

68. *Id.* at 762.

69. *Id.* at 761-62.

70. *Id.* at 761.

Service to drive up his driveway to deliver mail “directly to his residence” rather than at a rural delivery mailbox on the county road.⁷¹ In the late 1970s, a flood destroyed one of Nave’s driveway bridges.⁷² While federal disaster-relief moneys were provided throughout the county after the regional flood, when “Queen Nave and his daughter, Shirley Montgomery, asked ...[a county official] about the possibility of obtaining federal funds in order to defray the cost of repairing the [driveway] bridge,” they were informed “that federal funds could only be used to repair *county* roads and bridges.”⁷³

Thereafter, Queen Nave died and his residence and adjoining driveway passed to his widow.⁷⁴ She continued to hire persons to maintain the driveway until her death in 1998.⁷⁵ The Nave’s neighbor, Mrs. Hassell, hassled Mary Nave’s daughter, Shirley Montgomery, about the driveway after Mrs. Nave’s death, contending that since the driveway was a *county* road, Hassell would continue to use the driveway over Montgomery’s objections.⁷⁶ Upon further inquiry, Montgomery discovered that, in 1995, the Carter County Commission adopted an official county road list, which designated the driveway as a county road named Queen Nave Road.⁷⁷ There was no evidence, however, “that the driveway was ever dedicated, granted, or otherwise given to Carter County” by the Naves.⁷⁸

The Nave’s surviving daughter, Shirley Montgomery, encountered a deluge of bureaucratic temporizing. She was told by the county road superintendent that while “he had no idea how [the driveway] came to be listed as a county road in the first place . . . there was nothing he could do about it.”⁷⁹ The road superintendent refused her request, which was motivated by prior attempted robberies at the Nave residence, to allow the erection of a fence and gate across the driveway.⁸⁰ Another county official informed her that excavation of the driveway to repair an underground pipe was a violation of state law.⁸¹ Shirley Montgomery enlisted the assistance of an attorney to “request[] that the county road list be administratively corrected by removing Queen Nave Road from the list,” indicating “that the Naves had owned the property for over one hundred and fifty years, that the driveway was part of the property, and that a full title search had revealed that the Naves had

71. *Id.* at 762.

72. *Id.*

73. *Id.* (emphasis added).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 762-63.

never conveyed the driveway to Carter County or anyone else.”⁸² But alas, further governmental snafus were in the offing: the county attorney found “that Carter County had erroneously listed the Naves’ private driveway as a county road on its official road map and road list, and that the driveway should be removed from both.”⁸³ The Nave family then contacted the U.S. postmaster to request that further direct mail deliveries down the driveway to the house cease.⁸⁴ The direct mail cessation down the Nave driveway upset Mrs. Hassell, the neighbor, because *her* direct mail delivery also stopped as a result of the Nave family’s cessation request.⁸⁵ Mrs. Hassell then appeared before the Carter County Commission “to request that the administrative correction [by the county attorney] be rescinded, and that the driveway continue to be designated as a public road”; subsequently, the county commission passed “a resolution to direct the county attorney to write the postmaster, advising that ‘a mistake had been made and . . . the road known as Queen Nave Road is a county road until proven different,’ and requesting that mail service ‘be restored to the residents on that road.’”⁸⁶

Thence began a federal lawsuit by Mary Nave (who passed away thereafter) against the county for an unconstitutional taking of real property for a *private use* (of the neighbor Mrs. Hassell).⁸⁷ A federal district court rebuffed the lawsuit because it had not been preceded by a state court declaratory judgment action to quiet title.⁸⁸ Yet, the United States Court of Appeals for the Sixth Circuit reversed, allowing the Nave suit to proceed.⁸⁹ The unanimous panel opinion ended with the following commentary about how such a simple dispute ended in such tangled and protracted federal litigation:

It is difficult to avoid the conclusion that the costs of this litigation are being compounded out of all proportion to the stakes involved. Even more disturbing, nearly four years after the complaint in this case was filed, the county defendants appear to misapprehend the role of Mary Nave’s neighbor in this dispute. In their opening brief, the county defendants make much of the fact that when Shirley Montgomery asked the Carter County Highway Committee to take her mother’s driveway off the county’s list of roads, she “did not explain . . . that any other person [i.e., Hassell] made use of” the driveway.

82. *Id.* at 763.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 764, 767.

89. *Id.* at 768.

But the question of whether any other person used the driveway appears to have nothing to do with the question of whether the Naves own it or Carter County owns it. Hassell may indeed have a dispute with the Naves over whether she has the right to use the driveway, but that is a very different dispute than the one the county defendants have created.

The answer to whether or not Carter County owns the driveway should be found in its archives. If Carter County has no record of Queen Nave Road existing before it first appeared on the county's list of roads in 1995, and there is no record of the driveway's sale, grant, or dedication to the county, then we are at a loss to understand why the absence of documentation should not be conclusive. Why the county defendants thought that they needed to hear from Hassell in order to determine whether Carter County owns the driveway is unclear. Regardless of the outcome of any dispute between Hassell and the Naves over the use of the driveway, it would not follow that the Naves would have to tolerate the use of their driveway by other uninvited members of the general public, and it certainly would not follow that the driveway is the county's property.⁹⁰

2. The Case of the Angry Citizen Who Protesteth Too Much

Paul Knoeffler became upset about his neighbor's unchained dog and smoke from the neighbor's wood-burning stove.⁹¹ Knoeffler sought redress of these annoyances in the local municipal court but his complaints were dismissed.⁹² Deciding to express his outrage at what he viewed as an injustice, Knoeffler "posted signs on his property facing the street to protest the town judge's decision against him and his neighbors' failure to control their dog and pollution of the air by improper operation of their wood-burning stove."⁹³ Knoeffler started his informational campaign with six signs sporting the following provocative messages:

- "Warning: Town Justice allows Neighbor's Biting Dog to Run Loose!!";
- "Tie Up Your Biting Dog";
- "Poison Your Own Air, Not Ours!";
- "Stop the Smoke Pollution";
- "God Will Not Forsake Us"; and
- "Let the Truth be Known."⁹⁴

90. *Id.* at 772-73.

91. *Knoeffler v. Town of Mamakating*, 87 F. Supp. 2d 322, 323-24 (S.D.N.Y. 2000).

92. *Id.* at 324.

93. *Id.*

94. *Id.*

A few months later, Knoeffler put up a seventh sign in his yard with the following message: “Neighbors and Town Want to Do Away With Our Freedom of Speech and Our Right to Protest!”⁹⁵ Apparently, neither Knoeffler nor his irksome neighbors attempted to informally discuss the dog or smoke issue.

The town’s building inspector, John Grifo, quickly intervened by issuing an “Order to Remedy” to Knoeffler shortly after the posting of the initial batch of six signs.⁹⁶ Grifo’s order stated that four of Knoeffler’s signs were in violation of the Mamakating Town Code—impliedly because the signs did not fit into the category of “permitted signs and billboards” in the town code.⁹⁷ Permitted signs and billboards included “on-site advertising, address signs, identification signs for hotels and non-dwelling buildings, and sale or rental signs.”⁹⁸ Sensing a potential legal brouhaha, about a month later, the building inspector sent Knoeffler “a revised Order to Remedy” and a so-called “letter clarifying the alleged violation,” which, confusingly, explained that Knoeffler’s six signs were “in direct violation” of the town code but went on to assert that the signs “may be permitted” if they “were temporary and intended for informational purposes.”⁹⁹

Further bureaucratic actions followed. Several months after receiving the building inspector’s letter, Knoeffler “filed an application for a permit for ‘six protest signs, and maybe later some more.’”¹⁰⁰ Grifo denied the application in a reply letter, claiming that only the town Zoning Board of Appeals could issue the requested sign permit.¹⁰¹ Knoeffler persisted. He filed his sign permit request with the town zoning board; a public hearing followed which included “several comments from residents who opposed [Knoeffler’s] application because they believed [the] signs were dangerous and could cause traffic accidents.”¹⁰² The board issued a ruling that “retroactively granted [Knoeffler’s] application for a temporary sign permit” but ordered him to remove the signs in about two weeks.¹⁰³

Before the board-ordered removal date, Knoeffler sought a federal court “temporary restraining order and a preliminary injunction” preventing the town from enforcing the town sign ordinances against him.¹⁰⁴ The trial court judge denied Knoeffler’s request for preliminary injunctive relief.¹⁰⁵ At the hearing the town “offered [Knoeffler] to post two signs without limitation as to the subject

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* (citations omitted).

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

matter.”¹⁰⁶ Knoeffler responded to the settlement offer by moving for summary judgment, but, before the motion was decided, the town amended its sign ordinance by asserting public purposes of “attract[ing] economic development” and maintaining “an attractive community and streetscape,” requiring a permit for any sign, except for “exempted signs,” which included a limit of two protest signs of regulated dimensions.¹⁰⁷ As part of his summary judgment motion, Knoeffler sought compensatory and punitive damages “on the basis that the enforcement of the original” sign ordinance violated his First Amendment rights.¹⁰⁸ He also sought a declaration that the amended sign ordinance was “unconstitutional on First Amendment grounds.”¹⁰⁹

The district court ruled that because the original sign ordinance was “content-based” and gave town officials “too much discretion” in permitting requested signs, it violated Knoeffler’s First Amendment rights.¹¹⁰ However, the claim against Grifo, the building inspector, was barred by qualified immunity and Knoeffler was unable, under 42 U.S.C. § 1983, to collect punitive damages against the town.¹¹¹ Moreover, the court decided that the amended sign ordinance was similarly constitutionally invalid on First Amendment grounds because its exemptions were “content-based.”¹¹² The judge ended his opinion by noting that the town’s “laudable efforts to preserve the attractiveness of the town’s residential areas, enhance the homeowners’ enjoyment of their property, attract new residents and maintain property values deserve all the support the courts can properly give.”¹¹³ The judge continued with a simultaneous implied put-down of Knoeffler’s actions coupled with a paean for his right to express himself:

There is less inherent sympathy for a homeowner who undermines those [municipal] efforts by erecting a small forest of unsightly signs on his property. But where the municipality permits signs of any kind on private property, it cannot discriminate against comparable signs publicizing real or imagined grievances against one’s neighbors or the town administration. Indeed, this form of speech affords the speaker considerable “bang for the buck.” Plaintiff in this case has undeniably received great notoriety for his message . . . but also a reasonable choice of delivery media. . . .¹¹⁴

106. *Id.* at 324-35.

107. *Id.* at 325 (citations omitted).

108. *Id.* at 326.

109. *Id.* (citations omitted).

110. *Id.* at 327.

111. *Id.* at 329.

112. *Id.* at 331-33.

113. *Id.* at 333.

114. *Id.*

The court in *Knoeffler*—perhaps in a gesture of Solomonic wisdom—held that “[i]f plaintiff can prove that he has sustained significant actual injuries as a result of the enforcement of any of those [sign] ordinances against him[,] he may seek [compensatory] damages therefore pursuant to 42 U.S.C. § 1983.”¹¹⁵

3. The Case of the Frustrated “Artist”

From the vantage point of Edward Emery, all of his legal problems flowed from his artistic spirit. Emery built “a large masonry structure in his backyard which resembled a castle,” but neighbors considered Emery’s “castle” to be a nuisance and succeeded in their efforts at forcing the dismantling and removal of the edifice by order of the City of Toledo, Ohio.¹¹⁶ Emery had been “feuding” with his next-door neighbor, Debra Bennett, over the castle construction, and she was the “principal complainant” about the nuisance.¹¹⁷

Bad feelings between Ed and Debra quickly escalated with Ed deciding to act out. Indeed, as judiciously phrased by the Ohio appellate court, “[i]f relations between these two neighbors had ever been cordial, they were not so following the removal of the castle.”¹¹⁸ In the immediate aftermath of the castle dispute, Ed called Debra “a cocaine and heroin addict, a whore and prostitute.”¹¹⁹ Then Ed apparently dumped trash in Debra’s front yard, toilet-papered a tree on her property, and stole political signs on her land.¹²⁰ Amazingly, Debra’s testimony claimed that, in the three years prior to bringing her criminal complaint against Ed of “menacing by stalking” and violation of a protective order, “she had forty-one flat tires, the result of nails or slashing,” incurred damage to her outdoor security lighting six times and suffered the filing of numerous frivolous lawsuits brought by Ed against her and her teenage son.¹²¹ To add to the pattern of malicious activity, Ed began videotaping Debra, her children, and visitors to her home and also “installed mirrors on the side of his house” that faced Debra’s home.¹²² A few months before Debra filed her criminal complaints against Ed, she found a note inside her morning paper on her front porch:

The note read, “Pay the Piper! for your sins what rights do you’ve to destroy other’s property work of art? Go to the zoo west end Newsboys U.T. &

115. *Id.*

116. *City of Toledo v. Emery*, No. L-99-1067, 2000 WL 864305, at *1 (Ohio Ct. App. June 30, 2000).

117. *Id.*

118. *Id.*

119. *Id.* (internal quotation marks omitted).

120. *Id.*

121. *Id.*

122. *Id.*

Friends.” The note was attached to a section of the *Toledo Blade* newspaper with a picture of a large sculpture being installed at the University of Toledo campus. An arrow was drawn to the picture in green ink; the same color ink used in the note.¹²³

Ed was slapped with a temporary protective order at the same time that Debra filed a criminal complaint against him for stalking.¹²⁴ But Ed didn’t comply and continued to videotape Debra and her children. Ed endured two separate jury trials—in the first, he was convicted of menacing by stalking and, in the second, of violations of the protective order.¹²⁵ On the stalking conviction, Ed received a 180-day jail sentence, “with all but ten days suspended” and probation; on the protective order conviction, Ed received a 180-day jail sentence followed by a 180-day electronic monitoring (house arrest) sentence.¹²⁶

Ed mounted an assortment of arguments attacking his convictions on appeal; none of his attacks succeeded.¹²⁷ What is interesting, for our purposes, are the observations contained in the appellate opinion. First, the court noted that there was evidence of “an ever escalating pattern of vandalism and harassment and that such behavior might reasonably cause” Debra and her children “to fear that the next step would be physical harm.”¹²⁸ Second, another penetrating comment by the appellate court related to Ed’s videotaping activities in the course of his continuing battle with his neighbor, Debra. According to the court’s analysis, such “incessant camera use” can “assist the jury in understanding . . . otherwise innocent appearing acts, when put in the context of previous contacts he has had with the victim” that, on balance, are really “knowing attempts to cause mental distress.”¹²⁹ Thus, Ed’s “videotaping” of Debra, her children, and her visitors “was but one part of a behavioral pattern which caused the victims to be fearful or distressed.”¹³⁰ And, as the Ohio appellate court concluded, while “any videographer[] may have some liberty interest in taking pictures, such rights do not necessarily supersede [a neighbor’s] right to be left alone in the privacy of his or her own home.”¹³¹

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at *2.

128. *Id.* at *3.

129. *Id.* at *6 (internal quotation marks omitted) (citation omitted).

130. *Id.*

131. *Id.* at *6 (referencing *Cary v. Brown*, 447 U.S. 455, 477 (1980) (Rehnquist, J. dissenting)).

4. Synoptic Comments

All three 2000 neighbor cases that I subjected to extended commentary above¹³² might have been resolved sooner, and with less rancor, had a more effective and proactive dispute resolution system been in effect. None of the litigants in these cases appeared to be wealthy and able to invest in the cost of private arbitration or mediation. Yet, in the long run, they all probably incurred significant transaction costs that could have been minimized had government or nonprofit entities with appropriate expertise made meaningful social and psychological interventions. None of the disputants in the three case samples had patently frivolous positions at the onset of their respective disagreements.

In the *Case of the Confiscated Driveway*, the private neighbors had plausible grounds for believing that each enjoyed property rights over the driveway in question while the county officials seemed to have colorable reasons for contending that the driveway was a public thoroughfare.¹³³ In the *Case of the Angry Citizen Who Protesteth Too Much*, the plaintiff claimed to be bothered by his neighbor's dog and by smoke from the neighbor's wood-burning stove.¹³⁴ Were these unreasonable complaints? Whether or not the dog/stove-owning neighbors were following the letter of existing law, was there no possibility for reasonable accommodation or suggestions for ameliorating the impact on their complaining neighbor? Maybe if both neighbors had been informally assisted in talking through their competing perspectives a cheaper and more satisfactory accommodation could have been fashioned.

And, even in the *Case of the Frustrated "Artist,"* Ed, before he pursued his unreasonable and vindictive harassments of his neighbor, Debra, was he really so off base in seeking an outlet for his artistic expression? Perhaps an early neighborhood peacemaking effort could have channeled Ed's artistic impulse into contributing to the building of a community playground for children or painting a mural on a railroad bridge wall.

Even the potentially cost-prohibitive availability of a governmental or nonprofit neighborhood dispute settlement program in these three cases might not have scotched the potential for early settlement and diffusing of these various disputes. Had one of the attorneys in each of the cases suggested to his or her client a more subtle, less confrontational posture, the eventful human tragedies of the cases—in emotional distress, wasted time, hardened hearts and revenge-seeking behavior—might have been forestalled.

132. See *supra* notes 66–131 and accompanying text.

133. See *Montgomery v. Cater County*, Tenn., 226 F.3d 758, 761-62 (6th Cir. 2000).

134. See *Knoeffler v. Town of Mamakating*, 87 F. Supp. 2d 322, 323-24 (S.D.N.Y. 2000).

C. 2001

TABLE 3: 2001 Cases

Predominant Type of Neighbor Dispute	Number of Cases
Adverse Possession	3
Boundary or Title	6
Criminal Complaint by Neighbor	10
Development/Land Use/Zoning	3
Easements	4
Landscaping/Runoff	5
Non-Violent Nuisances	7
Riparian/Water Disagreements	3
Violent Confrontations	9
Miscellaneous	11
TOTAL	61

During 2001, neighborhood disputes of various type and intensity ended up being resolved in the courts. Illustrious cases included the following: a disagreement over a county road easement between owners of two Montana parcels of land that involved property worth less than \$2,000 and mushroomed into litigation that entailed tens of thousands of dollars in attorneys' fees;¹³⁵ an antagonistic feud between two neighboring Massachusetts families that led to one neighbor commanding his German shepherd dog to "get" the neighbor, frighten the neighbor's family, and ended with the dog inciter being criminally convicted of assault by a dangerous weapon;¹³⁶ a Los Angeles melee between two nearby households that led to a murder by gunshot of a young woman and the imprisonment of the woman shooter to a term of 68 years to life;¹³⁷ a wrangle between rural Colorado landowners over ditch rights and delivery of irrigation waters;¹³⁸ the tragic mauling of an eleven-year-old child by one of twenty vicious dogs who escaped from the property of a subdivision resident who harbored the vicious dogs used for boar hunting and guarding;¹³⁹ a longstanding squabble

135. Langemeier v. Kuehl, 40 P.3d 343, 504 (Mont. 2001).

136. Commonwealth v. Campbell, No. 00-P-579, 2001 WL 1646107 at *1 (Mass. App. Ct. Dec. 24, 2001).

137. People v. Day, No. B140769, 2001 WL 1555307, at *1-2 (Cal. Ct. App. Dec. 6, 2001).

138. Strole v. Guymon, 37 P.3d 529, 531 (Colo. App. 2001).

139. Cody F. v. Falletti, 92 Cal. App. 4th 1232, 1236-37 (Cal. Ct. App. 2001). Alas, the child was unable to recover tort damages from the members of a subdivision association who owned access easements over the road where the child was attacked by a vicious dog. *Id.* at

involving Tennessee neighbors over the moving of a storage shed and the zoning board approval for the construction of a private swimming pool;¹⁴⁰ a federal case involving the revocation of a criminal convict's supervised release term and imposition of a fifteen-month prison sentence for the convict's conviction in state court for his refusal to comply with court orders concerning a recurring property dispute with a neighbor;¹⁴¹ a tiff between rural Tennesseans, starting with a decision by a couple to place a double-wide mobile home on their property, escalating when one of the neighbors blocked the access road to the couple's land to try to prevent them from setting up their mobile home, and ending by a court establishing a boundary line and awarding the couple over \$6,000 to compensate them for the tortious delay in their being able to erect their mobile home;¹⁴² a battle involving two residents of an Ohio condominium complex, which culminated in one of the residents being found guilty of telephone harassment by a state municipal court and sentenced to 180 days jail time (suspended on condition of no-contact with other condominium residents) and which ended by the defendant violating probation by blocking another condominium resident's automobile on a public road and eventually yelling an obscenity;¹⁴³ a Rhode Island controversy that started when George Caramicu sought injunctive relief against his neighbors for disturbing his quiet neighborhood, leading to the parties agreeing to a mutual no-contact order, and culminated in George being adjudged to be in contempt for subsequently videotaping his neighbors to harass them;¹⁴⁴ a Montanan named Wayne Josephson

1236. The appellate court held that subdivision members did not have a duty to prevent one member from allowing unsecured vicious dogs to escape from his property. *Id.*

140. *Levy v. Bd. of Zoning App.*, No. M1999-00126-COA-R3-CV, 2001 WL 1141351, at *1 (Tenn. Ct. App. Sept. 27, 2001).

141. *United States v. Long*, 18 Fed. Appx. 158 (4th Cir. 2001).

142. *Savage v. Hildenbrandt*, No. M1999-00630-COA-R3-LV, 2001 WL 1013056, at *1 (Tenn. Ct. App. Sept. 6, 2001).

143. *State v. Hayes*, No. WD-00-075, 2001 WL 909291, at *1 (Ohio Ct. App. Aug. 10, 2001). The defendant's psychiatrist testified at the show cause hearing "that in addition to suffering from depression, [the defendant] has an unspecified personality disorder which causes her to overreact to situations." *Id.* (internal quotation marks and brackets omitted).

144. *Caramicu v. Rossi*, No. KC2001-0501, 2001 WL 872978, at *1-2 (R.I. Super. Ct. July 27, 2001). The Superior Court judge exercised wit and wisdom during the course of the opinion. The judge started with a quotation from the ancient Greek poet, Hesiod: "It has been said that a bad neighbor is as great a calamity as a good one is a great advantage." *Id.* at *1 (internal quotation marks omitted). Moreover, the judge noted that George Caramicu "has become obsessed" with his neighbors, and "has engaged in behavior that aggravates, rather than calms the turbulent situation in the neighborhood," in a "course of conduct [which] may well lead to violence." *Id.* at *3. Finally, in a Solomonic flourish at the end of the opinion, the judge concluded: "May this ruling serve as a warning ... to everyone involved in this litigation, that they should turn down the volume on this neighborhood dispute. Try to live in peace with one another and channel your energies toward a more worthwhile pursuit than making life miserable for each other." *Id.*

escalating a neighborhood disagreement over the use of a septic system by staring, shouting profanities, making oral threats, brandishing a pistol, firing shots over neighbors' property, making racial slurs, violating a restraining order and terrorizing his neighbors who sued him for compensatory and punitive tort damages;¹⁴⁵ a rural Indiana couple was fined \$150,000 by a county zoning board for burning off-site demolition debris which they had accepted for a fee and which led to numerous complaints by neighbors of malodorous and noxious smoke;¹⁴⁶ a quarrel between neighbors over the playing of loud music by children led to a police visit, which was, in turn, reported by the mother of the music-playing children as unnecessarily impolite, which, in turn, led the police officer to obtain an arrest warrant for the mother a few days later, whereby another police officer and a trainee policeman arrested the mother and "searched" her by opening a housedress she was wearing at the time followed by swiping her bare vagina and putting his hands up into her butt cheeks, which led the woman to sue the arresting police in constitutional tort action;¹⁴⁷ and a Hawaii suit by neighbors alleging that another neighbor violated federal water pollution law.¹⁴⁸

The overarching themes of the three 2001 cases subject to in-depth analysis are over-aggressiveness, lack of restraint, and human tragedy.

1. The Case of Rabbit Droppings, Water Spraying, and Wrongful Deaths

The Supreme Court of Washington adjudicated a profound tragedy in *Allstate Insurance Co. v. Raynor*.¹⁴⁹ The first sentence of the court's opinion sums up the neighborhood apocalypse: "[u]pset over rabbits and rabbit droppings in the property next to his, 72-year-old Milton King fatally shot his neighbor Candy Johnson and her 12-year-old daughter Cheryl Raynor, then immediately committed suicide."¹⁵⁰ A wrongful death action followed against Milton's widow, Margie, and Milton's estate. Allstate Insurance Company, the provider of the King's homeowner's insurance policy, brought a separate declaratory judgment action, seeking a ruling that the insurer was not liable for the neighbors' deaths under the terms of its policy with the Kings.¹⁵¹

Milton King, prior to his deadly shootings of two of his neighbors, had been criminally convicted of second degree assault with his .22 caliber handgun and had

145. *Lopez v. Josephson*, 30 P.3d 326, 328 (Mont. 2001).

146. *Dierckman v. Area Planning Comm'n of Franklin County, Ind.*, 752 N.E.2d 99, 101 (Ind. Ct. App. 2001).

147. *Amaechi v. West*, 237 F.3d 356, 358-59 (4th Cir. 2001).

148. *Wright v. Dunbar*, 1 Fed. Appx. 656, 658 (9th Cir. 2001).

149. *Allstate Ins. v. Raynor*, 21 P.3d 707, 708-09 (Wash. 2001) (en banc).

150. *Id.*

151. *Id.* at 708.

his gun confiscated by the police.¹⁵² But, after about a year and a half he was allowed to legally regain possession of his handgun.¹⁵³ Apparently Milton never was incarcerated for the crime.

Within a few days of retrieving his gun, Milton escalated a controversy that started a few weeks earlier involving his neighbors' keeping of rabbits.¹⁵⁴ Three days after Milton got his gun back, he went to the town planning office to complain about the offensive rabbits.¹⁵⁵ "When he was not waited on in a timely fashion, he proceeded to the mayor's office."¹⁵⁶ Upon learning that neither the mayor nor the city manager could see him, he announced to a clerk that he "would just have to take care of this myself" and left.¹⁵⁷ Three days after his in-person visit to the town office—and exactly one week after he had regained possession of his gun—he telephoned the planning office to determine whether any government action had been taken to deal with "the rabbit situation."¹⁵⁸ Then he traveled to the town police station "to ask officers to come and stop [his neighbors from] raising rabbits," explaining "that the rabbits had caused him stress, insomnia, and higher blood pressure."¹⁵⁹ The police did not respond to Milton's complaint.¹⁶⁰

Milton and his wife, Margie, exacerbated tensions with the rabbit-raising neighbors later that same day. First, Candy, the adult mother, her two daughters, and a friend of the girls "began stacking wood near the fence they shared with the Kings."¹⁶¹ Milton and Margie were displeased with this wood-stacking and cursed at the mother and the young girls.¹⁶² Candy then called 911 and a town policeman responded, assuring her "that it was lawful for her to raise rabbits and stack wood on her property."¹⁶³ Second, after the 911 responder contacted the Kings, "Milton insisted Candy was stacking the wood to cover up rabbit droppings as well as simply to harass him."¹⁶⁴ The police officer refused Milton's demand to stop his neighbors from raising rabbits and left the King household with Milton spewing forth verbal abuse after him.¹⁶⁵

152. *Id.* at 709.

153. *See id.*

154. *Id.*

155. *Id.* (internal quotation marks omitted) (record citation omitted).

156. *Id.*

157. *Id.* at 708 (internal quotation marks omitted).

158. *Id.* at 709.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

Later, refusing to accept the status quo, Margie King called 911 after the policeman had left her property.¹⁶⁶ The dispatcher then contacted the same policeman who had responded to the initial emergency call.¹⁶⁷ After some back-and-forth radio communications between the cop, his supervisor, another policeman, and a police department receptionist (who overheard the calls and warned the 911 dispatcher that based on thirty years experience as Milton's neighbor and acquaintance "she believed that absent intervention, [Milton] might end up doing something very violent"),¹⁶⁸ the 911 dispatcher "called the Kings to tell them the police would not be responding."¹⁶⁹ During the course of his radio communications with other police personnel, the policeman who had originally responded to the neighborhood spat referred to both Milton and Margie King as being "10-22," the "code for persons engaged in conduct suggestive of a mental disorder."¹⁷⁰

After Milton learned the police would not come back, he "armed himself with his .22 caliber handgun and a .38 caliber revolver and went out into his backyard, where he stood watching [his neighbors] Candy and the children stacking wood."¹⁷¹ Margie successfully persuaded her husband to come back into the house but, moments after Milton lay down inside, Margie acted out herself.¹⁷² Margie went back outside into her backyard: she poked through the fence dividing her property with her rabbit-loving neighbors in an attempt to knock over the woodpile they were stacking (which she believed was hiding rabbit droppings).¹⁷³ Margie then "turned on a water sprinkler, spraying the [neighbor] girls next door and eliciting a pejorative verbal response from them."¹⁷⁴ Finally, the pièce de resistance of the conflict transpired:

Suddenly, Milton burst from his house and stormed directly onto Candy's property, firing his .22 caliber handgun. Candy was hit once in the mouth, and her daughter Cheryl twice in the chest. Candy and her other daughter Kathryn ran into the house, and the girls' friend fled the scene. Candy called 911 and, despite her mouth wound, was able to inform the dispatcher she had been shot. While Candy was still on the phone with the 911 dispatcher, Milton entered her house and shot her twice more in the chest. Severely wounded, Candy sought refuge in the bathroom with her daughter Kathryn, who hid in the

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 709 n.1.

171. *Id.* at 710.

172. *Id.*

173. *Id.* at 709-10.

174. *Id.* at 710.

bathtub. Candy pressed her back against the door to prevent Milton from entering. Milton then left the house and fatally shot himself in the head with his .38 caliber revolver. Candy and Cheryl died from their gunshot wounds.¹⁷⁵

The homeowner insurance declaratory judgment suit boiled down to arid policy language, which covered accidental third party liability for bodily injury but excluded coverage for intentional or criminal acts.¹⁷⁶ The Supreme Court of Washington found it easy to affirm the lower state court's summary judgment in favor of Allstate, noting that Milton, prior to his suicide, "clearly engaged in *serious criminal conduct*" notwithstanding his "diminished mental capacity" leading up to the killings.¹⁷⁷ Justice Tallmadge observed, in a concurrence, that the expert psychiatric testimony, which was part of the trial record, indicated that Milton King did not act "under delusion," but, rather: "[Milton] did not believe he was using a toy gun to shoot at cardboard cutouts. He knew he was using a real gun to shoot real bullets at real people. He acted *volitionally*. As such, King's acts fell within the policy's intentional act exclusion."¹⁷⁸ In a telling postscript, the concurrence added: "The events in this case are tragic, given the loss of three lives over a minor neighborhood dispute. That a man of Milton King's disposition had a firearm is very difficult to understand; he should never have had the weapon."¹⁷⁹

2. The Case of the Mississippi Houseboat

The Supreme Court of Minnesota sorted out tort law principles in *Jensen v. Walsh*, a dispute involving neighbors who owned land next to one another along a water channel that led to the Mississippi River.¹⁸⁰ The Walshes were upset with their perception that the "Jensens' houseboat restricted their access to the river."¹⁸¹ Apparently, the Walshes did not like the fact that the Jensens rented their land-based house to a couple, William and Celeste Spooner, while living in their houseboat in the channel adjoining their property.¹⁸²

During the summer, James and Patricia Walsh, their daughter S.W., and an adult friend of the Walshes, Timothy Schacher, launched a concerted campaign "to drive the Jensens from [their] property or, at least, to convince them to remove the houseboat."¹⁸³ After being jointly sued with the Walshes for intentional damage to

175. *Id.* (footnote omitted).

176. *Id.*

177. *Id.* at 712.

178. *Id.* at 715 (Tallmadge, J., concurring).

179. *Id.* at 715-16.

180. *Jensen v. Walsh*, 623 N.W.2d 247, 248 (Minn. 2001).

181. *Id.*

182. *Id.*

183. *Id.*

property and intentional infliction of emotional distress, Schacher spilled the beans and admitted to the following summer occurrences:

James Walsh and Schacher stole the Jensens' electric meter and Schacher cut the Jensen's telephone line. Early in the morning of the day that the Spooners were to be married at the Jensen property, Schacher and Patricia Walsh's daughter, S.W., apparently with Patricia Walsh's knowledge, spray-painted an obscenity and "welcome" on the Jensens' garage and threw eggs against the houseboat and other property. Schacher and S.W. took the Walshes' cordless drill and S.W. used the drill to puncture tires on vehicles parked at the Jensen property. In addition, James Walsh pleaded guilty to disorderly conduct for operating his boat in an alarming manner near the Jensens' houseboat.¹⁸⁴

The trial court granted the Walshes' motion for partial summary judgment dismissing the plaintiffs' emotional distress cause of action.¹⁸⁵ The trial court also denied the plaintiffs' motion to amend their complaint to seek punitive damages.¹⁸⁶ Before trial, the litigants stipulated to a settlement whereby the Walshes and Schacher would pay \$5,765 to the plaintiffs for property damage, with the reservation of the plaintiffs to appeal dismissal of their claims for intentional infliction of emotional distress and punitive damages.¹⁸⁷ The Minnesota intermediate appellate court affirmed the trial court's dismissal rulings.¹⁸⁸

On appeal, the Supreme Court of Minnesota reversed the lower court's holding that the plaintiffs could not seek punitive damages in an action for intentional damage to property.¹⁸⁹ Relying on a state statute, which authorized Minnesota courts to award punitive damages in civil actions, the Supreme Court opined:

Without punitive damages, one who acts with deliberate disregard of the rights or safety of others faces no greater penalty than a well-meaning but negligent offender. It is therefore appropriate, in determining whether punitive damages should be allowed, to focus on the wrongdoer's conduct rather than to focus on the type of damage that results from the conduct.¹⁹⁰

184. *Id.*

185. *Jensen v. Walsh*, 623 N.W.2d 247, 249 (Minn. 2001).

186. *Id.*

187. *Id.*

188. *Id.* at 249.

189. *Id.* at 251-52 (statutory citation omitted).

190. *Id.* at 251.

3. The Case of the Unethical Lawyer

The Supreme Court of Nevada had little trouble in concluding that a lawyer's litigation conduct justified disbarment in *In re Discipline of Schaefer*.¹⁹¹ John Michael Schaefer became deeply entangled in litigation involving himself, his corporation, and his condominium association in southern Nevada.¹⁹² Schaefer, an attorney who was licensed in Nevada, was "president of Schaefer, Inc., which owns several condominium units at Wimbledon Tennis Club Condominiums" in Nevada.¹⁹³ Attorney Schaefer lived in one of the Wimbledon condominiums, and his corporation leased other units to various tenants.¹⁹⁴ Schaefer had numerous litigation disputes with his condominium neighbors—"these disputes became so pervasive that realtors attempting to market other condominium units were compelled to disclose to potential buyers that a litigious attorney lived there."¹⁹⁵

Mr. Schaefer engaged in numerous instances of sharp dealing. In one matter, he inserted an award of costs to his corporation when the court had not ordered costs, and, then, when the order was inadvertently entered by the court, he forced opposing counsel to make a motion to correct the erroneous order.¹⁹⁶ In a second matter, Schaefer had a run-in with members of the condominium association board, which resulted in the errant attorney's conviction of two counts of misdemeanor battery.¹⁹⁷ In response, Schaefer filed a frivolous complaint against various condominium residents for a conspiracy to assault Schaefer.¹⁹⁸ In violation of a no-contact order, Schaefer went to the residence of one of the litigants, talked to the wife who answered the door, and tried to work out a deal to drop the assault conspiracy complaint in return for cooperation in helping Schaefer resolve his misdemeanor battery.¹⁹⁹ Schaefer made the ex parte contract in spite of his knowledge that the litigant was represented by counsel.²⁰⁰ In related contacts, Schaefer frightened condominium residents by slipping communications under their doors late at night.²⁰¹

Attorney Schaefer also became embroiled in other personal litigation against a Nevada casino and made direct contacts with casino executives in spite of his

191. *In re Discipline of Schaefer*, 25 P.3d 191, 206 (Nev. 2001).

192. *Id.* at 195.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 195-96.

197. *Id.* at 196.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 196-97.

knowledge that the casino was represented by counsel.²⁰² He failed to notify a Texas court of his prior disciplinary penalties in an affidavit he filed for pro hac vice admission in a case.²⁰³ The Supreme Court of Nevada had little trouble in ordering that Schaefer be disbarred for “a blatant disregard . . . for the rights of others and the administration of justice,” with a substantial part of his unprofessional conduct involving his personal litigations against his condominium neighbors.²⁰⁴

4. Synoptic Comments

While the three 2001 neighborhood dispute cases that were highlighted in my in-depth discussion²⁰⁵ appear, at first blush, to be unrelated, upon further reflection they share an overarching characteristic of involving interactions between neighbors where the wayward parties dehumanized others and acted out to harm their fellow human beings in outrageous ways.

In the *Case of Rabbit Droppings, Water Spraying and Wrongful Deaths*, why did the elderly couple find their neighbors, who were mostly children, *so* deviant in keeping pet rabbits? Did Margie and Milton forget what it was like to be a kid? And when Milton’s complaints to town officials fell on deaf ears, why didn’t he persist in bringing whatever legitimate concerns he had (e.g. the smell of rabbit droppings, the possible health concerns in attracting insects) to the attention of local officials? Still, the police and local government employees probably had enough information to realize that either or both Milton and Margie were mentally ill. Would referral to a social service agency for intervention (a possible civil commitment proceeding) have been a viable response that might have prevented the carnage? And, how, indeed, did Milton get his handgun back from the police after his earlier criminal conviction?

The Case of the Mississippi Houseboat, was a matter of one set of neighbors demonizing another set of neighbors. Perhaps there was some inconvenience and annoyance by the neighbors who suffered impeded access to the river because of their bordering residents. But one wonders how this simple annoyance escalated to the point where the Walshes and their friend spray-painted obscenities on the neighboring garage, threw eggs, drilled holes in car tires, and went ballistic in

202. *Id.* at 197.

203. *Id.* at 205.

204. *Id.* at 206. Among the technical violations that the Nevada court pinpointed were the following: failure to file “meritorious claims”; failure to provide “candor toward the tribunal”; failure to exhibit “fairness to opposing party and counsel”; “communication with represented party”; “criminal act adversely reflecting on lawyer’s fitness”; “misconduct involving dishonesty, deceit, fraud or misrepresentation”; and “conduct prejudicial to administration of justice.” *Id.* at 205 (professional rule citations omitted) (parentheses omitted).

205. *See supra* notes 149–204 and accompanying text.

operating a boat. The perpetrators of these tortious (and arguably criminal) acts appeared to be members of the upper middle class. One can picture them inciting one another to “get back” at their bothersome neighbors. Perhaps the behavior of the teenager might be chalked up to a youthful indiscretion, but how is it that mature and prosperous individuals can become so violent over such small potatoes?

Likewise, *The Case of the Unethical Lawyer* involved a person (who happened to be a lawyer) who took his comfort, his property, and his perceived well-being over the top by treating his neighbors (and their attorneys) as if they were not fellow human beings entitled to respect, fairness, and consideration. Amazingly, a licensed attorney became so obsessed with his condominium properties that he became violent with his neighbors and attempted to coerce them to do his bidding.

D. 2002

TABLE 4: 2002 CASES

Predominant Type of Neighbor Dispute	Number of Cases
Adverse Possession	2
Boundary or Title	16
Criminal Complaint by Neighbor	7
Development/Land Use/Zoning	15
Easements	8
Landscaping/Runoff	1
Non-Violent Nuisances	8
Riparian/Water Disagreements	5
Violent Confrontations	7
Miscellaneous	16
TOTAL	85

In 2002, a plethora of battles involving neighbors were adjudicated in state and federal courts. A sampling of these controversies entails: a federal suit over water service between a rural water district and a Kansas municipality,²⁰⁶ a feud between families that started with a confrontation between two young children at school,²⁰⁷ which led, in the court’s analysis, to “the relationship between the two families . . . [going] to hell in a handbasket”²⁰⁸ (including mutual videotaping, filing of false

206. Rural Water Dist. No. 1, Ellsworth County, Kan. v. City of Wilson, Kan., 211 F. Supp. 2d 1324, 1325-26 (D. Kan. 2002).

207. Weaver v. Child, No. E030387, 2002 WL 1839275, at *1 (Cal. Ct. App. Aug. 13, 2002).

208. *Id.*

police reports, interference in the sale of a house, and stalking);²⁰⁹ a suit by environmental groups against the United States Forest Service challenging timber sales on national forest land;²¹⁰ a dispute involving ownership rights of coal bed methane in Wyoming;²¹¹ a case of conflicting land uses involving homeowners and an adjoining auto parts store involving the homeowners' anxiety and mental distress from the traffic and noise of the store, which was exacerbated by the city's pavement of an alley that prevented the homeowners from using their garage;²¹² a boundary line dispute between Ohio neighbors that supposedly was "settled" but dragged on for nearly a decade²¹³ because of "an endless stream of suspect motions"²¹⁴ filed by one of the attorneys in the case; a remodeling project by a California couple to add additional space to their home that was strenuously opposed by a neighbor who claimed the second-floor addition "would interfere with her sunlight and privacy" and who "acted in an antagonistic and offensive manner" during a topographical survey, leading to police intervention;²¹⁵ a multi-year encounter between a real estate developer who brought a series of losing suits against Ohio neighbors who he unsuccessfully claimed, were interfering with his building of a single family lot;²¹⁶ a disagreement among members of a homeowners' association over street access and parking mushroomed into the unsubstantiated filing of an unsuccessful restraining order by a couple against their neighbor who, in turn, assessed nearly \$25,000 in attorney's fees against the couple;²¹⁷ a spat between Washington neighbors led to feuding arguments about a mutual restraining order brought on by a miscellany of complaints involving removal of a no trespassing sign, throwing fireworks, posting of a sign that said "[w]hoever said love thy neighbor never met ours," and calling the Humane Society about a noisy peacock;²¹⁸ a tiff arising from a woman's parking of a RV motor home on the street in front of her home and the homes of her neighbors,

209. *Id.* at *1-3. A police officer testified that Mr. Child was "obsessed with his feelings of persecution and ... convinced that there [was] a neighborhood 'vigilante gang' conspiring to chase him from the neighborhood." *Id.* at *3.

210. *Idaho Sporting Congress, Inc. v. Alexander*, 45 Fed. Appx. 788, 790 (9th Cir. 2002).

211. *Newman v. RAG Wyoming Land Co.*, 53 P.3d 540, 541 (Wyo. 2002).

212. *Cozby v. City of Waco*, 110 S.W. 3d 32, 34-35 (Tex. App. 2002).

213. *Jackson v. Bellomy*, No. 01AP-1397, 2002 WL 31667233, at *1-2 (Ohio Ct. App. Nov. 27, 2002).

214. *Id.* at *7.

215. *Citroen v. Town of Corte Madera*, No. A095377, 2002 WL 31521732, at *5-6 (Cal. Ct. App. Nov. 14, 2002).

216. *Alsenas v. Barberic*, No. 80715, 2002 WL 31195207, at *1 (Ohio Ct. App. Oct. 3, 2002).

217. *Osgood v. Higazi*, No. A095847, 2002 WL 31151631, at *1-2 (Cal. Ct. App. Sept. 27, 2002).

218. *Hough v. Stockbridge*, 54 P.3d 192, 193 n.1 & n.2 (Wash. Ct. App. 2002).

leading to her neighbors obtaining an injunction²¹⁹ because the “RV was an eyesore, a hazard to drivers, pedestrians, and children playing in the vicinity, and a burden on property values”;²²⁰ a showdown between two couples who owned adjoining oceanfront lots in Massachusetts, with one couple whose family had owned or occupied the property for several decades objecting to and delaying a renovation proposal by the new couple while also allowing their dogs to frighten the new couple’s children and allowing their family to drive golf balls onto the new couple’s property, resulting in a judgment on a jury verdict pursuant to a state civil rights statute in favor of the new couple for \$211,000 in damages, \$150,000 in attorney’s fees and \$10,000 in costs;²²¹ a simple request by a homeowner for local planning commission approval to expand his house by the addition of two outdoor

219. *Fabiszewski v. Barbera*, No. A097957, 2002 WL 31888041, at *1 (Cal. Ct. App. Dec. 30, 2002).

220. *Id.* at *3 (internal quotation marks omitted). *Cf.* Dan Slater, *Unneighborly Suit*, WALL ST. J., May 21, 2008, at B6.

A federal appeals court in Chicago recently had some choice words for the players in a free-speech lawsuit. Calling the suit “petty” and “trivial,” Judge Diane Sykes wrote: “Lawsuits like this one ... contribute to the impression that Americans are an overlawyered and excessively litigious people.”

Precipitating the judge’s ire was a heated neighborhood spat. According to the opinion, suburban Chicago homeowners Jeffrey and Vicki Purtell parked a large recreational vehicle in their front yard. Some annoyed neighbors persuaded the town to adopt an ordinance banning storage of RVs on residential property.

In protest, the Purtells erected six tombstones in their front yard. Etched on each: a year of death corresponding to a respective neighbor’s address.

When a police officer made a second visit to the Purtells to persuade them to take the tombstones down, one of the neighbors arrived home from work and “chest-buffed” Jeffrey Purtell. The officer then told Mr. Purtell that if he didn’t take the tombstones down he would be arrested. Mr. Purtell complied, but later sued the officer for damages, asserting, among other claims, a First Amendment claim for violation of free speech.

A jury decided that tombstones constituted “fighting words,” and therefore weren’t deserving of First Amendment protection. The appeals court largely upheld the verdict, though it didn’t entirely agree with the jury’s conclusion.

Id.

221. *Ayasli v. Armstrong*, 780 N.E.2d 926, 928-29 (Mass. App. 2002). Judge Rapoza, however, wrote a dissenting opinion from the appellate court’s affirmance of the substantial judgment on the jury verdict. Judge Rapoza opined that “[t]his case presents a squabble between neighbors, which, as is often the case, began peacefully enough but soon escalated in intensity.” *Id.* at 940 (Rapoza, J., dissenting). Judge Rapoza went on to observe that “[h]uffing and puffing is not uncommon during neighborhood disputes, especially those wending their way through town hall en route to further litigation.” *Id.* at 942. Moreover, he pointed out: “The type of neighborhood imbroglio that we consider here is not at all uncommon, and I am loath to see such disputes in the future inevitably give rise to claims of civil rights violations merely because one of the participants proves intemperate or inconsiderate.” *Id.* at 943.

decks and a bedroom led to a neighbor's writing of a letter of objection to local authorities contending that the homeowner—based on information obtained in an Internet search—was affiliated with the Mafia and the Scientology movement and this letter, in turn, triggered an unsuccessful defamation suit;²²² an African alien in the United States was denied asylum protection by a federal appellate court in spite of a troubling personal dispute with a neighbor in Africa who murdered the individual's family in the country of Burkina Faso before he fled to America;²²³ an action by Oregon neighbors who brought a tort suit against a developer who, through excavation activities on undeveloped lots, caused landslides to the neighbors' homes;²²⁴ a quarrel between adjoining homeowners involving the nuisance placement and use of a garden, swing set, sand box, outdoor lighting, and a swimming pool close to the plaintiffs' property;²²⁵ a Montana controversy about flooding from irrigation activities of neighboring landowners;²²⁶ a criminal prosecution involving the fatal shooting of a neighbor in a business deal that created animosity;²²⁷ a tit-for-tat wrangle between Rhode Island property owners who blocked each others' driveway with boulders;²²⁸ a tort battle by two Wyoming neighbors over ownership of a water well on the boundary between the properties;²²⁹ a ten-plus year donnybrook involving a couple who wanted to build a

222. *Lucania v. Anderson*, Nos. A095922, A097146, 2002 WL 31794154, at *1-2 (Cal. Ct. App. Dec. 13, 2002).

223. *Osuman v. Ashcroft*, 37 Fed. Appx. 585, 585-87 (3d Cir. 2002). The record in the case is chilling:

Osuman lived on an extensive plot of farmland in Burkina Faso, owned by his father and adjacent to the land of Damba Grushie, the chief of the village and an elder. Osuman has said that Grushie has no connections to the government, but he also has said that the government is Grushie's boss.

According to Osuman's testimony, Grushie sought the land of Osuman's father for himself and his followers. On one occasion, sheep belonging to Osuman's father crossed into Grushie's land where they damaged some of Grushie's crops. In retaliation, Grushie killed the sheep. When Osuman's father confronted Grushie about killing his sheep, Grushie threatened to kill anyone who questioned his actions. Shortly thereafter ... Grushie and his followers murdered Osuman's father, mother, and two sisters in their home. A witness to the murder told Osuman ... of the murders and Grushie's declared intent to murder Osuman, the inheritor of the land, as well.

Id. at 585-86.

224. *Maurmann v. Del Morrow Const., Inc.*, 48 P.3d 185, 186-87 (Or. Ct. App. 2002).

225. *Sedlow v. Bailey*, No. 229319, 2002 WL 1010036, at *1 (Mich. Ct. App. May 17, 2002).

226. *Wells v. Young*, 47 P.3d 809, 809-10 (Mont. 2002).

227. *People v. Braybrook*, No. 223088, 2002 WL 652258, at *1 (Mich. Ct. App. Apr. 19, 2002).

228. *Tucker v. Kittredge*, 795 A.2d 1115, 1115-16 (R.I. 2002).

229. *Matlack v. Mountain West Farm Bureau Mut. Ins. Co.*, 44 P.3d 73, 75 (Wyo. 2002).

three-car garage with a second-story flat, their neighbor who enjoyed a restrictive covenant to view a lake, a court settlement that limited the garage's roof plan so as to preserve the neighbor's lake view, and repeated violations by the garage-building neighbors resulting in over \$100,000 of civil contempt fines and shifting of attorneys fees;²³⁰ a civil rights excessive force case, involving over-reaction on multiple levels pertaining to an aunt, whose niece owned an undeveloped lot in Maine, who had received permission from her niece to inspect survey marks on the lot—performed because of a boundary dispute—being confronted, arrested and roughly handcuffed by a police officer called to the scene at the behest of a complaining neighbor;²³¹ a bad-behaving neighbor whose years of playing constant loud music, beaming lights, and videotaping of the family next door was adjudged liable to the tune of \$245,000 in compensatory and punitive damages for preventing the sale of his neighbors' house;²³² and a disturbed woman living on a cul-de-sac who was issued a judicial restraining order²³³ for a series of bizarre and hostile actions she exhibited to her neighbors, which included yelling, screaming, calling one neighbor a “Chinaman, a piece of shit, a gay guy and a monkey [and telling] him to fuck off,” calling the police on residents who had parked their car and inadvertently blocked the sidewalk for a few minutes and other acts.²³⁴

The trio of cases that I have selected for in-depth analysis share themes of outrageous conduct and insanity.

1. California Dreaming #1: The Case of the Psycho Boundary Dispute

Walter Stephens' problem started when he received a letter from an attorney in October of 1997, informing him that she represented his next door neighbor, Bob Hall, in a boundary line dispute with Stephens.²³⁵ In point of fact, Stephens' problems began a few months earlier when he bought a house on Lompico Road in a mountainous area of Santa Cruz County and first met his neighbor Hall.²³⁶ After

230. *Roberson v. Norbom*, Nos. 25683-5-II, 26497-8-II, 2002 WL 242678, at *1-4 (Wash. Ct. App. Feb. 15, 2002).

231. *McDermott v. Town of Windham*, 204 F. Supp. 2d 54, 56-58 (D. Me. 2002).

232. *Cardinale v. Hearn*, No. B148137, 2002 WL 192861, at *1 & n.1 (Cal. Ct. App. Feb. 7, 2002).

233. *Quick v. Bond*, No. A097954, 2002 WL 31689723, at *1 (Cal. Ct. App. Dec. 2, 2002).

234. *Id.* at *1-2 (internal quotation marks and brackets omitted). Suzy Bond, the defendant, claimed that the “plaintiffs had improperly stated her race as Egyptian on their original petition, taking advantage of post 9/11 hostility toward people of Egyptian or Arabic extraction” *Id.* at *2 (internal quotation marks omitted).

235. *People v. Stephens*, Nos. H021256, H023524, 2002 WL 323531, at *1 (Cal. Ct. App. Feb. 28, 2002).

236. *Id.* at *4.

they had introduced themselves, Hall asked Stephens if he had dug up the culvert separating the two lots and Stephens admitted that he had, claiming that the culvert was on his property.²³⁷ The culvert ran along what Stephens believed was his driveway, but Hall claimed that the so-called driveway was really a “public access road” and that the culvert was on Hall’s property.²³⁸ In the late summer of 1997 Stephens “installed a concrete and steel pipe barricade across the driveway to prevent vehicles from entering.”²³⁹ In October of 1997, the county fire chief informed Stephens by letter that he had to remove the barricade for reasons of public safety.²⁴⁰ Viewing the fire chief’s letter as a form of harassment, Stephens delayed removing his driveway barrier until January of 1998 when the county planning department warned him that he would not qualify for a requested permit to build a shed on his property unless the barricade was dismantled.²⁴¹

In August of 1998, Hall had some unpleasant encounters with friends of Stephens who were on Stephens’s land while he was away from the area.²⁴² Upon Stephens return in late August, he decided to rent a backhoe and “take the culvert out of the ground so that Hall would not get access,” but when Stephens started the backhoe work, “Hall laid down in the culvert.”²⁴³ And, “[w]hen [Stephens] moved to a different part of the culvert, Hall blocked him again” with this cat and mouse game going on “about 15 times.”²⁴⁴ During the back and forth between the two male neighbors, Hall caught his foot in the bucket of the backhoe that Stephens was operating, necessitating an emergency trip to the hospital.²⁴⁵ In retaliation, Hall raided Stephens’s mailbox, took some of his mail and started to compile financial information about Stephens.²⁴⁶ In mid-November, Stephens observed Hall “watching him through the trees from Hall’s property;” a few days later, Stephens was served with a summons and complaint in a civil action brought by Hall “over the backhoe incident for property damage, trespass, assault and battery, and nuisance.”²⁴⁷

237. *Id.*

238. *Id.*

239. *Id.*

240. *People v. Stephens*, Nos. H021256, H023524, 2002 WL 323531, at *4 (Cal. Ct. App. Feb. 28, 2002).

241. *Id.*

242. *Id.* at *5.

243. *Id.*

244. *Id.*

245. *Id.*

246. *People v. Stephens*, Nos. H021256, H023524, 2002 WL 323531, at *5 (Cal. Ct. App. Feb. 28, 2002).

247. *Id.*

At about an hour before sunrise on November 20, 1998 Stephens arose “and went to the front porch to urinate.”²⁴⁸ While he was relieving himself, he heard a noise “like gravel on asphalt coming from the driveway”; thereafter, Stephens “went back to his back room, got his revolver, and loaded it.”²⁴⁹ When Stephens went back outside he spotted Hall walking toward the culvert; Stephens confronted Hall asking, “[w]hat the hell do you think you’re doing?,” and then, believing that he saw a “glint from what he thought was a gun barrel in Hall’s hand,” Stephens fired two shots at Hall before realizing that Hall was only holding a chrome thermos.²⁵⁰ Thereafter, Stephens “used his gun as a club,” beating what life remained out of Hall; then he put Hall in a wheelbarrow and wheeled him to a fire pit in Stephens’s backyard.²⁵¹

Since Hall failed to show up on November 20th for what was scheduled to be his last day of work at his job, his co-workers became concerned, and one of them called the sheriff’s department.²⁵² In the early afternoon, two deputies drove out to Hall’s house to investigate.²⁵³ One of the deputies saw smoke in Stephens’s backyard and noticed an “odor of something synthetic . . . that didn’t smell quite right.”²⁵⁴ Upon closer inspection the deputy observed the following:

There was a medium-sized couch in fairly good condition on fire. It was lying upside down on top of different sized pieces of lumber. As [the deputy] walked around the fire, he saw an unusual peach-colored object. He poked it with a stick and it seemed solid, spongy and juicy. [Stephens] . . . picked up a hose, and began spraying water on the fire . . . [The deputy] took another look at the object and discovered that it was a human arm.²⁵⁵

Stephens’s 25-years-to-life prison sentence was upheld on appeal with the appellate court concluding: “[t]he manner of the killing reveals a highly violent person, who kills without consciousness, and who is extremely deceptive” and that Stephens’s “lack of criminal history,” while a mitigating factor in the long incarceration sentence, “is substantially outweighed by the seriousness of the crime and the circumstances surrounding its commission.”²⁵⁶

248. *Id.*

249. *Id.*

250. *Id.* at *6 (internal quotation marks omitted).

251. *Id.*

252. *Id.* at *1.

253. *Id.*

254. *Id.* at *2 (internal quotation marks omitted).

255. *Id.*

256. *Id.* at *23.

2. California Dreaming #2: The Case of the Obsessive Lover

For over a decade, from 1987 through 1998, Christine H. and her husband were neighbors with Alan Leeman in Sonora, California.²⁵⁷ Christine's husband died in 1997, and Leeman moved out of the neighborhood in 1998.²⁵⁸ A few months after Leeman moved, he happened to spot Christine driving her car on a road that Leeman was helping to repair as part of a construction crew.²⁵⁹ Leeman obtained Christine's phone number during this meeting.²⁶⁰ A few days after this chance meeting, Leeman came over to Christine's home and talked with her for about an hour; thereafter, he started making daily visits to his former neighbor's home.²⁶¹ Christine refrained from telling Leeman to stop his visits because she did not want to appear rude and because she had heard that Leeman's mother had recently died and that he "was going through a difficult time" in coping with the death.²⁶²

After the passage of a few weeks, Leeman "extended his visits from one hour per day to two hours per day" and, on weekends, came over to do gratuitous yard work at Christine's house.²⁶³ A violent turn in the non-sexual relationship between the two occurred in May of 1999 when Christine decided to visit her mother for a day.²⁶⁴ Before she left, Christine told Leeman that "she wanted to be alone when she came home" later that day.²⁶⁵ Part of her motivation for making the request was mounting fear of Leeman's intrusion in her personal life and the way in which he tried to "tell[] her what to do."²⁶⁶ However, when Christine returned home from her visit to her mother, Leeman was at her house.²⁶⁷ "He accused her of having a relationship with someone else and of not visiting her mother. He also screamed obscenities at Christine and hit her with the palm of his hand."²⁶⁸ As a result of this confrontation, Christine told Leeman to leave and to never contact her again, but Leeman showed up at her house the next day in spite of her instruction.²⁶⁹

257. *People v. Leeman*, No. F035249, 2002 WL 258003, at *1 (Cal. Ct. App. Feb. 22, 2002).

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.* at *2.

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

After the May slapping incident, Christine wrote a note to her son describing the incident but, because she was afraid that Leeman would kill her, she hid the note in her kitchen drawer.²⁷⁰ In June, feeling “sorry” for Leeman, she lent him money to repair his truck and paid the veterinary bill for his sick cat.²⁷¹ Later that month, “Christine took her school-age grandson to practice for a musical play,” but when she returned to her house Leeman was waiting for her and “accused her of having sex with someone else.”²⁷² He “said he had driven around the school looking for her car and knew she was not there,” before he “became hysterical [and] screamed obscenities...” at her; calling her “[s]lut, whore, bitch, every word you can think of with the [F] word in front of it.”²⁷³ Leeman’s June confrontation with Christine ended with him hitting her on the shoulder, with Christine telling him to get off her property and never to contact her, and with Leeman crying and “begg[ing] for forgiveness” before leaving.²⁷⁴

In July, Christine had to have her car towed to an AAMCO shop and a Midas shop for various repairs.²⁷⁵ Leeman called before Christine got in the tow truck and insisted on driving her to the shop in his vehicle.²⁷⁶ Christine told Leeman that her “car was her responsibility and he should stay out of her business.”²⁷⁷ In reaction, Leeman “screamed obscenities and hit her.”²⁷⁸ On the day that Christine picked up her car, Leeman called the Midas shop and learned when Christine departed for her drive home.²⁷⁹ When she returned to her home, Leeman was “waiting for her.”²⁸⁰ Leeman told Christine that “she was 15 minutes late in arriving home, based on his time calculations,” and accused her of “doing it with everyone at AAMCO and Midas.”²⁸¹ He then began hitting Christine, threatening “to destroy [her] and her life.”²⁸²

Christine “wrote more than 20 notes describing” Leeman’s conduct on various occasions during the year, “hid[ing] the notes in different places in her home.”²⁸³

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.* at *2 & n.2.

274. *Id.* at *2.

275. *Id.* at *3.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* (internal quotation marks omitted).

283. *Id.*

Through all her travails with Leeman she never called the police because “she was afraid of what” Leeman would do.²⁸⁴ Indeed,

On one occasion she threatened to get a restraining order against [Leeman]. He told her such orders were not worth the paper they were written on and it could not protect her. He told Christine he would kill her if an officer came to his home or workplace. [Leeman] also threatened to park in the bottom of Christine’s driveway, drink a six-pack, shoot himself, and leave her to deal with it.²⁸⁵

In August, Christine accepted Leeman’s offer to “take care of her horses” so that she could visit her son in another city.²⁸⁶ When Christine returned home from the several day visit, she learned that Leeman “never left her property during her absence.”²⁸⁷ Leeman informed her that he “had searched her home while she was away and told her he did not like what he had found.”²⁸⁸

Later in August, Christine accompanied Leeman at a wedding of his foreman because Leeman owed her money and the date of the wedding happened to be the day the loan was due.²⁸⁹ Christine was nonplussed when, during the wedding reception, several people (who she did not know) approached her to congratulate her wedding engagement to Leeman.²⁹⁰ Christine reacted with anger and insisted that Leeman drop her off at her home.²⁹¹

The next day—August 22, 1999—Leeman called her on the phone crying and told Christine that he wanted to come over to her house to apologize.²⁹² Christine forbade him from doing so, informing Leeman that “she never wanted to see him again.”²⁹³ Leeman drove over to Christine’s house at 5 p.m. and “sped up her driveway, spun the wheels of his truck, jumped out of the vehicle, and screamed” obscenities at her.²⁹⁴ Leeman then walked up the steps of her outdoor deck and confronted Christine.²⁹⁵ He yelled at her, saying “he would not repay her loan,” that “he would destroy Christine and she would lose her home and everything her

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.* (internal quotation marks omitted).

291. *Id.*

292. *Id.* at *4.

293. *Id.*

294. *Id.*

295. *Id.*

husband had worked for.”²⁹⁶ Leeman repeated his earlier threat that while Christine had been away visiting her son, Leeman had “gone through her house . . . and found things he did not like.”²⁹⁷

Leeman then returned “to his truck, drove around in circles, and tore up Christine’s driveway.”²⁹⁸ When he backed his truck up to Christine’s wood splitter, she threatened to call the sheriff and approached him with a rake.²⁹⁹ Leeman responded by cursing, charging at Christine, snatching the rake out of her hand, grabbing Christine and “tightly squeeze[ing] her in a bear hug” screaming that “he was going to destroy her.”³⁰⁰ Somehow, Christine managed to free one of her arms and to slap Leeman on the chin.³⁰¹ Leeman left her in the driveway and went to his truck; moments later, she “went flying through the air” landing on her side, not having seen “what hit her.”³⁰²

While Christine was on the ground, she screamed and begged [Leeman] to call an ambulance but he refused. Christine then felt something grab her leg and turn her over onto her right side . . . Christine was in extreme pain and continued to beg [Leeman] to call an ambulance. He repeatedly walked in and out of her home but did not assist her. [Leeman] got into his truck three times and Christine feared he would run her over. [Leeman] finally came over to Christine, grabbed her injured left leg, and shook her leg hard. Christine screamed for him to stop. [Leeman] then sat down beside her, said he would lose his job, and also told her he had pushed her. Christine continued to ask [Leeman] to call for help but he just kept walking into her house and then back into her yard.³⁰³

After all that had transpired on that August afternoon, Leeman played with Christine by eventually bringing her telephone out in the driveway, but “repeatedly plac[ing] the telephone down and out of Christine’s reach.”³⁰⁴ After considerable delay, Leeman “tossed the phone onto the ground near Christine,” and listened as she dialed 911.³⁰⁵ Christine suffered a multiple compound fracture of one of her legs, a compound fracture to her left hip, abrasion to a shoulder, and blurred vision

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.* at *5.

305. *Id.*

from the incident.³⁰⁶ She required surgery and was hospitalized for several weeks; her surgery was complicated by blood clots.³⁰⁷ When Christine returned to her home from her extended hospitalizations, she found several things missing from her house.³⁰⁸

Leeman was convicted of felony battery with serious bodily injury.³⁰⁹ He was sentenced to a six-year prison term, ordered to pay \$1,200 in restitution, and ordered to pay Christine approximately \$500 for “mileage” and “unpaid medical expenses.”³¹⁰ Leeman’s various procedural claims on appeal were turned down.³¹¹

3. California Dreaming #3: The Case of the Harassed Inter-racial Couple

“Larry Jones, a black man, and his wife, Jacqueline Magnum, a white woman, moved into a single-family residence in Santa Monica in June 1997.”³¹² The Jones/Magnum “residence was situated between the Hirschbergers’ residence, on one side and Mr. Hellerman and Ms. Stanberry’s residence on the other side. The relationship between the neighbors rapidly deteriorated.”³¹³ During the trial, and after the opening statement for the inter-racial couple, the court nonsuited their cause of action for the tort of intentional infliction of emotional distress, “concluding that the (un)neighborly dispute was not outrageous as a matter of law.”³¹⁴

In reversing the trial court, the California appellate court detailed a dynamic between neighbors that had become ugly and dysfunctional. “Mr. Hirschberger repeatedly threatened Mr. Jones. Mr. Hirschberger told Mr. Jones ‘I’m going to get you, you; you’re not going to get away with this, you; you’re going to jail, you.’”³¹⁵ According to the appellate opinion, “Mr. Hirschberger warned Mr. Jones that ‘all he had to do was to tell the police that Mr. Jones had come at him with a shovel and that he would be arrested.’”³¹⁶ Moreover, “Mr. Hirschberger further cautioned Mr. Jones that ‘nobody will believe you over me. I’m white and educated, and nobody will believe you. The police will not believe you.’”³¹⁷ The appellate court,

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.* at *1.

310. *Id.*

311. *Id.*

312. Jones v. Hirschberger, No. B135112, 2002 WL 853858, at *2 (Cal. Ct. App. May 6, 2002).

313. *Id.*

314. *Id.* at *1.

315. *Id.* at *2.

316. *Id.*

317. *Id.*

drawing upon the opening statement of the couple, which had led to the nonsuit, explained that:

On another occasion, Mr. Hirschberger stood on [the inter-racial couple's] property and began beating on his chest. He challenged Mr. Jones to fight and moved towards Mr. Jones. Mr. Hirschberger said, Larry, you want some of this? Come and get it. Mr. Jones retreated behind a gate. Mr. Hirschberger admitted that he tried to get Mr. Jones to hit him specifically so that he could get . . . [Mr. Jones] arrested. Mr. Hirschberger told Mr. Jones your wife is a cunt bitch. Your wife is sleeping with white men.³¹⁸

Further items from the plaintiff couple's opening statement were highlighted by the appellate court. Both Mr. and Mrs. Hirschberger falsely accused Mr. Jones of vandalizing their automobiles.³¹⁹ Mr. Hirschberger obsessively videotaped the inter-racial couple and their children, focusing the camera on interior views of the couple's home including their bedroom and living room.³²⁰ All of the defendants harbored racial animosity toward the inter-racial couple as evidenced by: Mr. Hirschberger's and Mr. Hellerman's remarks that they did not like their wives living so close to a "nigger;" Mr. Stanberry referring to Mr. Jones as an "uppity nigger" for driving a Mercedes Benz; the Hirschbergers' statements about Mr. Jones as a "nigger," a "monkey," and an "orangutan," and Ms. Hirschberger's reference to Jones as a "black-ass nigger;" and Mr. Hellerman's complaint about decreasing property values and the possibility of "another O.J. Simpson scenario in the neighborhood."³²¹ Numerous other "neighborhood incidents" occurred involving the defendants including "improper etiquette in controlling household pets, parking disputes, repeated insults, and racial animosity."³²² As a result of the racial animus of his neighbors, Jones "drove with his windows closed so that he could not be accused of saying anything" to his neighbors, Jones "stopped visitors from coming to" his house, and Jones felt "as if he were a prisoner in his own house; that he could not come and go as he wanted to."³²³

In analyzing the applicability of the tort of outrage, the appellate court distinguished "intrafamilial warfare," where privacy issues and indeterminate psychological evidence made it undesirable from a public policy standpoint to recognize the tort from "disputes between neighbors."³²⁴ The court's analysis, first, canvassed out-of-state appellate decisions involving particular disputes between

318. *Id.* (internal quotation marks omitted).

319. *Id.*

320. *Id.*

321. *Id.* at *3.

322. *Id.*

323. *Id.* (internal quotation marks omitted).

324. *Id.* at *5 (citations omitted).

neighbors which “fail[ed] to meet the threshold of outrageousness as a matter of law” in suits for the tort of outrage.³²⁵ However, the *Jones* appellate court went on to cite other out-of-state cases that recognized that “some disputes between neighbors involve outrageous conduct.”³²⁶

The *Jones* court determined that the combined factual issues of surveillance of the plaintiffs’ residence, use of racial epithets, and cumulative impact indicated that outrageousness existed for the purpose of making out a prima facie case for the tort of outrage.³²⁷ Moreover, the court reversed the trial court so that plaintiffs, after remand, could amend their complaint to assert the following additional causes of action: “trespass and forcible entry, nuisance, trespass and injury to personal property, assault, invasion of privacy, false imprisonment, and abuse of process....”³²⁸

4. Synoptic Comments

These 2002 disputes between neighbors’ cases that were analyzed in the above commentary³²⁹ are linked to extreme anti-social acts involved and the limits of

325. *Id.* (citing *Lybrand v. Trask*, 31 P.3d 801 (Alaska 2001) (for the proposition that “painting biblical passages on neighbor’s roof [is] not outrageous”); *Huggins v. Wright*, 774 So.2d 408, 412 (Miss. 2000) (involving a “disagreement over location easement where one neighbor denied water and electricity for a period of time [as] not outrageous”); *Seltzer v. Bayer*, 709 N.Y.S.2d 21 (N.Y. App. Div. 2000) (for the proposition that “allegations of dumping cement on sidewalk in front of neighbor’s house, throwing cigarettes into neighbor’s backyard, throwing eggs onto neighbor’s steps, and threatening to paint a swastika on neighbor’s house [are] not sufficiently outrageous”); *Bethel v. Van Stone*, 817 P.2d 188, 195 (Idaho Ct. App. 1991) (for the proposition that “barring neighbor from using easement [is] not sufficiently outrageous”); *McDuff v. Turner*, 679 So.2d 1071, 1075 (Ala. Civ. App. 1996) (where “a neighbor sought intervention of the ABC Board and judicial intervention to stop loud music and to object to the renewal of a beer license”)).

326. *Jones*, 2002 WL 853858, at *5. The court went on to say:

Liability was upheld where the defendant neighbors attempted to negatively impact the financing of the plaintiffs’ home by sending information to the lenders and engaged in constant surveillance and harassment of the plaintiffs. *Gianoli v. Pfleiderer*, 563 N.W.2d 562, 568 (Wis. Ct. App. 1997) ... Similarly, an eight-year dispute between neighbors in North Carolina was found to support a cause of action for intentional infliction of emotional distress. *Wilson v. Pearce*, 412 S.E.2d 148, 151-52 (N.C. Ct. App. 1992). The source of the dispute principally was obscene gestures, curses, and sexually suggestive statements uttered by the plaintiff’s neighbor on a repeated basis. The plaintiff’s neighbors also violated a restraining order and fired a pistol.

Id. (citation form modified).

327. *Jones*, 2002 WL 853858, at *7-9.

328. *Id.* at *10.

329. See *supra* notes 235–328 and accompanying text.

criminal and tort adjudication in fashioning appropriate relief to these unneighborly outliers.³³⁰

In *The Case of the Psycho Boundary Dispute*, a lawyer for one of the neighbors tried to initiate settlement discussions with the next-door neighbor to no avail. Perhaps a more proactive approach by the lawyer (by filing suit early in the dispute) could have forced both sides to seriously address their conflicting views on the location of the uncertain boundary line between the California properties. But the confrontational and psychologically disturbed state of both men (as evidenced in the backhoe incident) was hard to predict and one wonders what lawyers, judges, and psychologists could have realistically done to avert the eventual killing.³³¹ *The Case of the Obsessive Lover* also presents an intractable problem of speculation of dangerousness. The widow and former neighbor of the abusive man would have probably been better off calling the police or seeking a no-contact, anti-harassment injunction. But who is to say? She was very scared that Leeman would kill her if she reported him to authorities.³³² Her husband had died, and there was no adult male in her life to help her stand up to Leeman.³³³ The eventual physical violence that she suffered at Leeman's hands came very close to murder; she was fortunate to survive his brutal beating and to not be run over by his truck.³³⁴ The meager criminally-ordered restitution and the lenient term of incarceration for Leeman are shockingly inadequate. It would appear that her theoretical tort causes of action were unattractive to a civil lawyer given Leeman's destitute financial straits.

The Case of the Harassed Inter-racial Couple, while more promising in terms of effective legal relief, is also depressing in the likelihood that peace will truly come to pass for the couple and their family. It is heartening to see the appellate tribunal in the case reinstate the couple's tort claim for outrage and allow them to amend their complaint to assert other tort causes of action against their racist neighbors. Yet, the absence of legal representation for the couple (they were proceeding *pro se* at the trial and appellate levels) is a strong indication that their case lacks true merit (after all, on remand they will have to establish proof of other

330. Cf. CHRISTOPHER SLOBOGIN, PROVING THE UNPROVABLE: THE ROLE OF LAW, SCIENCE AND SPECULATION IN ADJUDICATING CULPABILITY AND DANGEROUSNESS 99 (2007) (arguing that it is hard enough in many cases simply figuring out whether someone has committed an anti-social act, and even more difficult to determine the extent to which he or she intended the act and why it was committed. But most difficult for the legal system to figure out is whether a person will harm again and be a danger to the community).

331. See *People v. Stephens*, Nos. H021256, H023524, 2002 WL 323531 (Cal. Ct. App. Feb. 22, 2002).

332. See *People v. Leeman*, No. F035249, 2002 WL 258003 (Cal Ct. App. Feb. 22, 2002).

333. See *id.* at *1.

334. See *id.* at *1-5.

demanding elements of the tort of outrage including severe emotional distress), and the provable damages that they have suffered are intangible and non-pecuniary.³³⁵

Indeed, the case joins the other two “California-Dreaming” cases in that it is hard to tell whether the neighbors will be cowed and restrained by the tort litigation or whether one or more of the neighbors is dangerous to the couple and their children and will escalate the acting out to include physical violence. A pragmatic (but lamentable) response of the inter-racial couple would be to move to a more racially tolerant community. But how does one really know what one’s neighbors will be like before one moves to, and is ensconced in, a neighborhood?

E. 2003

TABLE 5: 2003 CASES

Predominant Type of Neighbor Dispute	Number of Cases
Adverse Possession	4
Boundary or Title	10
Criminal Complaint by Neighbor	5
Development/Land Use/Zoning	8
Easements	12
Landscaping/Runoff	1
Non-Violent Nuisances	10
Riparian/Water Disagreements	3
Violent Confrontations	3
Miscellaneous	6
TOTAL	62

During 2003, state and federal courts processed an interesting hodgepodge of cases involving conflicts between neighbors. Some of these matters involved the following: a boundary line tussle between Connecticut neighbors that escalated and upset the parties;³³⁶ a successful private nuisance action by a Mississippi couple against adjoining property owners for maintaining an aggressive dog who repeatedly frightened the plaintiffs’ family and guests;³³⁷ environmental litigation by a Pennsylvania landowner against a nearby mushroom farm for alleged pollution runoff;³³⁸ a California suit that started by neighbors complaining to local

335. See *Jones v. Hirschberger*, No. B135112, 2002 WL 853858 (Cal. Ct. App. May 6, 2002).

336. *Otley v. McCarthy*, No. CV020816358S, 2003 WL 23112729, at *1 (Conn. Super. Ct. Dec. 11, 2003).

337. *Williams v. King*, 860 So. 2d 847, 851-52 (Miss. Ct. App. 2003).

338. *Reynolds v. Rick’s Mushroom Serv., Inc.*, No. Civ. A. 01-3773, 2003 WL

authorities about sewage ponding and garbage accumulation by a property owner and culminated in a defamation action because the neighbors picketed the property owner's place of business with signs calling him a "Slum Lord";³³⁹ nearby residents who opposed the increased height of a radio communications tower by a public entity;³⁴⁰ a nasty confrontation between Connecticut landowners over the right of one landowner to block a dirt road with a chain, leading to the intervention of state police officers who were, in turn, sued for alleged constitutional torts;³⁴¹ a confrontation between young gang members that led to a death by shooting and murder convictions;³⁴² a litany of lawsuits involving wealthy Connecticut property owners concerning an acrimonious dispute over access to a seawall walkway along

22741335, at *1 (E.D. Pa. Nov. 17, 2003).

339. *Attell v. Blum*, No. A101353, 2003 WL 22597505, at *1 (Cal. Ct. App. Nov. 10, 2003).

340. *Kennedy v. Upper Milford Twp. Zoning Hearing Bd.*, 834 A.2d 1104, 1117 & n.27 (Pa. 2003). The Supreme Court of Pennsylvania, in ruling against the objection of the residents opposing the tower expansion, quoted extensively from a law review article that was critical of the "Not In My Back Yard" (NIMBY) "Syndrome":

The development may be homes just like the ones in which they live, but the neighbors oppose it because they fear that greater density will adversely affect local road congestion, neighborhood character, crime, taxes and public services.

NIMBYs show up at the zoning and planning board reviews, to which almost all developers of more-than-minor subdivisions must submit. If NIMBYs fail to reduce the scale and density of the project at these reviews, they often deploy alternative regulatory rationales, such as environmental impact statements, historic districts, aboriginal burial sites, agricultural preservation, wetlands, flood plains, access for the disabled and protection of (often unidentified) endangered species at other local, state and federal government forums, including courts of law. I have heard all of these arguments, and others too elaborately bizarre to list, in my ten years as a member of the Hanover, New Hampshire zoning board.

Id. at 1117 n.27 (quoting William A. Fishel, *1999 Voting Risk Aversion and the NIMBY Syndrome: A Comment on Robert Nelsons Privatizing the Neighborhood*, 7 GEO. MASON L. REV. 881-82 (1999) (footnote omitted)). The Supreme Court of Pennsylvania went on to quote from another article that denigrated NIMBYs:

NIMBY conflicts arise from projects that typically generate widely dispersed benefits while imposing concentrated costs, such as homeless shelters, prisons, airports, sports stadiums and waste disposal sites. Despite the social desirability of such projects, they often provoke intense local resistance that harnesses the political process to block construction of the proposed facility.

Id. (quoting Barak D. Richman, *Mandating Negotiations to Solve the NIMBY Problem: A Creative Regulatory Response*, 20 UCLA J. ENVTL. L. & POL'Y 223, 223 (2001/2002) (footnote omitted)).

341. *Longmoor v. Nilsen*, 285 F. Supp. 2d 132 (D. Conn. 2003).

342. *People v. Espinoza*, No. B160042, 2003 WL 22183768, at *1-2 (Cal. Ct. App. Sept. 23, 2003).

Long Island Sound;³⁴³ a Colorado controversy over irrigation rights to a water ditch;³⁴⁴ an ongoing spat between apartment dwellers—one living directly over the other—involving complaints of excessive noise, that blossomed into door-banging and personal insults, leading to fisticuffs and property destruction and a constitutional tort action against arresting New York City police officers;³⁴⁵ a neighborhood dispute over objections to landowners allowing their property to be used as part of a state trail system for snowmobiles and all terrain vehicles;³⁴⁶ a bizarre continuing row between two neighboring couples involving harassing comments, a physical confrontation between the two men, a subsequent criminal complaint, alleged stalking and a constitutional tort action against one set of neighbors;³⁴⁷ a rising tide of confrontations between Ohio neighbors involving problems with dogs, trimming of grass and trees by one neighbor on the other neighbors' land, objections over the placement of a shed on a property that allegedly caused flooding, verbal insults and a resulting panoply of tort claims between the neighbors;³⁴⁸ a tiff between Michigan resort association members over parking spaces;³⁴⁹ a suit between two adjoining affluent Connecticut landowners over erection of property improvements by one owner for obstructing his view of the ocean;³⁵⁰ an unusual federal case that commenced as a dispute involving surface water runoff between neighbors,³⁵¹ rose to allegations that one landowner engaged in “a year-long campaign of harassment . . . which included threats, attempts to have [the other neighbors'] water turned off and trash removal stopped, offensive mailings . . . , repeated harassing and threatening phone calls, and an attempt to have their backyard excavated without their consent,” escalated to requests for assistance from a local police officer to stop the offending actions by the neighbor, and led to the improbable result of the police officer failing to take appropriate law enforcement action because the offending neighbor was his

343. *McBurney v. Cirillo*, Nos. CV980414820, CV990422102, CV990422100, CV010455411, 2003 WL 22234871, at *7, 9 (Conn. Super. Ct. Sept. 17, 2003).

344. *Nolan v. Smith*, No. 02CV44, 2003 WL 24286582, at *1 (Colo. Dist. Ct. Aug. 12, 2003).

345. *Fernandez v. City of New York*, No. 02 Civ.8195 JGK, 2003 WL 21756140, at *1-2 (S.D.N.Y. July 29, 2003).

346. *Town of Lyndeborough v. Boisvert Props., L.L.C.*, No. 02-E-0466, 2003 WL 21995595, at *1 (N.H. Super. July 7, 2003).

347. *Nadig v. Nagel*, 272 F. Supp. 2d 509, 510 (E.D. Pa. 2003).

348. *Peretto v. Baron*, Nos. 81796, 81809, 2003 WL 21469190, at *1-2 (Ohio Ct. App. June 26, 2003).

349. *Slatterly v. Madiol*, 668 N.W.2d 154, 157 (Mich. Ct. App. 2003).

350. *Schimelman v. Katz*, No. CV98063630S, 2003 WL 21659690, at *1 (Conn. Super. Ct. June 19, 2003).

351. *DeMuria v. Hawkes*, 328 F.3d 704, 705 (2d Cir. 2003).

friend,³⁵² a federal civil rights action by neighbors against a police officer who lived next door and responded to the pranks of three young boys who threw rocks and dirt into the policeman's private swimming pool by taking some of the boys to his police station and placing them in a jail cell to punish and frighten them;³⁵³ an emotional/legal meltdown of epic proportions that started with minor disagreements between Mr. and Mrs. Quigley and their neighborhood acquaintances, Mr. and Mrs. Aronson,³⁵⁴ in "an upscale suburb in the foothills west of Denver," Colorado,³⁵⁵ over the neighbors' children and their dogs, intensified to obscenities and complaints to the animal control office about one of the dogs, rose to allegations that Mrs. Aronson commanded her dog, "Bear" to "get" Mrs. Quigley and her dog, worsened to incidents of road rage and stalking by vehicle, expanded to the Aronsons using a police scanner inside their home to intercept and record a telephone conversation between Mrs. Quigley and an out-of-state friend where inappropriate anti-Semitic jokes about the Aronsons were made (followed by the interception and recording by the Aronsons of a telephone conversation later that day between Mr. and Mrs. Quigley), intensified further to Mr. Aronson contacting the Denver office of the Anti-Defamation League (ADL) reporting on the Quigleys, escalated to the ADL holding a public press conference accusing the Quigleys of a conspiracy "to drive the Aronsons from their new home and neighborhood,"³⁵⁶ expanded to a criminal complaint filed against the Quigleys for "ethnic intimidation,"³⁵⁷ enlarged to the Quigleys receiving hate mail and being "publicly denounced by their priest" at their local church,³⁵⁸ evolved into an investigation and dismissal of the bulk of the criminal charges against the Quigleys by a district attorney, led to a settlement and release of all federal and state civil charges between the Quigleys and the Aronsons (with the Aronsons' civil litigation attorneys paying money to both the Quigleys and Aronsons for alleged conflict of interest), and culminated in a federal jury trial by the Quigleys against the ADL and its Denver director for defamation, invasion of privacy and other torts resulting in affirmance on appeal of over a million dollars of the district judge's judgment on the jury verdict.³⁵⁹

Other noteworthy 2003 cases involving neighborhood disputes were: a California dispute between adjoining landowners that led to a mediated settlement, a follow-up judgment enforcing the settlement, and judicial denial of a request to

352. *Id.* at 705.

353. *Simone v. Narducci*, 262 F. Supp. 2d 381, 382-83 (D. N.J. 2003).

354. *Quigley v. Rosenthal*, 327 F.3d 1044, 1048 (10th Cir. 2003).

355. *Id.* at 1047.

356. *Id.* at 1048-49, 1052-53.

357. *Id.* at 1055.

358. *Id.*

359. *Id.* at 1057, 1074.

reform the mediated settlement;³⁶⁰ a Massachusetts easement battle between neighbors that spiraled into unsuccessful criminal charges by one party against the other for hostile and inflammatory phone calls and led to an unsuccessful suit by the criminally-accused neighbor against the other for malicious prosecution;³⁶¹ a boundary line dispute between Illinois neighbors leading one to slanderously accuse the other, in the presence of third parties, of illegally tapping his telephone, threatening to plant bombs, committing bank fraud, stalking, and threatening, culminating in a bankruptcy court adversary proceeding;³⁶² an unsuccessful Arkansas suit by an adjoining property owner who sought injunctive and monetary relief against a neighboring turkey farm for pollution of a water supply and blocking a claimed easement road;³⁶³ a conflict involving a destitute widower who, in order to make some needed money, hired a forester to cut down trees near a fence line adjoining her neighbors' property, but, in fact, harvested considerable lumber from the neighbors' land and, as a result, was assessed treble damages under an Ohio statute for recklessly trespassing;³⁶⁴ a racially-charged encounter at an apartment complex in Maine, involving a constitutional tort against a policeman,³⁶⁵ which began by white children calling the black children "niggers," stating that their parents were "gay" and spraying "perfumed water in their faces,"³⁶⁶ led to the mother of the harassed black children confronting the mother of the white children, followed by the white mother closing her door such that the black mother's shoe was trapped, escalated with the black mother calling the local police, which resulted in a crowd of white apartment residents who shouted at the police officer, and culminated with the black adult cousin of the black mother confronting the policeman who, in turn, handcuffed the woman and yelled at her F-words joined with the phrase "nigger bitch";³⁶⁷ and a California boundary dispute involving a pattern of harassment by one neighbor, which included stringing ribbons across the others' deck and stairs to mark the alleged property line, posting "no trespassing" signs along this line, chasing the neighbor with a hammer, throwing beer bottle caps and glass into the adjoining yard, hanging a large Moldavian flag on a tree facing the neighbors' living room window, placing a large

360. *Berland v. Miller*, Nos. A099061, A100046, 2003 WL 1875463, at *1-2, 8 (Cal. Ct. App. Apr. 15, 2003).

361. *Leslie v. Sciacca*, No. 1486, 2003 WL 1901342, at *1-2 (Mass. App. Ct. Apr. 15, 2003).

362. *In re Passialis*, 292 B.R. 346, 348-51 (N.D. Ill. 2003).

363. *Broadston v. Parsons*, No. CA 02-598, 2003 WL 1735653, at *1 (Ark. Ct. App. Apr. 2, 2003).

364. *Coldsnow v. Hartshorne*, No. 01 C0 65, 2003 WL 1194099, at *1-2 (Ohio Ct. App. Mar. 10, 2003).

365. *Hardy v. Emery*, 241 F. Supp. 2d 38, 39-40 (D. Me. 2003).

366. *Id.* at 40.

367. *Id.* at 40-43.

plastic owl in a tree branch on the neighbors' side of the fence, and climbing on the fence to look into the neighbors' windows and yard.³⁶⁸

The leitmotiv of the three highlighted cases that I have selected for 2003 is human inhumanity toward others.

1. The Case of the "FA-Q" Serial Condemner

Richard Faughn's overall personality and indicia of his regard for others was encapsulated in the name of his boat: "FA-Q."³⁶⁹ Faughn's Michigan neighbors, Randall and Linda Sturm, obtained a trial court judgment "finding him in contempt of court for intentionally violating a permanent injunction forty-nine times, imposing a \$250 fine for each violation, and awarding" the Sturms \$45,000 in compensatory damages in addition to over \$33,000 in attorney's fees and costs.³⁷⁰ The poor relations between the parties started before 1998 when they disagreed on the right of the Sturms to enjoy a parking easement on Faughn's land.³⁷¹ The parties agreed to a mutual injunction and the trial court rendered an order holding that a parking easement existed.³⁷² In late 1998, after a hearing when the Sturms "testified that [Faughn] repeatedly drove on their lawn, sprayed herbicide, threatened them, used obscene language in the presence of their young daughters, and" allowed vehicles to be parked on his land, which blocked the Sturms from using the easement, the trial court found Faughn in contempt and ordered him to create a gravel parking area and to pay \$1,800 of the Sturms' court costs.³⁷³

In November of 1998 the Michigan trial court ordered a permanent injunction along the following lines:

[R]estraining [Faughn] from blocking the easement and requiring the parties to "conduct themselves in a neighborly, congenial and amicable fashion." [Faughn] was ordered to refrain from interfering with the [Sturms'] egress or ingress..., to move his vehicles if requested, to operate his vehicles and watercraft safely, to refrain from driving or parking on [the Sturms'] lawn, to refrain from threatening or harassing [the Sturms], to refrain from bringing

368. Rudy v. Dulfu, No. A099077, 2003 WL 1519654, at *1 (Cal. Ct. App. Mar. 25, 2003).

369. Sturm v. Faughn, No. 241707, 2003 WL 23104242, at *1 (Mich. Ct. App. Dec. 30, 2003).

370. *Id.* at *1-2 (footnote omitted).

371. *Id.* at *1.

372. *Id.*

373. *Id.*

garbage home from work, and to refrain from shoveling snow onto [the Sturms'] property.³⁷⁴

Over two years went by. In early 2001, the Sturms filed pleadings that alleged that Faughn had violated the November 1999 permanent injunction.³⁷⁵ A series of court hearings transpired.³⁷⁶ At which,

[The Sturms'] presented "a huge book of photographs and documentation" [showing] . . . that [Faughn] and his guests repeatedly parked their cars in a manner that blocked their access; that they docked [Faughn's] boat named "FA-Q" where it was visible to [the Sturms'] two young daughters; that [Faughn] shoveled snow and blew leaves onto [the Sturms'] yard, at times completely blocking their driveway; that [Faughn and his guests] shot out a pole light on [the Sturms'] property; that [Faughn and his guests] used vulgar language loudly and in front of the children; that [Faughn] sprayed paint on [the Sturms'] car; that [Faughn] trimmed a tree over [the Sturms'] property in an unattractive manner; that [Faughn] attempted to hit [the Sturms'] seven-year old daughter as she walked her dog; and that [Faughn] generally harassed [the Sturms] and threatened physical violence.³⁷⁷

In reviewing the trial court's order imposing fines, compensatory damages, and attorney's fees on Faughn for his serial criminal contempt of court, the Michigan appellate court upheld the \$45,000 compensatory damages award in favor of the Sturms,³⁷⁸ predicated on the "emotional distress and loss of the quiet enjoyment of [the Sturms'] premises as a proximate result of" Faughn's sustained misconduct.³⁷⁹ Moreover, the appellate court, while reducing the criminal contempt fine to a single fine of \$250,³⁸⁰ affirmed the \$33,000-plus attorney's fees and costs incurred by the Sturms in bringing their contempt enforcement action.³⁸¹

2. The Case of the Post-Traumatic Stressed-Out Neighbor

In the fall of 1998, Chris Markey and his Asian-American wife Huai moved into a lake-front home in Ohio next to the home and property owned by Daniel and

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.* at *3-4.

379. *Id.* at *3.

380. *Id.* at *3-4.

381. *Id.* at *4.

Safrona Gulley.³⁸² The Markeys were troubled by the noise level that was caused, in part, by all-terrain vehicles and boisterous late night commotion of the Gulleys.³⁸³ The Gulleys, in turn, disliked what they contended was Chris Markey's invasion of their privacy by videotaping their activities.³⁸⁴

During the two years since the Markeys moved in next to the Gulleys, the Markeys called the county sheriff's office to the area "well over fifty times"; these calls were precipitated by general tensions between the lake-front neighbors including the Markeys' aggravation by the erection of large flood-lights in the Gulleys' backyard along with a fourteen-foot high unpainted plywood wall on the boundary line near the Markeys' house.³⁸⁵ Safrona Gulley called Huai Markey a "gook" and a "Hopsing," playing on Huai's Asian background.³⁸⁶ The Gulleys continued their misconduct by unilaterally cutting down a bush and pulling up vines in the border area between the warring families, encroaching on their neighbors' property in the process.³⁸⁷ Both Daniel and Safrona Gulley were convicted of criminal violations as a result of the border vegetation incident; Daniel was sentenced to ninety days in jail and Safrona to sixty days in jail.³⁸⁸

During the summer of 2000, while the Markeys' criminal charges were pending against them, the "Gulley's filed suit in common pleas court, alleging harassment, malicious prosecution, and the intentional infliction of emotional distress" against the Markeys, seeking \$16,000,000 dollars in "monetary damages" and "equitable boundary line relief."³⁸⁹ The Markeys, in response, answered and counterclaimed based on a plethora of tort causes of action including "trespassing, libel, slander, private nuisance, invasion of privacy, and the intentional infliction of emotional distress."³⁹⁰ Following a four-day trial, the "jury returned a verdict in favor of the Markeys for \$101,000, representing \$50,000 for compensatory damages on their claim for intentional infliction of emotional distress, and \$50,000

382. Gulley v. Markey, No. 01COA030, 2003 WL 169953, at *1 (Ohio Ct. App. Jan. 24, 2003).

383. *Id.*

384. *Id.* According to trial testimony in the civil action between the parties, the Gulleys conducted numerous parties, "complete with a bonfire approximately fifty feet from the Markey home," with the loud gatherings "lasting until 4:00 a.m." *Id.* at *2.

385. *Id.* at *1. According to trial testimony in the civil action between the parties, the Gulley spotlights "flooded through the Markey home to the extent that their bedroom could not be fully darkened at night," thus disturbing their peace. *Id.* at *2.

386. *Id.* at *1.

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

for compensatory damages on their claim of nuisance,” \$250 in compensatory damages on their trespass claim and \$750 in punitive damages.³⁹¹

The Ohio appellate court, in the course of affirming the jury verdict for the tort of outrage, focused on Chris Markey’s expert psychological proof from a medical doctor that the neighborhood dispute with the Gulleys had caused Chris “dysthymia and post-traumatic stress disorder (PTSD),” coupled with “digestive and gastrointestinal problems.”³⁹² In addition, the appellate court reviewed with favor Huai Markey’s testimony that “she lived in fear” and felt that she had “no control over what happened” to her and her husband from the Gulleys’ misconduct.³⁹³

One final aspect of the case is worthy of mention. The appellate court found it appropriate that the Markeys were permitted to testify concerning their observations of Daniel Gulley’s recurring intoxication over the two-year period of neighborhood hostility because the testimony addressed the reasonableness of “the Markeys’ decision to utilize law enforcement rather than discuss the problems as neighbors generally might be expected to do.”³⁹⁴

3. The Case of the Incarcerated Farm Stand Lady

At the outset of a Massachusetts appellate court opinion, which went on to reverse the conviction of Joanne Santos for “trespass by agency,”³⁹⁵ the appellate opinion observed: “The events giving rise to the defendant’s conviction reflect the depressingly familiar phenomenon of an ongoing, rancorous dispute between neighbors over asserted property rights.”³⁹⁶ The bugaboo concerned a paved driveway of Joanne Santos’s backyard neighbors, Karen and Joseph Schady, which “was flanked on either side of land owned by” Joanne.³⁹⁷ The Schadys’ driveway, indeed, was problematic: civil litigation between the neighbors was pending with the Schadys claiming that they owned the entire eighteen-foot-wide drive and Santos claiming that, because “the Schadys were deeded only ten of its eighteen foot width . . . she owned the remainder.”³⁹⁸

The kernel of the controversy involved a seasonal farm stand that Joanne Santos owned and operated on her property facing a public road—consisting of a ten-foot gazebo and flower beds—which, also, happened to be located alongside the disputed driveway.³⁹⁹ “Concerned about [Joanne Santos’] customers’ foot and

391. *Id.* at *2.

392. *Id.* at *3.

393. *Id.* (internal quotation marks omitted).

394. *Id.* at *5.

395. *Commonwealth v. Santos*, 792 N.E.2d 702, 702, 708 (Mass. App. Ct. 2003).

396. *Id.* at 703.

397. *Id.*

398. *Id.* at 703 n.2.

399. *Id.* at 703.

automobile traffic across the driveway, the Schadys, through their attorney, requested that [Joanne] prevent her customers from using their claimed driveway in any manner.”⁴⁰⁰ Joanne responded to this communication by hiring “a crane operator to move several three by five foot rectangular cement blocks from a field on her property and to place them on the . . . edges of her land bordering the driveway,” where they had earlier been located “before the Schadys moved them—in such a way as to prevent her customers from entering the driveway” adjacent to her farm stand.⁴⁰¹ Joanne was careful to inform her hired crane operator to “avoid entering or touching in any way the ten-foot wide portion of the driveway she conceded” was the Schadys’ property and “to be sure to place the cement blocks entirely on what she claimed to be her property.”⁴⁰²

On the day that the crane operator moved the cement blocks for Joanne Santos, her neighbor, Karen Schady, objected to the project and observed the boom of the crane swaying, at times, “across the airspace above the driveway” in the course of operations.⁴⁰³ The following day, the Schadys filed a criminal complaint against Joanne.⁴⁰⁴ The trial judge “found her guilty of criminal trespass by agency by virtue of the crane operator’s occasional intrusions into the airspace above the driveway.”⁴⁰⁵ Shockingly, prior to Joanne’s sentencing to one year’s probation, “*she was unaccountably held without bail for four days in a house of correction . . . and ordered to undergo a psychiatric evaluation.*”⁴⁰⁶

The Massachusetts appellate court reversed Joanne’s conviction, opining that the government “has been unable to cite a single case . . . supporting the proposition that criminal trespass can be founded on an ‘entry’ consisting of the purported invasion of airspace by briefly and harmlessly moving or propelling an object above a parcel of land.”⁴⁰⁷ The court concluded by offering a rare rebuke of the criminal justice system that had caught up the Farm Stand Lady in a Kafkaesque nightmare:

[W]e are constrained to comment on the regrettable and questionable expenditure of public funds that the arguably arbitrary and erratic prosecution of this case involved. It seems clear that a more appropriate course for a dispute of this nature would have been a tort action, where equitable relief and the contempt sanction could adequately have remedied any ongoing, sustained or repetitive injury to legitimate property rights. Conservation of our limited

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.* at 704.

404. *Id.*

405. *Id.*

406. *Id.* (emphasis added).

407. *Id.* at 705.

judicial and prosecutorial resources is an obligation that must be shared by all officers of the justice system, and as this case demonstrates, is one that needs reiteration.⁴⁰⁸

4. Synoptic Comments

The in-depth 2003 neighborhood dispute cases discussed above⁴⁰⁹ are characterized by boorish misdeeds, which metastasized into situations of profound human suffering. Yet, due to a combination of profound perseverance by the aggrieved litigants, commendable skill of their advocates, fair-minded jury deliberations and wise judicial decisions, a rough kind of justice was achieved in each case.

The Case of the "FA-Q" Serial Condemner involved an out-of-control neighbor who acted like a tyrant—oblivious to all norms of civilized behavior, brutish in his actions toward young children, and bullying in his repeated affronts to the peace and quiet enjoyment of his neighbors' home.⁴¹⁰ The substantial compensatory damages, fines and shifting of attorney's fees to the deviant landowner reflect considerable lawyerly skill. One wonders, however, why the local prosecutor didn't enter the fray.

The Case of the Post-Traumatic Stressed-Out Neighbor involved two sets of neighbors that started off their living arrangement with the other by experiencing a fundamental conflict in lifestyles—one set of neighbors valued their quiet enjoyment of their property, and the other set of neighbors liked to party hardy.⁴¹¹ In hindsight, a more conciliatory approach at the start of neighborly relations might have gone far to smooth the rough edges of living so close to one another; the repeated calling of the sheriff to referee disagreements and excessive videotaping was, no doubt, counterproductive and served to create resentment and backlash by the opposing neighbors.⁴¹² Yet, the escalating, over-the-top behavior, which started with all night bonfire parties, evolved into spite floodlights and a spite wall and culminated in ethnic slurs and property destruction that was inexcusable.⁴¹³ The new neighbors, through the vigilant efforts of their attorney, matched the legal gamesmanship of the old neighbors and their jejune attorney (how foolish it was to file a transparently bogus \$16,000,000 lawsuit for harassment after the criminal trespass charges against the complainants!) and skillfully adduced expert evidence

408. *Id.* at 708.

409. *See supra* notes 369–408 and accompanying text.

410. *Sturm v. Faughn*, No. 241707, 2003 WL 23104242, at *1 (Mich. Ct. App. Dec. 20, 2003).

411. *Gully v. Markey*, No. 01COA030, 2003 WL 169953, at *1 (Ohio Ct. App. Jan. 24, 2003).

412. *Id.*

413. *Id.* at *1-2.

regarding the emotional distress suffered by his clients.⁴¹⁴ Lingering questions remain: might there have been an earlier legal intervention of the legal system in the recurring neighborhood dispute? After ten sheriff calls? After twenty sheriffs calls? After thirty? After forty?

The Case of the Incarcerated Farm Stand Lady, occurring in the Commonwealth of Massachusetts, has—up to the resounding reversal of Joanne Santos’ criminal conviction for “trespass by agency”—an eerie resemblance to the Salem, Massachusetts Witch Trials that occurred over three centuries beforehand.⁴¹⁵ Indeed, how did Joanne Santos end up incarcerated without bail in a state house of correction subject to prolonged psychiatric evaluations?⁴¹⁶

F. 2004

TABLE 6: 2004 Cases

Predominant Type of Neighbor Dispute	Number of Cases
Adverse Possession	4
Boundary or Title	14
Criminal Complaint by Neighbor	16
Development/Land Use/Zoning	11
Easements	6
Landscaping/Runoff	5
Non-Violent Nuisances	13
Riparian/Water Disagreements	2
Violent Confrontations	4
Miscellaneous	11
TOTAL	86

In 2004 a panoply of disputes between and involving neighbors resulted in judicial opinions. Examples of these conflicts include the following: a spat between adjoining property owners over a common private road that escalated to one neighbor wrongfully digging up a portion of the road to prevent the other neighbor from legally utilizing the common passage;⁴¹⁷ a disagreement over access by neighbors to a common water supply coupled with complaints by one litigant over smoke and noise from the other litigant’s barbecue restaurant;⁴¹⁸ a South

414. *Id.*

415. *See generally* THE OXFORD COMPANION TO UNITED STATES HISTORY 681 (Paul S. Boyer ed., 2001) (describing the 1692-93 witchcraft hysteria).

416. *See supra* note 406 and accompanying text.

417. *Griffin v. Abshire*, 878 So.2d 750, 753-54 (La. Ct. App. 2004).

418. *Ashmore v. Smith*, No. 03-03-00609-CV, 2004 WL 1171717, at *1 (Tex. Ct. App.

Dakota easement clash that involved a Sioux Native-American claim;⁴¹⁹ a brawl between condominium residents over cigar smoke, which wafted from the private outdoor patio of one unit into another, with claims that the cigar smoke caused contamination of draperies, furniture, and clothing and resulted in health difficulties and mental aggravation;⁴²⁰ a war between the residents of two units of a homeowners' association involving allegations of a racially based campaign entailing derogatory messages left in numerous locations, racial epithets, a cut television cable line, a "Scream" mask left on an automobile, and dead rats left on the front steps and back patio;⁴²¹ a Washington couple's boundary dispute with their neighbors that mushroomed into additional unsuccessful suits waged by the litigious couple against their neighbors' attorney, their neighbors' surveyor, the county prosecutor, state attorney general and state governor;⁴²² a deranged mother who lost custody of her two minor children because she was incarcerated as a result of a dispute with her neighbors involving vegetation growth where the mother "used a chainsaw to trim a tree in her yard" while her children were playing in the tree;⁴²³ a frustrated *pro se* litigant who sued a city in federal court and requested a program to be implemented to resolve neighborhood disputes like the ones he had supposedly been involved with;⁴²⁴ a disgruntled couple's effete lawsuit to order their homeowners association to enforce restrictive covenants regarding the parking and storage of recreational vehicles, trailers and boats;⁴²⁵ an environmental imbroglio involving a rural Pennsylvanian family, who valued a pond on their property for fishing, swimming, boating and aesthetic enjoyment and brought a federal action against a mushroom farm for civil penalties and injunctive relief for polluting their pond from leachate runoff of the mushroom farm;⁴²⁶ a donnybrook, which started by a Georgia woman's scolding remarks to a child that she should not

May 27, 2004).

419. Block v. Drake, 681 N.W.2d 460, 462 (S.D. 2004).

420. Babbitt v. Superior Court, No. E033448, 2004 WL 1068817, at *1 (Cal. Ct. App. May 13, 2004).

421. Lawrence v. Courtyards at Deerwood Ass'n, Inc., 318 F. Supp. 2d 1133, 1137 (S.D. Fla. 2004).

422. Whitcombe v. Kitz, 121 Wash. App. 1037, Nos. 52005-9-I, 52170-5-I, 2004 WL 1045932, at *1-2 (Wash. Ct. App. May 10, 2004).

423. *In re B.T.*, No. C043154, 2004 WL 966181, at *1 (Cal. Ct. App. May 6, 2004).

424. Romeo v. State of Delaware, No. Civ. A 04-153-SLR, 2004 WL 1043196 (D. Del. Apr. 27, 2004).

425. Goodenough v. Hidden Hills Homeowner's Ass'n, 121 Wash. App. 1013, 2004 WL 837900, at *4 (Wash. Ct. App. 2004).

426. Reynolds v. Rick's Mushroom Service, Inc., No. Civ.A. 01-3773, 2004 WL 620164, at *1-2 (E.D. Pa. Mar. 29, 2004). The federal district court judge, in partially granting the Reynolds' motion for injunctive relief, ordered a special master acting as a mediator to help the mushroom farm correct its operational deficiencies and comply with best practices. *Id.* at *8.

ride her bicycle on the woman's property, boiled over to the child's parents confronting the woman about her disciplinary comments, and exploded with the parents (one of whom was a county police officer) contacting a magistrate judge who ordered the woman's arrest for criminal simple assault, with the woman subsequently not prosecuted and, then, bringing a blockbuster civil rights suit against county officials in federal court;⁴²⁷ and, a disturbance in an apartment building that started with a neighboring tenant who made loud noises from the use of power tools in his unit early in the morning, and, after being requested by a resident couple to wait to later in the morning to use the power tools, made loud threatening verbal threats which included statements that he had "been in the pen for 12 years for attempted murder on two cops," that "the neighborhood was full of picky, nitpicky white motherfuckers" and that the couple would "be waking up to knives," leading to the power tool user's conviction for making criminal threats.⁴²⁸

Other noteworthy cases involving conflicts between neighbors decided in 2004 include: a raging battle between two Philadelphia males, one of whom was a policeman, over a woman with an ultimate confrontation when the cop was off-duty, encountered his rival on the street when the men were in their respective cars, and ended up in a street brawl with the off-duty police officer shooting his antagonist multiple times, leading the injured male to file an unsuccessful civil rights action against the cop and the City of Philadelphia;⁴²⁹ a feud between two affluent waterfront families in Massachusetts that led to criminal charges against various individuals in the two families, restraining orders and contempt of court stemming from harassing telephone calls, stoning of a house, verbal obscenities, and the like;⁴³⁰ a fracas between neighbors over the legality of parking a huge

427. *Payne v. DeKalb County*, 414 F. Supp. 2d 1158, 1163-64 (N.D. Ga. 2004).

428. *People v. Washington*, No. B163956, 2004 WL 505128, at *1-2 (Cal. Ct. App. June 16, 2004) (internal quotation marks omitted).

429. *Pryer v. City of Philadelphia*, No. Civ.A. 99-4678, 2004 WL 603377, at *1 (E.D. Pa. Feb. 19, 2004).

430. *St. Germain v. Rose*, No. 0000154, 2004 WL 504776, at *1 (Mass. Super. Ct. Feb. 4, 2004). The trial court judge, after imposing monetary penalties for contempt against various members of the Rose family, offered the following wise plea for future peace:

As an aside, and as an observation which the court takes the liberty of offering out of a hope that it might lead to a truce between the parties ... the atmosphere in which this dispute exists between these two families is not the fault of just one or the other. The court finds that there have been enough occasions wherein each side has had opportunity to de-escalate the conflict and to reduce the atmosphere of animosity, but, for whatever reason, neither could leave well enough alone. It is not within the ability of the court to solve any long-lasting dispute in which one side, or the other or both sides are so inflexible and intransigent in their ways and thinking that a permanent or long-lasting resolution is unlikely. Nor should the parties expect that the court can always be perfectly accurate in deciding questions of credibility on the evidence presented. In situations such as that presented here, especially as concerns a senseless and juvenile feud, with actions and reactions, charges and countercharges,

trailer on an adjoining lot;⁴³¹ a black woman's civil rights suit against her Indiana neighbors for various insults and indignities, such as a statement by one neighbor that "there is more than one way to lynch a nigger," neighbors placing dog feces on the door-mat of her house, placing beer bottles and cans in her mailbox and a phone threat from a man threatening to kill her;⁴³² a verbal altercation between a mother and a YMCA membership director that led to the mother being arrested and handcuffed by police (the record indicating that the mother and members of her family had been previously arrested by the police twenty-two times in a fifteen-month period);⁴³³ a nasty neighborhood dispute involving a pro se plaintiff who sued his neighbors and an arresting police officer for various alleged civil rights violations and subsequently drew contempt citations for making false statements to the federal court and, against the order of the court, inserting the social security numbers of the defendants in court filings;⁴³⁴ an unsuccessful tort action, predicated on a theory of public nuisance, by survivors of five victims who had been shot and killed by juveniles with access to handguns manufactured or sold by the defendants;⁴³⁵ a Montana family who was driven from their home by an adult neighbor, ironically named Danny C. Good, who was criminally responsible for various threats and actions against the family and was ordered to pay restitution to the family for the costs of obtaining surveillance equipment and paying the costs of an extra mortgage pending the sale of the home they moved away from;⁴³⁶ a

that has clearly gotten out of hand, it appears that the parties involved seem more interested in prolonging the dispute than in its solution, and with neither party being willing to admit to his own fault ... Cases such as this are further complicated by the necessities of travel and the fact that the public ways must be open and usable by all, but which use carries one party near the other. One can only hope that the parties involved will take an honest look at the situation that they alone have created, to reflect on their own attitudes, conduct and misbehavior that brought the situation to pass, and hopefully find an adult solution that both [families] can live with that ends not only the particular dispute that was before the court, but also improves the atmosphere that led or contributed to the controversy, for the sake of their families and neighbors. The court is not asking the parties to become friends, nor is it within our power to order them to do so; however, we can expect and order the parties to leave each other alone.

Id. at *2.

431. *Martinez v. McNabb*, No. C044117, 2004 WL 103541, at *1 (Cal. Ct. App. Jan. 23, 2004).

432. *Walton v. Claybridge Homeowners Ass'n, Inc.*, No.1:03-CV-69-LJM-WTL, 2004 WL 192106, at *1 (S.D. Ind. Jan. 22, 2004).

433. *Keene v. Hagerstown YMCA*, No. Civ. JFM-03-994, 2004 WL 2885365, at *1-2 (D. Md. Dec. 10, 2004).

434. *Long v. McDermott*, No. 03 C 6101, 2004 WL 2966934, at *1-2 (N.D. Ill. Dec. 1, 2004).

435. *Young v. Bryco Arms*, 821 N.E.2d 1078, 1080 (Ill. 2004).

436. *State v. Good*, 100 P.3d 644, 646-67 (Mont. 2004).

dispute between a developer and adjoining landowners over drainage and flooding of surface waters;⁴³⁷ an unsuccessful habeas corpus petition by eight inmates who were under long criminal sentences for their convictions for murder, criminal conspiracy, and other serious crimes stemming from their membership in MOVE—a group of Philadelphia residents who had ongoing problems with their neighbors and the police—which had a violent confrontation, under heavy gunfire, with city police and firefighters, resulting in a death, personal injuries, and the destruction of several buildings and trees;⁴³⁸ an errant attorney who had his license to practice law revoked for, among other things, misrepresenting to the survivors of an elderly client the “amount and nature of the work that he had done on the decedent’s behalf” in a dispute that the decedent had with a neighbor;⁴³⁹ a bizarre dispute between Connecticut neighbors, which started as a problem over surface run off, and led one neighbor, in retaliation, to call an excavating company, feigning that she was the property owner, to have the “entire backyard” of her antagonistic neighbor “excavated,” and to allegedly call the water company to request the neighbor’s water to be shut off, and ultimately, a federal civil rights suit brought by the duped neighbors against a police officer and other neighbors involved in the dispute;⁴⁴⁰ bad blood between Los Angeles neighbors over offending leaves and litter and a sprinkler system, which led to rock and brick throwing and an injunction by one set of neighbors against the other prohibiting further harassment;⁴⁴¹ an unsuccessful federal lawsuit against a Hawaii real estate developer over the unwanted construction of a swimming pool in a luxury subdivision;⁴⁴² a Georgetown attorney’s unsuccessful defamation and false light publicity federal lawsuit against three Georgetown University tenants residing next door that started with the attorney upset over the students’ “excessive noise, improper disposal of household trash, and abusive language,” with the loud noises recorded on a tape, escalated to the students writing a letter to their landlord claiming that the attorney’s recording was a violation of a criminal wiretap statute, and culminated in the attorney’s suit;⁴⁴³ apartment building tenants who did not like

437. TCR Midatlantic/NE Properties, Inc. v. Marques, No. 279257, 2004 WL 2376472, at *1-2 (Mass. Land Ct. Oct. 25, 2004).

438. Africa v. Digulielmo, No. Civ. A. 04-451, 2004 WL 2360419, at *1 (E.D. Pa. Oct. 20, 2004).

439. Iowa Supreme Court Bd. of Prof’l Ethics & Conduct v. Anderson, 687 N.W. 2d 587, 588-89 (Iowa 2004).

440. DeMuria v. Hawkes, No. 3:00CV1591, 2004 WL 2216524, at *1 (D. Conn. Sept. 24, 2004).

441. Wright v. Roberts, No. B165239, 2004 WL 2095537, at *1 (Cal. Ct. App. Sept. 21, 2004).

442. W. Sunview Props., L.L.C. v. Federman, 338 F. Supp. 2d 1106, 1110 (D. Hawaii 2004).

443. Washburn v. Lavoie, 357 F. Supp. 2d 210, 212-13 (D. D.C. 2004), *aff’d* 437 F.3d

the actions of a neighboring family in the apartment building (barking dog, children play noise, leaving laundry in communal laundry room for days) and, so, falsely charged the adult male father of being a “peeping Tom,” were held liable for substantial compensatory damages (including pain and suffering) and punitive damages for the tort of false imprisonment of their neighbor when he was wrongfully arrested by the police;⁴⁴⁴ a good samaritan neighbor who successfully petitioned for the legal custody of an abandoned child who had been living with her and a judicial determination that the neighbor was the “psychological parent” of the child;⁴⁴⁵ a macabre, unsuccessful federal civil rights wrongful death case, which involved an ongoing feud between rural Pennsylvanian neighbors that resulted in numerous complaints to the police, led to a call by one neighbor to the state police that his neighbor, Robert Smith (a former Vietnam war veteran) had shot out lights on the complainant’s property, escalated to responding state troopers calling for assistance from a police emergency response team because of concern that Smith had a laser-sighted firearm, resulted in a full-blown police emergency response team search of Smith’s property with a helicopter, distraction devices and tear gas, and, while Smith was not found by the paramilitary police raid, a friend found his body a week later in the wooded area behind his home, and a forensic pathologist opined that Smith had probably died from a heart attack caused by the stress of the police raid;⁴⁴⁶ and, an eight-year struggle between adjacent neighbors over a mature laurel hedge along their shared property line involving one neighbor who violated an arbitrator’s ruling prohibiting interference with the hedge by severely cutting the vegetation, constructing a concrete retaining wall encasing the hedge’s roots, building a cinder block spite wall on top of the retaining wall, and installing a wrought iron fence on top of the wall and who, ultimately, was ordered to pay contempt sanctions and prejudgment interest of over \$200,000 for his contumacious behavior.⁴⁴⁷

The three highlighted cases for 2004 all involved extreme actions by troubled residential neighbors seeking serious tort liabilities for their over-the-top neighbors.

1. The Case of the Serial Shooter Who Always Claimed Self-Defense

In the Texas case, *Rogers v. Peeler*, “Tommy Peeler and Michael S. Rogers were adjoining landowners who had an ongoing boundary line dispute.”⁴⁴⁸ Rogers

84 (D.C. Cir. 2006).

444. *Kesmodel v. Rand*, 15 Cal. Rptr. 3d 118, 120-21 (Cal. Ct. App. 2004).

445. *P.B. v. T.H.*, 851 A.2d 780, 782 (N.J. Super. Ct. App. Div. 2004).

446. *Smith v. Marasco*, No. Civ. A. 00-5485, 2004 WL 633276, at *1-3 (E.D. Pa. Mar. 29, 2004).

447. *Manza v. Kovanen*, 121 Wash. App. 1018, 2004 WL 901583, at *1 (Wash. Ct. App. Apr. 27, 2004).

448. *Rogers v. Peeler*, 146 S.W. 3d 765, 767 (Tex. App. 2004).

and Peeler owned adjacent tracts of land in the Sabine River bottom and for a year or so in the mid-1990s experienced a series of arguments concerning the boundaries of their properties.⁴⁴⁹ Yet, for more than six years the neighbors “had no [further] contact with one another” until a fateful day in November of 2002.⁴⁵⁰ As chillingly described in the appellate court opinion, which upheld a jury verdict for the tort of battery:

On November 9, 2002, Rogers and three companions were riding four-wheelers in the river bottom on Rogers’ property. [Among the four], [t]he two men in the group, Rogers and his friend Daniel Giles, were carrying firearms because, according to their testimony, they anticipated coming into contact with wild hogs and snakes. Members of the group testified that, during the excursion, they became lost in the thick brush of the river bottom.

Rogers saw Peeler on a tractor, mowing a nearby area, and that was when he knew he was on Peeler’s property. Rogers testified he then approached Peeler to explain that he was lost and to ask Peeler’s permission to take a right-of-way back to his own property. Peeler shut down his tractor and mower. Rogers told Peeler the group was lost, to which Peeler responded, “Bullshit.” According to Peeler, the conversation ended with Rogers calling Peeler a “stupid S.O.B.” Rogers turned to leave, and Peeler went toward him and threw his cell phone at Rogers, hitting him on the head.

At this point, the parties’ versions of events differ markedly. Peeler alleges that, when he was about two to eight feet from Rogers, he heard the velcro on Rogers’ pistol holster and, recognizing what was about to happen, he turned to run away. Rogers then shot Peeler in the back. The gunshot wounds indicate Peeler was shot in the back of his left shoulder and the back of his left armpit.⁴⁵¹

“As a result of these wounds, Peeler’s left arm had to be amputated below the elbow.”⁴⁵² Interestingly, Rogers contended that he acted in self-defense, testifying “that, after Peeler hit him with the cell phone, Peeler jumped on him, causing the four-wheeler to turn over.”⁴⁵³ During the ensuing struggle, “Rogers said he began to

449. *Id.*

450. *Id.*

451. *Id.* at 767-68. In Texas, Peeler technically sued for “assault,” which under Texas law has the same definition, “whether in a civil or criminal trial.” *Id.* at 768-69 (citation omitted). “A person commits assault [under Texas law] if the person intentionally, knowingly, or recklessly causes bodily injury to another.” *Id.* at 769 (citation omitted).

452. *Id.* at 768, n.2.

453. *Id.* at 768.

fear for his life and shot Peeler.”⁴⁵⁴ Moreover, “Rogers testified Peeler had previously threatened to kill Rogers, his dogs, and other people. Rogers admitted having consumed at least six to eight beers in the two hours preceding this encounter with Peeler.”⁴⁵⁵

Rogers’ story encountered problems in front of the jury. In the first place, a sheriff’s deputy who had responded to the incident testified that Peeler’s shirt “showed no signs that the weapon was fired in close contact with Peeler.”⁴⁵⁶ In the second place, Peeler’s counsel “presented evidence of two prior incidents in which Rogers shot a handgun during a confrontation and later claimed he acted in self-defense.”⁴⁵⁷ Indeed, “[i]n a 1988 incident, Rogers recklessly discharged a firearm while in an argument with a friend. Although Rogers claimed in this trial that he was defending himself in that incident, he nonetheless pled guilty to a charge of reckless conduct.”⁴⁵⁸ And, “[i]n a 1989 incident, Rogers claimed self-defense when he shot his then-wife in the leg because she allegedly came at him with a butcher knife.”⁴⁵⁹ The trial court, affirmed by the Texas appellate court, allowed the jury to consider Rogers’ prior violent acts, ostensibly undertaken in self-defense, for “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”⁴⁶⁰ As more particularly explained by the appellate court, “when an accused claims self-defense, the opposing party, in order to show the accused’s intent, may introduce rebuttal evidence of prior violent acts by the accused in order to show his or her intent.”⁴⁶¹

Peeler’s trial counsel went up to the line of legal propriety in his closing argument but did not, in the view of the appellate court, cross the line. Peeler’s lawyer, referring to the conflicting testimony of Rogers and his three excursion compatriots, argued: “And even with Mr. Rogers’ guidance from two prior experiences, knowing what self-defense is legally all about, two prior times when this has happened, they didn’t have time to get all their story together.”⁴⁶² Peeler’s trial counsel also suggested that “Rogers was a man looking for an excuse to shoot somebody, a man who would rather shoot than fight” and went on to assert that “[m]aybe the third time is a charm.”⁴⁶³ The trial court entered a judgment in

454. *Id.*

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.* at 772.

459. *Id.*

460. *Id.* at 773 (citing TEX. R. EVID. 404(b)).

461. *Rogers v. Peeler*, 146 S.W. 3d 765, 773 (Tex. App. 2004) (citations omitted).

462. *Id.* at 777 (internal quotation marks omitted).

463. *Id.* (internal quotation marks omitted).

accordance with the jury verdict of \$1,250,000 in compensatory damages, which the appellate court affirmed.⁴⁶⁴

2. The Case of the Bullying Neighbors

In the Tennessee case, *Levy v. Franks*, the state intermediate appellate court introduced the matter as follows: “[t]his case is about an idyllic relationship between neighbors that ultimately became a donnybrook.”⁴⁶⁵ The Franks family had owned a seventeen-acre tract of land in rural Tennessee for many years, but in 1983 the family sold a one-acre parcel to another family who constructed a home on the land.⁴⁶⁶ In 1987, Howard and Suzanne Levy purchased the house and land.⁴⁶⁷ As explained in the appellate opinion:

The area was quiet, pastoral and mostly rural. The Levys’ one-acre property was almost completely surrounded by the Franks’ property. The Levys accessed their property by an easement over a driveway that they shared with the Franks, and the water and gas lines to the Levys’ home ran under the Franks’ property. The Levys’ home overlooked a pond that sat on the Franks’ property.⁴⁶⁸

All went well between the Franks and their neighbors, the Levys, for ten years. The neighbors “lived in harmony,” the various “children played together,” the families shared “parties and cookouts, and the Levys were given open access to the Franks’ pond and recreational equipment.”⁴⁶⁹ In short, “[e]ach family considered the other to be friends.”⁴⁷⁰

Relations between the neighboring families started to be strained in the mid-1990s. During 1994, “the Franks built a barn-like structure on their property behind their home.”⁴⁷¹ In “an escalating commercial use”⁴⁷² of their acreage, in

464. *Id.* at 767. The feud between the neighbors in the Texas case at bar, fortunately, did not lead to any deaths. For a similar contest of wills between two Virginia neighbors that did lead to one neighbor killing the other, see Mary Battiata, *Blood Feud in THE BEST AMERICAN CRIME WRITING 2006* 195-221 (Mark Bowden ed., 2006). In a coda to her article Battiata wrote: “Nearly everyone has had problems with a neighbor at one time or another, and this story of tragedy in a corner of rural paradise ... seemed to strike a particular chord.” *Id.* at 219.

465. *Levy v. Franks*, 159 S.W. 3d 66, 69 (Tenn. Ct. App. 2004)

466. *Id.*

467. *Id.*

468. *Id.*

469. *Id.*

470. *Id.*

471. *Id.* at 70.

472. *Id.* at 69.

1995 the Franks added various “business offices to the barn,”⁴⁷³ and, during 1997, “the Franks built a second barn-like structure on their property, and Mr. Franks began storing equipment for his contracting business there as well.”⁴⁷⁴

Concerned about the frenetic development of the Franks’ adjoining land, “Mr. Levy anonymously contacted the County Codes Department” to suggest that the barn structures on his neighbors’ property “were in violation of the residential zoning restrictions” in the county.⁴⁷⁵ “As a result, the Codes Department sent the Franks a letter informing them that they would have to remove one of the barn-like structures on their property, because it had been built in the flood plain.”⁴⁷⁶

During 1998 relations between the Franks and the Levys broke down. First, after learning that Mr. Levy was the source of the land use complaint, Mr. Franks and his brother met with him “to discuss the property uses.”⁴⁷⁷ The substance of this informal meeting between neighbors was subject to markedly conflicting accounts:

According to Mr. Levy, in the meeting, Mr. Franks threatened to put pigs in the pond which the Levys’ home overlooked, to paint his barn structure orange and place it directly behind the Levys’ house, and to cut off the Levys’ access to their water line. Mr. Levy maintained that during this meeting Mr. Franks said that he planned to continue operating the family construction business from their property, and Mr. Levy could move if he did not like it. Mr. Franks, on the other hand, said that in the meeting he simply expressed disappointment with Mr. Levy’s conduct, noting that the Franks had always been good neighbors who did not do things such as putting pigs in the pond or painting the barn orange. Mr. Franks also said that he told Mr. Levy about plans to build Mr. Franks’ mother a home in a field behind the Levys’ property.⁴⁷⁸

After the Franks-Levy meeting, “[t]he Franks’ construction activities on their property continued unabated”⁴⁷⁹ and Mr. Levy continued to complain, to no avail, to county officials, one of whom suggested that Mr. Levy “obtain ‘hard’ evidence of the Franks’ activities on their property.”⁴⁸⁰ As a result, “Mr. Levy took this suggestion to heart” and started “photographing and videotaping the Franks’

473. *Id.* at 70.

474. *Id.*

475. *Id.*

476. *Id.*

477. *Id.*

478. *Id.*

479. *Id.*

480. *Id.* (footnote omitted).

property and the common driveway in order to document” the Franks’ activities.⁴⁸¹ During this agitated timeframe, the Franks mailed a letter to the Levys informing them “that the Levy children were no longer to use the Franks’ recreational equipment without permission or enter the Franks’ property in their absence.”⁴⁸² This communication was followed by Mr. Franks stopping the Levys’ eleven-year-old son from walking across the Franks’ property (as he had done in the past) to go fishing in a nearby river.⁴⁸³ In June of 1998, the county issued a stop work order on ongoing construction work on the Franks’ property.⁴⁸⁴ When a county officer served Mr. Franks with the order, Franks angrily remarked “that there’s fixin’ to be a killin’ in the holler” and, later the same day, repeated the threat at a county office.⁴⁸⁵ The county official who heard Mr. Franks’ threat “was sufficiently concerned that he told Mr. Levy about Mr. Franks’ remark, and both Mr. Levy” and the county officer “filed police reports based on Mr. Franks’ statements.”⁴⁸⁶ On various days in late June and early July, after the stop work order, the relations between the Franks and the Levys approached a new low, colorfully described in the Tennessee court’s opinion:

On June 27 and 28, 1998 . . . Mr. Franks had a dirt road made along the property line between the Franks’ and the Levys’ property and erected a silt fence between the road and the property line. Mr. Franks also bulldozed six to eight trees into the pond situated on his land but directly in front of the Levys’ home. Many of these bulldozed trees would stay in the pond some six months. On July 3, one of the Franks’ sons drove a lawn mower on the dirt path, blowing dust and dirt onto the Levys’ house. Mr. Levy relentlessly videotaped and photographed these activities, and indeed much of the other activities that occurred over subsequent months on the Franks’ property, including the comings and goings of employees and relatives. Mr. Levy also remained in contact with county officials. Later, on the day of the lawn mower incident, as Mr. and Mrs. Levy were outside getting ready to drive away from their house, Mr. Franks and a number of his employees stood at the end of their common driveway shouting taunts at the Levys, ridiculing their religious beliefs and calling Mr. Levy a “yellow belly.”⁴⁸⁷

During the first week of July, at the instigation of the Franks, the Levys were informed that their water line would be severed from the common water line with

481. *Id.*

482. *Id.* (footnote omitted) (internal quotation marks omitted).

483. *Id.* at 70-71.

484. *Id.* at 71.

485. *Id.* at 71 (internal quotation marks omitted).

486. *Id.*

487. *Id.* (footnote omitted).

the Franks and that they would have to “remove a gas line” cross their neighbors’ property because they “had not obtained an easement for the line.”⁴⁸⁸ Moreover, in a letter from the Franks’ attorney, the Levys were “warned” that “if the Levy children ventured onto the Franks’ property, it would be considered a trespass.”⁴⁸⁹ Also in early July, Mr. Franks submitted a site plan to the county planning commission, “seeking approval to use his property for a residential business and also seeking retroactive approval for the building of his barn structure in the flood plain.”⁴⁹⁰ On July 24, 1998, Mr. and Mrs. Franks, accompanied by relatives and employees of Franks’ construction company, came to the Levys’ front door and “[u]nbeknownst to the Franks, Mrs. Levy secretly videotaped” the threats made by Mr. and Mrs. Franks against her husband, Mr. Levy:

[In an angry and belligerent manner, Mr. Franks told Mr. Levy]: “I’m goin’ . . . to the [county planning] board about this . . . and you better not be there that’s all I got to say.”

“I can tie this thing for three years in Chancery Court, and cost your children’s college tuition and everything you want to spend.”

“If you come up and protest anything against me and you’re gonna see what’s gonna happen”

“So keep on, I don’t know who will murder you, but I’m tellin’ ya you’re gonna have problems, you don’t understand the consequences”

“Cause I’m, I’m tellin’ you man, you don’t realize what’s gettin’ ready to happen about all of this. You go and report me now and that’s fine. I’m telling you man, videotapin’s goin’ to get you in trouble.”

“Because . . . there ain’t a jail in this country that I don’t—no matter what jail I go to there’s gonna be a problem when you video me one more time.”

“So I mean let’s, let’s get it. You need to move, bottom line. You need to move. You’re in the wrong place, and you need to move.”

Mrs. Franks added remarks that were profane and derisive. The Franks left the Levy home, the matter unresolved. Later in the day, the Franks placed a large backhoe at the end of the common driveway, blocking a portion of it.⁴⁹¹

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.* at 72.

The next day, early in the morning while Mrs. Levy was in her yard gardening, “Mr. Franks drove his truck on his property near the Levys’ property, and got out of his truck with a gun,” then “fired two shots on his property, across the pond which the Levys’ home overlooked, and then backed his truck away.”⁴⁹² Mrs. Levy became “[a]larmed and afraid,” “ran into [her] house,” and “called law enforcement officials [to] file[] a report.”⁴⁹³ In addition, in the days in late July before the Levys sued the Franks, “other more minor incidents continued to occur.”⁴⁹⁴ The Levys’ lawsuit alleged violations by the Franks of local zoning codes in addition to illegal acts of intimidation and coercion in response to the Levys’ complaints.⁴⁹⁵ “The Levys requested declaratory judgment concerning the common driveway, the gas and water lines, and the business use of and the barns sitting on the Franks’ property.”⁴⁹⁶ Moreover, the Levys “sought temporary and permanent injunctive relief, enjoining the Franks from terminating the Levys’ gas and water service, from entering the Levys’ property, and from obstructing the Levys’ use of the common driveway.”⁴⁹⁷

After the filing of the Levys’ lawsuit against the Franks in the summer of 1998, the parties continued to battle with one another on further land use issues, and to harass and bother their neighbors.⁴⁹⁸ Court ordered mediation proved futile and “only resulted in increased rancor.”⁴⁹⁹ This post-mediation rancor included Mrs. Franks shouting “a fusillade of profanities and insults” at Mr. Levy while he was out on his deck grilling steaks,⁵⁰⁰ and a relative/employee of the Franks throwing rocks and dirt at the Levy house followed by shouting a “barrage of taunts and vile obscenities” directed at Mr. and Mrs. Levy and their children, for which the relative/friend was arrested for criminal trespass.⁵⁰¹ At the jail, where Mr. Levy

492. *Id.*

493. *Id.*

494. *Id.* These incidents involved the following:

Mr. Levy contended that once the Franks shone their car headlights into the Levys’ bedroom window for approximately ten minutes or so at 5:30 a.m., and that the Franks’ son once rode a motorized bike by their bedroom at 6:30 a.m. In apparent retaliation for the Levys’ constant videotaping of the Franks’ activities, the Franks used binoculars to observe the Levys’ activities on the deck of their home, and Mr. Franks walked along the property line looking into the Levys’ bedroom window.

Id.

495. *Id.* at 72-73.

496. *Id.* at 73.

497. *Id.* The causes of action and relief sought by the Levys were amended before trial to encompass tort claims for money damages. See *infra* notes 505-508 and accompanying text.

498. *Id.* at 73-74.

499. *Id.* at 74.

500. *Id.*

501. *Id.* The obscenities, caught on videotape by the Levys, included the following: “[G]et your f—— pussy a— over here you God d—— child molestin f—— and get your f——

went to swear out a warrant against the relative/employee of the Franks, he was blocked by a contingent of the Franks in the jail parking lot and subject to “another onslaught of epithets.”⁵⁰² In May of 1999, “the Levys installed a twenty-four hour surveillance system on their property, which included a camera aimed at the common driveway;” this action “was closely followed by the Franks’ erection of a thirteen-foot-high stockade-style wooden privacy fence along the property line shared with the Levys’ property result[ing] in the Levys’ home being surrounded on most of three sides by the fencing. . . .”⁵⁰³ The fence stood for over fifteen months; “[t]he day after the stockade fence was taken down, the Franks brought in truckloads of dirt and deposited the dirt along the property line, between the Franks’ pond and the Levys’ home.”⁵⁰⁴

The bench trial in the case lasted a full week with Mr. Levy providing “protracted testimony . . . punctuated by numerous videotapes, photographs, and diary entries.”⁵⁰⁵ Extensive lay and expert testimony was given at the trial regarding the Levys’ mental distress “from the continuing conflict” with the Franks.⁵⁰⁶ The trial court dismissed the Levys’ claim for outrage, found in favor of the Franks on the Levys’ claim for civil conspiracy, and awarded \$5,000 in damages for mental anguish on Mr. Levy’s claim for malicious prosecution (stemming from bogus charges against Levy for criminal trespass by Mr. Franks) plus \$1,050 in attorney’s fees.⁵⁰⁷ Finally each party was enjoined “from going on the other’s property, made provisions for a driveway easement, a gas line and driveway maintenance, and enjoined the re-erection of a thirteen-foot stockade fence on the basis that it would constitute a nuisance.”⁵⁰⁸

The Tennessee intermediate appellate court affirmed in part, reversed in part, and remanded.⁵⁰⁹ The two principal points of reversal were (1) that the conduct of the Franks was so outrageous as to constitute the tort of outrage, which resulted in serious mental injuries to the Levys,⁵¹⁰ and (2) that the trial record indicated malice by Mr. Franks in charging Mr. Levy with criminal trespass.⁵¹¹ The appellate court was distressed by the multiple “death threats” by Mr. Franks against the Levys, observing in its opinion that: “[b]y their entire course of conduct, the Franks sought to quell any opposition to the Franks’ use of their property as a staging ground for

d— out of your daughter’s God d— a —.” *Id.* (internal quotation marks omitted).

502. *Id.* (footnote omitted).

503. *Id.*

504. *Id.* at 75 (footnotes omitted).

505. *Id.*

506. *Id.* at 76.

507. *Id.* at 79.

508. *Id.* at 79 (footnote omitted).

509. *Id.* at 81-82, 85-86.

510. *Id.* at 82-86.

511. *Id.* at 86.

their construction business, by intimidating the Levys into either submitting meekly or selling their home.”⁵¹² Moreover, the appellate court found troubling the trial court’s “blaming the victim” frame of mind whereby, “instead of telling Mr. Franks that his death threats and other actions were egregious overreaction to Mr. Levy’s conduct,” the trial judge “admonished Mr. Levy at length for anonymously reporting the Franks’ zoning violations” to the county government.⁵¹³ Interestingly, in characterizing the conduct of the neighbors in this case, the appellate court opined: “[r]arely is there a perfect response to a bully, and the law does not require that the victim be either blameless or passive.”⁵¹⁴

3. The Case of the Chainsaw Harasser

The California case of *Clanton v. Carr* started with a minor dispute between a couple, Russell Clanton and his wife Vickie Hawkins-Clanton, and their adjoining neighbor, Melvin Carr.⁵¹⁵ An action for quiet title followed with the Clantons commencing suit against Carr.⁵¹⁶ The controversy over the 21 inch by 100 feet strip of land was resolved by mediation (which involved the construction of a boundary fence that Carr was barred from crossing) but, because Carr insisted on being paid money, the Clantons had to seek judicial enforcement of the settlement.⁵¹⁷ In retaliation, Carr then “embarked on a . . . campaign of harassment,” that the appellate court opined was “not hyperbole” in light of the record in the case.⁵¹⁸ In a remarkably telling account of Carr’s vindictive behavior, the court summarized key portions of the record as follows:

Carr threw nails on the Clantons’ driveway, causing many flat tires, for which he was criminally prosecuted. The Clantons found their water tanks drained, causing them to move into a motel overnight so they could shower and bathe. Their irrigation system was repeatedly vandalized. They were plagued by telephone calls where the caller refused to identify himself and hung up; the calls continued at hourly intervals throughout the night.

Carr installed floodlights and, shined them into the Clantons’ home. He also used the headlights from his tractor, leaving the motor running. Carr would often stand where he could stare into the Clantons’ home, forcing the Clantons

512. *Id.* at 84 (footnote omitted).

513. *Id.*

514. *Id.* at 85.

515. *Clanton v. Carr*, No. A104203, 2004 WL 2988609, at *1 (Cal. Ct. App. Dec. 28, 2004).

516. *Id.*

517. *Id.* at *1 & n.1.

518. *Id.* (internal quotation marks omitted).

to install a hedge to give them some privacy. Carr would stand at the property line and direct insulting remarks to Mr. Clanton, once in the presence of the Clantons' children. Carr made offensive gestures to Mr. Clanton's father.

Carr's preferred method of harassment was to operate gasoline-powered machinery within 30 or so feet of the Clantons' bedroom. *He was especially prone to using a chainsaw for extended periods of time, or during the times when it could cause maximum discomfort to the Clantons.*⁵¹⁹

Carr's chainsaw antics were unusually irksome: "Carr did not use the saw to fell trees or cut them into firewood. What he did was use the saw to cut grooves in tree stumps and logs dragged near the property line."⁵²⁰ Moreover, "[h]e did not do this when Mr. Clanton was absent. He typically commenced sawing when Mr. Clanton came home from work, or on Saturday or Sunday mornings, starting as early as 6 a.m."⁵²¹ Indeed, in a mad labor of malevolence, "Carr would continue sawing while being drenched by the Clantons' sprinklers, while it was raining, and even when it was snowing. Inside the Clantons' bedroom, the noise of the chainsaw was deafening."⁵²²

During the early months of 2001, matters escalated. While the Clantons repeatedly asked that Carr stop his extreme harassment, Carr would typically respond with "a flippant remark such as 'You're the pretty boy,' 'Have a nice day,' or a gesture such as kissing the air."⁵²³ In order to document precisely what their vicious neighbor was doing to them, in early 2001 they installed an elaborate security system with numerous security cameras activated by motion sensors.⁵²⁴ "On March 3, 2001, Mr. Clanton confronted Carr and told him to stop the harassment. Carr's reply, recorded on videotape for the jury, was "You started it three years ago, fucker. You're going to eat it."⁵²⁵ The climax to years of harassment occurred in May of 2001, as explained by the California appellate opinion:

After Mr. Clanton came home from work at 6 p.m., the family was getting ready to sit down to dinner. Mr. Clanton had just been given a glass of wine by his wife when Carr "fired up" his chainsaw. Mr. Clanton left the house and—enraged by what he and his family had endured—delivered an "obscenity-laced tirade" at Carr. After Carr just "smiled and kissed the air,"

519. *Id.* (emphasis added).

520. *Id.*

521. *Id.*

522. *Id.*

523. *Id.* at *2.

524. *Id.*

525. *Id.*

Clanton flung the contents of his glass at Carr. Mr. Clanton had returned to his home when Carr resumed sawing. Mr. Clanton, who is an attorney and who had researched the issue, crossed over to Carr's property, grabbed Carr, and made a citizen's arrest for disturbing the peace. Sheriffs were summoned. Before [the deputies] arrived on the scene, Carr told Mr. Clanton, "You're going down."⁵²⁶

In spite of the citizen's arrest, Carr "resumed his activities" of harassment.⁵²⁷ Thereafter, the Clantons filed a tort suit against Carr "for intentional infliction of emotional distress, nuisance, conversion, trespass, and invasion of privacy," seeking both damages and injunctive relief.⁵²⁸ But "[s]eeing no end" to the harassment by Carr, "the Clantons decided to move to a new home because—as Mr. Clanton put it—Carr had 'ruined any shred of tranquility any family could have in an otherwise tranquil spot.'"⁵²⁹

The jury returned a verdict of \$90,000 in compensatory damages for "intentional infliction of emotional distress, nuisance, trespass and/or invasion of privacy," and found Carr liable for \$5,000 in punitive damages for each plaintiff.⁵³⁰ The trial court entered a judgment in conformity with the verdict, issued injunctive relief, and denied various post-trial motions by Carr.⁵³¹

On Carr's appeal, the intermediate appellate court considered, among other bases of appeal, the claim that because one of the jurors had written derogatory limericks about Carr and distributed copies of the limericks before jury deliberation, this misconduct warranted reversal.⁵³² The appellate court rejected this argument,⁵³³ and affirmed the judgment below.⁵³⁴

4. Synoptical Comments

The Case of the Serial Shooter Who Always Claimed Self-Defense, *The Case of the Bullying Neighbors*, and *The Case of the Chainsaw Harasser* all share several troubling features. First, the underlying anti-social conduct of the defendant-aggressors, somehow, was allowed by the legal system to continue for years in each

526. *Id.*

527. *Id.*

528. *Id.* Amazingly, "Carr responded with a cross-complaint for assault, battery, false imprisonment, and infliction of emotional distress, and nuisance," and violated a pre-trial agreement to limit the hours that he could operate his machinery. *Id.* (footnote omitted).

529. *Id.*

530. *Id.* at *3.

531. *Id.*

532. *Id.* at *5.

533. *Id.* at *7.

534. *Id.* at *14.

case without appropriate judicial intervention. Second, while the violence and near-violence in each case was shocking, it is a wonder that no one in these cases was killed—although the neighbor in *The Case of the Serial Shooter Who Always Claimed Self-Defense* ended up losing an arm from his assailant. Third, with the exception of *The Case of the Serial Shooter Who Always Claimed Self-Defense*, it is arguable that the injured plaintiffs did not receive a full measure of compensatory damages. Finally, the egregious, outrageous, and malevolent behavior of all defendants in the three 2004 cases deserved substantial punitive damage awards that were never awarded. Arguably, whatever punitive damages that were awarded in the various cases were insufficient in light of the egregiousness of the defendants' conduct.

G. 2005

TABLE 7: 2005 CASES

Predominant Type of Neighbor Disputes	Number of Cases
Adverse Possession	4
Boundary or Title	10
Criminal Complaint by Neighbor	13
Development/Land Use/Zoning	8
Easements	13
Landscaping/Runoff	3
Non-violent Nuisances	8
Riparian/Water Disagreements	3
Violent Confrontations	3
Miscellaneous	17
TOTAL	82

During 2005 a varied assortment of neighborhood conflicts were adjudicated and resulted in written judicial opinions. Some prominent examples of these controversies include the following: a spat between wealthy adjoining landowners on the Upper Eastside of Manhattan over a zoning variance to allow the construction of a two-story glass enclosed staircase on a residence;⁵³⁵ bad relations between Ohio neighbors involving obscenities, spitting, and assault with an automobile by one neighbor in response to noise complaints by the adjoining residents, leading to criminal conviction of the former;⁵³⁶ a boundary line

535. *Pantelidis v. N.Y. City Bd. of Standards and Appeals*, 814 N.Y.S.2d 891 (Sup. Ct. 2005), *aff'd* 841 N.Y.S.2d 41 (App. Div. 2007); *aff'd*, 889 N.E.2d 474 (N.Y. 2008).

536. *State v. Miller*, No. 2004-P-0049, 2005 WL 3476648, at *1-2 (Ohio Ct. App. Dec. 16, 2005).

disagreement between adjoining Montana landowners involving a meandering river;⁵³⁷ an uproar involving the construction of a shower stall at a Massachusetts condominium building by one resident, which partially blocked the water view of another resident;⁵³⁸ an acrimonious battle over a fence between Florida neighbors resulting in such behavior as throwing a liquid, obscenities, obscene gestures, and allegations that one party had a gun and could use it;⁵³⁹ a neighborhood brouhaha involving a large motor home blocking a public road which led to a sheriff call and a criminal battery conviction for one of the motor home owner's striking a deputy;⁵⁴⁰ a querulous disagreement between residents over a fence, with one set of neighbors removing the fence and other property such as exterior lights and plants, while the other set of neighbors were out of town;⁵⁴¹ a testy quarrel by neighbors over a driveway easement with a judicial order for one couple to remove trees, bushes, fencing and a sign from the easement;⁵⁴² a nasty confrontation between Indianan landowners involving removal of a storm sewer pipe and unauthorized building of a concrete wall on a neighbor's property resulting in treble damages and attorney's fees for criminal conversion and criminal trespass;⁵⁴³ a wrangle involving a suit by California residents who were upset by their neighbor's cattle coming onto their property, munching on their vegetation, defecating, and trampling the ground and sensitive creek beds and who sued their neighbors and local government under various tort theories;⁵⁴⁴ an action by a Georgia homeowners' association forcing residents belonging to the association to remove an above-ground swimming pool that violated a restrictive covenant;⁵⁴⁵ a Connecticut dispute involving a claim by an adjoining landowner for a decree to be able to use a New Haven beach that had formed by accretion caused by a jetty that had acted as a trap for sand;⁵⁴⁶ a federal criminal civil rights conviction of a North Carolina white man⁵⁴⁷ who, along with his friend, chased a Mexican-American

537. *Andersen v. Monforton*, 125 P.3d 614, 615-16 (Mont. 2005).

538. *Stocchetti v. Burr*, No. 200500344, 2005 WL 3670421, at *1 (Mass. Super. Ct. Dec. 6, 2005).

539. *Santiago v. Towle*, 917 So. 2d 909, 910-11 (Fla. Dist. Ct. App. 2005).

540. *People v. Howard*, No. A109620, 2005 WL 3113558, at *1 (Cal. Ct. App. Nov. 22, 2005).

541. *Baker v. Tramutola*, No. D045480, 2005 WL 2841719, at *1 (Cal. Ct. App. Oct. 31, 2005).

542. *Granoff v. Seidle*, 915 So. 2d 674, 675, 677 (Fla. Dist. Ct. App. 2005).

543. *Harlan Bakeries, Inc. v. Muncy*, 835 N.E. 2d 1018, 1027, 1037 (Ind. Ct. App. 2005).

544. *Herzberg v. County of Plumas*, 34 Cal. Rptr. 3d 588, 591 (Cal. Ct. App. 2005).

545. *Hech v. Summit Oaks Home Owners Ass'n, Inc.*, 620 S.E. 2d 490, 490 (Ga. Ct. App. 2005).

546. *Palmieri v. Cirino*, 880 A.2d 172 (Conn. App. Ct. 2005).

547. *United States v. Nichols*, 149 F. App'x 149, 150 (4th Cir. 2005).

down the street with a bat and an iron pipe yelling “Go back to Mexico. You done got all our damn jobs,” and who continued to destroy the man’s vehicle and the windows and doors in his home;⁵⁴⁸ and a mandamus action by an Illinois landowner against a city to remove the lilac bushes and a fence in a right-of-way that allegedly created a dangerous condition by obstructing the width of the road and obstructing motorists’ ability to see oncoming traffic.⁵⁴⁹

Additional neighborhood disputes that led to judicial opinions issued in 2005 include: a *pro se* action claiming, among other things, that New York State police officers, over a period of twelve years, violated the plaintiff’s due process rights⁵⁵⁰ by “refusing to intervene in an ongoing property dispute” with “her neighbors, and by not taking adequate measures to protect her and her family from harassment at the hands of those neighbors;”⁵⁵¹ a suit by a Florida landowner against adjoining landowners for defamation, stating that the property owner had obtained a building permit illegally;⁵⁵² an action to enjoin an adjoining Georgia neighbor from trespassing and cutting trees on the plaintiff’s property;⁵⁵³ a criminal complaint against a San Francisco apartment dweller, instigated by female neighbors⁵⁵⁴ who saw the man “clearly visible through the window . . . across the street, naked and either playing with his penis or masturbating;”⁵⁵⁵ a tort suit involving claims that a litigant caused tortious injury in throwing rocks into his neighbors’ backyard, causing damage to property and caused a woman neighbor to fear for her life when he tried to attack her with a weed whacker;⁵⁵⁶ a squabble involving two apartment dwellers, one who complained about his neighbor’s noise on numerous occasions, the other who sought a restraining order alleging that she was being harassed by his noise complaints;⁵⁵⁷ a battle between two California mobile home park neighbors and the mobile home park owner involving claims of video camera invasion of privacy, assault with an automobile, and racial epithets;⁵⁵⁸ a civil rights suit by a wheelchair bound man with muscular dystrophy who had disputes with his neighbors over parking issues, received a death threat from one of the neighbors,

548. *Id.* at 150.

549. *Jamison v. City of Zion*, 834 N.E.2d 499 (Ill. App. Ct. 2005).

550. *Jackson v. New York State*, 381 F. Supp. 2d 80, 82-83 (N.D.N.Y. 2005).

551. *Id.* at 83.

552. *Scott v. Busch*, 907 So.2d 662, 663 (Fla. Dist. Ct. App. 2005).

553. *Vickers v. Meeks*, 615 S.E.2d 158 (Ga. Ct. App. 2005).

554. *People v. Greenwood*, No. A105692, 2005 WL 995528, at *1 (Cal. Ct. App. Apr. 29, 2005).

555. *Id.* at *1.

556. *Tyson v. Buck*, No. B171911, 2005 WL 675505, at *1 (Cal. Ct. App. Mar. 24, 2005).

557. *Fletcher v. Bobrycki*, No. 54367-9-I, 2005 WL 712407, at *1 (Wash. Ct. App. Mar. 21, 2005).

558. *Andrews v. Mobile Aire Estates*, 22 Cal. Rptr. 3d 832, 835 (Cal. App. 2005).

installed security lights on his garage in response to the threat, was arrested by deputy sheriffs for failure to adjust his security lights, and was roughly handled and dropped on the ground and had to be rushed to a hospital because of breathing difficulties;⁵⁵⁹ a bizarre pro se defamation action, brought in a Minnesota federal court by a married couple over a row that the couple had had a decade ago in Colorado involving their then Colorado neighbors, city officials, and a newspaper that had published articles about the couples' neighborhood dispute;⁵⁶⁰ an altercation between dog owners over the running of unchained dogs in the neighborhood;⁵⁶¹ and a serious tort suit for malicious destruction of easement owners' stairs and docks on a Tennessee lake by a landowner.⁵⁶²

The 2005 focus cases involved mini-tragedies involving feuding neighbors and disappointing legal responses to the problems.

1. The Case of the Free-Roaming Children and Dogs in the Road

The Washington case, *McKinney v. Ostrovsky*, "arose out of a neighborhood dispute regarding the proper use of a public roadway."⁵⁶³ A few months after

559. *St. John v. Hickey*, 411 F.3d 762, 765-66 (6th Cir. 2005).

560. *Sieverding v. Faegre & Benson, LLP*, No. 04-4317, 2005 WL 1431577, at *1-2 (D. Minn. May 23, 2005). The recitation of the amazing background to this federal suit is provided at the outset of the district court's opinion:

During the early nineties, while living in Steamboat Springs, Colorado, plaintiffs Kay and David Sieverding became involved in a dispute with their then neighbors, one of whom was the President of the City Council, over their neighbors' construction activities and perceived zoning law violations. Plaintiffs objected on numerous occasions to local authorities. The neighbors eventually sought and received a restraining order against Kay Sieverding. Additionally, Kay was criminally charged with "unlawful tree trimming" and harassment of her neighbor. Following mediation, the charges were dropped and plaintiffs agreed to deed a portion of their property to the neighbors. Plaintiffs believe that ... because of the neighbor's City Council position, their neighbors were permitted to violate numerous zoning laws without consequence, while Kay ... faced allegedly frivolous criminal charges and was forced to endure the imposition of an unwarranted restraining order. Similarly, plaintiffs believe that the prosecutor refused to drop the criminal charges against Kay ... and threatened her with a jail term, which forced plaintiffs into virtually giving away their land, at the behest of her former neighbors. The dispute between plaintiffs ... and the neighbors was reported in the local newspaper on several occasions. Plaintiffs vehemently assert that the reporting was inaccurate and misleading and, therefore, defamatory.

Id.

561. *Arndt v. Lawrence*, No. 042175, 2005 WL 1812465, at *1 (Mass. Super. Ct. May 17, 2005).

562. *Winkler v. Petersilie*, 124 F. App'x 925, at *1-3 (6th Cir. 2005).

563. *McKinney v. Ostrovsky*, No. 53549-8-1, 2005 WL 518985, at *1 (Wash. Ct. App. Mar. 7, 2005).

Michael McKinney and his wife, Debbie, moved into their suburban home on Garden Terrace Road they started encountering unusual problems with two other married couples (Peter and Lynn Ostrovsky, and George and Elizabeth Olsen), the other couples' young children, and a dog owned by one of the couples.⁵⁶⁴ When the McKinneys moved into the Garden Terrace Road neighborhood, the Ostrovskys and the Olsens had been friends and neighbors for at least six years on Garden Terrace Road, "a narrow, winding, wooded street with no sidewalks and virtually no shoulders."⁵⁶⁵

Tensions built up between the McKinneys and the two Garden Terrace Road couples over the course of two and a half years, leading the McKinneys to ultimately file a suit against these couples. The basis of the McKinneys' grievances were: (1) that Lynn Ostrovsky drove "unnecessarily close" to him with her SUV when he was walking his dog;⁵⁶⁶ (2) that "Ms. Ostrovsky blocked the passage of Mr. McKinney's vehicle while she was in her vehicle . . . for about 30 seconds" talking to a man in a yard;⁵⁶⁷ (3) that Lynn and Peter Ostrovsky impeded the passage of Mr. McKinney's vehicle "with their dog or children";⁵⁶⁸ (4) that the Ostrovskys encouraged their twin toddlers "to play in the center of the street with wagons and tricycles";⁵⁶⁹ (5) that "[o]ver Labor Day weekend of 2001, the McKinneys left their home in their vehicle and were confronted by the Ostrovskys and their children and another parent and child, who stood in the street and blocked their path," with Lynn Ostrovsky having a "smirk on her face";⁵⁷⁰ (6) that a few weeks later Mr. McKinney had a verbal confrontation with Lynn in the middle of the road over the safety of her encouragement of her young children to play in the street;⁵⁷¹ (7) that several months later, in the spring, "the McKinneys observed that

564. *Id.*

565. *Id.*

566. *Id.*

567. *Id.*

568. *Id.*

569. *Id.* at *2.

570. *Id.*

571. *Id.* The court described the incident as follows:

On September 21, 2001, Ms. Ostrovsky was in the middle of the street accompanied by her children on tricycles, and Mr. McKinney stopped his vehicle until the children and their mother moved aside. A ball remained in the road, and rather than drive in the narrow space between the people and the ball, Mr. McKinney got out of his vehicle and removed the ball. Ms. Ostrovsky responded by saying, "Why don't you just learn how to drive, moron?" and "When are you going to learn to just go the other way? Why is it such a big deal that you have to go home this way?" and told Mr. McKinney that he should learn the "rules of the block" or move elsewhere. Mr. McKinney retorted that she was threatening her children by encouraging them to play in the street and said, "your kids aren't going to make it." Mr. McKinney reported this and other incidents to the . . . police.

the entire street in front of the . . . Ostrovsky” home was plastered “with chalked graffiti, including hundreds of words and pictograms of children and flowers in various colors and a sign reading ‘SLOW DOWN FOR CHILDREN—CAUTION SLOW CAREFUL.’”⁵⁷² The bad blood between Lynn Ostrovsky and Michael McKinney came to a head on May 14, 2002, when, according to Michael, Lynn “pushed him off his bicycle” and verbally attacked him.⁵⁷³

Both Michael and Debbie McKinney had problems with Elizabeth Olsen, another neighbor, involving Elizabeth “directing traffic” and telling them to slow their vehicle down and with Elizabeth’s dog causing Michael to fall off his bicycle.⁵⁷⁴ The Ostrovskys both claimed that “the McKinneys regularly exceeded the 25-mile an hour speed limit on the narrow road,” and Mr. Ostrovsky contended “that he had repeatedly observed Mr. McKinney drive by his house and yell at him and his wife and that he had reached the conclusion that Mr. McKinney was ‘unstable.’”⁵⁷⁵

The McKinneys sued the Ostrovskys for assault and defamation and public nuisance for blocking a public roadway.⁵⁷⁶ The McKinneys, as an initial matter, sought a preliminary injunction against the defendants, but the trial court denied this relief stating: “Neighbors invariably get on each other’s nerves or irritate one another from time to time. However, in this instance, to talk about irreparable harm is to elevate this lawsuit to a level that it can never reach[.] . . . This request and this lawsuit verge on the frivolous.”⁵⁷⁷

Id.

572. *Id.*

573. *Id.* at *3. According to Mr. McKinney:

He stated that he was bicycling on Garden Terrace Road when he encountered Ms. Ostrovsky with her children on their tricycles and her dog on a lead, in the middle of the road. He said she told her children, “stay right there” and positioned them to block his passage. When one of the children said “hi” to him, Mr. McKinney said, “it seems your mom and I disagree about you blocking the street.” He stated that Ms. Ostrovsky told him, “We’re going to keep blocking you until we drive you out of the neighborhood.” Mr. McKinney circled back on his bike, exchanged angry words, and then tried to leave but Ms. Ostrovsky lunged at his throat with her dog’s lead, which stretched across the road at chest height, and pushed him off his bicycle. When Mr. McKinney said that she had crossed the line into assault, Ms. Ostrovsky responded, “there are no witnesses” and then slapped Mr. McKinney when he rose to his feet. Mr. McKinney used his bike to push her away and Ms. Ostrovsky called him a “p[—]” and “crazy man.”

Id.

574. *Id.*

575. *Id.* at *4.

576. *Id.* at *1. The McKinneys also sued Elizabeth Olsen for public nuisance for blocking a public roadway. *Id.*

577. *Id.* at *4 (internal quotation marks omitted) (certain brackets omitted).

“In September 2002, Ms. Olsen filed a motion for summary judgment seeking dismissal of the public nuisance claim. Thereafter, the McKinnneys sought to amend the complaint to add Mr. Olsen to the suit, and to add claims of false imprisonment and outrage against both the Olsens and the Ostrovskys.”⁵⁷⁸ The trial court allowed Mr. Olsen to be added to the McKinney suit but denied the motion to amend, “pending development of facts that would support the additional causes of action.”⁵⁷⁹ Depositions of the Ostrovskys and McKinnneys were taken; Lynn Ostrovsky “admitted that toys such as bicycles, strollers, or balls, were present in the street,” and the vehicular traffic had been slowed because of these obstructions; and she also claimed that Debbie McKinney had reported her to Child Protective Services and “that she had told several neighbors that she thought Mr. McKinney was crazy.”⁵⁸⁰

“After receiving this [and other] additional evidence, the court granted the Olsens’ summary judgment motion dismissing the public nuisance claim and denied the McKinnneys’ motion for leave to amend to add the claims of false imprisonment and outrage, with prejudice.”⁵⁸¹ The trial court thereafter granted the Olsens’ motion for sanctions, awarded approximately \$20,000 in attorney’s fees incurred by them against the McKinnneys and also awarded several thousands of dollars against the McKinnneys and their attorney for filing and pursuing what the court viewed as a frivolous lawsuit.⁵⁸²

In early 2003, “the McKinnneys had decided to give up and move from the neighborhood,” and they voluntarily dismissed all of their claims against the Ostrovskys.⁵⁸³ Thereafter, the Ostrovskys filed a motion for attorney’s fees against the McKinnneys, arguing that all of the McKinney claims against them had been frivolous.⁵⁸⁴ The trial court awarded Peter Ostrovsky approximately \$8,000 in attorney’s fees and costs in defending the frivolous action against him but denied Lynn Ostrovsky’s attorney’s fees because Mr. McKinney had a non-frivolous claim for assault against her.⁵⁸⁵

On appeal the Washington intermediate appellate court affirmed the sanctions in favor of the Olsens but reversed with respect to the judgment in favor of Peter Ostrovsky because there was some factual basis in the record that his wife’s arguable intentional tort against Mr. McKinney was committed to benefit Mr. Ostrovsky’s family.⁵⁸⁶

578. *Id.*

579. *Id.*

580. *Id.* at *4-5.

581. *Id.* at *6.

582. *Id.* at *6-7.

583. *Id.* at *7.

584. *Id.*

585. *Id.* at *8.

586. *Id.* at *15-16.

2. The Case of the Officious Homeowners Association Director

The Illinois case of *Schiller v. Mitchell* involved adjoining neighbors in the well-to-do town of Highland Park, north of Chicago on Lake Michigan. Ronald and Merle Schiller lived next door to Bernard Mitchell and Robert Stanley on Hybernian Drive.⁵⁸⁷ Mr. Stanley sat “on the board of directors of the Hybernian Area Homeowners Association . . . which maintains an exhaustive list of rules, regulations, and restrictions governing properties in the Hybernian subdivision.”⁵⁸⁸

Mr. Stanley and Mr. Mitchell installed a video-camera on the outside of their house “aimed at the garage, driveway, and side-door area” of the Schiller’s home.⁵⁸⁹ Stanley and Mitchell used the video camera to surveil the Schillers, to record activities at the Schiller home, and to complain about the Schillers.⁵⁹⁰

According to the Schillers’ complaint, Mitchell and Stanley “have made hundreds of telephone calls to the police, complaining about activities in the subdivision, most of them centering on plaintiffs.”⁵⁹¹ The complaint went on to allege that “[a]s a result, the police have investigated, questioned and suspected the plaintiffs. The police issued in excess of 14 tickets for such things as noise ordinance violations, exterior lighting violations, and a dog running at large.”⁵⁹² Moreover, according to the Schillers’ complaint, “[p]laintiffs were found liable on only three of the complaints. In addition to the ordinance violations, police twice charged plaintiff Ronald Schiller with misdemeanors . . .,” one being “a disorderly conduct charge for shining a light at defendants’ camera,” and the other “a disorderly conduct charge for forcefully exhaling into . . . Robert Stanley’s face”—that were either dismissed (the former) or decided in favor of Ronald Schiller (the latter).⁵⁹³ The complaint contained further allegations that the appellate court summarized:

[O]n those occasions when the police refused to act on [Stanley and Mitchell’s] complaints, defendants took their asservations [sic] about plaintiffs to other bodies, including the Association, governmental agencies, and their own private attorney, who sent plaintiffs’ attorney a letter threatening “swift and strong” action in the event the attorney found proof that plaintiffs vandalized defendants’ property. In grievances to the Association, defendants accused plaintiffs of driving past defendants’ residence, sweeping out plaintiffs’ garage in the morning, accidentally dropping a ladder on plaintiffs’

587. *Schiller v. Mitchell*, 828 N.E.2d 323, 325 (Ill. App. Ct. 2005).

588. *Id.* at 325-26.

589. *Id.* at 326.

590. *Id.*

591. *Id.* (internal quotation marks omitted).

592. *Id.* (internal quotation marks omitted).

593. *Id.* (internal quotation marks omitted).

own driveway, leaving flowers in boxes at the side of plaintiffs' house, placing flags to locate utilities, and spraying water onto defendants' property from plaintiffs' sprinkler system. As a result of these numerous complaints, the Association launched many investigations into plaintiffs' activities on their property.

In addition to the interrogations, administrative inspections, and criminal charges, plaintiffs claimed that they are subjected to an all-hours personal surveillance by defendants, as defendants stand on their property line and stare at plaintiffs. Plaintiffs alleged they were damaged as a result of defendants' actions.⁵⁹⁴

The trial court granted the defendants' motion to dismiss on all three legal theories propounded by the Schillers against their neighbors: invasion of privacy, nuisance, and intentional infliction of emotional distress.⁵⁹⁵ The Illinois intermediate appellate court affirmed the trial court's dismissal of all three tort theories.⁵⁹⁶ First, regarding the invasion of privacy claim, appellate court determined that the Schillers had failed to state a cause of action due to the lack of an invasion of seclusion because "[t]he complaint does not explain why a passerby on the street or a roofer or a tree trimmer could not see what the camera saw, only from a different angle,"⁵⁹⁷ and that the nature of the passive, exterior surveillance was not "*highly* offensive prying."⁵⁹⁸ Second, the private nuisance allegations in the complaint faltered, according to the Illinois court, because there was no allegation of a physical invasion of plaintiffs' property, and there was no allegation that the defendants "controlled" the investigative actions of the police or state and local prosecutors who bothered the plaintiffs.⁵⁹⁹ Finally, the appellate court determined that the Schillers did not state a cause of action for the tort of intentional infliction of emotional distress because, while the court could "imagine that it would be annoying to be stared at and to have a video camera continuously panning for silly infractions," as alleged in the complaint, "this does not amount to the atrocious and utterly intolerable behavior required" for the tort of outrage.⁶⁰⁰ Moreover, "[t]here is nothing inherently extreme and outrageous about conducting investigations or questioning or suspecting" and "[p]laintiffs . . . did not allege that defendants controlled the actions of the police."⁶⁰¹ And, in light of the lack of merit

594. *Id.*

595. *Id.* at 326-27.

596. *Id.* at 325-26, 329, 333, 338.

597. *Id.* at 329.

598. *Id.* at 328 (internal quotation marks omitted) (citation omitted).

599. *Id.* at 332-33.

600. *Id.* at 334.

601. *Id.*

of all three legal claims, the court concluded that issuance of injunctive relief of any nature was inappropriate.⁶⁰²

3. The Case of the Armed Home Invaders

Brown v. Kentucky involved a festering dispute between Kentucky neighbors that led to a shoot-out with two men dead and another wounded.⁶⁰³ The Supreme Court of Kentucky found no reversible error when it affirmed a jury verdict that convicted David Brown on two counts of first degree murder and upheld a twenty-four year term of incarceration for a home resident who shot three male next door neighbors who came to his home and angrily confronted him and one appeared to go for a gun on his person.⁶⁰⁴ The majority opinion opens with a broad-brushed picture of a troublesome set of neighbors:

The fatal shootout that led to Brown's twenty-four year prison sentence stemmed from a number of individually petty disputes between Brown and his next-door neighbors, the Sanderses. As often occurs in disputes between neighbors, individually small incidents blow up into one big confrontation. That happened here. David Brown lived with Rosetta Jackson, his girlfriend, for a few months preceding the incident. During that relatively brief span of time, there were numerous confrontations with the Sanderses. It was after one of the more serious of these clashes that Brown acquired the gun that he eventually used in the shootings.⁶⁰⁵

The Supreme Court's opinion then detailed the 'petty disputes' that led to the deadly shoot-out: "[i]n one incident, the Sanderses accused Brown of hitting a toddler during a dispute about whether the Sanderses raked trash onto the property where Brown was living."⁶⁰⁶ After "[t]he police were called," Brown left the area as suggested by the police "so that everyone could calm down," but the "Sanderses followed Brown, and left [him alone] only after threatening him once more."⁶⁰⁷ Vaguely, "[l]ater that night," according to the court, "two bandana-clad men approached Brown with a gun. No violence transpired, but Brown acquired a gun. The gun was used two months later."⁶⁰⁸

602. *Id.* at 333.

603. *Brown v. Commonwealth*, No. 2002-SC-0739-MR, 2005 WL 923699, at *1 (Ky. Apr. 21, 2005).

604. *Id.* at *1-4.

605. *Id.* at *1.

606. *Id.*

607. *Id.*

608. *Id.*

The night of the gun battle, “Brown was at his home with [his girlfriend] Jackson and another friend when the Sanderses” (the husband/father Harvey Sanders, Jr. and presumably his two sons Trey and Doug) went [to] Brown’s residence and “knocked on the door.”⁶⁰⁹ Harvey asserted “that someone insulted his wife as she was mowing the grass.”⁶¹⁰ Then, “Brown asked Harvey to leave, and during their heated argument, both Trey and Doug Sanders approached the house.”⁶¹¹ Harvey said “that he did not care if anyone in the house with Brown lived or died.”⁶¹² According to Brown’s testimony, “he saw Harvey make a ‘pocket-play’ for what he thought was a gun, and that he saw Doug brandish a gun.”⁶¹³ In an instant, “shots were fired in both directions” and “[a]fter the shooting, Harvey and Trey Sanders were found [dead] shot in the head, and Brown was shot in the side.”⁶¹⁴ The court noted, however, that the prosecution’s “version of events differs starkly from Brown’s account” in that the state argued that “it was not until the Sanderses were leaving that Brown shot [and killed] Harvey and Trey.”⁶¹⁵

After sifting through Brown’s arguments on appeal, the majority rejected his arguments that error had occurred at trial because of faulty jury instructions and insufficient evidence, concluding:

The facts are somewhat troublesome. The evidence showed that Brown was repeatedly provoked by the victims, and that he was minding his own business when they came to his house on the night of the shooting. This evidence was presented to the jury. Despite provocation, one is not entitled to overreact, and the jury found that Brown’s actions were not taken in self-defense. Brown received a fair trial, and twelve jurors found him guilty of first-degree manslaughter. We affirm Brown’s convictions in full.⁶¹⁶

In a dissenting opinion in *Brown*, joined in part by two other Kentucky justices, Justice Scott voiced some serious misgivings about the justice of Brown’s punishment and the confusing nature of self-defense. According to the dissent:

David Brown protected his friend and girlfriend from three assailants within the curtilage of his home. At the end of the affray two of the three lay dead

609. *Id.*

610. *Id.*

611. *Id.*

612. *Id.*

613. *Id.*

614. *Id.*

615. *Id.*

616. *Id.* at *4 (Scott, J., dissenting).

[and the third pled guilty to a charge related to Brown's shooting] and David Brown was wounded—shot in the side. I believe David Brown's conviction is a sad testimonial to the confusing state of our self-defense statutes and instructions.⁶¹⁷

4. Synoptical Comments

The alarming thread that connects *The Case of the Free-Roaming Children and Dogs in the Road* with *The Case of the Officious Homeowners Association Director* and the *Case of the Armed Home Intruders* is a paradigm of blaming (and punishing) the arguable true victims. All three case results involve American neighbors who had legitimate grievances about the behavior of other neighbors, who labored over time in trying to defuse tensions, and who didn't get any meaningful help from government institutions in coping with their fellow unreasonable—and arguably dangerous—denizens. Instead of nuanced, proactive, humane, and effective government interventions, each of the three focus cases for 2005 led to blunt and ineffective legal instruments (a criminal prosecution and hyper-technical limits on tort liability) that left the true victims displaced from their original neighborhoods or relegated to living with officious intermeddlers.

617. *Id.* at *4-5 (Scott, J., dissenting). Later in his dissent, Justice Scott opined: Society builds its prisons to hold people that are just down right mean; those who rob, cheat, steal and hurt people. Prisons are not built to incarcerate citizens who do what they are compelled to do by the love of life itself—risk their lives to defend their families and close ones. Such people are not a statistical threat to society—only those who would do them harm.

Id. at *7.

H. 2006

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Miscellaneous	15
TOTAL	82

In 2006—the seventh and final year of our structural study of the legal and factual nature of American disputes between and involving neighbors—a jumble of cases were adjudicated and led to judicial opinions including the following: a legal malpractice action, originating with a case involving natural land subsidence that led to a contribution suit by an adjoining landowner to pay for a portion of the cost to remediate a damaged slope;⁶¹⁸ a civil rights action by a Pennsylvanian man against police for the man’s involuntary civil commitment to a mental hospital after a neighbor had contacted law enforcement complaining that she saw the man outside on the street with a gun involving the man’s dispute with his neighbor;⁶¹⁹ a tort assault and battery case involving an Ohio neighbor⁶²⁰ who argued with a dog owner who allowed his dog to come onto the neighbor’s property to urinate and, one day, after the dog had finished a “whiz” came up behind the dog owner, “yelling at him about the dog urinating in” the neighbor’s yard, thereafter hitting and shoving the man to the ground;⁶²¹ a pro se suit by a New Hampshire woman⁶²² claiming “that her neighbors . . . conspired to violate her civil rights by harassing

618. Charnay v. Cobert, 51 Cal. Rptr. 3d 471, 473-74 (Cal. Ct. App. 2006).

619. Lear v. Borough of Brentwood, No. 02-1747, 2006 WL 3387170, at *1-2 (W.D. Pa. Nov. 21, 2006).

620. Lloyd v. Rutledge, No. 21293, 2006 WL 3350722, at *1 (Ohio Ct. App. Nov. 17, 2006).

621. *Id.* at *1.

622. Amatucci v. Bolduc, No. Civ. 06-CV-225-JD, 2006 WL 3065502, at *1 (D. N.H. Oct. 27, 2006).

her and causing her to be arrested and detained on false criminal charges”⁶²³ stemming from a parking dispute that started with the defendants blocking her driveway and the grandson of a neighbor riding his golf cart on the woman’s property;⁶²⁴ a pro se Ohio action, lashing out at a prosecutor, state court judges, law enforcement officers, neighbors, and a towing company for alleged improprieties in a convoluted saga of the plaintiff threatening to injure a neighbor because the neighbor killed several of the plaintiff’s cats, followed by sheriff deputies subduing the plaintiff by a taser and the plaintiff being convicted of assaulting a law enforcement officer;⁶²⁵ a civil rights imbroglio involving land use and zoning complaints by California neighbors over traffic, loss of parking, and noise occasioned by a Vietnamese Buddhist temple;⁶²⁶ a pro se federal lawsuit by a frustrated Montana resident over a convoluted dispute over stream and waterway rights;⁶²⁷ a boundary line quarrel that led to a physical confrontation between county sheriff deputies, a landowner, and a vigilante protest group dubbing itself the Concerned Citizens Against Government Corruption;⁶²⁸ a driveway dispute between Colorado neighbors,⁶²⁹ involving some litigants who were “quick to use guns, in various ways” when asserting their property interests;⁶³⁰ criminal fallout from gang violence in Washington, D.C.,⁶³¹ characterized by the appellate court “as an intense neighborhood dispute between young men” in the northwest quadrant of the capital city, over a seven-month period, “resulting in several deaths and injuries” of people in the area;⁶³² a confrontation between Minneapolis neighbors over trash, with a mentally-impaired adult son of one of the homeowner’s pulling a knife on a neighbor who then called 911 to report the incident, followed by other confrontations;⁶³³ a nearly decade-long feud involving New Jersey suburban neighbors over a barn-like carriage-house structure and the parking of commercial

623. *Id.* at *1.

624. *Id.* at *2.

625. Harpster v. Ashland County Prosecutor, No. 1:06 CV 1347, 2006 WL 3007386, at *1 (N.D. Ohio Oct. 20, 2006).

626. Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove, 460 F. Supp. 2d 1165, 1166, 1168 (C.D. Cal. 2006).

627. Metully v. Montana, No. CV 06-130-M-JCL, 2006 WL 2860584, at *2 (D. Mont. Oct. 3, 2006).

628. Long v. Pend Oreille County, No. CV-04-0344-AAM, 2006 WL 2850011, at *2-3 (E.D. Wash. Oct. 2, 2006) *aff’d in part, rev’d in part sub nom* Long v. Pend Oreille County Sheriff’s Dep’t, 269 Fed. Appx. 749, 750 (9th Cir. 2008).

629. Schuler v. Oldervik, 143 P.3d 1197, 1199 (Colo. App. 2006).

630. *Id.* at 1202.

631. Hairston v. United States, 905 A.2d 765, 769 (D.C. 2006).

632. *Id.* at 769.

633. Stepnes v. Tennesen, No. 04-68 (JNE/JSM), 2006 WL 2375645, at *1-3 (D. Minn. Aug. 16, 2006).

vehicles on a residential lawn that culminated in the shifting of attorneys fees to one party and the institution of a spite tort suit for harassment;⁶³⁴ a tragic tale of marital discord, involving a successful businessman, who was married to a woman for forty-five years before they divorced, who harbored a long standing grudge against her for being responsible for the death of their infant daughter, and who suffered a “psychotic episode” one winter day when he invaded the home of his ex-wife and tried to kill her, leading to a prison term of fifteen years for attempted murder;⁶³⁵ a suit by a California couple against their neighbor⁶³⁶ to require the “top[ping] or remov[al] [of] trees that were obstructing plaintiffs’ panoramic view”;⁶³⁷ a Rhode Island disagreement involving the doctrine of acquiescence⁶³⁸ to a “clearly established, obvious, physical boundary marker—in this case [a] row of arborvitae bushes extending nearly the entire length”⁶³⁹ of a property line; a dispute between former adjoining townhouse residents on Capitol Hill in Washington, D.C.,⁶⁴⁰ which started over “a wide range of issues,”⁶⁴¹ escalated over a “dispute concerning the removal of an oil tank,” heated up when one resident attempted to hit the other with a copper pipe, led to the arrest and detention of the assaulter for two days on felony charges, and culminated in a *pro se* federal civil rights action.⁶⁴²

Other noteworthy 2006 disputes involving neighbors were: a fight between Texans over the building of an airstrip on one couple’s property and the landing and take off of small aircraft from the strip;⁶⁴³ a rare instance of a post-judgment, pre-appellate disposition mediation settlement⁶⁴⁴ involving a “long standing dispute between neighbors regarding landscaping and run-off issues;”⁶⁴⁵ a multi-year New

634. D’Antonio v. Chorba, No. BER-L-3662-03, 2006 WL 2057222, at *1-2, *5 (N.J. Super. Ct. App. Div. July 26, 2006).

635. State v. Salesky, 2006 WL 2057544, at *1-2 (N.J. Super. Ct. App. Div. July 26, 2006). At the defendant’s criminal trial, evidence was adduced of his past “episodes of road rage and a dispute with a neighbor resulting in the imposition of a municipal court fine....” *Id.* at *4.

636. Cordan v. Kahn, No. H029400, 2006 WL 2048290, at *1 (Cal. Ct. App. July 24, 2006).

637. *Id.* at *1.

638. Collins v. Sienkiewicz, No. WC/05-0459, 2006 WL 1892229, at *2 (R.I. Super. July 7, 2006).

639. *Id.* at *2.

640. Lyles v. Micenko, 468 F. Supp. 2d 68, 70 (D. D.C. 2006).

641. *Id.*

642. *Id.* at 69-70.

643. Graves v. Diehl, No. 01-00-00412-CV, 2006 WL 1699527, at *1 (Tex. Ct. App. June 22, 2006).

644. Foreman v. Au, Nos. H029285, H029517, 2006 WL 1727421, at *1 (Cal. Ct. App. June 21, 2006).

645. *Id.* at *1.

York City battle⁶⁴⁶ “between former neighbors that escalated into police action and a federal civil rights lawsuit,”⁶⁴⁷ which started upon a couple’s complaint that another resident “while living in an apartment above [the couple] during the mid and late 1990s, vomited and urinated on their balcony, threw objects such as bricks, bottles, needles, condoms, and marijuana cigarettes onto their balcony, sold drugs, engaged in sadomasochistic sex and homosexual activity . . . and illegally barbecued”;⁶⁴⁸ a strange encounter by a Tennessee property owner who had the misfortune to observe strangers on his property, who happened to be undercover state drug enforcement officers on a stakeout, who tackled him and kicked him in the head after he fired rifle warning shots in the air;⁶⁴⁹ a federal class action lawsuit⁶⁵⁰ by “fourteen landowners in ten states [who] sued four telecommunications companies for trespass and unlawful enrichment based on the installation and operation of fiber optic cables in railroad rights-of-way that cross or are adjacent” to the landowners properties;⁶⁵¹ an ugly war between two Georgia neighbors involving an injunction under a state stalking statute over surveillance cameras that one neighbor had placed outside his house and pointed at his neighbors’ home and windows;⁶⁵² where the court ordered Respondent to “obtain a mental health evaluation”;⁶⁵³ a California criminal case involving one resident of a community who was convicted of assaulting another with a knife⁶⁵⁴ in a neighborhood of conflicting alliances over past feuds stemming from “allegations of a dog poisoning, police calls regarding marijuana plants, threatening notes, and a lawsuit over electrician fees owed by one neighbor to another”;⁶⁵⁵ a misdemeanor case against an Ohio man for letting his dogs run free without leashes;⁶⁵⁶ federal litigation between Florida property owners along a marsh and a state conservation agency over one landowner’s wrongful arrest for trespassing in the marsh while

646. Berk v. City of New York, No. 00 Civ. 8483(GEL), 2006 WL 1628494, at *1 (S.D.N.Y. June 12, 2006).

647. *Id.* at *1.

648. *Id.* at *1 n.1 (internal quotation marks omitted) (record citation omitted).

649. Hendricks v. Governor’s Taskforce for Marijuana Eradication, No. 3:05-CV-377, 2006 WL 1663675, at *1-2 (E.D. Tenn. June 7, 2006).

650. McDaniel v. Qwest Comm’ns Corp., No. 05-C-1008, 2006 WL 1476110, at *1 (N.D. Ill. May 23, 2006).

651. *Id.* at *1.

652. Knapp v. Cross, 632 S.E.2d 157, 158 (Ga. Ct. App. 2006).

653. *Id.*

654. People v. Eckhardt, No. B178137, 2006 WL 1174151, at *1 (Cal. Ct. App. May 4, 2006).

655. *Id.* at *1.

656. State v. Mogul, Nos. 2003-T-0177, 2003-T-0179, 2006 WL 988081, at *1 (Ohio Ct. App. Apr. 14, 2006).

deer hunting in his air boat,⁶⁵⁷ a violent confrontation between two Louisiana families, involving a hitting and kicking incident between two wives, participation of an eleven-year-old daughter, a wrestling fight between two husbands (also involving use of a brick as a weapon), which brought in a homeowner's insurance company to defend the civil suit and indemnify one of the families;⁶⁵⁸ a criminal contempt conviction case against a woman⁶⁵⁹ "for . . . staring at [her neighbors] with her hands held around her eyes in imitation of binoculars in violation of a court order of protection" that prohibited "interference" with her next door neighbors, defined as "viewing in the direction of [the neighbors] with binoculars or offending gazes";⁶⁶⁰ and a comical case⁶⁶¹ involving "an ongoing dispute between homeowners concerning various matters, including a common driveway, dogs, and rules of the homeowners' association"⁶⁶² that led a male neighbor, one day, to pull "down his shorts and expos[e] his buttocks"⁶⁶³ to the woman homeowner association president, and later, to engage in other bizarre (and sometimes criminal) behavior, such as, prior to his criminal trial, "display[ing] a poster on his vehicle of Bart Simpson 'moon[ing],' with the poster reading, in part, 'why is mooning only illegal in Trinity County?'"⁶⁶⁴

The 2006 highlighted cases deal, in one way or another, with spiteful or hostile neighbors who ended up causing themselves and others pain, damages, and travail.

1. The Case of the Corrupt Shrink and the Abusive Deputy Sheriff

Villar v. Wells came about, in large measure, from the bad relations that had developed between Jean-Pierre Villar, and a neighbor, Dr. Holli Bodner, a licensed psychologist.⁶⁶⁵ Jean-Pierre underwent reconstructive back surgery that entailed "the surgical attachment of two metal rods to his spine";⁶⁶⁶ Mr. Villar "was at his home convalescing and wearing a full torso back brace" when two Florida sheriff deputies arrived at his home to serve him with an order requiring him to be

657. *Dye v. Radcliff*, 174 F. App'x 480, 481-82 (11th Cir. 2006).

658. *Fremin v. Cabral*, 926 So. 2d 80, 80-81 (La. Ct. App. 2006).

659. *People v. Krauss*, No. 2004-660 W CR., 2006 WL 2794381 (N.Y. App. Term Jan. 30, 2006).

660. *Id.* at *1 (internal quotation marks omitted) (citation omitted).

661. *People v. Nitzke*, No. C048179, 2006 WL 62285, at *1 (Cal. Ct. App. Jan. 12, 2006).

662. *Id.* at *1.

663. *Id.*

664. *Id.* at *2.

665. *Villar v. Wells*, No. 8:05-CV-673-T-26, 2006 WL 560166, at *1 (M.D. Fla. Mar. 7, 2006).

666. *Id.*

involuntarily committed to a facility for a mental health evaluation.⁶⁶⁷ Unbeknownst to Mr. Villar, his neighbor Dr. Holli Bodner—with whom he had an “ongoing dispute” over unspecified issues⁶⁶⁸—had “committed perjury in the procurement of the order” requiring Mr. Villar to be involuntarily committed for a mental health test.⁶⁶⁹ Mr. Villar was doubly cursed when the sheriff’s deputies who showed up at his home manhandled and mistreated him.⁶⁷⁰ One of the deputies used “shock and awe tactics”⁶⁷¹ in responding to Mr. Villar’s insistence that he was “in no condition to go anywhere” and that he was “supposed to be laying down” after his back surgery.⁶⁷² These tactics included statements made to Mr. Villar such as “I don’t give a God damn shit what you’re supposed to do, you’re coming with us!” and, after Mr. Villar complained about the deputy hurting his arm, the retort “[s]hut the fuck up and get in the car!”⁶⁷³ Mr. Villar eventually “squatted and maneuvered himself into the backseat” of the sheriff’s car.⁶⁷⁴ As a result of the incident, Mr. Villar reinjured his back and suffered increased pain in his back and buttocks.⁶⁷⁵

Mr. Villar died before his wife, as the representative of his estate, filed a civil rights and tort survival action against Dr. Holli Bodner, the sheriff, and two deputies.⁶⁷⁶ “Bodner settled, was dropped as a defendant from the lawsuit and dismissed as a party with prejudice” (based on tort theories of malicious prosecution, negligence and false imprisonment);⁶⁷⁷ then the sheriff law enforcement defendants made a motion for summary judgment.⁶⁷⁸

The district court granted the summary judgment motions for all defendants on the civil rights claims, based largely on qualified immunity grounds,⁶⁷⁹ the court

667. *Id.*

668. *Id.* at *5 n.8.

669. *Id.* at *1 (footnote omitted). “Dr. Bodner pleaded no contest to the misdemeanor charge of perjury, and was adjudicated guilty and convicted. She received six months’ probation, fines, court costs, and weekends in jail for ten consecutive weeks.” *Id.* at *1 n.3.

670. *Id.*

671. *Id.* at *4 n.6. “After an internal investigation,” this deputy “was found to have engaged in conduct unbecoming a deputy” in his use of “rude or insulting language offensive to the public while on duty.” *Id.* (internal quotation marks omitted).

672. *Id.* at *2.

673. *Id.*

674. *Id.* at *5.

675. *Id.* at *6.

676. *Id.* at *2. According to the court, “the cause of his death was unrelated to the events” involving his arrest and transport in the sheriff’s squad car. *Id.*

677. *Id.* at *1 n.1.

678. *Id.* at *6.

679. *Id.* at *1, *6, *10. The court viewed the evidence of the deputies’ arrest of Mr. Villar as “reasonably proportionate to the need for that force” in light of the order for involuntary mental evaluation. *Id.* at *9. The court went on to hold that the “shock and awe”

then dismissed the remaining state tort claims “without prejudice to bringing them in state court.”⁶⁸⁰

2. The Case of the Annoying “Junk Artists”

Kinsale L.L.C. v. Tombari was a Connecticut case.⁶⁸¹ A married couple, Thomas and Diane Neligon, decided in April of 2004 to put their house and a new house that they had constructed down the street up for sale.⁶⁸² Robert Tombari and Nile Barrett owned and resided in a home next to the newly constructed Neligon house, “shortly after the ‘For Sale’ sign went up on the two [Neligon] properties . . . caus[ing] several inoperable Jeep vehicles and a trailer to be placed on their property.”⁶⁸³ Interestingly, “[t]he Jeeps looked like they had come from a junkyard,” and “[t]he trailer parked on the street right next to the [newly constructed house] had bumper stickers that stated, ‘Bambi makes cute sandwiches,’ and ‘I’d Rather Be Loading My Muzzle.’”⁶⁸⁴

Thereafter, during the time that the Neligons had their investment property on the market for a price of \$799,900, they “erected a six foot high fence between [that] property and that of [Tombari and Barrett].”⁶⁸⁵ In response, Tombari and Barrett “constructed a ten foot high structure that consisted of two wooden posts with several rusty cylinders hanging on a wire between the posts” and “also put up ‘No Trespassing’ signs on their property and targets in their windows.”⁶⁸⁶

The Neligons were able to sell the house they were living in for \$700,000 (five months after it went up for sale) but decided to move into the investment property next door to Tombari and Barrett.⁶⁸⁷ Moreover, during the time that the Neligons had their properties on the market, Tombari sent a false and malicious e-mail to Thomas Neligon’s employer.⁶⁸⁸

The Neligons succeeded in obtaining a prejudgment attachment against Tombari and Barrett in the Connecticut trial court:

profanity and abusive behavior of one of the deputies “did not constitute physical force causing any injury.” *Id.* at *5, *10 n.16.

680. *Id.* at *12.

681. *Kinsale L.L.C. v. Tombari*, 897 A.2d 646, 647 (Conn. App. Ct. 2006).

682. *Id.* The Neligons owned the investment property as a limited liability company called Kinsale, L.L.C. *Id.*

683. *Id.*

684. *Id.*

685. *Id.*

686. *Id.* (certain internal quotation marks omitted).

687. *Id.*

688. *Id.* at 648.

The [trial] court found that the defendants had imported the junk vehicles and erected the structure with the hanging cylinders maliciously and with the intent to annoy and to injure the plaintiffs in the use and disposition of their property. The [trial] court concluded that there was probable cause to believe that the [Neligons] will prevail on their nuisance claim and on their claim for malicious erection of a structure in violation of [state statute]. The court found that the defendants' conduct had the effect of depressing the fair market value of each of the plaintiffs' properties by \$50,000.⁶⁸⁹

As a result of the trial court's pre-trial probable cause findings in favor of the Neligons, the court ordered a "prejudgment attachment in the amount of \$100,000 against the real and personal property" of Tombari and Barrett.⁶⁹⁰ The trial court was unimpressed by the defendants' claim that their vehicles, trailer, targets and hanging fence objects were "art" and, therefore, entitled to "free speech" protection.⁶⁹¹

On defendants' appeal of the trial courts pretrial attachment order for \$100,000, a divided panel of the Connecticut intermediate court affirmed.⁶⁹² The dissent discussed matters that were not discussed in the trial court opinion or the majority's affirmance.⁶⁹³ Specifically, the dissent noted that the parties "have had several disputes" including neighborhood complaints to the police "on various occasions" about the Neligons "firing a loud cannon from the deck of their home at different times," and one of the defendants, "tripp[ing] on some construction debris in the roadway . . . fracture[ing] her foot" caused by the home construction project of the Neligons next door.⁶⁹⁴ In the dissent's view, because the nuisances were merely temporary and could have been abated, the trial court used an "improper standard in finding probable cause" and, then, "employed an improper measure of damages" given the facts in the case.⁶⁹⁵

3. The Case of the Cut Down Spite Gate

State v. Nord, a Washington criminal case against Russell Nord, involved a conviction for second-degree malicious mischief that was reversed on appeal.⁶⁹⁶

689. *Id.* at 647-48. The trial court also found that there was probable cause to believe, at the pretrial stage, that the email sent by Tombari to Neligon's employer was libel. *Id.* at 648.

690. *Id.*

691. *Id.* at 647 & n.2.

692. *Id.* at 650.

693. *Id.*

694. *Id.* at 650 n.1 (Flynn, C.J., dissenting).

695. *Id.* at 657.

696. *State v. Nord*, No. 55606-1-I, 2006 WL 2125592, at *1 (Wash. Ct. App. July 31, 2006).

The matter arose from an assortment of disputes between Nord and a couple, the Wrights, who owned an adjoining waterfront property.⁶⁹⁷

The main contention between Nord and his neighbors, Donald and Susan Wright, was that trees on Nord's property obstructed the Wright's "view."⁶⁹⁸ While Mr. Nord "trimmed some of the trees" over the years, he "left others to protect his privacy."⁶⁹⁹ Other arguments between Nord and the Wrights involved "water lines, watering along the property line, drainage, and access to [a] garage" that had been built before either neighbor had purchased their property.⁷⁰⁰ The garage, when built, encroached on "a small portion of the property owned by a predecessor of the Wrights."⁷⁰¹ The "[p]redecessors of the Wrights conveyed an easement for the use and maintenance of the existing garage to the predecessors of Nord, and their successors and assigns," which would terminate "upon removal or demolition of the garage, which has not occurred."⁷⁰²

While "[t]he Wrights knew of the [garage access] easement," they nevertheless "proceeded to have a spite fence constructed between the properties,"⁷⁰³ in order to obtain leverage over Nord in forcing him to trim more of his trees to enhance their "view."⁷⁰⁴ As explained by the appellate court, the Wright spite fence led to a major problem for Scott Nord:

The fence was built in part on the Nord property. In addition, the Wrights had a gate built between their house and the Nord garage. . . . A strong padlock was placed on the gate. When locked, the gate effectively denied Nord access to his easement.

While the fence was being built, Nord spoke with Don Wright and asked about access to the area between the houses. Wright replied that Nord's easement was only an encroachment, which did not allow Nord access and stated that the Wrights would lock the gate, unless something could be worked out with regard to the trimming of the trees. Nord called the fence company a number of times and informed it that a portion of the fence was being built on his property and that he would tear it down if it was not moved. The fence company and the Wrights ignored Nord.⁷⁰⁵

697. *Id.* at *1.

698. *Id.*

699. *Id.*

700. *Id.*

701. *Id.*

702. *Id.*

703. *Id.* (internal quotation marks omitted).

704. *Id.*

705. *Id.*

On the evening that the Wrights' fence was completed and the gate was padlocked, "Nord used a special power saw to cut down a number of fence posts that encroached on his property."⁷⁰⁶ Nord also "attempted to cut the padlock . . . but for a number of reasons was unsuccessful."⁷⁰⁷ Mr. Nord proceeded to "cut the gateposts holding the gate between the buildings"; however, "[a]fter the gateposts were cut, the gate rolled into the side of the Wright house," causing "cosmetic paint damage to the house and additional damage to a downspout and gutter on the Wright home" estimated to be about \$250 in damages.⁷⁰⁸

Nord was convicted of the malicious mischief charge after a bench trial; the trial judge "inferred from the 'thump' heard inside the Wright home," when the gate hit the side of their home, "that Nord threw the gate against the Wrights' garage and house" and "that Nord's 'willful and unlawful' action that caused damaged to the gate and to the side of the house was disproportionate to anything necessary to exercise his right of easement," and, therefore, he was criminally liable.⁷⁰⁹

On appeal, the Washington intermediate appellate court reversed.⁷¹⁰ According to the reasoning of the appellate court:

The Wrights own the land on which the easement is located and have the right to use their land for any purpose not inconsistent with its ultimate use for reserved easement purposes. But the Wrights do not have the right to unreasonably interfere with Nord's use of the easement. By locking the gate the Wrights unreasonably interfered with the easement and Nord had a right to gain access. While it may have been more thoughtful, there is no requirement that Nord had to resort to other legal process before attempting to gain access to his easement.⁷¹¹

In the appellate court's view, substantial evidence did "not exist to support the finding that Nord threw or tossed the gate against the Wrights' house."⁷¹²

4. Synoptical Comments

Why is it, as we reflect on cases like *The Case of the Corrupt Shrink and the Abusive Deputy Sheriff*, *The Case of the Annoying Junk Artists*, and *The Case of the Cut Down Spite Gate*, that American neighbors so often go to extremes in asserting their supposed property entitlements against their neighbors? Why does their

706. *Id.*

707. *Id.*

708. *Id.*

709. *Id.* at *2.

710. *Id.* at *4.

711. *Id.* at *3.

712. *Id.* at *4.

behavior against their fellow human beings turn ugly and dark? Why are they unable to arrive at reasonable accommodations in solving relatively simple problems? Can the reality of neighbors behaving badly be attributed to irrational impulses to protect and enhance one's real property at any cost? From the perspective of evolutionary biology, are humans "wired" to be hyper-aggressive in pursuit of carving out their home spaces in the world?

IV. AN EPISTEMIC THEORY OF EXTREME NEIGHBORHOOD CONFLICT AND A CALL FOR PRAGMATIC LEGAL RESPONSES

A. An Overarching Gestalt

As we have seen in the opening parts of this Article, while the legal system handles ordinary neighborhood disputes in a reasonably satisfactory manner, extraordinary battles involving neighbors can lead to extreme results: violence resulting in deaths and serious injuries; severe emotional distress; crushing transaction costs (attorney fees, expert charges, and the like); significant public costs (police intervention, police liability, court costs); and intangible impacts (like disruption of neighborhood cohesiveness and morale).

In broad philosophical terms, neighborhood disputes raise three key problems: (1) the problem of *knowledge* (what are the kinds of disputes that arise, what are the quantitative breakdown of these types of disputes, and what is the demographic profile of contentious American neighborhoods versus peaceful communities?); (2) the problem of *conduct* (how do neighbors deal with fellow neighbors, how do good neighbors resolve their disputes, and what is the meaning of a bad neighbor?); and (3) the problem of *governance* (how effective is the legal system in preventing/dealing with neighborhood disputes, what can be done to improve the effectiveness of neighborhood peace-keeping, and what are the costs of the various measures?).

After researching, reviewing and analyzing the 500 judicial opinions decided by American courts in the opening years of the current century, my sense is that the key theoretical variable in American neighborhood disputes, linking the problems of knowledge, conduct and governance is an epistemic gap. We simply don't know very much about minor versus major neighborhood disputes, good neighbors versus bad neighbors, good legal approaches versus bad legal approaches, and the proper role of government in preventing and resolving disputes.

My study provides a series of vignettes with a focus on extreme neighborhood conflicts. To the extent that we can gain general insights from this impressionistic survey, a general conclusion is that most of the extreme conflicts were resolved inefficiently and ineffectively and often over multiple years.

*B. Mapping American Neighborhood Law*⁷¹³

Surprisingly, American neighborhood law draws on a wide spectrum of discrete legal subjects, doctrines, principles, and rules. We see the application of tort, criminal law, property, contract, civil procedure, constitutional, statutory, land use, and environmental laws to various disputes.⁷¹⁴ On occasion, we encounter multiple legal areas in unusual controversies.⁷¹⁵

In terms of the forces that push and pull on neighborhood conflict, a number of tensions are present. One is the belief that seems to motivate much mischief: that property owners are entitled to do whatever they want to do with their property (and sometimes their perceptions of property that is adjacent to their property). Another tension is the commonly harbored view that the police should be called whenever one neighbor feels aggrieved by another. In a related way, police officers responding to neighborhood calls are too frequently under-trained in dealing with neighborhood controversies and police over-react to situations that might be handled with more finesse. Yet, police are hamstrung in many instances by ineffective laws that they are called upon to enforce and by an understandable unwillingness to get in the middle of dueling property claims. Moreover, another tension in neighborhood disputes is a dearth of collaborative, low-intensity institutions, and procedures to calmly and effectively prevent minor disagreements from becoming major confrontations. In a related way, few lawyers and judges who encounter neighborhood disputes seem to know how (or are disinclined to pursue) non-litigation avenues. Indeed, to legal professionals who learned that the most important tool in the toolbox of the law is a hammer, every problem looks like a nail.

Next, neighborhood legal controversies involve added complexity because of the multitudinous perspectives that different neighbors (with varying utilities, concerns, interests and backgrounds) harbor. Some will view the welfare and freedom of their children as a paramount neighborhood value—by way of illustration. Others will valorize peace and quiet. Still others will place a priority on deconstructing/constructing their living space with power tools and contractors by day and partying with loud music and deck gatherings by night.

Ultimately, American neighborhood law in the twenty-first century offers up an unreadable map. There are too many place names, rivers, cul-de-sacs, and subdivision lines on the map that bleed into and override other symbols on the chart.

713. I am indebted, in this section, to the penetrating insights in Pierre Schlag, *The Aesthetics of American Law*, 115 HARV. L. REV. 1049 (2002).

714. See discussion *supra* Part III.

715. See discussion *supra* Part III.

C. Potential Pragmatic Responses

The legal system needs more and better information (raw quantitative data) concerning basic who, what, where, when, and how metrics that seek to describe the nature, frequency, and resolution of neighborhood spats. Legislatures and city/town councils should be encouraged (through public and private grants) to explore experimental and innovative approaches to both preventing and resolving disputes in a more efficient and effective manner. For example, on the preventative front, the 1990 Neighborhood Revitalization Program (NRP), initiated by the city of Minneapolis, Minnesota, allocated planning grants of \$400 million to sixty neighborhood associations within the city to engage, in a deliberative way, in the formal articulation of priorities, plans and projects “regarding shared preferences on the character of their neighborhoods” and a common neighborhood vision of all major aspects of future neighborhood development.⁷¹⁶ The Minneapolis NRP has the potential, if followed by other communities, to ameliorate conflict between developers and residents. On a broader preventative level, America’s primary, middle, and secondary schools should consider curricular reform that would seek to teach the future property owners/occupiers of the nation that along with property rights there are neighborliness duties and norms; that “[i]n a well-functioning neighborhood, neighbors fulfill both negative and positive duties: not being noisy, not littering, not engaging in assault or theft, acting with ordinary politeness, rendering neighborly services and assistance.”⁷¹⁷

However, Conflicts between neighbors will not disappear, even if preventative neighborliness programs are expanded. Local communities, condominium associations, neighborhood associations—acting on their own or with the prod of judicial order—might consider developing institutions and processes for a Consensus Building Approach (CBA) leading to a “written package of commitments” between feuding neighbors.⁷¹⁸ In turn, law schools must strive to go beyond offering standard alternative dispute resolution (ADR) pedagogy to train law students (and practicing attorneys and judges) and seek to provide more particularized skill sets of alternative neighborhood dispute resolution strategies and techniques.

716. Archon Fung, *Democratizing the Policy Process*, in THE OXFORD HANDBOOK OF PUBLIC POLICY 669, 675-76 (Michael Moran et al. eds., 2006).

717. Mark A. R. Kleiman & Steven M. Teles, *Market and Non-Market Failures*, in THE OXFORD HANDBOOK OF PUBLIC POLICY, *supra* note 716, at 635.

718. LAWRENCE E. SUSSKIND & JEFFREY L. CRUIKSHANK, BREAKING ROBERT’S RULES: THE NEW WAY TO RUN YOUR MEETING, BUILD CONSENSUS, AND GET RESULTS 213-15 (2006). The CBA approach advocated by the authors involves five major steps (and numerous sub-steps): (1) “convening;” (2) “assigning roles and responsibilities;” (3) “facilitating group problem solving;” (4) “reaching agreement;” and (5) “holding parties to their commitments.” *Id.*

But, despite best preventative and collaborative efforts, isolated neighbors (because of mental, emotional or social dysfunctionality) can cause serious and substantial problems for themselves and their neighbors. American legislatures should, therefore, consider adopting, by way of statutory enactment, the United Kingdom model of Anti-Social Behavior Orders (ASBOs), authorized by Parliament.⁷¹⁹ “ASBOs allow [British] courts to require individuals to submit to conditions (such as restricted movement) even though they may not be guilty of a criminal offence;” the innovative legal concept “arose from a series of publicized prosecutions which created the paradigm of the neighbourhood blighted and terrorised by the outrageous behaviour of one or two families, groups or individuals, apparently beyond the reach of the law.”⁷²⁰ While—as my survey of extreme American neighborhood cases illustrates—anti-social behavior occurs in wealthy neighborhoods as well as economically disadvantaged neighborhoods—poorer neighborhoods present unique public policy challenges. As recently explained by two scholars:

[I]n some poor neighborhoods, norms of pre-emptive and aggressive violence once established, become difficult even for reluctant inhabitants to resist. Starting with a small minority, they can quickly become close to universal in a chain reaction of self-defense. While most people in the neighborhood may wish to move away from a norm of violence and low sociability to one of greater sociability and cooperation, it would be irrational (and possibly suicidal) for any individual to make the first move. Thus neighborhoods, without some exogenous shock (or some terribly brave individual), may continue indefinitely at a low-level equilibrium of collective dysfunction . . . or they may just depopulate as whoever can move out does so.

The more dysfunctional the neighborhood, the greater its need for intervention by organs of the state (if only to reconstruct its capacity for spontaneous action). But of course the state’s capacity to intervene depends in part on the neighborhood’s capacity to express its needs through formal or informal political interactions. Typically, a neighborhood where norms of sociability have broken down will also be handicapped by damaged channels of communication to the state. Precisely where interventions to overcome failures are most needed they may be least likely to succeed. This is the paradox that plagues efforts at “community policing:” where the police are most needed, the “community” may be hardest to find; heavy-handed

719. Edward C. Page, *The Origins of Policy*, in THE OXFORD HANDBOOK OF PUBLIC POLICY, *supra* note 716, at 217.

720. *Id.* (internal quotation marks omitted) (citation omitted).

enforcement, uninformed by a nuanced understanding of the situation, can make matters worse rather than better.⁷²¹

Finally, the criminal justice system and the civil justice system (with tort damages, civil rights damages, property adjudications and injunctive remedies) remain as powerful—albeit blunt and inefficient—tools for legally ordering neighborhood frictions.⁷²² As analyzed in this Article, some courts have risen to the occasion to decide vexing and contentious neighborhood disputes with panache and incisive legal reasoning. However, other courts have struggled with the blunt instruments of neighbor against neighbor adjudications.

Whatever legal responses to extreme neighborhood conflict are chosen by legislators, judges, policymakers, lawyers and associations—from preventive mechanisms to conflict resolution measures—the spirit of these reforms, in order to address the epistemic deficit in coming to grips with the contours of this public policy conundrum, should be *pragmatic*. How so? First, extreme neighborhood law should be conceived “not as a static body of rules and principles, but as a phenomenon in flux.”⁷²³ Second, the field should seek “a predictivist-inspired emphasis on causality,” with a twofold “discovery and analysis of the facts which constitute [the] reality” of neighborhood conflict along with a focus on “predicting how, and indeed what manner of, further facts will come into existence in the future.”⁷²⁴ Third, extreme neighborhood law should evolve from a pluralistic normative approach whereby “[t]heory and practice evolve together within a context of human purpose and activity; the practice informs the theory while the theory, in turn, informs the practice. Thus, the hallmark of a pragmatic method is its continual reevaluation of practices in the light of norms” that are thought to control them, “and of the norms in light of the practices they generate.”⁷²⁵ Finally, and somewhat paradoxically, a pragmatic approach to extreme American neighborhood conflict law reform must rest, in part, on longstanding traditions and aspirations of civility, neighborly love, and neighborly tolerance.

V. CONCLUSION

The neighbor is a tragic construct—involving a disconnect, between noble religious-ethical aspirations, on the one hand, and a territorial imperative of human

721. Kleiman & Teles, *supra* note 717, at 635 (internal citation omitted).

722. For an earlier discussion of certain property adjudication doctrines of neighborhood disputes, see Stewart E. Sterk, *Neighbors in American Land Law*, 87 COLUM. L. REV. 55 (1987).

723. NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* 128 (1995).

724. *Id.* at 129.

725. Catherine Pierce Wells, *Improving One's Situation: Some Pragmatic Reflections on the Art of Judging*, 49 WASH. & LEE L. REV. 323, 331 (1992).

nature that too often views the neighbor as other. American neighbor jurisprudence in the opening years of the current century reveals ongoing, serious, and destructive meltdowns involving neighbors throughout the country. A few examples of extreme conflict have been sketched as cautionary tales of how bad neighborhood conflicts can get. While state and federal court judges have done a fair job in resolving these disputes under traditional criminal law, tort and property principles, it is high time for some new approaches. In formulating an epistemic theory of extreme neighborhood conflict, this Article closes with an overarching gestalt, suggests a mapping of American neighborhood law, and ends with a few ideas for potential pragmatic responses.