



2022 Selected Cases

(NOTE: Up to 2 cases may be substituted for NHSEB cases when released the week of 9/12)

FALL 2022

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Case #2: Happy to be alone?

On May 18, 2022, the New York Court of Appeals heard a case on whether Happy the elephant has the right of Habeas Corpus, and therefore, whether she is considered a legal person. This was the first case of its kind in an English-speaking high court and called into question what constitutes a person in the United States.¹

For the past 45 years, Happy the elephant has been kept at the Bronx Zoo in a one-acre enclosure, with intermittent contact with other elephants.² A petition led by the Nonhuman Rights Project (NhRP) garnered almost 1.5 million signatures calling for Happy's release to an elephant sanctuary. The petition, titled "*End Happy The Elephant's 10 Years of Solitary Confinement*", states that Happy has been in isolation since her companions Grumpy and Sammy died. Zoo defenders assert that Happy is not alone, and that she receives extensive care, including efforts at interaction and enrichment, unlike prisoners in solitary confinement who receive little if any human contact. For instance, Happy resides next to another female elephant, Patty, who is separated by a fence and the two elephants can see and smell each other, and even touch trunks.³

Proponents on both sides agree that a ruling in favor of Happy's personhood would have massive ramifications. The Nonhuman Rights Projects filing the case on behalf of Happy, argue that the ruling could help animals achieve the bodily liberty that has been denied to them across human history. Whereas in a brief, attorneys for the Bronx Zoo wrote "Expanding the notion of a 'person' to include animals ... has implications not just for zoos, but for pet owners, farmers, academic and hospital-based researchers and, most critically, every human who might seek or need access to the judicial system."

Happy was, in part, selected by the NhRP because in 2005 she was the first elephant to pass the mirror test, previously only passed by great apes and dolphins. The mirror test determines whether an animal possesses the ability of visual self-recognition and is often associated with capacity for empathy. It is unclear whether opening the legal recognition of personhood to Happy the elephant would set the stage for all animals to fall under this category. There have been many theories on how to quantify the moral value of a being, whether that is self awareness, capacity for pain, or the capacity of rational thought. Some philosophers have even addressed consideration for the moral weight of plants.

¹ Michael Doyle, "Happy the elephant's case poses heavy philosophical" Politico, 05/12/2022 <https://subscriber.politicopro.com/article/eenews/2022/05/12/happy-the-elephants-case-poses-heavyphilosophical-questions-00032060>

² Vicki Constantine Croke, "Happy the elephant had her day in court. We humans are better for it." The Washington Post, June 23, 2022 <https://www.washingtonpost.com/opinions/2022/06/23/bronx-zoo-elephant-lawsuit-happycaptivity/>

³ Jill Lepore, "The Elephant who could be a person" The Atlantic, 11, 2021 <https://www.theatlantic.com/ideas/archive/2021/11/happy-elephant-bronx-zoo-nhrp-lawsuit/620672/>

NhRP argues that those who have claims against their case do so for personal interest, such as the National Association for Biomedical Research, which claimed that “extending habeas rights to animals would ... drive up the cost of conducting critical research using animals, threatening to impede important medical breakthroughs and other major scientific advances that benefit humans and animals alike.”⁴

Three Buddhist scholars countered in a brief that “this legal moment for Happy represents a great opportunity to consider the treatment of sentient beings from a cross-cultural and more moral perspective than we have done before, so as to avoid perpetuating a great moral wrong merely because it has been a habit of the law.”

On June 16, 2022, the top New York Court ruled that Happy cannot claim habeas corpus rights, and therefore, is not a legal person. While this may put to rest this challenge seeking animal personhood in the United States, the law is not necessarily coextensive of morality.

⁴ Kathleen M. Sullivan, Amicus Curiae Brief, September 24, 2021
<https://www.nonhumanrights.org/content/uploads/Kathleen-Sullivan-brief-Happy-Court-of-Appeals.pdf>

Case #3: Knowledge for the sake of ... lizard dewlaps?

An ecology lab at a renowned University focuses their research on animals largely found in the Caribbean and the southeastern United States. One of the groups focuses on anoles, a type of lizard of which there are more than 425 species and focuses on one of these species. The *Anolis Distichus* had been selected out of hundreds, due to the dearth of research on the particular species, because it is smaller and quicker, and therefore harder to catch than others. The group researches the lizard's dewlap, a brightly colored extendible flap of skin, and seeks to determine its true purpose as it has been hypothesized that male anoles use it to attract mates. In the course of research, teams of students are sent to capture wild anoles for study, measurements are taken, and then the lizards are released. But sometimes during this process, accidents happen, and the lizards die due to sun exposure, dropping of containers, or other unforeseen circumstances.

It is unclear to some, what this research would do for either humanity, or for the lizards themselves. This begs the question whether knowledge, for the sake of knowledge, is a goal justified in it of itself, in exchange for the loss of animal lives. Others may argue that scientific discoveries sometimes lead to unexpected advantages in other aspects of life. Like how scientists discovered that sharks resist infection, and then transitioned this knowledge into studying the sharks' immune system with the hope that their immunity could unlock secrets to improve human health⁵. Scientists may not always know the application of their study until after findings are made. Thus, it's possible the dewlap research could become relevant for conservation of lizard habitats if, for instance, we learn that they need to use their dewlaps in a particular location, climate, or time of day. And even if the research does not impart some immediate further application, some could say the knowledge alone is powerful. But the anoles at the moment do not get a say.

The above is an example where animals are accidentally killed in the field, but in many cases, animals are killed at the end of experiments due to factors such as stress or illness, that would not allow them to be returned to the wild. Many consider this a reasonable cost of better knowledge and understanding of our world. In Germany, there are investigations into whether the routine culling of unused research animals should be allowed, as they were not even used "for the greater good". For example, the European Union estimated that in 2017, EU labs culled 83% of mice in labs without any studies, due to space or time constraints.⁶ Animal rights activists in many countries have tried and failed for decades to get stricter animal testing laws on the books. The Animal Welfare Act is the only federal legislation that regulates researching animals in the U.S, but it does not cover 95% of the animals used in laboratories such as mice, rats, birds, and fish.³

⁵ Melinda Ratini, "Understanding Cancer -- the Basics" WebMD, January 20, 2022

<https://www.webmd.com/cancer/news/20170721/what-sharks-can-teach-us-about-our-health>

⁶ Hinnerk Feldwisch-Drentrup "Germany weighs whether culling excess lab animals is a crime" Science, May 5, 2022, <https://www.science.org/content/article/germany-weighs-whether-culling-excess-lab-animals-crime> ³ Susan

Gilbert, Gregory E. Kaebnick, and Thomas H. Murray, "Animal Research Ethics: Evolving Views and Practices," Special Report, Hastings Center Report 42, no. 6 (2012) <http://animalresearch.thehastingscenter.org/u-s-law-and-animal-research/>

Case #4: Do no harm

On December 24, 2017, 75-year-old Charlene Murphey was admitted to Vanderbilt University Medical Center with a subdural hematoma.⁷ Two days later, Murphey's condition had improved, and she was prescribed a sedating drug, Versed, to allow her to be still during a final MRI before release. RaDonda Vaught, a registered nurse with seven years of experience at the hospital, was ordered to administer the sedative. Vaught attempted to withdraw the sedative from an automated dispensing cabinet by keying "VE" into the search function. When this failed Vaught used an override code to manually withdraw the medication. Unfortunately, Vaught mistakenly withdrew vecuronium, a paralyzing drug, the administration of which led to the death of Charlene Murphy.

Vaught admitted her error to Vanderbilt administrators, explaining that she was distracted by a trainee and had been complacent. That information was not passed on to medical examiners, as required by law, and Murphy's death was attributed to natural causes. In the following month Vaught was fired but retained her nursing license as Vanderbilt continued to suppress public knowledge of the incident. In October 2018, the incident became public due to an anonymous tip and Vaught faced a hearing with the Tennessee Department of Health's Board of Nursing. Vaught explained the incident and that overriding the automated dispensing system was daily practice, that "You couldn't get a bag of fluids for a patient without using an override function." The board allowed her to retain her license.

Vaught was arrested on February 4, 2019 and charged with reckless homicide and impaired adult abuse. To fund her legal defense, Vaught started a GoFundMe campaign writing, "Many feel very strongly that setting the precedent that nurses should be indicted and incarcerated for inadvertent medical errors is dangerous." Nurses rallied to Vaught's defense raising over \$100,000, appearing at her trial, and writing letters of support. Janie Harvey Garner, a St. Louis registered nurse and founder of Show Me Your Stethoscope, a nurse's group with more than 600,000 members said, "In response to a story like this one, there are two kinds of nurses," Garner said. "You have the nurses who assume they would never make a mistake like that, and usually it's because they don't realize they could. And the second kind are the ones who know this could happen, any day, no matter how careful they are. This could be me. I could be RaDonda."⁸

Pharmacists have taken Vaught's case as an object lesson in the need for reform in the control of dangerous medications. For example, pharmacist confirmation of drugs obtained by overriding an automated dispenser, limiting overrides to emergency situations, separate control systems for paralytic drugs, like vecuronium, and other increases in institutional safeguards.⁹ Under

⁷ Brett Kelman "The RaDonda Vaught trial has ended. This timeline will help with the confusing case" Nashville Tennessean March 27, 2022. <https://www.tennessean.com/story/news/health/2020/03/03/vanderbilt-nurse-radondavaught-arrested-reckless-homicide-vecuronium-error/4826562002/>

⁸ Brett Kelman "As a nurse faces prison for a deadly error, her colleagues worry: Could I be next?" NPR, March 22, 2022 <https://www.npr.org/sections/health-shots/2022/03/22/1087903348/as-a-nurse-faces-prison-for-a-deadly-errorher-colleagues-worry-could-i-be-next>

⁹ Myungsun (Sunny) Ro and Emily B. Holcomb, "More Lessons Learned From RaDonda Vaught Case" Pharmacy

increased federal scrutiny Vanderbilt developed a “plan of correction” which satisfied officials and allowed it to continue operations with federal funds.

On the other hand, the Tennessee Department of Health’s Board of Nursing reversed its earlier decision and revoked Vaught’s nursing license. Vaught was subsequently convicted of criminally negligent homicide and abuse of an impaired adult. Although guilty of very serious charges, Vaught was sentenced to three years of probation and while she will likely never be a nurse again, she will also likely not serve time in prison. Still, many worry that the apparent institutional cover-up and chilling effect on nurses will cost other patients their lives.

Case #7: Anti-Vax or Anti-American

The United States Air Force Academy graduating class of 2022 was three fewer than anticipated at the May 25th ceremony in Colorado Springs. Three cadets who anticipated graduating with their classmates and receiving commissions in the USAF refused COVID-19 vaccination and were not allowed to attend the ceremony. One of the cadets has resigned from the Academy and may owe the cost of his attendance to taxpayers. The other cadets are in a legal limbo as they seek to join one of several class action lawsuits filed on behalf of military members who were required to either be vaccinated or be separated from military service.¹⁰

According to former Colorado state Rep. Gordon Klingenschmitt, “These are evangelical Christian cadets, who are pro-life, and they object to the fact that the vaccines were tested on aborted fetal stem cell lines. Because of their objection to abortion, their conscience will not let them ... inject this particular drug into their own bodies.” The cadets applied for religious exemptions for the mandated vaccination, but their requests were denied as of January 2022, the USAF had only approved a total of 9 religious exemptions. Director of Public Affairs Brian Maguire responded saying, “The majority of our religious accommodation requests centered on the use of stem cells in the development and/or production of the currently available vaccines. The Moderna and Pfizer vaccines did not use stem cells in the development, testing or production and were presented as an option. The cadets refused to commit to this vaccine.”¹¹

The cadets received an official letter of reprimand for not taking the vaccine in violation of Article 90 of the Uniform Code of Military Justice for disobeying an order from a superior officer. The letter makes the point that officers in the military are expected to obey orders even when they disagree with those orders. In this case, disobeying the order to be vaccinated, “jeopardizes the health, safety and readiness of yourself and of your fellow military members and compromises our mission.”

According to one whistleblower’s account, in October 2021 Air Force Secretary Frank Kendall told commanders “no religious accommodations could or should be approved for anyone who would be remaining in the Department of the Air Force.”¹² However, the U.S. military has allowed numerous medical exemptions to the vaccination policy. For some, this calls into question the degree to which safety is impacted by unvaccinated members of the armed forces.

¹⁰ Lolita Baldor “3 Air Force cadets who refused vaccine won’t be commissioned” AP News May 21, 2022 <https://apnews.com/article/covid-health-united-states-government-and-politics-educationc8debc71373ab4b4390980b12072ef5a>

¹¹ Stephanie Earls “Air Force Academy cadets who refused vaccine, and were denied waiver, could face expulsion” The Gazette May 14, 2022 https://gazette.com/premium/air-force-academy-cadets-who-refused-vaccine-and-were-denied-waiver-could-face-expulsion/article_070a3fec-d2fc-11ec-9490-0f8a500e9fd2.html

¹² O'Dell Isaac “Air Force Academy cadet submits resignation after refusing vaccine on religious grounds” The Gazette May 18, 2022 https://gazette.com/coronavirus/air-force-academy-cadet-submits-resignation-after-refusing-vaccine-on-religious-grounds/article_7ebca986-d6f2-11ec-8d5c-5787c7294f98.html

Amid concerns that vaccination requirements are overblown and the possible costs that cadets may face for refusing, some in Congress have taken the side of the cadets and introduced the Defending Freedom of Conscience for Cadets and Midshipmen Act. The Act would, if passed, prevent denial of graduation for not being vaccinated against COVID-19; prevent being dismissed from a service academy for refusing to be vaccinated; and, prevent any cadet who is not allowed to commission due to their COVID-19 vaccination status from being subject to repayment claims.¹³

¹³ Marco Rubio, “Colleagues Introduce Bill to Protect Air Force Cadets, Midshipmen From Being Punished for Not Receiving Covid-19 Vaccine” May 25 2022
<https://www.rubio.senate.gov/public/index.cfm/2022/5/rubiocolleagues-introduce-bill-to-protect-air-force-cadets-midshipmen-from-being-punished-for-not-receiving-covid-19vaccine>

Case #9: Freedom of tweets

As Twitter sues Elon Musk to force his purchase of the company or pay a reported one billion dollars in compensation, the character of Twitter today and under Musk's proposed leadership has become contentious. In March 2022, when Musk began his acquisition bid, he polled users on the platform asking, "Free speech is essential to a functioning democracy. Do you believe Twitter rigorously adheres to this principle?" Musk's offer letter contained his response, "I now realize the company will neither thrive nor serve this societal imperative in its current form. Twitter needs to be transformed as a private company."¹⁴

Twitter's content moderation policies have developed over the last ten years to prohibit the glorification of violence, incitement of violence, harassment, hateful conduct, graphic content and much more. These policies themselves have clarifying policies, but still require judgment calls. The judgment of the content moderation team has come under criticism in the past for being too aggressive, too lenient, and too inconsistent. For instance, when Twitter permanently suspended former President Donald Trump's account over tweets relating to the January 6th riots many viewed the decision as censorship of valid political beliefs and while others lamented the decision as too late.¹⁵

Musk's perspective is that content moderation should mirror local laws regarding speech and thus be as lenient as legally permissible and has vowed to reinstate the former President's account. Critics wonder, "[i]f Twitter wants to pull back from moderating speech on its site, will people be less willing to hang out where they might be harassed by those who disagree with them and swamped by pitches for cryptocurrency, fake Gucci handbags or pornography?"¹⁶ Beyond the user experience, others express concern that the rampant spread of misinformation on platforms like Twitter leads to a degradation of democracy and acts of violence like those of January 6th.

However, the proposed sale of Twitter resolves the digital public square will continue to be controlled by a handful leading voices at places like Twitter, Facebook, and Tik Tok. These leaders are controlled by market forces and their own moral compasses but are not themselves beholden to a democratic electorate. Some states have taken decisions about content moderation away from unelected leaders by implementing laws restricting the content on digital platforms. These new laws include both the Digital Services Act in the European Union, which requires Twitter to scrub its platform of misinformation and abuse, and Vietnam's policy of holding companies accountable for government criticism on their platforms.

¹⁴ Jennifer Korn, "Elon Musk's bumpy road to possibly owning Twitter: A timeline" CNN Business, August 19, 2022 <https://www.cnn.com/2022/05/17/tech/twitter-elon-musk-timeline/index.html>

¹⁵ Bobby Allyn and Tamara Keith, "Twitter Permanently Suspends Trump, Citing 'Risk Of Further Incitement Of Violence'" NPR January 8, 2021 <https://www.npr.org/2021/01/08/954760928/twitter-bans-president-trump-citingrisk-of-further-incitement-of-violence>

¹⁶ Shira Ovide, "Buying Twitter, Elon Musk Will Face Reality of His Free-Speech Talk" New York Times April 26, 2022 <https://www.nytimes.com/2022/04/26/technology/twitter-elon-musk-free-speech.html>

Case #10: A minor problem...

Joseph Campbell famously discussed the process of “coming of age,” and the need for rites of passage to help youths transition from childhood into adulthood in “The Power of Myth,” a transcribed interview between Campbell and Bill Moyers of PBS.¹⁷ Campbell talked about how myths, be they religious (as with Jewish bar and bat mitzvahs at 12 to 13, and Christian confirmation from about 12 to 15) or secular rites (quinceañera at 15, sweet 16 and drivers’ licenses at 16, and even gang membership from around 12 to 18 years of age), all aim to give the young person a sense of transition into the world of adult responsibilities and independence.

But notably, the timetable for the transition into adulthood is neither concrete nor consistent for all groups or individuals. For instance, the religious coming of age celebrations are usually around 12 to 13, but the secular rites are often a little later, around 15 to 16. States also have myriad laws when it comes to age of consent¹⁸, marriage²⁰, and legal capacity to enter into contracts²¹. These laws provide a slow evolution to legal adulthood, granting partial rights that will become full (or at least fuller) once the youth turns 18 (a few minor rights are still withheld until 21, such as the age to buy alcohol or to consume marijuana in states where it has been legalized).

Given that there are different approaches to a minor’s ability to consent to participate in significant, potentially life-altering behaviors, some ask whether these pre-adulthood rights should necessarily be tied to other legal rights that a minor may need to exercise, particularly as relate to medical treatment. In many states, minors may visit a gynecologist or family physician to obtain birth control, abortion care, or to treat sexually transmitted diseases without a parent consenting or being present. However, in other states, despite youths being allowed to marry under the age of 18, they nevertheless cannot see a gynecologist or other sexual healthcare provider without the consent of a parent or guardian.

Similarly, many states have allowed minors to obtain vaccines against deadly diseases without parental consent, particularly in light of the public health needs of society, as well as the potential for serious, even debilitating diseases if vaccines are not administered. As vaccines and abortions become increasingly controversial, many minors are seeking medical care without the permission or even expressly against the wishes of their parents. In many states, minors can

¹⁷ See Campbell and Moyers, *The Power of Myth*, Betty Sue Flowers, Editor, Anchor Books, a Division of Random House, Inc., July 1991.

¹⁸ “Statutory Rape: A Guide to State Laws and Reporting Requirements,” Office of the Assistant Secretary for Planning and Evaluation, U.S. Dept. of Health and Human Services, Dec. 14, 2004,

<https://aspe.hhs.gov/reports/statutory-rape-guide-state-laws-reporting-requirements-#:~:text=In%20the%20majority%20of%20states,and%2011%20states%2C%20respectively>).

²⁰ “Marriage Age in the United States,” Wikipedia, last accessed September 5, 2022,

https://en.wikipedia.org/wiki/Marriage_age_in_the_United_States#:~:text=With%20parental%20consent%2C%20a%20person,family%20division%20of%20district%20court.&text=Minors%20cannot%20marry.

²¹ “Legal Ages Laws,” law.jrank.org, <https://law.jrank.org/pages/11848/Legal-Ages.html>; last accessed Sept. 5, 2022; Stim, Richard, “Who Lacks the Capacity to Contract?” Nolo.com, last accessed Sept. 5, 2022, <https://www.nolo.com/legal-encyclopedia/lack-capacity-to-contract-32647.html>,

obtain birth control without parental consent, and a recent piece of legislation in California may allow children to be vaccinated against COVID-19 without needing their parents' permission.²² With the proliferation of anti-vaccination movement, critics of these new vaccine rights laws worry that the legislation may allow children to make decisions they do not fully understand.²³ For instance, many in the anti-vaccination movement hold serious concerns about the potential long-term impacts of new vaccines, which have yet to be tested for long-term impacts to health that may not be known for years or even decades.

²² Klass, Perri, M.D., "When Should Children Take Part in Medical Decisions?" The New York Times, Sept. 20, 2016, <https://www.nytimes.com/2016/09/19/well/family/when-should-children-take-part-in-medical-decisions.html>.

²³ Abcarian, Robin, "Should kids need parental consent for vaccines? Read this before you decide," Los Angeles Times, Jan. 26, 2022, <https://www.latimes.com/opinion/story/2022-01-26/teen-parents-consent-covid-vaccine>.

Case #13: Learn to live with your demons?

Caroline Mazel-Carlton began hearing voices as a young child.²⁴ And from a young age, she was put on medications that were supposed to temper and control those voices. But they had severe side effects, such as weight gain, self-harm (such as pulling hair out in patches), and erratic body movements, as well as feelings of isolation and ultimately a suicide attempt.

The National Institute of Mental Health found that these antipsychotic drugs have not improved since their inception 70 years ago,²⁵ and some studies found that that maintenance on the drugs may actually worsen outcomes and even cause brain atrophy, though these findings have been debated.²⁶

Mazel-Carlton found solace working on a farm where she stopped taking her prescriptions cold turkey. Once she stabilized and learned to process her auditory hallucinations with greater skill, she became involved with a growing effort to reform how the field of mental health treats severe psychiatric conditions. She became a peer-support specialist, someone who has lived experience and works alongside medical practitioners, and became involved in the Wildflower Alliance, a peer run organization.

“She began leading Hearing Voices Network support groups—which are somewhat akin to Alcoholics Anonymous meetings—for people with auditory and visual hallucinations. The groups, with no clinicians in the room, gathered on secondhand chairs and sofas in humble spaces rented by the Alliance. What psychiatry terms psychosis, the Hearing Voices Movement refers to as nonconsensus realities, and a bedrock faith of the movement is that filling a room with talk of phantasms will not infuse them with more vivid life or grant them more unshakable power. Instead, partly by lifting the pressure of secrecy and diminishing the feeling of deviance, the talk will loosen the hold of hallucinations and, crucially, the grip of isolation.”

Antithetical to traditional medical views of risk management, Mazel-Carlton’s treatment focused instead on acceptance and living with your voices. Medical practitioners claim that drug

²⁴ Bergner, Daniel, “Doctors Gave Her Antipsychotics. She Decided to Live With Her Voices,” The New York Times Magazine, May 17, 2022, updated May 22, 2022, (<https://www.nytimes.com/2022/05/17/magazine/antipsychotic-medications-mental-health.html>); **future discussion of Ms. Mazel-Carlton’s experiences are predominantly drawn from the foregoing article, and citation is ongoing throughout this case study unless noted otherwise.**

²⁵ See “Questions and Answers About the NIMH Clinical Antipsychotic Trials of Intervention Effectiveness Study (CATIE) – Phase 1 Results,” National Institute of Mental Health, (<https://www.nimh.nih.gov/funding/clinicalresearch/practical/catie/phase1results>) (last accessed July 22, 2022).

²⁶ See e.g. David M. Gardner, Ross J. Baldessarini, Paul Waraich, “Modern antipsychotic drugs: a critical overview,” Canadian Medical Association Journal, Jun 21, 2005, (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1150265/>).

regimens can reduce violent actions,²⁷ although most studies reaching such conclusions both presume optimal or near optimal compliance with the patient’s prescription regimen (which is not always the case), and further, the odds of violent outbursts are overall very low in any case, with some studies showing that poverty, homelessness, and isolation that often go hand-in-hand with nonconsensus realities are more likely to cause violent outbursts than the hallucinations themselves.²⁸

“Mazel-Carlton takes care not to diminish the suffering of people like herself and speaks of expanding ‘the options for healing.’ Yet she sees her wish as analogous to not just the mainstreaming of autism but the nascent acceptance of new forms of gender identity. ‘Our society needs to expand its view of what it means to be human,’ she says. ‘To expand what is affirmed and honored.’”

Through their work, the Alliance also works on suicide prevention, although their work is very different than mainstream suicide prevention methods.

“A slide within the training protocol Mazel-Carlton has designed teaches that the mission is ‘to stay present’ and not ‘to prevent them from doing that.’ ‘Stay away from fix-it mode, from savior mode,’ Mazel-Carlton tells trainees. ‘With our capes on, we can’t listen.’ A first principle is that people must be allowed to talk freely about all that is preying on them, including the wish to take their own lives, and in the groups, a foundational pact is that no one will be reported, not to any hotline, not to the police or any practitioner, no matter what he or she expresses an intent to do.’

To comprehend how thoroughly this defies dominant practice, take the policy of the country’s most-called—and heavily federally funded—suicide hotline. It advertises confidentiality but covertly scores risk and, each year, without permission, dispatches police cars and ambulances to the doors of thousands.”

²⁷ See “Antipsychotic drugs see drop in violent crime,” University of Oxford, May 8, 2014, <https://www.ox.ac.uk/news/2014-05-08-antipsychotic-drugs-see-drop-violent-crime>.

²⁸ Maurizio Pompili, MD, PhD, Andrea Fiorillo, MD, PhD, “Aggression and Impulsivity in Schizophrenia,” *Psychiatric Times*, Vol. 32, No. 7, July 23, 2015, <https://www.psychiatrytimes.com/view/aggression-andimpulsivity-schizophrenia>.

14. So sue me!¹

After Gawker Media published a scandalous video of the wrestler Hulk Hogan, Hogan sought revenge. He ultimately decided to sue Gawker for violating his right to privacy. Luckily for Hogan though, he was not the only person out for vengeance against Gawker. Years earlier, Gawker had divulged private and sensitive information about Peter Thiel, one of the wealthy founders of PayPal. Upon hearing of Hogan's situation, Thiel secretly invested around 10 million dollars to help Hogan win his lawsuit against Gawker. Thiel engaged in what is called 'litigation financing.' Litigation financing is the funding of litigation by individuals or groups who are not parties to the litigation.

While Thiel may have been motivated to invest for personal reasons, often the payoff for investing in another person's lawsuit is a significant financial gain for the investor. In the case of *Miller UK Ltd. v. Caterpillar Inc.* (2014), for example, the investors on the side of Miller (a small business litigator) against Caterpillar (a big business defendant) stood to earn millions if they won the case. Many worry that the potential for financial gain in litigation financing could lead to further corruption of the already pricey U.S. legal system. With the aim of making a profit from litigation financing, these investment firms are well positioned to perpetuate injustice. Such practices could lead to financiers exploiting potential plaintiffs who are in financial need.

Others don't share these worries. In the end, they argue, legal cases will succeed or fail on account of their merits, regardless of the money involved. Moreover, they contend that citizens should be permitted to sell and commodify their own lawsuits because they have a right to do so, especially if it helps them to cover expensive legal processes. Denying citizens this right out of sheer speculation that it could lead to negative consequences overlooks the fact that litigation financing can lead to positive outcomes in the U.S. legal system. Several case examples reveal how litigation financing has helped many to achieve justice, who could not otherwise afford to put up a legal fight against their opponents. One example, in *NAACP v. Button* (1963), the Supreme Court struck down a Virginia law that prevented the NAACP from funding litigation cases for those subject to unjust racial discrimination. The case of *NAACP v. Button* (1963) reveals how litigation financing can be an important means of achieving justice.

¹ This case was developed by the Parr Center for Ethics for use in the National High School Ethics Bowl. It appears in NHSEB's 2022-2023 Regional Case Set and is reproduced here with permission. For more information about the National High School Ethics Bowl, please visit nhseb.unc.edu.

15. Justice delayed, justice denied?¹

The murder of Emmett Till is one of the most notorious hate crimes in American history. At 14 years old, Till was killed in 1955, while visiting his family in Mississippi. This case has long symbolized both the racist violence that was perpetrated against African-Americans throughout the Jim Crow era, and the way in which perpetrators of this violence were rarely held accountable.

While socializing outside of a store, Till's cousins allegedly dared him to ask the white woman in the store, 21-year-old Carolyn Bryant, on a date. The 14-year old Till allegedly accepted the dare and made comments to her in the store. Bryant initially claimed that Till also made physical advances on her. When Bryant's husband Roy, heard of this, he and his half-brother J.W. Milam went to the residence where Till was staying and forced him into their car. Three days later, the boy's mutilated body was found by the Tallahatchie River, only identifiable by an engraved ring he was wearing. His body was flown back to Chicago where his mother insisted on an open casket funeral. The news media soon picked up the story after seeing the state of his body, and Roy Bryant and J.W. Milam were tried for murder in a segregated courthouse in Mississippi. At this trial, Carolyn Bryant repeated her allegations against Till. After deliberating for less than an hour, the all-white jury found the defendants to be not guilty. Carolyn Bryant later recanted her claims about Till, revealing the truth to author Timothy Tyson: Till never touched or harassed her.²

In July of 2022, an unserved arrest warrant for Carolyn Bryant (now Carolyn Donham of Raleigh, NC) from 1955 was found in a courthouse basement in Mississippi. Weeks later, a grand jury was empaneled to decide whether to indict her, as the only living accomplice of the Till kidnapping and lynching nearly 70 years ago. Ultimately, the grand jury decided not to issue an indictment over concerns about whether there was sufficient evidence to convict her.³

Critics of the grand jury's decision emphasize the importance of accountability. Those who would like to see Donham arrested and convicted argue that, just as Nazis have been prosecuted years after they committed their crimes, those who engage in horrible acts deserve to be punished regardless of how much time has passed. Moreover, given the symbolic importance of this case, it is important to have a formal acknowledgement and condemnation of her role in Till's lynching. Yet others question whether prosecuting an 88-year-old woman as an accomplice to a murder committed seven decades earlier would really constitute justice. Moreover, defenders of the grand jury's decision point out, given her age and serious health issues, she would not be likely to face punishment for this crime even if she were convicted—instead, she would likely have been sent home on compassionate release.

¹ *This case was developed by the Parr Center for Ethics for use in the National High School Ethics Bowl. It appears in NHSEB's 2022-2023 Regional Case Set, and is reproduced here with permission. For more information about the National High School Ethics Bowl, please visit nhseb.unc.edu.*

² <https://www.simonandschuster.com/books/The-Blood-of-Emmett-Till/Timothy-B-Tyson/9781476714851>

³ <https://www.npr.org/2022/06/29/1108806145/emmett-till-family-seeks-arrest-after-1955-warrant-is-found>