

2-11-2013

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Jason P. Nance

University of Florida Levin College of Law, nance@law.ufl.edu

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Recommended Citation

Jason P. Nance, *School Security Considerations after Newtown*, 65 *Stan. L. Rev. Online* 103 (2013), available at <http://scholarship.law.ufl.edu/facultypub/373>

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SCHOOL SECURITY CONSIDERATIONS AFTER NEWTOWN

Jason P. Nance*

On December 14, 2012, and in the weeks thereafter, our country mourned the deaths of twenty children and six educators who were brutally shot and killed at Sandy Hook Elementary School in Newtown, Connecticut. Since that horrific event, parents, educators, and lawmakers have understandably turned their attention to implementing stronger school security measures to prevent such atrocities from happening again. In fact, many states have enacted or proposed legislation to provide additional funds to schools for metal detectors, surveillance cameras, bulletproof glass, locked gates, and law enforcement officers.¹

As parents, policymakers, and school administrators consider whether to invest their limited funds in these strict security measures, there are several additional factors worth considering. First, empirical evidence demonstrates that low-income students and minority students are disproportionately subjected to intense security measures nationwide. This disparity may increase with the allocation of new funds. Second, strict security measures, particularly when used in combination, create a prison-like environment resulting in a deteriorated learning climate for students. Third, despite highly publicized

* Assistant Professor of Law, University of Florida Levin College of Law. I thank Tom Lin and Michael Wolf for their helpful comments. I also thank Olga Balderas and Dane Ullian for their excellent research assistance. Finally, I thank the U.S. Department of Education for providing me with access to the restricted-use dataset for the 2009-2010 School Survey on Crime and Safety.

1. See, e.g., Lloyd Dunkelberger, *Legislature Likely to Increase Funding for School Security*, HERALD-TRIBUNE (Sarasota, Fla.) (Jan. 16, 2013), <http://politics.heraldtribune.com/2013/01/16/legislature-likely-to-increase-funding-for-school-security> (describing likely increases in Florida's education budget to fund security measures such as surveillance cameras and security officers); Scott Waldman, *Tougher Security on Way for Schools*, TIMES UNION (Jan. 17, 2013), <http://www.timesunion.com/local/article/Tougher-security-on-way-for-schools-4200781.php> (describing New York legislation that will provide money to schools for increased security measures).

events of school violence, schools remain among the safest places for children. And because increased security measures are unlikely to prevent someone determined to commit a violent act at school from succeeding, funding currently dedicated to school security can be put to better use by implementing alternative programs in schools that promote peaceful resolution of conflict.

THE MOVEMENT TOWARDS INCREASED SECURITY MEASURES IN SCHOOLS

As tragic as the Newtown events were, they were not the first horrific acts of violence to take place in schools. Many remember the highly publicized shootings in Littleton, Colorado; Jonesboro, Arkansas; and West Paducah, Kentucky. After each of those incidents, there was also a call to implement stronger security measures in schools. The federal government and several states responded by creating programs for schools to purchase security equipment and hire law enforcement officers. For example, the Office of Community Oriented Policing Services has provided more than \$900 million to schools for security measures.²

As schools have implemented stronger security measures, courts have substantially weakened students' Fourth Amendment rights. School officials are no longer required to obtain a warrant, meet the standard of probable cause, or have an individualized suspicion that a student participated in wrongdoing before conducting a search.³ Instead, to determine the legality of a suspicionless search, courts weigh a school's interest in conducting a search against the student's expectation of privacy and the character of the intrusion.⁴ Because courts consider a school's interest in preventing crime to be paramount, courts generally permit schools to employ suspicionless search practices, particularly when those searches are considered minimally intrusive.⁵ This appears to hold true even when schools employ a host of suspicionless search practices that, in combination, amount to a substantial invasion of students' privacy. In light of the minimal oversight from the courts and significant federal and state funding, empirical evidence suggests that

2. See, e.g., Press Release, Community Oriented Policing Servs., US Department of Justice COPS Office Announces over \$13 Million in School Safety Grants (Sept. 8, 2011), available at <http://www.cops.usdoj.gov/Default.asp?Item=2599>.

3. See *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995) (concluding that the Fourth Amendment does not require school officials to have an individualized suspicion of wrongdoing before searching a student); *New Jersey v. T.L.O.*, 469 U.S. 325, 340-41 (1985) (holding that school officials need not obtain a warrant or meet the standard of probable cause before searching a student).

4. *Vernonia*, 515 U.S. at 654-66.

5. See, e.g., *State v. Jones*, 666 N.W. 2d 142, 150 (Iowa 2003) (upholding random locker searches); *In re F.B.*, 726 A.2d 361, 366 (Pa. 1999) (characterizing the intrusion imposed by a metal detector search as "minimal").

disturbing racial and class disparities in the implementation of strict security measures have emerged.

EMPIRICAL EVIDENCE SUGGESTS DISPARITIES IN THE USE OF STRICT SECURITY MEASURES

I conducted a study that tested whether student race and student poverty were significant predictors of whether school officials chose to implement a combination of intense security measures including metal detectors, law enforcement officers, random sweeps, security cameras, and locked gates. To test this hypothesis, I analyzed recently released, restricted data from the U.S. Department of Education's 2009-2010 School Survey on Crime and Safety (SSOCS). The SSOCS contained survey responses from more than 2500 school principals throughout the country regarding the types of security measures schools employ, as well as data on school crime, school conditions, and school demographics.⁶

I defined "student race" as the percentage of the school's population consisting of minority students, and "student poverty" as the percentage of students who were eligible for free or reduced-price lunch. Importantly, when testing this hypothesis, I took into account other factors (the "control variables") that might influence a school official's decision to implement strict security measures. Those control variables included:

- *school crime* (the number of violent incidents, physical attacks, threats of physical attack, incidents involving possession of a weapon or illegal drugs, theft, and incidents of vandalism that occurred on school grounds);
- *school disorder* (the frequency of occurrences relating to student racial tensions, student bullying, student sexual harassment, disorder in the classroom, student verbal abuse of teachers, student acts of disrespect other than verbal abuse, student gang activities, and student cult activities);

6. See NAT'L CENTER FOR EDUC. STATS., SCHOOL SURVEY ON CRIME AND SAFETY PRINCIPAL QUESTIONNAIRE: 2009-2010 SCHOOL YEAR 5-18 (2010), available at http://nces.ed.gov/surveys/ssocs/pdf/SSOCS_2010_Questionnaire.pdf. The restricted-use data "have a higher level of detail in the data compared to public-use data files." See *Statistical Standard Program*, NAT'L CENTER FOR EDUC. STATS., http://nces.ed.gov/statprog/instruct_gettingstarted.asp (last visited Feb. 4, 2013). Although the restricted datasets are not available to the general public, datasets that contain less sensitive data for prior school years are currently available. See *Data Products*, NAT'L CENTER FOR EDUC. STATS., http://nces.ed.gov/surveys/ssocs/data_products.asp (last visited Feb. 4, 2013).

- *neighborhood crime* (the school officials' perceptions of crime problems near the school);
- *geographic region* (whether the school was located in a southern, northeastern, western, or midwestern state);
- *school urbanicity* (whether the school was located in a city, suburb, town, or rural area);
- *student population* (the number of students the school served); and
- *low-performing students* (the percentage of students who scored below the fifteenth percentile on standardized tests).

The preliminary analyses showed that even after accounting for the above control variables, student race and student poverty remained strong predictors for whether a school decided to use a combination of strict security measures.⁷ While it is too early to know if these disparities will continue if additional funding for security measures becomes available, these preliminary findings suggest that low-income students and minority students may again be disproportionately affected as our country embarks on this new phase of security upgrades.

THE USE OF STRICT SECURITY MEASURES HARMS STUDENTS' INTERESTS

If school officials were asked why they rely on strict security measures, they would respond that they use them to keep students safe. Indeed, no one can disagree that the safety of our students is imperative. However, many education scholars understand that the most important ingredient for establishing a safe school is "to cultivate bonds of trust and caring within the school community."⁸ Strict security measures sour students' attitudes, produce barriers between students and educators, and frequently are a cause of discord within the school community. The use of these measures sends a message to students that they are not to be trusted, and that they stand accused of wrongdoing.⁹ In fact, some studies cast doubt on whether strict security measures effectively reduce school crime at all. For example, Matthew Mayer and Peter Leone conducted an empirical study involving almost 7000 students,

7. See Jason P. Nance, *Students, Security, and Race* (2013) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214202.

8. Pedro A. Noguera, *Finding Safety Where We Least Expect It: The Role of Social Capital in Preventing School Violence*, in ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS 202, 203 (William Ayers et al. eds., 2001).

9. See Martin R. Gardner, *Student Privacy in the Wake of T.L.O.: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897, 943 (1988); Paul Hirschfield, *School Surveillance in America: Disparate and Unequal*, in SCHOOLS UNDER SURVEILLANCE: CULTURES OF CONTROL IN PUBLIC EDUCATION 38, 46 (Torin Monahan & Rodolfo D. Torres eds., 2010).

finding that schools' reliance on metal detectors, locked doors, locker checks, and security guards may lead to more disorder, crime, and violence. They conclude that schools should devote less attention to running schools in an overly restrictive manner and concentrate more on helping students develop individual responsibility.¹⁰

Furthermore, the disproportionate use of strict security measures on minority students has a particularly deleterious effect. Leading social scientists maintain that strict security measures perpetuate racial inequalities by disempowering minorities and conditioning them to accept intense surveillance by government authorities, skewing their perceptions regarding the role government should play in their lives.¹¹ In addition, schools whose primary mission is to control students rather than to educate them deprive their students of the quality educational experiences that white students frequently enjoy. Strict security measures, especially when used in conjunction with zero-tolerance policies, also affect students' social mobility because suspension, expulsion, and arrest affect students' future educational and employment opportunities.¹²

Moreover, consider the harmful messages that the disparate use of strict security measures sends to all students. It creates the impression that we trust privileged white students more, and that those students enjoy heightened privacy rights. Such messages alienate minority students, causing them to disengage from the community. These messages may also feed racial tensions, generating an undesirable society for all of us. As Sharon Rush cogently observed, "Our children are watching us. They learn about race and race relations from us. As adults, we must be careful not to promote a vision of

10. See Matthew J. Mayer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 EDUC. & TREATMENT CHILD. 333, 349 (1999); see also Randall R. Beger, *The "Worst of Both Worlds": School Security and the Disappearing Fourth Amendment Rights of Students*, 28 CRIM. JUST. REV. 336, 340-41 (2003) (citing several studies demonstrating that aggressive security measures produce alienation and mistrust among students, leading to more disorder); Abigail Hankin, Marci Hertz, & Thomas Simon, *Impacts of Metal Detector Use in Schools: Insights from 15 Years of Research*, 81 J. OF SCH. HEALTH 100, 105 (2011) (concluding that there is insufficient evidence to demonstrate whether metal detectors reduces school violence); but see Rachana Bhatt & Tomek Davis, *The Impact of Random Metal Detector Searches on School Violence, Contraband Possession, and Perceptions of Safety* (2012) (unpublished manuscript), available at http://www2.gsu.edu/~ecorrb/index_files/RandomSearch.pdf (finding that, when comparing two geographically-adjacent school districts in Florida, the school district that used random metal detector searches reduced the probability of students bringing weapons to school).

11. See Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95, 108 (2001); see also Aaron Kupchik & Geoff K. Ward, *Reproducing Social Inequality Through School Security: Effects of Race and Class on School Security Measures* 3-9 (unpublished manuscript), available at <http://www.edweek.org/media/kupchikward-02security.pdf>.

12. See Kupchik & Ward, *supra* note 11, at 7.

social reality that teaches non-White children that they are racially inferior *or* that teaches White children that they are racially superior.”¹³

THERE ARE BETTER METHODS TO REDUCE SCHOOL VIOLENCE

A hard truth that parents, school officials, and policymakers must accept is that even the strongest security measures will not and cannot perfectly thwart those determined to commit violent acts inside schools. It is simply impossible to ensure the safety of all our children at all our schools.¹⁴ Indeed, the Columbine tragedy occurred in the presence of armed guards and metal detectors.¹⁵ Nevertheless, despite these highly publicized events of school violence, schools still remain among the safest places for children generally.¹⁶

The fact is that schools can do much more to prevent violence by investing in programs that build community, collective responsibility, and trust among students and educators than by using measures that rely on fear, coercion, and punishment. In addition to counseling, mental health services, mentoring programs, and hiring additional teachers to reduce class sizes, there are several well-respected, data-driven programs and methods that promote school safety without harming the educational climate. They also do more to reduce societal violence than strict security measures ever could.

For example, a program called School-Wide Positive Behavioral Interventions and Supports is a data-driven initiative that helps educators define, teach, and support appropriate behavior to create strong learning environments for an entire school or district. It is a decision-making framework that guides educators to develop and implement a set of evidence-based strategies tailored to meet the needs of each student. Its major components include identifying, teaching, modeling, and supporting appropriate behavior; developing a set of behavior interventions and supports; using data to solve issues; implementing behavior practices with consistency; and continually

13. Sharon Elizabeth Rush, *The Heart of Equal Protection: Education and Race*, 23 N.Y.U. REV. L. & SOC. CHANGE 1, 42 (1997).

14. See Arne Duncan, *Resources for Schools to Prepare for and Recover from Crisis*, HOMEROOM BLOG (Dec. 17, 2012), <http://www.ed.gov/blog/2012/12/resources-for-schools-to-prepare-for-and-recover-from-crisis> (explaining that not all school violence can be prevented).

15. See Amanda Terkel, *Columbine High School Had Armed Guard During Massacre in 1999*, HUFFINGTON POST (Dec. 21, 2012), http://www.huffingtonpost.com/2012/12/21/columbine-armed-guards_n_2347096.html; Marcus Wright, *Experts Say Intrusive Security at Public Schools Reproduces Social Inequalities*, TRUTHOUT (Nov. 21, 2012), <http://truth-out.org/news/item/12886-experts-say-intrusive-security-at-public-schools-reproduces-social-inequality>.

16. See Duncan, *supra* note 14 (“Schools are among the safest places for children and adolescents in our country, and, in fact, crime in schools has been trending downward for more than a decade.”); see also Beger, *supra* note 10, at 338.

monitoring progress. This program has successfully reduced violence in all school settings, including in urban schools and in the juvenile justice system.¹⁷

Another example is restorative justice programs. Restorative justice programs focus on helping student offenders repair the harm caused to victims and making communities whole. They provide opportunities for the victim to confront the wrongdoer, to explain how the victim has been harmed by the wrongdoer's actions, and to provide opportunities for the wrongdoer to make amends. School officials that have implemented these programs have achieved great success in reducing violence in their schools. For instance, West Philadelphia High School, formerly one of the most dangerous schools in Pennsylvania, reported that acts of school violence decreased by fifty-two percent the year after implementing this program. The following year, the number of violent incidents decreased again by an additional forty-five percent.¹⁸

Notably, there are six New York City public schools that serve at-risk student populations that successfully maintain safe, nurturing learning environments without relying on strict security measures. All of these schools maintain higher than average attendance and graduation rates, lower crime rates, and fewer school suspensions. None of them uses metal detectors. While each of these schools is unique, all of them share certain qualities and philosophies, including: (1) dignity and respect for all members of the school community; (2) strong, compassionate school leadership; (3) open lines of communication between the students, educators, and school officials; (4) fair rules; and (5) placement of responsibility for discipline with school officials rather than a law enforcement officer.¹⁹

CONCLUSION

The events at Newtown have caused all of us to deeply consider how to keep students safe at school. A natural response to this atrocity is to demand

17. See, e.g., *School-Wide PBIS*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, <http://www.pbis.org/school/default.aspx> (last visited Feb 4, 2013); *What is School-Wide Positive Behavioral Interventions & Supports?*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, http://www.pbis.org/school/what_is_swpbs.aspx (last visited Feb. 8, 2013); *Frequently Asked Questions*, POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, http://www.pbis.org/school/primary_level/faqs.aspx (last visited Feb. 7, 2013).

18. Laura Mirsky, *Building Safer, Safer Schools*, 69 EDUC. LEADERSHIP 45, 49 (2011); see also Laura Mirsky, *Safer Safer Schools: Transforming School Culture with Restorative Practices*, INT'L INST. FOR RESTORATIVE PRACS. (May 20, 2003), http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/ssspilots.pdf (describing restorative justice programs that effectively reduced school crime in other Pennsylvania schools). While West Philadelphia High School has not completely abandoned using strict security measures, its adoption of alternative programs is an encouraging sign.

19. N.Y. CIV. LIBERTIES UNION, SAFETY WITH DIGNITY: ALTERNATIVES TO THE OVER-POLICING OF SCHOOLS 7 (2009), http://www.nyclu.org/files/Safety_with_Dignity.pdf.

that lawmakers and school administrators invest our limited public funds into strict security measures. But this strategy is misguided. Empirical evidence suggests that these additional investments in security equipment and law enforcement officers may lead to further disparities along racial and economic lines. Further, it is imperative that all constituencies understand that there are more effective ways to address violence than resorting to coercive measures that harm the educational environment. Indeed, schools can make a tremendous impact in the lives of students by teaching students appropriate ways to resolve conflict and making them feel respected, trusted, and cared for. These are the types of schools that can make a real difference in the lives of students.²⁰

An article that contains the full empirical study described in this essay, as well as further analysis of these issues, can be downloaded at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214202

20. See Pedro A. Noguera, *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, 42 *THEORY INTO PRACTICE* 341, 343, 349-50 (2003).