

Locked Down and Armed: Security Responses to Violence in Our Schools

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*Our nation's schools should be safe havens for teaching and learning, free of crime and violence.*¹

I. INTRODUCTION

“Hold hands and close your eyes,” the students were told. But, it was not their teacher giving them directions; it was the Connecticut State Police who were leading them through the carnage as they left Sandy Hook Elementary School.² The image of students walking through the school parking lot, with their hands on the shoulders of their classmates, still raises our emotions to the surface and provides a visceral punch.³

The faith that parents hold in sending their children to school knowing that they will be safe was once again sorely tested in the most appalling way at Sandy Hook Elementary School in December of 2012. The public was horrified by the April 20, 1999 television pictures of students at Columbine High School running out of their high school in single file, hands behind their heads, herded by SWAT team members dressed in black. The vision of seventeen-year-old Patrick Ireland being dragged to safety through a broken second-floor school window by armed police officers became a focal point of the horror of twelve students and one teacher murdered and the suicide of the two deeply troubled teens who committed the rampage.⁴ Yes, Columbine was alarming, but Sandy Hook is an elementary school, a place where we send our most vulnerable.

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¹ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2011, NAT'L CTR. FOR EDUC. STATISTICS & BUREAU OF JUSTICE STATISTICS (2012), available at <http://perma.cc/J43P-HLJ2>.

² Susan Candolotti & Sarah Aarhun, *Police: 20 Children Among 26 Victims of Connecticut School Shooting*, CNN.COM (Dec. 15, 2012, 12:19 AM), <http://perma.cc/3W8K-3V9V>.

³ See generally STEPHEN J. SEDENSKY III, REPORT OF THE STATE'S ATTORNEY FOR THE JUDICIAL DISTRICT OF DANBURY ON THE SHOOTINGS AT SANDY HOOK ELEMENTARY SCHOOL, OFFICE OF THE STATE'S ATTORNEY JUDICIAL DIST. OF DANBURY, available at <http://perma.cc/6RTL-F9WC>.

⁴ Todd A. DeMitchell, *School Security: The New Fundamental Value in Educational Policy Making: The Columbine Effect*, ELA NOTES (Educ. Law Ass'n, Cleveland, Ohio), Oct. 1999, at 1.

Once again, the public is appalled and left with new images of young children being led by their teachers under armed escort from their school: crying, terrified, and bewildered, with their hands on each other's shoulders so no one gets lost, no one gets left behind, no one has to look at the carnage. We conjure visions of a principal and a counselor running toward danger, teachers shielding their students with their bodies, and barricaded children shrinking from the violence, the evil, which just entered their classroom.

How do educators, parents, and community members respond to yet another assault on our students in our schools? What new policies do we implement to stop the carnage caused by individuals who bring weapons to school with the intent to cause harm?⁵ What new changes do we make to our school culture and to our wider culture? Fundamentally, we asked how do we make our schools places where children and adults feel safe and are secure.

First, this Article will develop a thumbnail sketch of the research of the incidents of violence in schools. Next, it will briefly look at the emergence of security as a fundamental value in educational policy making. Last, it will look at some of the policy responses, including arming educators, and it concludes with a discussion of the daily climate we create in our classrooms and our schools. An overarching question of the Article is, while we harden the schoolhouse gate, practice new drills, and coordinate response times and active shooter tactics, although necessary, are these efforts sufficient?

II. HOW SAFE ARE OUR SCHOOLS?

*School safety should be recognized as an ongoing concern that deserves more systematic and sustained attention, and reliance on evidence-based practices rather than sporadic, crisis-driven responses to high profile incidents.*⁶

The Centers for Disease Control and Prevention (CDC) defines school violence as youth violence that occurs on school property, on the way to or

⁵ While most of the publicity surrounding school killings is attached to guns, not all student deaths are caused by guns. See, e.g., *1 Student Dead, 3 Injured After Stabbing at Spring High School Near Houston*, FOXNEWS.COM (Sept. 4, 2013), <http://perma.cc/SN3K-K5B6>. In April of 2014, a 16-year-old student wielding two eight-inch kitchen knives slashed and stabbed twenty students at his high school in Murrysville, Pennsylvania. Chelsea J. Carter, Paul Courson, & Pamela Brown, *Four School Stabbing Victims in Critical Condition; Teen Suspect Charged as an Adult*, CNN JUSTICE (April 9, 2014), <http://www.cnn.com/2014/04/09/justice/pennsylvania-school-stabbing/>.

⁶ *Youth Violence Project Violence in Schools and Communities*, UNIV. OF VA. CURRY SCH. OF EDUC., <http://perma.cc/3NAH-TCEF> (last visited Feb. 26, 2014).

from school, or school sponsored events.⁷ It causes physical as well as emotional harm.⁸ School shootings can be categorized into two major groups.

The first is individual and gang disputes with targeted victims. Revenge is often a motive for these shootings. In a U.S. Secret Service and Department of Education case study of thirty-seven targeted school attacks, “more than three quarters of the attackers held a grievance against particular individuals or the school itself at the time of the attack.”⁹

A recent example of a revenge school shooting took place just eight miles from Columbine High School in Colorado, one day before the one-year anniversary of the Sandy Hook Elementary School killings. An eighteen-year-old Arapahoe High School student, Karl Pierson, brought a shotgun to school to confront his debate coach with whom he had had a conflict, resulting in one critically injured student, who later died from her injuries,¹⁰ and Pierson committing suicide in a classroom before the police could get to him.¹¹

The deputy on duty and a security guard, rushed immediately toward the shooting, initiated the active shooter protocol—quite possibly reducing the amount of violence in the school. Eighty seconds elapsed from the time the shooter entered the school with a shotgun, a bandolier loaded with ammunition, and three Molotov cocktails, to the time he committed suicide.¹² The students were meticulously evacuated and searched, and herded out of school with their hands once again on their heads. Neighboring schools went into lockout.¹³

The second is what some call rampage shootings with multiple victims.¹⁴ Michael Rocque, a professor at the College of Criminal Justice at

⁷ *Understanding School Violence: Fact Sheet 2012*, CTR. FOR DISEASE CONTROL & PREVENTION: NAT'L CTR. FOR INJURY PREVENTION & CONTROL, 1, <http://perma.cc/92BL-4XQU> (last visited Feb. 26, 2014) [hereinafter CDC Fact Sheet].

⁸ *Id.*

⁹ Randy Borum et al., *What Can Be Done About School Shootings? A Review of the Evidence*, 39 EDUC. RESEARCHER, no. 1, Jan./Feb. 2010, at 27, 31.

¹⁰ Tom Watkins & Ralph Ellis, Colorado High School Shooting Victim Dies at Hospital, CNN U.S. (Dec. 22, 2013), <http://www.cnn.com/2013/12/21/us/colorado-arapahoe-shooting-death/>.

¹¹ Kirk Mitchell et al., *Arapahoe High School Shooting: Gunman Intended to Harm Many at School*, DENVER POST, Dec. 14, 2013, <http://perma.cc/R4ZZ-PMRP>.

¹² *Id.*

¹³ A lockout is different than a lockdown. A lockdown keeps everyone inside the school in their classrooms with classes stopped. A lockout keeps individuals put with all doors locked but classes resumed as normal.

¹⁴ See, e.g., Michael Rocque, *Exploring School Rampage Shootings: Research, Theory, and Policy*, 49 THE SOC. SCI. J. 304 (2012); Stuart Henry, *School Violence Beyond Columbine: A Complex Problem in Need of an Interdisciplinary Analysis*, 52 AM. BEHAV. SCIENTIST 1246, 1248 (2009). For an in-depth account of rampage shootings in West Paducah, Kentucky (Heath High School, three students killed and five wounded, December 1, 1997), and Jonesboro, Arkansas (Westside Middle School, five killed and ten wounded, March 24, 1998), see KATHERINE S. NEWMAN ET AL., RAMPAGE:

Northeastern University, characterizes rampage shootings as mainly involving middle to lower-middle class white males. The shootings tend to be clustered in suburban and rural schools, not in urban schools. This runs counter to most research on youth violence, which is typically concentrated in areas of disadvantage.¹⁵ What seems to matter in these rampage shootings “is not exacting revenge on particular people, but to make a statement with violence.”¹⁶ In many ways, Rocque asserts, school rampage shootings are similar to workplace mass killings, which often include a symbolic target.¹⁷

For example, a twelve-year-old student entered his middle school gymnasium in Roswell, New Mexico in January of 2014, carrying a sawed-off 20-gauge pump shotgun.¹⁸ He fired one shot into the ceiling and one into the floor. The third he fired into the stands where students waited for the school day to begin resulting in two wounded students. “‘The victims were random,’ the state police chief said.”¹⁹

There are an estimated fifty million students enrolled in pre-kindergarten through the 12th grade.²⁰ Youth homicide is the second leading cause of death for individuals age five to eighteen and is a critical concern.²¹ However, school-associated violent deaths are rare²² and declining.²³ “Of all youth homicides, less than 2% occur at school.”²⁴ In 1992–93, there were thirty-four student homicides at school and six suicides for youth ages five to eighteen.²⁵ In 2009–10, there were seventeen youth homicides occurring at school and 1,562 homicides occurring away from school, and seven suicides at school and 1,337 away

THE SOCIAL ROOTS OF SCHOOL SHOOTINGS (2004). Describing the ambush set up by 11-year-old Andrew Golden and 13-year-old Mitchell Johnson at Westside Middle School, Newman et al., write, “The scene was the stuff of nightmares, with injured kids jumbled on the floor of the gym bleeding and crying, and desperate teachers bent over them trying to staunch the blood and reassure their terrified students.” *Id.* at 10.

¹⁵ Rocque, *supra* note 14, at 306.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Greg Botelho, *Police: Suspect Entered New Mexico School with Sawed-Off Shotgun and Plan*, CNN.COM (Jan. 15, 2014, 11:00 PM), <http://perma.cc/L8LA-KD4Q>. The student personally sawed off the shotgun, which he took from his home. *Id.*

¹⁹ *Id.*

²⁰ *Fast Facts*, INST. OF EDUC. SCI.: NAT’L CTR. FOR EDUC. STATISTICS, <http://perma.cc/XTE8-LF7M> (last visited Feb. 27, 2014).

²¹ Joanne M. Kaufman et al., *Sex, Race/Ethnicity, and Context in School-Associated Student Homicides*, 27 J. INTERPERSONAL VIOLENCE 2373, 2374 (2012), available at <http://perma.cc/XHN8-8UKA>.

²² *Id.*

²³ Scott Neuman, *Violence In Schools: How Big A Problem Is It?*, NPR.ORG (March 16, 2012, 1:25 PM), <http://perma.cc/8NMG-EV4M>.

²⁴ CDC Fact Sheet, *supra* note 7, at 1.

²⁵ ROBERS ET AL., *supra* note 1, at 7.

from school.²⁶ This is a decline of over 50%. “Violent deaths at school are rare but tragic events with far-reaching effects on the school population and surrounding community.”²⁷ Even when the events are distant, students and families feel increased fear, which may negatively affect attendance and grades.²⁸ Wylie, et al. reported, in spite of the data, that students are more afraid of being attacked in school than outside of school.²⁹

The data on nonfatal victimizations, including theft, violent victimizations, and serious violent victimizations against students ages twelve to eighteen show a decrease between 1995 and 2009.³⁰ The percentage of males reporting being victimized declined during this period from 10% to 5%, and female students reported a decline from 9% to 3%.³¹ The CDC’s School Associated Violent Death found:

- Most school-associated violent deaths occur during transition times—immediately before and after the school day and during lunch.
- Violent deaths are more likely to occur at the start of each semester.
- Nearly 50% of homicide perpetrators gave some type of warning signal, such as making a threat or leaving a note, prior to the event.
- Firearms used in school-associated homicides and suicides came primarily from the perpetrator’s home or from friends and relatives.³²

Teachers are the other major group in schools that face victimization. During similar periods of time, the reports of threats declined from 12% to 7% from 1993–94 to 2003–04.³³ However, the reported incidents of physical attack, at 4%, were not measurably different comparing 1993–94 and 2007–08.³⁴ Threats declined, but attacks upon teachers remained

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ Kaufman, *supra* note 21, at 2374.

²⁹ Lindsey E. Wylie et al., *Assessing School and Student Predictors of Weapons Reporting*, 8 YOUTH VIOLENCE & JUV. JUST. 351, 351–52 (2010).

³⁰ See generally *id.*; Kaufman, *supra* note 21; see also ROBERS ET AL., *supra* note 1, at 15.

³¹ ROBERS ET AL., *supra* note 1, at 16.

³² CTR. FOR DISEASE CONTROL & PREVENTION, SCHOOL ASSOCIATED VIOLENT DEATH STUDY (June 4, 2013), available at <http://perma.cc/4G4Y-694M>. (From 1999 to 2006, “[m]ost homicides included gunshot wounds (65%), stabbing or cutting (27%), and beatings 12%). CTR. FOR DISEASE CONTROL & PREVENTION, *School-Associated Student Homicides – United States, 1992-2006*, MMWR WEEKLY (January 18, 2008), <http://perma.cc/HQT7-QQX7>.

³³ ROBERS ET AL., *supra* note 1, at 22–23.

³⁴ *Id.*

unchanged.

Schools are places where youth are found in large numbers. They are brought together for up to six hours a day in defined spaces. There is a significant adult presence in their lives at school. “Since teachers stand *in loco parentis* (custodial and tutelary responsibilities), they must take affirmative actions in the face of foreseeable risks to protect students.”³⁵ When compared to their life outside of school, students are quite safe at school from violence. However, “quite safe” is not good enough. We cannot be content with a decline in violent death or victimization. It is our job to consistently and assiduously create and sustain a school environment that protects the health and well being of all who enter its gate.

III. THE EMERGENCE OF SECURITY AS A FUNDAMENTAL VALUE IN EDUCATION POLICY MAKING

*We long for the time when children did not have to pass through metal detectors on their way to class, when hall monitors were other children, not armed guards, when students dressed for school without worrying about gang colors. Those were the days when sharp words, crumpled balls of paper, and, at worst, the bully's fists were the weapons of choice.*³⁶

A. Security: A Fundamental Value

Government must protect its citizens from recognized threats—crime, attack, and invasion. Schools have not, historically, pursued security as a fundamental value.³⁷ The school’s concern has been for student safety. Disciplinary policies are typically aimed at disruption, fighting, and rowdy behavior. However, “Americans have come to view schools as places of potential violence. This led to an unprecedented focus on protecting and safeguarding schools.”³⁸ The introduction to a 1994 study by Robert Linquanti and BethAnn Berliner stated, “For children to learn and teachers to teach, schools must be safe places. During the past decade, images of schools as safe havens have been replaced by metal detectors, drive-by shootings, gang warfare, and a generation of school children living in

³⁵ TODD A. DEMITCHELL, NEGLIGENCE: WHAT PRINCIPALS NEED TO KNOW ABOUT AVOIDING LIABILITY 25 (2007).

³⁶ *People v. Pruitt*, 662 N.E.2d 540, 545 (Ill. App. Ct. 1996).

³⁷ For an early discussion of the emergence of security as a fundamental value in educational policy making, see DeMitchell, *supra* note 4, at 4–5.

³⁸ Rocque, *supra* note 14, at 304.

fear.”³⁹ Columbine, Virginia Tech University, and now Sandy Hook underscore a fundamental policy change that has taken place in our schools. We now pursue a new fundamental value in our schools: security. Security is now a common term associated with schools. It has not always been that way. Discipline and safety were the terms we used to describe policies aimed at student behavior. We used to simply practice fire drills and duck and cover for nuclear war. Times have changed, and security, once reserved for police and military actions, now refers to educational policies and responses.

The pervasiveness of the policy response to drugs, weapons, and violence has indicated the emergence of a new fundamental value in educational policy-making—security. Public policy pursues those values the polis considers most important at a given time. The simplest, most basic human need is survival. Government must protect its citizens from recognized threats—crime and invasion. Historically, schools have not pursued security as a fundamental value, but instead the school’s concern has been for student safety. Disciplinary policies are typically aimed at disruption, fighting, and rowdy behavior, whereas security policies are aimed at protecting students from grievous injury and death. Discipline maintains the integrity of the instructional environment and provides order. Security maintains the health and well being of the individual. For the first time, schools are pursuing policies of security.⁴⁰

DeMitchell and Cobb, in an exploratory study of New England superintendents, found security emerging as a fundamental value in educational policy-making.⁴¹ They concluded, “It is a sad commentary that security, as a value to be pursued in educational policy making, has joined the traditional values of excellence, equity, choice, and efficiency.”⁴² Nearly 89% of the responding superintendents considered security to be on par with the importance of the other fundamental values, including excellence. And, a one-way ANOVA ($p > .05$) between urban, suburban, and rural school districts found no significant differences in responses. In other words, superintendents, without regard for the location of their school district, believe that security is a fundamental value on par with other fundamental values.⁴³

Superintendents translated this value into action by budgeting for

³⁹ ROBERT LINQUANTI & BETHANN BERLINER, *REBUILDING SCHOOLS AS SAFE HAVENS: A TYPOLOGY FOR SELECTING AND INTEGRATING VIOLENCE PREVENTION STRATEGIES I* (1994), available at <http://perma.cc/CC9P-SVUN>.

⁴⁰ Todd A. DeMitchell & Casey D. Cobb, *Policy Responses to Violence in our Schools: An Exploration of Security as a Fundamental Value*, 2003 *BYU EDUC. & L.J.* 459, 462–63 (2003).

⁴¹ *Id.*

⁴² *Id.* at 484.

⁴³ *Id.* at 480.

security measures. Just over half (52%) of the responding superintendents increased their spending on making their schools more secure, with the largest percentage of increases (70%) in their security budget occurring in school districts more than 5,000 students.⁴⁴ Suburban school districts had the greatest number of budget increases (62.5%).⁴⁵ There is evidence from this study that there has been an increase in spending on security. This indicates that the need for enhanced security competes with other fundamental values in competition for scarce resources.

B. Federal and National Responses to Security

Policy makers at all levels are devising responses to violence in the school. In 1990, Congress passed the Gun-Free Schools Act, which forbade “any individual knowingly to possess a firearm” in a school zone.⁴⁶ Despite being overturned by the Supreme Court in 1995 in *United States v. Lopez*,⁴⁷ in 1996, Congress re-enacted the ban on weapons at or near schools.⁴⁸ Furthermore, federal laws were enacted which enhanced the maximum penalty for certain drug offenses committed within 1,000 feet of a school.⁴⁹

In addition to establishing gun-free and drug-free zones around schools, at least one state, Tennessee, tried to erect another barrier of protection—prostitute-free zones. The proposed legislation would apply to prostitute and their “Johns” caught within a mile and a half of elementary and secondary schools.⁵⁰ In Tennessee, there would be three security rings around the schools—drugs, weapons, and prostitutes.

Further, following the shootings at West Paducah High School in December of 1997, President Clinton directed that an annual report be given on school security. Attorney General Reno and Secretary Riley of the Department of Education in October of 1998 issued the first report.⁵¹ President Clinton, Mrs. Clinton, and Vice President Gore underscored the federal interest in making schools secure by addressing the White House-

⁴⁴ *Id.* at 479.

⁴⁵ *Id.*

⁴⁶ 18 U.S.C. § 922(q)(I)(A) (2012).

⁴⁷ *United States v. Lopez*, 514 U.S. 548 (1995).

⁴⁸ 20 U.S.C. § 7151(a)–(h)(2) (2012).

⁴⁹ 21 U.S.C. § 860(a) (2012).

⁵⁰ *News in Brief: Prostitute-Free Zones*, EDUC. WEEK (Apr. 19, 1995), <http://perma.cc/629B-BWDB>.

⁵¹ RICHARD W. RILEY & JANET RENO, ANNUAL REPORT ON SCHOOL SAFETY: 1998, available at <http://perma.cc/6GQY-BXNJ> (writing, “Despite recent tragedies that received national attention, schools should not be singled out as especially dangerous places. Rather, schools should be the focus of community collaborations that create safe learning environments for all students.”) *Id.* at iv.

sponsored conference on school security in October of 1998.⁵² Prior to the conference, President Clinton, in an address to the American Federation of Teachers on the importance of school discipline and safety said, “Our progress will come to nothing if our schools are not safe places, orderly places, where teachers can teach and children can learn.”⁵³

Following the shootings at Sandy Hook Elementary School, the debate over gun control ensued. President Obama named Vice President Biden to lead the Gun Violence Task Force. On January 16, 2013, President Obama proposed: stronger background checks for weapons purchases; banning military-style assault weapons and high capacity magazines; conducting more research on gun violence; promoting common-sense gun safety; improving treatment for mental illness for students; and training additional health professionals to work with children. Specific to schools; Obama proposed providing funding to increase the number school resource officers; developing and implementing emergency plans; and training for teachers and staff to create safer and more nurturing environments.⁵⁴

The federal government was not the only national respondent to the Sandy Hook killings. Wayne LaPierre, the Executive Vice President of the National Rifle Association, made headlines at a news conference when he proclaimed, “The only thing that stops a bad guy with a gun is a good guy with a gun.”⁵⁵ LaPierre called for an armed guard in every school, arguing:

We care about our president, so we protect him with armed Secret Service agents. Members of Congress work in offices surrounded by Capitol Police officers. Yet, when it comes to our most beloved, innocent, and vulnerable members of the American family, our children, we as a society leave them every day utterly defenseless, and the monsters and the predators of the world know it, and

⁵² Jessica Portner, *President Seeks to Boost Federal Role in School Safety*, EDUC. WEEK (Oct. 21, 1998), available at <http://perma.cc/NRU9-4MBA>.

⁵³ President Bill Clinton, *Promoting Discipline and Safety in Schools*, THE WHITE HOUSE (July 20, 1998) available at <http://perma.cc/B3ZL-A7AF> (quoting President Bill Clinton).

⁵⁴ *President Obama's Remarks on New Gun Control Actions, Jan. 16, 2013 (Transcript)*, WASHINGTON POST, Jan. 16, 2013, <http://perma.cc/68XH-4BC7>.

⁵⁵ Eric Lichtblau & Motoko Rich, *N.R.A. Envisions 'a Good Guy With a Gun' in Every School*, N.Y. TIMES, Dec. 21, 2012, <http://perma.cc/DBD6-YEY5>. For the NRA response to the backlash to LaPierre's comment, see Howard Fineman, *David Keene, NRA President, Has No Regrets About Newtown Massacre Response*, HUFFINGTON POST, Apr. 3, 2013, <http://perma.cc/J3KH-ST55>. For an interesting response to the argument that “guns don't kill people but people kill people,” see Nicholas D. Kristof, *The Killer Who Supports Gun Control*, N.Y. TIMES, Dec. 14, 2013, <http://perma.cc/PQ7G-PR6Y>. (“It's clear that the only reason I'm alive is because my assailant didn't have his weapon of choice,” he adds, “Can you imagine if we had access to guns in prison?”).

exploit it.⁵⁶

LaPierre called on Congress to act immediately “to appropriate whatever is necessary to put armed police officers in every school in this nation.”⁵⁷ Both the American Federation of Teachers and the National Education Association responded to the NRA proposal to post armed officers in every school with the following statement: “Guns have no place in our schools. Period.”⁵⁸

States have also responded to the need for school security. For example, in part in response to school violence, New Hampshire requires school districts to develop emergency response plans, which include more than fire evacuation drills.⁵⁹ Since Sandy Hook, more than 450 bills related to school safety were filed across the nation.⁶⁰ *Education Week* categorized the bills into seven categories. The categories are: school emergency planning; building safety; school climate and student supports; police in schools; arming school employees; easing school gun restrictions; and gun control.⁶¹ For example, Alabama passed a bill (H.B. 116) that authorized the formation of a volunteer emergency security force at the Franklin County public schools consisting of current and retired school employees and local citizens.⁶² The governor vetoed the bill.⁶³

C. School Responses: Hardening the School Site

Schools took a number of security steps prior to Sandy Hook. Security cameras, metal detectors, random locker sweeps, hiring security guards or school resource officers,⁶⁴ and locked entrances.⁶⁵ In addition, certain types of clothing were outlawed following the shootings at Columbine, such as long trench coats, Goth clothing, and Marilyn Manson T-shirts,

⁵⁶ *Remarks From the NRA Press Conference on Sandy Hook School Shootings, Delivered on Dec. 21, 2012 (Transcript)*, WASHINGTON POST, Dec. 21, 2012, <http://perma.cc/8RK7-XJKN> (a PDF from the NRA of Wayne LaPierre’s remarks is available from the author).

⁵⁷ Sean Sullivan, *NRA’s Wayne LaPierre: Put ‘Armed Police Officers’ In Every School*, WASHINGTON POST, Dec. 21, 2012, <http://perma.cc/7MJ-F3EY>.

⁵⁸ Maggie Clark, *School Security Tightens in Wake of Sandy Hook*, HUFFINGTON POST, Aug. 12, 2013, <http://perma.cc/D2K-PBNV>.

⁵⁹ N.H. REV. STAT. ANN. § 189:64 (2007).

⁶⁰ *School Safety Legislation Since Newtown*, EDUC. WEEK (Oct. 2, 1013), <http://perma.cc/D5FT-BFXY>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* (New Hampshire bill H.B. 609, a similar bill, which would have allowed school boards to put to a public vote whether an employee with a permit to carry a concealed firearm may do so on school grounds also failed).

⁶⁴ For a story on the work of school resource officers, see Richard Gonzales, *How To Be the Good Guy With a Gun At School*, NPR.ORG (Mar. 20, 2013), <http://perma.cc/3HXN-GS82>.

⁶⁵ See Rocque, *supra* note 14, at 310; Wylie et al., *supra* note 29, at 352.

while Pasadena Independent School District in Texas required that all book bags be clear plastic.⁶⁶

Following Sandy Hook, additional precautions were taken. For example, Monterey Highlands Elementary School, a K-8 school in the Alhambra Unified School District in California, previously did not believe that they needed a fence, being situated in a quiet residential neighborhood, but built the fence after Sandy Hook.⁶⁷ Increased marketing for school security has emphasized bulletproof backpacks, bulletproof defender Notebook Folio, and bulletproof safety seats.⁶⁸ New lockdown drills, fewer open entrances, more safety patrols, more spending on security, and more “active shooter” drills with coordination with police response units have occurred and will likely occur in the near future.⁶⁹ The response to the Arapahoe High School shootings demonstrates the change in tactics from the Columbine shootings. In Columbine, the police force gathered and reviewed intelligence before proceeding. In Arapahoe, the police response was to immediately find and neutralize the shooter; follow-on “rescue teams will treat and remove the injured.”⁷⁰ In addition, lockdown was initiated immediately and parents were pre-directed to an off-site reunification center to eliminate interference with police responders.⁷¹

There is a likelihood and need for continued security-driven emergency drills. The fire drill of old is replaced with a plethora of emergency options responding to active shooters, tornadoes, and medical emergencies. Evacuation is but one emergency option; schools now routinely practice: room-by-room evacuation; reverse evacuation; stay put, drop, cover, and hold procedures; shelter-in-place; and scan procedures.

With so many drills, locked doors, metal detectors, roaming patrols, searches, plain language announcements, hardened sites at the entrance of the school with a locked door and a security camera, with an intercom quizzing parents and visitors as to why admittance should be allowed, the public school has been transformed. Has the school been made safer for

⁶⁶ See DeMitchell, *supra* note 4.

⁶⁷ Devin Kelley, *After Sandy Hook, Schools Start the Year With Heightened Security*, L.A. TIMES, Aug. 11, 2013, <http://perma.cc/FTV8-HTAQ>.

⁶⁸ See Bullet Blocker products, BULLET BLOCKER: <http://perma.cc/V2CL-64SM>; <http://perma.cc/KVK2-PQPP>; <http://perma.cc/4QT-ARPA>.

⁶⁹ See e.g., Denise Jewell Gee, *After Sandy Hook, A New Wave of School Security*, THE BUFFALO NEWS, Dec. 12, 2013, <http://perma.cc/BR49-MYYK>; Dana Remington & Rachel Trotter, *Utah Schools Run Lockdown Drills, A Year After Sandy Hook*, STANDARD EXAMINER, Dec. 22, 2013, <http://perma.cc/943C-PVGR>; Mary Beth Marklein, *Schools Tighten Security After Sandy Hook*, USA TODAY, Sept. 24, 2013, <http://perma.cc/8SAN-8P2S>.

⁷⁰ See U.S. Dept. of Justice FBI, *Active Shooter Event: Quick Reference Guide Act* (Feb. 26, 2014), <http://perma.cc/EZE9-SB6A>.

⁷¹ Ray Sanchez, *Lessons of Columbine and Other School Shootings Helped in Arapahoe*, CNN.COM (Feb. 26, 2014), <http://perma.cc/K8JT-5LT4> (Another tactic that was employed was to immediately remove the target from the school campus).

students by these actions?

IV. A CALL TO ARMS

*An Arkansas state senator who was advocating for arming teachers in the aftermath of Newtown accidentally shot, with a rubber bullet-loaded pistol, a participant playing the role of a teacher who was confronting an active shooter, a “bad guy,” during a training exercise.*⁷²

One policy solution to the gun violence in our schools that has stirred intense debate is to bring more guns into the schools by arming faculty, staff, and administrators.⁷³ For example, Representative Louie Gohmert (R-Texas), referring to the principal, Dawn Hochsprung, of Sandy Hook Elementary School, stated, “I wish to God she had an M-4 in her office locked up so when she heard gunfire she pulls it out and she didn’t have to lunge heroically with nothing in her hands but she takes him out, takes his head off before he can kill those precious kids.”⁷⁴ For opponents of arming faculty and staff, the issue is that more guns in school does not lead to a safer school. Kenneth S. Trump, President of the for-profit National School Safety and Security Services, asserts, “The majority of teachers want to be armed with textbooks and computers, not guns.”⁷⁵

The argument for arming school personnel is two-fold. First, the response time between notice of a shooting and arrival of the police is a number of minutes. By the time the police get to school, the danger is over.⁷⁶ Therefore, there should be a deterrent force that can respond quickly to save lives. The common lament from the Sandy Hook shootings

⁷² Josh Voorhees, *Lawmaker Who Wants to Arm Teachers Almost Learned Why That May Not Be Such a Good Idea*, SLATE, (Aug. 29, 2013), <http://perma.cc/BU5-L3JZ>.

⁷³ See e.g., Patrick McGreevy, *GOP Legislators Propose California School Districts Arm Teachers*, L.A. TIMES, Jan. 30, 2013, <http://perma.cc/8QED-28VM>; Laura Vozzella, *Va. Bill Would Order Schools to Arm Teachers*, WASH. POST, Dec. 12, 2012, <http://perma.cc/S8NB-V9LS> (writing, “Del. Robert G. Marshall is proposing a bill that would require some teachers or other school staff to carry concealed weapons to school.”).

⁷⁴ Alexander Bolton, *GOP Lawmaker Wishes Sandy Hook Principal was Armed with Assault Rifle*, THE HILL’S BLOG BRIEFING ROOM (Feb. 26, 2014), <http://perma.cc/R7FC-LQZG> (“The M-4 carbine is a smaller version of the M-16 and AR-15 assault rifles. It was developed for urban combat and its semi-automatic version, which is available to civilians, can fire 45 rounds per minute.”).

⁷⁵ *Arming Teachers and School Staff with Guns*, NAT’L SCH. SAFETY AND SECURITY SERVS., <http://perma.cc/DU7R-PYBB>.

⁷⁶ FEMA, in September of 2013, released new guidelines for emergency medical technicians responding to active shooter situations. Previously, they held back until an all-clear signal was given. The Obama administration recommended a change in which medical personnel can enter a “warm zone” before the zone is totally secured. The quicker response is intended to deliver medical aid sooner, thus saving lives. See Michael S. Schmidt, *In Mass Attacks, New Advice Lets Medic Rush In*, N.Y. TIMES, Dec. 7, 2013, <http://perma.cc/ZHT8-QFZH>.

is that if only the principal had a weapon, she could have stopped the carnage before it happened.⁷⁷ It is an “if only” argument. Nebraska State Senator Mark Christensen argues that he “doesn’t want every teacher to carry a gun but believes more is better.”⁷⁸ He asserts, “If you have a gunman coming into a school, I don’t want kids shot up and killed until the police arrive, which could be four or five minutes. It could be 10 minutes. Ten minutes could mean a lot of dead kids.”⁷⁹

David Kopel, an associate policy analyst with the Cato Institute, offers three examples of what he calls real-world programs in which guns are allowed in schools.⁸⁰ The first is Utah, which he asserts from “kindergarten through graduate school, the schools of Utah have been safe from any attempted attack by mass murders.”⁸¹ Utah has a “Shall Issue” statute allowing individuals to carry concealed handguns on any public elementary, secondary, or Utah state university.⁸² His argument is that because individuals with permits may carry guns into schools and colleges, the students in Utah are safe in part because the citizens are armed in schools. He writes:

The data from Utah campuses reveal no incidents of the slightest misuse of a firearm by a person with a legal permit. Nor is there any record of misuse of a firearm by a permit holder in a K-12 school anywhere in Utah. There have been no instances of attempted mass murders at any

⁷⁷ This is the essential argument advanced by the Nelson, Georgia town council (population 1,300) for passing an ordinance requiring every head of the household residing in the city limits “to maintain a firearm together with ammunition therefore.” Joe Sterling, *In Georgia, Town Requires Gun Ownership*, CNN.COM (Feb. 26, 2014), <http://perma.cc/TN46-3A9N>.

⁷⁸ Joe Jordan, *Lawmaker’s Reloaded Plan to Arm Teachers for a Fight*, NEBRASKAWATCHDOG.ORG (Nov. 26, 2013), <http://perma.cc/5E6N-48G9>.

⁷⁹ *Id.* Police have changed their tactics from securing the perimeter and assembling a tactical team before action is taken, to a Quick Action Deployment to locate and stop the active shooter. William E. Stone & David J. Spencer, *Using Textbooks as Ballistic Shields in School Emergency Plans*, 12 J. POLICE SCI. & MGM’T 536, 539 (2010).

⁸⁰ David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 531 (2009).

⁸¹ *Id.* For a response to legislative acts requiring colleges and universities to allow individuals to carry guns on campus, arguing an infringement on the academic freedom of the institution, see Shaundra K. Lewis, *Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns*, 48 IDAHO L. REV. 1 (2011); Kathy L. Weyer, *A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University of Utah*, 2003 UTAH L. REV. 983 (2003). However, for an argument allowing students to carry firearms, see Michael L. Smith, *Second Amendment Challenges to Student Housing Firearms Bans: The Strength of the Home Analogy*, 60 UCLA L. REV. 1046 (2013).

⁸² Kopel, *supra* note 80, at 527 (citing UTAH CODE ANN. § 76-10-505.5(3) (2008)).

school in Utah.⁸³

This asserted causal relationship between gun availability on campus resulting in enhanced safe and secure campuses must be thoroughly examined; attempts to establish causality are fraught with reliability and validity issues.⁸⁴ What other factors may influence this asserted lack of gun related deaths? An asserted positive association between a lack of mass school shootings and carrying concealed weapons to school does not create a causal connection between the variable (concealed weapons) and the outcome (no school shootings): if adults carry guns in the school, then the school will be safe.

As of 2009–10, there are 98,817 public schools in the United States.⁸⁵ Since the vast majority of these schools have not had killings on their campus, can the presence of weapons in Utah's 994 public schools⁸⁶ provide the causal model for the rest of the country's schools? This does not mean that Utah schools are not safe, it just means that their students' safety cannot be attributed to allowing guns on campus without much more complex statistical analysis than an assertion of causality.

His other two real-world programs where guns are prevalent in schools are Israel and Thailand. Kopel notes, "[b]oth Israel and Thailand face[] large, well-organized, and internationally funded terrorist organizations."⁸⁷ A comparison between Israel and the United States regarding weapons at school must also be cast within a greater understanding of the differences between the two nation's approach to gun ownership. Yaakov Amit, the head of the Public Security Ministry's Firearms Licensing Department, states, "There is an essential difference between the two. In America the

⁸³ *Id.* at 529. See also, Mitch Vilos & Curt Oda, *The Simple Solution to School Shootings*, THE SALT LAKE TRIBUNE, Dec. 18, 2012, <http://perma.cc/AYP7-EJ45>. ("Utah's schools, Like Israel's, are much safer because of the present policy of allowing school officials with concealed weapon permits to arm themselves.").

⁸⁴ See Mark Duggan, *More Guns, More Crime*, 109 J. POL. ECON. 1086, 1112 (2001) (asserting that some studies have found that an increase in gun ownership causes an increase in homicide rates); See also Ian Ayres and John J. Donohue III, *More Guns, Less Crime Fails Again: The Latest Evidence From 1977-2006*, 6 ECON. J. WATCH 218, 224 (2009) (finding an increase in assault rates, though not homicide rates) (cited in *Moore v. Madigan*, 702 F.3d 933, 938 (7th Cir. 2012), a Second Amendment case). But see John Lott, *MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS 38–55* (3d ed. 2010) (asserting that the right-to-carry laws have decreased the level of violence in the United States).

⁸⁵ INST. OF EDUC. SCI.: NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 19.

⁸⁶ Patti Harrington, *2009 Fingertip Facts: Public Education*, UTAH ST. OFFICE OF EDUC. (Feb., 26 2014), available at <http://perma.cc/BU4S-S44J>.

⁸⁷ Because proponents of allowing anyone with a concealed weapons permit to carry handguns into schools do not assert that it is necessary to thwart well-organized terrorist attacks. This argument may be of little value in the discussion of the appropriate role of armed individuals in schools. Kopel noted that the arming of teachers in both Israel and Thailand did not lead to an "instant" cessation of school attacks. Kopel, *supra* note 80, at 535.

right to bear arms is written in the law, here it's the opposite . . . only those who have a license can bear arms and not everyone can get a license."⁸⁸ Once a person gets a gun, they are only issued a one-time supply of 50 bullets, which cannot be renewed.⁸⁹

The last example is Norway, in which students on the Svalbard archipelago are required to take shooting classes at school and to carry shotguns while traveling to and from school.⁹⁰ There has been a surge in the polar bear population resulting in several deaths.⁹¹ The rest of the student population of Norway is not required to carry a shotgun.

A second argument is that a gun-free zone is an invitation to criminals to wreak havoc in the schools. School district superintendent, David Thweatt, of Harrold, Texas defended the decision to allow teachers to carry firearms into the school with a carry permit, stating, "When the federal government started making schools gun-free zones, that's when all of these shootings started. Why would you put it out there that a group of people can't defend themselves? That's like saying 'sic' em' to a dog."⁹² The argument that schools are "easy targets" and thus attract killers may not bear close scrutiny. *USA Today* established a database on mass killings in the United States from 2006 to 2013.⁹³ The great majority of mass killings take place away from school. They take place in homes and neighborhoods; they take place in malls and places of business.⁹⁴ If a sign that says that this is a gun-free zone is a magnet for killers, should not there be greater instances of killings at schools than in other places in society?

The Arkansas Christian Academy took down its "Gun-free Zone" signs and replaced them with signs that say, "Any attempt to harm children will be met with deadly force."⁹⁵ Not only are adults warned about the use of deadly force on campus, students are reminded that deadly force may be needed at their school and in their classrooms. Where else do students go where notice is given that deadly force may be used in order to protect them? Is the message that we have provided a safe environment, or is the message that our environment may be so hostile that we have to warn

⁸⁸ Ben Hartman, *Israeli Gun Control Regulations "Opposite of US,"* THE JERUSALEM POST, Dec. 18, 2012, <http://perma.cc/R2K6-K54B>.

⁸⁹ *Id.*

⁹⁰ Kopel, *supra* note 80, at 535–36.

⁹¹ *Id.*

⁹² *Id.* at 525.

⁹³ *Behind the Bloodshed: The Untold Story of America's Mass Killings,* USA TODAY, <http://perma.cc/3EYT-EE4F>.

⁹⁴ *Mass killings occur in USA once every two weeks,* FREELANCE BUREAU OF INT'L INVESTIGATION (Dec. 6, 2013), <http://perma.cc/N8N3-EF9E> ("Breakups, estrangements and family arguments make up the majority of cases, though unrelated victims may be caught in the crossfire.").

⁹⁵ Craig Day, *Arkansas Schools Train Teachers, Staff to be Armed Guards,* OKLAHOMA'S OWN (Nov. 4, 2013), <http://perma.cc/NT7S-L868>.

others that deadly force is available? While there have been mass killings in malls and theaters, signs are not posted about the use of lethal force. While schools are special places, should they be singled out as especially dangerous places when the research does not support such a conclusion?

If criminals know that schools have armed adults ready and willing to repel them with deadly force, they would not invade the school. Teachers, administrators, custodians, and cafeteria workers carrying concealed weapons would keep intruders or students from knowing who was armed; therefore, the likelihood of mayhem would be reduced, the argument asserts. However, a Texas law, the Protection of Texas Children Act,⁹⁶ requires teachers who want to serve as school marshals to have a license to carry a concealed weapon, pass a mental health evaluation, and receive special training to respond to an active shooter at school.⁹⁷ The law requires that the gun be under lock and key if the school marshal has “regular, direct contact with students” and cannot carry a concealed handgun,⁹⁸ and that a school have no more than one marshal per 400 students.⁹⁹ Georgia and Missouri allow teachers to bring guns on school property as long as they are in a locked car.¹⁰⁰ These conditions may not provide the speedy responses that proponents of arming faculty staff assert are necessary. They do, however, underscore the reality that guns are dangerous and while used as a protection for children, children have to be protected from them. The Seventh Circuit attempted to balance this argument, writing, “A gun is a potential danger to more people if carried in public than just kept in the home. But the other side of this coin is that knowing that many law-abiding citizens are walking the streets armed may make criminals timid.”¹⁰¹ The court, however, distinguished the schools as a “sensitive place” in which the prohibition of guns is appropriate.¹⁰²

Are more guns in schools to combat the use of guns in schools the best policy response; many say no. Kevin Quinn, a spokesperson for the National Association of School Resource Officers, offers the following critique of arming teachers. Confronting an active shooter gets “dicey” very quickly, he asserts, for the employee with a gun. He asks whether the employee can meet the possible imbalance of firepower of an assault type

⁹⁶ For a reading of the act which covers a number of different Texas codes, see Protection of Texas Children Act, ch. 655, 2013 Tex. Gen. Laws, available at <http://perma.cc/6YK8-UDTY>.

⁹⁷ *Id.* § 5 (Subchapter F, Chapter 1701, Occupations Code § 1701.260(b)(c)(d)).

⁹⁸ *Id.* § 3 (Subchapter C, Chapter 37, Education Code § 37.0811(d)).

⁹⁹ *Id.* § 3 (Subchapter C, Chapter 37, Education Code § 37.0811(a)).

¹⁰⁰ Kim Severson, *Guns at School? If There's a Will, There Are Ways*, N.Y. TIMES (Sept. 27, 2013), <http://perma.cc/38YP-WH9C>.

¹⁰¹ *Moore v. Madigan*, 702 F.3d 933, 937 (7th Cir. 2012).

¹⁰² *Id.* at 940–41.

weapon.¹⁰³ He also notes that “[w]hile those at the school might recognize a teacher defending students from an attacker . . . police officers might not.”¹⁰⁴ A person openly carrying a gun is an automatic suspect in an active shooter situation.¹⁰⁵ The police must confront that individual, thus losing value time. Underscoring this potential fog of multiple armed individuals in a school confrontation, one can use the words of a supporter of arming teachers, Arkansas State Senator Jeremy Hutchinson, who shot a person playing a teacher in a simulation. He stated following the incident:

The tough part is when law enforcement does arrive, it’s hard to distinguish between the good guys with guns and the bad guys with gun. There were gun shots in the hallway, there’s a man shooting into the classroom, and I shot that person (with a simulation bullet). At the end of the simulation, the chief said that was a man playing a teacher in the hallway, who was gunning down the (fake) shooter.¹⁰⁶

A less charitable individual could have written the headline, “A Good Guy with a Gun, Stopped Another Good Guy with a Gun.”

Mike Riley, spokesperson for Charlotte County Schools in Florida, responded to the idea of armed teachers stating, “Two words: Unmitigated disaster.”¹⁰⁷ He asserted that it would be difficult to turn teachers into essentially law enforcement officers with a weapon.¹⁰⁸ Do we turn teachers and principals into security guards?

A few considerations for those lawmakers and school board who wish to arm educators and staff members to respond to active shooters.

- Firearms are dangerous. Are they stored safely¹⁰⁹ and

¹⁰³ For example, Adam Lanza, the Sandy Hook shooter, entered the school with a Bushmaster Model XM15-E2S semi-automatic rifle, a Glock 20, semi-automatic pistol, and a Sig Sauer P226, 9 mm semi-automatic pistol. SEDENSKY, *supra* note 3, at 37.

¹⁰⁴ Andrew Ujifusa, *Debate Stirred on Arming Teachers, School Staff*, EDUC. WEEK (Dec. 19, 2012), <http://perma.cc/6N2U-XR2M>.

¹⁰⁵ For an extension of this argument see Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results from a National Survey*, 15 VIOLENCE & VICTIMS 257, 271 (2000) (finding that guns are used “far more often to kill and wound innocent victims than to kill and wound criminals”) (cited in *Madigan*, 702 F.3d at 950 (Williams, J., dissenting)).

¹⁰⁶ Beth Stebner, *Arkansas State Senator Fires Back at Claims He Accidentally Shot Teacher in Simulated School Shooting Exercise*, N.Y. DAILY NEWS (Aug. 29, 2013), <http://perma.cc/ME59-886H>.

¹⁰⁷ Matt Grant, *SWFL Schools Reject Arming Teachers With Guns*, FOX4 NOW (December 19, 2012), <http://perma.cc/TH32-A8SH>.

¹⁰⁸ *Id.*

¹⁰⁹ See Andrew Jay McClurg, *Armed and Dangerous: Tort Liability for the Negligent Storage of Firearms*, 32 CONN. L. REV. 1189 (2000); Edward F. Dragan, *Another Look at Guns in Schools: Liability*, EDUC. EXPERT (May 9, 2013), <http://perma.cc/7CAX-HRS3>.

used safely?¹¹⁰ Will the individual employee or the employing school district, or likely both, be liable for this increased foreseeable harm of bringing weapons to school with hundreds of adolescent students if a foreseeable injury occurs?

- If firearms are locked up so that students do not have access to them, can they be accessed easily in case of an emergency?
- How many employees will be allowed to carry weapons at school? While Texas law states one per 400 students, we typically have less adults per student on recess duty. So how many armed employees should we have at a school? Teachers on duty do not present a potential danger to students; do armed school personnel present an increased danger, as the Texas law seems to indicate?
- How will they be supervised if concealed weapons are allowed at school?
- There is a heightened concern about security following the massacre at Sandy Hook Elementary School. Because the number of active shooter incidents at schools are very small proportionally when compared to the number of schools in the nation, will the level of vigilance about training and liability remain at the level required for the safe allowance of guns, possibly multiple guns on a school campus?

One of the most important, yet thorniest, issues is whether students and parents feel that their school is made safer by the presence of weapons at school. If students believe that their school is so unsafe that the adults must carry guns to combat the violence in school, will students feel safer or will they feel less secure?

V. LOOKING OUTWARD, AND LOOKING INWARD

In a society with shallower roots and weaker bonds, our schools must be places where all students are embraced, protected and guided. Our schools cannot change the gun laws, but our schools can be havens from the social

¹¹⁰ For a general discussion of tort liability in schools, see DEMITCHELL, *supra* note 35.

*forces that lead our children to lose hope.*¹¹¹

We know that schools are relatively safe places; in fact, for many students, it is the safest place in their lives. However, “[s]chool shootings engender deep public concern. They violate strongly held cross cultural beliefs about the sanctity of childhood and the obligation of society to protect children from harm.”¹¹² Schools must be safe and secure. When the number of violent deaths at schools across the United States is considered, the unmistakable finding is that the vast majority of deaths are caused by students at the school and not by intruding active shooters who are emboldened by signs that schools are gun-free zones. Given that the number of stranger/intruder murders at schools through rampage shootings that indiscriminately target students and teachers is a small proportion of the murders,¹¹³ should we focus outward or should focus inward?

A. Drills and Responses

A multi-pronged approach is preferable to confronting issues of security on our school campuses. For example, the National Incident Management System/Incident Command System (NIMS/ICS) from the Federal Emergency Management Agency provides a web-based course for schools.¹¹⁴ This program is part of a national effort to manage emergencies, from preparedness to recovery. The Department of Education’s four phases of crisis management—prevention, preparedness, response, and recovery—fit within the NIMS/ICS model.

1. Listening

Gregg Champlin, a School Emergency Planning & Natural Hazards Planning Specialist, recommends a number of important components of a school’s security plan.¹¹⁵ His first admonition he calls, Mitigation: Prevention and Protection, in which students and staff who see something, should say something.¹¹⁶ Creating an environment that allows and encourages reporting of suspicious student behavior is a challenge and an

¹¹¹ John E. Chubb, *The Sandy Hook Tragedy: Guns Kill and So Does Culture*, THE QUICK & THE ED (Dec. 19, 2012), <http://perma.cc/U78R-U63H>.

¹¹² Traci L. Wike & Mark W. Fraser, *School Shootings: Making Sense of the Senseless*, 14 AGGRESSION & VIOLENT BEHAV. 162, 166 (2009).

¹¹³ See *U.S. School Violence Fast Facts*, CNN.COM (Oct. 22, 2013), <http://perma.cc/VW27-75NV>.

¹¹⁴ *IS-100.SCA: Introduction to the Incident Command System for Schools*, FEMA (Oct 31, 2013), available at <http://perma.cc/N3YX-HYLM>.

¹¹⁵ The author has a copy of the email communications from Gregg Champlin delineating his suggestions (Nov. 27, 2013).

¹¹⁶ *Id.*

opportunity for proactive action to avert a catastrophe. Similarly, the CDC noted that many students leave messages about their intended violent actions.¹¹⁷ For example, a 16-year-old junior had been stockpiling weapons and keeping a map of the school with a hit list. A friend who learned of the plot told her parents and the police.¹¹⁸ A rampage was averted because a student was alert, saw something, and said something. It was not considered tattling, it was considered being a good citizen.

Experts, including the Federal Bureau of Investigation, assert that profiling potential shooters is “not an appropriate method for preventing school shootings.”¹¹⁹ Instead, both the FBI and the Secret Service recommend that schools use a threat assessment approach.¹²⁰ A threat assessment approach does not attempt to match a suspect to the profile; instead, the investigation focuses on the behavior of the person and whether those behaviors suggest that the person poses a threat.¹²¹ Threat assessments provide an approach in which the likelihood of a threat being carried out is assessed, and the likely is sorted from the unlikely.¹²² Daniel et al. asserts that “threat assessment can be an effective means of preventing lethal school violence.”¹²³

The experts found that most of the shooters communicated overtly or covertly their intention to kill prior to their attacks, communicating to friends and peers of the planned attack.¹²⁴ For example, a high school student sent increasingly violent and threatening instant messages from his home to his friends bragging about his weapons and his threats to kill specific individuals as well as “taking out” others —“and ill probly only kill the people I hate?who hate me / then a few random to get the record.”¹²⁵ His friends joked with him at the beginning, but became

¹¹⁷ CDC Fact Sheet, *supra* note 7.

¹¹⁸ Alan Zarembo, *Plotters of School Killings Tend to Tip Off Someone in Advance*, LOS ANGELES TIMES (Dec. 23, 2012), available at <http://articles.latimes.com/2012/dec/23/nation/la-na-massacre-prevention-20121224>.

¹¹⁹ Borum, *supra* note 9, at 31.

¹²⁰ MARY ELLEN O'TOOLE, THE SCHOOL SHOOTER: A THREAT ASSESSMENT PERSPECTIVE (1999); Fein, *infra* note 147.

¹²¹ Borum discusses the Virginia Threat Assessment model and the Dallas Threat of Violence Risk Assessment. Borum, *supra* note 9, at 31–34.

¹²² The FBI, in its threat assessment perspective, asserts, “**All threats are NOT created equally.** However, all threats should be accessed in a timely manner and decisions regarding how they are handled must be done quickly.” O'TOOLE, *supra* 120, at 5 (emphasis in original). Two questions drive the assessment: “how credible and serious is threat itself? And to what extent does the threatener appear to have the resources, intent, and motivation to carry out the threat?” *Id.*

¹²³ Jeffrey A. Daniels, Adam Volungis, Erin Pshenishny, Punita Gandhi, Amy Winkler, Daniel P. Cramer, & Mary C. Bradley, *A Qualitative Investigation of Averted School Shooting Rampages*, 38 THE COUNSELING PSYCHOLOGIST 69, 71 (2010).

¹²⁴ *Id.*

¹²⁵ *Wynar v. Douglas Cnty. Sch. Dist.*, 728 F.3d 1062, 1065 (9th Cir. 2013); see also *id.* at 1070 (asserting “The nature of the threats here was alarming and explosive. Confronted with a challenge to

increasingly alarmed and shared their concerns with their football coach.¹²⁶ The student was suspended and then expelled for violent and threatening instant messaging. He brought suit for a violation of his free speech rights. The Appellate Court acknowledged the school officials difficult task of “balancing safety concerns against chilling free expression”.¹²⁷ The disciplinary action was upheld by the Ninth Circuit Court of Appeals.¹²⁸

2. *Reacting*

Second, Champlin recommends that we should help and encourage educators to “think on their feet” in a dangerous situation.¹²⁹ They should be empowered to take action that is reasonably calculated, given the context of their circumstances, to adapt to the crisis as it unfolds. We need to practice our drills: “[t]he lockdowns are part of a constellation of new security measures deployed by schools over the last decade, a complement to closed-circuit cameras, doors that lock automatically and police officers in the building.”¹³⁰ But we also need to empower teachers, administrators, and staff to think and act to protect our students.

3. *Flight & Fight*

Third, remember time, distance, and shielding in case of an active shooter incident. Time is important, react quickly; keep distance between students and the shooter; and shield students when escape is not possible. Overturn furniture and bookcases, barricade doors, place as much as possible between the shooter and the students and yourself.

A variation of this combines elements of think on your feet with time, distance, and shielding. Homeland Security provides training for Run,

the safety of its students, Douglas County did not need to wait for an actual disruption to materialize before taking action.”).

¹²⁶ *Id.* at 1066.

¹²⁷ *Id.* at 1070 (citation omitted).

¹²⁸ *Id.* at 1072. However, the Court of Appeals was clear that responding to the threat was appropriate, but it did not imply approval of the particular response of expulsion without benefit of counseling or assessment that a threat no longer existed was punitive. “Our responsibility, however, is not to parse the wisdom of Douglas County’s actions, but to determine whether they were constitutional. We conclude that they were.” *Id.*

¹²⁹ Reacting quickly is imperative. Most shootings are over in a few minutes. For example, in Stockton, California (Jan. 17, 1989), within four minutes 106 bullets were shot killing four students and one teacher, and wounding nine students and one teacher. Denise Dusek, An Ideal Model for Responding to Active Shooter Incidents at Schools I (2013) (unpublished Masters of Public Administration thesis, Texas State University) (on file with Texas State University) available at <http://perma.cc/SSS8-YHPA>.

¹³⁰ Jack Healy, *In Age of School Shootings, Lockdown Is the New Fire Drill*, NY TIMES (Jan. 16, 2014), available at <http://perma.cc/CS4H-7VBG>.

Hide, Fight.¹³¹ When faced with an active shooter, if possible run and put distance between yourself and the shooter. If that is not possible, hide and barricade. If you are discovered—the first five seconds are critical—then fight; literally fight for your life with anything at hand.¹³²

4. *The Aftermath*

Fourth, be prepared to act through drills and advance planning, but also be prepared for the aftermath of action. How do we respond to the physical and the emotional needs of our students¹³³ and staff?¹³⁴

B. *The Climate We Create: Looking Inward*

Our schools are special places. David Tyack and Larry Cuban assert, “Dialogue and debate about the goals of education are a ‘potent means of defining the present and shaping the future’; it is ‘one way that Americans make sense of their lives.’”¹³⁵ Lawrence Cremin, one of the preeminent historians of American education, posits that important questions in education go “to the heart of the kind of society we want to live in and the kind of society we want our children to live in.”¹³⁶ If our schools are a brightly polished speculum for the society that we want, then how we construct the environment of schools is critical.¹³⁷

Our biggest challenge and threat for school violence comes from within the school, and not from the intruder. How do we respond? The environment that we create is critical to the sense of security and connectedness that students feel to their school and to their fellow students. Ron Avi Astor asserts that the multi-pronged approach to school violence must include social, emotional, and school climate issues in its core mission.¹³⁸ In addition to creating A+ students, he believes that our

¹³¹ *Run, Hide, Fight – Surviving an Active Shooter Event*, Federal Law Enforcement Training Center, available at <http://perma.cc/Y362-Q5CS>.

¹³² See Kim Segal, *Teachers Train to Face School Shooter*, CNN.COM (Sept. 30, 2013), <http://perma.cc/MP8G-FKDL>. (“Educators of all ages practiced how to use those body parts [hands, elbows, knees and feet] on pads held by instructors; they were encouraged to make every strike fueled with aggression and anger.”)

¹³³ See *PREPaRE: School Crisis Prevention and Intervention*, NAT’L ASS’N OF SCH. PSYCHOLOGISTS, <http://perma.cc/9NW-HM5R> (last visited Feb. 27, 2014).

¹³⁴ For a discussion of the effects of shootings at school on employees, see Eitan D. Schwarz & Janice M. Kowalski, *Malignant Memories: Effect of a Shooting in the Workplace on School Personnel’s Attitudes*, 8 J. INTERPERSONAL VIOLENCE 468 (1993).

¹³⁵ DAVID TYACK & LARRY CUBAN, *TINKERING TOWARD UTOPIA: A CENTURY OF PUBLIC SCHOOL REFORM* 42 (1995).

¹³⁶ LAWRENCE A. CREMIN, *PUBLIC EDUCATION 74–75* (1976).

¹³⁷ See e.g., HAROLD G. SHANE, *THE EDUCATIONAL SIGNIFICANCE OF THE FUTURE* 32, 44 (1973).

¹³⁸ Ron Avi Astor, *Creating the Schools We Want for our Children*, EDUC. WEEK (Dec. 12, 2013, 2:45 PM), <http://perma.cc/7FTN-FXJ5>.

schools should help foster A+ human beings.¹³⁹

Hardening the school site should not involve hardening the relations, care, and concern for others at the school. Issues of easy access to guns and the prevalence of violent video games and movies are beyond the reach of the schools. However, the environment, culture, and climate of the school provide educators with levers they can positively use. Who gets valued and who gets scorned? In a study of school shootings, social rejection—including bullying—was present in thirteen of the fifteen shootings.¹⁴⁰ However, we should be cautious not to assume that bullying alone forecasts violence.

The reality is that we do not fully understand why some individuals kill others and why they target schools with unknown victims. Policies that promote a safe and secure school must be balanced with the type of environment that we want our children to be in for six hours a day, five days a week. A school under siege may stir feelings of unease and anxiety of not being safe when those very actions are taken to reduce anxiety and instill a sense of security. Establishing trusting relationships with students is an important aspect of creating a safe environment.¹⁴¹

A trusting environment provides safe avenues for communicating with educators and other personnel about signs or cues of potential violence. As discussed above, there is often “leakage” regarding intended violence. Students are in the best position to tap into that information.¹⁴²

The concept that schools are soft targets because of a gun-free zone creating a free-fire zone is misplaced. The overwhelming number of schools with signs designating a gun-free and drug-free zone do not tempt criminals to come to school. Bringing more guns into school and placing them in the hands of individuals who may be poorly trained, and have competing responsibilities such as teaching, is an easy public solution but a poor substitute for the heavy lifting necessary to truly make our schools safe havens for students.

It is worth noting that Justice Scalia’s majority opinion in the most recent Second Amendment case on individual gun rights ownership, *District of Columbia v. Heller*, stated:

[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and

¹³⁹ *Id.*

¹⁴⁰ Rocque, *supra* note 14, at 308.

¹⁴¹ Daniels et al., *supra* note 122, at 90.

¹⁴² O’Toole, *supra* note 120, at 32. The FBI suggests that “Internal Teams”, “Student Assistance Programs”, and Peer Assistance Groups” may also help to confront the code of silence. *Id.*

government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.¹⁴³

School boards and legislators must give great weight to the Supreme Court opinion that schools are sensitive places with longstanding prohibitions for bearing arms inside the schoolhouse gate? The Supreme Court has long noted the special circumstances of the school requiring nuanced and appropriate responses to its special characteristics.¹⁴⁴ Educators and school boards have a legitimate pedagogical concerns to prevent violence in their schools.¹⁴⁵

Armed teachers in a virtual lockdown mode do not provide an environment for social, emotional, or cognitive growth for children. “[E]stablishing a positive, caring school climate characterized by mutual respect between students and adults, as well as efforts to break the code of silence that prevents students from seeking help to resolve problems or report a threat of violence”¹⁴⁶ is a path towards a more secure and safe school. The Secret Service and the Department of Education assert, that creating a culture and climate of “safety is essential to the prevention of violence in schools,”¹⁴⁷ and that school climates that “create relationships

¹⁴³ District of Columbia v. Heller, 554 U.S. 570, 626–27 (2008).

¹⁴⁴ See e.g., Tinker v. Des Moines Indep. Cnty. Sch. Dist., 393 U.S. 503, 506 (1969) (writing, “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students.”).

¹⁴⁵ Griggs v. Fort Wayne Sch. Bd., 359 F. Supp. 2d 731, 741 (N.D. Ind. 2005) (asserting, “It is indisputable that schools have a legitimate pedagogical concern in preventing violence in their facilities. As other courts have recognized, this concern is particularly pressing in the wake of Columbine and similar tragedies: [W]e live in a time when school violence is an unfortunate reality that educators must confront on all too frequent basis.”).

¹⁴⁶ Borum et al., *supra* note 9, at 31.

¹⁴⁷ ROBERT A. FEIN, ET AL., U.S. SECRET SERVICE & U.S. DEPT. OF ED., THREAT ASSESSMENT IN SCHOOLS: A GUIDE TO MANAGING THREATENING SITUATIONS AND TO CREATE SAFE SCHOOL CLIMATES 69 (2002). The Guide discusses 11 major components and tasks for creating a safe/connected school climate. The list is easy to compile but difficult to implement. However, it does provide a roadmap for safe schools even if the journey is difficult.

1. Assess the school’s emotional climate.
2. Emphasize the importance of listening in schools.
3. Take strong but caring stance against the code of silence.
4. Work actively to change the perception that talking to an adult about a student contemplating violence is considered ‘snitching.’
5. Find ways to stop bullying.
6. Empower students by involving them in planning, creating, and sustaining a school culture of safety and respect.
7. Ensure that every student feels that he or she has a trusting relationship with at least one adult at school.
8. Create mechanisms for developing and sustaining safe school climates.
9. Be aware of physical environments and their effects on creating comfort zones.
10. Emphasize an integrated systems model.
11. All climates of safety ultimately are ‘local.’

of respect and connection between adults and students” are integral to safety at school and successful learning experiences.¹⁴⁸ However, the goal of creating and sustaining a safe school climate is “not created overnight,” it requires planning and dedication.¹⁴⁹

We must look beyond the easy nostrums of locked down and armed that may make adults feel good and find those difficult approaches that create a climate and culture of trust and acceptance. This hard path of building the capacity of care in the schools, in the long run, enables students to feel safe, secure, wanted, and valued. This is a task for schools and their communities. Dietrich Bonhoeffer writes, “[t]he test of the morality of a society is what it does for its children.”¹⁵⁰ Students must be protected through drills, procedures and reasonable safety precautions with appropriate responses. Society must also provide for their well-being by improving the type of climate we create inside that increasingly hardened schoolhouse gate.

Id. at 69–72.

¹⁴⁸ *Id.* at 72.

¹⁴⁹ *Id.*

¹⁵⁰ Janet Philiposian, *Homework Assignment: The Proper Interpretation of the Standard for Institutional Liability If We Are to Protect Students In Cases of Sexual Harassment by Teachers*, 33 SW. U. L. REV. 95 (2003) (quoting BENJAMIN A. REIST, *THE PROMISE OF BONHOEFFER* 15 (1969)).