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Report Card: Grading the Country’s Response to Columbine

SCOTT R. SIMPSON†

The recent tragedy in Red Lake, Minnesota¹ evoked the painful memories of the seemed whirlwind of school violence that set upon the country in the late nineties: Springfield, Oregon;² Jonesboro, Arkansas;³ West Paducah, Kentucky;⁴ Pearl, Mississippi;⁵ and the infamous Littleton,

† J.D. Candidate, State University of New York at Buffalo, 2005; B.A., College of the Holy Cross, 1999. I would like to thank my wife, Caryn, for her support throughout the composition and editing of this article. Two public school teachers, Amy Kiehl and Deborah Bitterman, provided valuable assistance and are assuredly assets to their respective school districts. Also, I would be remiss without expressing my appreciation to the various members of the Buffalo Law Review for their diligence and helpful suggestions.

1. On March 21, 2005, Jeff Weise shot his grandfather, a sergeant with the Red Lake police department, and his grandfather's girlfriend with a .22-cal. weapon in order to obtain his grandfather’s 12-gauge shotgun and .40-cal. handgun. He then proceeded to Red Lake High School in his grandfather's squad car, shooting a security guard on his way into the school before opening fire in the hallways and on one classroom in particular. He killed the teacher in that classroom, five students, and injured several others before taking his own life in the worst episode of school violence since Columbine. See Chris Maag, The Devil in Red Lake, TIME, Apr. 4, 2005, at 35; Jodi Wilgoren, Shooting Rampage Leaves 10 Dead on Reservation, N.Y. TIMES, Mar. 22, 2005, at A1.

2. Kip Kinkel killed his parents on May 20, 1998, at least partially because he wanted to spare them from the humiliation of his recent suspension for possession of a gun in school. The next day he killed two classmates and injured twenty-two others when he shot up the cafeteria at Thurston High School. For an interesting account and analysis, see JULIE A. WEBBER, FAILURE TO HOLD: THE POLITICS OF SCHOOL VIOLENCE 69-89 (2003).

3. On March 25, 1998, thirteen-year-old Mitchell Johnson and eleven-year-old Andrew Golden, students at Westside Middle School, killed four students, one teacher, and wounded ten others when they pulled the fire alarm and lay in wait in a nearby clearing for their peers to come out of the school before opening fire. Id. at 50-51.

4. Michael Carneal, a fourteen-year-old student at Heath High School, killed three students and left five wounded when he fired into a prayer circle on December 1, 1997. Id. at 25-26.
Colorado,\textsuperscript{6} to name just a few. Red Lake sent educators, legislators, and parents scrambling anew for answers in an effort to ensure that the unthinkable would not happen in their communities. This Comment seeks to evaluate the success of those efforts after Columbine and to make additional recommendations.

Part I of this Comment discusses the extent of the supposed violent "crisis" in the country's schools. Part II evaluates legislation, both federal and state, that has been passed to combat school violence and concludes that legislation is needed to provide consistency among the states. Part III deals with zero tolerance policies and their general lack of success and common sense. Parts IV and V further the general thrust of the article, which contends that the only way to effectively prevent school violence is to provide kids with support and direction, rather than punishment. Part IV argues that profiling potential troubling behavior provides a start, but not a panacea, to stopping school violence. Part V recommends a grass roots approach to the problem of school violence and documents some of the nation's scholastic success stories.

\section*{I. Statistics and the Scope of School Violence}

After the horror at Columbine left the impression that the country's schools were rife with violence, it is surprising

\textsuperscript{5} Before leaving for school on October 1, 1997, sixteen-year-old Luke Woodham beat and stabbed his mother to death. Upon his arrival at Pearl High School, Woodham shot and killed two students and wounded seven others as they prepared to start the school day. Richard Lacayo, \textit{Toward the Root of the Evil}, \textit{TIME}, Apr. 6, 1998, at 38.

\textsuperscript{6} Eric Harris and Dylan Klebold staged the most elaborate attack on an American school to date on April 20, 1999. It is a little known fact that if all of the homemade bombs they rigged up around the school that day actually worked as they were designed, Columbine would have been the worst domestic attack in history in terms of lives lost, surpassing even the Oklahoma City bombing. After a failed attempt to detonate their propane tank bombs, Harris and Klebold stormed through Columbine High with an assortment of modified firearms, killing fourteen students (including themselves) and one teacher, and wounding twenty-two more. \textit{See} Nancy Gibbs, \textit{Special Report: The Littleton Massacre}, \textit{TIME}, May 3, 1999, at 20, 25, 34; \textit{Jefferson County Sheriff Department's Report, Glimpses of Klebold and Harris}, \textit{at} http://www.cnn.com/SPECIALS/2000/columbine.cd/Pages/SUSPECTS_TEXT.htm (last visited Mar. 31, 2005) [hereinafter \textit{Sheriff's Report}].
how few violent deaths actually take place on school property. Shortly after Columbine, from July 1, 1999, to June 30, 2000, there were only twenty-four homicides, sixteen of which involved students.\textsuperscript{7} During the school years from 1992 to 2001, students between the ages of five and nineteen were at least seventy times more likely to be murdered away from school grounds.\textsuperscript{8} Between 1995 and 2001, the percentage of students who reported a violent victimization at school dropped from three to two.\textsuperscript{9}

For students ages twelve to eighteen, violent crime decreased from forty-eight violent crimes per 1,000 students in 1992 to twenty-eight violent crimes per 1,000 students in 2001.\textsuperscript{10} One hundred and sixty-one thousand violent crimes were reported at school in 2001, compared to 290,000 outside of school.\textsuperscript{11} Since 1993, there has been no measurable difference in students that report being threatened or injured with a weapon, such as a gun, knife, or club, in school. Between seven to nine percent of high school students report being threatened in the preceding twelve months prior to having been asked the question.\textsuperscript{12} However, during that same time period, high school students who reported carrying such a weapon to school during the previous thirty days decreased from twelve to six percent.\textsuperscript{13} In the 1999-2000 school year, 135,000 teachers were physically assaulted by a student, with that figure representing about four percent of all elementary and secondary teachers.\textsuperscript{14}


\textsuperscript{8} Id. Note that this figure is not adjusted for the relatively small amount of time students spend in school as compared to the time spent away from school. Over this same period nationwide, 2,124 children ages five to nineteen were homicide victims. \textit{Id.} at \textit{vii}.

\textsuperscript{9} Id. at \textit{v}. The report defines violent crime as rape, sexual assault, robbery, and aggravated and simple assault. \textit{Id.} at \textit{vii}.

\textsuperscript{10} Id. at \textit{vii}.

\textsuperscript{11} Id.

\textsuperscript{12} Id. at \textit{viii}.

\textsuperscript{13} Id. at \textit{ix}.

\textsuperscript{14} Id.
Against this backdrop of decreasing youth violence both inside and outside of schools, there are statistics that give the careful researcher pause. First, eight percent of students reported being bullied at school in the last six months of 2001, up from five percent in 1999.\textsuperscript{15} Bullying has a large impact on the life of an adolescent and causes anxiety that detracts from the process of education.\textsuperscript{16} Secondly, despite the aforementioned statistics demonstrating that kids are far safer at school than away from school, students do not feel that way. In both 1999 and 2001, students were more likely to fear being attacked when they were at school than away from school.\textsuperscript{17} Lastly, the 2003-04 school year was marred by the most "school-associated violent deaths" since the 1997-98 school year.\textsuperscript{18}

The school shootings mentioned above were largely indiscriminate attacks where male perpetrators had seemingly taken temporary leave of their senses. However, in most of the shootings, with the notable exception of

\begin{quotation}
15. Id. at viii.


17. DEVOE, supra note 7, at ix.

18. See NATL SCH. SAFETY CTR., SCHOOL ASSOCIATED VIOLENT DEATHS 39-41 (2005) (displaying charts and graphs analyzing "school-associated violent deaths"), at http://www.nsscl.org/savd/savd.pdf (last visited Mar. 31, 2005). However, the report's definition of "school-associated violent deaths" is "any homicide, suicide, or weapons-related violent death in the United States in which the fatal injury occurred" (1) on school property, (2) while the victim was on the way to school or coming home from school, (3) while the victim was attending or on the way to a school-sponsored event, or (4) "as an obvious direct result of school incident/s, function/s or activities, whether on or off school bus/vehicle or school property." Id. at 1. The definition is somewhat overinclusive, as illustrated by the August 28, 2003 incident involving Kyle Wasson. See id. at 34 (detailing a shooting in which the only nexus to a school is that it occurred near an elementary school while children were outside for recess). Due to the report's overinclusiveness and the fact that it was issued by an institution with a vested interest in the statistics it reports (the National School Safety Center sells consulting services on its website), the report must be viewed with caution. Nevertheless, discounting some of its extravagances, it does show an increase in on-campus deaths for the 2003-04 school year.
\end{quotation}
Columbine, the initial target was female.19 “In a shockingly large percentage of [school shootings], [the shooters] killed or wounded girls that they claimed to have ‘loved.’ Girls they harassed and stalked. Girls they believed had rejected them. Girls they killed in juvenile separation attacks.”20 Interestingly enough, this statistical phenomenon is not widely reported. Critics like Marina Angel have noticed that news outlets and government agencies have been particularly lax in reporting the threat posed by adolescent boys to adolescent girls.21 Angel argues that by downplaying these demonstrated violent tendencies on the part of young boys, we run the risk of misinterpreting these attacks, thereby making them more likely to take place in the future.22

So, why is the American public so badly misinformed in the face of statistics that support evidence of decreasing juvenile criminality on the streets and in schools? News coverage, especially television news coverage, plays a significant role in how Americans perceive the world around them. The media’s intense coverage of the school shootings, while ignoring statistical evidence that downplayed their

19. Columbine involved the targeting of specific groups of students with whom the killers had a beef, particularly the “jocks.” See Gibbs, supra note 6, at 31. Although their stated intention was to kill student-athletes, the shooting pattern was largely indiscriminate. Jonesboro, West Paducah, and Pearl were all examples where females were the initial targets. The killers in those three shootings experienced rejection from either females they targeted or from other girls at school. Some commentators have noticed a significant lack of discussion of the fact that Jonesboro involved only one boy who was hit by the shooters (Golden’s cousin). See WEBBER, supra note 2, at 54-57 (discussing the targeting of girls in school shootings).


21. See id. at 490-92.

22. Angel concludes that, in order to subvert American boys violent tendencies, boys should be “taught to emulate, not denigrate, girls.” Id. at 515. The author makes this statement because of girls’ comparatively low rates of violent crime. While I am not sure the answer is quite so simple, it behooves educators and especially parents to make a concerted effort to ensure that the boys in their charge are emotionally stable and supported. See DAN KINDLON & MICHAEL THOMPSON, RAISING CAIN: PROTECTING THE EMOTIONAL LIFE OF BOYS 222 (1999) (maintaining that boys must learn certain lessons in order to successfully navigate adolescence).
prevalence, misled the country into believing that the county’s schools were under attack from within.

For instance, after Harris and Klebold’s rampage, the three major news networks aired approximately twelve hours of coverage in 1999. All together, NBC, CBS, and ABC aired 319 stories about Columbine, representing fifty-four percent of all their murder stories in 1999. In comparison, one of the biggest antitrust cases in American history brought by the Justice Department against software giant Microsoft was the subject of only twenty-four stories.

The coverage itself skews reality. News editors and producers will certainly be quick to inform that high ratings follow from sensational news. Splashy, exaggerated headlines and news coverage in connection with school shootings feed the fears of parents and students.

One publication, reporting on school safety measures being taken across the country, began its article with the following narrative: “The nation’s schools are an accurate mirror of our violent society. Newspapers depict a gloomy view of schools in which violence is pervasive and a ‘police state’ mentality of crime prevention prevails. Stories of weapons, drugs, gangs, and violent behavior in schools abound in the news media.”

Notice that the preceding quotation is, for the most part, accurate. The country’s news media is saturated with youth violence. However, as has already been pointed out, the number of news stories is not representative of the frequency of youth violence. By devoting a disproportionate

24. See id. at 1059-60.
25. See id. at 1059-60.
27. Ernestine S. Gray, The Media—Don’t Believe the Hype, 14 STAN. L. & POL’Y REV. 45, 47 (2003) (“When the media covers juvenile issues at all, it is often in the context of violence, and specifically in the context of violent juvenile crime. Although juvenile arrests and juvenile crime rates have fallen since 1994, the media’s coverage of the issue has not reflected such a drop.”).
amount of time and resources to school violence, the national news media has misled parents and students into a paranoid belief that their school could be next.28

Despite the fact that school violence is not the epidemic it seems to be when the country picks up its morning paper, it is a serious issue facing school districts. The U.S. Secretary of Education and the Attorney General wrote in 1998: “America’s schools are among the safest places to be on a day-to-day basis... Nevertheless, last year's tragic and sudden acts of violence in our nation’s schools remind us that no community can be complacent in its efforts to make its schools even safer.”29

II. LEGISLATING FOR SAFE SCHOOLS


The first serious effort Congress made to try and take weapons out of the country’s schools was with the Gun-Free Schools Act of 1990 (the “1990 Act”).30 The 1990 Act made it a federal crime “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.”31 Congress passed the 1990 Act under the traditionally broad mandate of the Commerce Clause, which gives Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”32

28. Schwartz, supra note 26, at 4 (observing that the Columbine shooting is regularly referred to as a “massacre” and could happen at any school, when “a more accurate assessment is that such an incident will happen in another school somewhere, but that the associated risk of this occurring can be reduced”) (emphasis omitted); Insley, supra note 23, at 1061 (revealing that seventy-one percent of adults believe a school shooting is likely to occur in their community).


32. U.S. CONST. art. I, § 8, cl. 3. The Supreme Court first described the bounds of the Commerce Clause in the landmark decision of Gibbons v. Ogden,
The 1990 Act was struck down by the Supreme Court in *U.S. v. Lopez.* Lopez, a high school senior at the time of the offense, was convicted under the 1990 Act for carrying a concealed weapon on school grounds. He appealed the decision, arguing that Congress had exceeded the power afforded it under the Commerce Clause. The Fifth Circuit agreed and reversed the District Court, holding that there was a sparse legislative history accompanying the 1990 Act with little to no congressional findings supporting its enactment.

The Supreme Court began its opinion by surveying its Commerce Clause jurisprudence, most of which was highly deferential to the legislative branch. However, even in its most recent decisions that had expansively construed Congress’s commerce power,

the Court warned that the scope of the interstate commerce power “must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.”

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22 U.S. 1 (1824). The Court, defining the meaning of the term “commerce” as it is used in the Constitution: “Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.” *Id.* at 189-90.


34. *See* United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993).

35. *Id.* at 557, (quoting NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937)). *See also* United States v. Darby, 312 U.S. 100, 119-20 (1941) (upholding the Fair Labor Standards Act on the grounds that Congress can regulate intrastate commerce if it has a “substantial” effect on interstate commerce); Wickard v. Filburn, 317 U.S. 111, 125 (1942) (upholding the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of homegrown wheat based on Congress’s power to regulate any activity that has a “substantial economic effect” on interstate commerce). *Wickard* may have been the most expansive reading in history of Congress’ powers under the Commerce Clause. *Wickard* involved a farmer that violated a federally imposed quota on the growing of wheat. Mr. Filburn was producing wheat in excess of the quota for private use and futilely argued that his family’s private use of crops grown on privately owned land had none of the indicia of interstate commerce.
With this history in mind, the Court thought Congress could regulate (1) "the use of the channels of interstate commerce", (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities", and (3) "those activities having a substantial relation to interstate commerce." After briefly concluding that the first two categories above were inapplicable, the Court went on to consider whether the challenged statute could be upheld by classifying the possession of firearms on school property as an activity that substantially affected interstate commerce.

The Court was deeply concerned with the ramifications of arriving at the conclusions urged upon it by the Government.

[U]nder its "costs of crime" reasoning... Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. Similarly, under the Government's "national productivity" reasoning, Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of § 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

The Court reasoned further that if Congress could regulate activities that adversely affect schools' learning environments, they would have the ability to set the curriculum taught at those schools. In effect, this would be a trampling of the Tenth Amendment, since education has always been the province of the States, having not been expressly delegated in the Constitution. Because the curriculum obviously affects the learning process, under the

37. Id. at 564 (internal citations omitted).
38. Id. at 565.
39. See U.S. Const. amend. X.
Government’s reasoning, anything that affects the learning process affects interstate commerce.\(^4\)

The Court feared that by employing the Government’s rationale, any activity could be labeled commercial and therefore within the reach of congressional regulation. The 1990 Act was a criminal statute that had little to no effect on commerce.\(^4\) The Court concluded, “To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.”\(^4\)

In a federal system of checks and balances, it is incumbent upon each branch to ensure that neither of the other two oversteps the bounds of its authority. This was essentially the 1990 Act’s undoing. By not even making an attempt to legitimize their actions by holding hearings or making congressional findings, Congress essentially was relying on the fact that the Court would just roll over. Many commentators lauded the Court’s decision, believing it was a long overdue statement that principles of federalism were still alive and well in an era where the Court had traditionally allowed the legislative branch a wide degree of latitude.\(^4\)

B. Gun-Free Schools Act of 1994

Passage of the Gun-Free Schools Act of 1994 (the “1994 Act”)\(^4\) was made possible by the Supreme Court’s ruling in *South Dakota v. Dole*.\(^4\) It is likely that the 1994 Act would

\(^4\) See *Lopez*, 514 U.S. at 565.

\(^4\) See id. at 561.

\(^4\) Id. at 567.

\(^4\) E.g., Steven G. Calabresi, “A Government of Limited and Enumerated Powers”: In Defense of United States v. Lopez, 94 Mich. L. Rev. 752, 752 (1995). In concurrence, Justice Kennedy wondered whether the federal law was even necessary, given the fact that over forty states already had legislation in place making it illegal to possess a gun in a school zone. See *Lopez*, 514 U.S. at 581.


have suffered the same fate as the 1990 Act had Congress not elected to pattern the 1994 Act after the legislation in *Dole.* In *Dole,* South Dakota protested the federal government’s imposition of a minimum drinking age of twenty-one. However, the Government did not strictly forbid the States from setting their own drinking age. Congress has the power to condition the receipt of federal funds “upon compliance by the recipient with federal statutory and administrative directives.” Congress’s conditioning of federal money upon South Dakota’s drinking age being twenty-one was reasonably calculated to promote safe interstate travel and to advance the general welfare. Congress could not impose a national drinking age on the States, but it could do indirectly what it could not do directly using its Commerce Clause powers.

Congress pursued the same approach with the 1994 Act. The 1994 Act conditioned receipt of federal funds on each state’s adoption of legislation mandating a one-year suspension for any student who brought a firearm to school. The 1994 Act allowed the “chief administering officer” of local school districts to review the punishments handed out and modify them if necessary on a “case-by-case basis.” It also required local school districts to establish a policy whereby all punishments handed out under the 1994 Act would be referred to the criminal justice system. All fifty states have enacted their version of “zero tolerance” policies, but have expanded them to cover more than just possession of firearms.

C. Can Congress and State Legislatures Do More?

After Columbine, the search for responsibility began. The list of possible culprits was lengthy: violent video games, bloody cinema, and irresponsible parenting, to name

46. See U.S. CONST. art. I, § 8, cl. 1.
47. *Dole,* 483 U.S. at 206.
51. See *infra* notes 102-03, and accompanying text for a discussion of the expansion of zero tolerance policies beyond firearm violations.
just a few.\textsuperscript{52} Once it became known that the shooters obtained portions of their arsenal from a gun show, a renewed cry for increased gun control became popular.\textsuperscript{53}

Gun shows have always been a target for gun control advocates. "Anecdotal evidence suggests the diversion of firearms from licensed and unlicensed retail sources, including at and through gun shows, to prohibited persons and for use in crime may be a significant public safety problem."\textsuperscript{54} Studies and surveys present conflicting facts used in assessing the danger presented by gun shows. A 1986 survey of over 1,800 incarcerated felons demonstrated that seventy percent of the weapons used by the felons were stolen, not obtained commercially.\textsuperscript{55} Another survey showed that less than three percent of inmates bought firearms

\textsuperscript{52} But see Chris Taylor, Digital Dungeons, \textit{Time}, May 3, 1999, at 50. (concluding that, while violent video games exist, they do not in and of themselves, create violent tendencies in video gamers). Blaming Hollywood became particularly popular when Michael Carneal revealed that he patterned his attack on The Basketball Diaries, a Leonardo DiCaprio movie that contained a school shooting scene. See Webber, supra note 2, at 26-30 (discussing Carneal and the influence The Basketball Diaries had on his violent behavior). Harris and Klebold also were known to have obsessed over the movie Natural Born Killers, a film in which the two main characters embark on a nation-wide killing spree with no remorse. See Sheriff's Report, supra note 6 (containing several references to the movie). For a discussion of parental responsibility, see Amy Dickinson, Where Were the Parents?, \textit{Time}, May 3, 1999, at 40 (questioning whether Harris's and Klebold's parents could have prevented Columbine).

\textsuperscript{53} See Bowling for Columbine (United Artists 2002). Michael Moore's film, which won an Oscar for Best Documentary, is filled with many interesting, if not attenuated, theories on gun control and American violence. For instance, Moore insinuates that one reason Columbine occurred was because Columbine High is located near a Lockheed-Martin plant. Lockheed-Martin, of course, builds, among other things, instruments of war. Do not see the connection? Moore seems to believe that by living around and working in the plant, Littleton residents created a violent environment that somehow fostered the Columbine attack. While I appreciate Mr. Moore's attempts to raise the public consciousness, it is this type of reach that mars his generally thoughtful films and allows conservatives to dismiss his films as unsubstantiated, leftist rants. I am not sure Columbine would have been prevented had all of the townsfolk worked at Greenpeace.


\textsuperscript{55} Id. at 10-11.
from gun shows.\textsuperscript{56} But, there is also evidence that tends to support the anecdotal evidence referred to above. A 1995 Bureau of Alcohol, Tobacco, and Firearms study demonstrated that many traced firearms "had been bought at retail, straw purchased, or otherwise trafficked, rather than stolen."\textsuperscript{57}

Anthony Braga and David Kennedy's research concludes that firearms are diverted at gun shows by:

unlicensed dealers who knowingly sell firearms to prohibited persons without conducting criminal background checks and/or who are illegally engaged in the business of selling firearms; corrupt licensed dealers who willfully violate federal firearms regulations by, for example, making "off paper" sales and falsifying transfer paperwork; and straw purchasers and straw purchasing rings that purchase firearms from licensed and unlicensed dealers for prohibited persons.\textsuperscript{58}

They point out that current federal gun control legislation does not specifically address gun shows and that Congress should act to redress the narrower threat of gun shows within the broader framework of federal gun control.\textsuperscript{59}

Unfortunately, it does not seem likely that students who have committed themselves to a Columbine-like attack will be stopped by restricted access to weapons. Gun control laws would be more likely to dissuade the commission of lesser crimes by less determined criminals. The kids that become school shooters are so emotionally and psychologically disturbed that they will not be deterred from procuring weapons. Finding a friend or family member to legally purchase weapons on their behalf, like the Columbine shooters did, will always be an option.

\textsuperscript{56} Id. at 11 (illustrating the results of a 1991 survey of inmates conducted by the U.S. Bureau of Justice Statistics).

\textsuperscript{57} Id.

\textsuperscript{58} Id. at 19.

\textsuperscript{59} See id. at 19-21. Others insist that new legislation is unnecessary; the existing laws must simply be enforced. See Matthew Pontillo, \textit{Suing Gun Manufacturers: A Shot in the Dark}, 74 ST. JOHN'S L. REV. 1167, 1198 n.224 (2000) (detailing an NRA program called "Project Exile," by which the NRA "encourages the strict enforcement of existing gun laws to prevent and deter crime").
Therefore, if Congress and state legislatures want to keep guns out of schools, deterring would-be shooters with criminal liability is not the most judicious approach. Instead, the individuals who purchase firearms legally and pass them on to violent minors need to be punished just as severely as the minors who eventually pull the trigger. Most states do impose criminal liability on any individual that transfers a firearm to a minor. But, the penalty in the majority of those states is only a misdemeanor or even a mere fine, while others only restrict the right to transfer handguns to minors, leaving it perfectly legal to transfer rifles or shotguns. If legislatures really want to prevent the diversion of firearms to minors, these laws must be toughened. If a minor commits a violent crime with a firearm transferred illegally from an adult, the transferee should not be able to escape jail time if convicted. Further, to ensure that the gun buying public knows the law, gun transfer laws should be posted at all places where firearms are sold. With tougher criminal laws in place, irresponsible adults that divert weapons to minors may think twice if they know they will face certain jail time for their actions. Transferors may be especially hesitant to buy firearms for minors they know present a risk to commit violent crime.

With laws in place that strictly regulate the sale and transfer of weaponry, the only way kids would be able to obtain firearms would be to steal them. Many states currently impose criminal liability on individuals who improperly secure a firearm and allow a minor to gain possession

60. See, e.g., CAL. PENAL CODE § 12072(a)(3) (West 2000); N.Y. PENAL LAW § 265.10(5) (McKinney 2005).
61. See, e.g., CAL. PENAL CODE § 12072(g)(1) (West 2000) (classifying an offense as a misdemeanor); N.Y. PENAL LAW § 265.10(5) (McKinney 2005) (classifying an offense as a Class A misdemeanor).
63. See COLO. REV. STAT. § 18-12-108.7 (2004) (mandating that the transfer of firearms other than handguns is legal so long as the transferee obtains permission from the minor's parent or legal guardian).
64. The Jonesboro shooters stole the weapons they used from the home of Golden's grandfather, who usually kept the guns under lock and key. See WEBBER, supra note 2, at 50.
The violation of such statutes is usually a misdemeanor, with the burden on the prosecution to demonstrate negligence on the part of the owner. Therefore, if a gun owner takes reasonable precautions to ensure the security of his or her firearms (i.e., a locked cabinet), criminal liability will not attach. Again, if legislatures want to keep guns out of the hands of students, it makes sense to toughen these laws as well.

The problem with enacting the above types of criminal penalties is that it is very rare in the American system of justice for individuals to be strictly liable for the criminal actions of another. Professor Peter Arenella explained, "In this country, we believe that people should only be held accountable for their own criminal acts or the criminal acts of others they've encouraged." Given this philosophy, it is not surprising that there have been few attempts at prosecuting parents or others under the statutes discussed above for the criminal acts of minors, nor have there been many under "contributing to the delinquency of a minor" statutes. Legislators have been hesitant to hold parents liable for their children's actions because of the generally accepted sentiment that it is possible for even responsible parents to be unaware of their child's criminal intentions. Some argue that it is critical that legislators turn the heat up on parents, as they are best positioned to be aware of the threat their child may present to themselves and to others. "To ensure parental support, it is crucial that there be a

65. See FLA. STAT. ANN. § 790.174(2) (West 2000). But see IOWA CODE ANN. § 742.22(7) (West 2003) (requiring the minor to display the weapon in a public place for criminal liability to attach).


67. See Linda A. Chapin, Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States, 37 Santa Clara L. Rev. 621, 648, 653 (1997) (noting that few parents have been prosecuted under these statutes and that these types of laws primarily function as threats to force parents to properly supervise their children). For an example of a typical contributing to the delinquency of a minor statute, see CAL. PENAL CODE § 272 (West 2000).

68. See Cornwell, supra note 66, at 64 (suggesting that even the best parents can have children who commit serious crimes). For more on parental liability for youth violence, see Deborah A. Nicholas, Note, Parental Liability for Youth Violence: The Contrast Between Moral Responsibilities and Legal Obligations, 53 Rutgers L. Rev. 215 (2000).
substantial penalty for their noncooperation to signal that, by virtue of their misconduct, they will share meaningfully in their children's criminal responsibility."69 Due to the lack of enforcement on the part of local authorities, it remains likely that parental responsibility will be a moral, rather than criminal, issue.

While the imposition of tougher legislation that would make guns more difficult to procure and impose stiffer criminal liability on the part of those who would provide firearms to minors would be welcome, as a practical matter they may not have much effect. Federal and state law would no doubt seem inconsequential to a student pushed to the brink of considering an attack on his school. The solution lies on the local level and will come from educators, parents, and students.

III. ZERO TOLERANCE

A. Definition and Application of Zero Tolerance

With the passage of the 1994 Act and the subsequent spate of school shootings in the years following, school administrators have expanded the 1994 Act further than Congress ever intended.70 Seizing on the new tough love sanctioned by Congress in the nation's schools, school districts began instituting zero tolerance policies en masse.71 In an era where parents are increasingly concerned about the safety of their children at school, the tough rhetoric of


70. The 1994 Act mandated that school boards suspend any student for possession of a firearm on school property, but does not forbid schools from crafting more comprehensive policies that would make other types of offenses carry automatic disciplinary sentences. Put another way, the statute establishes a floor, not a ceiling. See 20 U.S.C. § 7151(b)(1) (2004).

Zero tolerance finds an eager audience in parents and educators.\textsuperscript{72}

Zero tolerance is defined as a disciplinary policy "intended primarily as a method of sending a message that certain behaviors will not be tolerated, by punishing all offenses severely, no matter how minor."\textsuperscript{73} Unfortunately, the doctrine of zero tolerance has proven to be more appealing ideologically than in practice. Zero tolerance policies have grabbed media attention as a result of excessive punishments intended to correct trivial student transgressions that have gone beyond the boundaries of logic.\textsuperscript{74} In Colorado, a ten-year-old student was expelled for accidentally bringing her mother's lunch to school, discovering a small knife and dutifully reporting the incident to her teacher.\textsuperscript{75} In Georgia, an eleven-year-old girl was suspended when her school classified a ten-inch novelty chain, attaching her key ring and Tweety Bird wallet, as a

\textsuperscript{72} An interesting comparison can be made between the zero tolerance policies schools are currently employing and the federal sentencing guidelines now used by federal judges in imposing criminal sentences. Both are assigned the same fatal flaw: That by imposing automatic sentences on offenders, legislators are taking away the independence, experience, and judgment of educators and judges. For a judge's viewpoint on the folly of the federal sentencing guidelines, see Judge Louis F. Oberdorfer, \textit{Mandatory Sentencing: One Judge's Perspective—2002}, 40 AM. CRIM. L. REV. 11 (2003).


\textsuperscript{74} Although the Gun Free Schools Act requires that states' zero tolerance statutes enable disciplinary decisions to be reviewed and curtailed if necessary by the applicable authorities, see, e.g., N.Y. EDUC. LAW § 3214(3)(d) (McKinney 2001) (providing, "a superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis"), this power is not exercised enough to reduce seemingly extreme disciplinary actions. Only forty-two percent of expulsions imposed nation-wide in the 2000-01 school year under zero tolerance policies pursuant to the Gun Free Schools Act were shortened to under a year. See KAREN GRAY & BETH SINCLAIR, U.S. DEPT OF EDUC., \textit{REPORT ON THE IMPLEMENTATION OF THE GUN-FREE SCHOOLS ACT IN THE STATES AND OUTLYING AREAS 2} (2003), \textit{available at} http://www.ed.gov/about/reports/annual/gfssa/GFSA2000-2001.pdf (last visited Apr. 7, 2005)

Perhaps the most ridiculous result of zero tolerance befell Ohio high school senior Dana Heitner, an excellent student and candidate for valedictorian of his class, who was slapped with a ten-day suspension after parodying the movie "Speed" in posters he made for his girlfriend's student council campaign. In the movie, a bomber attaches an incendiary device to a bus, setting the bomb so that it would explode if the bus's speed fell below fifty miles per hour. The school categorized Dana's posters as a "terrorist threat." Upon learning of the poster's author, the school district's superintendent acknowledged Dana presented no real threat to public safety. However, the making of a terrorist threat fell under the rubric of the district's zero tolerance policy and Dana's sentence was carried out. As a result, he received a "D" in calculus for the quarter in question because he was not allowed to take a test that was administered during his suspension, thereby casting his valedictory status into great doubt. Further, since many colleges require the disclosure of any suspension on applications for admission, Dana feared that his chances of getting into the school of his choice were greatly diminished.


77. For Ohio's zero tolerance statute, which also closely tracks the language of the federal Gun Free Schools Act, see OHIO REV. CODE ANN. § 3313.66 (Anderson 2004).

78. The poster read: "There is a bomb in this receptacle. If the weight on the seat goes over fifty pounds, the bomb will be activated. Once activated, this receptacle will blow up if the weight put upon it ever goes below fifty pounds. The only way to get off the seat safely is to scream as loud as you can that you will vote for Robin Cox in the coming election and then deposit one billion dollars in the nearest mail container with a hole in the bottom that connects the container to a not yet completed underground subway." Margaret Graham Tebo, Zero Tolerance, Zero Sense: School Violence is a Hot-Button Issue But are Strict, Inflexible Policies the Answer? Some Say Yes, While Others Insist that All-Or-Nothing Punishment Merely Alienate Students, 86 A.B.A. J. 40 (2000).

79. Id.

80. Id.

81. Id. Proponents of zero tolerance strategies suggest that the same incidents are repeatedly cited by critics of zero tolerance policies to demonstrate their absurd application. See, e.g., Charles Patrick Ewing, Why Violence in Schools Cannot Be Tolerated, BUFFALO NEWS, Sept. 10, 2000, at F1. Professor
B. Legal Ramifications of the Application of Zero Tolerance

After reviewing the above accounts of zero tolerance in action, one wonders how often school districts will find themselves in various courts defending their zero tolerance policies. While school districts must be allowed a certain amount of latitude to keep their schools safe and facilitate a positive learning environment, it is well-known that students do not "shed their constitutional rights... at the schoolhouse gate." Zero tolerance policies would seem to be most vulnerable on due process grounds under the Fourteenth Amendment, which provides that students cannot be deprived of life, liberty, or property without due process of law.

As an initial matter, it is necessary to point out the deferential treatment courts give to states and school districts when it comes to matters of school discipline. The Supreme Court "has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." Given the Court's reluctance to challenge school disciplinarians in their area of expertise, it is reasonable to expect

Ewing points out that zero tolerance policies have long been applied in connection with airport security, with even the slightest jest by airline passengers receiving the gravest scrutiny. The application of zero tolerance, in this context, has largely been accepted as a necessary security measure. Ewing posits that the stakes are just as high in the nation's schools and that even a passing threat should result in every possible precaution being taken. Ewing makes a compelling point, but I wonder if his argument is not weakened by the fact that airport security measures are most often applied to mature adults (or at least those under immediate adult supervision) that understand the solemnity of airport security in a post-9/11 world while zero tolerance policies are applied to children who may not fully comprehend the implication of schoolyard threats in a post-Columbine world.

82. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969). In Tinker, the Supreme Court held that black armbands worn by students to protest the Vietnam War were closely akin to "pure speech" and were therefore protected under the First Amendment. The disruption that occurred took place because certain of the students' contemporaries objected to the political message. The Court noted that the disruption was not actually caused by the students' armbands, but by the reaction. Id. at 505-06.

83. See U.S. CONST. amend. XIV.

that any challenge to school disciplinary policies will prove difficult to litigate.

The Supreme Court first explicitly extended procedural due process rights to students in *Goss v. Lopez*. Goss involved nine high school students from Columbus, Ohio who were suspended from their respective schools for up to ten days without receiving any kind of hearing. Despite the fact that Ohio was not constitutionally obligated to establish a public school system, they nonetheless had chosen to do so. Having made that choice, “Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred.” The Court said that it is the primary purpose of public school systems to educate their students and it becomes extremely difficult for a student to learn from her derelictions without being promptly informed of the reason for the disciplinary action and having a chance to tell her side of the story.

Having decided that all students have due process rights, the Court next considered what type of process would satisfy that requirement. While acknowledging the practical constraints that limit the school’s resources it can devote to a complex hearing process, the Court held that when a suspension of ten days or less is imposed on a student, “the student [must] be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” The hearing does not have to be a formal procedure, nor does there have to be a minimum amount of time between notifying the student of her hearing and the hearing itself. In dicta, the Court

86. See OHIO REV. CODE ANN. § 3313.64(B) (Anderson 2004) (providing free public education to children between the ages of six and twenty one).
87. Goss, 419 U.S. at 574.
88. Id. at 580.
89. Id. at 581.
90. Id. at 582. Some have attacked Goss for not going far enough towards *meaningful* due process: “A requirement of more than nominal due process is essential if we are to develop a system of discipline that allows students to learn from their mistakes.” Brooke Grona, Comment, *School Discipline: What Process is Due? What Process is Deserved?*, 27 AM. J. CRIM. L. 233, 244 (2000).
added that a suspension that provides for the student to miss more than ten days of school might require more formal procedures.\footnote{Goss, 419 U.S. at 584.}

\textit{Fuller v. Decatur Public School Board of Education School District}\footnote{78 F. Supp. 2d 812 (C.D. Ill. 2000).} was a controversial case involving a longer suspension. The case grabbed media headlines when the Reverend Jesse L. Jackson became involved with the defense of the six African-American defendants.\footnote{For a discussion of the controversy resulting from the melee, see Joseph T. Hallinan & Flynn McRoberts, Facts, Faces Behind Decatur Fight Coming into Focus, CHI. TRIB., Dec. 5, 1999, at 1.} The case revolved around a September 17, 1999 melee in the bleachers of a high school football game between Eisenhower High School and MacArthur High School. The altercation lasted approximately ten minutes, as the non-participants frantically scrambled to escape the violence. Although the fight did not involve any weapons, Ed Boehm, principal at MacArthur, claimed "he had never seen a fight of this magnitude in his twenty seven years in education."\footnote{Fuller, 78 F. Supp. 2d at 816.}

The following Monday, the three schools\footnote{Two students from Stephen Decatur High School, two from Eisenhower and two from MacArthur were involved in the incident. Id. at 816.} began an investigation into the altercation. All of the suspected participants were removed from their respective schools pending the resolution of the investigations. After completing the investigation, each school recommended that their students be suspended for two years. Principal among their reasons and consistent with the designs of zero tolerance policy, the students were suspended "because their behavior was unacceptable in the District."\footnote{Id. at 817.} To satisfy their due process requirements, the district's superintendent wrote the parents of each student a letter informing them of the charges against them and the date, time,
and place of the hearing in connection with their student's pending suspension.\textsuperscript{97}

The students brought two relevant constitutional claims for our purposes:\textsuperscript{98}

(1) An allegation that their procedural due process rights were violated because of the inadequacy of the notice of the hearings, namely, a failure on the part of the district to (a) allow them to confront their accusers, and (b) inform them of their appeal rights. Citing \textit{Goss v. Lopez} and \textit{Linwood v. Board of Education}, Judge McCuskey noted that due process only guaranteed the students an opportunity, after a reasonable notice of such opportunity, to be heard in a meaningful manner.\textsuperscript{100} Despite the stiffer penalties imposed as compared to the students in \textit{Goss}, the opinion was silent as to whether due process requirements should be heightened in cases where students face a significant deprivation of their right to a public education.

(2) An allegation that the district had engaged in racial discrimination in violation of the students' equal protection rights. A summary of expulsions imposed by the district from the beginning of the 1996-97 school year through October 5, 1999 demonstrated a statistical disparity in the number of African-American students that had been suspended as compared to their Caucasian classmates. Forty-six to forty-eight percent of the students in the district were African-American, but comprised eighty-two percent of the students expelled during that time period.\textsuperscript{101}

\textsuperscript{97} The students were charged with violating various provisions of the district's policies and procedures: Rule 10, Gang-Like Activities; Rule 13, Physical Confrontation/Physical Violence with Staff of Students; and Rule 28, Any Other Acts That Endanger the Well-Being of Students, Teachers, or Any School Employee(s). \textit{Id.} at 817.

\textsuperscript{98} The students also brought a claim that the district's policy against "gang-like activity" was void for vagueness. Judge McCuskey acknowledged that the District's need to craft and implement discipline policies was broad and such policies need not be as detailed as criminal statutes. \textit{See id.} at 826.

\textsuperscript{99} 463 F.2d 763 (7th Cir. 1972). \textit{Linwood} was another due process case where the student challenged an Illinois statute that granted boards of education the power to expel students for gross misconduct. The Seventh Circuit upheld the statute because it required that the offending student be given a hearing with sufficient notice thereof.

\textsuperscript{100} \textit{Fuller}, 78 F. Supp. 2d at 822.

\textsuperscript{101} \textit{Id.} at 824.
While the Court thought that the strong statistical evidence presented by the students might "lead a reasonable person to speculate that the School Board's decision was based upon the race of the students," statistics alone do not provide the foundation for an equal protection claim. In order to prevail on an equal protection claim, the students needed to be able to demonstrate that race actually served as a motive in the school district's disciplinary decision process. Merely showing that the school district's expulsions had a disparate statistical impact was not enough to prevail on the equal protection claim.

The enduring legacy left by Goss, Fuller, and similar due process cases involving student discipline is how difficult it is to successfully challenge state legislation converted into school district zero tolerance policies. School districts have learned that as long as they have a clearly defined disciplinary procedure in place and make that information available to parents and students, it remains exceedingly difficult for a court to tell professional educators that their policies have deprived students of either procedural or substantive due process rights.

C. Zero Tolerance Policies Send the Wrong Message

1. Racial Disparity. Despite the apparent decrease in juvenile crime in society in general, zero tolerance has made school suspensions into a booming business. In 1997, even before Columbine set the nation into a panic, the country's schools suspended over three million students, mostly for non-violent behavior. In Maryland, school districts suspended sixty percent of their students for the non-violent acts of "tardiness, truancy, disrespect, classroom disruption, and portable communication devices." Zero tolerance was initially conceived as a policy that was to be

102. Id.
104. Insley, supra note 23, at 1054.
105. Id. at 1055.
employed only upon commission of a select group of violent offenses. Its scope has now expanded to include such subjective offenses as "disrespect."

One of the most troubling aspects of zero tolerance policies is the uneven application of such policies to minority students. Fifty years after Brown v. Board of Education,\textsuperscript{106} we still have not achieved racial equality in education despite the Supreme Court's words in that seminal opinion:

Today, education is perhaps the most important function of state and local governments. . . . It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, must be made available to all on equal terms.\textsuperscript{107}

Skiba points to the fact that, in comparison to Caucasians, African-American students are "exposed more frequently to more punitive disciplinary strategies, such as corporal punishment, and receive fewer mild disciplinary sanctions when referred for an infraction."\textsuperscript{108} Skiba contends that several legitimate reasons for the discrepancy might exist. For example, although no less an indictment of zero tolerance policies, he observes that African-American students often come from a lower socioeconomic background and there is evidence that the disparity stems from wealth discrimination rather than racial discrimination.\textsuperscript{109} However, "race appears to make a contribution to disciplinary outcome independent of socioeconomic status."\textsuperscript{110}

Perhaps a more obvious explanation would be that minority students engage in more disorderly contact than do their white contemporaries. Numerous studies and articles have not supported this position.\textsuperscript{111} There is no evidence of more misbehavior on the part of minority stu-

\begin{footnotes}
\footnote{106. 347 U.S. 483 (1954).}
\footnote{107. \textit{Id.} at 493.}
\footnote{108. Skiba & Knesting, \textit{supra} note 71, at 31.}
\footnote{109. \textit{Id.}}
\footnote{110. \textit{Id.}}
\footnote{111. \textit{Id.} n.24 (citing four articles in support).}
\end{footnotes}
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dents. Skiba points to a study done by the Indiana Education Policy Center to explain the discipline discrepancy: Minority students are disciplined more frequently for engaging in subjective behavior.\textsuperscript{112}

It is not difficult to imagine how damaging such disparate treatment can be to a developing youngster. In her history class she is being taught that "all Men are created equal,"\textsuperscript{113} but in the next breath, she is being disciplined more severely than her white classmates for the same trivial cell phone violation.\textsuperscript{114} The message of zero tolerance that certain behavior is unacceptable in schools tends to get lost if the policy is applied in an uneven, unfair manner.

2. Alternative Education. What do suspended or expelled kids, who may have already displayed troubling tendencies, do when they are banned from attending school? Unfortunately, with little to no contact with adults and peers in an educational environment, outcast kids are more likely to drop out of school or to become defendants in the juvenile justice system. One study shows that suspended sophomores drop out of school at three times the rate of other students similarly situated.\textsuperscript{115} So why are we bouncing kids out of school at a record clip with little to no chance at bettering themselves and becoming happy, productive members of society?

The first reason has to be that there is no federal right to an education. \textit{San Antonio Independent School District v. Rodriguez}\textsuperscript{116} involved a challenge by minority students

\begin{flushleft}
\textsuperscript{112} \textit{Id.} at 31.

\textsuperscript{113} \textit{The Declaration of Independence} para. 2 (U.S. 1776).

\textsuperscript{114} Of course, if the student can prove this type of treatment, she may have a legal cause of action. \textit{See U.S. v. Armstrong}, 517 U.S. 456, 465 (1996) (holding that to "establish a discriminatory effect in a race case [under disparate treatment theory], the claimant must show that similarly situated individuals of a different race were not prosecuted").


\textsuperscript{116} 411 U.S. 1 (1973).
\end{flushleft}
who lived in school districts with a low property tax base. Because school districts are predominately funded through the collection of property taxes, which are based on property values as determined by the local assessor, students who lived in poorer school districts tended to receive an inferior education in comparison with wealthier districts. The students claimed this was a violation of the Equal Protection Clause.

The Court considered whether education could be classified a “fundamental” interest, entitling the students to added protection under the Equal Protection Clause. While acknowledging that it is doubtful that any child could succeed in life without the benefit of an education, the Court urged that “the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause.” Despite an interesting argument by the students that education should be classified as a fundamental interest because of its nexus with the exercise of other constitutionally protected activities like the right to vote and the right of free speech, the Court declined to find that education is a right guaranteed by the Constitution.

With no federal mandate for the States to provide their students with an education, the States are left to craft their own policies on education. New York is an example of a state that guarantees the provision of an education until the age of sixteen. Further, upon the suspension or expulsion of a student, New York requires the district to take “immediate” action to provide alternative education for a suspended or expelled student under the age of sixteen. Currently, New York is one of only a little over half of the fifty states that have legislation in place mandating alternative education.

117. See id. at 30.
118. Id.
119. See id. at 35-36.
120. See N.Y. EDUC. LAW § 3205(1)(a) (McKinney 2001).
121. See N.Y. EDUC. LAW § 3214(3)(e) (McKinney 2001).
An additional reason that states have been somewhat hesitant to impose mandatory alternative education for suspended students is simply the cost in doing so. Legislators perceive, perhaps correctly, any effort at instituting potentially costly benefits for students who have committed potentially criminal transgressions is not going to be politically popular. In Michigan, it is estimated that approximately $5,000 a year is expended for each student's education. While not an inconsequential figure, it is a drop in the bucket compared to the $243,000 to $388,000 that society spends on the average high school dropout over his or her lifetime. Not only is providing alternative education the right thing to do in order to afford all children the right to an education and a chance in life, but it makes sound financial sense.

Proponents of zero tolerance are quick to cite the budgetary crunch that many inner-city school districts face each year. Every dollar and minute that schools are forced to spend on disciplinary matters takes away from their primary function of educating kids. Zero tolerance is quick and administratively efficient. The recent increase in suspensions and expulsions for lesser offenses strongly suggests that teachers are using zero tolerance policies as a way to manage their classrooms. "Resorting to discipline in this way often exempts teachers from developing constructive strategies to resolve classroom conflict, such as


123. See Bogos, supra note 122, at 386.

124. See Howard N. Snyder & Melissa Sickmund, U.S. Dept of Just., Juvenile Offenders & Victims: 1999 National Report 82-83. The cost rises even higher if the dropout commits a crime or picks up a drug habit, where it will then cost somewhere between $1.7 million and $2.3 million dollars over his or her lifetime. See id. Also consider that forty-six percent of prisoners currently residing in New York State penitentiaries hail from New York City's sixteen worst public schools. Loic Wacquant, Deadly Symbiosis: When Ghetto and Prison Meet and Mesh, in Mass Imprisonment: Social Causes and Consequences 101 (David Garland ed., 2001).

cooperative discipline, that lead students to make responsible rather than obedient choices." Instead of encouraging teachers to work with struggling kids who may be crying out for attention, zero tolerance policies enable educators to wash their hands of the problem, to the detriment of the child.

D. Zero Tolerance Policies Simply Do Not Work

Despite all of the negative effects zero tolerance policies have on students, the most disconcerting fact is that there is no evidence that they work. Plagued by bad press and uneven administration, zero tolerance has been in existence for almost fifteen years with no documented record of even minimal success. Violence among school-age children overall has decreased since 1993 and is probably responsible for any concurrent decrease in violence on school property. Most commentators have suggested zero tolerance policies completely fail to redress the underlying problems that lead to the outbreak of student violence and instead exacerbate many of the insecurities felt by school-age children, especially pre-teens and teens. The most awkward time in life is generally acknowledged to be early in high school, a time where one's sense of belonging is critical to self-esteem. Zero tolerance isolates students from educa-

126. Id.
128. See Skiba & Knesting, supra note 71, at 35.
129. See supra Part I.
130. See Morrison, supra note 127, at 56-57 ("Expelling a child from school may act to alienate him or her further from the learning environment and those in it and may even intensify those troubling behaviors targeted for elimination"); Tebo, supra note 78, at 40 (describing underlying factors that tend to be ignored by educators and that zero tolerance policies may actually hinder the reporting of children who need intervention because kids feel that those that are reported will be dealt with severely instead of receiving counseling or other assistance).
131. Evidence of this fact can be found in the writings of Eric Harris and Dylan Klebold. Harris in his personal journal: "I hate you people for leaving me
tors and minimizes their attachment to teachers and other students.\textsuperscript{132}

Zero tolerance penalties would not have stopped the shooters in Littleton or in Springfield. In many of these cases, the students were too far removed from reality for any type of deterrent to have any effect on their behavior. In order to prevent violent incidents from occurring in schools, we must raise the overall consciousness level of the faculty and students.

IV. PROFILING AND TRAINING

A. Restrained Utilization of Profiling May Help Prevent School Violence

The most effective way to counter violent tendencies among students is for school districts to have a faculty that understands how to make the determination that a student may become violent. Schools seem to be making an effort to better educate their teachers and staff as to what they need to be looking for so that they can catch and interpret warning signs without alienating the student body.

Educators are hesitant to use the word "profiling" and insist that by identifying troubling tendencies they are only maintaining a proper level of vigilance.\textsuperscript{133} Indeed, the

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out of so many fun things." \textsc{Sheriff's Report, supra} note 6. Klebold's writings: "I swear—like I'm an outcast, and everyone is conspiring against me . . ." and "The lonely man strikes with absolute rage." \textit{Id.} Popular culture is often a good barometer as to the state of the nation's teenagers. The band "Good Charlotte" released a song dedicated to all of their fans who had written them contemplating suicide. \textit{See Good Charlotte, Hold On, on Young and the Hopeless} (Sony Music 2002).

132. \textit{See} \textsc{Insley, supra} note 23, at 1070 (arguing that "harsher punishments often intensify a student's adversarial feelings toward adults and destroy a student's motivation to learn").

133. Profiling was first instituted by law enforcement agencies to alert their officers as to potential criminals by using a composite of traits or attributes commonly thought to be common among criminals and comparing those traits to suspects of police investigations. Profiling obtained its bad reputation because it was most often used against minorities, instituting protests and lawsuits claiming racial discrimination. \textit{See} American Civil Liberties Union, \textit{ACLU Calls for Congressional Action on Racial Profiling} (Apr. 14, 1999) (issuing statement of Laura W. Murphy, Director of ACLU Washington
various agencies that have compiled the traits of school shooters have cautioned against an overaggressive use of these checklists. Developing a profile by comparing the students who had turned violent seems like a rational response to prevent the same from happening in other school districts. However, "in practice, trying to draw up a catalogue or 'checklist' of warning signs to detect a potential school shooter can be shortsighted, even dangerous.... In fact, a great many adolescents who will never commit violent acts will show some of the behaviors or personality traits included on the list." Much as zero tolerance policies have the potential to stigmatize impressionable students and leave them distrustful of authority, aggressive profiling can have the same effect. The FBI's threat assessment manual recommends that profiling not be used until after a threat against the school has been made. Only after the threat has been evaluated and classified as a low, medium, or high level threat may the school take into account four other factors: The personality of the student, the student's family dynamics, school dynamics and the student's role in those dynamics, and the student's social dynamics.

Particularly relevant for purposes of this Comment is the personality of the student. While the FBI issues a fairly comprehensive list of characteristics that may signal dan-

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135. Id. at 2-3.

136. See id. at 10 (describing the recommended threat assessment process, in which a threat is made by a student, the threat is independently evaluated, and then the student's characteristics and background are used to assist in the evaluation of the threat).

137. Generally, the FBI asserts that the more direct, specific, and realistic the threat is, the more seriously it should be taken. See id. at 8-9.
ger once a threat has been issued, several strike me as being particularly noteworthy:

(1) “Leakage”—The FBI defines “leakage” as occurring “when a student intentionally or unintentionally reveals clues to feelings, thoughts, fantasies, attitudes, or intentions that may signal an impending violent act.” Leakage can be found in a student’s class work, conversations with teachers or other students, or even in internet chat rooms. It can be an attempt by the student to call attention to himself, an attempt to signal others as to the presence of inner conflict. The FBI considers leakage to be “one of the most important clues that may precede an adolescent’s violent act.”

(2) Romantic rejection—A failed romance often brings about intense feelings of rejection and humiliation in adolescents, who have little to no experience in dealing with the opposite sex.

(3) Narcissism—“The student is self-centered, lacks insight into others’ needs and/or feelings, and blames others for failures and disappointments.” Narcissistic students

138. For a full list of characteristics identified by the FBI, see id. at 16-21. Other government agencies have issued similar lists to the FBI’s, with similar cautionary instructions as to their usage and potentially damaging effects if misused. See, e.g., U.S. DEP’T OF EDUC., supra note 29, at 8-11 (1998); Nat’l Sch. Safety Ctr., Checklist of Characteristics of Youth Who Have Caused School-Associated Violent Deaths, at http://www.nssc1.org/reporter.checklist.htm (last visited Jan. 15, 2004).


140. Jeff Weise maintained a fairly violent presence on the internet. He created violent animation that eerily foreshadowed the violence he visited on Red Lake. In that cartoon, a man kills others with a rifle, throws a hand grenade into a police car, and finally kills himself by firing a pistol into his mouth. Monica Davey & Jodi Wilgoren, Signs of Danger Were Missed in a Troubled Teenager’s Life, N.Y. TIMES, Mar. 24, 2005, at A1. When Weise updated his Yahoo user profile in June of 2004, he used “verlassen4-20” as a username, combining the German word meaning “forsaken” with Adolf Hitler’s birthday. He said that his nickname was “Totenkopf,” German for “death’s head” or “skull.” He altered his picture so as to appear he had monster’s teeth and empty eyes. Id.

141. See O’TOOLE, supra note 134, at 16.

142. Id.

143. See id. at 17. See also notes 19-22 supra and accompanying text.

144. O’TOOLE, supra note 134, at 18.
often display an attitude of self-importance that hides feelings of inferiority.145

(4) Alienation—Alienation involves more than just being a “loner.” It involves a profound sense of sadness in not fitting in with classmates or with society in general.146 As articulated above, Harris and Klebold felt their peers excluded them.147

(5) Intolerance—“The student often expresses racial or religious prejudice or intolerant attitudes toward minorities, or displays slogans or symbols of intolerance in such things as tattoos, jewelry, clothing, bumper stickers, or book covers.”148

As discussed earlier, the FBI recommends that these student characteristics only be considered after a threat has been made.149 However, I maintain that with a constrained referral system in place using a list of troublesome characteristics, teachers can be an invaluable resource in combating school violence. This approach is more in line with the recommendations of the Department of Education: “School communities must ensure that staff and students only use the warning signs for identification and referral purposes – only trained professionals should make diagnoses in consultation with the child’s parents or guardian.”150 Teachers should be trained to identify children that are at risk of becoming violent and then to make prompt referral to a school psychologist or other designated professional.151

145. Id.

146. See id. See also KATHERINE S. NEWMAN, RAMPAGE: THE SOCIAL ROOTS OF SCHOOL SHOOTINGS 152 (2004) (opining that school shootings are a mechanism whereby school shooters express their “anger with an entire social system that has rejected them”).

147. See SHERIFF’S REPORT, supra note 6.


149. In fact, student threat assessment has spawned a cottage industry. Mosaic-2000 is a computer program that assists school districts in evaluating potential threats. See generally Jodie Morse, Looking for Trouble, TIME, Apr. 24, 2000, at 50.


151. Due to budgetary constraints, many schools do not have a school psychologist at their disposal. Easy access to such a professional is essential to the success of any referral program. Those districts that do not have such a luxury may consider seeking such services on an as needed basis.
In instructing teachers to identify warning signs in their students, it is imperative to inform them that no one sign is dispositive and that most students at one time or another in their lives may demonstrate one or more of the characteristics exhibited by school shooters. However, when in doubt, it is best to err on the side of safety and consult with a professional. It is recommended that a parent or guardian should be contacted upon the manifestation of characteristics that may indicate violent tendencies.

B. The Therapist's Dilemma—How Tarasoff Complicates Profiling

In assessing whether students pose a threat to themselves or their schools, psychologists face potential civil liability for failing to take appropriate action to protect others, depending on the State in which they reside. In Tarasoff v. The Regents of the University of California, the Supreme Court of California determined that a therapist may be held liable for failing to protect a third party whom she reasonably feels may be at risk for attack by her patient.

Tarasoff involved a psychologist by the name of Dr. Moore. The Doctor had a patient, Poddar, who, two months prior to the assault, confided his intention to kill one Tatiana Tarasoff. Dr. Moore, believing his patient's threat to be credible, directed the campus police to take Poddar into custody. Poddar was briefly detained, but eventually released. Dr. Moore did not warn Tatiana or her family of the threats made against her by Poddar, and he eventually carried out his threat. Tatiana's mother and father sought to hold Dr. Moore liable for his failure to warn their daughter of Poddar's murderous intentions.

The Defendants sought to establish that they owed Tatiana no duty of care and, in the absence of such duty, were free to conduct themselves as they saw fit. The Court


153. Besides Dr. Moore, named defendants also included Drs. Gold and Yandell, psychiatrists at Cowell Memorial Hospital who concurred in Dr. Moore's decision to detain Poddar, and Dr. Powelson, Dr. Moore's supervisor who overruled his decision to detain Poddar and ordered him to be released. See id. at 339-40.
agreed that, at common law, one person generally owes no duty to control the conduct of another or to warn others that may be affected by such conduct. However, the Court cited Section 315 of the Restatement (Second) of Torts, explaining that such a duty of care may attach from either "(a) a special relation...between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation...between the actor and the other which gives to the other a right of protection." While the Defendants had no such relationship as to Tatiana, they did have a doctor-patient relationship with respect to Poddar. "Such a relationship may support affirmative duties for the benefit of third persons."

The Defendants next contended they should be under no duty to warn third parties because of the difficulty involved in predicting whether a patient will actually carry out his threat. The Defendants were supported by the American Psychiatric Association and other similarly situated professionals who argued that predictions in this regard were more likely to be wrong than right. The Court was not persuaded by this argument, countering that the therapist need only exercise a reasonable degree of care, that which would normally be exercised by other therapists under similar circumstances.

The last argument pressed by the Defendants revolved around the psychotherapist-patient privilege. In order for a patient's treatment to be effective, that patient must be able to expect that anything revealed to the therapist for purposes of treatment will remain confidential. A patient will not reveal homicidal tendencies to his doctor if there is a chance his therapist might expose him to criminal or civil liability, but instead will seek to conceal bad thoughts and intentions, preventing his rehabilitation. The Court recognized the importance of the privilege, but insisted, "[a]gainst this interest... we must weigh the public interest

154. See id. at 343.
155. Id.
156. Id. at 343.
157. See id. at 344-45.
158. Tarasoff, 551 P.2d at 345.
in safety from violent assault.”\textsuperscript{159} The Court pointed out that the California Legislature had already engaged in such a balancing test and had concluded that the privilege did not bar a therapist from revealing the privileged communication if it was necessary to protect the patient or the person or property of a third party.\textsuperscript{160} Succinctly stated, “the protective privilege ends where the public peril begins.”\textsuperscript{161} Therefore, the holding of \textit{Tarasoff} is as follows:

When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever steps are reasonably necessary under the circumstances.\textsuperscript{162}

It is not difficult to imagine a situation in which a school psychologist is faced with a problem that would be dictated by the \textit{Tarasoff} decision.\textsuperscript{163} Columbine could have presented such a scenario, as Eric Harris had been seeing a therapist.\textsuperscript{164} If he had made a threat in the presence of his therapist, the therapist would have been under a duty to assess the threat to the best of his professional ability and warn any potential victims. Predicting future violent behavior can be even more difficult when dealing with children. Plaintiff’s attorney Michael Breen makes some suggestions for school psychologists seeking to discharge

\textsuperscript{159} Id. at 346.
\textsuperscript{160} See id. at 346-47.
\textsuperscript{161} Id. at 347.
\textsuperscript{162} Id. at 340.
\textsuperscript{163} Not all jurisdictions have adopted \textit{Tarasoff}’s holding that a therapist can be held liable for the misdeeds of his patient. See, e.g., Mason v. HIS Cedars Treatment Ctr. Inc., No. 05-98-00832-CV, 2001 Tex. App. LEXIS 5494, at 16 (Tex. App. Aug. 15, 2001) (observing that Texas has not adopted the \textit{Tarasoff} decision), rev’d on other grounds, 143 S.W.3d 794 (Tex. 2004).
\textsuperscript{164} See SHERIFF’S REPORT, supra note 6.
their *Tarasoff* duties. Among his suggestions, Breen urges mental health professionals to treat their patients aggressively. Therapists cannot be reluctant to detain patients that may present a threat, nor can they be hesitant to involve law enforcement officials. Although therapists can seek guidance from a recommendation like Breen's, the fact is that *Tarasoff* puts therapists between a rock and a hard place: They must balance their duty to protect the public against the violent acts of their patient, yet their profession dictates they zealously guard against the revelation of their patient's communications. If they do not refer a patient to law enforcement who communicates violent sentiments and then acts on them, a legitimate cause of action may be maintained against the therapist. Breen believes that a clever plaintiff's attorney could make this kind of situation into an extremely large jury award because *Tarasoff* is now almost thirty years old and the mental health profession has done little to address the issue. A plaintiff's attorney could paint the profession's refusal to address the issue as irresponsibility and a blatant disrespect for the law.

Despite the potential legal pitfalls that could snag unwary therapists, a system in which school teachers are trained to recognize certain troubling behaviors in their students and then refer those students to mental health professionals for further supervision may go a long way to protect students from violence.


166. See *id.* at 199.

167. See *id.* at 196-97.
[E]ducation is the silver bullet. Education is everything. We don't need little changes. We need gigantic, monumental changes. Schools should be palaces. The competition for the best teachers should be fierce. They should be making six-figure salaries. School should be incredibly expensive for government and absolutely free of charge to its citizens, just like national defense. That's my position. I just haven't figured out how to do it yet.169

The most difficult task in government is not figuring out how to make people's lives easier. There are plenty of talented individuals in Washington with great ideas. The problem almost inevitably is money. If you cannot devise a way to pay for a piece of legislation, it is dead before it even draws its first breath. Nowhere is this fact more apparent than in education. It hardly comes as a surprise that the most violent schools are traditionally the most under-funded.170

A. Inadequate Infrastructure

One of the most persistent problems facing schools today is the ever-increasing size of public schools. Teachers, especially in urban areas, face unmanageable class sizes, making it difficult to give the proper amount of attention to those students who may be experiencing problems or even to identify those students. Studies have found an empirical link between school size, class disruption, and

168. Obviously there are many societal and social factors that, on some level, contribute to school violence. One of the most prominent among these is an abusive home environment. Although domestic violence and its contributions to school violence are beyond the scope of this Comment, the interested reader may see Jeffrey J. Haugaard & Margaret M. Feerick, The Influence of Child Abuse and Family Violence in the Schools, in SCHOOLS, VIOLENCE, AND SOCIETY 79 (Allan M. Hoffman ed., 1996); Susan F. Cole & M. Geron Gadd, Family and Community Responses to School Violence: Uncovering the Roots of School Violence, 34 NEW ENG. L. REV. 601, 604-05 (2000).


academic achievement. Smaller schools and classes "have fewer discipline problems, lower dropout rates, higher student participation levels, and steadier academic progress." Even Columbine, located in a well-to-do suburban area, was a massive institution, a place where the average student can get lost in the din. As the country's population has expanded its demographics shifted, schools have not been built or expanded at the same rate. To give overburdened teachers the ability to give each student the proper attention, States and school districts must find funding to build up school infrastructure.


173. See Gibbs, supra note 6, at 29 ("It was all out in the open, all the needles and threats, but in a school of nearly 2,000 busy, ambitious kids, that quiet hissing sound was just background noise . . . .").

174. See Sara Mead, Policy Report: School Construction, 2001 PROGRESSIVE POL'Y INST. 3 (June 2001) (revealing that Florida's Miami-Dade County would need to add one elementary school per month to meet the influx of new students while Nevada's Clark County, the fastest growing school district in the country, will need to make room for 150,000 new students by the year 2010), at http://www.ndol.org/documents/school-construction.pdf (last visited Feb. 28, 2005). Not only is the country in need of more schools, but existing schools are in disrepair. Cleveland's East High School had its gymnasium roof collapse in October of 2000. Id. at 2. The average school building is about forty years old, an age where buildings start to deteriorate rapidly. Id.

175. As mentioned above, this is easier said than financed. Mead suggests the creation of state or regional infrastructure banks to provide funding for school construction. The federal government would provide the initial capital to these institutions, who would then use the funds to make low-interest loans and other flexible financing options available to local school districts. As these loans were repaid, the infrastructure banks would eventually become self-sustaining.
School districts must develop clear, sensible disciplinary codes. Punishment should be proportionate to the offense. "If the only tool you have is a hammer, you tend to see every problem as a nail.' Every problem is not a nail, of course, and schools must recognize that every threat does not represent the same danger or require the same level of response."

Every effort should be made to obtain the input of the student body, especially in connection with student discipline. I would recommend the formation of a task force at every school with the overarching goal of building a community founded upon mutual respect. The task force would be comprised of school administrators, teachers, parents, and students. And by students I do not mean, exclusively, the academic elite. Every effort should be made at obtaining a truly representative collection of students from every social clique in each school to ensure that any of the task force's actions do not perpetuate the exclusivity seen in schools like Columbine. The task force would meet once a month to discuss any and all matters affecting the school. It is essential that administrators and teachers see how their policies will affect the student body and obtain feedback in a forum that encourages the free flow of ideas between adults and students. Teachers and administrators should instill responsibility in their students for the welfare of the school and their peers. Often, students have information that, if made known to the proper authorities, could prevent violent behavior. "By involving young
people in solving the problem of youth violence rather than imposing a 'treatment' on them, youth summits have a positive impact on young people's behavior as responsible citizens.” By giving as large a group of students as possible a stake in the process, students will be more likely to take ownership of their schools and to report suspicious behavior if they know they are doing so to protect themselves and their friends.

Teen summits have been experimented with across the country and have been largely successful. The Wyoming Bar Association gave students across the State the opportunity to meet one another and discuss ways to prevent violence. Some of the students attending this summit decided that they would benefit from the creation of teen courts and successfully lobbied the state legislature in 1996. The Wyoming teen summit suggests that not only do such summits provide students with a meaningful opportunity to address issues important to them, but can also produce long-lasting, beneficial change.

C. Make In-School Suspension More Than Just “Out of Sight, Out of Mind”

When punishments like in-school suspension are imposed, students too often find themselves engaged in busy work that fails to make productive use of their time. Very little effort is made to actually discover how the reporting of potentially dangerous student behavior by instituting a campaign called “Silence Hurts.” Drop boxes are placed around schools so that students can anonymously report any trouble brewing on the horizon. The anonymous aspect of the program is particularly important because most students do not report dangerous situations because they fear retaliation or that they will somehow get themselves into trouble with school authorities. Rene Sanchez, Red Lake School Shooting: Vigilant, but Still Vulnerable, MINNEAPOLIS STAR TRIB., Mar. 23, 2005, at 12A.


180. See id. For the resulting Wyoming legislation, see WYO. STAT. ANN. §§ 7-13-1201 to 1205 (Michie 2003).

181. See Adams, supra note 125, at 146-47 (discussing the inadequacies of in-school suspension (“ISS”) and the fact that students often end up in ISS because their middle-class teachers can not maintain order in a socially diverse classroom).
student ended up there or why the student acted as he did. At a Philadelphia middle school, psychiatrist Paul J. Fink, in collaboration with the school's principal, converted one such in-school suspension program into an “Alternative Learning Center.” The busywork was set aside; instead, the children and the teacher engaged in a group discussion on values, affects, problems, and issues that were burning in these children's minds but that they had never openly discussed. As a result of this collaborative effort, disciplined students learned that teachers were not enemies to avoid at all costs, but genuinely cared about them and their education. Furthermore, the school allowed students to attend the Alternative Learning Center whenever they had a problem, regardless of whether they had been assigned as punishment.

D. Promote Academic Achievement

Perhaps most importantly, schools must maintain an atmosphere that academic achievement is both vital and attainable. Too often, talented students lose interest in school, finding nothing in the school environment to motivate them. “Effective schools convey the attitude that all children can achieve academically and behave appropriately, while at the same time appreciating individual differences.” Students that are unsuccessful in school tend to present the biggest behavioral problems.

182. For more on the shortcomings of in-school suspension, see Brent E. Troyan, Note, The Silent Treatment: Perpetual In-School Suspension and the Education Rights of Students, 81 Tex. L. Rev. 1637 (2003).


184. Id. at 238.

185. See id.

186. Dylan Klebold was placed in a school for gifted children when he was in elementary school and was a talented young man, even building his own home computer. See SHERIFF'S REPORT, supra note 6.


188. Id. ("Students who do not receive the [academic] support they need are less likely to behave in socially desirable ways."). See also Eugene Maguin & Rolf Loeber, Academic Performance and Delinquency, 20 CRIME & JUST. 145 (1996) (concluding that academic performance is related to delinquency).
Many schools maintain an honor roll for academic achievement. Realistically, not every student will be blessed with enough native ability to attain that goal. However, if schools were to recognize students who had improved their marks over the previous grading period, every student would have an opportunity to be recognized for academic achievement. Instituting a "most improved" category to the honor roll may give struggling students something to which they can aspire. If a student is recognized for the first time in his or her life for academic achievement, they may be encouraged enough to push themselves a little harder.

E. Facilitate the Sharing of Information Amongst Relevant Staff

The aftermath of school shootings is often characterized by a familiar lamentation amongst the community and school administrators: "Why didn't we see this coming?" Part of the reason has to be that schools are ill-equipped to deal with the detailed information that they receive about their students. When a student begins a new academic year, his records from previous years usually do not make it into the hands of his new teacher because schools believe that each student should begin the new year with a "clean slate," unfettered by his past transgressions. Schools tend to be zealous protectors of student information, so much so that records pertaining to students' health, academic progress, peer relationships, home lives, and disciplinary records often go unseen by the teachers and other school

189. See Davey & Wilgoren, supra note 140 (quoting Jeff Weise's step-aunt: "Everything was laid out, right there, for the school or the authorities in Red Lake to see it coming. I don't want to blame Red Lake, but did they not put two and two together?").

190. NEWMAN, supra note 146, at 81.

191. Id. at 87. See generally ROBERT ROSENTHAL & LENORE JACOBSON, PYGMALION IN THE CLASSROOM: TEACHER EXPECTATION AND PUPILS' INTELLECTUAL DEVELOPMENT (1968) (explaining that teachers often base their treatment of a student on what they expect to see from them both academically and behaviorally).

personnel that interact with and supervise students on a daily basis.\textsuperscript{193}

In many of the recent school shootings, “there was sufficient evidence that they [the eventual shooters] needed more help and guidance, but because no individual had the whole picture about any of these boys, no one recognized the depth or seriousness of their problems.”\textsuperscript{194} In order for teachers and school administrators to be able to help potentially lost kids, they must have all available information on their students. Any teacher, guidance counselor, or school administrator that interacts significantly with a student must be given the necessary information at the beginning of each school year to ensure that warning signs are not missed and that students are given the appropriate amount of attention.\textsuperscript{195}

VI. CONCLUSION

While revamped legislation would be helpful, the real onus to prevent school violence falls on educators, parents, and students themselves. New legislation is unlikely to deter students who have deteriorated to the point where they are contemplating a school shooting. The key is to help them before they reach the breaking point by nurturing, not punishing. Time and resources will be constraining factors, and this is where federal and state legislators can make a difference. There are plenty of innovative models out there for schools to incorporate if only they had the time and money to undertake such an experiment. By increasing the quality of education and amount of attention students are receiving, subsidiary problems like school violence will take care of themselves. A renewed commitment to traditionally underfunded public schools on the part of legisla-

\textsuperscript{193} Newman, supra note 146, at 81.

\textsuperscript{194} Id. at 109.

\textsuperscript{195} The dissemination of information recommended here should not be construed as espousing external release of records to the community unless required by law. See Susan P. Stuart, Fun With Dick and Jane and Lawrence: A Primer on Education Privacy as Constitutional Liberty, 88 Marq. L. Rev. 563, 564-66 (2004) (arguing that children should not receive less protection than adults under the Due Process Clause and that students have a legitimate privacy interest in their school records as a result of the Supreme Court’s ruling in Lawrence v. Texas, 539 U.S. 558 (2003)).
tors, teachers, parents, and communities would go a long way toward alleviating many of the problems faced by today's students.