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ARTICLES

SCHOOL VIOLENCE: PROTECTING OUR CHILDREN AND THE FOURTH AMENDMENT

Donald L. Beci*

"Without saying a word, a 15-year-old boy bearing a grudge and carrying a stolen .38-cal. Smith & Wesson revolver shot and killed two fellow students . . . ."1

"[P]olice discovered that a middle school student had kept a sawed-off shotgun in his locker."2

"[A] 13-year-old boy came to school with a loaded .22-caliber rifle and took his teacher hostage . . . ."3

"[A]n angry 12-year-old boy tried to strangle one kid and took a tire chain to two others at school."4

"[I]n the fatal stabbing of a 14-year-old girl [while in classroom,] . . . [h]er former boyfriend was charged with first-degree murder."5

"A Grade 3 student in Chicago pulled a handgun out of his bookbag and shot another student in the spine."6

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Presently, school violence is reaching such extreme degrees that government officials may feel compelled to sacrifice constitutional principles in order to protect children. Although school boards and legislatures will undoubtedly consider several methods of protection that are constitutionally acceptable under the Fourth Amendment search and seizure doctrine, this laudable effort to improve the safety of children while at school will include other methods that are patently unconstitutional. Of greater significance is the plethora of approaches which will fall within the questionable gray area where their constitutional permissibility under Fourth Amendment jurisprudence is uncertain. In society’s zeal to protect school children, the methods that are ultimately pursued, and which the Supreme Court Justices allow, will have significant constitutional implications.

This Article will address the potential negative implications that efforts to improve school safety may have on the evolution of Fourth Amendment jurisprudence. Specifically, Part I of this Article identifies the escalating degree of weapon-related violence occurring within elementary and secondary schools. Part I argues that although this school violence is an additional


8. The focus of this Article is on weapon-related violence. Neither drug searches, nor procedures directed toward reducing physical violence perpetrated without weapons, will be addressed. For a discussion of school drug searches, see Mary A. Shaughnessy, Sniff Searches in Public Schools: Are They Allowed?, 20 J.L. & EDUC. 391 (1991) (discussing whether sniff searches are unconstitutional); see also Schaill v. Tippecanoe County Sch. Corp., 864 F.2d 1309, 1318-22 (7th Cir. 1988) (holding that random urinalysis program did not violate Fourth Amendment); Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 481-82 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983) (holding that canine inspection of student without individualized suspicion is an unjustified intrusion); Brooks v. East Chambers Consol. Indep. Sch. Dist., 730 F. Supp. 759, 766 (S.D. Tex. 1989) (rejecting the state’s claim to a compelling interest in conducting warrantless urine tests on students participating in extracurricular activities), aff’d, 930 F.2d 915 (5th Cir. 1991); Doe v. Rennfrow, 475 F. Supp. 1012, 1022 (N.D. Ind. 1979) (holding that canine search is constitutional), aff’d in part, remanded in part, 631 F.2d 91 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1982); Kathleen M. Dorr, Annotation, Validity. Under Federal Constitution, of Regulations, Rules, or Statutes Allowing Drug Testing of Students, 87 A.L.R. FED. 148 (1988).

9. While several interesting Fourth Amendment issues arise in the higher education setting, this Article is limited to searches and seizures at the elementary and secondary school
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symptom of the deterioration of family and individual values, the community nevertheless has an immediate ethical and legal duty to protect children, particularly when it requires them to attend school. Part II reinforces the applicability of the Fourth Amendment to school situations, and addresses the penalties which can be imposed upon a school official who conducts an unconstitutional search. Part II also considers some of the methods employed by public schools to enhance school safety, such as locker searches, magnetometer searches, and strip searches, as well as the typical search of an individual's possessions. This section then examines the compatibility of various protective measures with evolving Fourth Amendment jurisprudence.

Part III addresses some of the specific repercussions that efforts to provide safer schools may have on evolving Fourth Amendment jurisprudence. These negative consequences arise out of the following queries. First, what lessons are these actions to improve school safety teaching students about the community's attitude toward personal liberty and privacy? Second, in seeking to achieve the goal of protecting children, will society continue to provide greater protection against arbitrary searches and seizures to adults than it provides to children while in school? Third, if the Supreme Court succumbs to the temptation to issue politically popular, result-oriented decisions in a piecemeal fashion without regard to established Fourth Amendment precedent, what will guide school boards and legislatures when called upon to approve novel approaches for enhancing school safety? Finally, to what degree will the Court permanently alter the balance of Fourth Amendment interests by strengthening public safety while thwarting individual privacy and personal liberty?

Finally, Part IV suggests possible methods of reducing school violence, which are conducive to instilling respect for individual privacy and liberty. The community must not choose one goal to the exclusion of the other. Rather, the community must achieve both goals by protecting children from school violence while teaching and demonstrating respect for personal privacy and individual liberty. The approaches taken to protect children while in school will challenge, stretch, and ultimately redefine the Fourth Amendment as it is currently understood. The significance of such implications will levels and does not address searches and seizures in dormitories and at universities in general. See generally Michael L. Keller, Comment, Shall the Truce be Unbroken: New Jersey v. T.L.O. and Higher Education, 12 J.C. & U.L. 415 (1985) (discussing searches and seizures at the postsecondary education level).

10. The focus of this Article is limited to state-supported public schools, as the Fourth Amendment does not regulate the conduct of purely private citizens who act without government involvement. Burdeau v. McDowell, 256 U.S. 465, 475 (1921).
go far beyond whether the assistant principal is successful in finding anything when searching a student's bookbag.

I. PROTECTING CHILDREN FROM VIOLENCE WHILE IN SCHOOL

School children are inflicting violent harms upon each other at an alarming rate.\(^\text{11}\) A large portion of this violent behavior is weapon-related.\(^\text{12}\) The community has an immediate responsibility to protect children from this escalation of violence. Indeed, school officials have both a moral duty and a legal duty to protect students from such violence.

In a recent national survey\(^\text{13}\) of school crime conducted over a six month period, approximately one-half million American children reported experiencing one or more violent crimes while at school.\(^\text{14}\) Students numbering approximately three times that figure reported being the victims of property crimes.\(^\text{15}\) When asked about their experiences with all crimes, not just those that were violent or involved property, nearly two million children reported being victimized at least once at school during the six-month period.\(^\text{16}\) Twenty-two percent of all children feared an attack at school, and almost one-half million of them reported taking a weapon to school to protect themselves.\(^\text{17}\)

Unfortunately, the school environment is simply a microcosm of larger society; thus, the tremendous level of school violence is just one symptom signaling the deterioration of family, community, and individual values in our culture.\(^\text{18}\) A complete, long-term solution would therefore require heal-

\begin{footnotesize}
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\item See Martin Halstuk, Increased Alarm Over Guns at School, S.F. CHRON., Aug. 3, 1992, at A14 (reporting that San Francisco schools confiscated fifteen guns and 119 knives from high school students, twenty guns and twenty-two knives from middle school students, and three guns and ten knives from elementary school students); Carol Innerst, Pistol-Packing Kids Put School on Alert, WASH. TIMES, Aug. 23, 1992, at A1 (reporting that District of Columbia schools confiscated 242 weapons from students, a 91% increase over the previous year); see also John H. Lee, Student, 13, is Arrested for Threats with Pistol, L.A. TIMES, Jul. 18, 1992, at B3; Andrew Martin, 8th-Grade Girl Stabs Classmate, CHI. TRIB., Sept. 18, 1992, at 6; Steven R. Reed, 6 Wounded in School Shooting Spree, HOUS. CHRON., Sept. 12, 1992, at A1; Student Opens Fire in School, UPI, Sept. 21, 1992, available in LEXIS, Nexis Library, Wires File.
\item BASTIAN & TAYLOR, supra note 11.
\item Id. at 1.
\item Id.
\item Id.
\item Id. at 10-12.
\item For a contemporary discussion of family, community, and individual values, see Howard Fineman, Playing on the 'V Word,' NEWSWEEK, June 8, 1992, at 23; Joe Klein, Whose Values?, NEWSWEEK, June 8, 1992, at 19; Eloise Salholz et al., Values in the Classroom, NEWSWEEK, June 8, 1992, at 26.
\end{enumerate}
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ing the underlying ills responsible for deteriorating values.\textsuperscript{19} Such a solution, which is also the solution to many other problems facing society, is beyond the scope of this Article. Rather, this Article addresses the specific steps being taken by schools to reduce violence and the effect these efforts may have on the evolution of Fourth Amendment doctrine.\textsuperscript{20}

\section{An Ethical Obligation to Protect Children in the School Environment}

The community has a moral responsibility to protect children while in school, particularly since it mandates that the children attend school. All states require compulsory school attendance either legislatively or through constitutional provision.\textsuperscript{21} A state’s authority to require compulsory school attendance is justified under the common law doctrine of \textit{parens patriae}.\textsuperscript{22} In fact, a state’s interest in providing for the well-being and education of minors is so great that it normally has the power to require school attendance over parental objection.\textsuperscript{23} Indeed, a state’s power may even extend to requiring school attendance despite the child’s or parent’s religious beliefs objecting to such education.\textsuperscript{24} Because a state requires such school attendance, it has a moral duty to maintain student discipline\textsuperscript{25} and to protect children from violence that occurs while they are attending the very schools to which the state has bound them to attend. This argument does not advo-

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\item Such a comprehensive, long-term solution would also seek to alleviate the individual isolation and “disempowerment” currently being endured by many members of our society.
\item The course of action pursued by school boards will affect a number of constituents. These include students, administrators, parents, and teachers. The various constituents may have competing demands and preferences. While school boards will undoubtedly be concerned with the political implications of these demands and preferences, this Article does not address such political considerations.
\item Prince v. Massachusetts, 321 U.S. 158 (1944).
\item \textit{Id.} at 166.
\item Theories of discipline, and the legal requirements relating to student discipline, will not be addressed in this Article. \textit{See generally} Ingraham v. Wright, 430 U.S. 651, 671 (1977) (noting that while other legal remedies may be available to a student, the Eighth Amendment does not prohibit a school official from inflicting corporal punishment on a student); Fee v. Herndon, 900 F.2d 804 (5th Cir.) (discussing Ingraham and the constitutionality of corporal punishment), \textit{cert. denied}, 111 S. Ct. 279 (1990).
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cate that in fulfilling the ethical obligation to protect students, a state should repeal its compulsory school attendance laws. Nor does it advocate that a state close its public schools26 in favor of increasingly popular, alternative educational arrangements, such as private schools27 and home schooling.28 Historically, the American people have consistently placed great value on public education,29 and claims have been made that children benefit from being educated in a collective classroom environment rather than in individual seclusion at home.30 Although some argue, superficially, that the state should not require children to attend schools if it cannot guarantee their

26. Students do not have a fundamental right to a public education under the federal Constitution. Arguably, therefore, unless prohibited by its own law, a state could close all of its public schools. See Plyler v. Doe, 457 U.S. 202, 221 (1983) (holding that public education is not a "right" granted to individuals by the Constitution); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) (holding that education is neither explicitly nor implicitly guaranteed by the Constitution); cf. Griffin v. County Sch. Bd., 377 U.S. 218 (1964) (refusing to allow county to close its public schools in order to avoid a desegregation mandate). For an interesting discussion to the contrary, see Susan H. Bitensky, Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis, 86 NW. U. L. REV. 550 (1992) (arguing for a constitutional guarantee to public education).

While students do not have a collective right to an education, once the state provides public education, it must do so consistently, without discrimination. Griffin, 377 U.S. at 231-32. In addition, the state cannot deny an education to an individual student unless that student is provided with due process of law. Goss v. Lopez, 419 U.S. 565 (1975).


Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Id. at 493.

30. Several courts have held that it is permissible for a state to forbid home instruction as a substitute to its compulsory school attendance requirement. See, e.g., Duro v. District Attorney, 712 F.2d 96 (4th Cir. 1983) (upholding effective total ban on home schooling), cert. denied, 465 U.S. 1006 (1984). In so holding, many courts have reasoned that the state has a legitimate interest in requiring children to be educated in a classroom since children can benefit from social interaction with other children who have different attitudes and abilities. See Blackwelder v. Safnauer, 689 F. Supp. 106 (N.D.N.Y. 1988), appeal dismissed, 866 F.2d 548 (2d Cir. 1989).
safety, this argument camouflages the real but more difficult need to make public schools safer.\(^{31}\)

**B. A Legal Duty to Protect Children in the School Environment**

Notwithstanding its moral responsibility, the state has a legal obligation to protect students from violence and to remove weapons from their possession. This duty springs from two separate sources.\(^{32}\) The first is the traditional *in loco parentis* doctrine, which places a legal duty on school officials to act pursuant to applicable tort law.\(^{33}\) The second imposes a legal duty on school officials to comply with state statutes and school board regulations.\(^{34}\)

Under the *in loco parentis* doctrine, teachers and school administrators are liable for their omission or failure to act when a student is in danger within the school setting. Underlying the doctrine is the theoretical supposition that parents voluntarily delegate their authority to public school officials.\(^{35}\) This principle supersedes the usual rule that members of the general public do not have a general duty to come to the aid of a person in danger. Thus,

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31. Private schools alone, even with additional public funding, cannot completely satisfy the need to provide mass general education for all children. Even if private schools could satisfy such a need, their lower levels of violence are arguably only the result of a selection process that excludes disruptive children and allows school officials to treat such children in a manner inconsistent with traditional Fourth Amendment liberty and privacy interests.

32. In addition to a legal duty arising out of these two sources, public school officials may also have a duty to protect students from violent acts committed by other students, based on the Fourteenth Amendment. This constitutional duty would arise only if a court accepted the argument that compulsory school attendance laws restrain the personal liberty of students to such an extent that the laws create a special custodial relationship between the student and school. However, only two federal circuits have addressed this issue, and both have held that there is no constitutional duty to protect school children from harm caused by their peers. D.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364 (3d Cir. 1992) (en banc); J.O. v. Alton Community Unit Sch. Dist. 11, 909 F.2d 267 (7th Cir. 1990).

33. See Hurlburt v. Noxon, 565 N.Y.S.2d 683, 685 (Sup. Ct. 1990) (holding that the school district, acting *in loco parentis*, has a legal duty to protect students); see also Norman v. Turkey Run Community Sch. Corp., 411 N.E.2d 614, 616 (Ind. 1980) (holding that teachers have a special responsibility to supervise students); Eastman v. Williams, 207 A.2d 146, 148 (Vt. 1965) (recognizing that a teacher stands in the place of the parent); RESTATEMENT (SECOND) OF TORTS § 320 cmts. a, b, d (1986).


35. However, it should be noted that the supposition that parents voluntarily delegate their authority to school officials does not exempt public school officials from complying with Fourth Amendment requirements. See New Jersey v. T.L.O., 469 U.S. 325, 336 (1985) ("In carrying out searches and other disciplinary functions . . . school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment."); see also Ingraham v. Wright, 430 U.S. 651, 662 (1977) (noting that the concept of a voluntary delegation of authority may be inconsistent with compulsory education laws).

36. Of course, in the same capacity as members of the general public, teachers and school administrators are also liable for any of their negligent acts which cause injury to a student.
teachers and school administrators have an affirmative duty to protect students in danger who are subject to a foreseeable risk of harm. The scope of a teacher's duty under the doctrine is determined by measuring the teacher's actual conduct against the actions that a reasonable teacher would take, under similar circumstances, to protect a student from injury. 37

In addition to the legal duties arising out of the in loco parentis doctrine, school officials must also protect students by enforcing state statutes and school board regulations. Indeed, state legislatures and school boards have imposed a myriad of requirements upon teachers and administrators to ensure school safety. 38 Significantly, many of these statutes 39 and regulations 40 prohibit the possession of weapons on school grounds.

See generally Restatement (Second) of Torts § 282 (1986); W. Page Keeton et al., eds., Prosser and Keeton on the Law of Torts § 31 (5th ed. 1984).

37. For example, it is understood that students should not possess fireworks while at school, because other students would be at risk of injury. A teacher, therefore, would have an affirmative duty to remove such fireworks from a student's possession. The teacher would have such a duty even if there were no law prohibiting the possession of fireworks in schools. The teacher's conduct would be measured against that of a reasonably prudent teacher under similar circumstances. For a discussion of the scope of a teacher's duty, see Ferraro v. Board of Educ., 212 N.Y.S.2d 615, 626 (App. Term.), aff'd, 221 N.Y.S.2d 279 (App. Div. 1961); Quigley v. School Dist., 446 P.2d 177, 177 (Or. 1968); Cherney v. Employers Mut. Liab. Ins. Co., 289 N.W.2d 372, 372 (Wis. Ct. App. 1979) (unpublished limited precedent opinion); John Elson, A Common Law Remedy for the Educational Harms Caused by Incompetent or Careless Teaching, 73 NW. U. L. REV. 641 (1978); Christopher Bello, Annotation, Personal Liability of Public School Teacher in Negligence Action for Personal Injury or Death of Student, 34 A.L.R.4TH 228 (1984).


38. See, e.g., N.C. GEN. STAT. § 115C-307(a), 308, 309(a)-(c) (1990) (requiring school officials to immediately excuse from school and report to the local health authority any person who shows symptoms of sickness or disease); 28 PA. CODE § 27.72 (1979) (requiring all teachers to maintain order and discipline in the areas of school over which they have authority and provide students with various services, such as administering drugs or emergency health care, in order to ensure students' health and well-being); TEX. ADMIN. CODE tit. 19, § 177.1 (1988) (requiring educators to maintain standards of professional responsibility and ethical conduct when interacting with students, faculty, parents, administrators, and the community, in order to ensure a productive school environment).


II. METHODS TO ENHANCE SCHOOL SAFETY MUST COMPLY WITH FOURTH AMENDMENT SEARCH AND SEIZURE REQUIREMENTS

It is clear that the Fourth Amendment does not apply unless one has a legitimate expectation of privacy in what is being searched. The current "expectation of privacy" reasoning was first articulated by Justice Harlan in *Katz v. United States*.

When this standard is applied to the school setting, the constitutionality of many searches will turn on whether a student has a legitimate expectation of privacy. Accordingly, methods used to enhance school safety must comply with the Fourth Amendment where they invade areas in which the student has such an expectation of privacy. Many courts have held that if a search in a public school violates Fourth Amendment requirements, the contraband discovered is subject to the exclusionary rule and thus will not be admissible in a criminal prosecution against the student. However, the Fourth Amendment is not limited to criminal investigations; it applies to all searches and seizures by state agents, regard-

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41. See *Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring); see, e.g., *Minnesota v. Olson*, 495 U.S. 91, 95 (1990); *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (holding that there is no reasonable expectation of privacy against aerial surveillance under the Fourth Amendment); *Hudson v. Palmer*, 468 U.S. 517, 530 (1984) (holding that the Fourth Amendment is inapplicable to "shakedown" searches of prison cells as prisoners have no legitimate expectation of privacy in cell or property therein); *United States v. Jacobsen*, 466 U.S. 109, 123 (1984) (finding that the Fourth Amendment does not prohibit chemical field-testing of powdered drugs because a person does not have a legitimate expectation of privacy in whether a substance is illicit).

42. 389 U.S. 347, 361 (1967).


44. Id. at 333.

45. This assumes that the contraband is "fruit of the poisonous tree," *Nardone v. United States*, 308 U.S. 338, 341 (1939), that there is no attenuation, that no exception is applicable, and that the student has standing to challenge the Fourth Amendment violation.


47. Because the Fourteenth Amendment has been interpreted as incorporating the Fourth Amendment, states and their subdivisions must comply with Fourth Amendment requirements. *Mapp v. Ohio*, 367 U.S. 643 (1961); *Elkins v. United States*, 364 U.S. 206, 213 (1960).
less of whether the search results in a criminal prosecution.\(^4\) Neither the amendment's express wording,\(^4\) nor its subsequent interpretation by the Supreme Court,\(^5\) restricts its application to criminal prosecutions. Therefore, school officials must comply with the Fourth Amendment even if no criminal prosecution results from a search of a student conducted on school grounds by those officials.\(^5\)

\(\text{A. Penalties Against School Officials who Violate the Fourth Amendment} \)

As is customary under the law, however, it is left to individual plaintiffs (i.e., students and/or their parents) or conscientious school board attorneys to ensure that Fourth Amendment rights are protected. There are various legal remedies which a student can pursue against a school board and its agents for violating his or her Fourth Amendment rights. Chief among these remedies are those available under 42 U.S.C. § 1983.\(^5\) A § 1983 action may provide both injunctive relief and compensatory damages to a student who is subjected to an unlawful search conducted by school officials.\(^5\)

While injunctive relief is only appropriate when there is a clear pattern of

\(48.\) While the Fourth Amendment is applicable to seized evidence that will not be used in a criminal prosecution, the absence of prosecution is one of the factors considered in assessing the reasonableness of the search. See Camara v. Municipal Court, 387 U.S. 523, 537 (1967) (reasoning that one of the factors contributing to the determination of reasonableness was that the inspection of an apartment was not aimed at discovering evidence of a crime).

\(49.\) The Fourth Amendment reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

\(50.\) See, e.g., O'Connor v. Ortega, 480 U.S. 709, 714-15 (1987) (applying the Fourth Amendment to non-criminal search of employee's office by hospital administrators); Camara, 387 U.S. at 530 (applying the Fourth Amendment to non-criminal warrantless search of apartment by city housing inspectors).

\(51.\) See Ortega, 480 U.S. at 714 ("The strictures of the Fourth Amendment . . . have been applied to the conduct of governmental officials in various civil activities."); One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 702 (1965) (applying the Fourth Amendment to forfeiture proceedings, although they were not criminal proceedings).

\(52.\) 42 U.S.C. § 1983 (1988). This statute, which creates a Fourteenth Amendment damages action, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id.

\(53.\) This Article will not address broader issues of immunity or intricate aspects of § 1983 actions. For thorough attention to such matters, see 1 SHELDON H. NAHMOD, CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: THE LAW OF SECTION 1983 (3d ed. 1991).
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conduct by school officials which violates Fourth Amendment rights on an ongoing or repeated basis, an action for money damages is an appropriate remedy for isolated violations. An individual or school official who violates a student’s Fourth Amendment rights with deliberate indifference or reckless disregard can also be ordered to pay punitive damages. Furthermore, under 18 U.S.C. § 242, the criminal counterpart to § 1983, a school official who willfully violates a student’s Fourth Amendment rights can be criminally prosecuted. While a § 1983 action may not be brought against a state or a state agency (i.e., the state department of education), an official from the state or state agency can be sued in his or her individual capacity. In addition, suit may be brought against municipalities, counties, school districts, and individuals. Finally, a § 1983 suit is actionable even in states that have not abrogated the doctrine of sovereign immunity.

B. The Compatibility of Specific Protective Measures with the Fourth Amendment

While current Fourth Amendment guidelines governing school searches are derived from a number of Supreme Court opinions, the Court has ex-

56. While only compensatory damages are available in an action against a local government, see City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981), both punitive and compensatory damages can be awarded in a § 1983 action against an individual defendant, see Smith v. Wade, 461 U.S. 30 (1983).
57. 18 U.S.C. § 242 provides:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, . . . . shall be fined not more than $1,000 or imprisoned not more than one year, or both . . . .

58. Id.
60. See also id. at 61.
63. See, e.g., Hudson v. Palmer, 468 U.S. 517, 525 (1984) (holding that the applicability of the Fourth Amendment turns on whether the person invoking its protection has a legitimate expectation of privacy); Marshall v. Barlow’s, Inc., 436 U.S. 307, 312-13 (1978) (noting that individual privacy interests can be jeopardized by government investigations which are undertaken to enforce civil statutes and regulatory standards, as well as by government investigations seeking to enforce the criminal law); Terry v. Ohio, 392 U.S. 1, 24-25 (1968) (reasoning that even a limited search of the person is a substantial invasion of privacy); Camara v. Munici-
plicitly confronted school searches on only one occasion. In *New Jersey v. T.L.O.*, the Court expressly articulated what is required of school officials before they may conduct a search of either a student's person or a closed purse or bag carried by that person. In *T.L.O.*, the Court reduced one, and eliminated a second, of the traditional Fourth Amendment safeguards applicable to searches. First, while school officials cannot conduct a search based on a mere "hunch," the basis for that search does not have to satisfy the higher threshold requirement of probable cause, which ordinarily applies to Fourth Amendment searches. Instead, a school official need only have a reasonable suspicion that the search will uncover evidence of a legal violation or an infraction of school disciplinary rules. Second, contrary to the traditional requirement, public school officials do not have to obtain a warrant before searching school children.

However, in *T.L.O.*, the Court did maintain the requirement that the search must be reasonable. Reasonableness is determined by a two-step analysis: first, the search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction," and second, the measures adopted must be "reasonably related to the objectives of the search." In analyzing this methodology, it may be inferred that the Court's present interpretation of the Fourth Amendment appears to permit various methods of excluding weapons from public schools through student searches. Unfortunately, since the Court has not yet expressly addressed the constitutionality of most of these methods, their legitimacy is uncertain, leaving school officials to independently decide what is permissible. The following three search procedures used in schools will be briefly addressed: locker searches, magnetometer searches, and strip searches.

1. Searches of Lockers, Desks, and Other School Property

In *T.L.O.*, the Court explicitly refrained from deciding whether a student has a legitimate expectation of privacy in a locker, desk, or other school...
Consequently, the Court did not resolve what, if any, standard governs searches of such areas. Nevertheless, the expectation of privacy analysis can logically apply to the school setting. In situations where the school administration and students share joint control of lockers, desks, or other school property, the students would not have a legitimate expectation of privacy in such property; thus, in the absence of a legitimate expectation of privacy, Fourth Amendment requirements would be inapplicable. Indeed, the majority of cases which have addressed locker searches concur in this analysis.

In contrast, it is unknown what Fourth Amendment requirements must be satisfied by school officials when courts find that a student does have a legitimate expectation of privacy. Rather than apply the T.L.O. reasonable suspicion standard, the Court could condition such searches on a warrant supported by probable cause. While this outcome is conceivable, it is unlikely, given the Court's current pattern of reducing threshold search requirements. In fact, those courts which have concluded that students have a legitimate expectation of privacy in lockers, desks, or other school property, generally allow school officials to search such areas without a warrant, if they have satisfied the lower reasonable suspicion standard of T.L.O.

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72. Id. at 337 n.5.
73. Id. at 337.
74. The school administration can minimize the possibility that students will be deemed to have a legitimate expectation of privacy in lockers. At the beginning of each academic year, school officials can announce a policy of searching lockers and can give notice that the administration has key or combination access to all lockers. Such efforts would be more prudent in jurisdictions that are inclined to find that students have a legitimate expectation of privacy.
75. See, e.g., Zamora v. Pomeroy, 639 F.2d 662, 670 (10th Cir. 1981) (holding that because both the school and the student exercise joint control over a school locker, the school has a right to inspect it); People v. Overton, 229 N.E.2d 596, 598 (N.Y. 1967) (arguing that nonexclusive nature of student locker empowers school to consent to search), remittitur amended, 245 N.E.2d 807 (N.Y.), and adhered to, 249 N.E.2d 366 (N.Y. 1969).
76. As noted, the constitutionality of such searches has not yet been addressed by the Court. See supra note 72 and accompanying text.
77. See, e.g., United States v. Place, 462 U.S. 696, 703-04 (1983) (recognizing that important law enforcement interests may support a minimally intrusive search and seizure based on less than probable cause); United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975) (ruling that in appropriate circumstances the Fourth Amendment allows a limited search and seizure on facts not constituting probable cause); Adams v. Williams, 407 U.S. 143, 145-46 (1972) (holding that an individual may be briefly detained with less than probable cause).
2. Magnetometer Searches

Schools are increasingly using metal detectors to keep guns, knives, and other weapons out of school buildings. However, the proper application of the Fourth Amendment to such searches is slightly more complicated than is readily apparent. Indeed, and perhaps because, members of the public submit to magnetometer searches on numerous occasions, it is commonly assumed that the widespread use of such detectors is constitutionally permissible. However, the Court has not yet directly addressed the Fourth Amendment validity of suspicionless magnetometer searches. Generally, lower courts evaluate magnetometer searches as an administrative search, and many courts have held magnetometer searches constitutional in specific situations. Typically, after balancing the invasiveness of the search against the need for the search, courts conclude that the search is reasonable.

Today, magnetometers are commonly used at airports, performing arts centers, public buildings, and courthouses. However, the justification for this type of search—to prevent members of the public from being exposed to

80. John Kass, Daley Offers Metal Detectors to Schools, CHI. TRIBUNE, June 5, 1992, at C1 (reporting that Chicago Mayor Richard Daley offered to provide two metal detectors to each of Chicago’s 74 high schools in an effort to combat rising crime statistics, which indicate that one serious crime arrest is made for every two high school classrooms).


82. For a discussion of administrative searches, see 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 10.1-.11 (2d ed. 1987).

83. For cases concluding that airport magnetometer searches are constitutional, see United States v. Albarado, 495 F.2d 799 (2d Cir. 1974); United States v. Slocum, 464 F.2d 1180 (3d Cir. 1972); United States v. Epperson, 454 F.2d 769 (4th Cir. 1972); United States v. Lopez, 328 F. Supp. 1077 (E.D.N.Y. 1971). See also, Myrna G. Baskin & Laura M. Thomas, Note, School Metal Detector Searches and the Fourth Amendment: An Empirical Study, 19 U. MICH. J.L. REF. 1037 (1986) (suggesting that the development of alternative methods to decrease school violence would better protect students’ Fourth Amendment rights than the use of magnetometer searches).

84. While the searches are undertaken without a warrant, probable cause, or reasonable suspicion, courts are generally more willing to find them reasonable since the potential for arbitrariness is eliminated. See generally LAFAVE & ISRAEL, supra note 64, at 227-28 (outlining the development of airport magnetometer searches and the application of both the reasonable suspicion test and the Fourth Amendment balancing test to determine if such searches are constitutional).

85. See Von Raab, 489 U.S. at 675 n.3 (commenting on the common use of magnetometers at airports); Russell J. Davis, Annotation, Validity, Under Federal Constitution, of Search Conducted as Condition of Entering Public Building, 53 A.L.R. FED. 888 (1991) (analyzing the use of magnetometers in public buildings); Baskin & Thomas, supra note 83, at 1058; see, e.g., Philip Hager, Security Measures at Courts are Changed, L.A. TIMES, Aug. 21, 1992, at B3 (discussing the use of magnetometers at specific state and federal courthouses); William C. Lhotka, St. Louis Shootout, NAT’L L.J., May 18, 1992, at 6 (reporting the installation of magnetometers at a state courthouse); Daniel Wise, Courthouse Search Permitted, N.Y.L.J., Mar. 4, 1992, at 1 (discussing the admissibility of contraband seized through a routine courthouse magnetometer search).
significant risks of harm when they voluntarily convene in public areas—
breaks down when submission to a magnetometer is a compulsory, rather
than a voluntary, act by an individual. Accordingly, a distinction should be
made between the use of such detectors at locations where members of the
public can prevent the search by choosing not to enter, and those locations
where persons must enter. For example, an individual can choose not to
enter a performing arts center, or even an airport, where a magnetometer
search will be performed. However, compulsory education laws require stu-
dents to enter a school building, even when a magnetometer search is being
conducted at its doorway.86 Unlike the passenger at an airport, the student
is not free to terminate the search. Indeed, in a footnote to National Treas-
ury Employees Union v. Von Raab,87 quoting from United States v. Ed-
wards,88 Justice Kennedy seemed to indicate that one of the reasons why a
suspicionless airport magnetometer search was reasonable was that any per-
son could avoid the search by electing not to board the aircraft.89 Arguably,
then, it is constitutionally impermissible to conduct a suspicionless magne-
tometer search upon a person who cannot terminate the search. A student
entering the schoolhouse is such a person.

Alternatively, the Court could decide that when students receive advance
notice that suspicionless magnetometer searches will be conducted, their use
in schools is constitutionally valid. This would place the burden on students
to minimize the intrusiveness of such searches by choosing not to carry
weapons into school; thus, while the student would still be required to sub-
mit to the magnetometer search, the student would avoid the greater intru-
siveness of the additional personal search triggered by a magnetometer alert.
The Court could use a balancing approach and conclude that the need for
school safety outweighs this minimal level of intrusiveness. However, as Jus-
tice Kennedy implicitly acknowledged, the initial walk through a magne-
tometer constitutes a search regardless of its degree of intrusiveness. Al-
though students cannot choose to avoid these searches, school officials are

86. For a discussion of compulsory education laws, see supra note 21 and accompanying
text.
496, 500 (2d Cir. 1974) (emphasis in original)).
88. Edwards, 498 F.2d at 500.
89. As Justice Kennedy noted:
"When the risk is the jeopardy to hundreds of human lives and millions of dollars of
property inherent in the pirating or blowing up of a large airplane, that danger alone
meets the test of reasonableness, so long as the . . . passenger has been given advance
notice of his liability to such a search so that he can avoid it by choosing not to travel
by air."
Von Raab, 489 U.S. at 675 n.3 (1989) (quoting Edwards, 498 F.2d at 500 (emphasis in
original)).
increasingly subjecting school children to such searches despite the Court's failure to rule on their constitutionality.

3. Strip Searches

One of the more profound Fourth Amendment issues arising in the school context involves the strip search of students. Although the *T.L.O.* decision did not directly address student strip searches, it did deal with the search of a student's person. Since a strip search is essentially just a more extreme form of such a search, it logically follows that the *T.L.O.* reasonableness requirement would be one of the tests applied to measure the constitutionality of a strip search. If the Court were to adopt this approach, a strip search would be unconstitutional unless it were reasonable in light of its particular facts. Specifically, to determine whether a strip search is reasonable in scope, a reviewing court would consider the nature of the infraction, the intrusiveness of the strip search, the gender of the student, and the age of the student. Lacking direction from the Supreme Court, lower courts generally adopt this analysis to determine the constitutionality of school strip searches.

Aside from the reasonableness requirement, it is unclear whether the Court would require that other traditional Fourth Amendment safeguards be met before school officials are permitted to strip search school children. Given the invasiveness of such searches, and the fact that children are in-

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90. Even more vital may be the applicability of Fourth Amendment principles to body cavity searches. Supreme Court caselaw involving intrusive searches outside of the school setting indicates that the ordinary Fourth Amendment requirements pertaining to a given situation will apply to a cavity search, but that the key to determining the constitutionality of a particular body cavity search will be an evaluation of its reasonableness. Compare United States v. Montoya de Hernandez, 473 U.S. 531, 536-44 (1985) (approving administration by customs agents of a pregnancy test, x-ray and rectal examination of an international airplane passenger) with Winston v. Lee, 470 U.S. 753, 758-67 (1985) (disapproving surgery to obtain evidence of a crime).

Because body cavity searches are conducted for the purpose of detecting drugs rather than weapons, they will not be addressed further in this Article. For an example of lower court reasoning regarding body cavity searches in schools, see Tarter v. Raybuck, 742 F.2d 977, 982-83 (6th Cir. 1984) (dictum) (concluding that body cavity searches of students to detect illegal drugs are *per se* unreasonable), cert. denied, 470 U.S. 1051 (1985).


92. *Id.* at 343-48.

93. *See supra* notes 70-71 and accompanying text. Strip searches would appear to be rarely necessary if the goal of the search is to detect weapons. Because they are extremely intrusive, as well as of little value, it is the author's opinion that strip searches of students by school officials should almost always be considered unreasonable.

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III. THE DETRIMENTAL EFFECTS OF EFFORTS TO PROVIDE SAFER SCHOOLS ON FOURTH AMENDMENT JURISPRUDENCE

A. Student Respect for Liberty and Privacy is Corrupted by the Enforcement Measures Schools Adopt to Stop Violence

Actions to improve school safety strive to achieve a necessary and commendable goal. However, some of these actions may risk significant damage to evolving Fourth Amendment jurisprudence if undertaken hastily and without careful and thorough consideration.

Current methods used to improve school safety play a dual role: they provide a means to protect today's students while influencing how future generations interpret and modify the Fourth Amendment. Undoubtedly, the approaches tomorrow's leaders will take toward the amendment will be shaped by the lessons they learn as today's school children. Students learn about the liberty, privacy, and security guaranteed by the Fourth Amendment more through actions than words. Consequently, students are more likely to learn how to resolve conflicts between personal liberty and public safety from witnessing bookbag searches than from passively completing their reading assignments. Thus, the pedagogical implications of overly intrusive policing methods must be considered in the attempt to maintain a degree of order in an environment that is conducive to learning. Although


96. Writing for the majority in T.L.O., Justice White noted that "in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." 469 U.S. at 339.

97. See supra note 77 and accompanying text; see, e.g., Williams v. Ellington, 936 F.2d 881, 886-87 (6th Cir. 1991) (holding that reasonable suspicion is proper standard for strip search).

98. See, e.g., W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943) ("That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.").
students will not be able to learn if they are sent into a war zone where their personal safety is threatened on a daily basis by weapon-wielding "classmates," they should not learn that a safe, orderly learning environment requires authoritarian and repressive tactics. To achieve this balance, the goal of maintaining a safe and orderly environment conducive to student health and education must be weighed against that of preserving traditional respect for individual liberty and privacy. Both goals must be accomplished, because they both affect what today's children are being taught as they grow into tomorrow's leaders.

B. Even Greater Protection Against Arbitrary Searches and Seizures Will Be Given to Adults Than to Children While in School

Many uphold the belief that children hold a special place in society and that they are in need of extra care and guidance; indeed, numerous precepts and doctrines in American law incorporate this assumption.99 Ironically, in an apparent attempt to protect children, the Supreme Court has, within the context of the school environment, reduced the threshold requirements necessary to justify a Fourth Amendment search.100 As previously noted, the Court interprets the Fourth Amendment to permit some student searches to be justified by the lower standard of reasonable suspicion, but generally requires adult searches to be justified by probable cause.101 This suggests that the need for a student search outweighs the student's Fourth Amendment rights to a greater degree than the need for an adult search outweighs the rights of the general citizen. However, adult searches usually arise in the criminal context, while school searches generally do not. Thus, it is reason-


100. See T.L.O, 469 U.S. at 325.

101. See supra part II.B.
able to infer that the Court interprets the Constitution as giving greater pre-
search protection to adult criminal suspects than to students searched within
schools.

Moreover, although students in the school environment are given less pro-
tection against arbitrary searches and seizures than adults, they are given the
same protection as adults outside the school environment. Yet the Court has never indicated that Fourth Amendment rights depend on a person's age, nor has it held that such rights turn exclusively on where a person is located when being searched. As the Court expressly stated in Katz, "the Fourth Amendment protects people, not places." Apparently, then, the Court's primary justification for reducing the level of protection provided by the Fourth Amendment is its conviction that the safety of children while in school warrants such action.

Assuming the Court's justification for this reduced level of protection is valid, such justification prompts additional inquiry into what standard should regulate searches by school officials of parents who have occasion to be in their child's school. Because adults have a number of legitimate reasons to be on school premises—ranging from participating in parent-teacher conferences, to attending sporting events and theatrical productions—the question arises whether the rights of adults should be given the greater protection ordinarily afforded to adults and children outside the school environment, or whether adults should be subjected to the reduced standard which pertains to children while in the school. If the need to protect students justifies reduced Fourth Amendment protection, then a school coach or drama teacher should circumscribe conceivable danger and conduct a search regardless of whether the danger is posed by another student or a visiting parent. What justification, other than age, is there for not requiring an adult

102. See Davis v. Mississippi, 394 U.S. 721 (1969) (holding that "the Fourth Amendment applies to minors in the same manner as adults"); In Re S.J.F., 736 P.2d 29, 30 (Colo. 1987) ("The general rule, which applies to both minors and adults, is that a search must be conducted in accordance with fourth amendment rights."); In Re Marsh, 237 N.E.2d 529, 530 (Ill. 1968) (holding the Fourth Amendment exclusionary rule applicable to proceedings under the Juvenile Court Act); Martin R. Gardner, Student Privacy in the Wake of T.L.O.: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools, 22 GA. L. REV. 897, 907 (1988) ("Outside the context of school searches, the courts grant full fourth amendment protection to young people subjected to searches and seizures by the police."). But cf. W. v. California, 449 U.S. 1043, 1046 (1980) (Marshall, J. dissenting) ("The Court has never previously considered the scope of Fourth Amendment protections when asserted by a minor ... [n]or attempted to define the 'totality of the relationship of the juvenile and the state.'") (quoting In re Gault, 387 U.S. 1, 13 (1967)) (footnote omitted).

103. See Katz v. United States, 389 U.S. 347, 359 (1967) ("Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures.").

104. Id. at 351.

105. The author has been unable to locate any appellate authority addressing this question.
to submit to a search by the school coach or drama teacher who has met the reduced showing necessary to justify the search of a school child? Such an inquiry may assist the Court in determining whether it will continue to interpret the amendment as providing a reduced level of protection to searches of children in school.

Historically, society has not always believed that children hold a special place and deserve distinctive treatment. Since the late 1800s, society’s collective perception of how children should be treated in American culture has vacillated. The public outlook periodically moves across a spectrum. At one end of the spectrum, children are viewed as nothing more than “little adults,” and their conduct and responsibilities are held to standards similar to those applied to adults. When this perception prevails, children are not viewed as being innocent or in need of extra care. At the other end of the spectrum, children are viewed as being pure and faultless. When this outlook prevails, children are more deserving of special treatment. Consequently, the Court should be particularly sensitive to the need to protect both the liberty and safety interests of students during periodic fluctuations in the public’s attitude toward the proper role of children in society.

C. The Court Fails to Guide School Boards and Legislatures

The Court has a duty under the doctrine of *stare decisis* to interpret the Fourth Amendment consistently and to apply precedent. Yet there appears to be a growing public sentiment favoring the use of increasingly adversarial law enforcement methods in schools. In an effort to protect children, the Court may acquiesce to public demands and render result-ori-

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107. According to one sociological theory, society’s shifting attitude toward children is most apparent when considering periodic differences in styles of children’s clothing. During the times when fashion dictates that children be dressed as “miniature adults,” society treats them less as children and more as adults. In contrast, when children are dressed in unique, cuddly, childish attire, society views them more warmly than it does adults. *See generally Philippe Aries, Centuries of Childhood* (Robert Baldick trans., 1962).

108. Brown Shoe Co. v. United States, 370 U.S. 294, 307 (1962) (noting that the Supreme Court should not disregard implications of exercise of judicial authority assumed to be proper for many years); Gore v. United States, 357 U.S. 386, 392 (1958) (recognizing that a long course of adjudication in the Supreme Court carries impressive authority); Smith v. Allwright, 321 U.S. 649, 665 (1944) (noting that continuity of decisions on constitutional questions is desirable); Wright v. Sill, 67 U.S. (2 Black) 544, 544 (1863) (“A question repeatedly argued and decided must be considered as no longer open for discussion, whatever differences of opinion may once have existed on the subject in this Court.”).

mented holdings that are inconsistent with current Fourth Amendment doctrine.\textsuperscript{110} In a result-oriented opinion, the Court would uphold a school official's specific acts on the ground that such acts achieved an outcome that the Court construes as desirable. Thus, the Court would not necessarily reach its decision by conforming to accepted doctrine. In more precarious result-oriented opinions, the Court's articulated reasoning would be inconsistent with that of settled precedent and even with the reasoning set forth in other result-oriented opinions.

While the thought of result-oriented decisionmaking may not offend those who are comfortable with a pragmatic approach, a careful examination reveals that such an approach has serious negative results even for the pragmatist. Thoughtfully developed precedent articulates reasoning that can be applied to novel fact situations, and thus creates stability and predictability within that area of law. Consequently, when new situations arise—the vast majority of which will never reach the Supreme Court—they can be resolved through adherence to the reasoning and methodology of such established precedent. Thus, when the Court renders opinions consistent with settled Fourth Amendment doctrine, it provides essential guidance to teachers, administrators, school boards, and legislatures.

In contrast, result-oriented opinions give no guidance to those who must resolve situations which have not yet been addressed by the Court. Because the Court elects to hear only a small percentage of cases,\textsuperscript{111} lower courts must rule on the constitutional validity of new approaches to reduce weapon-related school violence. Unfortunately, these courts may be required to struggle with, and apply, the conflicting reasoning articulated in result-oriented opinions.


\textsuperscript{110} Recently, the Court has revealed its awareness of, and susceptibility to, the type of political pressures that could lead to result-oriented holdings. In Planned Parenthood v. Casey, 112 S. Ct. 2791, 2814 (1992), the Court openly noted the ardent and antagonistic public opinion regarding the legal right to an abortion. See id. Acknowledging both public opinion and the appearance that the Court was responding to such opinion, Justice Souter indicated that the loss of public confidence in the judiciary would seriously weaken the Court's capacity to exercise judicial power. Id. at 2815-16. While the majority's reasoning opposed overturning Roe v. Wade, 410 U.S. 113 (1973), it suggested that the Court considers public opinion when reevaluating established doctrine. The majority also suggested that considerations of public opinion, and the immediate practical consequences of a holding, may be more readily taken into account when the established doctrine to be overruled is less controversial than in the abortion controversy. Thus, in less controversial cases, succumbing to public opinion would be less likely to weaken the Court's capacity to exercise judicial power.

\textsuperscript{111} The Supreme Court heard a total of only 127 cases during the 1991-92 term. Furthermore, only once in the past several years, has the Court addressed student searches. New Jersey v. T.L.O., 469 U.S. 325 (1985).
D. The Court May Permanently Rebalance Traditional Fourth Amendment Interests and Disregard Liberty, Privacy, and Individual Security

There is another manner in which the Court could acquiesce to growing political demands that schools employ increasingly adversarial law enforcement methods. Rather than issue piecemeal result-oriented opinions, which ignore past decisions and traditions, the Court could opt to squarely overrule established precedent, thereby altering the necessary balance between contending Fourth Amendment interests. This course of action would have more far-reaching consequences. Before the Court discards precedent, it should carefully consider the potential negative repercussions which new rulings may have on evolving Fourth Amendment jurisprudence.

At the core of Fourth Amendment jurisprudence are two vital but competing objectives: enforcement of public safety and protection of individual liberty. However, actions which further one goal often frustrate the other. To protect public safety, government officials seek to enforce rules through various policing methods; yet, to protect personal liberty, the Court limits intrusions into areas of individual privacy. In the criminal context, individual liberty and public safety are balanced against each other. Recently, however, the Court has hinted that it will tilt the balance in favor of law enforcement, precedent notwithstanding.

In *California v. Acevedo*, Justice Scalia, in a concurring opinion, urged the Court to deviate from traditional Fourth Amendment interpretation. Justice Scalia advocated elimination of the general rule that a search by law enforcement officials requires a warrant. Instead of a general warrant requirement with specific exceptions, Justice Scalia submitted that a warrant should be required only when a case-by-case analysis indicates that it is necessary under the Fourth Amendment's reasonableness requirement. Moreover, the Court increasingly recognizes situations in which it is willing to depart from the usual Fourth Amendment threshold requirements of a warrant and probable cause. In particular, when the Court perceives government officials as having "special needs" beyond criminal law enforcement, it is additionally inclined to allow searches without warrants, probable cause, or even individualized suspicion. Writing for the majority in *Skin-*

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113. Id. at 1992-04 (Scalia, J., concurring).
114. Id.
115. Maryland v. Buie, 494 U.S. 325 (1990) (permitting officers to make warrantless, limited search, of areas in an arrestee's home where persons may be hidden, with only a reasonable suspicion of bodily harm).
116. See, e.g., Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (allowing employer to conduct urine testing without a warrant or a showing of individualized suspicion);
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Justice Kennedy noted that "[w]hen faced with such special needs, we have not hesitated to balance the governmental and privacy interests to assess the practicality of the warrant and probable cause requirements in the particular context." 118

These competing Fourth Amendment objectives—protection of individual liberty and enforcement of public safety—arise in the school setting. Before the Court further alters the balance of Fourth Amendment interests so as to promote school safety, it should thoroughly consider all of the consequences that new methods of policing will have on liberty and privacy interests. Any rebalancing will permanently alter Fourth Amendment jurisprudence, which would affect adults as well as children well into the future.

IV. REDUCING SCHOOL VIOLENCE WITHOUT DEMONSTRATING DISRESPECT FOR INDIVIDUAL RIGHTS: FIVE POTENTIAL SOLUTIONS

The community may have the means available to reduce school violence without demonstrating disrespect for individual dignity. The purposes of the proposals that follow range from immediate prevention, to deterring others after violence has already occurred, to long-term prevention.

One possibility proposes designing school buildings to deter students from committing violent acts. 119 By using architectural design to prevent acts of violence from occurring in the first instance, the need for post-incident searches and investigation is reduced. To facilitate deterrence, schools could be designed with more open spaces, fewer dark corners, wider hallways, and fewer dead-end corridors. Areas where violence tends to occur, such as locker rooms, bathrooms, and parking lots, would receive additional attention. 120 Coaches' offices could be placed in locker rooms, and only low-rising lockers would be used. This would provide full visual control. Bathrooms could be built with baffled entrances, rather than doors, similar to those used in airports. This would offer students privacy while putting them on notice that school officials could enter without the warning sound of an opening door. Finally, the principal's office could be located in an area

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118. Id. at 619.
120. See, e.g., Stern v. New Haven Community Sch., 529 F. Supp. 31 (E.D. Mich. 1982) (permitting visual surveillance of students through two-way restroom mirrors on grounds that students have reduced expectations of privacy at school).
that provides full visual control of the parking lots or other problem areas. Such design solutions would provide an immediate form of prevention: while the proposal is not aimed at making long-term, far-reaching changes in the violent conduct of students, its goal is to prevent violent acts immediately before they occur. If a violent act does not occur, the need for searches lessens, and thus Fourth Amendment principles are not implicated.

A second proposal involves the use of architectural design to make Fourth Amendment searches less obtrusive. As previously noted, the use of devices such as magnetometers is most likely permissible under current Fourth Amendment reasoning, and provides immediate prevention. While this may be a legitimate means of eliminating weapons from schools, the use of the least expensive, most obvious, metal detector might give a prison-like appearance to schools. In contrast, a detector could be concealed by building it into all school entrances. Thus, school boards should consider whether obtrusive, court-approved searches can be implemented in a less intrusive manner by taking advantage of newer methods of architectural design. While a less intrusive method may be more expensive, it would minimize the severity of the clash with Fourth Amendment privacy principles.

A third proposal involves deterring students from engaging in future violent conduct after violent acts have already been committed. In theory, other students would be deterred from future violence by learning that those responsible for violent acts have been punished. Because such punishment does not involve searches or seizures, it has the potential to reduce

121. See supra part II.B.2.


123. Such punishment could include time-out, detention, and exclusion from extracurricular activities. In addition, the school board may wish to evaluate the merits of imposing reasonable corporal punishment. The Supreme Court has held that reasonable disciplinary corporal punishment administered by school officials does not offend Eighth Amendment principles proscribing cruel and unusual punishment, and is thus a permissible means of maintaining student discipline and order. Ingraham v. Wright, 430 U.S. 651 (1977). As Justice Powell reasoned:

The concept that reasonable corporal punishment in school is justifiable continues to be recognized in the laws of most States. . . . It represents "the balance struck by this country," between the child's interest in personal security and the traditional view that some limited corporal punishment may be necessary in the course of a child's education.

Id. at 676 (citations omitted); see Gaspersohn v. Harnett County Bd. of Educ., 330 S.E.2d 489 (N.C. App. 1985) (upholding state statute that permits school officials to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order"). But cf: Alan Reitman, Corporal Punishment in Schools—The Ultimate Violence, 9 Children's Legal Rights J. 6 (1988) (suggesting that physical punishment should not be imposed upon children in the school setting).
school violence without demonstrating disrespect for Fourth Amendment privacy and liberty interests. In addition to punishing the student who has committed the violence, civil or criminal liability could be imposed upon the offending student's parents. While a civil remedy would serve to compensate the individual victim for injuries suffered, the criminal law would be used to protect the collective welfare of the community. Civil liability would be imposed when an injured student pursued a successful tort action against the offending student and that student's parents. In accord with this civil remedy, a court could order that damages be paid to the victim by the parents of children who perpetrate violence on their fellow students. In addition, some communities are experimenting with legislation that imposes criminal liability upon the parents of children who injure fellow students with weapons. Theoretically, a parent convicted under the criminal law could be incarcerated as well as fined. Arguably, students would be further deterred from engaging in violent conduct by learning that parents, as well as their children, can be held both civilly and criminally liable for violent acts committed by their children.

A fourth possibility involves designating alternative schools for disruptive children. Some public school districts are currently experimenting with this rather new and somewhat controversial alternative. Unlike ordinary schools, which serve all children, the mission of alternative schools is to serve only the most disruptive students. While the specific nature of pro-

124. At common law the general rule was that parents were not liable for the torts of their minor children solely on the basis of the parent-child relationship. This rule has been supplanted in most jurisdictions by statutes that impose liability on the parent, and these statutes have been upheld as a constitutional exercise of the states' police power. See Vanthournout v. Burge, 387 N.E.2d 341, 343-44 (Ill. App. Ct. 1979) (upholding constitutionality of Parental Responsibility Act); First Bank Southeast v. Bentkowski, 405 N.W.2d 764, 766 (Wis. Ct. App. 1987) (imposing liability on parents for minor children's acts which meet the statutory elements); see also Restatement (Second) of Torts §§ 316, 703 (1965); Wade R. Habeeb, Annotation, Parents' Liability for Injury or Damage Intentionally Inflicted by Minor Child, 54 A.L.R.3d 974 (1991) (examining laws that address parental liability for children's crimes); B.C. Ricketts, Annotation, Validity and Construction of Statutes Making Parents Liable for Torts Committed by Their Minor Children, 8 A.L.R.3d 612 (1966).

125. See generally Craig E. Pinkus, Note, Criminal Liability of Parents for Failure to Control Their Children, 6 VAL. U. L. REV. 332 (1972) (declaring it "unlawful for the parent or any minor to fail to exercise reasonable parental control" if the minor commits criminal acts resulting from that failure) (citing MADISON HEIGHTS, MICH., CODE § 8-221 (1970)).

126. See Habeeb, supra note 124.

127. See, e.g., Shelia M. Poole, The South in Brief, ATLANTA J. & CONST., Mar. 18, 1992, at A3 (discussing North Carolina proposal to impose liability on parents whose children bring weapons to school).

128. This Article will not address the prerequisites necessary for criminal liability.

129. See generally NATIONAL SCHOOL SAFETY CENTER, ALTERNATIVE SCHOOLS FOR DISRUPTIVE YOUTH (1989) (providing detailed information and a useful bibliography regarding specific alternative education programs being operated by various states.)
grams varies, students prone to violence are generally referred to separate, resource-intense, public schools within the school district. At their best, such schools include a strong counseling component, have better teacher-student ratios, and establish firmer parameters and consequences on student behavior. Whether such schools succeed at reducing violence and provide students with a foundation for success, or merely serve as a dumping ground for violence-prone students has yet to be demonstrated. Unfortunately, if alternative schools become nothing more than holding tanks, even greater damage is likely to be inflicted upon liberty and privacy values.

The final possibility addresses the need to curtail violent conduct by students on a long-term, far-reaching basis. While officials must intervene in schools to reduce the presence of weapons, violence, and disruptive behavior, such intervention only addresses symptoms. Preventative efforts must also address, at an early stage, the source of the motivation to bring weapons into schools in the first place. Such prevention cannot wait until weapon-related violence occurs at the elementary or secondary school level; preventative efforts must be undertaken as early in a student's learning process as possible.

For nearly a decade, the Senate Subcommittee on Juvenile Justice has attempted to formulate long-term solutions to escalating levels of school violence. Various experts, with differing perspectives on education, have testified before the Subcommittee. The opinions offered by these professionals include the following recommendations: (1) schools must place higher expectations and demands, including upgraded graduation requirements and increased homework requirements, on students; efforts must be undertaken at the earliest grade level to diagnose and remedy student behavioral problems; (3) students should be encouraged to demonstrate good citizenship through supervised participation in community improvement projects and school beautification programs; (4) a systemwide code of discipline, including "cooling-off" rooms, in-school suspension, and special counseling, must be developed and implemented so that fair and consistent standards and penalties are applied throughout the district; (5) students must be exposed to law-related education and provided an opportunity to operate student courts in order to teach respect for legal principles and the rule of law.

131. Id. at 136-37 (statement of Constance Clayton).
132. Id. at 137-38.
133. Id. at 137.
134. Id. at 117 (statement of Peter F. Flynn).
135. Id. at 21, 137 (statements of Albert Shaker & Constance Clayton).
Clearly, these five options are not exhaustive. Furthermore, each suggestion requires more thorough evaluation before being implemented. Rather than attempt to be exhaustive or engage in an encyclopedic review, this Article simply suggests that there do exist methods to reduce school violence which minimize damage to Fourth Amendment jurisprudence. Legislatures and school boards must thoroughly consider all plausible solutions which have the potential to reduce school violence while teaching and demonstrating respect for personal privacy and individual liberty.

V. CONCLUSION

The Court must be vigilant in regulating the interplay between the procedures implemented by school boards to achieve safer schools and the effect these measures have on the evolution of Fourth Amendment jurisprudence. School children are increasingly inflicting weapon-related violence upon other students at an alarming and escalating rate. While this school violence is just one symptom of the deterioration in family, community, and individual values, society must meet its obligation to better protect children while in school. The Fourth Amendment, as currently interpreted, permits the use of various procedures to improve school safety. Yet, the increased level of litigation over this complex issue suggests that teachers, administrators, and school boards are challenging established parameters with novel safety measures of questionable constitutionality.

When school officials engage in enforcement measures that fall outside the boundaries permitted by the Fourth Amendment, and thus subject students to unconstitutional searches, students may be entitled to compensatory damages, injunctive relief, or punitive damages. Furthermore, when school officials knowingly violate the Fourth Amendment, they tarnish the community's integrity.

Actions taken by school officials to improve school safety teach students about the community's attitude toward personal liberty and individual privacy. As noted by Justice Brennan, "[s]chools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms." 136 The approaches that future court justices, who are today's school children, will take in interpreting and modifying the Fourth Amendment are shaped by the lessons taught to those children today.

Two conflicting objectives are at the core of Fourth Amendment jurisprudence. On the one hand, individual privacy and liberty interests must be

136. Doe v. Renfrow, 451 U.S. 1022, 1027-28 (1981) (Brennan, J., dissenting) (arguing that the majority should have granted certiorari and reversed the lower court decision that held that warrantless "dragnet" police dog searches do not contravene the Fourth Amendment).
respected; on the other hand, the government must enforce measures that promote public safety. In the school setting, the goal of enforcing public safety has dominated. Indeed, in the Court's zeal to protect school children, it has already reduced the threshold requirements necessary to justify a school search. Consequently, the Court has interpreted the Fourth Amendment as providing greater protection of privacy rights to adults than to children while in school.

Additional harm to established Fourth Amendment jurisprudence may result from the Court's disregard for the doctrine of *stare decisis*. The Court is likely to approve enforcement procedures that are inconsistent with established Fourth Amendment doctrine, partly because such methods protect children, and partly because such procedures vent political pressure to enhance school safety. The harm from such decisions will vary depending on the nature of the Court's opinions. If the Court renders a series of result-oriented holdings which articulate inconsistent reasoning, then lower courts, legislatures, school boards, administrators, and teachers will be left to resolve novel situations without proper guidance. The Court may also choose to expressly overrule established precedent and alter the balance between the contending Fourth Amendment interests. By this course, the Court might profoundly tilt the balance toward safety and enforcement and away from personal liberty and individual privacy.

Before discarding Fourth Amendment precedent and tradition, it is essential to thoroughly consider solutions that have the potential to reduce school violence without jeopardizing individual privacy and liberty interests. Such possible solutions include changing school designs, emphasizing deterrence, and creating alternative schools. In addition, school officials must launch long-term, far-reaching preventative efforts that address students' underlying motivations to bring weapons into school and commit violent acts. Most likely, a workable solution will combine several approaches. However, it is critical that the community determine whether it has the means available to reduce school violence without jeopardizing personal privacy and individual liberty. The community must resolve this inquiry before reacting to escalating anxiety regarding school violence, and before pursuing enforcement measures which have little regard for the effect on individual privacy and liberty interests.