# Discriminatory Surveillance:
# Issues of Equity, Privacy and Security in Schools

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Ron Garrison
safeschool@aol.com or 707-746-5880

*Abstract*

Both the Congress and Supreme Court have recently addressed student privacy issues. What future round of legal challenges can school officials expect from matters of equity, student privacy and school security technology? Following recent events, school officials may find it easy to convince themselves, school boards and parents that security technology belongs in schools to counter terrorism and enhance safety. But without rigorous inquiry into the behavioral, educational and developmental impacts of security technology on campuses, education officials could implement safety, security and surveillance tactics so intrusive they could arrest the development of those it is designed to protect.   A discussion follows on how these security issues may collide with equity and privacy in an educational environment.

*In the end, we simply cannot protect freedom by forsaking freedom. As much as we want to be safe from terrorism, we cannot make ourselves more secure by making our values less secure.*

---Janis Besler Heaphy, president and publisher of the *Sacramento Bee*,
commencement speaker booed off the stage for advocating
the protection of civil liberties, December 2001

Commenting on Janis Besler Heaphy's graduation speech cut short by hecklers from the graduating class of Sacramento State University, Robert Jones, a university vice president said, "It was when she started defending *habeas corpus* that things went downhill."[1]  Perhaps we should expect such a reaction from Sacramento's graduating students where the largest percentage of bachelor's degrees awarded are in marketing, business and protective services.[2]  After all, their future corporate employers will likely profit from selling security technology or marketing databases like those maintained by the American Student List, declaring on its web page, "To help you reach this highly lucrative market, ASL has compiled over 12 million names of children between the ages of 2 and 13."[3]

Graduating students may view civil liberties of the type Janis Besler Heaphy describes as barriers to their future bottom line but it was those same liberties that protected them through the developmental stages of their childhood to the point of their current academic achievement.  These students' stunning intolerance of their inherited democratic principles follows a disturbing trend of attitudes and events challenging many of America's constitutional liberties.  And, predictably, this sea change is being tested in our nation's schools.

Unfortunately such displays of "stunning intolerance"[4] are not limited to college graduates. Reports like, *Defending Civilization: How Our Universities Are Failing America, and What Can Be Done About It*, suggest that campus dissent after September 11, 2001 is unpatriotic and lists the names of academics who are allegedly guilty of crimes that support dissent.[5] According to a recent Zogby International poll, 54 percent of Americans favor allowing telephone conversations to be monitored, 80 percent support video surveillance in public places and 67 percent approve of having their mail monitored.[6] And a CNN/USA Today Gallup poll found that a vast majority of Americans said they approve of law enforcement officials, "randomly stopping people who may fit the racial profile of suspected terrorists."[7]

From biometrics to video recognition, America's two-front war against both economic instability and terrorism has the potential to result in an increasingly intolerant society where civil liberties are viewed as roadblocks to the patriotic institutionalization of security standardization. In the name of security advancement, Americans face the potential for a concatenation of defensive errors that may lead to significant declines in civil liberties. And our schools appear to be, once again, the new battleground where those changing social policies are tested.

From the days of *Brown vs. Board of Education*, schooling in America has become the sounding board for a cacophony of social and political agendas. Today, American public education faces a chorus of competitive detractors in addition to cries from corporations and government to reform or be, "taken over".[8] Once on the bandwagon, these reforms with their accompanying *de facto* litigation may actually place students, staff and parents at greater risk. Curiously, educational tort reform is rarely the subject of candidate debates on educational accountability.

Responding to these calls to restructure, the public education community has traditionally established commissions and committees, purchased vendor-developed programs, feebly evaluated their progress, and then braced itself against the next storm of reform. Consistent federal support of public education, kept in place by a duty to transfer democratic principles through schooling, has been applied to a small number of educational programs.[9] Remarkably while federal intrusion into the nation's classrooms has been previously difficult to achieve, under the current Bush administration enhanced political control seems inevitable with initiatives like the reauthorization of the Elementary and Secondary Education Act (ESEA), which, in part, contains mandated provisions from school prayer to the Boy Scouts' use of school facilities.[10]

DECONSTRUCTING SCHOOL SECURITY

Educational communities are harmed when schools are cut adrift amid storms of social change and upheaval. It is a paradox that some of the generation of post World War II baby-boomers, now established policy-makers themselves, view civil liberties as an obstruction to national security. Those who used their campus as a tool of protest during the 1960's and '70's, should be highly critical of the increasing militarization of

schools using sophisticated security technology and enhanced protective services to achieve school safety and behavioral compliance. There exists in public education a serious need for dialogue regarding the deconstruction of school security programs. The current model adopted from the military, law enforcement and the private security industry may not be the best safety solution for educational environments.

Today's students enjoy many 21st century school reform innovations but school discipline still relies upon medieval relics of English common law emphasizing power, retribution and punishment. Whether student discipline was delivered in the past with, "a dunce in the corner," or by its modern equivalent of, "time-out," American school behavioral management systems have remained largely unchanged over time. Surprisingly, the latest in school security technology is not innovative, modern or effective; it's coercive, disciplinary and punitive. Without rigorous inquiry into the behavioral, educational and developmental impacts of security technology on campuses, education officials could implement safety, security and surveillance tactics so intrusive they could arrest the development of those it is designed to protect.

Surveys on the health effects of surveillance monitoring in the workplace have suggested that electronically monitored workers experience higher levels of depression, tension and anxiety and lower levels of productivity than those who are not monitored.[11] Further, there are few credible studies indicating school security technology is actually effective. Many school security practices are based largely on conjecture, vendor recommendation or the threat of litigation rather than scientific evidence that these practices actually deter criminal activity. Proof for the effectiveness of school safety and security measures is rare, ambiguous and often more art than science.[12] Recently, New York *Daily News* reporters tested security measures across their city and, despite a recent double shooting inside a Manhattan high school, found most of the safeguards failed miserably.[13]

While school officials like Principal Brian McKibben from Fremont High School, where 32 surveillance cameras including microphones survey the campus and surrounding area 24 hours a day, may defend ubiquitous surveillance declaring that, "…safety far outweighs other concerns," Fremont student Michael Smith disagrees, "It feels like a jail in here…they might as well just put us in orange jump suits with numbers on them."[14] Significant insight from a youthful representative of a generation where live video cams in the bedroom, survival docudramas, home video shows and hidden camera journalism preempts serious dialogue on the erosion of individual identity within a *Truman Show* and *Jerry Springer Show* culture. The danger is, if students like Michael lose their individual identity, then America runs the risk of losing its national identity.
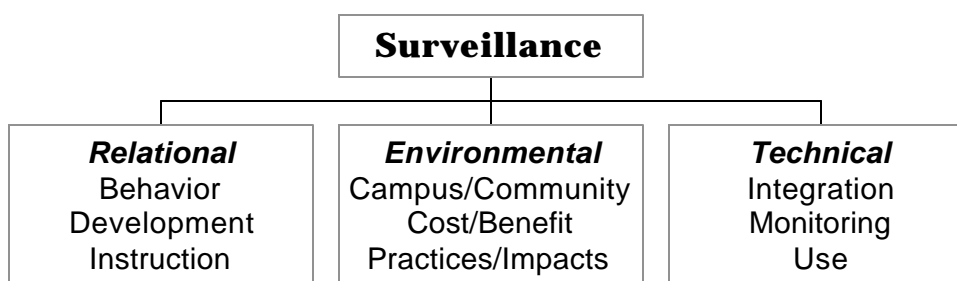
Perhaps Michael should assist school officials with information on criminal displacement and crime reduction studies, one of which finds, "there is no more significant crime reduction than those in control areas without surveillance cameras."[15] Over time and with an increased presence in society, video surveillance systems may actually contribute to criminal activity especially by juveniles who view the technology as an opportunistic mechanism for displaying bravado to friends, family and rivals. Further,

enhanced technical surveillance in the place of traditional supervision may meet the needs of the viewer to watch others in the name of security more than provide additional safety to students and school staff. "Spying on people covertly is an indignity, much like the indignity of harassment itself."[16]

"If we react too quickly to today's challenges, prisons and schools could easily become interchangeable and, in some cases, indiscernible."[17] Michel Foucault warns us about building a "panopticon" of surveillance where power is both, "visible and unverifiable."[18] *The goal of school security is to increase participation, not suspicion.* An effective school security program begins with community-based assessment and planning, uses a wide array of human support systems and seamlessly integrates security technology with other environmental controls.

If participatory instead of exclusionary models are used for school security systems, then any similarity between prisons and schools will be minimized. Parents don't want to send their children to target-hardened fortresses and communities don't want uninviting and inaccessible school facilities resembling penal institutions. Students in these schools would resemble, "butterflies mounted on pins, fastened each to his desk, spreading the useless wings of barren and meaningless knowledge they have acquired."[19] One example of a participatory model for the adoption of a security system may look like this:

Figure 1: **Model for School Security Technology Implementation**

| Surveillance | | |
| --- | --- | --- |
| ***Relational***<br>Behavior<br>Development<br>Instruction | ***Environmental***<br>Campus/Community<br>Cost/Benefit<br>Practices/Impacts | ***Technical***<br>Integration<br>Monitoring<br>Use |

Components within this model support participant dialogue focusing on diverse issues from community to classroom to achieve both user acceptance and technological efficiency.

Since the events of September 11, 2001, other significant social issues have been raised regarding the, "beginnings of a surveillance infrastructure that will erode existing privacy protections".[20] According to the *American* Sentinel, "private sector inventiveness is being wedded to government intrusiveness to reap a disaster for civil liberties." With this "inventiveness," school officials can soon expect to be pressured to implement emerging education security systems technology that may be variations on current national security themes including:

- Interception technology for use with cell phones to email including the FBI's recently renamed "Carnivore" system
- Large-area closed and open circuit PTZ (pan, tilt and zoom) surveillance cameras (CCTV/OCTV) networks with high detail and IR capability
- Identification devices such as biometric scanners and facial recognition technology including those that are lie detectors capable of picking-up flushes around the eyes to determine subject truthfulness
- Surveillance roving wiretaps, anti-hacking and encryption technology
- Tracking devices such as the, "Digital Angel"
- Enhanced crime, cryptology and incident reporting systems
- Intrusive medical and substance abuse tracking technology
- Data retention technology for long-term access to citizen records
- Networked response and web surveillance access systems
- Eavesdropping technology including, "Magic Lantern"
- Enhanced metal detectors and other screening devices
- Mandated "suspicious activity" reports similar to the Postal Service's, "Eagle Eye" program and the IRS's "Know Your Customer" system that monitors bank and purchasing transactions.
- Standardized "smart" identification cards like the "UltraCard," capable of storing 20MB of data and a national driver's licenses linking access to student attendance (including resident and non-resident registration), accountability and behavior.[21]

Variations of these devices and measures applied to campuses may have a positive impact on the safety and security of students and staff and by themselves do not necessarily represent a threat to the educational integrity of school systems. However, their cumulative impacts, without significant educational, developmental and psychological safeguards paralleling their adoption could seriously impair the educational attainment of students and potentially decrease their civil liberties. The purpose of school security is not to treat students with suspicion or obtain criminal evidence but instead, in combination with a variety of other supportive systems, offer students the safety they need to develop and learn.

It is a false dichotomy that decreasing civil liberties gives us more security. Students that are educated and engaged in the application of their civil liberties are key to a sustainable national security when they become adults. Equally important, these systems are designed for use in an adult society, not for a community where nurture, support and youth development are fostered. Adult school staff will inevitably monitor the security technology placed in schools, but many of these individuals lack adequate training and this, combined with the problems of access control for school buildings that were never designed for such controls, add up to increased risks for schools.

Even the nation's airports, before and after September 11th, have their difficulties maintaining a consistent system of security. "The technology is only as good as the people who use it," comments aviation expert Paul Dempsey, professor of law at Denver University."[22] During an assessment of airport access control requirements, the

Federal Aviation Administration (FAA) found from December 1998 through April 1999, that agents successfully penetrated secure areas on 117 (68 percent) of 173 attempts.[23] "We could breech security 80 to 90 percent of the time with very little problem before September 11, said Bogdan Dzakovic, a former FAA agent, "…and today, I don't think we'd have that much more of a problem."[24] In one recent example, the Louisville International Airport had to shut down because a security employee was reported to have fallen asleep.[25]

STUDENT PRIVACY AND SOCIAL JUSTICE

Despite the Fourth and Fourteenth Amendments, there is no unequivocal right to privacy found in the United States Constitution nor is there a independent oversight agency to monitor privacy violations or a comprehensive privacy protection law for the corporate sector. In today's America it seems privacy issues have become a battleground for litigants and a business opportunity for marketers. And when it comes to business opportunity, even organizations like the National School Boards Association are willing to barter student privacy rights for, "productive relationships with business."[26]

With respect to student's rights in school, the current direction of Fourth Amendment law reflects society's fears of and disrespect for children and the paucity of alternatives to police-type enforcement measures that are both in use and under consideration in the schools. It also indicates that school authorities no longer have to grant students the civil rights considered inalienable by the rest of the nation's citizens. Thus, the first line of defense of school administrators is to bring in more policing measures, such as car searches, metal detectors, urinalyses and drug-sniffing dogs.[27]

Historically, the United States Supreme Court has ruled in a number of cases supporting a limited constitutional right to privacy. Specifically, in *Katz v. United States*[28], a person has a right to privacy from government surveillance where there is a, "reasonable expectation of privacy" and in matters of family and education, Americans also have federal protections from violation of their privacy.[29] Federal legislation such as the *Federal Education Records and Privacy Act* (FERPA) requires that any school or institution that receives federal funds for education may not release "non-directory" school records without prior consent. Records may also be protected under *The Privacy Act of 1974*, *The Privacy Protection Act of 1980* and the *Freedom of Information Act*. Additionally, the tort of privacy was first adopted in 1905 and in all but two state courts, recognizes a civil right of action for invasion of privacy.

But what was once a "reasonable expectation of privacy" may have changed dramatically for the nation after September 11, 2001, and for schools since the violence at Columbine. It appears civil liberties have become situational based both on changing current events and when new forms of technology are introduced. With an Orwellian sense of irony, post 9-11 America has become a nation where disclosure is privacy; privacy is disclosure. For example, laws like the Freedom of Information Act, once used to protect individuals from unwarranted intrusions, is now being used by government agencies to shield their activities from public scrutiny in the name of national security.[30]

The passage of recent government legislation affecting both citizen and student civil liberties is second only to the multitude of methods corporations use for monitoring their employees, selling of medical and bank records (tied to social security numbers) and the distribution of surveillance technology for use both in both private and public places like schools. Fortunately for students, personally identifiable information like social security numbers is protected under FERPA.[31] Public schools and colleges are prohibited from requiring their students to disclose their social security numbers unless another federal law requires their collection.[32]

A growing list of government surveillance practices applicable in most cases to students includes the *Omnibus Safe Streets and Crime Control Act of 1968*, the *Electronic Communications Privacy Act of 1986*, the *Foreign Intelligence Surveillance Act of 1978*, the *Communications Assistance to Law Enforcement Act of 1994* and most recently, the *USA Patriot Act*. [33] The USA Patriot Act is particularly important because it, along with its counterpart the *Uniting and Strengthening America Act*, "provides appropriate tools required to intercept and obstruct terrorism."[34]

These *Acts* amend Section 444 (j(1)(A)(B)) of the General Education Provisions Act (20 U.S.C. 1232g) to read in part, (A) "…to collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of Title 18 U.S.C., or an act of domestic or international terrorism as defined in section 2331 of that title," and (B) "for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate and use such records."[35] "As social visions of equity and justice cede from public memory, unfettered brutal self interests combine with retrograde social policies to make security a top domestic priority."[36]

Clearly, these *Acts* pose serious dilemmas for educators, but in an era of standards, testing and benchmarks, student privacy and civil liberties seem to be on the bottom of the educational priority list. But what should become clear to educators attempting to develop a sustainable policy response to these statutes is that civil liberties such as privacy are both an educational and social justice issue with no easy answers like, "it's the kid's fault." For example, since the tragedy of Columbine, there has been significant government and vendor interest to develop student predicting and profiling measures to reduce school violence. Predicting student behavior not only raises civil liberties issues but also violates the developmental and psychological health of individual students and may lead to the increased marginalizing of minority students.[37]

EQUITY AND DISPROPORTIONAL DISCIPLINE

The racial profiling of minorities for traffic violations, minority confinement, voting rights[38] and other issues of equity were being addressed in many American communities prior to September 11, 2001. Gary Webb, writing a task force report to the California legislature on racial profiling wrote, "While the CHP (California Highway Patrol) has a strong official policy against racial profiling and unwarranted traffic stops, it appears that

some of these activities were unofficially tolerated and, at lower supervisory levels, even encouraged."[39] The Sentencing Project reports that, "While African Americans constitute 13 percent of all monthly drug users, they represent 35 percent of arrests for drug possession, 55 percent of convictions and 74 percent of prison sentences.[40] And many black parents bear the burden of racial profiling when their children are involved, "It's the fear of black parents across the country; that their sons will be harassed, beaten or killed by police."[41]

Parents of minority students are also concerned with issues of racial disproportionality found in schools. Because educators sometimes fail to understand the institutional linkages that contribute to low academic achievement and higher rates of discipline for minority students, they need an increased awareness of racial discrimination prior to the implementation of security systems. "I don't know why minority students in the district's secondary school were suspended at a higher rate than white students," said Eric Witherspoon, superintendent of Des Moines (Iowa) school district.[42]

A report by the Applied Research Center in Oakland, California, found how high-stakes testing and excessive security measures subvert academic excellence and racial equity for students of color in United States public schools.[43] In June 2000, the Indiana Education Policy Center published a report entitled, "The Color of Discipline," which, in part, concluded that, "these and other data suggest African American students are disciplined more frequently and harshly for less serious, more subjective reasons." And Brenda Townsend commented in her study on the disproportionate discipline of African American learners said, "…to reduce the rates at which African American children are excluded from schools, the relationships among schools, families and communities must be restored.[44]

Unfortunately, the wholesale insertion of school security technology without a rigorous re-examination of school disciplinary practices is unlikely to restore relationships and may, in fact, lead to expanded forms of disproportionate discipline if racial profiling is any indicator. A student learns his place in society and what others expect of him from the way that teachers and administrators conduct the social system of the school."[45] The entire school community is harmed by bias-motivated disciplinary practices.

PRIVACY, PARTICIPATION AND YOUTH DEVELOPMENT

Less than two months before the third anniversary of the Columbine school shootings, deputies rushed to the high school again to quell a food fight that authorities say was a near riot. "They are way over the top on security," said Austin Rabinoff, 15, a sophomore. "They check the parking lot all the time. When they found a baseball bat in my car they threatened me with six months jail time and a $1,500 fine," said Junior Keith Kinsella. Kinsella said school officials have been too zealous about avoiding any violence because of the April 20, 1999, assault that left 12 students, one teacher and two teen gunmen dead.[46] Certainly, it is difficult to be critical of Columbine school officials after the events of their tragedy. But this recent report may underscore the importance of minimizing the stress of invasive surveillance and its requisite invasion of

student privacy in the process of developing a safe school.   Privacy is viewed in most democratic societies as a necessary element in the development of healthy, active individuals.[47]

Autonomous youth development of which civil liberties like privacy play a part can be one strategy to reduce draconian school violence suppression tactics.  "Today, supporting environments are denied to large numbers of children and youth and in many instances the environments in which they live have actually become dangerous," suggests Joel F. Handler, chair of the panel for a National Research Council report entitled, *Losing Generations: Adolescents in High Risk Settings.*  The NRC panel found significant links between the influence of environmental settings and adolescent behavior and development.[48]  Safe and supportive environments are critical for a child to develop positive relationships and maturation.  "Privacy is necessary…to protect important social relationships…but there is also an important case for privacy that has to do with the development of human individuality.  Without privacy there is no individuality."[49]

Educators should, when developing a school security program, avoid instilling more fear and mistrust in students by implementing policies, procedures and practices that are excessively oppressive, demeaning or intrusive.  This means creating security programs for the right reason: *to enhance safety, quality of instruction and youth development.* Security program managers working in educational institutions sometimes fail to fully understand that security technology is not as an end to itself, but a means to enhance the development, attendance and achievement of children.  Failure, "to provide students with meaningful social contexts within which to function have precipitated the participation of the school in violence problems."[50]

Children and youth are developmental human beings and education is central to their development.  According one child development expert, Lev Vygotsky, "the only good learning is that which is in advance of the child's development."[51]  There exists an intimate relationship between education and a healthy child's development.  If youth development programs are missing in schools, learning becomes difficult and behavioral difficulties follow.  When school officials encourage participatory civil liberties like privacy, students learn the capacity to be self-correcting.   For example in Vygotsky's work, private speech serves an important self-regulatory function.  It is the means by which children guide their own thinking and behavior.  Private speech guides children from being regulated by others to being self-regulated by their own thinking.[52]

For children and youth, if there is limited participation, there is inhibited social development.  Studies demonstrate the lack of participation is associated with rigid and simplistic relational strategies, psychological dependence on external sources for personal validation and the expression of self-destructive and antisocial behaviors including drug abuse, depression, promiscuity, premature parenthood, suicide and delinquency."[53]

For example, one developmental theory that identifies delinquency as a critical pathway toward criminality is Robert Loeber's work on antisocial conduct.  Loeber and his colleagues used a developmental model to describe how children progress from disruptive to criminal behaviors. According to these researchers, some children follow specific developmental pathways that lead to increasingly disruptive and delinquent behavior. Especially in boys, these behaviors are displayed in a methodical, progressive manner with less serious problem behaviors preceding more serious ones.[54]

Loeber found that these increasingly disruptive and antisocial behaviors in childhood and adolescence roughly follow a sequence of progressive activity from difficult temperament to criminal recidivism:

- Difficult temperament
- Hyperactivity
- Overt conduct problems and/or aggressiveness
- Withdrawal
- Poor peer relationships
- Academic problems
- Covert or concealing conduct problems
- Association with deviant peers
- Delinquency and arrest
- Recidivism[55]

Loeber's theory was field-tested beginning in 1986 with a longitudinal investigation in Pittsburgh, involving repeated contacts with the same male juveniles and their primary caretakers over a substantial portion of their developmental years.[56] This research inquiry, later known as the *Pittsburgh Youth Study*, confirmed that for the males studied, less serious forms of delinquency developed into distinct behavioral pathways that often steered individuals toward more serious criminal activity.

The *Pittsburgh Youth Study* also found that boys who never progressed beyond the first stage of any pathway reported very low offense rates during the prime delinquency ages of 13 to 16. However, as soon as boys started to develop their disruptive and delinquent behavior characteristics along several diverse pathways, the rate of serious offenses increased.[57]  Loeber's work helps establish the link that unless children and adolescents have opportunities for meaningful participation, supportive environments and positive adult mentors, the developmental pathways youth choose can be dangerous both to themselves and others.

LEGAL CHALLENGES AND EDUCATIONAL JUSTICE

As public education evolves, so does school law.  Matters of privacy, equity and security compete with a variety of other compelling issues the school community confronts daily. Schools are dynamic organizations propelled by a mission to serve a vast array of educational and social needs and must look constantly for new ways to be more efficient and responsive.

Both the Congress and Supreme Court have recently addressed a number of issues regarding the privacy of students.[58] Other legal trends and issues will become equally compelling for school officials to consider in the near future. These include bullying, educational records, harassment, standards of liability, alternative and off-site learning programs, student searches and discipline. Discipline, in particular, for regular and special education students is notable.

For example, a 10-inch bread knife found by a school security guard in the bed of a student's pickup truck was accidentally left behind over the weekend from a box of personal belongings owned by his ailing grandmother. The knife could end up costing the 16-year-old honor student the rest of his junior year of high school. He was expelled under his state's zero–tolerance weapons policy.

Students like this share a fate similar to others recently punished for handing out mints to classmates, possessing a nail clipper, taking a plastic ax to a class Halloween party and a 8-year-old boy pointing a breaded chicken finger at a teacher and saying, "Pow, pow, pow." Last year the American Bar Association voted to recommend ending the zero-tolerance policies, saying they are unfair and inappropriate for many children.[59] Unfortunately, given the continued application of these policies in many schools, there also seems to be zero tolerance for common sense.

Recognizing that practices like zero tolerance can lead to absurdity and discrimination, the Governing Board and superintendent of the Vallejo City Unified School District in California, began an initiative to reduce, not increase the number of student suspensions and expulsions. This initiative, Educational Justice for African American Students (EJAAS), relies on student advocacy, community service and educational justice to reduce the number of minority student school exclusions.[60] California requires that school districts apply, "corrective actions" prior to suspension or expulsion in an effort to reduce the overall number of school exclusions.[61] These "corrective actions" offer school officials statutory alternatives that encourage options for school exclusions.

Educational justice programs can offer students and parents a variety of options for corrective action prior to discipline. Clearly, assessing school staff and student relationships, peer interaction, curriculum and instruction and the school's ecology can have a dramatic impact on student behavior. But for students who require formal behavioral intervention, school officials should consider programs like restorative justice that offer modern alternatives to punishment and discipline. School systems today need programs that balance the varied interests of students, peers, the school and the community. Restorative justice offers this balanced approach to student management programs.

Currently, many restorative justice activities are done by social services agencies, schools, law enforcement and probation departments.[62] Restorative justice is, "a process whereby parties with a stake in the particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the

future."[63] Mika and Zehr developed a series of restorative justice "signposts" applicable to the school community:

- Focus on harms suffered rather than laws or policies broken
- Show a balanced concern for the victim and offender by involving both in the justice process
- Work toward restoration of victims through empowerment and response to their needs
- Support the offender and simultaneously encourage understanding, acceptance and commitment to repair the harm
- Recognize the offender's needs to fulfill obligations which are achievable, not punitive
- Provide opportunities for direct and indirect victim-offender dialogue
- Involve and empower the community through the judicial process, particularly by increasing its capacity to recognize and respond to infractions of law or policy
- Encourage collaboration and reintegration rather than coercion and separation
- Pay attention to the unintended results of alternative activities and programs
- Show respect for the dignity of everyone, particularly victims, offenders and those who are concerned with justice.[64]

CONCLUSION

School communities are complex social settings requiring modern methods of management and response to risk. While many pundits lead us to believe it's effective to buy our way out of trouble using security technology, achieving safe schools over the long-term requires investment not in hardware but in the software of relationships, resiliency, educational justice and youth development. For example, the risk pathways brought to Columbine High School by students Harris and Klebold included personal struggles to maintain relationships, lack of adult interaction and emotional isolation. The cumulative effect of these unaddressed risks resulted in a violent message of contempt delivered to both the school and community.

Violent acts perpetrated by children are the result of stress response mechanisms that can be mitigated by nurturing the resilient qualities of attachment, problem solving, spirituality, interaction, age appropriate independence, support, goal orientation, thriving, and positive adaptation. Models for delivering these qualities include Haggerty's descriptions of multi-axial life trajectory and developmental cascades and Garmezy and Rutter's developmental interventions described in their book, *Stress, Coping and Development in Childhood*.[65] Programs like these and others including restorative justice consider youth developing responses then collaboratively provides intervention and opportunity, increasing the protective factors necessary to support the child in the future.

Effective institutional approaches to reduce violence consist of non-intrusive individual and social management techniques including risk assessment and intervention, information sharing, safety planning and educational justice. Lore and Schultz comment, "Parallel studies of aggression in children, assaultive adults and even entire societies have suggested that humans are exquisitely sensitive to subtle social controls that could be used to reduce the frequency of individual acts of violence."[66] Enhancing safety also requires that school officials discover ways to increase the protective factors found in the family, school and community.

An important protective factor for students would be the expansion their nexus of social attachment through the awareness and application of their civil liberties during maturation. Developing behavioral scaffolding systems of support emphasizing connectedness, diversity and tolerance may counteract the potentially violent effects of marginalization. An architecture of attachment built upon a foundation of participation using developmental scaffolds that identify strengths, emphasize contribution and enhance civil liberties can increase school safety and prevent tragedy.

It has been estimated Americans are being photographed an average of 30 times each day…on a single day in New York a researcher counted 2,400 surveillance cameras.[67] Clearly, too few adults question the psychological impact that increasingly sophisticated security systems have on individuals perhaps because surveillance may have already become an unquestioned community standard. In our demographically aging society, many of the distinctions that have traditionally separated adults and children are blurred, so the developmental impacts of intrusive technology on children by adults may not be fully appreciated. Too many children act like adults and too many adults act like children. This is why, in reaction to the events of Columbine and September 11th, educators should not act in ways that fundamentally change what American public schooling has become over time. School officials should focus their pedagogical energies on protection over risk.

Collectively, students, parents, school staff and the community must find ways where reactions to national events do not give victory to terrorism. Americans must not alter the legacy of freedom its citizens have traditionally called upon the schools to deliver. There is a greater need today for dialog and human connection than for technology.

Teachers who encourage age-appropriate discussion on the domestic and international wells of discontent that breed terrorism will do more for national security than hundreds of metal detectors. "Clearly, against the backdrop of fear and uncertainty we must re-evaluate our policies regarding surveillance…"[68] At the end of the day, long-term sustainable security will only come when we have enhanced social justice for all our students, their families, our communities, our nation and our world.

Perhaps the real danger is that educational institutions, rushing to embrace bigger and better security systems, will forget that human relationships, not technology, form the basis of authentic security. But because relationships take time to develop and nurture, fear and expedience may have contributed to an American spending binge similar to

military expenditures during the Cold War.  The major difference is that this time, we may be protecting us from ourselves.[69]

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[1] Timothy Egan, "In Sacramento, a Publisher's Questions Draw the Wrath of the Crowd," *The New York Times*, 12/21/01.

[2] CSUS Common Data Set – 2000, Degrees conferred, IPEDS Completions, Part A.

[3] See Robert O'Harrow Jr., "Marketers May Face Student-Data Curbs," *The Washington Post*, 12/18/01.

[4] Robin Wilson and Ana Marie Cox, "Terrorist Attacks Put Academic Freedom to the Test," *The Chronicle of Higher Education*, 10/5/01, pg. A12.

[5] Henry A. Giroux, "Democracy, Freedom, and Justice after September 11th: Rethinking the Role of Educators and the Politics of Schooling," *Teachers College Record*, #10871, 1/16/02

[6] John Rossomando, "Most Americans Support Government Surveillance," *CNSNews*, 2/7/02.

[7] Liz Dagget, "Poll shows many Americans now approve of racial profiling," *The Daily Helmsman Online,* 11/29/01

[8] Johnson, Robert, C., "Legislature Signals Probable Takeover of Philadelphia Schools," *Education Week*, October 31, 2001.

[9] FERPA, IDEA, 504, Title 1, 9, etc., come to mind.

[10] "ESEA Extends Federal Reach in Schools," *NEA Today*, Washington, DC, March 2002, pg. 20.

[11] Rosen, Jeffrey, *The Unwanted Gaze: The Destruction of Privacy in America*, Vintage Books, New York, 2001, pg. 213.

[12] Garrison, Ronald, W., *Avila v. Houston Independent School District*, United States District Court for the Southern District of Texas, H-00-2794, 2001.

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[20] As reported in the *Contra Costa Times*, from a Robert O'Harrow Jr. *Washington Post* article entitled, "Air Profiling Network Raises Privacy Issues," 2/1/02, pg. B3.

[21] Several states currently link school attendance with obtaining a driver's license. Federal efforts in this area include reducing or eliminating welfare to the families of drug users and a current California legislative proposal would deny a driver's license to males who fail to register for the draft (see *Contra Costa Times*, "Draft Registry Splits Students," 3/15/02, pg. A3.

[22] Konrad, Rachel, "Airport Security Technology Under Scrutiny," CNET News.com, 9/13/01.

[23] Memo from Alexis M. Stefani, Assistant Inspector General for Auditing to the Federal Aviation Administration on Airport Access Control, 11/18/1999, Report No. AV-20000-017.

[24] Reported on CBSNews.com in an article entitled, "Fear of Flying," Washington, DC, 2/25/02.

[25] USA Today, "Napping Security Worker Delays Flights in Louisville, " 2/19/2002.

[26] O'Harrow, Robert, "Marketers May Face Student Data Curbs," *Washington Post*, 12/18/02.

[27] Beyer, Dorianne, Esq., "School Safety and the Legal Rights of Students," *ERIC Clearinghouse on Urban Education*, No. 121, May 1997, EDO-UD-97-2.

[28] 386 US 954, (1967)

[29] See Griswold v. Connecticut, 381 US 479 (1965); Whalen v. Roe, 429 US 589 (1977); Paul v. Davis 424 US 714 (1976).

[30] Martin E. Halstuk, "The Treat to Freedom of Information," *Columbia Journalism Review*, Nov/Dec. 2001.

[31] Family Educational Right to Privacy Act (Buckley Amendment), 20 USC S. 1232g.

[32] *Privacy Act of 1974*, (5 U.S.C. § 552a)

[33] This *Act* amends 20 USC 1232g, § 507-508 (FERPA and the *National Education Statistics Act of 1994*).

[34] Public Law 107-56, October 26, 2001;115 Stat.272.

[35] FERPA, Sec. 507 [115 Stat. 367-68] and § 444 of 20 U.S.C. – 1232(g) by adding after subsection (i) a new subsection (j) 1 (A) (B).

[36] Henry A. Giroux, "Democracy, Freedom, and Justice after September 11th: Rethinking the Role of Educators and the Politics of Schooling," *Teachers College Record*, #10871, 1/16/02.

[37] In August 2000, the U.S. Secret Service released a report on school violence critical of predicting and profiling. Bryan Vossekuil, the agent heading the project, said, "There's no one set of characteristics that describe a school shooter - we don't believe in profiles."  Additionally:

- Behind most recent efforts to predict youth behavior is the politically motivated assumption that society must treat young offenders as adults. One way to achieve this goal is to intervene in the rights of others who, by their status in society, have fewer rights guaranteed by the Constitution. Simply put, it's easier to pick on kids.  "Police are more likely to arrest youth than adults who are marginally involved in criminal behavior." (R.J. Gable in *Today's Delinquent*, Vol. 1, 1982.)

- Curiously, the American juvenile justice system and OJJDP were created specifically to counter practices that treated juveniles as adults. Behavioral prophecy will return childhood to the dark ages.

- Equally curious are the marketable reasons behind the current interest in predicting juvenile behavior: labeling and social control.  Managing predicted behaviors would certainly increase the demand for Ritalin, Prozac and Zoloft.  Prediction will lead to prescription.

- Current behavioral predicting and profiling attempts are more art than science. Enforcement agencies find it difficult to profile most adult offenders both for reasons of accuracy and Constitutional protections. This is why infiltration and surveillance are the preferred methods of criminal intervention.

- Studies on resilience demonstrate that the vast majority of youth who experience multiple risk factors during their childhood do not grow-up to be criminal, deviant or violent (Werner, Bernard, et. al).

- Since only a small number of chronic juvenile offenders commit the majority of criminal offenses, why fixate on predicting the behavior of all children?  Do we need more identifying "labels" for children?

- Rather than attempt to predict an individual child's behavior, why not modify children's institutions to provide programs emphasizing support, safety, social justice, health and inclusion?

- Predicting juvenile behavior is, "like predicting a major earthquake, there are too many variables." (John H. Laub, Professor of Criminology, University of Maryland in College Park.)

- Recent challenges to racial profiling and disproportionate rates of disciplinary actions against minorities make predicting and profiling socially suspect. Predicting behavioral characteristics can be linked historically to outcomes like: phrenology, stereotyping, racism and ethnic cleansing.

- The author of a longitudinal birth cohort study conducted in Wisconsin during the 1940's and 50's concluded that, "The future behavior of individual juvenile offenders cannot be accurately predicted regardless of their early criminal records." (Shannon, L.W., Risk Assessment, *Journal of Quantitative Criminology*, Vol. 1 #2, 1985.)

- Researcher Hopson declared, "The literature presents too many false positives and false negatives to provide any support for predictors of violent juvenile behavior." (Hopson, D., *Prediction of Juvenile Violence*, 1987.)

- Hamparian, found in 1987 that, "Few data suggest an ability to accurately predict individual violent juvenile behavior."

- The conclusion of a study completed in 1999 sponsored by the National Research Council and the Institute of Medicine stated, "Physicians cannot reliably identify children who go on to commit random, uncharacteristic acts of violence, such as the recent school shootings...but that doesn't necessarily hold true for a subset of children who exhibit consistently aggressive behavior starting in toddler-hood…it turns out that these children often have multiple comorbid psychiatric illness."

(Clinical Psychiatry News,27(7):5,1,1999). Treating illness is different from punitive action based on probability.

[38] An example of voting rights issues was recently described by Michael Moore, "…this assault on voting rights of minorities was so widespread in Florida that it even affected people like Linda Howell. Linda received a letter informing her that she was a felon and therefore advising her not to bother showing up on Election Day, because she would be barred from voting. The only problem was, Linda Howell wasn't a felon; in fact, she was the elections supervisor of Madison County, Florida. She and other local election officials tried to get the state to rectify the problem, but their pleas fell on deaf ears. They were told that everyone who complained about being prevented from voting should submit themselves for fingerprinting, and then let the state determine whether or not they were felons". Reported in *Stupid White Men*. By Michael Moore, Regan Books/Harper-Collins, New York, 2001, pp.5-6.

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[58] See *Falvo v. Owasso Independent School District*, *Earls v. Board of Education of Tecumseh*, *Gonzaga University v. Doe* and US Senators Richard C. Shelby and Christopher Dodd's provision to curb marketers who want to gather personal information about students.

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