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The End of School Policing

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Police officers have become permanent fixtures in public schools. The sharp increase in the number of school police officers over the last twenty years has generated a substantial body of critical legal scholarship. Critics question whether police make students safer. They argue that any safety benefits must be weighed against the significant role the police play in perpetuating a school-to-prison pipeline that funnels Black and Brown students and students with disabilities out of schools and into courts, jails, and prisons. In suggesting remedies for this problem, commentators have proposed several regulatory fixes. These include changes to the standards for evaluating students' claims of constitutional rights violations, specialized police trainings, and voluntary agreements between law enforcement agencies and school districts that circumscribe the role of school police. Thus far, however, legal scholars have focused primarily on the "how" of school policing, eschewing the logically prior normative question of whether there should be police in schools at all.

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This Article takes up that question, and it argues that education policymakers should consider removal—rather than only regulation—of school police. In so doing, it makes three primary contributions to school-policing scholarship. First, it shifts the focus away from the safety debates that preoccupy scholars and policymakers, arguing that financial incentives for schools, security-theater concerns for administrators, and legitimacy-building interests of law enforcement equally explain school policing's rise. Second, using critiques of community policing as an analytical framework, it illuminates a range of school-governance and pedagogical harms from school policing that exist separate from and antecedent to policing's role in fueling the school-to-prison pipeline. Third, it puts grassroots movements against school policing in conversation with the prison abolitionist project and argues that insights from both should inform school-safety policymaking.

INTRODUCTION

Over the last two decades, police officers have become permanent fixtures in public schools.[1] While fewer than one hundred police officers worked full-time in schools in 1970, today that number has risen to between 20,000 and 30,000 officers patrolling the nation's elementary, middle, and high schools.[2] Amidst fears about juvenile crime in general and school shootings in particular, the decade between 1997 and 2007 saw an especially sharp rise in hiring.[3]

This sharp growth in school policing has generated a substantial body of critical scholarship. Critics of school policing question whether police make students safer than they would otherwise be.[4] They focus on how school policing criminalizes developmentally typical misbehavior and pushes students of color and students with disabilities into courts, jails, and prisons, creating a "school-

1. *See infra* notes 43–58 and accompanying text.

2. Shabnam Javdani, *Policing Education: An Empirical Review of the Challenges and Impact of the Work of School Police Officers*, 63 AM. J. CMTY. PSYCH. 253, 253 (2019) (internal citations omitted); *see also* Jason Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV. 919, 946 n.128 (2016) [hereinafter *Students*] (noting that the National Center for Education Statistics estimates the higher number).

3. Javdani, *supra* note 2, at 254.

4. *See, e.g.*, Denise C. Gottfredson, Scott Crosse, Zhiqun Tang, Erin L. Bauer, Michele A. Harmon, Carol A. Hagen & Angela D. Greene, *Effects of School Resource Officers on School Crime and Responses to School Crime*, 19 CRIMINOLOGY & PUB. POL'Y 905, 929–30 (2020) (finding, *contra* the suggestion by the National Association of School Resource Officers that school police make students and schools safer, that "increasing SRO dosage does not reduce school records of any form of school crime, and results in higher counts of recorded weapon- and drug-related school crimes, effects that persist for at least 20 months after the increase in SROs"); Jason P. Nance, *Rethinking Law Enforcement Officers in Schools*, 84 GEO. WASH. L. REV. ARGUENDO 151, 154 (2016) (citing studies showing that "how effective SROs programs are at promoting school safety is far from clear"); *see also infra* notes 86–99 and accompanying text.

to-prison pipeline."[5] They propose regulatory fixes aimed at ameliorating the harms of the pipeline.[6]

This Article shifts the scholarly analysis from *how* officers police schools to *whether* they should be there at all. After demonstrating that the evidence surrounding the safety benefits of school police is weak, it explores how the rise of school policing is likely equally attributable to non-safety factors. Using critiques of community-policing theory as a framework, the Article then shows how school policing creates harms separate from and antecedent to the school-to-prison pipeline. Reviewing the minimal utility of law and policy at meaningfully regulating the police and analyzing insights from grassroots organizing opposed to school policing as well as the prison abolitionism movement, the Article argues that policymakers should consider removing police from schools.

The Article develops the argument over three parts. Part I expands our understanding of why police are in schools. Conventional wisdom suggests that school administrators have sought out police for safety reasons and that police do, in fact, make schools safer.[7] Yet the evidence base for the safety benefits of school policing is mixed and inconclusive.[8] This Part takes up three explanatory

5. *See, e.g.*, Josh Gupta-Kagan*, Reevaluating School Searches Following School-to-Prison Pipeline Reforms*, 87 FORDHAM L. REV. 2013, 2015 (2019) [hereinafter *Reevaluating School Searches*] (arguing that the presence of SROs is an "important part" of the story of the pipeline); Bethany J. Peak, *Militarization of School Police: One Route on the School-to-Prison Pipeline*, 68 ARK. L. REV. 195, 219–22 (2015) (making the link between school policing and the pipeline); Jason Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 1 (2013) (drawing on empirical data from the U.S. Department of Education to show that low-income students and students of color are much more likely to go to schools with "intense security conditions" than other students, even when controlling for neighborhood crime, school crime, and school disorder); Amanda Merkwae, *Schooling the Police: Race, Disability, and the Conduct of School Resource Officers*, 21 MICH. J. RACE & L. 147 (2015) (noting the disproportionality in school-based arrests); Jyoti Nanda, *The Construction and Criminalization of Disability in School Incarceration*, 9 COLUM. J. RACE & L. 265, 277–78 (2019) (same); *see also infra* notes 153–173 and accompanying text.

6. *See, e.g.*, Gupta-Kagan, *Reevaluating School Searches*, *supra* note 5, at 2058 (arguing for a change in the constitutional standard of how courts evaluate students' Fourth Amendment claims); Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1119 (2003) (same); Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 43 (2006) (arguing for a change in *Miranda* doctrine to account for relationships among students, officers, and administrators).

7. *See, e.g.*, Mandy McLaren, *In a World 'Overrun by Tragedy,' JCPS Will Start New School Year Without Cops*, LOUISVILLE COURIER J. (Aug. 7, 2019), https://www.courier-journal.com/story/news/education/2019/08/06/jcps-board-votes-remove-school-resource-officers/1935287001/ [https://perma.cc/5WCA-PMKA] (quoting a retired principal voting against a proposal to remove police officers from schools in favor of a private security force arguing, "I can't imagine leaving our schools defenseless . . . I can't deny this reality that we're in of mass shootings . . . . For me, this is just common sense that we have to have someone accessible to our buildings to be able to meet a threat like this, because this is the world we live in"); *see also infra* notes 59, 79–85 and accompanying text.

8. *See infra* notes 86–99 and accompanying text.

factors largely unexplored in legal scholarship.[9] First, federal and state funding incentivizes the hiring of school police.[10] Such funding is less likely to be available for other, non-law enforcement means of enhancing safety, such as hiring or increasing the number of school-based mental health staff.[11] The second factor is what national security scholars describe and often deride as "security theater"—highly visible personnel as well as physical mechanisms that create the appearance of enhancing safety without actually improving it.[12] The third factor is the legitimacy-building interests of law enforcement, which police perceive to be especially compelling in schools with large concentrations of Black and Brown students.[13]

Part II illuminates a broader range of negative impacts from school policing than is captured in the scholarly and popular literature on the school-to-prison pipeline. The existing commentary often criticizes policing's role in pushing students out of schools and into courts, jails, and prisons.[14] I argue in this Section that school policing, even when it does not function in this way, nonetheless creates harms.[15]

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9. Legal scholars have noted the availability of government funding for school police officers. *See, e.g.*, Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 367 n.145 (2011) ("In addition to the implementation of zero-tolerance and fear over high-profile school[] shootings like that at Columbine High School in 1999, the increase in SROs can be traced to federal funding for school officers through COPS [Community Oriented Policing Services] program . . . ."). They have not, however, conceptualized school policing as an aspect of security theater; nor have they considered how policing as an institution benefits from the installation of officers in schools.

10. *See infra* notes 100–112 and accompanying text.

11. *See* AMIR WHITAKER, SYLVIA TORRES-GUILLÉN, MICHELLE MORTON, HAROLD JORDAN, STEFANIE COYLE, ANGELA MANN & WEI-LING SUN, ACLU, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS (2019), https://www.nyclu.org/sites/default/files/field_documents/030119-acluschooldisciplinereport.pdf [https://perma.cc/9ARM-QV4G].

12. *See, e.g.*, BRUCE SCHNEIER, BEYOND FEAR: THINKING SENSIBLY ABOUT SECURITY IN AN UNCERTAIN WORLD 38 (2003) [hereinafter BEYOND FEAR] (documenting phenomenon); *see also infra* notes 118–133 and accompanying text.

13. *See, e.g.*, Aaron Kupchik & Nicole L. Bracy, *To Protect, Serve, and Mentor? Police Officers in Public Schools*, *in* SCHOOLS UNDER SURVEILLANCE: CULTURES OF CONTROL IN PUBLIC EDUCATION 21, 29 (Torin Monahan & Rodolfo Torres eds., 2009) (finding that school-policing organizations view school policing as "opportunities to foster legal socialization by building relationships with youth" and noting that "this view presumes that through regular and casual interaction with school police officers, students will gain . . . greater respect for law enforcement"); *see also infra* notes 134–152 and accompanying text.

14. *See supra* note 56 and accompanying text; *see also* Mariame Kaba, *How the School-to-Prison Pipeline Works: And Why Black Girls are Particularly at Risk*, TEEN VOGUE (Oct. 10, 2017), https://www.teenvogue.com/story/how-the-school-to-prison-pipeline-works [https://perma.cc/PQ4W-XBZ7] (noting that "[c]ops in schools . . . play a critical role in this pipeline"); MEGAN FRENCH-MARCELIN & SARAH HINGER, ACLU, BULLIES IN BLUE: THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING 5 (2017), https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf [https://perma.cc/9U42-NN36] (linking school policing to a "'push-out' phenomenon").

15. *See infra* notes 253–324 and accompanying text.

To analyze these harms, this Section draws on literature explaining and critiquing community policing. While scholars have not highlighted this fact,[16] school policing is a version of community policing.[17] Outside the school context, scholars *have* cogently critiqued community policing, and it turns out that those critiques help bring school policing's non-pipeline harms into focus. First, while community policing, in theory, relies on partnerships between law enforcement and communities, in practice, these are not partnerships of equals; when a community's priorities clash with a law enforcement imperative, the latter will prevail.[18] This unequal relationship lays the groundwork for a second critique—namely, that officers, rather than community members themselves, can decide whose opinions and perspectives in a given community should be afforded weight. Accordingly, officers can cherry-pick those community members whose views most closely align with law enforcement.[19] Third, community-policing initiatives may serve to tamp down and co-opt bubbling grassroots resistance—as one scholar says, to buy peace rather than to earn it.[20]

Each of these three critiques has salience in the school-policing context. First, despite the nomenclature of a school-police "partnership," law enforcement officers can override how administrators and teachers wish to handle student misconduct.[21] Such interference in discipline administration creates governance harms within the school, as teachers and administrators are prevented from handling teachable moments as they see fit.[22]

Second, while deputizing school police to perform teaching and counseling functions may seem an efficient use of personnel resources, this arrangement can create pedagogical problems and help facilitate the criminalization of students.[23] School police officers frequently perform teaching and counseling tasks for which they are unqualified.[24] Officers can take advantage of students' diminished legal rights and developmental immaturity by manipulating their

16. Legal scholars may mention in passing—but mostly do not analyze the theoretical and practical significance of—the fact that school policing is defined federally as a community-policing assignment and funded through a federal office supporting community policing, or that school police officers function according to the theory underlying community policing. *See, e.g.*, Merkwae, *supra* note 5, at 158 (noting that origins of SRO programs in the U.S. can be traced back to community policing strategies implemented in Michigan in the 1950s); Gupta-Kagan, *Reevaluating School Searches*, *supra* note 5, at 2058 (describing school resource officers' education and mentoring work as "community-policing tasks [that] serve crime-prevention goals" but arguing that the fact that school police perform these tasks is doctrinally insignificant for Fourth Amendment purposes, thus implicitly suggesting that these community-policing tasks are either harmless or not worthy of scholarly analysis).

17. *See infra* notes 177–179, 214–217 and accompanying text.

18. *See infra* notes 206–207 and accompanying text.

19. *See infra* notes 208–209 and accompanying text.

20. *See infra* notes 210–213 and accompanying text.

21. *See infra* notes 253–274 and accompanying text.

22. *See id.*

23. *See infra* notes 275–297 and accompanying text.

24. *See infra* notes 287–290 and accompanying text.

teaching or counseling roles to obtain information they can then use to interrogate, arrest, and charge students.[25]

Finally, school policing stifles dissent and normalizes surveillance.[26] In particular, it normalizes a racialized version of surveillance that targets Black and Brown students, as well as students with disabilities and low-income students.[27] As a result, all students receive -- and may internalize -- an inaccurate message that members of marginalized student groups are uniquely a threat to others.[28] Such a message is deeply damaging in an environment ostensibly intended to educate students, nurture identity development, and encourage the growth of proto-citizens.

Part III makes a prescriptive claim: policymakers should consider removing, rather than merely regulating, school police.[29] Standard regulatory mechanisms have done little to rein in the problematic aspects of school policing. As the state and federal cases discussed below illustrate, the triad role that characterizes school policing makes it practically impossible for students to prevail on legal claims.[30] Also of minimal utility at effecting change in police behavior are the voluntary agreements entered into between law enforcement and schools.[31] There are few requirements pertaining to eligibility and training of school police and those that exist are difficult for students, parents, and other school community members to enforce.

But the argument against school police does not draw its normative heft only from the weakness of any given regulatory mechanism at changing school-police behavior. Instead, I consider the question of safety more capaciously than educational decision-makers often do and show how school policing can interfere with safety rather than promote it.[32] In so doing, I draw from the grassroots organizing against school policing—led primarily by the Black and Brown students and their families most negatively affected by it—that prompted several large school districts in the summer and fall of 2020 to sever ties with

25. *See infra* notes 277–278 and accompanying text. Indeed, one commentator argues that school police officers should exclusively engage in this and other non-law enforcement roles such as "mentor[ ], counselor[ ], and role model[ ]" because doing so will "shape the perceptions of the youth directly affecting their future interactions with officers in the community." Devan Byrd, Note, *Challenging Excessive Force: Why Police Officers Disproportionately Exercise Excessive Force Towards Blacks and Why This Systemic Problem Must End*, 8 ALA. C.R. & C.L. L. REV. 93, 117 (2017).

26. *See infra* notes 298–306 and accompanying text.

27. *See infra* notes 307–316 and accompanying text.

28. *Id.*

29. *See infra* notes 376–386 and accompanying text.

30. *See infra* notes 325–353 and accompanying text.

31. *See infra* notes 365–375 and accompanying text.

32. *See infra* notes 398–405 and accompanying text.

police departments.[33] These districts constitute a notable counterexample to the steadily upward trajectory of police hiring over the last three decades.[34]

This movement overlaps in important ways with prison and policing abolitionism, which sees safety as arising not only from accountability for interpersonal harm but also from funding structures that ensure living-wage jobs and community-based programs that can prevent offending in the first instance.[35] Abolitionism also prioritizes non-carceral mechanisms for responding to offending when it occurs.[36]

Taken together, insights from these movements suggest that a rich curriculum, after-school activities, and equitable financing may level out the educational playing field. What's more, they support the creation of non-reactive and non-punitive responses to in-school offending, such as restorative practices. Part III combines the insights from Parts I and II to create a set of considerations for the benefit of education policymakers considering removal of police from schools.[37]

I.
BEYOND DEBATES ABOUT SECURITY: A RICHER ACCOUNT OF THE RISE OF SCHOOL POLICING

Part I.A defines school police, describes the range of schools in which they work, and documents their growth nationwide. Part I.B outlines the safety rationales offered by school-policing proponents and summarizes the empirical literature that contests these rationales. Because the evidence surrounding the effect of school policing on safety is mixed, Part I.C analyzes causal factors that equally, if not better, explain school policing's rise.

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33. After officers from the Minneapolis Police Department killed George Floyd on camera and in broad daylight, several school districts made moves to sever ties with police departments. *See, e.g.*, Moriah Balingit, Valerie Strauss & Kim Bellware, *Fueled by Protests, School Districts Across the Country Cut Ties with Police* (June 12, 2020), https://www.washingtonpost.com/education/2020/06/12/schools-police-george-floyd-protests/ [https://perma.cc/ZF9W-UUFS]; *see also infra* note 374 and accompanying text.

34. *See* F. CHRIS CURRAN, BENJAMIN W. FISHER, SAMANTHA VIANO & AARON KUPCHIK, UNDERSTANDING SCHOOL SAFETY AND THE USE OF SCHOOL RESOURCE OFFICERS IN UNDERSTUDIED SETTINGS 3 (2020) [hereinafter UNDERSTANDING], https://www.ojp.gov/pdffiles1/nij/grants/254621.pdf [https://perma.cc/VT4X-9SHY].

35. *See generally* Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1575–76 (2019) (defining security as "freedom from danger, fear, and anxiety" requiring a "decisive departure from typical demands for policy reform" (internal citation omitted)); Meghan G. McDowell & Luis A. Fernandez, *'Disband, Disempower, and Disarm': Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373, 374 (2018) (describing police abolitionism as "challeng[ing] the hegemonic idea that the police are an inevitable fixture in society and, moreover, that the police are analogous to community safety").

36. *See* Allegra McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1156, 1161 (2015) (discussing as part of the abolitionist project institutional alternatives to criminal law enforcement including "restorative forms of redress" of harm).

37. *See infra* notes 406–419 and accompanying text.

A. School Policing: Definition, Reach, and Growth

The permanent assignment of officers to schools takes one of two primary forms.[38] The most common method is for schools to partner with police or sheriffs' departments to procure law enforcement officers who will work within the schools.[39] Such officers are typically known as school resource officers ("SROs").[40] The second method, the practice of school districts running their own police forces, is less pervasive but still common.[41] The Los Angeles School Police Department, for example, employs over 400 sworn officers, 100 non-sworn school safety officers, and civilian support staff, constituting the largest independent school police department in the country.[42]

The number of school police officers has grown significantly over the last three decades. The first known permanent police officer was hired by a school

38. The reason for focusing on the permanent assignment of police officers at schools is that this Article does not argue that police officers should never be permitted in schools—only that they should not be *stationed* there. Under the normative vision advanced here, student and teacher safety would be more likely achieved without a permanent police presence than with one. However, this Article does not suggest that school staff and students should be discouraged from summoning the police in an emergency. For a further discussion of the ways in which the specter of such an emergency impedes meaningful change, see *infra* notes 408–412 and accompanying text.

39. *See* THE COUNCIL OF STATE GOV'TS JUST. CTR., OFFICERS IN SCHOOLS: A SNAPSHOT OF LEGISLATIVE ACTION (2014), https://csgjusticecenter.org/wp-content/uploads/2020/02/NCSL-School-Police-Brief.pdf [https://perma.cc/6DE5-YFFA]; *see also* Thomas v. Barze, 57 F. Supp. 3d 1040, 1045 (D. Minn. 2014) (describing an arrangement in which "[t]he School Resource Officer program is managed through a partnership between Minneapolis Police Department and Minneapolis Public Schools, and managed through the district's security office, whereas the 'part-time officers who are hired by the schools, specifically to supplement security function, are hired directly through the schools without any connection to [the police department]'").

40. *See* 34 U.S.C. § 10389(4) (defining an SRO as "a career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with school and community-based organizations"). The Safe and Drug Free Schools and Communities Act elaborates on this definition by explaining that SROs are expected to "(A) educate students in crime and illegal drug use prevention and safety; (B) develop or expand community justice initiatives for students; and (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness." 20 U.S.C. § 7161(11).

41. *See* EMILY MORGAN, NINA SALOMON, MARTHA PLOTKIN & REBECCA COHEN, COUNCIL OF STATE GOV'TS JUST. CTR., THE SCHOOL DISCIPLINE CONSENSUS REPORT: STRATEGIES FROM THE FIELD TO KEEP STUDENTS ENGAGED IN SCHOOL AND OUT OF THE JUVENILE JUSTICE SYSTEM 183 (2014), https://njjn.org/uploads/digital-library/CSG_The-School-Discipline-Consensus-Report_Jun2014.pdf [https://perma.cc/MRN6-ZC7D] (estimating that approximately 250 school districts employ their own police force); THE COUNCIL OF STATE GOV'TS JUST. CTR., OFFICERS IN SCHOOLS: A SNAPSHOT OF LEGISLATIVE ACTION, *supra* note 39 (providing overview of school policing in fifty states). In some cases, school districts contract with private security guards, who may be off-duty or retired law enforcement officers; these guards may supplement or supplant school police. Other school districts have neither formalized partnerships with police and sheriffs' departments nor their own police forces but simply rely on local police departments for security needs as they arise. *Id.* Neither private security guards nor outside officers typically perform the teaching, counseling, or mentoring roles discussed in Part II. This Article uses the umbrella term "school police" to refer to both forms of permanently assigned police officers, unless a meaningful distinction between the two categories exists.

42. *About Us*, LOS ANGELES UNIFIED SCHOOL DISTRICT, https://achieve.lausd.net/Page/15609 [https://perma.cc/EK6M-BMMY]; *see also* Erin R. Archerd, *Restoring Justice in Schools*, 85 U. CIN. L. REV. 761, 767 (2017).

in the early 1950s,[43] yet school policing remained rare. While fewer than 100 police officers worked full-time in schools in 1970,[44] today that number has risen to between 20,000 and 30,000 officers.[45] Approximately 50 percent of public schools employ permanent police officers.[46] The decade between 1997 and 2007 saw an especially sharp rise in hiring.[47] The National Association of School Resource Officers ("NASRO"), which trains and advocates for school police officers, describes school policing as the "fastest-growing area of law enforcement."[48]

Today, school police officers patrol all types of K-12 schools. They are permanently embedded in urban, rural, and suburban schools;[49] regular public and charter schools;[50] and high, middle, and elementary schools.[51] While only a handful of private schools employ permanently assigned school police,[52] the

43. Joseph B. Ryan, Antonis Katsiyannis, Jennifer M. Counts & Jill C. Shelnut, *The Growing Concerns Regarding School Resource Officers*, 53 INTERVENTION SCH. & CLINIC 188, 188 (2018) (noting that the first known school police officer was employed in Flint, Michigan in the 1950s); *see also* Ben Brown, *Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment*, 34 J. CRIM. JUST. 591, 592 (2006) (noting that in 1939, the Indianapolis Public Schools hired a "special investigator who served in that role for a decade and eventually became a 'supervisor of special watchmen' in 1952," as well as the fact that the watchmen agency was reorganized and eventually became the Indianapolis Public School police).

44. Javdani, *supra* note 2, at 253; *see also* Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q. 619, 620 (2013) (noting that in 1975 only one percent of K-12 schools employed police officers).

45. *See supra* note 2 and accompanying text.

46. LAUREN MUSU-GILLETTE, ANLAN ZHANG, KE WANG, JIZHI ZHANG, JANA KEMP, MELISSA DILIBERTI & BARBARA A. OUDEKERK, NAT'L CTR. OF EDUC. STAT., INDICATORS OF SCHOOL CRIME AND SAFETY: 2017 iv (2018), https://nces.ed.gov/pubs2018/2018036.pdf [https://perma.cc/9G37-T9M2]. Exact numbers are difficult to discern because there is no centralized database for SRO hiring. *See Frequently Asked Questions*, PA. ASS'N OF SCH. RES. OFFICERS, https://pasro.org/faq.html [https://perma.cc/CP2X-2C9J] (explaining that 42% of public schools surveyed by the National Center for Education Statistics "reported that they had at least one SRO present at least one day a week during the 2015–2016 academic year").

47. Javdani, *supra* note 2, at 253.

48. *About NASRO*, NAT'L ASS'N OF SCH. RES. OFFICERS, https://www.nasro.org/main/about-nasro/ [https://perma.cc/S4FT-F6NS].

49. CURRAN ET AL., UNDERSTANDING, *supra* note 34, at 3.

50. *See, e.g.*, Stephen Sawchuk, *What Districts Should Know About Policing School Police*, EDUC. WK. (Oct. 1, 2019), https://www.edweek.org/leadership/what-districts-should-know-about-policing-school-police/2019/10 [https://perma.cc/F58V-3V2P] (discussing Florida SRO's arrest of two young students at a charter school and discussing new Florida law that requires an armed staff member at every school, including charter schools); *see also New In-House Police Department & School Resource Officer (SRO) Program Frequently Asked Questions (FAQs)*, ATLANTA PUB. SCHS. OFF. SAFETY & SEC., https://www.atlantapublicschools.us/domain/12071 [https://perma.cc/VQB9-EZ6C] (discussing the inclusion of charter schools and specific requirements for these schools in the district's SRO program).

51. *See* Grace Chen, *Cops and Children: Why Police Officers are Stationed at Elementary Schools*, PUB. SCH. REV. (Oct. 10, 2020), https://www.publicschoolreview.com/blog/cops-and-children-why-police-officers-are-stationed-at-elementary-schools [https://perma.cc/N4JM-PT3R] (noting the "growing trend of stationing police officers at elementary schools").

52. *See* PA. ASS'N OF SCH. RES. OFFICERS, *supra* note 46 (noting that "fewer private school[s] than public school[s] have SROs"); *Developments in the Law—Policing Students*, 128 HARV. L. REV.

number of school police has grown in all types of public schools.[53] Recently, growth has been especially pronounced in elementary and non-urban schools.[54] Yet school police remain most heavily concentrated in low-income high schools[55] with majority populations of students of color.[56] While the summer of 2020 saw a small number of school districts make moves to curtail, refashion, or eliminate their policing programs,[57] the general trend appears to be one of steady hiring growth.[58]

1747, 1759 (2015) ("[I]n practice, private schools are much less likely than public schools to employ police officers."); Monica Kreber, *What About Private School Security*?, SUMMERVILLE J. SCENE (Jan. 30, 2019), https://www.postandcourier.com/journal-scene/education/what-about-private-school-security/article_9b968991-a74a-548f-acb5-ff72b91a3201.html [https://perma.cc/8EEM-XE4X] (attributing the dearth of school police officers in private schools to both absence of funding and perceptions that the schools don't need them).

53. For an analysis of the pedagogical implications of the fact that police officers are more likely to be in public schools with low-income students of color than other types of schools, see *infra* notes 307–316 and accompanying text.

54. CURRAN ET AL., UNDERSTANDING, *supra* note 34, at 3 (noting that the percentage of elementary schools with police between 2005 and 2015 grew from 18.5% to 30.4% and that in that same time period, the percentage of suburban schools with police grew from 34.6% to 43.6% and the percentage of rural schools with police grew from 26.7% to 39.7%).

55. *See Developments in the Law—Policing Students*, *supra* note 52, at 1747 ("Not only do public schools generally have a higher police presence than private schools, but public schools with higher percentages of students receiving reduced-price lunch have a higher daily police presence than other public schools."); *see also* LISA H. THURAU & LANY W. OR, STRATEGIES FOR YOUTH, TWO BILLION DOLLARS LATER: STATES BEGIN TO REGULATE SCHOOL RESOURCE OFFICERS IN THE NATION'S SCHOOLS: A SURVEY OF STATE LAWS (2019), https://strategiesforyouth.org/sitefiles/wp-content/uploads/2019/10/SFY-Two-Billion-Dollars-Later-Report-Oct2019.pdf [https://perma.cc/7ZBH-L7TU] (reporting that 71% of public high schools employ school police); MUSU-GILLETTE ET AL., *supra* note 46, at 8.

56. *See* Kristin Harper & Deborah Temkin, *Compared to Majority White Schools, Majority Black Schools Are More Likely to Have Security Staff*, CHILD TRENDS (Apr. 26, 2018), https://www.childtrends.org/blog/compared-to-majority-white-schools-majority-black-schools-are-more-likely-to-have-security-staff [https://perma.cc/4QUN-6HXA].

57. *See, e.g.*, Madeline Fox, *Milwaukee Public Schools Terminates Police Contract*, URB. MILWAUKEE (June 19, 2020), https://urbanmilwaukee.com/2020/06/19/milwaukee-public-schools-terminates-police-contract/ [https://perma.cc/NV7E-UWJX]; Lois Beckett, *Minneapolis Public School Board Votes to Terminate Its Contract with Police*, GUARDIAN (June 2, 2020), https://www.theguardian.com/us-news/2020/jun/01/minneapolis-public-school-end-police-contract [https://perma.cc/MFM9-PHNP]; Eder Campuzano, *Portland Superintendent Says He's 'Discontinuing' Presence of Armed Police Officers in Schools*, OREGONIAN (June 5, 2020), https://www.oregonlive.com/education/2020/06/portland-superintendent-says-hes-discontinuing-school-resource-officer-program.html [https://perma.cc/NVW5-M9QT]; Harmeet Kaur, *Denver's School Board Votes to End Its Relationship with the City's Police Department*, CNN (June 12, 2020), https://www.cnn.com/2020/06/12/us/denver-school-board-cuts-ties-to-police-trnd/index.html [https://perma.cc/S9VJ-ZKUM].

58. *See* CURRAN ET AL., UNDERSTANDING, *supra* note 34; *see also* Nance, *Students*, *supra* note 2, at 946 (noting that hiring plateaued during the 2008–2009 recession but otherwise has had a steadily upward trend).

B. The Unresolved Safety/Security Debate

It may seem obvious that school administrators seek to hire police officers to keep students safe and buildings secure. Courts and policymakers reflexively link policing and improved safety, as if the connection is so obvious that it requires no defense or even an explanation. [59] This conventional wisdom—despite being empirically unfounded—exists because of the overlapping historical phenomena that have led both policymakers and parents alike to accept that schools are sufficiently unsafe that they require a full-time police presence.

The first of these historical phenomena is the temporary but sharp spike in juvenile arrest rates that began in the late 1980s and continued until the mid-1990s.[60] Academics[61] and elected officials[62] attributed this increase in arrests to characterological change in the people being arrested.[63] This was the decade of the juvenile "superpredator,"[64] allegedly fearless and without the capacity for remorse. Although arrest rates were up among young people of all races, young

59. In a concurring opinion in a case allowing a motion to dismiss a student's § 1983 excessive force claim that was extremely critical of the actions of school police, Judge Lucero reflected this conventional wisdom when he averred that "[p]olice presence in schools is of course intended to serve the best interests of students and communities."). Hawker v. Sandy City Corp., 774 F.3d 1243, 1244 (10th Cir. 2014) (Lucero, J., concurring); *see also* McLaren, *supra* note 7 (discussing a retired principal voting against a proposal to remove police officers from schools in favor of a private security force based on "common sense" belief that police make schools safer).

60. NAT'L CTR. FOR JUV. JUST. & OFF. JUV. JUST. & DELINQ. PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT 125 (Melissa Sickmund & Charles Puzzanchera eds., 2014), https://www.ojjdp.gov/ojstatbb/nr2014/downloads/nr2014.pdf [https://perma.cc/QZF3-K6UT] (reporting that the juvenile violent crime arrest rate rose nearly 70% beginning in 1987 and reached its peak in 1994).

61. *See* John DiIulio, *The Coming of the Super -- Predator*s, WASH. EXAM'R (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators [https://perma.cc/32T6-QGNG]; *see also* Clyde Haberman, *When Youth Violence Spurred 'Superpredator' Fear*, N.Y. TIMES (Apr. 6, 2014), https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html [https://perma.cc/X75N-T89S] (noting that James A. Fox, a criminologist, warned of "a blood bath of violence" that would soon overtake the land).

62. *See, e.g.*, Kevin Drum, *A Very Brief History of Super-Predators*, MOTHER JONES (Mar. 3, 2016), https://www.motherjones.com/kevin-drum/2016/03/very-brief-history-super-predators/ [https://perma.cc/97MW-HQ5E] (discussing Hillary Clinton's 1996 speech in which she described "the kinds of kids that are called 'super-predators'—no conscience, no empathy. We can talk about why they ended up that way, but first we have to bring them to heel").

63. *See* WILLIAM J. BENNETT, JOHN J. DIIULIO, JR. & JOHN P. WALTERS, BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS 27 (1996) ("Superpredators [are] radically impulsive, brutally remorseless youngsters . . . who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience. They perceive hardly any relationship between doing right (or wrong) now and being rewarded (or punished) for it later. To these mean-street youngsters, the words 'right' and 'wrong' have no fixed moral meaning.").

64. John J. DiIulio, Jr., the then sociology professor at Princeton, is credited with coining this term. DiIulio, *supra* note 61, at 23.

Black and Brown men were portrayed as especially depraved.[65] While predictions that arrest rates would continue to climb turned out to be wrong,[66] politicians continued to rely on these racialized tropes as support for tougher criminal and school-issued punishment at the state[67] and federal[68] levels.

The second phenomenon was the occurrence of mass school shootings in K-12 schools. In 1999, two students killed twelve of their classmates, one teacher, and themselves at Columbine High School in Littleton, Colorado.[69] While not the first mass school shooting,[70] the Columbine shooting was at the time the deadliest.[71] Like subsequent mass school shootings, the Columbine shooting took place in a middle-income suburban area.[72] The assailants, as well

65. *See* Perry Moriearty, *Framing Justice: the Media, Race, and Legal Decisionmaking*, 69 MD. L. REV. 849, 867–68 (2010) (describing a standard "superpredator script" in the media in which, "[m]ore often than not, the perpetrators were portrayed as black or brown and the victims as white," and quoting DiIulio as predicting that "as many as half of these juvenile super-predators could be young black males").

66. Elizabeth Becker, *As Ex-Theorist on Young Superpredators, Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html [https://perma.cc/PX7R-EKMZ] (noting that the superpredator theory was discredited because instead of rising, juvenile crime rate dropped by half).

67. *See* HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CTR. FOR JUV. JUST., JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 89 (1999), https://www.ncjrs.gov/html/ojjdp/nationalreport99/chapter4.pdf [https://perma.cc/AE5S-BDWE] (noting that in the 1990s, forty-seven states weakened or removed longstanding confidentiality provisions in juvenile court, and forty-five states enacted or enhanced laws that facilitated transfer of juvenile offenders to the adult criminal justice system); Perry L. Moriearty & William Carson, *Cognitive Warfare and Young Black Males in America*, 15 J. GENDER, RACE, & JUST. 281, 284 (2012) (describing how "even as crime rates among black youth have dropped steadily since the mid-1990s, . . . associations [linking criminality to black youth] . . . have prompted lawmakers and their constituents to continue to support laws and policies that they know disproportionately punish and incapacitate young black males"); *see also* Catherine L. Carpenter, *Against Juvenile Sex Offender Registration*, 82 U. CIN. L. REV. 747, 751–55 (2014) (noting that states revised their sex offender registration laws to include children adjudicated delinquents of sex offenses as well as children convicted of sex offenses in adult court); Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 396 (2013) (explaining that legislatures amended clauses pertaining to the purpose of juvenile court to incorporate "accountability, public safety, victims' rights, and, on occasion, punishment").

68. *See, e.g.*, Gun-Free Schools Act, 20 U.S.C. § 7961 (mandating that all schools receiving federal funds impose a one-year expulsion for any student found in possession of a firearm at school and refer to law enforcement any student found in possession of a weapon).

69. *See generally* DAVE CULLEN, COLUMBINE (2009).

70. For example, in 1989, a twenty-four-year-old man fatally shot five children—all refugees from Southeast Asia—and wounded thirty- two others at the Cleveland Elementary School in Stockton, California. *See* Jay Mathews & Matt Lait, *Rifleman Slays Five at School*, WASH. POST (Jan. 18, 1989), https://www.washingtonpost.com/archive/politics/1989/01/18/rifleman-slays-five-at-school/5417a754-b716-4c10-8b58-dac2bc29ae5d/ [https://perma.cc/3NNT-X2YY].

71. Gillian Brockell, *Bullies and Black Trench Coats: The Columbine's Most Dangerous Myths*, WASH. POST (Apr. 20, 2019), https://www.washingtonpost.com/history/2019/04/19/bullies-black-trench-coats-columbine-shootings-most-dangerous-myths/ [https://perma.cc/2E9P-4SLG] (noting that Columbine at the time was the school shooting with the most casualties).

72. Michael Rocque, *Exploring School Rampage Shootings: Research, Theory, and Policy*, 49 SOC. SCI. J. 304, 306 (2012).

as the victims, were mostly white and middle class.[73] Perhaps because of such demographic factors, these mass school shootings have generated widespread media coverage, certainly disproportionate to that which follows gun violence where the victims are non-white and non-middle class.[74] The details of the mass school shootings—the names of the assailants and locations of the assault—are seared in the popular consciousness.[75] The media coverage generated by the Columbine shooting, combined with the fact that it occurred during a decade of increased arrests of young people, rendered it a potent source of public worry about the safety of students.[76] Yet the intense focus on this mass shooting obscured two important facts: first, while juvenile crime was up overall, *school* crime was down,[77] and, second, school shootings are statistically exceedingly rare.[78]

School-policing proponents argue that whether the greatest safety threats are believed to be from external sources—which is often the view in suburban, middle-class schools[79]—from within the school itself, as is believed of low-income schools with large populations of Black and Brown students,[80] policing is the solution.[81] These proponents argue that highly visible, uniformed, armed

73. CULLEN, *supra* note 69, at 22.

74. *See* Rocque, *supra* note 72, at 306 (arguing that "[t]he involvement of middle-class shooters in middle class areas rather than inner city populations may explain the media saturation" and that such intense coverage helps make the incidence of such events "appear more prevalent than they are").

75. William S. Koski, *Foreword: The Political Construction of Youth Crime and Its Policy Consequences*, 14 STAN. L. & POL'Y REV. 5, 7 (2003) (asserting that "Columbine, Santee, and Paducah have become household names and have been portrayed as symbolic of the madness of our children"). Similar to their white adult counterparts, white youths who commit mass shootings are more likely to have their crimes attributed to mental illness or other social ills than are young Black men or shooters of other races. *Id.* (describing how the "violent acts of young, white suburbanites are portrayed as societal failings, while the violent acts of young, black men are treated as individual failings").

76. *See* Glenn W. Muschert, *The Columbine Victims and the Myth of the Juvenile Superpredator*, 5 YOUTH VIOLENCE & JUV. JUST. 351 (2007) (examining media coverage of the 1999 Columbine school shootings and linking it to the juvenile superpredator myth).

77. Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 280 (2009) (citing statistics showing that school crime nationally was declining as school-police hiring was rising).

78. *See id.* (noting that while school crime was "relatively rare, and usually nonviolent, school shootings . . . fed growing public fear of juvenile and school crime"); *see also* David Ropeik, *School Shootings are Extraordinarily Rare. Why is Fear of Them Driving Policy?*, WASH. POST (Mar. 8, 2018), https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-ebf9d112159c_story.html [https://perma.cc/B9WP-ZCFN] (explaining that "the statistical likelihood of any given public school student being killed by a gun, in school, on any given day since 1999 was roughly 1 in 614,000,000").

79. Benjamin W. Fisher, Ethan M. Higgins, Aaron Kupchik, Samantha Viano, F. Chris Curran, Suzanne Overstreet, Bryant Plumlee & Brandon Coffey, *Protecting the Flock or Policing the Sheep? Differences in School Resource Officers' Perceptions of Threats by School Radical Composition*, 00 SOC. PROBS. 1, 11 (2020).

80. *See* CARLA SHEDD, UNEQUAL CITY: RACE, SCHOOLS, AND PERCEPTIONS OF INJUSTICE 99, 149 (2016) (describing how the combined impact of aggressive policing and physical security constitute an inward-turning "criminal gaze" that views entire student bodies as suspicious).

81. *See* Matthew T. Theriot & Matthew J. Cuellar, *School Resource Officers and Students' Rights*, 19 CONTEMP. JUST. REV. 363, 363 (2016) ("School resource officer (SRO) programs, or

police officers deter external assailants and prevent students from committing crime and violence.[82] Particularly when aided by threat-assessment tools and the array of high-tech surveillance technology products on the market,[83] officers are believed to be able to predict and prevent future dangerousness.[84] Indeed, the U.S. Department of Justice administers a blog called "Averted School Violence," to which school resource officers report the ways in which they help prevent school violence.[85]

A review of the research, however, reveals that the evidence base for the safety benefits of school policing is weak. There are, overall, too few studies on the effectiveness of school-policing programs at preventing violence.[86] The studies that do exist point in different directions. For instance, one widely cited 2009 study concluded that the presence of police correlated with a decrease in assault and weapons charges.[87] But a different study suggested that policing served no discernible deterrent effect—it showed that nearly half of students in schools with police officers reported knowing of students who carry knives, and another 10 percent reported knowing classmates who carry firearms.[88]

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programs that place sworn law enforcement officers at schools, have emerged as one of the most significant of these strategies for increasing school safety and reducing violence.").

82. *See id.*

83. *See generally* Barbara Fedders, *The Constant and Expanding Classroom: Surveillance in K-12 Public Schools*, 97 N.C. L. REV. 1679–98 (2019) (detailing school-security products, technologies, and practices).

84. *See* SHANE R. JIMERSON, DEWEY G. CORNELL, FRANCI CREPEAU-HOBSON, CINDY DICKINSON, BENJAMIN FERNANDEZ, CATHY KENNEDY-PAINE, AMANDA NICKERSON & MELISSA REEVES, NAT'L ASS'N SCH. PSYCHS., THREAT ASSESSMENT FOR SCHOOL ADMINISTRATORS & CRISIS TEAMS (2015), https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/systems-level-prevention/threat-assessment-at-school/threat-assessment-for-school-administrators-and-crisis-teams [https://perma.cc/28YJ-U849] (describing a three-part process of "(a) identifying student threats to commit a violent act, (b) determining the seriousness of the threat, and (c) developing intervention plans that protect potential victims and address underlying problem"); *see also* MARY ELLEN O'TOOLE, NAT'L CTR. FOR THE ANALYSIS OF VIOLENT CRIME, THE SCHOOL SHOOTER: A THREAT ASSESSMENT PERSPECTIVE 2–3 (2009) (describing threat assessments).

85. *Our Mission*, AVERTED SCH. VIOLENCE, https://www.avertedschoolviolence.org [https://perma.cc/25QT-7C4F].

86. *See, e.g.*, ALEXIS STERN & ANTHONY PETROSINO, WHAT DO WE KNOW ABOUT THE EFFECTS OF SCHOOL-BASED LAW ENFORCEMENT ON SCHOOL SAFETY? 3 (2018), https://www.wested.org/wp-content/uploads/2018/04/JPRC-Police-Schools-Brief.pdf [https://perma.cc/F63Y-J4ZZ] (concluding that there has been no "rigorous evaluative research on the effects - in terms of school safety - of having a police presence in schools," and asserting that the existing body of evidence "fails to support a school safety effect"); Nance, *Students*, *supra* note 2, at 977 (explaining that "the current research on the effectiveness of SRO programs in preventing violence is very limited"); NATHAN JAMES & GAIL MCCALLION, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS 9 (2013), https://fas.org/sgp/crs/misc/R43126.pdf [https://perma.cc/34DW-K4PV] (internal citation omitted) (describing dearth of studies).

87. Theriot, *supra* note 77, at 285.

88. James H. Price & Jagdish Khubchandani, *School Firearm Violence Prevention and Practices: Functional or Folly?*, 6 VIOLENCE & GENDER 154, 162 (2019); *see also* Gottfredson et al., *supra* note 4, at 929–30; Kenneth Alonzo Anderson, *Policing and Middle School: An Evaluation of a Statewide School Resource Officer Policy*, MIDDLE GRADES REV., Sept. 2018, at 1, 1 (discussing study

Moreover, studies purporting to show an objective safety benefit of school policing often reveal only the subjective perceptions of students, parents, and staff.[89] In other words, school police make some school community members *feel* safer. The catch, however, is that subjective feelings of safety are multi-layered, idiosyncratic, and highly related to a student's race, class, and trauma history. For example, one survey of students in suburban high schools showed that students who frequently interact with school police officers report feeling safer because of the officer's presence.[90] Yet these students are no less likely to fear an attack at school.[91] Researchers posit that this fear likely exists *because* students equate the officer's presence with the threat of gun violence.[92] Moreover, feelings of safety are not static and do not arise in a vacuum. Students with trauma and victimization histories, as well as students who have had negative experiences with officers outside of school—disproportionately low-income Black and Brown students—feel less safe around police than do their peers without these histories.[93]

In addition, methodological gaps exist in the study of the relationship between school police and safety. Much of the research is purely qualitative or

"show[ing] that offering matched SRO funds to increase policing and training was not associated with reductions in reported acts (infractions) per school year, a key measure of school safety"). *But see* Emily G. Owens, *Testing the School-to-Prison Pipeline*, 36 J. POL'Y ANALYSIS & MGMT. 11, 34 (2016) ("Using credibly exogenous variation in SROs generated by DOJ hiring grants . . . to find that adding officers to schools appears to increase both school safety and police involvement in violent, drug, and weapons violations on school grounds, with some additional awareness of drug crimes and serious violent offenses happening in the community at large.").

89. BARBARA RAYMOND, CTR. FOR PROBLEM-ORIENTED POLICING, ASSIGNING POLICE OFFICERS TO SCHOOLS 8 (2010), https://cops.usdoj.gov/RIC/Publications/cops-p182-pub.pdf [https://perma.cc/6WPR-LT8Y] ("Typically, studies that report positive results from SRO programs rely on participants' perceptions of the effectiveness of the program rather than on objective evidence.").

90. *See* CURRAN ET AL., UNDERSTANDING, *supra* note 34, at 15.

91. *Id.*

92. *Id.*; *see also* NAT'L ASS'N OF SCH. PSYCHS., SCHOOL SECURITY MEASURES AND THEIR IMPACT ON STUDENTS 2 (2018) (noting studies that show that presence of security guards and metal detectors negatively affects students' perceptions of safety and, among students, increases fear) (internal citations omitted)).

93. *See* Amanda Geller, Jeffrey Fagan, Tom Tyler & Bruce G. Link, *Aggressive Policing and the Mental Health of Young Urban Men*, 12 AM. J. PUB. HEALTH 2321, 2324 (2014) (reporting on interviews with young men on their experiences of police encounters and subsequent mental health, and finding that young men in urban areas who have experienced police contact, especially intrusive contact, report high levels of anxiety and trauma associated with those experiences); John A. Rich & Courtney M. Grey, *Pathways to Recurrent Trauma Among Young Black Men: Traumatic Stress, Substance Abuse, and the "Code of the Street,"* 95 AM. J. PUB. HEALTH 816, 818 (2005) (surveying Black crime victims and finding that a third of the participants "[a]t best . . . view the police as unhelpful; at worst . . . as abusive"); *see also* Matthew T. Theriot & John G. Orme, *School Resource Officers and Students' Feelings of Safety at School*, 14 YOUTH VIOLENCE & JUV. JUST. 130, 142 (2016) (finding that "aggressive or overly authoritative police tactics" by SROs can create more anxiety among students).

ethnographic,[94] and there is an insufficiently robust body of quantitative work to supplement it.[95]

Finally, the question of whether and how police presence prevents gun violence is particularly confounding,[96] in part because school shootings are so rare.[97] The fact that police officers were on duty at the time of the nation's most deadly K-12 school shootings stands as a stark reminder of the limitations of policing and other security measures in the face of an assailant determined to kill.[98] In sum, the most that can fairly be said for the current state of social science research is that it is conflicting with respect to whether police presence improves student safety.[99]

Because the question of whether school policing improves safety seems to be a wash, an examination of other factors underlying school policing's ascendance is in order. Exploring these factors adds needed nuance to school-policing debates in which opponents incorrectly assume that police are in schools

94. *See* Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Educational Outcomes*, 38 J. POL. ANALYSIS & MGMT. 338, 340 (2019) ("There is a large qualitative and ethnographic literature that documents the growth of harsh school sanction policies.").

95. *Id.* (noting the "lack of quantitative empirical evidence evaluating the impact of school police."); *see also* Theriot, *supra* note 77, at 281 (noting that many studies of schools with police officers lack a control group of schools with otherwise similar characteristics that do not have a school police officer).

96. *See, e.g.*, Radley Balko, Opinion, *Putting More Cops in Schools Won't Make Them Safer, and It Will Likely Inflict a Lot of Harm*, WASH. POST (Feb. 22, 2018), https://www.washingtonpost.com/news/the-watch/wp/2018/02/22/putting-more-cops-in-schools-wont-make-schools-safer-and-it-will-likely-inflict-a-lot-of-harm/ [https://perma.cc/Y3MY-MQTH] (summarizing literature indicating inconclusive evidence).

97. Bryan R. Warnick & Ryan Kapa, *Protecting Students from Gun Violence: Does "Target Hardening" Do More Harm than Good?*, EDUC. NEXT, Spring 2019, at 22, 23 (describing that of the 1,168 total homicides of youth during the 2014-2015 school year, 98.3 percent occurred somewhere other than school, thus making youths safer from gun violence in schools than in their homes or communities); *see also* Michael Hiltzik, *Don't Be Misled by the Publicity on Shootings: For Kids, Schools Actually are the Safest Refuges from Gun Violence*, L.A. TIMES (Mar. 16, 2018), https://www.latimes.com/business/hiltzik/la-fi-hiltzik-school-safety-20180316-story.html [https://perma.cc/7TBR-2Z54] (summarizing research and quoting criminologist James Alan Fox stating, based on his own research on mass murders, "[t]here is not an epidemic of school shootings").

98. Both Columbine High School and Marjory Stoneman Douglas High School had school police officers on duty at the time of the attacks. For explanations of the motivations of mass school shooters, see Price & Khubchandani, *supra* note 88, at 162 (arguing that because school shooters often plan to die in their attack, the presence of an armed officer is not an effective deterrent); *see also,* Dave Cullen, *From Columbine to Parkland: How We Got the Story Wrong on Mass Shootings*, GUARDIAN (Feb. 9, 2019), https://www.theguardian.com/books/2019/feb/10/columbine-parkland-gun-crime-dave-cullen [https://perma.cc/PGX9-99BL] (describing mass school shooters as motivated by a desire for self-aggrandizement and referring to school shootings as "performance violence").

99. Gary Zhang, *The Effects of a School Policing Program on Crime, Discipline and Disorder: A Quasi-Experimental Evaluation*, 44 AM. J. CRIM. JUST. 45, 47 (2018) (noting that evidence points in conflicting and often opposing directions with respect to such safety outcomes as perceived crime and actual criminal incidents, arrests, suspensions, and expulsions); Constance A. Lindsay, Victoria Lee & Tracey Lloyd, *The Prevalence of Police Officers in US Schools*, URB. INST. URB. WIRE: CRIME & JUST. (June 21, 2018), https://www.urban.org/urban-wire/prevalence-police-officers-us-schools [https://perma.cc/H8LE-2LA4] (same); *see also* Gottfredson et al., *supra* note 4, at 929–30.

only because they improve safety—and then argue that policing's harms should be measured against these perceived benefits.

C. Underexamined Causal Factors for School Policing's Rise

This Section moves beyond unresolved debates about whether police officers are effective at keeping students safe and schools secure. It considers factors entirely outside of safety considerations that also help explain the rise of school policing. These include government funding that incentivizes police hiring over other kinds of safety investments a school district might choose to make; "security-theater" considerations that may motivate school administrators to do all they can to create highly visible and obvious safety features, notwithstanding a dearth of evidence supporting their *actual* effectiveness; and the legitimacy-building interests of law enforcement.

1. Financial Incentives for Schools

Federal and state legislatures allocate significant funding for schools to hire school police officers,[100] whose salaries can constitute a significant expense for school districts.[101] On their own, many public schools cannot afford such an outlay.[102] In the early 1990s, the federal government began to assist school

100. The Community Oriented Policing Services program, created by Title I of the Violent Crime Control and Law Enforcement Act of 1994, provides hundreds of millions of dollars in grants each year to increase the number of officers across the nation, including in schools. NATHAN JAMES, CONG. RSCH. SERV., COMMUNITY ORIENTED POLICING SERVICES (COPS) PROGRAM (2021), https://crsreports.congress.gov/product/pdf/IF/IF10922 [https://perma.cc/CT5V-6MFT]; *see also Supporting Safe Schools*, COPS, https://cops.usdoj.gov/supportingsafeschools [https://perma.cc/U343-VUVA] ("The COPS Office supports safe schools by providing grant funds, technical assistance, and resources to help deploy school resource officers (SROs)."). States also allocate significant funding to hire SROs. *See, e.g.*, Press Release, Ralph S. Northam, Va. Governor, Governor Northam Announces Fifty-Three Localities Receive Over $3.47 Million in School Resource Officer Incentive Grants (June 13, 2019), https://www.governor.virginia.gov/newsroom/all-releases/2019/june/headline-841075-en.html [https://perma.cc/8UEY-V88S]; Press Release, South Carolina Dep't of Educ., South Carolina Department of Education to Fund 205 New School Resource Officers (Sept. 26, 2019), https://ed.sc.gov/newsroom/news-releases/south-carolina-department-of-education-to-fund-205-new-school-resource-officers/ [https://perma.cc/5ZD4-4G72].

101. *See* Jonathan Pushman, *Law Enforcement in Schools: A New Option s Available for New Jersey*, SCH. LEADER, May–June 2017, at 14, 14 (noting that "hiring an SRO may not be financially possible for districts that have to balance the cost against other important educational priorities" and "[e]ven the most ardent supporters of the SRO concept acknowledge that cost is a significant factor in the decision").

102. *See, e.g.*, Leslie Postal, *Central Florida Charter Schools Struggle to Pay for On-Campus Officers Required by New Law*, ORLANDO SENTINEL (Sept. 6, 2018), https://www.orlandosentinel.com/news/education/os-police-charter-schools-parkland-20180904-story.html [https://perma.cc/452H-MSEF] (describing that two Central Florida schools "combined are getting $35,413 in 'safe schools' money from the state, earmarked as part of the new legislation, [b]ut having an officer on campus every school day will cost them $81,000 for the year . . . . The schools raided their technology budgets to make up the $45,587 difference this year, but school leaders aren't sure how they can manage beyond that . . . 'We all feel like it's a great idea to have a school resource officer on campus,' [a school administrator] said. But, she added, 'This is not affordable at all.'").

districts wishing to hire full-time police officers. This funding came in two separate forms. The 1994 Safe Schools Act gave money to schools with evidence of crime, violence, and student disciplinary problems;[103] these funds could be used to hire law enforcement officers.[104] Five years later, the Department of Justice began to provide direct grants to districts for policing.[105] Between 1999 and 2008, the federal government awarded over $750 million to local police departments, which funded over 6,500 new officers.[106] After the shooting at Sandy Hook Elementary School, the Obama administration announced new awards.[107] This new funding facilitated the hiring of 370 additional officers in 2013.[108] Surveys show that approximately half of the schools that have an officer were able to reimburse a sheriff's or police department for the salary through a federal grant.[109] In many states, legislatures also provide funding for school police, even when funding for other school spending is frozen or cut.[110]

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103. 20 U.S.C. §§ 5961–5968.

104. Theriot & Orme, *supra* note 93, at 130.

105. Na & Gottfredson, *supra* note 44, at 620–21.

106. BARBARA RAYMOND, OFF. OF CMTY. ORIENTED POLICING SERVS., ASSIGNING POLICE OFFICERS TO SCHOOLS 1 n.4 (2010), https://cops.usdoj.gov/RIC/Publications/cops-p182-pub.pdf [https://perma.cc/6WPR-LT8Y].

107. Press Release, U.S. Dep't of Just., Department of Justice Awards Hiring Grants for Law Enforcement and School Safety Officers (Sept. 15, 2014), https://www.justice.gov/opa/pr/department-justice-awards-hiring-grants-law-enforcement-and-school-safety-officers [https://perma.cc/5EGQ-CNTQ].

108. Theriot & Orme, *supra* note 93, at 131.

109. JAMES & MCCALLION, *supra* note 86, at 19–20 (noting that while "data do not indicate how each SRO position is funded," a survey conducted by NASRO of attendees at their 2004 national conference found that 45 percent of respondents indicated their SRO position was funded by a federal grant and, further, that federal funding "probably supported a significant expansion of SRO programs across the country" and stating, finally, that in many cases, local law enforcement agencies assume the expense of a school police officer once a grant dries up).

110. Nance, *Students*, *supra* note 2, at 947 n.137 (listing the following state statutes that provide for SRO funding: ALA. CODE § 41-15B-2.2 (2014); GA. CODE ANN. § 20-2-1185 (2015); 24 PA. CONS. STAT. § 13-1302-A (2011)); *see also* Appropriations Act of 2018, 2018-5 N.C. Sess. Laws 36, § 7.27(e) (authorizing funding for $12 million in a school resource officer grant program to the state's elementary and middle schools). States across the nation—including some of the states providing statutorily for SROs—have been facing budget cuts for schools in the past decade. *See* MICHAEL LEACHMAN, NICK ALBARES, KATHLEEN MASTERSON & MARLANA WALLACE, CTR. ON BUDGET & POL'Y PRIORITIES, MOST STATES HAVE CUT SCHOOL FUNDING, AND SOME CONTINUE CUTTING (2016), https://www.cbpp.org/research/state-budget-and-tax/most-states-have-cut-school-funding-and-some-continue-cutting [https://perma.cc/YYN3-NHMH] ("At least 31 states provided less state funding per student in the 2014 school year (that is, the school year ending in 2014) than in the 2008 school year, before the recession took hold. In at least 15 states, the cuts exceeded 10 percent."); *see also* Bill Chappell, *Alabama Senate Approves Shifting $100 Million Away From Schools*, NPR (Sept. 15, 2015), https://www.npr.org/sections/thetwo-way/2015/09/15/440516013/alabama-senate-approves-shifting-100-million-away-from-schools [https://perma.cc/9U2L-5CU7]; *Education Funding in Final 2011-12 Budget*, PA. BUDGET & POL'Y CTR. (July 13, 2011), https://www.pennbpc.org/education-funding-final-2011-12-budget [https://perma.cc/65TM-P8ZR] (discussing major cuts to Pennsylvania's education budget); Gemma DiCarlo, *State Budget Cuts One Billion Dollars From Statewide K-12 Education*, U. OF GA. (July 1, 2020), https://www.wuga.org/post/state-budget-cuts-one-billion-dollars-statewide-k-12-education#stream/0 [https://perma.cc/5FRY-L6ZT].

Similar levels of government funding are not available for school-based mental-health staff, even when schools can make a showing that they have crime, high incidence of trauma, or disorder such that enhanced counseling services would serve a salutary function.[111] The resulting contrast between law enforcement and mental-health staff is pronounced. A 2019 ACLU report found that "1.7 million students are in schools with police but no counselors; 3 million students are in schools with police but no nurses; 6 million students are in schools with police but no school psychologists; and 10 million students are in schools with police but no social workers."[112]

Investing in mental health staff is investing in safety.[113] Research shows that today's students are suffering "record levels" of anxiety, depression, and trauma.[114] The COVID-19 pandemic has exacerbated underlying mental health challenges and created new ones.[115] Mental health staff can help students improve their emotional well-being, which can lead to higher academic achievement, fewer disciplinary infractions, and more school connectedness.[116] These results, in turn, lead to less crime and violence in schools.[117]

Yet the financial incentives for school administrators encourage them to de-prioritize these positive mental health interventions and invest instead in school police. This skewed funding landscape takes on added salience given the other social forces pushing administrators toward investing in school police, which are discussed in the following Sections.

2. Security Theater

Security theater is one of the key social forces driving school policing. As defined—and often derided—by national security scholars, security theater is the enactment of tangible and highly visible measures that promote the

111. Put another way, there is no comparable set of incentives to the Safe Schools Act, which arguably encourages schools to inflate their levels of crime and disorder in order to obtain grant funding for use on school policing.

112. WHITAKER ET. AL, *supra* note 11, at 4.

113. *See infra* notes 398–405 and accompanying text for discussion of the more capacious definition of safety that abolitionism facilitates, which includes preventive measures such as mental health staff.

114. WHITAKER ET. AL, *supra* note 11, at 4.

115. Akshar Aiyer, Salim Surani, Yashdeep Gill, Iqbal Ratnani & Shaleen Sunesara, *COVID-19 Anxiety and Stress Survey (CASS) In High School and College Students Due to Coronavirus Disease 2019*, 158 CHEST J. 314A (2020) ("The Covid19 pandemic has resulted in an extremely high level of stress and mental health morbidity in both high school and especially college students. There is a high prevalence of depression and anxiety in students, and this is more pronounced in girls."); *see also Resources for Parents*, Ctrs. for Disease Control (Dec. 28, 2020), https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/parental-resource-kit/index.html [https://perma.cc/WMN5-F5AP] (describing the negative impacts of COVID-19 on the emotional and mental wellbeing of children and young people).

116. Richard E. Cleveland & Christopher A. Sink, *Student Happiness, School Climate, and School Improvement Plans: Implications for School Counseling Practice*, 21 PRO. SCH. COUNSELING 1, 3–4 (2018); Thomas J. Hernández, Susan R. Seem, *A Safe School Climate: A Systemic Approach and the School Counselor*, 7 PRO. SCH. COUNSELING 256, 261 (2004).

117. Cleveland & Sink, *supra* note 117, at 16.

appearance—rather than the reality—of security.[118] The paradigmatic example is the Transportation Security Administration, castigated by critics as engaging in expensive, showy, but ultimately ineffective performances of airport security such as the use of metal detectors, pat-downs, shoe searches, and police dogs.[119]

Several factors help explain why school administrators may engage in security theater. The first, perhaps most understandable, pertains to actions taken in the wake of gun violence. National security scholars explain that after a terrorist attack, highly visible safety measures can coax people out of their homes and back into public places.[120] Similarly, in the wake of a gun violence episode in a school,[121] administrators may believe that a show of state-sponsored armed force is critical to enabling students to return to school.[122]

Second, school administrators likely wish to avoid the ignominy that attaches to *seeming* defenseless against safety threats—not only the rare instances of gun violence but also more common, less dangerous fights or disruptiveness.[123] In this regard, a decade-old study surveying principals about their reasons for hiring school police is telling; asked to explain why they wanted officers in their schools, the most widely cited reason was "'[n]ational media attention about school violence' (24.5%)."[124] Only 3.7% of respondents

118. SCHNEIER, *supra* note 12, at 38.

119. *See generally* Govind Persad, *Health Theater*, 48 LOY. U. CHI. L.J. 585, 589 (2016) (documenting examples); *see also* Adam Samaha, *Regulation for the Sake of Appearance*, 125 HARV. L. REV. 1563, 1592 (2012) (arguing that requirements to show ID before entering the voting booth are "akin to airport security efforts that some call . . . 'security theater'").

120. *See, e.g.*, Bruce Schneier, *Beyond Security Theatre*, NEW INTERNATIONALIST (Nov. 1, 2009), https://www.schneier.com/essays/archives/2009/11/beyond_security_thea.html [https://perma.cc/P58T-J63Y]; Peter P. Swire, *Privacy and Information Sharing in the War on Terrorism*, 51 VILL. L. REV. 951, 966 (2006).

121. Josh Sanburn, *Do Cops in Schools Do More Harm Than Good?*, TIME (Oct. 29, 2015), https://time.com/4093517/south-carolina-school-police-ben-fields/ [https://perma.cc/RJE7-5HER] (discussing fact that school shootings often spur police hiring because this kind of hiring is a way for administrators to show that they are working to keep students safe).

122. *See* Nicole Gaudiano, *Parkland and Santa Fe Schools Disclose Devastating After-Effects of Shootings*, POLITICO (Oct. 10, 2019), https://www.politico.com/news/2019/10/10/parkland-santa-fe-school-shootings-effects-students-043687 [https://perma.cc/ULR6-9U9B] (describing how, in the aftermath of its May 2018 mass shooting, the Santa Fe, Texas high school applied for federal funding for more police officers on the grounds that a heightened police presence would diminish students' "continued fear factor of attending school").

123. *See Cops in Schools: Have We Built a School-to-Prison Pipeline?*, BEST SCH. (Mar. 23, 2020), https://thebestschools.org/magazine/cops-schools-built-school-prison-pipeline/ [https://perma.cc/ZL7N-7M44] ("Implemented properly, the SRO program should function both as a line of defense against criminal behavior for those students who've come to school to learn, and as a bridge between law enforcement officers and their communities. Daily headlines depicting violence between officers and citizens underscore just how desperately such a bridge is needed."); *see also* LAWRENCE F. TRAVIS III & JULIE KIERNAN COON, THE ROLE OF LAW ENFORCEMENT IN PUBLIC SCHOOL SAFETY: A NATIONAL SURVEY 34–35 (2005), https://www.ncjrs.gov/pdffiles1/nij/grants/211676.pdf [https://perma.cc/5ZAM-9ZQ6] (describing the reasons school principals gave for hiring a School Resource Officer).

124. TRAVIS & KIERNAN COON, *supra* note 123, at 35.

indicated that the *actual* level of violence in the school was the reason for establishing a school-policing program.[125]

A third factor may be concern about litigation in the event of an incident of violence. Schools have a legal obligation to keep the students under their supervision safe.[126] Case law has established that schools' responsibility is "custodial and tutelary,"[127] requiring "close supervision"[128] of students. The Supreme Court has stopped short of ruling that schools have a "constitutional 'duty to protect'" students;[129] however, it has stated that for many purposes schools act *in loco parentis*.[130] Schools may thus incur liability if they are negligent with respect to failing to provide the kind of supervision necessary to prevent foreseeable injuries.[131] After instances of gun violence in schools, victims' families have filed lawsuits alleging negligence on the part of the school for failing to prevent the attack.[132] While plaintiffs may not prevail in such lawsuits, school districts must expend financial and public relations resources defending against them.[133] A school administration may believe that staffing schools with armed police will reduce the possibility of such litigation.

3. Legitimacy-Building Interests of Law Enforcement

While one might think that school-police partnerships are created solely at the initiation of schools, law enforcement has its own legitimacy-building reasons for wanting officers stationed in schools. [134] Historically, these interests have been particularly pronounced in school districts with high percentages of Black and Brown students.[135]

In the 1960s, police departments in urban, majority-Black school communities recognized that installing officers in schools, in teaching and extra-curricular capacities, could be a way to quell civil rights organizing, gather

125. *Id.*
126. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 655 (1995).
127. *Id.*
128. *Id.*
129. *Id.* (citing DeShaney v. Winnebago Cnty. Dep't Soc. Servs., 489 U.S. 189, 200 (1989)).
130. *Id.* (citing Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 684 (1986)).
131. *See, e.g.*, Garcia v. City of New York, 222 A.D. 2d 192, 196 (1996).
132. *See, e.g.*, Patricia Mazzei, *Parkland Victims' Families Sue, Claiming Negligence in Mass Shooting*, N.Y. TIMES (Apr. 10, 2019), https://www.nytimes.com/2019/04/10/us/parkland-lawsuits-safety.html [https://perma.cc/EV72-39MP] (discussing, *inter alia*, lawsuits against the Parkland, Florida school district in which the mass shooting at Marjory Stoneman Douglas High School occurred).
133. *See, e.g.*, Castaldo v. Stone, 192 F. Supp. 2d 1124 (D. Colo. 2001) (analyzing claims under Colorado state law and 42 U.S.C. § 1983 of families of Columbine victims against school district and sheriff's department and concluding that sheriff's department and school employees were entitled to qualified immunity, but that individual school resource officer was not).
134. One commentator explains when police departments became independent from political machines, they lost an external source of legitimacy; as such, "police action in the current era . . . [constitutes] . . . a type of dominating class for itself, inscribing its power on the state and civil society." Stuart Schrader, *To Protect and Serve Themselves: Police in US Politics Since the 1960s*, 31 PUB. CULTURE 601, 607 (2019).
135. *See* FRENCH-MARCELIN & HINGER, *supra* note 14, at 3–4.

intelligence, and improve the improve the image of police.[136] In Baltimore, for example, throughout the decade, young people protested racial inequality in the city's high schools.[137] In response, school leaders enacted increasingly punitive disciplinary policies and, eventually, significantly increased the policing in their schools.[138] Moreover, notable examples of police officers working in schools without performing what we commonly understand as law-enforcement tasks existed in Watts and South Central, California. In those communities, Black residents had organized opposition to government-sponsored discrimination and police brutality.[139] Anti-police sentiment ran high.[140] In an effort to suppress this resistance, municipal officials arranged for the Los Angeles Police Department to send officers into public high schools. There, officers led a course entitled "Police Role in Government" aimed at encouraging students to inform on their family members and friends and improving attitudes toward the police.[141] The regular presence of LAPD officers in urban schools "functioned to 'create a sense of concern for orderly behavior and a sense of responsibility for the maintenance of law and order.'"[142] In addition, the LAPD organized summer and weekend outings for low-income Black students, aimed at "'afford[ing] opportunities for police officers and young people to . . . [build] . . . relationships."[143]

In other areas, political leaders supported school policing as a means of addressing tensions over court-ordered desegregation.[144] Many White people viewed desegregation as synonymous with a breakdown in school discipline.[145]

136. Damien M. Sojoyner, *Black Radicals Make for Bad Citizens: Undoing the Myth of the School-to-Prison Pipeline*, 4 BERKELEY REV. EDUC. 241, 252 (2013).

137. Heather Ann Thompson, *Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History*, 97 J. AM. HIST. 703, 710–11 (2010).

138. *Id.* at 711 (noting that by 1984, the city created the Baltimore School Police Force, giving it unprecedented authority in schools).

139. Sojoyner, *supra* note 136, at 252 (citing the Watts rebellion and student strike in Jefferson High School).

140. *Id.*

141. *Id.* (describing the course as designed "[t]o provide the Police Department . . . with information and insights" on "problem areas" and to "reduce tensions and conflicts between the youth and police and to create a cooperative relationship with the police officers working in the community").

142. ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 92 (2016).

143. *Id.* at 93.

144. *See, e.g.*, Craig Turner, *Policeman May be Assigned to Racially Troubled Monrovia High,* L.A. TIMES SG6 (June 20, 1972) (quoting Monrovia, California mayor as describing new school-policing program as "creat[ing] a favorable environmental climate in which to teach a greater respect for law and order and understanding of law enforcement" . . . [and] noting that the "high school has been the site of periodic clashes between black and white students in recent years").

145. *See generally* DOUGLAS S. REED, BUILDING THE FEDERAL SCHOOLHOUSE: LOCALISM AND THE AMERICAN EDUCATION STATE 196–97 (2014) (arguing that desegregation was seen by many whites as synonymous with disciplinary breakdown).

Black students responding to racial injustice were seen by school officials as threats.[146] School-policing programs responded to both sets of concerns.

Today, one sees police departments continuing to push for the installation of officers in schools for legitimacy-building reasons that have little to do with keeping students and buildings safe and secure. The case of Beaufort, South Carolina, is illustrative.[147] That city's middle and high schools each have full-time school police officers assigned to them, yet none of the elementary schools do.[148] The county sheriff argued in a federal grant application seeking funds so that the local elementary school could hire officers—and again to the press—that "[t]hose are critical times in a child's life . . . [w]e're missing out on what an impression a uniformed law officer can make."[149] The 2013 federal case *Moriarty v. Board of County Commissioners for County of Sandoval*, a wrongful termination case brought by a school police officer fired for an off-campus incident, also exemplifies this legitimacy-building impulse.[150] In a deposition, the officer's supervisor characterized school police officers' mission as "'primarily [acting] as [mentors] to the students . . . [and] show[ing] the kids that police officers aren't the enemy, they're your friends.'"[151] A school police officer in a 2019 focus group framed the sentiment more bluntly: "[I]t's a PR thing."[152]

In sum, while school-policing proponents often assume that officers promote safety—and that they are in schools to do so—the reality is more complex. The empirical basis for concluding police make schools safer is thin, and it turns out that schools and police departments possess an array of reasons for wanting to station officers in schools.

II.
BEYOND THE SCHOOL TO PRISON PIPELINE: A BROADER RANGE OF HARMS

Having considered the multiple factors that help explain the two-decade increase in the number of school police officers, the Article now turns to an

146. FRENCH-MARCELIN & HINGER, *supra* note 14, at 3–4; *see also* Regina D. Lambert & Dixie McGinty, *Law Enforcement Officers in Schools: Setting Priorities*, 40 J. EDUC. ADMIN. 257, 259 (2002) (discussing that a Charlotte, North Carolina high school program entitled "Officer Friendly" began to improve police-community relations).

147. Grace Chen, *Cops and Children: Why Police Officers are Stationed at Elementary Schools*, PUB. SCH. REV. (Oct. 10, 2010), https://www.publicschoolreview.com/blog/cops-and-children-why-police-officers-are-stationed-at-elementary-schools [https://perma.cc/HR6M-T583].

148. *Id.*

149. *Id.*

150. 931 F.Supp.2d 1142, 1146 (2013).

151. *Id.* at 1148.

152. F. Chris Curran, Aaron Kupchik & Benjamin W. Fisher, *Curran: The Good-Guy Image Police Present to Students Often Clashes With Students' Reality*, PALM BEACH POST (June 10, 2020), https://www.palmbeachpost.com/story/opinion/columns/more-voices/2020/06/10/curran-good-guy-image-police-present-to-students-often-clashes-with-students-reality/41730381/ [https://perma.cc/Q7SG-B2AG] (quoting anonymous school resource officer participant in a focus group).

analysis of school policing's harms. Part II.A surveys the literature on the school-to-prison pipeline. The remainder of this Section develops the argument that even when officers do not engage in the kinds of aggressive policing condemned in the pipeline literature, school policing nonetheless works harm on schools and students. Part II.B provides the theoretical lens that helps illuminate some of these harms: namely, the rich literature critiquing community policing. Part II.C applies community-policing critiques to school-policing programs, identifying and analyzing the school-governance and pedagogical harms that flow from school policing even apart from the pipeline.

A. The School-to-Prison Pipeline Critique

Beginning in 2003, scholars began to link the rise in school policing to the so-called school-to-prison pipeline.[153] These scholars argue that school policing—combined with zero-tolerance disciplinary practices, high-stakes testing, and fiscal austerity measures that deprive public schools of needed funds—creates a pipeline through which students are pushed out of schools and into courts, jails, and prisons.[154] Typically, three police practices are singled out in this scholarship.

First, scholars condemn police use of the unique tools of law enforcement—handcuffs, Tasers, and physical force—for purely disciplinary purposes.[155] Judging by press accounts, this practice is not unusual. Notable recent examples include officers applying handcuffs above a third grader's elbows so that he would learn to "behave the way [he was] supposed to";[156] arresting first graders for throwing temper tantrums;[157] using a Taser to awaken a sleeping high-school student;[158] and repeatedly body-slamming an 11-year-old onto the hallway floor.[159]

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153. Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, NEW DIRECTIONS FOR YOUTH DEV., Autumn 2003, at 9, 10–11.

154. *See, e.g.*, Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 862 (2012) ("Today, police officers routinely patrol public school hallways on a full-time basis . . . and school officials refer a growing number of youth to the juvenile and criminal justice systems for school-based misconduct."); Ken McGrew, *The Dangers of Pipeline Thinking: How the School-to-Prison Pipeline Squeezes Out Complexity*, 66 EDUC. THEORY 341 (2016) (summarizing literature and criticizing the pipeline heuristic for being insufficiently attentive to the non-school factors that contribute to the depressed life chances of poor and minority youths).

155. *See, e.g.*, Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities*, 2017 UTAH L. REV. 229, 232 (2017).

156. *Id.* at 230.

157. Mariel Padilla, *Officer Under Investigation After Arresting 6-Year-Olds, Chief Says*, N.Y. TIMES (Sept. 23, 2019), https://www.nytimes.com/2019/09/22/us/6-year-old-arrested-orlando-florida.html [https://perma.cc/9QLU-53KT] (discussing arrests of 6-year-olds for temper tantrum).

158. Associated Press, *School Resource Officer Activates Taser to Awaken Sleeping Student in Ohio*, EDUC. WK. (Sept. 11, 2018), https://www.edweek.org/ew/articles/2018/09/12/school-resource-officer-activates-taser-to-awaken.html [https://perma.cc/Y2BY-WGP5].

159. Ashad Hajela & Josh Shaffer, *Ex-Deputy Seen Body-Slamming Vance County Middle-Schooler Won't Face Felony Charges*, NEWS & OBSERVER (Dec. 17, 2019), https://www.newsobserver.com/news/local/crime/article238445258.html (describing misdemeanor

Second, scholars point out a correlation between the presence of police officers in a school and the likelihood that students will be arrested and sent to the juvenile or criminal systems[160] for behavior that violates the law but that is developmentally typical and that, prior to the rise of school policing, was handled by teachers and administrators.[161] Especially noteworthy is how having a police officer in a school correlates with spikes in arrests for disorderly conduct.[162] This result is unsurprising when one considers that this offense—and the related crime of disturbing schools[163]—sweeps within it a broad swath of typical adolescent behaviors. Officers thus must differentiate on a case-by-case basis between behavior that is merely obnoxious misconduct that can be handled by the school and behavior for which a student should be arrested. Disorderly conduct is highly "subjective, situational, and circumstantial,"[164] which is apparent from even a cursory review of appellate opinions and media accounts of school-based disorderly-conduct arrests. For example, officers have charged students with

assault charges brought against SRO in a North Carolina middle school after the SRO was "filmed lifting and ramming a middle-school student to the floor"). For additional accounts of officer use of force against students for disciplinary purposes, see Evie Blad, *School Police Put on Leave After Incident in Baltimore*, 35 EDUC. WK. (Mar. 8, 2016), https://www.edweek.org/ew/articles/2016/03/09/school-police-put-on-leave-after-incident.html [https://perma.cc/L66X-W88J] (reporting on a video that shows an officer slapping, swearing at, and kicking a teenage boy); *see also* ALEX S. VITALE, THE END OF POLICING 65 (2017) (describing 2015 federal court decision finding Birmingham, Alabama school police officers guilty of civil rights violations for widespread use of pepper spray on Black students); Joseph B. Ryan, Antonis Katsiyannis, Jennifer M. Counts & Jill C. Shelnut, *The Growing Concerns Regarding School Resource Officers*, 53 INTERVENTION SCH. & CLINIC: CURRENT TOPICS 188, 188 (2018) (noting that "[d]uring the past year, the media has exposed a rash of incidents concerning school resource officers (SROs) using excessive force to manage student misbehavior").

160. *See, e.g.*, Nance, *Students*, *supra* note 2, at 958 & n.202 (citing multiple studies to that effect). A 2019 analysis found, in addition to these short-term impacts of exclusionary discipline and arrest, evidence that "[o]ver the long term, exposure to federal funding for school police is associated with small but significant declines in high school graduation rates and college enrollment." Weisburst, *supra* note 94, at 361; *see also id.* at 338 (finding that "exposure to a three-year federal grant for school police is associated with a 2.5 percent decrease in high school graduation rates and a 4 percent decrease in college enrollment rates"). *But see* Christina Pigott, Ami E. Stearns & David N. Khey, *School Resource Officers and the School to Prison Pipeline: Discovering Trends of Expulsions in Public Schools*, 43 AM. J. CRIM. JUST. 120, 137 (2018) (finding that the presence of SROs in schools does not increase referrals to the criminal justice system).

161. *See* Kevin Lapp, *Databasing Delinquency*, 67 HASTINGS L.J. 195, 212 (2015) ("[S]chools have criminalized normal adolescent behavior.").

162. *See* Theriot, *supra* note 77, at 285 (finding that, when controlling for socioeconomic disadvantage, the presence of a police officer in a school means an increase in the arrest rate for disorderly conduct by over 100 percent).

163. *See, e.g.*, Kenny v. Wilson, 885 F.3d 280, 284 (4th Cir. 2017) (reversing district court's dismissal of current and former public school students' § 1983 claim challenging prosecution under disturbing-schools statute, which proscribed interference with, disturbance of, loitering on, or being obnoxious in schools).

164. *See* Theriot, *supra* note 77, at 285.

disorderly conduct for throwing a chair in the lunchroom,[165] burping repeatedly,[166] and refusing to turn over a cell phone and leave the classroom.[167]

Third, scholars criticize the fact that school policing unfairly[168] and disproportionately targets Black and Brown students and students with disabilities.[169] Black students represent 16 percent of student enrollment, yet they constitute 31 percent of students subjected to a school arrest.[170] In addition, while students receiving special education services represent 12 percent of all students nationwide, they constitute 23 percent of the nation's students arrested in schools.[171] The disorderly-conduct arrests that correlate with policed schools may be particularly likely to be inflected by racial and ableist bias, given how much interpretation and discernment are called for from the officer in assessing whether a given act constitutes a crime as opposed to childish or adolescent misbehavior.[172] Multiple anecdotal accounts show how the minor misbehavior of students with disabilities in school may be criminalized, including through a disorderly-conduct arrest, even when that behavior is an expected manifestation of their disability.[173]

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165. In re T.T.E., 831 S.E.2d 293, 295 (N.C. 2019).

166. A.M. v. Holmes, 830 F.3d 1123, 1130 (10th Cir. 2016).

167. Associated Press, *Deputy Who Tossed a S.C. High School Student Won't Be Charged*, N.Y. TIMES (Sept. 2, 2016), http://www.nytimes.com/2016/09/03/afternoonupdate/deputy-who-tossed-a-sc-high-school-student-wont-be-charged.html [https://perma.cc/U87Y-QCW8] (recounting South Carolina incident in which police officer flipped a girl out of her desk after she refused to release her cell phone and to leave the classroom and reporting on the disposition of the investigation).

168. *See* Kristen Henning, *Criminalizing Normal Adolescent Behavior: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 420 (2013) (arguing that "decision makers, such as police, probation officers, and prosecutors, treat youth of color more harshly than white youth in part because of an implicit bias to ignore developmental immaturity in youth of color").

169. *See, e.g.*, Jason Nance, *Implicit Racial Bias and Students' Fourth Amendment Rights*, 94 IND. L.J. 47, 52 (2019) (discussing the "substantial empirical evidence [that] demonstrates that schools serving higher concentrations of students of color are more likely to rely on coercive surveillance measures than schools serving primarily white students"). A 2011–2012 U.S. Department of Education study found that Black, Latino, and special-education students were disproportionately subjected to arrest and prosecution. VITALE, *supra* note 159, at 62.

170. Vitale, *supra* note 159, at 62.

171. U.S. DEP'T OF EDUC., GUIDING PRINCIPLES: A RESOURCE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE (2014), http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf [https://perma.cc/U93D-CJRT]; *see also* David C. May, Corrie Rice & Kevin I. Minor, *An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues Among Students Receiving Special Education Services*, CURRENT ISSUES EDUC., Sept. 2012, at 1, 6 (noting that over 80 percent of officers at least somewhat agreed that students receiving special education services were abusing the system to obtain these services and that over 50 percent of officers agreed that those students had a detrimental impact on the neurotypical students with whom they attend school).

172. *See generally* Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. (forthcoming Oct. 2021) (manuscript at 15–30), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552620 [https://perma.cc/MPS4-4RUA]; *see also* Josh Gupta-Kagan, *The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident*, 45 FORDHAM URB. L.J. 83, 104–05 (2016).

173. *See generally* Shaver & Decker, *supra* note 155, at 259–75 (surveying cases involving students with disabilities who sued in the wake of aggressive policing tactics).

The school-to-prison pipeline account of school policing's harms has proven a powerful catalyst for grassroots organizing[174] and has spurred legislative action.[175] But in many cases, the harms may be less concrete, less dramatic, and less of a predictable consequence than those captured in the pipeline heuristic. The following Sections, using community-policing theory[176] as a framework, take up this broader range of harms.

B. School Policing as Community Policing: A Critical Account

While rarely discussed by scholars, school policing is a form of community policing.[177] Federal law defines a school resource officer in two different parts

174. *See infra* notes 381–386 and accompanying text (discussing grassroots activism against school policing).

175. *See, e.g.*, *Ending the School to Prison Pipeline, Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 1–2 (2012).

176. This Article's discussion of policing theory is confined to those philosophies of policing adopted (and rejected) over the years by police departments. Legal and criminal justice scholars—sometimes working directly with policing practitioners—promote or critique various philosophies but rarely challenge the received wisdom about policing, namely that, "'like the criminal law of which it is supposedly part, [policing] is no more and no less than a set of instruments to manage something called crime.'" MICOL SEIGEL, VIOLENCE WORK: STATE POWER AND THE LIMITS OF POLICE 4 (2018) (citing MARK NEOCLEOUS, THE FABRICATION OF SOCIAL ORDER: A CRITICAL THEORY OF POLICE POWER ix (2000)). Outside of these disciplines, however, scholars ask more fundamental questions, as Seigel notes: "What is police power? What are police? Why does it so fundamentally appeal?" SEIGEL, *supra*, at 4. They also point out the deeply contingent nature of the supposedly objective category of "crime" and note that most of policing involves neither crime control nor law enforcement. *See, e.g.*, STUART HALL, CHAS CRITCHER, TONY JEFFERSON, JOHN CLARKE & BRIAN ROBERTS, POLICING THE CRISIS: MUGGING, THE STATE, AND LAW AND ORDER (1978) (the foundational work in this genre). For a contemporary critical take on the received wisdom about policing, see Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About "Criminal Justice Reform,"* 128 YALE L.J. 848, 854 (2019) (criticizing the fact that "it is a 'crime' . . . to wager in the streets over dice. [In contrast], [w]agering over international currencies, entire cities' worth of mortgages, the global supply of wheat needed to avoid mass starvation, or ownership of public corporations is accepted behavior."). A recent body of legal scholarship does argue that the equation of policing with crime control masks the use of arrests for purposes having little to do with crime. Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 809 (2015) (arguing that civil regulatory bodies that make decisions based on arrests can pool resources with prosecutors and police officers, thereby achieving a level of enforcement neither could achieve alone, and describing this phenomenon as undermining important aims of the criminal justice system); Anna Roberts, *Arrests as Guilt*, 70 ALA L. REV. 987, 989 (2019) (noting ways in which arrest has become fused with guilt and outlining the harms of this fusion). But even this scholarship does not expand the category of policing beyond the behavior of domestic, public police personnel. *See* SEIGEL, *supra*, at 4 (decrying the equation between policing and police officers). Ultimately, a reckoning with the full scope of the police power as urged by these critical scholars outside the legal academy is beyond this Article's scope.

177. Ryan Broll & Stephanie Howells, *Community Policing in Schools: Relationship-Building and the Responsibilities of School Resource Officer*s, POLICING: J. POL. & PRAC. 1, 2 (2019) (describing the ways in which community-policing mechanisms influence school policing as "largely overlooked"). School-policing legal scholars have either left the community-policing functions unaddressed or compared them favorably to the law-enforcement functions of school police. *See, e.g.*, Gupta-Kagan, *Reevaluating School Searches*, *supra* note 6, at 2058 (noting that school resource officers "work to prevent crimes by working to keep children from joining gangs, educating children about the law, and even mentoring children" as part of their "community-policing tasks").

of the U.S. Code; describing in each school policing constituting a community-policing assignment.[178] Moreover, the funding for school policing flows through the federal Office of Community Oriented Policing Services.[179]

The theoretical underpinnings and critiques of community policing offer scholars a helpful lens through which to assess school policing. Once we see school policing as community policing, we can better understand how even those aspects of school policing that do not contribute to the pipeline nonetheless bring harm to schools and students.

The following Sections define and contextualize community policing within the history of policing reform and summarize key critiques of community policing.

1. Community Policing: A History and Definition

Community policing is the use of partnerships between police departments and community-based institutions and the adoption of "problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime."[180] The concept and practice of community policing arose in the 1990s after three decades of what scholars refer to as the police professionalization era. Through professionalization, police reformers sought to decouple policing from the political machines with which they were associated.[181] Beginning in the 1960s, professionalization reformers centralized control over patrol officers. They envisioned the police force as a "rational, efficient, scientifically organized, technologically sophisticated bureaucracy," above the political fray and separate from the social conflicts of the day.[182] Professionalization also meant timely

178. 34 U.S.C. § 10389(4) defines an SRO as "sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with school and community-based organizations." Under the Safe and Drug Free Schools and Communities Act, an SRO is defined as a "career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations to—(A) educate students in crime and illegal drug use prevention and safety; (B) develop or expand community justice initiatives for students; and (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness." 20 U.S.C. § 7161.

179. *See* Press Release, U.S. Dep't of Justice, Department of Justice Awards Hiring Grants for Law Enforcement and School Safety Officers (Sept. 27, 2013), https://www.justice.gov/opa/pr/department-justice-awards-hiring-grants-law-enforcement-and-school-safety-officers [https://perma.cc/MR6X-JWQJ].

180. OFF. CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUST. COMMUNITY POLICING DEFINED 1 (2014), https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf [https://perma.cc/992L-AFT2]; *see also* BERNARD HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 46 (2001).

181. Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2003–04 (2017); *see also* SAMUEL WALKER, A CRITICAL HISTORY OF POLICE REFORM 75 (1977) (noting that crime suppression became the overriding ideology).

182. David Alan Sklansky, *Persistent Pull of Police Professionalism*, NEW PERSPS. POLICING, Mar. 2011, at 1, 2 [hereinafter *Persistent Pull*].

responsiveness; one of the singular developments of this era was the emergency-response 911 line.[183]

These reforms, however, did not address the police-community relations that had deteriorated in politically marginalized communities of color.[184] The 1960s and 1970s saw Black people killed by police at a rate nine times more than that of whites,[185] engendering widespread protest. Police bureaucrats recognized the need for a change in tactics, and community policing was born.[186] Yet professionalization's emphasis on objectivity and detachment did little to improve the image of police in these marginalized communities.

By the end of the 1980s, professionalization had waned in influence; beginning in the next decade, community policing constituted the predominant police reform.[187] In 1994, Attorney General Janet Reno created the United States Department of Justice's Office of Community Oriented Policing Services ("COPS"), charged with promoting community policing, demonstrating its effectiveness at reducing crime and violence and creating order, and assisting local agencies in developing management infrastructures to sustain community policing after federal funding ended.[188] While community policing had been growing in popularity since at least the late 1980s,[189] the establishment of a dedicated federal office signaled that it was now an ideological cornerstone of U.S. policing.[190]

At least two related aspects of community policing are salient in understanding its influence on school policing. First, community-policing

183. Tracey L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1600 (2002).

184. Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1513 (2002) (describing community policing as "a dramatic reorientation in the politics of law enforcement: for decades a weapon by which dominant groups safeguarded their preeminence . . . [policing is] now being recast by traditionally marginalized groups as a tool for revitalizing community life in the inner city").

185. SEIGEL, *supra* note 176, at 2.

186. *Id.* Conclusively ascertaining causes of changes in policing philosophy is difficult. *See* Amna Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834, 872 n.163 (2015) (describing policing histories as "highly contested"); SEIGEL, *supra* note 176, at 5 (criticizing the dominant narrative of police history as "quiescent . . . an apology, produced by pro-police narrators, a tale of noble origins and ever-improving professionalization").

187. Sklansky, *Persistent Pull*, *supra* note 182, at 1.

188. Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351, 382 (2011) (noting that since 1994, the COPS program has distributed over $12 billion in federal funds to states and that, although the Bush Administration drastically reduced funding under COPS, in March 2009, Attorney General Eric Holder announced an infusion of $1 billion of funds to revitalize the program (citing Meares, *Praying for Community Policing*, *supra* note 183, at 1596)). While the Trump Administration proposed to end COPS, it stated that it will continue funding its functions through the Office of Justice Programs. U.S. DEP'T OF JUST., FISCAL YEAR 2020 BUDGET REQUEST AT A GLANCE (2019), https://www.justice.gov/jmd/page/file/1142306/download [https://perma.cc/8MMR-GTTH].

189. Meares, *Praying for Community Policing*, *supra* note 183, at 1597.

190. *Id.* at 1597; *see also* Sklansky, *Persistent Pull*, *supra* note 182, at 2 (noting that federal funding streams "reflect[] and, to a degree, help[] shape prevailing ideas about best practices in policing").

proponents promote community partnerships because of their perceived value in improving relations in communities with "high rates of investigative and enforcement involvement"[191]—a euphemistic way of describing politically marginalized neighborhoods that are overwhelmingly Black and Brown with histories of conflict with law enforcement.[192] The theory is that attending to the concerns of community members can help police departments regain people's trust so that they will then report crime when it occurs and answer police questions during an investigation.[193] Without such partnerships, it is believed, police officers will be unwilling to differentiate between the majority of law-abiding community members and alleged law-breakers and will continue to engage in the heavy-handed tactics that bred mistrust in the first instance.[194] When the groundwork for communication is laid, by contrast, police departments may consider the views of the community as they set law-enforcement priorities.[195] Once law enforcement attends to those views, the theory holds, community members will be more likely to conform with the criminal law and adhere to orderliness norms.[196] During community policing's heyday,[197] scholars made grander claims about its benefits as well: they argued that community policing could constitute a version of deliberative democracy[198] and could help heal and bring cohesion to a fractured community.[199]

The second salient aspect of community policing rests on the idea that building trust in police among marginalized communities requires the

191. Establishment of the President's Task Force on 21st Century Policing, Exec. Order No. 13,684, 79 Fed. Reg. 76,865, 76,865 (Dec. 18, 2014).

192. Formalized partnerships presumably are unnecessary in wealthy communities, where the police do not suffer legitimacy deficits since they have historically been attentive to the needs and desires of community members. The existence of private police forces in wealthy neighborhoods particularly illustrates this phenomenon. *See* Elizabeth E. Joh, *Conceptualizing Private Police*, 2005 UTAH L. REV. 573, 587 (2005) (describing private police as being "client-driven" and as focused on preventing loss and protecting private property more than on solving crime). David Sklansky argues that while many initiatives can fly under the banner of community policing, "[f]or all the diverse definitions of community policing, it may boil down to this: police treating a neighborhood the way a security guard treats a client property." David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1701 n.17 (2005) (internal citation omitted).

193. *See* HARCOURT, *supra* note 180, at 46.

194. *Id.*

195. *Id.*

196. *Id.*

197. Commentators argue that post-9/11, community policing has been eclipsed by intelligence-based or predictive policing, which constitutes a return to the technocratic and bureaucratic tenets of police professionalism and an abandonment of the centrality of partnerships. *See, e.g.*, Sklansky, *Persistent Pull*, *supra* note 182, at 7.

198. *See, e.g.*, Archon Fung, *Accountable Autonomy: Toward Empowered Deliberation in Chicago Schools and Policing*, 29 POL. & SOC'Y 73, 73–80 (2001) (discussing how community policing in Chicago exemplifies "empowered deliberative democracy").

199. Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why It Matters*, 54 WM. & MARY L. REV. 1865, 1885 (2013) ("Policing should . . . play a role in the production of self-identity that helps to 'construct and sustain our 'we-feeling'—our very felt sense of 'common publicness'" (citing IAN LOADER & NEIL WALKER, CIVILIZING SECURITY 164 (2007)).

participation of police in positive, nonenforcement activities[200] so that officers can come to know people as community members, rather than only as potential criminal suspects. The Obama Administration's report entitled *Task Force on 21st Century Policing* contained a blueprint for how police can accomplish this aim.[201] This report offers examples of positive, non-enforcement activities, such as the Police Athletic League ("PAL").[202] PALs provide recreation opportunities to youth who might not otherwise have access to them.[203] However, these sports-based interventions offer more than just recreation for its own sake; police officers use these programs as interventions for young people whom they perceive to be both troubled and potentially troubling. Such interventions aim to change behavior, steering youth away from perceived negative influences, instilling adherence to dominant social norms, and inculcating trust in law enforcement.[204]

2. Community Policing Critiqued

While the literature critiquing community policing is extensive,[205] three principal criticisms emerge as relevant to the analysis of school policing. First, notwithstanding the emphasis on partnerships, civilian-police relationships are characterized by a power differential that skews heavily toward the police.[206] Community-policing efforts are shaped and administered according to the priorities, outlook, and schedules of law enforcement.[207]

Second, the concept of "community" is pliable and subject to manipulation by law enforcement.[208] Examples abound of police cherry-picking members of a community whose views are most likely to align with those of law enforcement, ignoring the potentially dissenting views from more politically marginalized members.[209]

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200. OFF. CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUST., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 15 (May 2015) [hereinafter TASK FORCE ON POLICING], https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [https://perma.cc/TZ6B-8QJH] (listing examples of positive activities: Coffee with a Cop and Sweet Tea with the Chief).

201. *Id.* at 1.

202. *Id.* at 15.

203. *See id.*

204. Jacob J. Bustad & David L. Andrews, *Policing the Void: Recreation, Social Inclusion and the Baltimore Police Athletic League*, 5 SOC. INCLUSION 241, 242 (2017).

205. *See* Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 402–04 (2016) (cataloguing critiques).

206. *See, e.g.*, Sklansky, *Police and Democracy*, *supra* note 192, at 1813 (describing how an advisory committee set up to elicit residents' views in one Chicago neighborhood tended not to represent those views but instead to pursue a police-created agenda and to "receive more advice than they give").

207. *See* DAVID ALAN SKLANSKY, DEMOCRACY AND THE POLICE 83 (2008).

208. *See* Simonson, *supra* note 205, at 402 & n.51.

209. *Id.*(collecting sources describing this dynamic in various cities such as Seattle, where "the same three to five people" are purported to represent the community during the city's community-policing program meetings, and Chicago, where attendance at police meetings represents a "strong middle-class bias").

Third, community-policing initiatives may co-opt community concerns rather than meaningfully respond to them.[210] Put another way, law enforcement-initiated "nonenforcement" activities—sports or mentoring programs, for example—may have initial appeal in communities with high poverty rates where such activities are unavailable or unaffordable. But these initiatives are often constructed and administered in a top-down fashion, without initial community input or buy-in.[211] Moreover, these police-run programs frequently have unstated agendas that involve gathering intelligence and tamping down unrest, "'buying peace' rather than earning it."[212] This aspect of community policing is similar to the 1960s school-policing programs in schools with mostly Black student populations.[213]

C. Community-Policing Underpinnings of School Policing

The community-policing aspirations of school policing are nowhere better delineated than in the National Association of School Resource Officers ("NASRO") document *To Protect and Educate*: *The School Resource Officer and the Prevention of Violence in Schools.*[214] NASRO argues that school police ought not to engage only in traditional law-enforcement activities such as patrol, traffic direction, security provision, and investigation of crime. Instead, officers are urged to become part of the school community through teaching and counseling students.[215] Law enforcement is part of the job but is, significantly, listed last.[216] Other policing organizations add to NASRO's envisioned triad—teacher, counselor, and law enforcement officer—the related category of "mentor."[217]

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210. *Id.* at 403.

211. Bustad & Andrews, *supra* note 204, at 242 (describing police-initiated athletic programs as rooted in "reformist paternalism" aimed at controlling behavior).

212. Wesley Skogan, *Representing the Community in Community Policing*, *in* COMMUNITY POLICING: CAN IT WORK? 57 (Wesley Skogan ed., 2004) ("One reason—perhaps the major one—cities adopt community policing is to solve their legitimacy problems and buy peace in poor and disenfranchised neighborhoods.").

213. *See supra* notes 136–143 and accompanying text.

214. NAT'L ASS'N SCH. RES. OFFICERS, TO PROTECT AND EDUCATE: THE SCHOOL RESOURCE OFFICER AND THE PREVENTION OF VIOLENCE IN SCHOOLS (2012), https://www.nasro.org/clientuploads/resources/NASRO-Protect-and-Educate.pdf [https://perma.cc/786S-A3PG].

215. *Id.* at 21.

216. *Id.*

217. POLICE FOUND., A TOOLKIT FOR CALIFORNIA LAW ENFORCEMENT: POLICING TODAY'S YOUTH, DEFINING THE ROLE OF SCHOOL-BASED POLICE OFFICERS 2, https://www.policefoundation.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf [https://perma.cc/WP7C-4WT4].

1. The "Triad Role" of Police Officers in Schools

An extended description of school police officers' teaching, counseling, and mentoring roles will lay the foundation for the application of community-policing critiques to school policing.

a. School Police as Teachers

School police officers teach in several capacities. The teaching role includes leading formal courses in a variety of topics that can loosely be grouped under the category of safety, sometimes with a gesture toward civics.[218] NASRO breaks down this list as including:

> Instructing students on technology awareness, domestic violence, traffic-stop education, and bullying"; "[c]reating and conducting a distracted driving course for students in the school district"; [and] "[p]roviding unique classroom instruction to students in programs such as the 'Eddie Eagle Gun Safe' Program, the 'Too Good for Drugs & Violence Program,' and the 'Protecting Kids Online' Program.[219]

Perhaps the most well-known version of "teaching with a badge"[220] is Drug Abuse Resistance Education ("D.A.R.E."). Originating in Los Angeles—primarily in majority-Black schools[221]—in the early 1980s, D.A.R.E. subsequently spread throughout the country.[222] In most cases, the officers taught the course once a week over a period of several months, lecturing on the dangers of drugs.[223] Channeling popular fears about schools as potential places of danger, law enforcement officers invoked militaristic rhetoric in describing the program. D.A.R.E. is referred to in its promotional materials as the "first line of defense in America's schools."[224]

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218. Del Stover, *Police Presence*, URB. ADVOC., Feb. 2016, at 34, 36 (quoting Micah Ali, president of the board in trustees for California's Compton Unified School District explaining the educational purpose of school police: "We don't see SROs as just someone who wears a uniform and carries a gun on campus . . . we see a resource to engage and enhance the education program"); *see also* NATHAN JAMES & KYRIE E. DRAGOO, CONG. RSCH. SERV., R45251, SCHOOL RESOURCE OFFICERS: ISSUES FOR CONGRESS 2 (2018), https://crsreports.congress.gov/product/pdf/R/R45251 [https://perma.cc/73UL-3H8M] (describing officers teaching courses on "responsible citizenship").

219. NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22–23.

220. Mike Kennedy, *Teachers with a Badge*, AM. SCH. & UNIV. (Feb. 1, 2001), https://www.asumag.com/mag/article/20846711/teachers-with-a-badge [https://perma.cc/KTY3-46RY].

221. Sojoyner, *supra* note 136, at 246.

222. Amy Nordrum, *The New D.A.R.E. Program—This One Works*, 25 SCI. AM. (Sept. 10, 2014), https://www.scientificamerican.com/article/the-new-d-a-r-e-program-this-one-works/ [https://perma.cc/8UGF-PH6C].

223. Scott O. Lilienfeld & Hal Arkowitz, *Why "Just Say No" Doesn't Work*, SCI. AM. (Jan. 1, 2014), https://www.scientificamerican.com/article/why-just-say-no-doesnt-work/ [https://perma.cc/PLJ9-FSBY].

224. *School Safety*, D.A.R.E., https://dare.org/school-safety/ [https://perma.cc/3RLD-EA4X].

Multiple studies show the inefficacy of D.A.R.E. at stopping substance use.[225] Scholars critique the content, teaching methods, and reliance on police officers as reasons for its ineffectiveness.[226] Instead of abstinence lectures from uniformed adults, researchers recommend realistic conversations about the prevalence and harms of all manner of drugs, including legal ones, in which students have the opportunity to simulate real-world situations with peers.[227] Nonetheless, D.A.R.E. has enduring appeal, and as recently as 2017, the U.S. Attorney General called for its continuation.[228]

Less well known but growing in popularity is the Gang Resistance Education and Treatment Program ("G.R.E.A.T.").[229] Created in 1991 in the Phoenix Police Department,[230] G.R.E.A.T. uses uniformed police officers to warn students of the dangers of gang involvement.[231] Research suggests some decrease in gang involvement and improved attitudes toward police officers as a result of exposure to the G.R.E.A.T. program, but no decrease in crime or delinquency.[232]

School-policing proponents care less about the subject-matter content of these lessons than the fact that students are learning from police, in a presumably

225. *See, e.g.*, Lilienfeld & Arkowitz, *supra* note 223 (summarizing evidence of ineffectiveness); *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO- 03-172R, YOUTH ILLICIT DRUG USE PREVENTION: DARE LONG-TERM EVALUATIONS AND FEDERAL EFFORTS TO IDENTIFY EFFECTIVE PROGRAMS (2003), https://www.gao.gov/assets/gao-03-172r.pdf [https://perma.cc/LU8F-3Y8S] ("All of the evaluations suggested that DARE had no statistically significant long-term effect on preventing youth illicit drug use.").

226. Lilienfeld & Arkowitz, *supra* note 223 (citing studies).

227. Denise C. Gottfredson, *School-Based Crime Prevention*, *in* LAWRENCE W. SHERMAN, DENISE GOTTFREDSON, DORIS MACKENZIE, JOHN ECK, PETER REUTER & SHAWN BUSHWAY, NAT'L INST. OF JUST., PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING 5-1, 5-35 to 5-36 (1997), https://www.ncjrs.gov/pdffiles1/Digitization/165366NCJRS.pdf [https://perma.cc/3RM8-WKKX] ("No scientific evidence suggests that the D.A.R.E. core curriculum, as originally designed or revised in 1993, will reduce substance use in the absence of continued instruction more focused on social competency development."); *see also* Theodore L. Caputi & A. Thomas McLellan, *Truth and D.A.R.E.: Is D.A.R.E.'s New Keepin' It REAL Curriculum Suitable for American Nationwide Implementation?*, 24 DRUGS: EDUC., PREVENTION & POL'Y 49 (2017) (discussing these adaptations).

228. *See* Press Release, U.S. Dep't of Just., Attorney General Jeff Sessions Delivers Remarks at the 30th DARE Training Conference (July 11, 2017), https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-30th-dare-training-conference [https://perma.cc/CZ7P-V44G] ("We must have Drug Abuse Resistance Education. DARE is the best remembered anti-drug program. I am proud of your work. It has played a key role in saving thousands of lives and futures.").

229. Anna Heinrich, *4 Surprising Duties of a Police Officer You Wouldn't Expect*, RASMUSSEN UNIV. (June 12, 2017), https://www.rasmussen.edu/degrees/justice-studies/blog/duties-of-police-officer/ [https://perma.cc/X7SJ-93PQ].

230. *Fact Sheet - Gang Resistance Education and Training (G.R.E.A.T.) Program*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES (June 2020), https://www.atf.gov/resource-center/fact-sheet/fact-sheet-gang-resistance-education-and-training-great-program [https://perma.cc/KS3V-RMMV].

231. *Id.*

232. *See generally* Andrew V. Papachristos, *Two Decades of G.R.E.A.T.: Considering the History and Evaluation of One of the Longest-Running Gang Prevention Programs*, 12 CRIMINOLOGY & PUB. POL'Y 367, 369 (2013).

non-threatening context.[233] NASRO even exhorts officers to "[h]elp[] students with their homework."[234]

Along with teaching, law enforcement officers intervene at the education-policy-making level to critique existing discipline policies, propose new ones, and weigh in on curriculum.[235] At the state level, legislatures seek to give law enforcement a say in and, in at least one state, attempted to give law enforcement officers veto power over school districts' disciplinary codes.[236] In the Charlotte-Mecklenburg schools in North Carolina, the Fraternal Order of Police objected when a middle school assigned a popular novel that included a depiction of police violence against a Black teenager.[237] While the school administration prevailed over police objections with respect to that particular book assignment, it did not contest the principle that law enforcement should have a voice in curricular content going forward.[238] Finally, in at least two cases, police departments have helped create urban magnet high schools in which standard high-school courses are "infused with concepts related to public safety and the law."[239]

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233. *See* Owens, *supra* note 88, at 16; NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22–23 (noting that school police are expected to, among other obligations, "develop[] intervention, skills-development, and healthy-lifestyle programs for elementary and middle-school students so they are prepared to succeed in high school"; "implement[ ] a 'Doing the Right Thing' program where educators select one student each month for lunch with the SRO and a photo in the local paper in recognition of their leadership skills"; and "conduct[] intervention programs for the purpose of counseling victims and friends of victims of campus violence").

234. NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22; *see also* Anthony H. Normore, Darius Bone, Delaney Jones & Stacy Spell, *To Protect and Educate: Legal Mandates and Complex Leadership of School Resource (Police) Officers*, *in* LEGAL FRONTIERS IN EDUCATION: COMPLEX LAW ISSUES FOR LEADERS, POLICYMAKERS AND POLICY IMPLEMENTERS 201 (Anthony H. Normore, Patricia A.L. Ehrensal, Patricia F. First & Mario S. Torres, Jr. eds., 2015) (suggesting officers can function as role models through their teaching roles).

235. For example, the Obama Administration's Task Force on Twenty First Century Policing exhorts police departments to "develop and monitor school discipline policies" and to "work with schools to create a continuum of developmentally appropriate and proportional consequences." OFF. CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUST., TASK FORCE ON POLICING, *supra* note 200, at 48.

236. *See, e.g.*, S. 295,154th Gen. Assembly 2019–2020 Session (N.C. 2019) (attempting to modify N.C. GEN. STAT. § 115C-390.2(a) to require that local boards of education "cosult[]with teachers, school-based administrators, parents, and local law enforcement agencies" when adopting school discipline policies and procedures).

237. Simone Jasper, *Police Don't Want Kids at a North Carolina Middle School Reading This Book*, HERALD SUN (Sept. 26, 2019), https://www.heraldsun.com/news/state/north-carolina/article235503727.html [https://perma.cc/X3AL-MCSG] (discussing opposition from Charlotte-Mecklenburg Fraternal Order of Police to decision of local middle school to assign Jason Reynolds's novel, ALL AMERICAN BOYS).

238. *See id.* (noting that the school invited police officers to join the class's discussion of the book).

239. DYLAN PRESMAN, ROBERT CHAPMAN & LINDA ROSEN, OFF. CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, COPS INNOVATIONS: A CLOSER LOOK, CREATIVE PARTNERSHIPS: SUPPORTING YOUTH, BUILDING COMMUNITIES 10–14 (2002), https://cops.usdoj.gov/RIC/Publications/cops-w0046-pub.pdf [https://perma.cc/T58A-SD8R].

b. School Police as Counselors

The counseling role[240] of school police is multi-faceted. NASRO envisions counseling occurring in informal settings, often outside of regular school hours, and even after the school year has ended. Examples include "sharing dinner together during an extended school day," "weekend field trips," "summer 'bike rodeos,'" and "Jr. Police Academies."[241] These officer-counselors also are envisioned as "[l]istening to students' concerns about bullying by other students" and "[p]roviding counseling and referrals when sex-abuse victims turn to them for help."[242]

The counseling role is not simply a passive one, in which the officer must wait to be approached by a worried student or anxious parent. Instead, officers can be proactive when they notice students whom they believe to be "at risk or vulnerable," such as when they either know or simply perceive that a student "does not have structure or stability in his/her home life."[243] In such cases, officers are encouraged to "conduct[ ] home visits to contact parents of at-risk students and assist[ ] those families."[244] While it is difficult to determine how widespread such practices actually are, it is clear that school-police advocates believe they are important.[245] And the discretion given to school police officers enables them to pursue these activities whenever they are inclined to do so.[246]

While school-policing proponents may disavow or downplay this fact,[247] school police often also act as disciplinarians.[248] In other words, school police use the tools of law enforcement to monitor students and enforce student codes of conduct, including rule-breaking that does not violate the criminal law—functions that one might think should be performed by other school staff

240. At times, school-policing organizations refer to a mentoring role, or use the two terms interchangeably. POLICE FOUND., A TOOLKIT FOR CALIFORNIA'S LAW ENFORCEMENT: POLICING TODAY'S YOUTH 2 (subsuming each of the components of the triad under the "mentor" heading).

241. NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22–23 (also describing "free programs that give students something positive to do after the school day and during their summer vacation, including camping, bull riding, archery, baseball, life-skills, and musical theatre . . . [c]oordinating and funding programs for students-in-need that provide rides to school, school uniforms, school lunches, supplies for the home, food, and holiday gifts . . . [c]oordinating a variety of community service activities with students that include spending time with the elderly at local nursing homes, running soup kitchens for the needy, [and] hosting dances with student groups").

242. *Id.*

243. POLICE FOUND., DEFINING THE ROLE OF SCHOOL-BASED POLICE OFFICERS, *supra* note 217, at 3.

244. NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22.

245. *See, e.g.*, Broll & Howells, *supra* note 177, at 5 (noting that "[r]elationship-building is central to community policing," and discussing survey in in which "most participants and interviewees reported positive relationships between SROs and school staff").

246. For a discussion of how school districts struggle to constrain officer discretion, *see infra* Part III.A.

247. *See, e.g.*, NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 24 (omitting any mention of a disciplinary function of a school police officer and discussing only the "triad" role of school police officers).

248. Kupchik & Bracy, *supra* note 13, at 24–26, 33.

members such as counselors or assistant principals.[249] Evidence suggests that the degree to which school police involve themselves in student discipline correlates with the race and socioeconomic status of the student body – in white and affluent schools, officers are less likely to perform disciplinary tasks than in other kinds of schools.[250] Reform efforts have sought to limit the degree to which police involve themselves in purely disciplinary matters.[251] Nonetheless, the line between a purely disciplinary issue and a criminal violation can be a fine one, and advocates in recent years have drawn attention to how frequently the line is blurred.[252]

2. Community-Policing Critiques Applied to School Policing

Aided by the critical literature on community policing, this Section identifies and analyzes harms created by school policing heretofore unexplored in legal scholarship. It explains that the "partnerships" between schools and police are unbalanced in favor of the police, compromising school governance. It next explores the harms to students resulting from the triad role of teacher, counselor, and officer that school police play. It then examines the harms that flow from school policing's aspiration to normalize law enforcement's presence in the lives of students. Finally, it considers the messages of racism and ableism transmitted by the way school policing conducts surveillance.

a. Interference with School Governance

School policing can interfere with school governance.[253] Recall that one critique of community policing is that its partnerships skew in favor of the

249. *See* Lisa H. Thurau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools,* 54 N.Y. L. SCH. L. REV. 977, 988 (2009).

250. *Id.*; *see also* F. Chris Curran, Benjamin W. Fisher, Samantha Viano & Aaron Kupchik, *Why and When do School Police Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement*, 126 AM. J. EDUC. 33, 49 (2019) (finding that school police officers' involvement in discipline depends on the degree to which the officers perceive the school to have widespread discipline problems).

251. *See infra* notes 365–375 and accompanying text (discussing voluntary agreements between police and schools to circumscribe the role of police in schools).

252. *See, e.g.*, AMANDA PETTERUTI, JUST. POL'Y INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 13 (2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf [https://perma.cc/N846-FP7S] (arguing that "schools are relinquishing their authority to effectively and safely handle discipline issues at school without law enforcement involvement").

253. Edward Rubin cautions legal scholars against limiting their considerations of whether and how state interactions with citizens are oppressive to questions of due process and posits that a governance frame is often more fruitful. Edward L. Rubin, Bureaucratic Oppression: Its Causes and Cures, 90 WASH. U. L. REV. 291, 291–93 (2012). In his germinal work, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 207–231 (2007), Jonathan Simon notes how the crime-control paradigm can be seen in school discipline and security features. What I mean here by governance, however, is more specific and perhaps more mundane than what Simon means by "governing through crime." In this Section, I am interested

police.[254] While police departments may seek community input, a law enforcement agenda nearly always controls.[255]

Consider a hypothetical partnership between a school administration and police department. While school administrators may agree to—and even initiate—such a partnership, school police officers ultimately are accountable to the sheriff's or police departments that employ them, not to the schools that house them.[256] Absent an explicit agreement to the contrary,[257] school police officers are free to carry out their work with the same tools and tactics available to them in any other environment. Because they typically receive little training germane to child and adolescent development and the unique characteristics posed by an educational setting,[258] they may default to what one scholar calls the "paradigmatic police activity"—arrest[259]—when faced with putatively illegal but developmentally typical misconduct.

The example of Kiera, an African-American high school sophomore in Chapel Hill, North Carolina, illustrates the problems that result from the unbalanced nature of the school-police partnership.[260] Kiera was involved in a shoving match with a classmate before the start of school one day. The altercation lasted less than a minute but slowed the entry of students into the building. The assistant principal ordered both girls to go to detention for a day and participate in mediation. Unbeknownst to the school administration, however, the school police officer who witnessed and intervened in the altercation also initiated delinquency charges for disorderly conduct.[261] The

in exploring the specific ways in which school policing supplements, conflicts with, or supplants entirely the administration of public schools.

254. *See supra* notes 206–213, and accompanying text.

255. *See* SKLANSKY, DEMOCRACY AND THE POLICE, *supra* note 207, at 83 ("The theme is community partnership, not community control: with minor exceptions, community policing programs are implemented unilaterally by the police.").

256. *See* MORGAN ET AL., *supra* note 41, at 240–41 (recommending that municipal and county law enforcement agencies improve their supervision of SROs without any mention of the role school administrators might play in supervising SROs).

257. *See id.* at 186 (discussing the need for school administrators and SROs to "ensure that roles are defined and understood to minimize arrests of students for minor misbehavior"); *see also* Kupchik & Bracy, *supra* note 13, at 26–27 (illustrating the need for clear boundaries between administrator and SRO duties); *infra* Part III.A.3 (discussing the effects of voluntary agreements between schools and law enforcement agencies).

258. *See infra* notes 354–364 and accompanying text.

259. Rachel Harmon, Why Arrest?, 115 MICH. L. REV. 307, 307 (2016); *see also* Jason Nance, Dismantling the School-to-Prison Pipeline: Tools for Change, 48 ARIZ. STATE L.J. 313, 340 n.141 (2016) (discussing Department of Justice investigation of the Ferguson, Missouri Department in which the DOJ explained, "SROs told us that they viewed increased arrests in the schools as a positive result of their work").

260. Kiera was a client in 2018 of the University of North Carolina Youth Justice Clinic; her identifying information has been changed to protect her confidentiality.

261. Kiera was charged under N.C. GEN. STAT. § 14-288.4, which defines disorderly conduct as "a public disturbance intentionally caused by any person who does any of the following . . . [inter alia] [d]isrupts, disturbs or interferes with the teaching of students at any public or private educational

assistant principal was subpoenaed to court by the prosecution. In conversation with defense counsel, the assistant principal confirmed that the incident had occurred as described in the police report, and Kiera admitted to the charge. Like many young people, Kiera wanted to resolve the case and move on[262] and, as her attorney explained to her, the state could likely prove the elements.[263]

At sentencing, the assistant principal expressed frustration that she was not consulted by the officer before he initiated the proceedings. She testified that she did not believe the charges should have been brought, as they were interfering with the positive progress Kiera was making in school.[264] While one might think that educators, rather than law enforcement, can and should make the call about whether and when the many behaviors that can constitute disorderly conduct should warrant arrest and prosecution, the nature of the school-police partnership often takes this decision away from educators, as it did in Kiera's case.[265]

Gray ex. rel. Alexander v. Bostic offers an additional illustration of how school policing interferes with school governance.[266] In *Gray*, an SRO handcuffed a nine-year-old girl in a physical education class after the girl declined to do jumping jacks. When she was confronted by the coach who was teaching the class, she said something interpreted as threatening.[267] Subsequently:

> Deputy Bostic told Gray to turn around, pulled her hands behind her back and put Gray in handcuffs. Deputy Bostic tightened the handcuffs to the point that they caused Gray pain. Deputy Bostic told Gray, "[T]his is how it feels when you break the law," and "[T]his is how it feels to be in jail." Gray began to cry. Gray stood with the handcuffs on for not less than five minutes, with Deputy Bostic standing behind her.[268]

The child's parent sued under 42 U.S.C. § 1983 for violation of her Fourth Amendment rights.[269] Ruling that the handcuffing was unreasonable, the

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institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto."

262. *See* Wallace J. Mlyniec, *In re Gault at 40: The Right to Counsel in Juvenile Court—A Promise Unfulfilled*, 44 CRIM. L. BULL. 371, 381–82, 393 (2008) (upwards of 90% of juvenile cases are resolved by way of admission).

263. Juveniles are not constitutionally entitled to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971). While some states provide for jury trials as a matter of state statute, North Carolina does not. Juvenile Delinquency, N.C. JUD. BRANCH, https://www.nccourts.gov/help-topics/family-and-children/juvenile-delinquency [https://perma.cc/D29K-K459] (noting that North Carolina adjudicatory hearings occur in front of a judge).

264. Upon hearing this testimony, the judge ordered no disposition, stating on the record that he believed that Kiera had already received sufficient consequences.

265. *See* Lapp, *supra* note 161, at 214–15.

266. 458 F.3d 1295 (11th Cir. 2006).

267. *Id.* at 1300. The exact words that were said were unclear, but it was undisputed in the record that the child said something that was interpreted by those present as threatening and disrespectful to the coach. *See id.*

268. *Id.* at 1301.

269. *Id.* at 1302 (noting other claims under other federal statutes that the child's mother was not appealing).

Eleventh Circuit Court of Appeals affirmed the district court's denial of summary judgment on Gray's illegal seizure claims.[270] The coach insisted on handling the matter, but the officer intervened over the coach's objection.[271]

A guidance counselor presumably would have responded to these two scenarios in a markedly different manner.[272] A counselor is likely to have experience in and be guided by ideals of conflict resolution and de-escalation, whereas the officer is likely taught to be comparatively aggressive.[273] Intervening in a student-staff conflict and handling it contrary to the wishes of the staff member diminishes the staff member's expertise; moreover, when police repeatedly intervene in routine discipline, teachers can over-rely on officers to address student misbehavior rather than treating the misbehavior as a teachable moment without life-altering negative consequences.[274]

b. Negative Effect on Learning

Recall another critique of community policing: the concept of *"*community*"* is so malleable that officers can select as partners only those community members whose views are most likely to align with their own about appropriate law enforcement priorities.[275] In the school setting, while the seemingly benign tasks of teaching and counseling are offered to all students, officers can similarly cherry pick—they can focus on those students most accepting of their presence and amenable to their interventions. These students and, by extension, their parents, can help legitimate the school-policing enterprise.[276]

At a more granular level, the cherry picking might work this way: officers are free to manipulate the triad role to pursue law-enforcement activities against a smaller and select number of students they deem problematic.[277] What an officer learns through a D.A.R.E. class—or in an informal homework session, or summer camp—can be used to investigate and initiate prosecutions for alleged misconduct occurring both in and out of school. The information can be used

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270. *Id.* at 1310.

271. *Id.* at 1301.

272. *See* Steven C. Teske & J. Brian Huff, *When Did Making Adults Mad Become a Crime? The Court's Role in Dismantling the School-to-Prison Pipeline*, JUV. & FAM. JUST. TODAY, Winter 2011, at 14, 14–17. Indeed, guidance counselors "[h]ave a primary obligation to the students, who are to be treated with dignity and respect as unique individuals," which does not include handcuffing a child for being obstinate. AM. SCH. COUNS. ASS'N, ASCA ETHICAL STANDARDS FOR SCHOOL COUNSELORS 1 (2016), https://www.schoolcounselor.org/getmedia/f041cbd0-7004-47a5-ba01-3a5d657c6743/Ethical-Standards.pdf [https://perma.cc/23P5-W3JZ].

273. *See* Kupchik & Bracy, *supra* note 13, at 32.

274. *See* Theriot, *supra* note 77, at 285.

275. *See supra* notes 208–209 and accompanying text.

276. *See id.*

277. *See* NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 24 (explaining that "SRO[s] stay[] apprised of a student's activities and challenges in a variety of settings and can step in when a pattern of suspicious behavior emerges—a pattern that would not be seen by a social worker or teacher alone").

against the student who supplies it or one of her friends, without her consent or even her knowledge.[278]

One might object that the gathering of and reliance on intelligence in this way is simply good policing. Yet this objection fails to account for the importance of relationship-building as a component of student growth and development. Reliable school personnel who follow through on their commitments to students and who support the young people they teach are critical to school connectedness among students.[279] This connectedness in turn underlies healthy development and academic achievement.[280] When an officer takes information she learns through her mentorship or counseling role and uses it for law enforcement purposes, students may be less likely to trust adults who are legitimate teachers or counselors. These trust-impairing aspects of school policing thus negatively affect the school environment.

Police officers are incentivized to engage in this conduct because, unlike other school staff members, officers do not face any common law or statutory penalties for disclosing students' confidential information. Recall that NASRO envisions school police officers "[l]istening to students' concerns about bullying by other students," and providing counseling and referrals when sex-abuse victims turn to them for help.[281] One can easily imagine a situation in which a student who has experienced cyberbullying or other forms of victimization by peers wishes to share the experience with some, but not all, members of a school administration team. In many instances, evidentiary privileges would require a school guidance counselor to respect those wishes,[282] assuming the complained-of incidents did not implicate mandatory-reporting or other obligations of adults in a custodial/tutelary relationship with students.[283] A school police officer,

278. VITALE, *supra* note 159, at 67 (noting that "[w]hile officers want young people to confide in them, they are also law enforcement agents, meaning that these communications can be used as evidence and can lead very quickly to police enforcement action").

279. *See generally* MEGAN TSCHANNEN-MORAN, TRUST MATTERS: LEADERSHIP FOR SUCCESSFUL SCHOOLS 165 (2d ed. 2014) ("[S]tudent trust was found to be the strongest predictor of student achievement.").

280. CTRS. FOR DISEASE CONTROL & PREVENTION, FOSTERING SCHOOL CONNECTEDNESS: IMPROVING STUDENT HEALTH AND ACADEMIC ACHIEVEMENT 1 (2009), https://www.cdc.gov/healthyyouth/protective/pdf/connectedness_administrators.pdf [https://perma.cc/LUW4-HKPQ].

281. NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22.

282. *See, e.g.*, OHIO REV. CODE ANN. § 2317.02(G)(1) (West 2017) ("The following persons shall not testify in certain respects . . . (G)(1) [a] school guidance counselor who holds a valid educator license from the state board of education [unless] (d) [t]he client voluntarily testifies, in which case the school guidance counselor or person licensed or registered under Chapter 4757. of the Revised Code may be compelled to testify on the same subject." 2317.02(G)(1)(d)).

283. *See, e.g.*, OHIO REV. CODE ANN. § 2151.421 (West 2021) ("(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age, or a person under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect

however, is not similarly obligated. The officer can override a student's wishes and file charges against the suspected perpetrator.[284]

While one might think that a student would not share such information with a police officer *unless* she wanted the officer to take protective or investigative action, such a belief does not account for the fact that minors often have little understanding of police officers' duties and roles—and even less comprehension of their own rights.[285] Young people may have a particularly difficult time understanding the complexities inherent in the triad role of the school-based police officers who hold themselves out as quasi-teachers and trustworthy counselors, but are ultimately beholden to the imperative of criminal investigation.[286]

Finally, the fact that school police officers are asked to make clinical judgments when they have likely not had clinical training[287] means that they may be particularly inclined to revert to beliefs grounded in race, disability, or class-based stereotypes. Consider here the suggestion that school police officers conduct home visits to assist families of "at risk" students.[288] Critics of "at risk" terminology in the education and social-work realms argue that the phrase suggests a problematic determinism that fails to account for resiliency factors in young people.[289] Nonetheless, the phrase connotes an agreed-upon set of factors that play a critical role in the training that mental health professionals receive.[290] Without such training, police officers may decide that a student is "at risk" entirely because of an officer's own race-, disability-, and class-based biases.

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of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division.").

284. *See* VITALE, *supra* note 159, at 67.

285. *See, e.g.*, Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1136 (1980) (finding that juveniles under fifteen manifest significantly poorer comprehension than adults of comparable intelligence of Miranda rights).

286. *See, e.g.*, Thurau & Wald, *supra* note 249, at 985 (describing the "bottom line" of school policing: "Administrators perform the duties of law enforcement, but retain the power of a school administrator. SROs may act like teachers and counselors, but they have the power and authority of law enforcement agents. SROs may become confidants of students, yet anything SROs hear, find, or receive from an administrator may be used to prosecute students").

287. *See* PETER FINN & JACK MCDEVITT, NATIONAL ASSESSMENT OF SCHOOL RESOURCE OFFICER PROGRAMS: FINAL PROJECT REPORT 4 (2005), https://www.ncjrs.gov/pdffiles1/nij/grants/209273.pdf [https://perma.cc/NT3B-EG4X] (noting that "[i]t appears that many SROs engage in activities for which they have not been trained, including mentoring and teaching").

288. *See* NASRO, TO PROTECT AND EDUCATE, *supra* note 214, at 22.

289. *See, e.g.*, CHILDREN AND FAMILIES "AT PROMISE": DECONSTRUCTING THE DISCOURSE OF RISK XI (Beth Blue Swadener & Sally Lubeck eds., 1995) (critiquing "the discourse over 'children at risk'" that "attempts to frame such children and their families as lacking the cultural and moral resources for success in a presumed fair and open society and as in need of compensatory help from the dominant society").

290. *See, e.g.*, Nicole Hill, Wilderness Therapy as a Treatment Modality for At-Risk Youth: A Primer for Mental Health Counselors, 29 J. MENTAL HEALTH COUNSELING 338, 339 (2007).

Police officers performing social welfare tasks that they are unqualified for is neither confined to the school setting, [291] nor a new phenomenon. Since the Progressive Era, police departments have assigned their officers such tasks. But as Francis Allen argued over fifty years ago, social-welfare provision delivered through the penal system carries stigmatizing consequences.[292] Moreover, the fact that officers know they can use arrest and prosecution as a mechanism for service delivery incentivizes policing that focuses less on a student's alleged misconduct and more on her social and economic circumstances.[293] The school police officer in Kiera's case, for example, may have thought that bringing a delinquency case would teach her an important life lesson and that juvenile court would give her access to services that she would not otherwise obtain. But the cost of such services was the stigmatizing pronouncement from the judge who adjudicated her and declared her a juvenile delinquent.[294]

In critiquing the delegation of social-welfare tasks to unqualified police, I do not mean to suggest that such tasks would otherwise be carried out by appropriately trained and credentialed staff. Indeed, most public schools are sorely lacking in mental-health personnel.[295] Moreover, in criticizing the fact that police officers act punitively against students once they obtain incriminating information about them in their teaching or counseling roles, I do not mean to say that police officers are the only school staff who act punitively against students. To be sure, school administrators over the last three decades have engaged in harsh and exclusionary school discipline practices that deprive students of fundamental education rights.[296] These include imposing suspensions, expulsions, and disciplinary transfers that create short- and long-

291. *See, e.g.*, Barbara Fedders, Opioid Policing, 94 IND. L.J. 389, 395–96 (2019) (summarizing non-arrest-based approaches to users of illicit drugs).

292. *See* Francis Allen, *Problems of "Socializing" Criminal Justice*, in THE BORDERLAND OF CRIMINAL JUSTICE 5 (1964). Inversely, scholars make the point that even putatively civil systems use criminal law tactics and terminology and are stigmatizing to poor people. *See, e.g.*, Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 644 (2009) (documenting and criticizing the importation of "criminal law enforcement goals, strategies, and perspectives" into the welfare system, and the resulting "treatment of low-income women as criminals").

293. *See* Tamar Birckhead, Delinquent by Reason of Poverty, 38 WASH. U. J. L. & POL'Y 53, 53 (2012) (arguing that "at each stage of the process—from intake through adjudication to disposition and probation—the court gives as much or more weight to the perceived "needs" of the child and her family than to the quality of the evidence against her or the ability of the state to prove its case"); *see also* Allen, *supra* note 292, at 5 ("We do on occasion administer our social services through the agencies of the criminal law. One may wonder about the quality of services that result in stamping the stigma of felony conviction . . . . But that is not all. When penal treatment is employed to perform the functions of social service, selection of those eligible for penal treatment proceeds on inadmissible criteria. Persons are selected for criminal conviction not by reference to their moral character or social dangerousness but by reference to their poverty or their helplessness.").

294. *See* Uberto Gatti, Richard E. Tremblay & Frank Vitaro, *Iatrogenic Effect of Juvenile Justice*, 1 CHILD PSYCHOL. & PSYCHIATRY 991, 996–97 (2009) (discussing "stigma attached to the juvenile justice system").

295. *See* WHITAKER ET AL., supra note 11, at 4–5.

296. *See* DEREK BLACK, ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE 1 (2016).

term harms for students.[297] However, the installation of police in schools does pose unique harms to student development unlike those that can be inflicted by other school personnel, as the following Section explores.

c. The Racialized Harm of Surveillance

Recall the criticism of community policing that it functions to tamp down legitimate political resistance through co-optation of community concerns.[298] School-policing proponents often frame the arguments for school police—particularly in the younger grades—by suggesting that the presence of school police officers can and should make students comfortable with law enforcement.[299] One commentator praises the idea that school policing can "show the kids that police officers aren't the enemy, they're your friends."[300] Another elaborates on this theme, arguing that school police should perform counseling and mentoring in order to normalize law enforcement, so that young people will express what officers believe to be appropriate deference and respect in community-based interactions.[301]

Yet the push to help students become comfortable with a ubiquitous law enforcement presence conflicts with what should be a key role of education: to prepare students for participating in democracy.[302] Ideally, as common-school proponents argued, public education can promote social cohesion and help level the economic playing field.[303] Preparing students to participate in democracy should mean teaching them how to interact with people from differing backgrounds and with disparate abilities, and to respectfully disagree with peers and teachers. This process may not always unfold smoothly. Because it involves people who are growing and developing, conflict may occur. The presence of police officers beginning in elementary school communicates to students that this maturation process, even if not explicitly criminalized, is nonetheless the proper object of police surveillance. Moreover, when police are stationed at a

297. *See* Barbara Fedders, Schooling at Risk, 103 IOWA L. REV. 871, 890–902 (2018).

298. *See supra* notes 210–213 and accompanying text.

299. *See* Owens, *supra* note 88, at 34 (noting that the federal government viewed the placement of police in schools as a way to increase the chances that young people would perceive police as "trustworthy and helpful").

300. Moriarty v. Bd. of Cnty. Comm'rs for Cnty. of Sandoval, 931 F. Supp. 2d 1142, 1148 (D.N.M. 2013) (quoting a former SRO supervisor).

301. Byrd, *supra* note 25, at 117; *see also* Owens, *supra* note 88, at 34.

302. Wisconsin v. Yoder, 406 U.S. 205, 221 (1972) (accepting as valid State of Wisconsin's argument that state has a legitimate interest in preparing individuals to be self-sufficient participants in a democratic society as a reason for compulsory education); JOHN DEWEY, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION 87 (1916) ("The devotion of democracy to education is a familiar fact.").

303. McCollum v. Bd. of Educ., 333 U.S. 203, 216–17 (1948); *see also* IRA KATZNELSON & MARGARET WEIR, SCHOOLING FOR ALL: CLASS, RACE, AND THE DECLINE OF THE DEMOCRATIC IDEAL 50 (1985) (describing common-school sentiment as exemplified in an argument made by the first superintendent of the Chicago public schools, who argued in 1954, "Tear down our School Houses and turn our children into the streets, and our political institutions would be involved in the ruin").

school, participating not only in directing traffic and patrolling hallways but also in teaching, coaching, and counseling activities, their presence further suggests that crime and disorder are always around the corner and that police officers are uniquely able to prevent and respond to it.[304] Placing officers in schools for the purpose of teaching students to like the police has anti-democratic overtones. The carceral state[305] becomes normalized for students at a young age. [306]

The harms of this surveillance are not evenly distributed, but are borne disproportionately by marginalized students.[307] For example, schools with high percentages of low-income students are more likely to be staffed by police officers than are schools with wealthier students.[308] Schools with large numbers of Black and Brown students employ police officers at higher rates than schools with more white students.[309] In those schools, school police officers often rely on arrests for minor infractions.[310] While empirical research has provided no evidence that Black students contravene codes of conduct at higher rates than

304. *See* Aaron Kupchik & Torin Monahan, *The New American School: Preparation for Post-Industrial Discipline*, 27 BRIT. J. SOCIO. EDUC. 617, 617 (2006) ("By incorporating police officers and technological surveillance into the school safety regime, schools shape the experiences of students in ways that reflect modern relationships of dependency, inequality, and instability vis-à-vis the contemporary power dynamics of the post-industrialist labor market and the neoliberal state.").

305. *See* Fedders, *Opioid Policing*, *supra* note 291, at 439–40 (citing Marie Gottschalk in defining the carceral state as extending beyond the well-documented expansion in the jail and prison population over the last four decades to encompass "the far-reaching and growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship," including "probation, parole, community sanctions, drug courts, and immigrant detention" and arguing that "[t]he carceral state also extends beyond those personally affected by these consequences and includes the more than eight million children who have had an incarcerated parent and whose life outcomes are negatively affected by that fact"). Or, as Jonathan Simon puts it, "[t]he carceral state . . . exercises permanent surveillance and control, not a single game of guilt or innocence." Jonathan Simon, *Racing Abnormality, Normalizing Race: The Origins of America's Peculiar Carceral State and its Prospects for Democratic Transformations Today*, 111 NW. U. L. REV. 1625, 1642 (2017).

306. *See* Brown, *supra* note 43, at 599 (arguing that one potential effect of "placing police officers in schools and granting the officers substantial discretionary authority" is that "the students may be conditioned to passively accept intrusions into their privacy, a trend which may have ramifications for civil liberties in the future").

307. *See* PETTERUTI, *supra* note 252, at 21–23 (compiling data demonstrating that "[s]tudents of color and students with disabilities are the most likely to be affected by harsh disciplinary policies and the school resource officers that go with them").

308. Aaron Kupchik & Geoff Ward, *Race, Poverty, and Exclusionary School Security: An Empirical Analysis of U.S. Elementary, Middle, and High Schools*, 12 YOUTH VIOLENCE & JUV. JUST. 332, 344 (2014) (referencing data on disparate levels of police staffing based on class and race and concluding "poverty is taken to indicate dangerousness").

309. *See* Lindsay et al., *supra* note 99.

310. *See* Aaron Sussman, *Learning in Lockdown: School Police, Race, and the Limits of Law*, 59 UCLA L. REV. 788, 803 (2012) (discussing New York Police Department takeover of New York public schools and arguing that "school police find the school equivalent of 'broken windows,' leading to the arrests or threatened arrests of students caught eating food outside the cafeteria, carrying a cell phone, or arguing with a teacher"); *see also* PETTERUTI, *supra* note 252, at 13 (discussing how the increase of SROs stationed in schools correlates to an increase in arrests of young people).

white children,[311] Black students are disproportionately likely to be suspended[312] and arrested.[313] The school police officer who arrests, cites, or handcuffs a Black or Latino six-year-old for an in-school temper tantrum can likely offer a race- and gender-neutral explanation.[314] Similarly, the officer might decide to ignore a white six-year-old engaging in the same behavior, also citing race-neutral reasons; she could, for example, attribute the offending behavior to childish attributes associated with a person of that age. Likewise, students receiving special education services represent 12 percent of all students nationwide, yet they make up 23 percent of the nation's students who were arrested in school.[315] This disparity may rest on the fact that officers are not trained in recognizing how disability affects behavior, and they often do not make allowances for a child's disability in deciding whether to arrest.[316]

This differentiated treatment of misbehavior in school based on race and disability suggests that the relevance of developmental immaturity depends on the individual characteristics of the child. In the past decade, a trilogy of cases[317] has endorsed psychological and neurobiological research that assigns to a "child"—defined as someone under age eighteen—a set of universal characteristics that renders them categorically less culpable than people over the age of eighteen: "[first], a lack of maturity and an underdeveloped sense of responsibility . . . [second], more vulnerabil[ity] or susceptib[ility] to negative influences and outside pressures, including peer pressure . . . [and third] personality traits . . . [that] are more transitory, less fixed."[318] Yet scholars have shown that the degree to which state actors are willing to extend the attributes of

311. Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317, 320–24 (2002).

312. MORGAN ET AL., *supra* note 41, at 214 ("In New York City, 95 percent of all arrests in public schools studied in 2011–12 involved Black or Hispanic students. Their representation in the student population was approximately 30 percent of students; in Connecticut in 2011, White students comprised 62 percent of the student population, and 35.3 percent of students arrested. Black children represented 13.2 percent of the state's students, and 27.6 percent of those arrested, while Hispanic students were 18.6 percent of the state's students, and 34.2 percent of those arrested. In Florida, a 4-year study revealed that Black youth represented 22 percent of the overall youth population, and 47 percent of school-based delinquency referrals to the juvenile justice system.").

313. *Id.*

314. Police and prosecutors may decide to arrest and prosecute individuals engaged in such behavior for disorderly conduct, typically a broad and vague crime. *See supra* notes 162–167 and accompanying text.

315. *See supra* note 171 and accompanying text.

316. *See generally* Shaver & Decker, *supra* note 155, at 247–48 (noting disparities in arrests and discipline of students with disabilities and noting federal government initiative regarding SROs based on belief that school police need more training on "disability issues").

317. Roper v. Simmons, 543 U.S. 551, 569–71 (2005) (ending the death penalty for people who commit crimes while under the age of eighteen); Graham v. Florida, 560 U.S. 48, 82 (2010) (ending life-without-parole sentences for individuals under the age of eighteen who commit non-homicide crimes); Miller v. Alabama, 567 U.S. 460, 465 (2012) (holding that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment).

318. Roper v. Simmons, 543 U.S. at 569–70.

the *prototypica*l child to any *given* child is dependent on identity factors such as race. [319] In other words, some children enjoy the benefits of a social presumption of innocence, while others – Black and Brown students, and students with disabilities – may not.[320]

Schools have a hidden curriculum: the structures, staffing, extracurricular, and non-curricular features that communicate values and supplement the formal curriculum.[321] School policing can communicate values of inequality, because private schools are unlikely to employ police officers while low-income schools and school with high percentages of students of color are most likely to have police officers. Moreover, police officers disproportionately arrest students of color and students with disabilities.[322]

All students are poorly served by these distributive inequities of school policing. White and neurotypical students may internalize and normalize the institutionally racist and ableist aspects of the carceral state. Black and Brown students and students with disabilities—those most likely to be surveilled and targeted for criminalization—will suffer diminished self-image and face a host of negative collateral consequences such as school drop-out, arrest, and difficulty finding work as adults.[323] These harms may be compounded contemporaneously in their communities. After all, intense surveillance does not end at the school

319. *See, e.g.*, Patricia Soung, *Social and Biological Constructions of Youth: Implications for Juvenile Justice and Racial Equit*y, 6 NW J. L. & SOC. POL'Y 428, 428–30 (2011); *see also* Henning, *supra* note 176.

320. *See generally* Soung, *supra* note 319, at 432 (noting that Black youth historically have been "excepted from the conception of youth as innocent babes to be protected and nurtured into citizens afforded a full array of political, economic and social rights"); Shaver & Decker, *supra* note 155, at 251 (noting that because children with disabilities are often more challenging to teach, historically they have been excluded from classrooms, arguably a defining site of childhood).

321. Lotem Perry-Hazan & Michael Birnhack, *The Hidden Human Rights Curriculum of Surveillance Cameras in Schools: Due Process, Privacy, and Trust*, 48 CAMBRIDGE J. EDUC. 47, 47 (2018) (explaining that "school curricula convey socialisation [sic] messages not only through explicit content of academic instruction, but also through the *hidden* curriculum, which comprises the school ethos, practices and ecologies").

322. *See* Albert W. Alschuler & Stephen J. Schulhofer, *Antiquated Procedures or Bedrock Rights?: A Response to Professors Meares and Kahan*, 1998 U. CHI. LEGAL F. 215, 217 (1998) ("Far from serving the needs of the disadvantaged, the concept of community can, in the wrong hands, become another weapon for perpetuating the disempowerment and discrimination that continue to haunt urban America."). One Progressive Era police commissioner phrased the potential for police officers to lead by example in grandiloquent terms, arguing "the power of the policeman for good or for evil is great . . . In this aspect of his duties the policeman is an educator, just as truly as is the president of one of our large universities." SAMUEL WALKER, A CRITICAL HISTORY OF POLICE REFORM: THE EMERGENCE OF PROFESSIONALISM 81 (1977).

323. Howard Smith, *Growing Up A Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests*, 45 N. KY. L. REV. 137, 139 (2018); *see also* FRENCH-MARCELIN & HINGER, *supra* note 14 at 30; WHITAKER ET AL., *supra* note 11, at 25.

doors but may continue and increase as young people return to highly policed neighborhoods.[324]

III.
REMOVAL, NOT REGULATION

While the previous Sections demonstrated the harms of school policing, this Section argues for a path forward. After revealing the limitations of regulation efforts in Part III.A, I argue in Part III.B that policymakers should consider removal, rather than only regulation, of school police.

A. The Limitations of Law and Policy

1. Criminal Procedure Doctrine

Criminal procedure doctrine has been an ineffective way of reining in the power of school police to criminalize students. School-policing cases that involve students' Fourth and Fifth Amendment claims—which have preoccupied legal scholars of school policing[325]—illustrate how the different functions police perform in schools diminish students' constitutional rights.[326]

Consider first the case law on custodial interrogations. Law enforcement officers must comply with the dictates of *Miranda*[327] when conducting custodial interrogations of minors.[328] In schools, this means that when school police arrange custodial interrogations, *Miranda* warnings must be administered.[329] In addition, in some states, a parent must be present during questioning if the student being interrogated is under a specified age.[330] By contrast, state actors outside of law enforcement – including school administrators – are free in many states to dispense with *Miranda* protections when interrogating students.[331] Courts sometimes extend the ability to discard *Miranda* even to school

324. *See, e.g.*, Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. CHI. LEGAL F. 125 (2016).

325. School-policing scholars' preoccupation with constitutional criminal procedure is consistent with that of policing scholars generally. *See* Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 762–63 (2012) (criticizing legal scholars for confining questions of how to regulate police power through law to constitutional criminal procedure).

326. *See* Thurau & Wald, *supra* note 249, at 985.

327. Miranda v. Arizona, 384 U.S. 436, 467–73 (1966) (enumerating rights afforded criminal suspects when subject to custodial interrogation by law enforcement as the right to remain silent, the right to counsel prior to questioning, the right to have counsel present during any questioning, and the right to an appointed attorney if the individual wants an attorney and cannot afford to hire one).

328. Application of Gault, 387 U.S. 1, 55 (1967).

329. Kristi North, *Recess is Over: Granting Miranda Rights to Students Interrogated Inside School Walls*, 62 EMORY L.J. 441, 446–48 (2012).

330. *See, e.g.*, N.C. GEN. STAT. § 7B-2101.

331. *See, e.g.*, Commonwealth v. Snyder, 597 N.E.2d 1363, 1369 (Mass. 1992) ("The Miranda rule does not apply to a . . . school administrator who is acting neither as an instrument of the police nor as an agent of the police pursuant to a scheme to elicit statements from the defendant by coercion or guile.").

administrators who invite officers into the room where the child is interrogated.[332]

Such formalistic reasoning subverts the Supreme Court's "childhood is different" rationale,[333] which established that adolescents are more susceptible to external pressures than adults (and therefore categorically less culpable as criminal offenders).[334] It ignores the fact that school police officers can take advantage of any "counseling" or "mentoring" relationship they have established to exploit a student's understandably lowered defenses.[335] It also overlooks the sorts of power differentials that exist in policed schools that *Miranda* sought to address.[336] One manifestation of this power differential is the fact that students are often subject to discipline, such as suspension or even criminal charges, for declining to follow the orders of an adult.[337] A student faced with an administrator's order to accompany them to the principal's office for interrogation is thus placed in a bind – submit to questioning and potentially incriminate themselves, or assert their Fifth Amendment rights and potentially incur disciplinary consequences.[338]

This doctrine incentivizes police to commandeer school administrative proceedings for their own purposes. That is, school police seeking to question a student without first having to provide *Miranda* warnings can simply alert the school administration of this wish. As long as there is no record of the police initiating the interrogation, officers are free to use any evidence they uncover in a subsequent criminal prosecution, without fear of a successful motion to suppress the evidence; a reviewing court will likely find that no Fifth Amendment violation occurred.[339] Even when the information sought by the

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332. State v. J.T.D., 851 So. 2d 793, 796 (Fla. Dist. Ct. App. 2003) (finding no custodial interrogation when the student was questioned by the principal and assistant principal in the presence of the school resource officer, who did not ask any questions). *But see In re* K.D.L., 700 S.E.2d 766 (N.C. Ct. App. 2010) (finding that a twelve-year-old student was in custody when questioned at school by a principal in the presence of a police officer because of the interrogation's other highly coercive factors including length of questioning and fact that student was frisked and transported in a police car).

333. *See supra* notes 317–318 and accompanying text.

334. *Id.*

335. *See* Thurau & Wald, *supra* note 249, at 985 (noting paradox of fact that "SROs may become confidants of students, yet anything SROs hear, find, or receive from an administrator may be used to prosecute students").

336. *See* Miranda v. Arizona, 384 U.S. 436, 467 (1966) ("We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."); *see also* Holland, *supra* note 6, at 65 (arguing that "[a]n officer's participation in interrogation necessarily changes the experience from the student's standpoint").

337. *In re* J.D.B., 686 S.E.2d 135, 147 (N.C. 2009) (Hudson, J., dissenting) ("[I]n the school environment, where juveniles are faced with a variety of negative consequences—including potential criminal charges—for refusing to comply with the requests or commands of authority figures, the circumstances are inherently more coercive and require more, not less, careful protection of the rights of the juvenile."), *rev'd and remanded sub nom*, J.D.B. v. North Carolina, 564 U.S. 261 (2011).

338. *Id.*

339. *See supra* note 332 and accompanying text.

officer pertains to out-of-school conduct,[340] an in-school interrogation can occur, which allows police to skirt the constitutional protections that would otherwise apply.

Consider, next, the case law on search and seizure. The foundational Supreme Court school-search case is *New Jersey v. T.L.O.*,[341] where a school administrator caught a student with illegal drugs after a search. In that case, the Court announced that while searches by school officials trigger the protections of the Fourth Amendment, such searches need only comport with the "reasonableness" standard, rather than the more stringent standard of probable cause.[342] The facts of *T.L.O.* did not involve a school police officer or other law enforcement agent; indeed, the Court bracketed the question of what standard would apply if one were present.[343] Nonetheless, relying on the notion that school police are not only law enforcement officers since they perform other tasks, a majority of state courts have held that officers need only have reasonable suspicion that a student has broken a criminal law or violated a school rule to commence a search.[344]

The leading case[345] for this majority view that school police officers need only reasonable suspicion to conduct a search is *People v. Dilworth*.[346] In that

340. Indeed, this was the factual scenario of J.D.B.; the juvenile was suspected of breaking and entering and larceny in his community, and officers went to his school after being rebuffed by his grandmother when they tried to question him in her home. It was these facts that led the dissent in the state court opinion to opine that "[e]ven radical Muslims suspected of terrorism are afforded broader constitutional protections than the majority wishes to give juveniles in J.D.B.'s position." In re J.D.B., 686 S.E.2d 135, 145 (2009). Some school districts have drawn the line at *off-campus* officers coming *on campus* to conduct interrogations about *off-campus* conduct free of the constitutional protections that would otherwise apply. *See, e.g.*, WAKE COUNTY BOARD OF EDUCATION POLICIES AND PROCEDURES, POLICY CODE 5120 (2018), https://boardpolicyonline.com/bl/?b=wake_new#&&hs=499829 [https://perma.cc/V4HS-MK8H].

341. 469 U.S. 335 (1985) (affirming denial of appeal of student adjudicated delinquent for drug offenses after a search of her purse by school administrators uncovered illegal drugs).

342. *Id.* at 341–42 (following the twofold inquiry announced in *Terry v. Ohio*, 392 U.S. 1, 20–21 (1967), which measures constitutionality by assessing whether a search is reasonable at its inception and whether the search is reasonably related in scope to the circumstances justifying the initial intrusion).

343. *Id.* at 341 n.7 ("We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question."). Similarly, *Safford Unified Sch. Dist. #1 v. Redding* concerned the search of a student's bag by school administrators, not a police officer. 557 U.S. 364, 368 (2009).

344. *See, e.g.*, R.D.S. v. State, 245 S.W.3d 356, 369 (Tenn. 2008) "(T]he reasonable suspicion standard is the appropriate standard to apply to searches conducted by a law enforcement official assigned to a school on a regular basis and assigned duties to the school beyond those of a[n] ordinary law enforcement officer . . . whether labeled an 'SRO' or not. However, if a law enforcement officer not associated with the school system searches a student in a school setting, that officer should be held to the probable cause standard.").

345. Gupta-Kagan, *Reevaluating, supra* note 5, at 2025 n.85 (noting that the case has been cited sixty-five times, including twenty-three times in states other than Illinois, and that it is listed in law school casebooks as the leading case on school searches).

346. 661 N.E.2d 310 (Ill. 1996).

case, a school resource officer searched Dilworth, a student whom he suspected of selling drugs at school. Upon recovering drugs, the officer arrested him. Dilworth was transferred to adult criminal court for prosecution.[347] Dilworth argued that probable cause should govern the search because the school resource officer was involved. The Court disagreed, likening the school police officer to a school official.[348] In its ruling, the Court referenced the fact that the school described the officer in its student handbook as "a member of the . . . staff" who assisted with student discipline.[349] The *Dilworth* court thus exemplified how the triad role inures to the benefit of the state against the student.

Even when courts treat school police as law enforcement, requiring probable cause to commence a search, school police can navigate their search protocols to weaken Fourth Amendment protections. Just as they can work with school administrators in the interrogation context to avoid complying with Fifth Amendment protections, so too in the search context they can arrange for teachers and administrators to conduct searches to avoid probable cause requirements.[350] In light of the ways in which school police officers are able to leverage their triad role to evade constitutional protections, it is evident that legal doctrine is insufficient to remedy the harms posed by school police officers.

Without explicitly considering the normative question of whether police even belong in schools in the first instance, much legal scholarship on school policing focuses on how to tweak criminal procedure doctrine to account for the unique setting of the school and the particular characteristics of young people.[351] The officer in Kiera's school could simply have broken up the scuffle and referred Kiera to the assistant principal for a decision about whether to impose school discipline. But, as courts currently interpret the Fourth Amendment, the officer was not required to do so. So long as officers are free to make arrests for any criminal infraction, no matter how minor,[352] their presence in schools will likely continue to correlate with higher rates of involvement in the juvenile and criminal systems. And so long as constitutional doctrine enables pretextual

347. The majority took note of but dismissed the dissent's argument that it was "fundamentally unfair to conclude that defendant has diminished privacy rights while a student at a public school, and then to charge and sentence defendant to four years in the penitentiary as an adult with evidence obtained as a result of his diminished privacy rights." *Id.* at 320.

348. *Id.* at 319–20.

349. *Id.* at 320.

350. Nicole L. Bracy, *Circumventing the Law: Students' Rights in Schools with Police*, 26 J. CONTEMP. CRIM. JUST. 294 (2010).

351. *See, e.g.*, Gupta-Kagan, *Reevaluating*, *supra* note 5, at 2057–63 (arguing that federal, state, and local reforms aimed at limiting the involvement of school police in disciplinary matters suggest that Fourth Amendment doctrine should change to reflect that school police are law enforcement and not school officials).

352. *See* Atwater v. Lago Vista, 532 U.S. 318 (2001) (holding that the Fourth Amendment does not forbid warrantless arrest for minor misdemeanor offense punishable only by fine).

searches and seizures,[353] police presence in schools will likely continue to lead to racially disparate outcomes.

Given the limits of constitutional criminal procedure at establishing *ex post* limitations on the powers of school police, *ex ante* mechanisms may seem to be an appealing means of effectively regulating school police. Such mechanisms for regulating school police include eligibility criteria for becoming a school police officer, statutorily imposed training requirements, and voluntary agreements between school districts and law enforcement agencies. However, as the following Sections demonstrate, each of these policy mechanisms is inadequate in ameliorating the harms of school policing highlighted in this Article.

2. Police Qualifications and Training

The demand for SROs has resulted in the "quick hiring and training of a number of personnel who have little experience in schools."[354] One recent study, for example, found that school police officers commonly come from street patrol or jail facilities.[355] Moreover, although the federal government allocates close to two billion dollars to fund the hiring of school police, it did little to provide guidance or oversight of school police until 2014.[356] In that year, the Obama administration began mandating that schools report data on school-based arrests; it also issued a series of guidance documents recommending regular training for school police.[357] In 2018, however, the federal government withdrew this guidance.[358] NASRO, which provides training—but not certification—for school police, recommends that school police officers have at least three years of policing experience, have a "strong desire to develop positive relationships with youth on a daily basis," have no disciplinary actions involving young people, and do the work voluntarily and not pursuant to an assignment.[359]

353. *See* Whren v. U.S., 517 U.S. 806 (1996).

354. F. Chris Curran, *A School Resource Officer in Every School?*, CONVERSATION (Apr. 11, 2018), https://theconversation.com/a-school-resource-officer-in-every-school-94721 [https://perma.cc/WR4U-ALT7]. There are numerous challenges in finding comprehensive data about school policing, ranging from decentralization, to a dearth of reporting requirements, to questions about the reliability of the information that is reported. *See, e.g.*, Weisburst, *supra* note 94, at 340–41.

355. Curran, *supra* note 354.

356. *See* THURAU & OR, *supra* note 55, at 8.

357. *Id.*

358. Letter from Kenneth L. Marcus, Assistant Sec'y of C.R., U.S. Dep't of Educ., and Eric S. Dreiband, Assistant Att'y Gen., U.S. Dep't of Just., to colleagues (Dec. 21, 2018), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf [https://perma.cc/PR5P-5E3C] (withdrawing, *inter alia,* a "Dear Colleague Letter" on nondiscriminatory administration of school discipline, an overview of the Supportive School Discipline Initiative, and a set of guiding principles on improving school climate).

359. *Frequently Asked Questions*, NAT'L ASS'N SCH. RES. OFFICERS, https://www.nasro.org/faq/ [https://perma.cc/4RCV-PV9S].

However, local police and sheriffs' departments are free to disregard these recommendations.[360]

For the most part, states do not step in to fill the void left by the federal government's hands-off approach to the school police officers they fund. Generally, states do not mandate comprehensive qualification or training requirements for school police.[361] Only a very small minority of states have laws requiring training on the legal and policy issues that confront school police on a daily basis, such as how to address students with trauma, the ways in which adolescent development affects behavior, particular accommodations necessary for students receiving special education, and how to carry out school policing without creating or perpetuating racial inequity.[362] Only eight states mandate training in de-escalation, and only four require training in mediation or restorative justice techniques.[363] While it is difficult to determine whether police and sheriff's departments voluntarily take steps to equip officers for the unique requirements created by a school, one study of cadet training in police academies found that in thirty-seven states, only 1 percent of the time in training was spent on juvenile justice issues—and that training often focused on juvenile law, rather than "practical skills grounded in developmental and psychological understanding" relevant to young people in schools.[364]

3. Voluntary Agreements with Law Enforcement

In an effort to regulate school police officers, schools may enter into agreements with law enforcement agencies in which each party sets forth expectations regarding when school police will become involved in misconduct, and what will happen once they do.[365] Such agreements may be drafted to proscribe officers' involvement in student misconduct that violates school rules

360. *Cops in Schools*, *supra* note 123 ("The nationwide landscape for SRO training is riddled with gaps and inconsistencies. As it stands today, there are no federally-approved standards regarding SRO training.").

361. THURAU & OR, *supra* note 55, at 11 (noting that twenty-four states and the District of Columbia have passed statutes that require training for school police).

362. *Id.*

363. *Id.*

364. STRATEGIES FOR YOUTH, IF NOT NOW, WHEN? A SURVEY OF JUVENILE JUSTICE TRAINING IN AMERICA'S POLICE ACADEMIES 16, 18 (2013), https://strategiesforyouth.org/sitefiles/wp-content/uploads/2019/10/SFY-If-Not-Now-When-Report-Feb2013.pdf [https://perma.cc/PEN2-WBDA] (noting that experienced officers receive even less during annual in-service training).

365. U.S. DEP'T JUST. & U.S. DEP'T EDUC., SAFE SCHOOL-BASED ENFORCEMENT THROUGH COLLABORATION, UNDERSTANDING, AND RESPECT (SECURe) 2, https://www2.ed.gov/documents/press-releases/secure-implementation.pdf [https://perma.cc/XZ3B-34LP] (including among its five action steps to improve school policing, first, the "creat[ion] of sustainable partnerships and [the formalization of memoranda of understanding (MOUs)] among school districts, local law enforcement agencies, juvenile justice entities, and civil rights and community stakeholders" and, second, assurance that "MOUs meet constitutional and statutory civil rights requirements").

but is not unlawful.[366] They may, as well, specify that law enforcement officers will not seek a delinquency or criminal complaint for certain kinds of minor, allegedly criminal, misconduct until non-court alternatives are first attempted.[367] In some instances, juvenile-court judges spur the enactment of these agreements, frequently with a stated motivation of concern about the influx of school-based minor offenses into juvenile court.[368] These kinds of voluntary agreements are responsive to advocates' concerns about the school-to-prison pipeline.[369] In addition, they are surely aimed at preventing the kind of egregious rights violations exhibited by police in cases like *Bostic*,[370] which not only harm students but also may create litigation expense for schools.[371]

Notwithstanding commitments to reducing arrests and criminal justice involvement, these agreements ultimately are weak mechanisms for regulating school police officers. For one, they typically contain exceptions establishing that school administrators cannot limit police discretion.[372] Moreover, parents and students may not be included in the decision-making processes by which these agreements are negotiated.[373] In addition, the school representatives who

366. Morgan et al., *supra* note 41, at 219 ("No universal or nationally accepted standards exist that explicitly state when a law enforcement officer should or should not be involved in enforcing student misconduct on school campuses. School officials cannot dictate when officers can investigate or enforce laws on school campuses (so long as they meet legal standards) any more than officers can require school officials to suspend or expel students. Both can, however, work together with other stakeholders to develop criteria that guide actions to address student misbehavior, minimize contact with the juvenile justice system when possible, and serve the needs of all students and staff for safe and productive classrooms.").

367. Teske & Huff, *supra* note 272, at 14–16.

368. *See, e.g.*, ANNIE E. CASEY FOUND., EXPANDING JDAI TO THE DEEP END, INNOVATION GUIDE: CLAYTON COUNTY COOPERATIVE AGREEMENT 1–3 (2014), https://www.aecf.org/m/privy/Deep-End-Resource-Guide-9e-Reducing-Youth-Incarceration-Innovation-Guide-Clayton-Cooperative.pdf [https://perma.cc/DM8D-3VLL] (describing judge-led efforts).

369. *See* Steven C. Teske, *A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents*, 24 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 88, 93 (2011) ("After police were placed on middle and high school campuses in the mid-1990s, the number of referrals to the juvenile court increased approximately 1,248% by 2004.").

370. *Supra* notes 266–271 and accompanying text.

371. *Id.*

372. *See, e.g.*, COLLABORATIVE AGREEMENT, BIRMINGHAM CITY SCHOOLS COLLABORATIVE 5 (2009), http://www.njjn.org/uploads/digital-library/Birmingham-City-Schools-School-Offense-Protocol-Alabama-10.13.09.pdf [https://perma.cc/TVJ2-DDW3] (noting that "[n]otwithstanding the graduated response system . . . an SRO has the discretion to make an arrest and file a complaint against a student in *exceptional circumstances*" but not defining "exceptional circumstances" (emphasis added)); *see also* MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO POLICE DEPARTMENT AND THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT 9–10 (Sept. 2013), http://fixschooldiscipline.org/wp-content/uploads/2014/10/SFPD-SRO-MOU.pdf [https://perma.cc/P5QL-Z89D] (providing that, although San Francisco police officers "should use [a] graduated response system" and "make every effort to not refer a student to San Francisco County Juvenile Probation's Community Assessment and Referral Center ('CARC')," officers still retain "the discretion to refer the case to CARC").

373. *See, e.g.*, *Take Action: Support Alternatives to Police in Schools*, ADVANCEMENT PROJECT, (May 14, 2018), https://advancementproject.org/pinellasstudentsafety/ [https://perma.cc/X5WG-5JZ9]

negotiate these agreements are often elected officials governing the operation of a district rather than people working in a school.[374] The implications of this exclusion of key stakeholders—parents, students, and school administrators—are twofold. First, many school-community members may be unaware of the existence of the agreement at all, weakening any signaling function of the school's values the document might otherwise have. Second, excluding the people most likely to be affected by aggressive policing tactics may mean the agreement is less reflective of these groups' particular concerns. Yet the exclusion of key stakeholders is predictable when one considers the community-policing critique that police departments often opportunistically select the representatives with whom they wish to create partnerships.[375]

B. Beyond Regulation and Toward Removal

Focused on the ways policing pushes students into the pipeline, school-policing scholars have largely argued for the reversal of current legal doctrine or reform through policy. In light of the inability of law and policy to effectively regulate the harms that arise from school policing, I ask the threshold question: should we have police in schools? Part I articulates a normative objection to school police, drawing from the insights of grassroots organizations often excluded from mainstream policy debates and legal scholarship. Part II puts this policy perspective in conversation with the movement for prison and policing abolition. Part III analyzes how school-police removal is a logical demand for abolitionists to make. Finally, Part IV considers caveats and counterarguments.

1. The Case for Removing Police from Schools

The rise of school policing has occurred for reasons apart from student-centered safety concerns.[376] And, even when functioning without pushing students into the school-to-prison pipeline, school policing inflicts governance

(urging the Pinellas County School Board to "make every effort to engage students, families and community members in their decision-making process" about school policing).

374. *Id.* Most agreements are negotiated and signed by the district's superintendent or Board secretary as opposed to administrators who work in the schools. *See e.g.*, SCHOOL RESOURCE OFFICER SHARED SERVICE AGREEMENT BETWEEN THE TOWN OF DOVER AND THE DOVER SCHOOL DISTRICT (Sept. 5, 2018), https://dover-nj.org/ourpages/auto/2020/7/28/41836608/SRO%20Contract%20.pdf [https://perma.cc/HTN7-HYB8]; MEMORANDUM OF AGREEMENT BY AND BETWEEN WINDHAM PUBLIC SCHOOLS AND WILLIMANTIC POLICE DEPARTMENT (Oct. 9, 2012), https://www.cga.ct.gov/olr/documents/misc/SRO/Windham%20MOA.pdf [https://perma.cc/PK3A-595P]; SCHOOL RESOURCE OFFICER AGREEMENT BETWEEN THE ARLINGTON INDEPENDENT SCHOOL DISTRICT AND THE CITY OF ARLINGTON (2012–13), http://arlingtontx.granicus.com/MetaViewer.php?view_id=2&clip_id=1199&meta_id=141843 [https://perma.cc/4QZL-52UY].

375. *Supra* notes 208–209 and accompanying text.

376. *See supra* notes 100–152 and accompanying text.

and pedagogical harms.[377] Yet policymakers largely have failed to fully consider an option that is hiding in plain sight: remove police from schools.[378]

Social-movement scholars have long recognized the power of grassroots activism as a source of policy change, positing that activist demands can redefine and stretch legal concepts. Professors Lani Guinier and Gerald Torres have proposed a social-change theory of "demosprudence," which holds that "the language of law [can be] stretched to accommodate the language of the people."[379] Yet policymakers in the school safety space largely have missed out on a potential source of ideas for change:[380] the work of anti-school-police organizers.[381]

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377. *See supra* notes 253–322 and accompanying text.

378. AARON KUPCHIK, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR 80 (2010) ("Amazingly, there is no critical discussion among the public or policy-makers . . . about whether police *ought* to be in public schools to begin with."). *But see* Nance, *Dismantling*, *supra* note 259, at 346–360 (discussing factors other than strict security measures that can ensure safety). In one example of a school district stopping its school-policing practices, the Jefferson County Public Schools in Kentucky voted in August 2019 against contracts with the county sheriff's office and local police departments that would have provided for school resource officers after budget cuts to the Louisville Police Department essentially ended its SRO program. *See* McLaren, *supra* note 7.

379. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 Yale L.J. 2740, 2781 (2014); *id.* at 2745 ("We posit almost the reverse: for legal change to reflect real social change it must take account of, and engage with, alternative or contending sources of power. Such change must also, in some measure, transform the culture.").

380. School-policing scholars, too, have not engaged with the contributions of grassroots organizers, perhaps because the demands of police-free schools seem impractical. *See* Alice Ristroph, *Farewell to the Felonry*, 53 Harv. C.R.-C.L. L. Rev. 563, 570 (2018) ("Much of the theory and discourse of criminal law, including the discourse of 'reform,' reproduces or simply takes for granted the ideological structures that make existing law seem moral and necessary.").

381. A non-exhaustive list of groups opposing school police includes the Network for Public Education; Advancement Project; Parents Across America; Dignity in Schools Campaign; #PoliceFree Schools; The Gwinnett Parent Coalition to Dismantle the School-to-Prison Pipeline; The Alliance for Educational Justice, Black Organizing Project; Allegheny County Black Activist Organizer Collective of Pennsylvania; Cops Outta Campus; Education Justice Alliance; The Alliance to Reclaim Our Schools; The Journey for Justice Alliance; The Student Voice; Youth Activism Project; Oregon Student Voice; Iowa Student Learning Institute; Advocates for Equality; Gen-Up; UrbEd; Parents Across America; Communities United for Restorative Justice; Urban Peace Movement; Teens Take Charge; Young Organizers United; Power U; Racial Justice NOW!; Families and Friends of Louisiana's Incarcerated Children; and the Urban Youth Collaborative. *See* Network for Pub. Educ., https://networkforpubliceducation.org/grassroots-education-network-june-2020-newsletter/ [https://perma.cc/5SPC-G67S]; Advancement Project, https://advancementproject.org/partners-and-allies/ [https://perma.cc/9SGV-QBJM]; Parents Across Am., http://parentsacrossamerica.org/affiliates/ [https://perma.cc/6FCK-8VXA]; Dignity in Schs. Campaign, https://dignityinschools.org/ [https://perma.cc/6W73-6RRF]; #PoliceFree Schs., https://policefreeschools.org/ [https://perma.cc/G4TV-KJ9Z]; Gwinnett Parent Coal. to Dismantle Sch.-to-Prison Pipeline, https://www.gwinnettstopp.org/ [https://perma.cc/R2H9-KRES]; All. for Educ. Just., https://wecametolearn.com/ [https://perma.cc/8MQZ-SLV4]; Black Org. Project, http://blackorganizingproject.org/ [https://perma.cc/H4UD-2ENK]; Educ. Just. All., https://www.ejanc.org/ [https://perma.cc/8YX3-FNV9]; All. to Reclaim Our Schs., http://www.reclaimourschools.org/ [https://perma.cc/Y4DN-5DXM]; Journey for Just. All., https://j4jalliance.com/ [https://perma.cc/VCF8-9ZWR]; Student Voice, https://www.stuvoice.org/ [https://perma.cc/5YKQ-Q8KP]; Youth Activism Project, https://youthactivismproject.org/ [https://perma.cc/U7PW-3HG9]; Or. Student Voice, https://www.oregonstudentvoice.org/

This oversight is perhaps predictable. As grassroots activist groups, they are likely not seen as suitable partners for police and school administrators. As such, they often are not invited to—and may be excluded from—meetings in which decisions about safety are made. They contest the assumptions of school safety planning through less conventional means: protesting at school board meetings, and organizing walkouts of class and other acts of civil disobedience.[382] These grassroots organizations, most of which were formed in the last decade, often consist of parents and students most negatively affected by school policing, who want to see change at both the micro and macro level.[383]

Through their work, these activists demand that education policymakers attend to concerns outside of Fourth Amendment jurisprudence, such as the dignity of young people[384] and their right to a childhood unencumbered by the

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[https://perma.cc/284F-EVJ4]; Iowa Student Learning Inst., https://www.iowasli.org/ [https://perma.cc/JZC4-9NNS]; Advocs. for Equal., https://www.mocosteps.org/ [https://perma.cc/TU88-9RW4]; Gen-Up, https://www.generationup.net/ [https://perma.cc/2R3L-4BT2]; UrbEd, https://www.urbedadvocates.org/ [https://perma.cc/Z6R7-XHUX]; Cmtys. United for Restorative Just., https://curyj.org/ [https://perma.cc/BP2F-Y2RH]; Urb. Peace Movement, https://urbanpeacemovement.org/ [https://perma.cc/8FSR-UH7Q]; Teens Take Charge, https://www.teenstakecharge.com/ [https://perma.cc/7SFH-93TZ]; Young Organizers United, http://granitestateorganizing.org/y-o-u/ [https://perma.cc/7SC2-7CM9]; Power U, https://www.poweru.org/ [https://perma.cc/N453-2LU3]; Racial Just. NOW!, https://rjnohio.org/about/ [https://perma.cc/9JSM-EJE6]; Fams. and Friends of LA.'s Incarcerated Child., https://www.fflic.org/about-us/mission-vision [https://perma.cc/49NC-SJPN]; Urb. Youth Collab., http://www.urbanyouthcollaborative.org [https://perma.cc/AJ6T-RGH].

382. *See, e.g.*, Phoebe Petrovic, *'No Cops in Schools': Protestors Shut Down Madison School Board Meeting*, WIS. PUB. RADIO (Oct. 30, 2018), https://www.wpr.org/no-cops-schools-protesters-shut-down-madison-school-board-meeting [https://perma.cc/S5F3-T6SE] ("Members of the public opposed to police officers in schools shut down a Madison Metropolitan School District Board meeting Monday night. Many protesting were young people of color criticizing a report that recommended keeping education resource officers in the high schools. For more than an hour, person after person had taken the microphone to denounce police presence in schools. Students like King and Shyra were there with the advocacy group Freedom, Inc.. The two did not share their last names, and said police in schools make them feel unsafe and that their demands have not been heard."); Cornell Barnard, *Oakland School Board Meeting Turns Chaotic After Protesters Take Over, Forcing Board to Leave*, ABC 7 NEWS (Nov. 13, 2019), https://abc7news.com/education/oakland-school-board-meeting-turns-chaotic-after-protesters-take-over/5695552/ [https://perma.cc/BU9M-Z5MU] (quoting meeting participants as arguing "[o]ut with the school board, in with democracy" as well as arguing for an end to spending money on school police).

383. *See supra* note 381 (list of organizations).

384. Student and parent activists have been pushing for reform for over a decade to remove police from schools as police target racial minority students. *See* Sonali Kohli & Howard Blume, *For Teen Activists, Defunding School Police Has Been a Decade in the Making*, L.A. TIMES (June 15, 2020), https://www.latimes.com/california/story/2020-06-15/defund-police-schools-case-security-guards-campus [https://perma.cc/S4JN-AU75]; *see also Mission*, DIGNITY IN SCHOOLS, https://dignityinschools.org/about-us/mission/ [https://perma.cc/N8MK-C5RP]; Associated Press, *Fight for Police-Free Schools Has Been Years in the Making*, U.S. NEWS (July 25, 2020), https://www.usnews.com/news/politics/articles/2020-07-25/fight-for-police-free-schools-has-been-years-in-the-making [https://perma.cc/CBL3-NLKE]; *National Education Justice Organizations to Host a Day of Action Demanding Police-Free Schools*, ADVANCEMENT PROJECT (Dec. 4, 2018), https://advancementproject.org/news/national-education-justice-organizations-to-host-a-day-of-action-demanding-police-free-schools/ [https://perma.cc/2NBW-UKBP]; Press Release, Student Voice,

threat of arrest for developmentally typical misconduct.[385] This politics of contestation stands as an alternative to the community-policing paradigm, in which police officers seek input from pre-selected representatives of the public that they are then free to ignore.[386]

2. The Prison-Abolitionist Project

The grassroots movement to end school policing overlaps and shares normative commitments with the movement for prison abolitionism.[387] While "abolition" in American political history evokes the movement to end chattel slavery, beginning in the late twentieth century scholars and activists began to speak of abolishing prison.[388] The most prominent early articulation of prison abolitionism was in 1976, when a Quaker minister and anti-prison activist published *Instead of Prisons: A Handbook for Abolitionists*, a booklet that argued for a moratorium on new prison construction, decarceration for those who were in prison, and the creation of alternatives to criminalization and incarceration.[389] Two decades later, activist-scholars Ruth Wilson Gilmore and Angela Davis spearheaded the creation of Critical Resistance, coining the term "prison industrial complex" and committing the group to the goal of ending it.[390]

Today, prison abolitionism has entered mainstream scholarly and policy-making discourse. An entire issue of the *Harvard Law Review* was devoted to abolitionism.[391] Criminologist Jeremy Travis notes its influence.[392]

Thousands of Students Launch Move School Forward: 30 Days of Action Campaign (July 1, 2020), https://www.stuvoice.org/updates/thousands-of-students-launch-move-school-forward-30-days-of-action-campaign [https://perma.cc/X73F-5LXW].

385. PETTERUTI, *supra* note 252, at 17–19.

386. *See* Simonson, *supra* note 205, at 402–03.

387. There is a long line of organizing demands that draw from abolitionist history. *See generally* MANISHA SINHA, THE SLAVE'S CAUSE: A HISTORY OF ABOLITION (2016) (describing the movement to end the prison industrial complex as part of a long line of abolitionist activism, which also includes the founding of the interracial Knights of Labor, the NAACP, the Industrial Workers of the World, and, most prominently, the civil rights movement; the "arc of the moral universe" quote popularized by Martin Luther King, Jr., originated with the abolitionist Theodore Parker).

388. Dorothy E. Roberts, *The Supreme Court 2018 Term Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 7, 14 (2019).

389. FAY HONEY KNOPP, INSTEAD OF PRISONS: A HANDBOOK FOR ABOLITIONISTS (1976).

390. *History, Beyond the Prison Industrial Complex*, CRITICAL RESISTANCE, http://criticalresistance.org/about/history/ [https://perma.cc/GS9R-7ZYT]. The contemporary prison abolitionist movement arose outside of the legal academy and largely entirely outside of academia. The gradual incorporation by legal scholars of abolitionist ideas is not a seamless one, generating some skepticism from activists and organizers wary of the mainstreaming of the movement. *See, e.g.*, Roberts, *supra* note 388, at 10 n.42 (2019) (noting a "constant sense of tension between wanting my scholarship to be useful to abolition activists and recognizing the tendency of academic enterprises to 'filter [ ] professionalism and conformity into activism'" (internal citation omitted)).

391. 132 HARV. L. REV. 3 (2019).

392. Bill Keller, *What do Abolitionists Really Want?*, MARSHALL PROJECT (June 13, 2019), https://www.themarshallproject.org/2019/06/13/what-do-abolitionists-really-want [https://perma.cc/SEQ5-24TX].

Representative Alexandria Ocasio-Cortez recently argued that abolitionism should inspire criminal justice reform.[393]

The critique of the prison industrial complex includes within it a critique of policing. One scholar argued in 2015 to abolish the police, asking: "What do you do with an institution whose core function is the control and elimination of black people specifically, and people of color and the poor more broadly? You abolish it."[394] Two years later, sociologist Alex Vitale imagined, in over two hundred pages of detail, *The End of Policing,*[395] from whose title this Article draws. That same year, Professor Tracey Meares, once a prominent defender of community policing, also suggested that policing as it is practiced today needs to be radically reconfigured.[396] In the summer of 2020, this movement gained enormous traction, as #defund and #abolish demands infused the massive street protests that percolated for months.[397]

3. School-Police Removal as an Abolitionist Project

When school-policing proponents reference school safety, they seem to mean the absence of individual or group acts of violence or disruption.[398] However, as abolitionists argue, ensuring safety means more than preventing and punishing criminal wrongdoing through policing and prosecution.[399] Professor

393. James Kilgore, *AOC is Talking About Prison Abolition. Will She Take Action?*, TRUTHOUT (Oct. 8, 2019), https://truthout.org/articles/aoc-is-talking-about-prison-abolition-will-she-take-action/ [https://perma.cc/J8GZ-JR3F].

394. Mychal Denzel Smith, *Abolish the Police: Let's Have Full Social, Political, Economic Equality*, NATION (Apr. 9, 2015), https://www.thenation.com/article/archive/abolish-police-instead-lets-have-full-social-economic-and-political-equality/ [https://perma.cc/YRX5-Y8V7].

395. VITALE, *supra* note 159.

396. Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOSTON REV. (Aug. 1, 2017), http://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad [https://perma.cc/22NK-RX2W]; *see also* César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 246 (2017) (arguing that immigration imprisonment is "inherently indefensible and should be abolished").

397. *See generally* Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html [https://perma.cc/P4BJ-FLVM]; Amna Akbar, *The Left is Remaking the World,* N.Y. TIMES (July 11, 2020), https://www.nytimes.com/2020/07/11/opinion/sunday/defund-police-cancel-rent.html [https://perma.cc/G8FJ-ERBR].

398. *See, e.g.*, Clarissa Bustamante, *Springdale Schools Increase Police Presence After School Shooting Threat*, NWA HOMEPAGE (Aug. 26, 2019), https://www.nwahomepage.com/news/springdale-schools-increase-police-presence-after-threat-of-school-shooting/ [https://perma.cc/YPM4-4NDY] (quoting Springdale, Arkansas public school spokesperson after unsubstantiated shooting threat triggered influx of school resource officers as saying "school safety is important every day and we want parents to know every day when they drop their child off at a Springdale school it's the safest place they can possibly be"); Audra Gamble, *Ensuring Student Safety: Sheriff's Office School Resource Officer Program Grows*, HOLLAND SENTINEL (Sept. 20, 2018), https://www.hollandsentinel.com/news/20180920/ensuring-student-safety-sheriffs-office-school-resource-officer-program-grows [https://perma.cc/W5HL-P8E9] ("Safety is a priority for the districts, with officers chipping in on school safety drills, emergency plans, and the general safety and security procedures in a building.").

399. *See* Rodríguez, *supra* note 35, at 1575–76.

Allegra McLeod, one of the first legal scholars to address abolitionism, argues for a "displace[ment] of criminal law enforcement through meaningful justice reinvestment to strengthen the social arm of the state and improve human welfare. This . . . abolitionist framework would operate by . . . proliferating restorative forms of redress."[400] In the school setting, this translates to investment in mental-health staff, ensuring adequate support for teachers, and creating environments that allow students to try out new ideas, to experiment, and to engage in respectful dissent without fear of punitive discipline or arrest.[401]

Abolitionism supplies a rich intellectual and theoretical tradition that can inspire dramatic social change. One need not, however, sign on to the entire abolitionist project to agree that school policing in its current form should be ended. The growing movement to make schools trauma-informed, for example, also serves as inspiration for a policy solution that eliminates or shrinks school policing.[402] Proponents of trauma-informed-schools push for school staff to create predictable routines, to teach social and emotional learning so that students can learn how to manage emotions without resorting to tantrums or physical violence, and to learn how to de-escalate potentially violent episodes without involving punishment.[403] They argue for restorative and transformative justice practices—such as mediation and reparation for harm—to replace arrest and other punitive practices.[404] Much of this, from an educator's perspective, is common sense. Kiera's principal[405] knew better than the school police officer how to interrupt her negative behaviors, make her see how they were wrong, and insist that she and the other student work to mend their differences.

In sum, removing police from schools—or rejecting proposals to install them in the first instance—is a policy demand that can unite abolitionists and other supporters of students' rights.

4. Caveats and Counterarguments

This Section provides caveats to the policy proposal of removing police from schools, and it considers and responds briefly to potential

400. McLeod, *supra* note 36, at 1156.

401. *See, e.g.*, *Take Action: Support Alternatives to Police in Schools*, *supra* note 373 (arguing for restorative justice, mental health supports, and trauma-informed care rather than school police as more effective mechanisms for disrupting school violence).

402. *See, e.g.*, Megan Runion, *The Infrastructure of Trauma-Informed Schools Requires a Human Scaffold*, PSYCH. LEARNING CURVE (Apr. 30, 2018), http://psychlearningcurve.org/trauma-informed-schools/ [https://perma.cc/2QX7-L3DJ] (describing trauma-sensitive schooling as a "movement on the rise").

403. SUSAN F. COLE, JESSICA GREENWALD O'BRIEN, M. GERON GADD, JOEL RISTUCCIA, D. LURAY WALLACE & MICHAEL GREGORY, HELPING TRAUMATIZED CHILDREN LEARN: SUPPORTIVE SCHOOL ENVIRONMENTS FOR CHILDREN TRAUMATIZED BY FAMILY VIOLENCE 47, 53, 68–69, 80 (2005), https://traumasensitiveschools.org/wp-content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf [https://perma.cc/RCW9-DE6H].

404. *Id.* at 51, 88.

405. *Supra* note 260 and accompanying text.

counterarguments.[406] As a caveat, in arguing that policymakers remove permanently embedded school police, I do not mean to suggest that police should never be permitted to come on campus. Nothing would, if administrators opted to end their school-policing programs, constrain any teacher or administrator from summoning off-campus police to respond to a true security incident.[407] Similarly, probation officers visiting their juvenile charges would not be barred under this proposal.

One objection to demands to end school-policing programs is that they are insufficiently attentive to the political reality. The specter of gun violence in schools, however statistically unlikely its actual occurrence,[408] hovers over student-safety policymaking.[409] Short of gun violence, school-policing proponents use threats of less deadly disruption—which they argue will intensify in the wake of the COVID-19 pandemic—as justification for maintaining or increasing the number of police: "If I were an educator, I can't imagine being willing to roll the dice to remove the armed protection from my campus for my students when we are coming off from the most significant break we have ever had with schools," asserts the head of NASRO.[410] Even school administrators who are unpersuaded that permanently assigned school police officers constitute the most effective way to prepare for and respond to violence[411] likely worry about legal liability and political ignominy they would face if they discontinued school policing and a violent incident then occurred.[412]

Moreover, from an administrator's perspective, embedded police officers may seem a sounder option than privatizing security (as urged by the National Rifle Association), wherein a broader array of even less well-trained people—teachers, staff, volunteers—would be deputized to carry guns and conduct armed

406. A full airing of all policymaking issues inherent in school safety planning is beyond this Article's scope. Education scholars, educators, and activists, however, have created multiple resources directing administrators to non-policing means of making schools safe. *See, e.g.*, PETTERUTI, *supra* note 252, at 29–30; Gottfredson et al., *supra* note 4, at 931; *Model Policies to Fight Criminalization*, DIGNITY SCH., https://dignityinschools.org/take-action/counselors-not-cops/ [https://perma.cc/4J8D-UWJV]; Nance, *Dismantling*, *supra* note 259, at 350–62.

407. *See* ADVANCEMENT PROJECT & ALLIANCE FOR EDUC. JUST., WE CAME TO LEARN: A CALL TO ACTION FOR POLICE-FREE SCHOOLS 2, 77 (2018), https://advancementproject.org/wp-content/uploads/WCTLweb/index.html [https://perma.cc/A9FQ-HA78] (concluding that reform will not be enough to end the problems students of color face in schools and arguing that police should be removed entirely, switching to a system where police are only called in as a final resort).

408. Warnick & Kapa, *supra* note 97, at 23.

409. *See, e.g.*, Balko, *supra* note 96 ("One of the more popular reactions from the right to the Parkland, Fla, school shooting . . . is that we need to put more cops in schools.").

410. Kara Harris, *There's a Movement to Defund School Police, Too*, BLOOMBERG (Aug. 24, 2020), https://www.bloomberg.com/news/articles/2020-08-24/minneapolis-denver-and-oakland-defund-school-police?srnd=citylab [https://perma.cc/9VL9-JG63].

411. *See id.* (summarizing literature indicating inconclusive evidence that school policing is effective deterrent against school shooters).

412. *See supra* notes 126–133 and accompanying text.

patrols.[413] Indeed, in at least one case, a school district severed its contract with a police department only to implement a program of private security guards.[414] Privatized security in schools might at first blush seem an appealing alternative. It is likely less costly than a full-time, embedded police officer. Moreover, the scope of the job is more straightforward—the chimerical and misleading "teacher," "counselor," and "mentor" roles are dispensed with. At the same time, private security creates a host of new problems: while the reality of police accountability is elusive, police departments "at least understand their *charge* as protecting everyone within their jurisdiction."[415] Private security, by contrast, operates without these accountability constraints.[416] Similarly, oversight and chains of command are even less effective in private security regimes than in traditional law enforcement agencies.[417]

Another challenge to the concept of removing school police arises from the question of whose voices should carry the most weight in deliberations that might occur over school-police removal. School safety planning frequently proceeds without any input from students and parents at all. Administrators and school boards sometimes suggest that because a particular policy decision involves security, secrecy about its implementation is appropriate.[418] If a school district were to, as this Article has suggested, seek out the views of students and parents on the question of school policing, how should it decide how to weigh competing viewpoints? After all, in some school communities, the most vocal and passionate school-policing critics may be in the minority. On the flip side, the most committed policing adherents may not have children likely to suffer any of the discrete harms addressed here. Viewing the question through a racial- or disability-equity lens, moreover, may not entirely resolve it. One cannot essentialize Black or disabled students, assuming their support for ending school

413. NRA CARRY GUARD, *Arming Teachers Keeps Kids Safe* (May 22, 2018), https://www.nracarryguard.com/resources/blog/2018/5/arming-teachers-keeps-kids-safe/ [https://perma.cc/7KGW-V7K9]; Eric Lichtblau & Motoko Rich, *N.R.A. Envisions 'a Good Guy with a Gun' in Every School*, N.Y. TIMES (Dec. 21, 2012), https://www.nytimes.com/2012/12/22/us/nra-calls-for-armed-guards-at-schools.html [https://perma.cc/UXQ3-6NDT] (quoting NRA Executive Vice President LaPierre). For an analysis of anti-gun control groups' arguments that the state must not possess a monopoly on violence, *see* Joseph Blocher & Darrell A. H. Miller, *What is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment*, 83 U. CHI. L. REV. 295, 352–54 (2016).

414. *See Minneapolis Schools Quietly Hiring Security Officers After Eliminating SROs*, SEC. MAG. (July 21, 2020), https://www.securitymagazine.com/articles/92878-minneapolis-schools-quietly-hiring-security-guard-after-eliminating-sros [https://perma.cc/85KV-JYN5].

415. David Alan Sklansky, *Private Police and Democracy*, 43 AM. CRIM. L. REV. 89, 91 (2006); *see also id.* at 90 ("[E]ven the most autonomous police departments are subject to *some* political oversight — more public supervision, almost certainly, than virtually any private security firm.").

416. *Id.* at 90.

417. *Id.*

418. *See* Fedders, *The Constant and Expanding Classroom*, *supra* note 83, at 1723 (citing message from Chapel Hill-Carrboro City Schools Board member responding to a parent inquiry about a new surveillance application which read, "Thank you for the message. This is an effort to increase safety at our schools and so not necessarily part of a public process for feedback").

policing—these students may see themselves as actual or potential victims of playground, classroom, cyberbullying, or worse, and believe that policing can protect them whereas a school administration cannot.[419]

Ultimately, the particularities of how any given school district approaches the question of whether school policing does more harm than good will vary; what is more, proposing specific recommendations on safety planning is not this Article's purpose. Instead, what I have sought to do—through adding missing nuance to the question of why we have police in so many schools, and how police officers subvert, in mostly unappreciated ways, critical functions of education—is bring to the fore issues mostly overlooked by both legal scholars and policymakers.

CONCLUSION

Notwithstanding these potential hurdles, grappling with the threshold question—why should police officers be permanently assigned to public schools?—yields important explanatory and conceptual payoffs. As this Article has shown, the evidence base for the safety benefits of school policing is mixed and inconclusive. The reasons for school policing's rapid growth lie in factors other than student safety. Moreover, as the literature critiquing community policing helps us see, school policing creates governance and pedagogical harms even when it is not actively pushing students into the school-to-prison pipeline. For all these reasons, as grassroots anti-police organizers and abolitionist activists and scholars argue, considering the end of school policing is long overdue.

419. *Cf.* JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 9–12 (2016) (discussing the roles of Black Americans in creating and promoting the harsh criminal legal system that disproportionately incarcerates Black people).