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ON STUDENT RIGHTS IN THE YEAR OF *BROWN*: A LEGAL, PSYCHOLOGICAL, AND POLICY ANALYSIS

A. J. Angulo and Carol Marchel***

ABSTRACT

Fifty years after the landmark *Brown v. Board of Education*¹ decision, we review student civil rights in the context of current educational policies and practices. Using the highly publicized drug raid at Stratford High School in Goose Creek, South Carolina, we analyze the legal and policy issues raised by the raid. As did *Brown v. Board of Education*, we evaluate the important psychological effects of school practices, and their impact on individual students, schools, and communities. We present our analysis of student civil rights in the post-Columbine context of schools, where concerns for student safety sometimes override concerns for student rights. Finally, we posit that an overemphasis on safety at the expense of student civil rights can be counterproductive when attempting to produce safe schools. We argue that for healthy student development and positive school and community relationships, student civil rights must remain a central concern for educational policy makers.

I. INTRODUCTION

In 2004, the *Brown v. Board of Education* decision² turned fifty. Celebrations held across the country offered a reminder of how a controversy at a small school can potentially recast

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1. 347 U.S. 483 (1954).

2. *Id.*

national debates about student civil rights as well as civil and political rights for all Americans. These celebrations highlighted the far reaching impact that the decision had on American society as well as on changes in theory and practice in fields such as law, psychology, and education.

For the Supreme Court justices in the *Brown* decision, the problem of segregation had not only legal but also psychological dimensions.³ In their efforts to address these concerns, they took aim at the foundation of segregation,⁴ as established by the “separate but equal” doctrine of *Plessy v. Ferguson*.⁵ In May 1954, the *Brown* court turned that foundation into rubble by declaring state-sanctioned separation of the races in public schools a violation of the Equal Protection clause of the Fourteenth Amendment.⁶ To do this, the justices in part relied on psychological research, or what they called “modern authority,” to overturn the anachronistic psychological outlook of *Plessy*.⁷ According to *Plessy*, any harmful effects of segregation were merely figments in the minds of African-Americans.⁸ The *Brown* decision no longer shared this view and introduced research of the 1940s and 1950s on discrimination and personality development to declare that the “separate but equal” doctrine contradicted the aims of public education.⁹

As the fiftieth anniversary *Brown* celebrations got underway, national and international attention briefly turned to another school controversy, one from the town of Goose Creek, South Carolina. Like *Brown*, the case raises fundamental questions about student civil rights in relation to legal precedent, psychological research, and educational policy. What follows is an analysis of a police raid on Goose Creek’s Stratford High School on November 5, 2003¹⁰ and its

3. *Id.* at 494–95.

4. *Id.* at 487–88, 490–91.

5. 163 U.S. 537 (1896).

6. *Brown*, 347 U.S. at 495.

7. *Id.* at 494–95 & n.11.

8. *Plessy*, 163 U.S. at 551.

9. *Brown*, 347 U.S. at 494–95; E. Christi Cunningham, *Exit Strategy for the Race Paradigm*, 50 HOW. L. J. 755, 785–86 (2007); John P. Jackson, Jr., *The Triumph of the Segregationists? A Historiographical Inquiry into Psychology and the Brown Litigation*, 3 HIST. PSYCHOL. 239, 255–56 (2000).

10. Three major news networks—CNN (Nov. 7, 10), CBS (Nov. 7), and Fox News (Nov. 17)—covered the incident within the first two weeks of its occurrence. For a

relationship to present-day “modern authority.”

The raid provides a vehicle for the critical review of three bodies of literature—legal, psychological, and educational policy research—that, when integrated, offer a prime example of the sometimes yawning gap between educational theory and school practice. This gap, as this case study and our conclusions suggest, can be costly, both in economic terms and in terms of school-community relations. For Stratford High and the Goose Creek Police Department, the economic costs included a class-action lawsuit filed by students, a lengthy period of negotiations, and in July of 2006, a \$1.6 million settlement with affected students.¹¹ The impact on school-community relations has likewise taken its toll, as has been made clear by the actions and expressions of students, parents, and community leaders.¹² The police action, administrative decision-making, and legal fall-out that occurred at Stratford has broad implications for American education. This case study offers insight into the ways in which such actions clash with student rights, conflict with recent scholarship in educational psychology, and encourage counterproductive school policy. It also proposes that an overemphasis on safety at the expense of student civil rights can be counterproductive when attempting to produce safe schools. For healthy student development and positive school and community relationships to occur, student civil rights must remain a central concern for educational policy makers.

Part II offers background to the case. It provides information on the conditions of the school and the nature and character of the raid. Part III examines the legal dimensions of

sampling of newspaper attention given to the raid, see *Across the Nation*, SEATTLE TIMES, Nov. 9, 2003, at A10; Seanna Adcox, *Stratford Raid Criticized, Praised: Parents Address School Board, Goose Creek Officials*, POST & COURIER, (Charleston, S.C.), Nov. 12, 2003, at A1; Linda P. Campbell, *High School Raid Was a Real Bust of a Bust*, FORT WORTH STAR-TELEGRAM, Dec. 11, 2003, at B11; Mindy B. Hagen, *Judge OKs Settlement for Stratford Police Raid*, POST & COURIER, (Charleston, S.C.), July 11, 2006, at B1; *Outrage Follows High School Raid: Weapons Drawn in Drug Search*, CALGARY HERALD, Nov. 9, 2003, at A6; *Pupils Taking Police to Court*, DAILY TELEGRAPH (Sydney, Austl.), Dec. 12, 2003, at 43; *Raid of Terror: When Guns are Drawn in School Hallways*, POST-GAZETTE (Pittsburgh), Nov. 12, 2003, at A10; S.C. *Police Probing High School Drug Sweep*, DESERET NEWS (Salt Lake City), Nov. 9, 2003, at A12; S.C. *Probes High School Drug Sweep: South Carolina Investigating Drug Sweep at High School by Officers with Drawn Guns*, ASSOCIATED PRESS, Nov. 8, 2003, available at <http://curezone.com/forums/fm.asp?i=550249>.

11. Hagen, *supra* note 10.

12. See *infra* notes 99–102 and accompanying text.

the case. Scholarship on search and seizure, excessive force, and discrimination is discussed in light of specific events in the Goose Creek incident. Part IV focuses on the potential psychological impact of the raid, both on individual students, and on the school as a whole. Following a review of the relevant psychological literature, Part V examines the relationship between the educational policy decisions made in Goose Creek and research on zero tolerance.

II. THE SCHOOL RAID

In 2003, Stratford High was considered one of South Carolina's finest public schools.¹³ Nestled in a suburban area just outside of Charleston, this institution had largely been known for its academic excellence and its award-winning extracurricular activities. Since the late 1990s, the school's principal, George McCrackin,¹⁴ along with the School Improvement Council, had boasted that students there scored above the state average in standardized tests and received, collectively, more than a million dollars worth of scholarship awards each year.¹⁵ According to a 2003 report, eighty-five percent of graduating seniors attended a post-secondary institution.¹⁶ In addition, in 2003, the approximately 2,650 students at the school participated in seventy-six extracurricular activities.¹⁷ The school had a nationally ranked speech and debate team, a nationally ranked academic team, a state governor's award for service learning, Scholastic Press Association Awards for excellence in journalism, and in recent years had won state championships in football, baseball, and softball, and regional championships in cross country and volleyball.¹⁸ In its 2003 evaluation, South Carolina ranked

13. Seanna Adcox, *Police Fail to Find Drugs in Stratford High Raid*, POST & COURIER, (Charleston, S.C.), Nov. 7, 2003, at B1.

14. Principal McCrackin stepped down in early 2004. Seanna Adcox, *McCrackin Steps down as Stratford Principal*, POST & COURIER, (Charleston, S.C.), Jan. 6, 2004, at A1.

15. South Carolina Department of Education, *Stratford High*, STATE OF SOUTH CAROLINA ANNUAL SCHOOL REPORT CARD (2003), available at <http://www.myscschools.com/reportcard/2003/high/h0801001.pdf> (last visited Nov. 15, 2006).

16. *Id.*

17. *Id.*

18. Stratford High School, Awards and Accomplishments, <http://www.berkeley.k12.sc.ua/HIGH/SHS/awards/awards.htm> (last visited Dec. 13, 2003).

Stratford High as “excellent” in an annual report card, meaning that the school had substantially exceeded state standards.¹⁹ Bolstering the state evaluation, ninety-five percent of teachers stated they were satisfied with the school’s social and physical environment.²⁰

On November 5, 2003, Stratford High began to receive national and international media attention, but it had nothing to do with either its academic excellence or its extracurricular activities. Rather, a police raid at approximately 6:45 a.m. that morning took center stage.²¹ A videotaped recording of the incident showed fourteen police officers sealing off a school hallway, at least two of whom had their guns drawn.²² The officers ordered the 107 students detained in the corridor to lie on the floor or to face a wall in a kneeling position with hands held behind their heads.²³ Those students who remained standing were handcuffed by the officers and forced to kneel.²⁴ Surveillance cameras captured the raid, showing students huddled together along the walls and separated from their belongings, which had been placed in a row in the center of the corridor.²⁵ Police officers then brought in a specially-trained Czechoslovakian Shepard to check the belongings for drugs.²⁶ None were found.²⁷

Principal McCrackin took responsibility for ordering the

19. STATE OF SOUTH CAROLINA ANNUAL SCHOOL REPORT CARD, *supra* note 15.

20. *Id.*

21. Steve Reeves & Allison L. Bruce, *Storm Swirls Around Drug Sweep; ACLU Considers Lawsuit After Police Action at School*, POST & COURIER, (Charleston, S.C.), Nov. 11, 2003, at A1.

22. School Surveillance Videotape, Narrated by Principal McCrackin (Dec. 5, 2003), available at http://stream.realimpact.net/?file=realimpact/aclu/20031205_ACLU_DrugBust.rm; see Adcox, *supra* note 13; Tony Bartelme, “It’s Not How My Unit Would Have Done It”: Police Might Have Violated Own Regulations During Stratford Drug Raid, POST & COURIER, (Charleston, S.C.), Dec. 7, 2003, at A1; Tamar Lewin, *Raid at High School Leads to Racial Divide, Not Drugs*, N.Y. TIMES, Dec. 9, 2003, at A20; Reeves & Bruce, *supra* note 21.

23. Bartelme, *supra* note 22; Reeves & Bruce, *supra* note 21; NPR Morning Edition: *Students and Parents Suing School Administrators and Police Following a High School Drug Raid They Say Went Too Far* (NPR radio broadcast Dec. 12, 2003) [hereinafter NPR].

24. Adcox, *supra* note 13; Bartelme, *supra* note 22; CNN Live at Daybreak: *Police with Guns Drawn Storm High School in Drug Sweep* (CNN television broadcast Nov. 7, 2003) [hereinafter CNN].

25. School Surveillance Videotape, *supra* note 22; see also NPR, *supra* note 23.

26. *Police Didn’t Follow Rules on Using Drug Dogs at High School*, ASSOCIATED PRESS ST. & LOCAL WIRE, Dec. 7, 2003.

27. Adcox, *supra* note 13; CNN, *supra* note 24.

police raid.²⁸ His primary justification for doing so was what he considered to be suspicious activity in the hallway secured by the officers.²⁹ Earlier in the term, surveillance cameras had recorded select students entering and leaving a restroom in a regular pattern.³⁰ McCrackin witnessed this pattern on several separate occasions and came to the conclusion that a handful of these students were involved in drug-related activity.³¹ He presented this evidence to Goose Creek police officials who, in turn, agreed to conduct the raid.³² The resulting action took students, parents, and the local community by surprise. In the immediate aftermath of the raid, McCrackin took the lead in responding to public criticism with three unequivocal statements. First, he defended the actions of the law enforcement officers and his decision to allow the raid. "I will utilize whatever forces that I deem necessary," he told reporters, "to keep this campus safe and clean."³³ Second, he rejected public criticism that the raid had been an overreaction on his part. McCrackin described it instead as a "valuable experience" for students.³⁴ Third, he expressed certain interest in repeating the action on the campus. "If we have to, we will," he responded when asked if he would do it again.³⁵

Educational administrators like McCrackin face the unenviable task of striking a balance between student safety and student freedom. This may indeed be one of their most difficult responsibilities. But school policies at public institutions like Stratford High are subject to state and federal laws because they are agencies of the state.³⁶ As such, procedures for regulating order in public schools are not defined by individual discretion, but rather by policies that arise from state and federal law. Given the precedent established in *Brown*, any discretion that a school administrator has within the parameters defined by laws

28. CNN, *supra* note 24.

29. Adcox, *supra* note 13.

30. *Id.*

31. *Id.*

32. *Id.*

33. CNN, *supra* note 24.

34. *Id.*

35. *Id.*

36. See *New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985); see also Bill O. Heder, *The Development of Search and Seizure Law in Public Schools*, 1999 BYU EDUC. & L.J. 71 (1999).

should be reconcilable with standards found in educational research.³⁷

The question at hand in the Goose Creek incident is twofold: first, whether the manner and conduct of the police raid on Stratford High constituted a violation of state and federal law, and second, whether the discretion available to McCrackin was reconcilable with psychological and educational policy research.

III. "WHATEVER FORCES THAT I DEEM NECESSARY": A LEGAL ANALYSIS

The Goose Creek incident raises three broad legal themes: search and seizure, excessive force, and discrimination. First of all, the police officers were involved in what could be considered a search and seizure operation. Their intent, as well as that of the principal, was to discover the presence of illegal drugs in the school.³⁸ Second, the videotape and student testimony suggest the possibility that the search was conducted with excessive force.³⁹ Students subjected to the raid reported being forced to the ground and having guns indiscriminately directed at them.⁴⁰ Third, discrimination may have played a role in the location and timing of the raid.⁴¹ Statistics reveal that approximately seventy percent of the students subjected to the raid were black, while the total black population at Stratford High was approximately twenty-two percent.⁴² The breadth of the legal themes involved calls for an analysis of precedents established as well as areas of school law yet to be defined.

37. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494–95 (1954). *Brown* relied, in part, on educational and psychological research to challenge the legal underpinnings of segregation. *Id.* at 495.

38. See Adcox, *supra* note 13.

39. See CNN, *supra* note 24.

40. Reeves & Bruce, *supra* note 21; see Complaint Jury Demand at ¶ 2, *Alexander v. Goose Creek Police Dep't*, 2003 WL 23875947 (D.S.C. Dec. 15, 2003) (No. 203394323), available at <http://www.aclu.org/DrugPolicy/DrugPolicy.cfm?ID=14578&c=19>.

41. Lewin, *supra* note 22.

42. Seanna Adcox, *Principal Gets Noisy Show of Support: Stratford High Staffers, Students Stage Horn-Honking Rally as a Handful Protest*, POST & COURIER, (Charleston, S.C.), Nov. 15, 2003, at A1; see also Reeves & Bruce, *supra* note 21.

A. Search and Seizure

Search and seizure cases are generally defined by the parameters of the Fourth Amendment to the Constitution. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” states the Amendment, “shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”⁴³ Perhaps the two most important cases that clarify the meaning of the Amendment in terms of school settings are *People v. Overton*⁴⁴ and *New Jersey v. T.L.O.*⁴⁵ In *Overton*, a detective with a warrant, accompanied by a school administrator, searched Carlos Overton’s school locker for drugs.⁴⁶ Marijuana cigarettes were found in the locker.⁴⁷ Upon discovering that the warrant was invalid, Overton moved to suppress the use of the cigarettes as evidence in a youthful offender proceeding. Overton lost. Although the New York Supreme Court held that the evidence was “the product of an illegal search and seizure,”⁴⁸ the Court of Appeals overturned the ruling, holding that in the absence of a valid warrant, a school official may consent to a search when there is suspicion of illegal activity on school grounds.⁴⁹

In the case of *T.L.O.*, the Supreme Court reviewed the legality of a search conducted by a school official and its relation to the Fourth Amendment. A teacher saw T.L.O. smoking in the restroom and sent T.L.O. to see a school administrator for violating school policy.⁵⁰ T.L.O. denied

43. U.S. CONST. amend. IV.

44. 249 N.E.2d 366 (N.Y. 1969).

45. 469 U.S. 325 (1985); see also Heder, *supra* note 36.

46. *Overton*, 249 N.E.2d at 366.

47. *Id.*

48. *People v. Overton*, 273 N.Y.S.2d 143, 144 (Sup. Ct. 1966).

49. *Overton*, 249 N.E. 2d at 368. For further treatment of search and seizure issues in schools, see generally Richard Jenkins, *An Historical Approach to Search and Seizure in Public Education*, 30 W. ST. U. L. REV. 105, 142–43 (2003); Rebecca N. Cordero, Comment, *No Expectation of Privacy: Should School Officials Be Able to Search Students’ Lockers Without Any Suspicion of Wrong Doing? A Study of In Re Patrick Y. and Its Effect on Maryland Public School Students*, 31 U. BALT. L. REV. 305, Spring 2002, Volume 2; Timothy L. Jacobs, Comment, *School Violence: An Incurable Social Ill that Should Not Lead to the Unconstitutional Compromise of Students’ Rights*, 38 DUQ. L. REV. 617 (2000).

50. *New Jersey v. T.L.O.*, 469 U.S. 325, 328 (1985).

smoking to the school administrator, who in turn requested to see the contents of the student's purse. The contents revealed cigarettes and drug paraphernalia.⁵¹ When the State brought delinquency charges, T.L.O. moved to suppress the evidence found in her purse, claiming a violation of her Fourth Amendment rights.⁵² On appeal, the Supreme Court decided that no warrant was necessary and argued that the search was justified and reasonable.⁵³ *T.L.O.* established that searches and seizures of that kind must be justified at inception (i.e., the teacher's report of T.L.O.'s smoking gave the administrator justification) and reasonable in scope (i.e., limited to the purse).⁵⁴

The Goose Creek incident involved searches and seizures and, thus, intersects with standards set by *Overton* and *T.L.O.* By all accounts, the officers were invited to the campus at the principal's request and accompanied by him during the raid.⁵⁵ The law enforcement officials, therefore, needed no warrant and searches conducted would not be in violation of the *Overton* standard.⁵⁶ Recent lower court cases in Pennsylvania, Florida, Indiana, Texas, Illinois, and elsewhere have ruled likewise in supporting or lending support to searches conducted jointly by police and school officials who have reasonable suspicion.⁵⁷

In light of *T.L.O.*, however, was the Goose Creek raid justified at inception and reasonable in scope? The justification for the raid was that McCrackin saw suspicious activity via the

51. *Id.*

52. *Id.* at 329.

53. *Id.* at 340–47.

54. For further treatment of search and seizure issues in schools following *T.L.O.*, see generally David C. Blickenstaff, *Strip Searches of Public School Students: Can New Jersey v. T.L.O. Solve the Problem?*, 99 DICK. L. REV. 1 (1994); Martin R. Gardner, *Student Privacy in the Wake of T.L.O.: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897 (1988); Sunil H. Mansukhani, *School Searches After New Jersey v. T.L.O.: Are There Any Limits?*, 34 U. LOUISVILLE J. FAM. L. 345 (1995–1996); Dale Edward F.T. Zane, Comment, *School Searches Under the Fourth Amendment: New Jersey v. T.L.O.*, 72 CORNELL L. REV. 368 (1987).

55. See Adcox, *supra* note 13.

56. See *People v. Overton*, 249 N.E.2d 366, 368 (N.Y. 1969).

57. See, e.g., *State v. D.S.*, 685 So. 2d 41, 43 (Fla. Dist. Ct. App. 1996); *People v. Dilworth*, 661 N.E.2d 310, 314–21 (Ill. 1996); *S.A. v. State*, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995); *Commonwealth v. J.B.*, 719 A.2d 1058, 1065 (Pa. Super. Ct. 1998); *Wilcher v. Texas*, 876 S.W.2d 466, 468–69 (Tex. App. 1994); see also 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 (2003).

surveillance cameras.⁵⁸ Courts have yet to rule on whether videotapes of suspicious behavior of the kind viewed by McCrackin are sufficient justification for a search and seizure raid. Video recordings of activity are different from the first-hand accounts in *T.L.O.*, yet not significantly different from common observation. By this measure, the camera observations might satisfy the justification at inception standard. Detaining 107 students, however, does not appear to meet the “reasonable in scope” standard. The blanket detention of this number of students indicates a random search, rather than limited to an intended target, and therefore would be unconstitutional.

The use of drug dogs also fails to meet the “reasonable in scope” standard. In the Goose Creek incident, law enforcement officers “locked down” the corridor, separated students from their belongings, such as backpacks and other items, and then proceeded to use a specially-trained dog to “sniff” the belongings.⁵⁹ On approximately twelve occasions, the dog alerted its handler to suspected bags, which the officers then searched and emptied without finding contraband.⁶⁰

Federal courts have ruled in two significant cases on the constitutionality of such “sniff” and search operations and whether they should be considered Fourth Amendment violations. In *Doe v. Renfrow*, junior and senior high school students in Highland, Indiana were detained in their first-period classrooms for two and a half hours.⁶¹ During the period of detention, a canine unit conducted a room-to-room inspection (i.e., “sniffing”) of students and their belongings.⁶² From this raid, seventeen students were discovered to have illegal drugs in their possession.⁶³ The Seventh Circuit Court of Appeals ruled that no constitutional protection of students was violated with random “sniffing” of students.⁶⁴ In essence, the case established that a “sniff” does not constitute a search, and thus does not need to meet the requirements of the Fourth

58. Adcox, *supra* note 13.

59. See CNN, *supra* note 24.

60. See *id.*

61. 475 F. Supp. 1012, 1016–17 (N.D. Ind. 1979).

62. *Id.*

63. *Id.*

64. *Id.* at 1019; see also Jennifer Bradfield, *Veronia School District 47J v. Acton: A Step Toward Upholding Suspicionless Dog Sniff Searches in Public Schools?*, 68 U. COLO. L. REV. 475, 501 (1997).

Amendment and such clarifying cases as *Overton* and *T.L.O.*⁶⁵

In the Texas case of *Horton v. Goose Creek Independent School District*,⁶⁶ however, the Fifth Circuit Court of Appeals ruled on a similar search and sniff operation and came to a slightly different interpretation. This court made a clear distinction between the sniffing of objects and spaces versus the sniffing of persons.⁶⁷ The sniffing of objects and spaces, according to *Horton*, did not constitute a search, for a “public smell” should be regarded in the same manner as something in “plain view.”⁶⁸ The sniffing of a person, by contrast, was considered by the court to be an invasion of privacy and rose to the level of a search.⁶⁹ As such, personal sniffs must meet the governing Fourth Amendment requirements for searches (i.e., justified at inception and reasonable in scope).⁷⁰

Both *Horton* and *Doe* apply to the Goose Creek incident. Common to both rulings was the view that sniffing spaces and belongings does not constitute a search. Video recordings indicate that, at Stratford High, a drug dog randomly sniffed possessions and persons.⁷¹ According to *Doe*, this poses no violation of constitutional rights; but if viewed via *Horton*, the same case—particularly the “sniffing” of individuals—does pose a violation of constitutional rights.⁷² This being the case, courts have yet to rule decisively and resolve this common dilemma in school law.⁷³

65. *Doe*, 475 F. Supp., at 1019. For further treatment of narcotics detection dogs in schools, see generally Robert C. Bird, *An Examination of the Training and Reliability of the Narcotics Detection Dog*, 85 KY. L.J. 405 (1996–1997); Amanda S. Froh, *Rethinking Canine Sniffs: The Impact of Kyllo v. United States*, 26 SEATTLE U. L. REV. 337, 353, 362 (2002).

66. 690 F.2d 470 (5th Cir. 1982).

67. *Id.* at 477–78.

68. *Id.* at 477.

69. *Id.* at 478; see also Bradfield, *supra* note 64, at 501.

70. *Horton*, 690 F.2d at 479; see also Bradfield, *supra* note 64, at 493 (stating that if a court “finds that a dog sniff does constitute a search under the Fourth Amendment, it must then inquire as to whether the search was reasonable”).

71. See Complaint Jury Demand, *supra* note 40, at ¶¶ 11, 25, 43 (claiming that the drug dog did perform sniff examinations on students); School Surveillance Videotape, *supra* note 22.

72. See *Doe v. Renfrow*, 475 F. Supp. 1012, 1019 (N.D. Ind. 1979); *Horton*, 690 F.2d at 488.

73. See Bradfield, *supra* note 64, at 505 (arguing for what the Supreme Court should do “if and when the issue of suspicionless dog sniffs” comes before it).

B. Excessive Force

While the raid satisfied some and appears to have violated other search and seizure standards, the conduct of the officers involved raises questions about excessive force. Individuals who have sustained unreasonable injury as a result of excessive force can usually seek redress under tort law, state laws governing suffering, assault, and battery. Whether students receive substantive redress through tort law will depend on the injuries sustained by the students. Evidence of physical and emotional injury would need to be substantiated and documented for a successful suit under tort law against the school. Historically, however, educational institutions have had the right to stand *in loco parentis*, or in place of the parent, in making discipline-related decisions.⁷⁴ Courts have granted these institutions wide discretion in administering disciplinary measures considered necessary for maintaining order.⁷⁵

At the federal level, many cases concerning force in schools have involved corporal punishment administered by a school official. The landmark Supreme Court decision in *Ingraham v. Wright* established that even severe corporal punishment may not constitute a violation of the Eighth Amendment's protection against cruel and unusual punishment.⁷⁶ In *Ingraham*, a junior high school student in Dade County, Florida received a paddling that resulted in a hematoma that required medical attention, causing the student to miss several days of school.⁷⁷ Despite the severity of the injury, the justices did not apply the "cruel and unusual" standard normally reserved for criminals in closed institutions.⁷⁸ Constitutional law would apply in corporal punishment cases, declared the *Ingraham* court, only if Fourteenth Amendment due process rights had been violated.⁷⁹ For punishments of this nature to be in accord with constitutional protections, students must

74. See generally Brian Jackson, Note, *The Lingering Legacy of In Loco Parentis: An Historical Survey and Proposal for Reform*, 44 VAND. L. REV. 1135 (1991).

75. *Id.* at 1146-48.

76. 430 U.S. 651, 683 (1977); see also Kathryn R. Urbonya, *Public School Officials' Use of Physical Force as a Fourth Amendment Seizure: Protecting Students from the Constitutional Chasm Between the Fourth and Fourteenth Amendments*, 69 GEO. WASH. L. REV. 1, 14-15 (2000).

77. *Ingraham*, 430 U.S. at 654, 657.

78. *Id.* at 664.

79. *Id.* at 671-72.

receive notice about the conduct to be disciplined and a hearing that would provide an opportunity for the student to comment before being disciplined.⁸⁰ The ruling confirmed a previous Supreme Court decision that upheld the “legitimate and substantial interests” of the state to maintain order in schools over the objections of parents opposed to corporal punishment.⁸¹

When considering the Goose Creek incident as a corporal punishment case, two main variables come to the fore: the administration of the punishment and the injury it caused. Courts have yet to rule on whether law enforcement officers can administer corporal punishment at the discretion of a school official. If forcing students to the ground is lawful, the question remains whether the actions against the detained students at Stratford High constituted corporal punishment. Since no specific student had been targeted for a specific violation of school policy, or given notice of said violation, policy, and resulting punishment, it is highly unlikely that direct force upon students would constitute “reasonable” corporal punishment; the standard of due process established by *Ingraham* would still apply. Students were not given an explanation for their punishment, nor were they given an opportunity to comment before being subjected to force and restraint. Given the absence of due process, the police raid violates the standard established in *Ingraham*.

Also applicable in the action of the Goose Creek police department is a broader constitutional standard of excessive force.⁸² One of the most important cases shaping legal opinions on excessive force came from the Supreme Court decision in *Rochin v. California*.⁸³ Police were found to have forced an emetic into the stomach of a suspect in an effort to retrieve illegally possessed morphine.⁸⁴ The conduct of police officers in this case had “shock[ed] the conscience” of the Court, the justices said.⁸⁵ Such action denied the suspect any reasonable

80. Brooke Grona, Comment, *School Discipline: What Process is Due? What Process is Deserved?* 27 AM. J. CRIM. L. 233, 244 (2000).

81. See *Baker v. Owen*, 395 F. Supp. 294, 300 (M.D.N.C. 1975).

82. See generally David Frisby & Joseph C. Beckham, *Developing School Policies on the Application of Reasonable Force*, 122 EDUC. L. REP. 27 (1998).

83. 342 U.S. 165 (1952).

84. *Id.* at 166.

85. *Id.* at 172.

due process rights and thus established grounds for reversing the suspect's narcotics conviction.⁸⁶ *Rochin* was later reinforced by the decision in *Johnson v. Glick*,⁸⁷ in which the Second Circuit Court of Appeals found that in a situation between a correctional officer and an inmate, the inmate had a cause of action against the officer for unconstitutional police brutality.⁸⁸ Evidence of severe harm or injury played a substantial role in both of these decisions.⁸⁹

More recently, in *Graham v. Connor*, the Supreme Court used "objective reasonableness" rather than degree of injury to define excessive force.⁹⁰ With *Graham*, the Court acknowledged that other forms of excessive force existed beyond permanent or severe physical harm.⁹¹ Rather than focusing on the severity of injury, the justices considered the degree of force used in relation to the threat posed by the plaintiff.⁹² The *Graham* decision established a three-part test to evaluate the nature of police force: (1) the severity of the crime under suspicion, (2) the degree of threat posed by the suspects against the law enforcement officers, and (3) whether the suspect attempted to resist or evade arrest.⁹³ Via *Graham*, the court overturned the necessity of evidence of harm or injury to substantiate claims of excessive force.⁹⁴

When considering the Goose Creek incident in relation to the legal standard found in *Graham*, there is little evidence to suggest that Stratford High constituted a potentially severe crime scene or that police should have expected any high degree of threat against them. With ninety-five percent of teachers and eighty percent of students satisfied with the school's social and physical environment,⁹⁵ the action of the police is difficult to reconcile with the first and second parts of the test. As for the third, videotaped evidence and individual

86. *Id.* at 173-74.

87. 481 F. 2d 1028, 1033 (2d Cir. 1973), *cert. denied*, 414 U.S. 1033 (1973).

88. *Id.* at 1029-30, 1033.

89. *Id.*; see also *Rochin*, 342 U.S. at 173.

90. 490 U.S. 386, 388 (1989).

91. See *id.* at 393-94.

92. *Id.* at 396.

93. *Id.*; see also Daniel J. O'Connell, Note, *Excessive Force Claims: Is Significant Bodily Injury the Sine Qua Non to Proving a Fourth Amendment Violation?*, 58 FORDHAM L. REV. 739, 749 (1990).

94. See *Graham v. Connor*, 490 U.S. 386 (1989); O'Connell, *supra* note 93.

95. STATE OF SOUTH CAROLINA ANNUAL SCHOOL REPORT CARD, *supra* note 15.

accounts reveal exceptionally compliant “suspects,” almost none of whom attempted to flee or evade capture.⁹⁶ Furthermore, the conscience of the court of public opinion has been shocked by the extent of force used in the raid.⁹⁷ If the *Rochin-Glick* standard (i.e., “shocks the conscience”) still applies, as recent cases such as *Golden v. Anders*⁹⁸ have indicated, then the sensibilities of those affected by the raid would be relevant. One local resident described the raid as “appalling and shameful”; others described the actions of the police as “assault tactics,” and “Gestapo-like” acts.⁹⁹ Along with these residents, other police units in the area questioned the actions of the Goose Creek Police. A Charleston police officer stated, “It’s not how my unit would have done it.”¹⁰⁰ While some supported the principal’s decision,¹⁰¹ hundreds of Charlestonians accompanied by such figures as Senator John Edwards and Jessie Jackson protested the raid.¹⁰² Moreover, the majority of parents who brought their concerns to school board meetings or conducted other public demonstrations disagreed with the “bad judgment” displayed by the school and law enforcement officials.¹⁰³

C. Discrimination

Any challenge against the school’s “bad judgment” under the charge of discrimination would invoke the Fourteenth Amendment’s Equal Protection clause or claim a violation of Title VI of the 1964 Civil Rights Act.¹⁰⁴ In Equal Protection cases, the burden of proof is overwhelmingly on the side of the

96. Adcox, *supra* note 13 (quoting a police officer as saying that everyone was compliant); School Surveillance Videotape, *supra* note 22.

97. See CNN, *supra* note 24.

98. 324 F.3d 650, 652–53 (8th Cir. 2003).

99. Letters to the Editor, *Readers Decry Stratford Drug Raid*, POST & COURIER, (Charleston, S.C.), Nov. 11, 2003, at A12.

100. Bartelme, *supra* note 22.

101. Adcox, *supra* note 42.

102. Schuyler Kropf, *Edwards Backs March Against Drug Raid During Local Stop*, POST & COURIER, (Charleston, S.C.), Dec. 18, 2003, at B3; James Scott, *Hundreds March as Jackson Leads*, POST & COURIER, (Charleston, S.C.), Dec. 17, 2003, at A1; see also Adcox, *supra* note 42.

103. Adcox, *supra* note 42; Adcox, *supra* note 10; Letters to the Editor, *supra* note 99.

104. James E. Ryan, *Race Discrimination in Education: A Legal Perspective*, 105 TCHRS. C. REC. 1087, 1088 (2003).

plaintiff to find evidence of explicit discriminatory intent.¹⁰⁵ Without such evidence, courts have long sided with school officials on matters of educational policy.¹⁰⁶ Plaintiffs without explicit discriminatory intent evidence can also seek legal remedy by arguing that there is a “compelling state interest” for deeming a specific state-sanctioned policy as discriminatory and, thus, a violation of Equal Protection.¹⁰⁷ In determining what constitutes a compelling state interest, however, courts have traditionally been reluctant to intervene in matters of public educational policy and have allowed school officials wide discretion in determining the state’s educational interests.¹⁰⁸ In Title VI Civil Rights cases, the plaintiff is not required to produce evidence of explicit discriminatory intent. Instead, the plaintiff must demonstrate that state action has had a disparate impact on minorities.¹⁰⁹ Once disparate impact is established, courts shift the burden of proof to the defendants to demonstrate that such policy is a legitimate educational goal or necessity.¹¹⁰ As with Equal Protection cases, plaintiffs in Title VI Civil Rights cases meet their most difficult challenge in rebutting defendants on matters of educational policy.¹¹¹ They must counter with equally effective alternatives that are less discriminatory or establish that arguments in favor of the original policy do not meet the standard for legitimate educational interests.¹¹²

Whether or not Stratford High officials intended to disproportionately affect their African American¹¹³ student population, the *prima facie* case against the school suggests the likelihood that discrimination played a role in the location and timing of the raid. Approximately seventy percent of the students subjected to the raid were black; the total black population in the school, however, amounts to just over twenty percent.¹¹⁴ Students have testified that the corridor sealed by

105. *Id.* at 1090.

106. *See Jackson, supra* note 74.

107. *See Ryan, supra* note 104, at 1089–91.

108. *See Jackson, supra* note 74.

109. *Ryan, supra* note 104, at 1091–93.

110. *Id.* at 1092.

111. *Id.* at 1093.

112. *Id.* at 1092–93.

113. This article will use “Black” and “African American” interchangeably.

114. *Adcox, supra* note 42.

the law enforcement officers during the raid was one that African American students frequented more often than other areas of the school.¹¹⁵ The early morning hour of the raid also coincided with the arrival of the earliest buses, filled mostly with black students, before the arrival of most students.¹¹⁶ “If they were willing to get anybody,” stated one student witness, “they would have come at a different time and searched the whole school, not just 107 kids out of 2,700.”¹¹⁷ In potential discrimination cases, however, courts will require more than *prima facie* arguments against school actions. School officials have been adamant in declaring that the raid was not an act of “racial profiling”¹¹⁸ and, in cases such as these, if no evidence is produced to the contrary, the plaintiffs in a discrimination suit would not likely prevail.

IV. “A VALUABLE EXPERIENCE”: A PSYCHOLOGICAL ANALYSIS

Because contemporary courts are likely to reject this *prima facie* evidence of discrimination, the Goose Creek incident stands today where segregation cases stood pre-*Brown*. But just as *Brown* was decided on legal precedent and with reference to psychological research, the raid on Stratford High offers an opportunity to consider current developments in psychology (or “modern authority”) that bear on contemporary school law. Although the case has been settled in favor of the students,¹¹⁹ the Goose Creek incident allows for an examination of how courts might consider the psychological impact arising from forceful action that disproportionately affects a minority population in similar cases. An examination of psychological effects on students bears scrutiny on several levels, for the raid suggests a broad range of possibilities with varied outcomes that are likely to interact in complex, unpredictable ways. For the purposes of this analysis, our attention will focus on what appears most likely according to recent psychological research: that a raid such as the one on Stratford High will have appreciable implications for individual

115. Reeves & Bruce, *supra* note 21.

116. Lewin, *supra* note 22.

117. *Id.*

118. Lewin, *supra* note 22.

119. See *Harris v. McCrackin*, 2006 WL 1897038 (D.S.C. July 10, 2006); Hagen, *supra* note 10.

students as well as for the school as a whole. While the intended aim, as described by Principal McCrackin, was to ensure school safety by actions taken against a group of students suspected of drug activity and potentially violent behavior,¹²⁰ a substantial body of psychological literature does not support McCrackin's "ends-justify-the-means" approach. Instead, research has long suggested that tactics such as those used in the raid are linked to long-term, counterproductive consequences likely to increase rather than decrease the potential for school violence and disruption.¹²¹

What follows is an examination of the literature on some of the possible outcomes for individuals and the school as a whole. Though presented as hypothesized outcomes, the literature contemplates areas that deserve further empirical scrutiny. At the individual level, this psychological analysis of the incident at Goose Creek will center on three broad areas: identity development, alienation, and the impact of trauma. For the school at large, the analysis will turn to potential implications for school climate and school violence. At both levels, psychological research strongly indicates that discriminatory intent is immaterial when considering negative outcomes.¹²² Although racist and discriminatory actions are no doubt harmful, perceived discrimination alone can contribute to psychological risk.¹²³ Perception provides the information from which adolescents construct identity, interpret levels of threat, and make decisions about their personal value within the social system of the school.¹²⁴ Home, school, and communities influence adolescent perceptions of school climate, suggesting

120. Adcox, *supra* note 13.

121. See Lyn Boulter, *Family-School Connections and School Violence Prevention*, 55 NEGRO EDUC. REV. 27, 35 (2004).

122. See Rodney Clark et al., *Racism as a Stressor for African Americans: A Biopsychosocial Model*, 54 AM. PSYCHOLOGIST 805, 809 (1999) (stating that although Whites may not see their beliefs or actions as being racist, "such beliefs and actions may be perceived as serious or threatening . . . by some African Americans").

123. Clark et al., *supra* note 122, at 806; Bonnie Moradi & Nadia Talal Hasan, *Arab American Persons' Reported Experiences of Discrimination and Mental Health: The Mediating Role of Personal Control*, 51 J. COUNSELING PSYCHOL. 418, 418 (2004) (stating that "perceived experiences of prejudice and discrimination may . . . be related to mental health problems"); Laura A. Szalacha et al., *Perceived Discrimination and Resilience*, in RESILIENCE AND VULNERABILITY: ADAPTATION IN THE CONTEXT OF CHILDHOOD ADVERSITIES 414, 416-20 (Suniya S. Luthar ed., 2003).

124. Gabriel P. Kuperminc et al., *Perceived School Climate and Difficulties in the Social Adjustment of Middle School Students*, 1 APPLIED DEVELOPMENTAL SCI. 76, 77 (1997).

that events disruptive to any of these have a negative effect on adolescent perceptions of their schools.¹²⁵ Intent aside, perceived discrimination can result in a host of negative outcomes for adolescents—minority adolescents in particular—that in turn interfere with learning, psychological adjustment, and healthy social behavior.¹²⁶

A. Individual Outcomes: Adolescent Identity and Ethnic Identity

Healthy social behavior and adjustment is to a strong degree linked to establishing one's personal identity—coming to understand the self and one's role in the world. Developmental psychologists have long tagged adolescence as the life stage during which personal identity is strengthened.¹²⁷ It is during this time that adolescents examine their own ideas, beliefs, feelings, and emotions in order to judge how they are similar and different from others.¹²⁸ The behaviors, words, and reactions of the self and others become the objects of careful scrutiny in the search for greater self-understanding.¹²⁹ Ultimately, the adolescent's efforts to piece self-perceptions together are rewarded by their integration into a unified view of the self—a self at once both unique and also part of society.¹³⁰ Numerous social influences, including family, peers, school, and work experiences, provide the perceptual “data” for adolescents as they develop a stronger personal identity.¹³¹

More recently, psychological research has focused on the process of identity development for minority group

125. *See id.* at 76–77.

126. *See* Jean S. Phinney et al., *Ethnic Identity Development and Psychological Adjustment in Adolescence*, in *ETHNIC ISSUES IN ADOLESCENT MENTAL HEALTH* 55–56 (Arlene Rubin Stiffman & Larry E. Davis eds., 1990) (discussing effects of negative stereotypes on academic performance); Szalacha, *supra* note 123 (explaining effects of perceived discrimination on psychosocial adjustment).

127. *See generally* DAVID ELKIND, *ALL GROWN UP AND NO PLACE TO GO: TEENAGERS IN CRISIS* (rev. ed. 1998); BEVERLY DANIEL TATUM, “WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?” AND OTHER CONVERSATIONS ABOUT RACE (1997).

128. ELKIND, *supra* note 127, at 15; TATUM, *supra* note 127, at 19–20.

129. ELKIND, *supra* note 127, at 18–22.

130. *Id.*

131. *Id.* at 18–22. *See generally* ERIK H. ERIKSON, *IDENTITY: YOUTH AND CRISIS* (1968).

adolescents.¹³² As adolescents determine their place in society, they must come to an understanding of race and ethnicity.¹³³ Throughout this process, in contrast to majority group adolescents, who don't generally link race to personal identity,¹³⁴ minority group adolescents face more difficult challenges. Minority students must live in both cultures—adopting characteristics of both the majority and minority cultures.¹³⁵ Majority group students may be aware of information about the minority culture, but this information is greatly out-weighted by dominant-group information.¹³⁶ Minority group students, on the other hand, are often miseducated about their own racial group. For instance, in his revised theory of Black identity formation, psychologist William E. Cross, Jr. pointed out,

[I]t is very difficult for *any* Black American to progress through the public schools without being miseducated about the role of Africa in Western civilization and world culture in general, and the role of Blacks in the evolution of American culture and history in particular. This miseducation does not automatically lead to self-hatred, but it most certainly can distort intra-Black discourse on Black cultural-historical issues and/or Black challenges and problems.¹³⁷

For healthy developmental outcomes, minority students

132. WILLIAM E. CROSS, JR., *SHADES OF BLACK: DIVERSITY IN AFRICAN-AMERICAN IDENTITY* 3–39 (1991) [hereinafter *SHADES OF BLACK*]. See generally William E. Cross, Jr., *The Thomas and Cross Models of Psychological Nigrescence: A Review*, 5 *J. BLACK PSYCHOL.*, 13 (1978) [hereinafter *Psychological Nigrescence*]; Jean S. Phinney & Mona Devich-Navarro, *Variations in Bicultural Identification Among African American and Mexican American Adolescents*, 7 *J. RES. ON ADOLESCENCE* 3 (1997) [hereinafter *Bicultural Identification*]; Jean S. Phinney & Doreen A. Rosenthal, *Ethnic Identity in Adolescence: Process, Context, and Outcome*, in *ADOLESCENT IDENTITY FORMATION* 145–72 (Gerald R. Adams et al., eds., 1992).

133. See generally Phinney & Rosenthal, *supra* note 132.

134. See TATUM, *supra* note 127, at 93–96 (discussing the development of White identity).

135. *Id.* at 20–23. See generally Jean S. Phinney et al., *Ethnic Identity Development and Psychological Adjustment in Adolescence*, in *ETHNIC ISSUES IN ADOLESCENT MENTAL HEALTH* 53–72 (Arlene Rubin Stiffman & Larry E. Davis eds., 1990).

136. See *SHADES OF BLACK*, *supra* note 132, at 192 (stating that the American education system is “extremely monoracial and monocultural (i.e., white and Western dominated) in its emphasis”); DERRALD W. SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE* 156 (3d ed. 1999) (stating that at the earliest stages of identity development, Whites have a “limited . . . knowledge of other ethnic groups”).

137. *SHADES OF BLACK*, *supra* note 132, at 192–93.

must ultimately be able to value their own ethnic identity, as well as conceptualize themselves as part of the majority culture.¹³⁸ Identity development for minority group adolescents demands understanding and coming to terms with discrimination and its implications for their lives.¹³⁹ Thus, discrimination experienced during adolescent years may be of magnified psychological harm for minority group adolescents because it occurs at a time when adolescent stressors influence the many actions taken by adolescents during the heightened investigation of sexual, academic, and social roles common to this developmental period. Although the struggle for racial identity occurs across minority groups, the development of Black racial identity sometimes takes on more prominence than identity development in other racial groups.¹⁴⁰ In their reconceived model of racial identity, a team of researchers led by Robert M. Sellers describe the unique pattern of oppression faced by Blacks. The legacy of slavery and forced assimilation of their indigenous culture has meant that African Americans have had to graft traditional cultural practices onto practices of the dominant culture in order to redevelop their unique cultural heritage.¹⁴¹ As a result, Blacks are more concerned about issues of race than many other racial groups.¹⁴² Thus, Black adolescents are more likely to have a heightened sensitivity and awareness of differential treatment based on race.

When considered from an identity formation perspective, three possible counterproductive outcomes of the Stratford raid may occur. First, if Black students perceive they were singled

138. *Id.* at 119–25.

139. See TATUM, *supra* note 127, at 55–56 (mentioning “the personal impact of racism” and the “effects of ethnicity on [a student’s] future”); Jean S. Phinney, *Ethnic Identity in Adolescents and Adults: Review of Research*, 108 PSYCHOL. BULL. 499, 499 (1990) (discussing ethnic identity development as crucial to functioning in a potentially discriminatory environment); see also SHADES OF BLACK, *supra* note 132, at 189–223; JANET E. HELMS, BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH, AND PRACTICE (1990); Robert M. Sellers et al., *Multidimensional Model of Racial Identity: A Reconceptualization of African American Racial Identity*, 2 PERSONALITY & SOC. PSYCHOL. REV. 18, 20–21 (1998) (discussing the development of racial identity in a racist environment).

140. See TATUM, *supra* note 127, at 53 (stating that “adolescents of color are more likely to be actively engaged in an exploration of their racial or ethnic identity than are White adolescents”).

141. Sellers, *supra* note 139, at 18.

142. See *id.* at 18–19 (discussing the significance of race in the lives of African Americans); TATUM, *supra* note 127, at 52–54.

out for discriminatory treatment, the event can teach them that their group is less valued and that they, as members of that group, are less important in school. As Beverly Tatum notes, in her book *Why Are All the Black Kids Sitting Together in the Cafeteria?*, “To the extent that the targeted group internalizes the images that the dominant group reflects back to them, they may find it difficult to believe in their own ability.”¹⁴³ Positive self-efficacy, a concept attributed largely to the work of researcher Albert Bandura, can be thought of as a student’s belief that they will succeed. Bandura showed that high self-efficacy was strongly linked with student efforts and later achievements.¹⁴⁴ In the age of No Child Left Behind, when schools struggle to bolster achievement scores of low achievers, the self-efficacy of minority students is of paramount importance. When students feel that they do not belong in school, they are at increased risk for school failure and dropping out of school altogether.¹⁴⁵

The second of three possible counterproductive outcomes of the Stratford raid includes negative outcomes for majority group students at the high school. Some studies suggest that if Black students form a healthy ethnic identity, they are more likely to view majority group peers in positive ways.¹⁴⁶ The net result is a school with more positive race relations. Causing Black students to feel less accepted or singled out could work counter to positive race relations. Therefore, to the degree that positive intergroup student relationships contribute to healthy school functioning, all Stratford students have been harmed by the raid.

Third, the raid at Stratford High, if viewed by students as an act of racial discrimination, may strengthen developmentally normal divisions based on race and perpetuate the racial divide. In order to understand and strengthen their ethnic identity, minority adolescents typically go through a period of strong interaction with members of their own

143. TATUM, *supra* note 127, at 23.

144. See ALBERT BANDURA, SOCIAL LEARNING THEORY 79–81 (1977).

145. See *Missing in Action*, INDIANAPOLIS STAR, May 15, 2005, available at <http://registrar.iupui.edu/emc/ppt/star.pdf> (quoting a high school principal as saying that “[k]ids drop out because they don’t feel they belong”).

146. Jean S. Phinney et al., *Intergroup Attitudes Among Ethnic Minority Adolescents: A Causal Model*, 68 CHILD DEV., 955, 956 (1997).

group.¹⁴⁷ During this time, minority adolescents often show strong “us against them” behaviors, frequently observed in school. For example, as Tatum noted, adolescents sort themselves into ethnic groups in school cafeterias, eating only with members of their own racial or ethnic group.¹⁴⁸ Though choosing to interact strongly within their own racial group during adolescent years, however, minority students who form a healthy racial identity are eventually able to interact with majority group students.¹⁴⁹ More than likely, if considered discriminatory, the Goose Creek incident would perpetuate divisions rather than promote cohesion.

Both possibilities—the perception of being singled out and the strengthening of a racial divide—began to appear in the immediate aftermath of the raid. Critics of the police action agree that it was conducted at a time and place that involved a disproportionate number of Black students.¹⁵⁰ Regardless of intent, the action could easily be seen as discriminatory and was more likely to be perceived so by Blacks. According to Stratford student De’Nea Dykes, a Black eleventh grader, the timing of the raid was highly suspect. “If they were willing to get anybody,” said Dykes, “they would have come at a different time and searched the whole school, not just 107 kids out of 2,700.”¹⁵¹ Nathaniel Smalls, an African American ninth grader, shared Dykes’ perspective of the incident. Describing the racial overtones of the raid, Smalls said that “[s]ome [white] kids were just arriving at school. And whenever they were searching me, they were probably thinking, ‘Oh, he’s searching him, he’s got drugs,’ or something like that. I was embarrassed, mad, thinking, ‘Well, why am I being searched? If I’m getting searched, everybody should be getting searched.’”¹⁵² The student comments and the complaints filed by members of the Black community illustrate perceptions of differential valuation based on race.¹⁵³ Comments on the strengthening of

147. See TATUM, *supra* note 127, at 59–62. For a discussion of black organizational membership as part of the stages of nigrescence, see SHADES OF BLACK, *supra* note 132, 169–70; *Psychological Nigrescence*, *supra* note 132, at 15, 25.

148. TATUM, *supra* note 127, at 52.

149. *Id.*

150. Lewin, *supra* note 22.

151. *Id.*

152. NPR, *supra* note 23; see also Complaint Jury Demand, *supra* note 40.

153. See Complaint Jury Demand, *supra* note 40.

a racial divide have taken a similar turn. Jessica Chinnners, a white tenth grade student at Stratford, viewed the actions of the police that morning as racist. "I looked down the long hall," she said, "and saw the police lining up all these black students."¹⁵⁴ The immediate impression left on her and "most other students interviewed, black and white," according to one report, is that "the incident opened a racial chasm in the school."¹⁵⁵

Whether intentional or not, high-profile school events perceived as acts of discrimination might impede the development of positive relationships across the racial divide that often accompany healthy minority identity development. The "us against them" social positioning is also the foundation of student alienation, which in turn is sometimes linked to counterproductive student outcomes.

B. Individual Outcomes: Alienation

Alienation may occur when students perceive that they are marked as different from most of their peers.¹⁵⁶ Alienation may also occur when students are dealt with in racist, elitist, or stereotypic ways and are thus "forced to take on roles or . . . comply with group expectations to which they do not subscribe."¹⁵⁷ In schools, alienation can be measured by the degree to which students feel separated from important social environments, community, and school settings.¹⁵⁸ In some ways, adolescence is a time when youth commonly experience feelings of alienation as they become independent and begin to separate from the family. At the same time, social connections typically broaden during adolescence, going beyond the confines of the family to include peers and other adults that often provide models for young people.¹⁵⁹ This extended social network provides social support for adolescents in many ways.

154. Lewin, *supra* note 22.

155. *Id.*

156. Barbara M. Newman & Philip R. Newman, *Group Identity and Alienation: Giving the We Its Due*, 30 *J. Youth & Adolescence* 515, 526 (2001).

157. *Id.* at 526.

158. *Id.*

159. TERESA M. MCDEVITT & JEANNE ELLIS ORMROD, *CHILD DEVELOPMENT: EDUCATING AND WORKING WITH CHILDREN AND ADOLESCENTS* 564–65 (2d ed. 2003). See generally Robert Serpell & Giyoo Hatano, *Education, Schooling, and Literacy*, in *BASIC PROCESSES AND HUMAN DEVELOPMENT, HANDBOOK OF CROSS-CULTURAL PSYCHOLOGY*, VOL. 2, 339–76 (John W. Berry et al., eds., 2d ed. 1997).

Alienated youth, however, tend to feel cut off from supportive relationships with positive role models and the benefits that result from them.¹⁶⁰

Developmental psychologists have discussed at length the increasing risks of alienation faced by post-modern adolescents. Both Urie Bronfenbrenner and, more recently, David Elkind note that contemporary adolescents experience excessive feelings of alienation.¹⁶¹ Numerous influences, including changes in the family structure, economic demands, and structures of schools contribute to adolescent alienation.¹⁶² In his book, *All Grown Up and No Place to Go*, Elkind cites the burgeoning size of schools, increasingly large class sizes, and the overemphasis on academic achievement as some of the factors that result in what he calls “the forgotten half.”¹⁶³ According to Elkind, these are the high school students who are not bound for college, and who increasingly find no place in school.¹⁶⁴ Exacerbating this condition, Elkind notes, is the fact that many students in today’s large schools do not experience essential social connections with peers and adults.¹⁶⁵ In the absence of social connection and with increased feelings of alienation, students have fewer reasons to remain in school. As such, alienation in the postmodern context has played a central role in such problems as increased drop-out rates, increased involvement with gangs, low academic achievement, and, in some cases, endangerment of other students by alienated students.¹⁶⁶ In post hoc studies of school shootings, for

160. Daya Singh Sandhu, *Alienated Students: Counseling Strategies to Curb School Violence*, 4 PROF. SCI. COUNSELING 81, 83–84 (2000).

161. See ELKIND, *supra* note 127, at 81–107; Urie Bronfenbrenner, *The Origins of Alienation*, 231 SCI. AM. 53 (1974).

162. See Bronfenbrenner, *supra* note 161; Thomas P. Gullotta, *Early Adolescence, Alienation, and Education*, 22 THEORY INTO PRAC. 151 (2001); Reed W. Larson et al., *Changes in Adolescents’ Interpersonal Experiences: Are They Being Prepared for Adult Relationships in the Twenty-First Century?*, 12 J. RES. ON ADOLESCENCE 31 (2002).

163. ELKIND, *supra* note 127, at 170.

164. *Id.* at 170–71.

165. *Id.* at 169–71.

166. Wayne N. Welsh et al., *A Macro-Level Model of School Disorder*, 37 J. RES. CRIME & DELINQ. 248–54 (2000) [hereinafter *Macro-Level Model*]; see also Jenifer Cartland et al., *Feeling at Home in One’s School: A First Look at a New Measure*, 38 ADOLESCENCE 305 (2003) (explaining link between alienation and violence against other students); James S. Catterall, *An Intensive Group Counseling Dropout Prevention Intervention: Some Cautions on Isolating At-Risk Adolescents Within High Schools*, 24 AM. EDUC. RES. J. 521, 534 (1987) (explaining link between alienation and drop-out rates); Robert Flynn Corwyn & Brent B. Benda, *Violent Youths in Southern Public*

example, a commonality among the perpetrators of high profile violent acts, are feelings of alienation.¹⁶⁷ While not all alienated youth act out in violence, it is a risk factor linked to many negative outcomes, none of which can be viewed as desirable.¹⁶⁸

Much recent literature has also found that minority students are prone to feelings of alienation. As author and family therapist Nancy Boyd-Franklin writes, "All Black people, irrespective of their color, shade, darkness, or lightness are aware from a very early age that their blackness makes them different from mainstream White America."¹⁶⁹ Not surprisingly, given the impact of alienation, minority students, as well as those from low socioeconomic backgrounds, are more likely to drop out of school.¹⁷⁰ This same group of students is also more likely to report a lack of trust in the school system and to perceive that teachers devalue them.¹⁷¹ Strong parental involvement in schools can mitigate student alienation, but parents of minority students often face cultural barriers that result in less involvement in schools.¹⁷² Following years of perceived racial discrimination, African American parents often mistrust schools, and as a result may be less visibly involved in their children's school life.¹⁷³

Schools in America, 10 VIOLENT YOUTH 69 (2001); Will J. Jordan et al., *Exploring the Causes of Early Dropout Among Race-Ethnic and Gender Groups*, 28 YOUTH & SOC'Y 62 (1996); Christine Kerres Malecki & Michelle Kilpatrick Demaray, *Carrying a Weapon to School and Perceptions of Social Support in an Urban Middle School*, 11 J. EMOTIONAL & BEHAV. DISORDERS 169 (2003); Tamera B. Murdock, *The Social Context of Risk: Status and Motivational Predictors of Alienation in Middle School*, 91 J. EDUC. PSYCHOL. 62 (1999); Tonja R. Nansel et al., *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 J. AM. MED. ASS'N 2094, 2097-99 (2001); Sandhu, *supra* note 160, at 83-84.

167. *See generally* Sandhu, *supra* note 160.

168. *See generally* BRYAN VOSSEKUIL ET AL., U.S. SECRET SERVICE, NATIONAL THREAT ASSESSMENT CENTER, SAFE SCHOOLS INITIATIVE: AN INTERIM REPORT ON THE PREVENTION OF TARGETED VIOLENCE IN SCHOOLS (2000).

169. NANCY BOYD-FRANKLIN, BLACK FAMILIES IN THERAPY: A MULTISYSTEMS APPROACH 34 (1989).

170. Murdock, *supra* note 166, at 62.

171. *See id.*

172. *See* Mark Kiselica et al., *Counseling Children and Adolescents in Schools*, in HANDBOOK OF MULTICULTURAL COUNSELING 516, 519-21 (Joseph G. Ponterotto et al., eds., 1995).

173. *Id.* The relationship between minority families in general and the school system is also frequently strained. Sherry M. Cole et al., *School Counselor and School Psychologist: Partners in Minority Family Outreach*, 16 J. MULTICULTURAL COUNSELING & DEV. 110, 110 (1988).

For Stratford High, conclusions from the alienation research—removal from school, lack of trust in the school system, perceived devaluation from teachers, and lack of parental participation—are all too relevant with regard to the Goose Creek incident. In at least one case of removal from school, the mother of student Dejohn McKelvy, expressed “outrage” at the fact that her son was “blamed” by the school, despite being an innocent bystander.¹⁷⁴ McKelvy’s mother subsequently pulled him out of school.¹⁷⁵ Feelings of distrust toward the school system, perceived devaluation, and lack of parental participation came to the fore in comments made by the mother of Stratford student Jalania McCullough. In a joint interview with her mother, Cordelia Ned, Jalaina McCullough stated that a police officer had put a gun directly to her head.¹⁷⁶ When asked her reaction to the principal’s actions, Jalaina’s mother said, “I would ask him why to have innocent kids’s lives endangered. My daughter here could have been dead.”¹⁷⁷ When asked if she wanted to talk to the principal, Ned simply said, “No.”¹⁷⁸ Adding to her distrust, she and her daughter claimed to have attempted to meet with Principal McCrackin about the matter, but that “he never showed up.”¹⁷⁹ For another student, feelings of distrust extend beyond the raid. Samuel Ody III, an ACLU client in the settlement with Stratford High, reported that after the raid he felt that the administration was “trying to find him doing something wrong.”¹⁸⁰ Mildred Brevard, Stratford High School’s new interim principal, candidly recognized the level of distrust when she noted that her immediate job upon assuming her new position would be “trying to get the school healed” and to earn the trust of students and teachers.¹⁸¹

These signs indicate that the raid exacerbated the preexisting potential for student alienation at Stratford High.

174. Tony Bartelme, *District Says Raid at School Justified; Suit Response Partly Blames Students*, POST & COURIER, (Charleston, S.C.), Jan. 27, 2004, at A1.

175. *Id.*

176. *American Morning: Interview with Jalania McCullough, Cordelia Ned* (CNN television broadcast Nov. 10, 2003).

177. *Id.*

178. *Id.*

179. *Id.*

180. ACLU, *Profile of Samuel & Joshua Ody*, Dec. 15, 2003, available at <http://www.aclu.org/drugpolicy/gen/10677res20031215.html>.

181. Adcox, *supra* note 14.

It targeted a group already prone to feelings of alienation. The school's large size set the stage for limited social contacts and disconnection between supportive adults and students. Coercive, controlling tactics of the raid itself contributed toward student feelings of powerlessness. The school administration's actions made the differentiated status of students more pronounced, further identifying minorities as members of a marginalized group. Fallout from the raid further disaffected parents from the school, limiting the potentially helpful connections that mitigate adolescent alienation.¹⁸² If alienation results from the accumulation of experiences of disconnection and powerlessness, the raid had the potential to produce maladaptive feelings of isolation for the targeted students at Stratford High.

C. Individual Outcomes: The Impact of Trauma

Along with risks posed for identity formation and student alienation, the characteristics of the raid itself pose a third risk for students—that of stress due to traumatic events. Though we often think of stress as psychological in nature, stress can affect physical well-being as well.¹⁸³ The physical aspects of stress—what oft-cited stress researcher Hans Selye called the “stress response”—have been linked to a variety of health outcomes including hypertension and numerous diseases related to reduced immunological functioning.¹⁸⁴ For example, in a series of well-known experiments that involved inoculating quarantined people with the cold virus, Dr. Sheldon Cohen and a group of colleagues showed that there is a strong link between colds and chronic stress.¹⁸⁵

More recently, the impact of stress on physical well-being

182. See Bartelme, *supra* note 174; Letters to the Editor, *supra* note 99.

183. See generally HANS SELYE, *THE PHYSIOLOGY AND PATHOLOGY OF EXPOSURE TO STRESS* (1950).

184. *Id.* For further treatment of the physical effects of stress, see generally Sheldon Cohen & Tracy B. Herbert, *Health Psychology: Psychological Factors and Physical Disease from the Perspective of Human Psychoneuroimmunology*, 47 ANN. REV. OF PSYCHOL. 113 (1996); James P. Henry & Clarence E. Grim, *Psychosocial Mechanisms of Primary Hypertension*, 8 J. HYPERTENSION 783 (1990); Jan A. Moynihan & Robert Ader, *Psychoneuroimmunology: Animal Models of Disease*, 58 PSYCHOSOMATIC MED. 546 (1996).

185. Jane E. Brody, *A Cold Fact: High Stress Can Make You Sick*, N.Y. TIMES, May 12, 1998, at F7. See, e.g., Sheldon Cohen et al., *State and Trait Negative Affect as Predictors of Objective and Subjective Symptoms of Respiratory Viral Infections*, 68 J. PERSONALITY & SOC. PSYCHOL. 159 (1995).

was observed in the months following September 11, 2001. New York Methodist Hospital in Brooklyn reported a significant increase of heart attacks (35% more than had been previously treated) and tachyarrhythmias (40% more than had been previously treated) within the first sixty days following the destruction of the World Trade Center.¹⁸⁶ In a study following the terrorist attacks, researchers found that heart attacks are indeed linked to a “surge in stress.” In a report given at the American Heart Association’s Scientific Sessions in 2003, researcher Jianwei Feng, MD explained that “[a]nytime a person experiences psychological or emotional stress, catecholamine levels rise, which increases heart rate and blood pressure.”¹⁸⁷ In addition, risks associated with traumatic stress could have more “major implications” for those with preexisting heart disease.¹⁸⁸

Highly stressful life events have also long been known to result in psychological trauma, sometimes of long duration. Individuals already experiencing stress in their lives are more vulnerable to the effects of additional stressors.¹⁸⁹ We are familiar, for example, with the long-term debilitating effects of stressful war experiences. Some soldiers, however, are more vulnerable to the harm of stress than others. Some show no symptoms, some have mild effects, while others have chronic and severe psychological disturbances after returning home.¹⁹⁰ Psychological trauma following stressful events can include anxiety, depression, and changes in sleep or eating habits.¹⁹¹ Alternatively, it can also result in significant, long-term psychopathology.¹⁹² At its extreme, the psychological

186. Vandana Karri & C.V. R. Reddy, *Heart Attacks Rose at Brooklyn Hospital After Terrorist Attack*, *CARDIOLOGY ONLINE* (Nov. 12, 2003), http://www.cardiologyonline.com/journal_articles/Heart_attacks.htm.

187. *Id.*

188. *Id.*

189. See RICHARD BONNA, *COPING WITH STRESS IN A CHANGING WORLD* 8–9 (1996).

190. See Christopher Erbes et al., *Post-Traumatic Stress Disorder and Service Utilization in a Sample of Service Members from Iraq and Afghanistan*, 172 *MILITARY MED.* 359, 361–62 (2007).

191. Helpguide, *Emotional and Psychological Trauma: Recognizing the Symptoms and Getting Help*, http://www.helpguide.org/mental/emotional_psychological_trauma.htm.

192. See Zahava Solomon & Mario Mikulincer, *Post-Traumatic Intrusion, Avoidance, and Social Functioning: A 20-Year Longitudinal Study*, 75 *J. CONSULTING & CLINICAL PSYCHOL.* 316, 316 (2007) (stating that combat stress reaction may be a “marker for future psychopathology”).

aftermath of stressful events, what we familiarly think of as Post-traumatic Stress Disorder (PTSD), becomes debilitating, affecting most areas of life.¹⁹³ Although commonly thought of as a response to disasters or prolonged exposure to stress, many psychologists believe that what might trigger PTSD in some individuals may have no effect in others.¹⁹⁴

Three variables determine the stress impact of traumatic experiences: (1) the characteristics of the stressful event, (2) the appraisal or perception of the event, and (3) the resources available to those experiencing stress.¹⁹⁵ In stress research from the 1960s through the 1980s, much attention was paid to the effect of life events.¹⁹⁶ Since the mid-70s, stress research has clearly indicated that stressful events that are potentially damaging, undesirable, unusual or novel, and uncontrollable carry the most stress-producing potential.¹⁹⁷ For example, while many of us experience daily stress related to common life events such as being stuck in traffic or arriving at a meeting late, the stress level we experience is relatively low. Some events, however, result in higher levels of stress because the event is novel, or very threatening. Witnessing the planes crash into the World Trade Center, experiencing combat, or being in a car accident would fall into this high stress category. Equally important to the characteristics of stressful events is the *perception* of those events. When it comes to stress, "it's not the objective facts that determine whether an event is traumatic, but [an individual's] *subjective emotional experience*

193. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 424-29 (4th ed. 1994).

194. See American Psychological Association, *Mind/Body Health: The Effects of Traumatic Stress*, APA HELP CENTER, <http://apahelpcenter.org/articles/article.php?id=122> (stating that although seventy percent of adults in the U.S. have experienced at least one severe traumatic event during their lifetime, only twenty percent develop symptoms of PTSD). See generally Jonathan R. T. Davidson & Edna B. Foa, *Refining Criteria for Posttraumatic Stress Disorder*, 42 HOSP. & COMMUNITY PSYCHIATRY 259, 259 (1991); John S. March, *What Constitutes a Stressor? The "Criterion A" Issue*, in POSTTRAUMATIC STRESS DISORDER: DSM-IV AND BEYOND 37, 37-54 (Jonathan R. T. Davidson & Edna B. Foa eds., 1993); Daniel S. Pine, *Developmental Psychobiology and Response to Threats: Relevance to Trauma in Children and Adolescents*, 53 BIOLOGICAL PSYCHIATRY 796 (2003).

195. See Stevan Hobfoll, *Conservation of Resources: A New Attempt at Conceptualizing Stress*, 44 AM. PSYCHOLOGIST 513, 514-15 (1989) (discussing "event-perception viewpoints"); Leonard Pearlin, *The Sociological Study of Stress*, 30 J. HEALTH & SOC. BEHAV. 241, 241-56 (1989) (addressing stressors and stress mediators).

196. *Id.* at 243-45.

197. See *id.* at 244.

of the event.”¹⁹⁸ Furthermore, stress outcomes are affected by the resources or mediators people have that mitigate the stress process.¹⁹⁹ In his classic review of the sociological aspects of stress, Leonard Pearlin observed that social position influences vulnerability to certain stressors, pointing out the importance of looking at an individual’s background or life circumstances when evaluating the stress-inducing power of events.²⁰⁰ Social support networks, for example, provide positive experiences and a sense of predictability in otherwise stressful situations, buffering against negative outcomes.²⁰¹ Sheldon Cohen and Thomas A. Wills posit that social support both positively alters the appraisal of stress and reduces the impact of the physical processes associated with stressful events.²⁰²

The raid at Stratford High qualifies as an incident likely to result in negative stress reactions. On all three counts—the nature of the event, the appraisal or interpretation of the event, and the resources of the students involved—the event matches the criteria for high stress risk. First of all, the raid was unpredictable, swift, and had the visible elements of imminent danger. In what has been described as a “commando-style raid”,²⁰³ students witnessed police bursting out of closets with guns drawn.²⁰⁴ Handguns were directed at students, who were ordered on to their knees and handcuffed if they resisted.²⁰⁵ At that point, a drug-sniffing dog was brought in.²⁰⁶

Second, the students appraised the raid as threatening. As one student reported, “I assumed that they were trying to protect us, that it was like Columbine, that somebody got in the school that was crazy or dangerous. But then a police officer pointed a gun at me. It was really scary.”²⁰⁷ Another student

198. Helpguide, *supra* 191.

199. Pearlin, *supra* at 195, 249–52.

200. *Id.* at 241–43; see also Sheldon Cohen & Thomas Ashby Wills, *Stress, Social Support and the Buffering Hypothesis*, 98 PSYCHOL. BULL. 310, 312–19 (1985) (discussing social support as a buffer against stress).

201. Cohen & Wills, *supra* note 200, at 311.

202. *Id.* at 312–13.

203. *Drug Raid at S.C. High School*, CBS NEWS, Nov. 7, 2003, available at <http://www.cbsnews.com/stories/2003/11/07/national/main582492.shtml>.

204. Lewin, *supra* note 22.

205. *Id.*

206. Tony Bartelme, *School Raid Raises Questions About Drug War*, POST & COURIER, (Charleston, S.C.), Nov. 16, 2003, at A1.

207. Lewin, *supra* note 22.

echoed that reaction, stating that “[he] thought it was a terrorist attack or something . . . [o]r somebody had a gun in the school.”²⁰⁸ Many aspects of the raid contributed to student perceptions of imminent danger. In a complaint filed on behalf of the students following the raid, for example, it was alleged that the police dog brought in to sniff for drugs did not heel properly.²⁰⁹ Witnesses to the raid, in one of several complaints against the school, have stated that “[t]he dog frightened the students who, with their hands behind their heads or bound behind their backs, felt helpless to defend against an attack.”²¹⁰ At the time of the event, students were allegedly placed in a position (some with hands behind their heads, some with hands bound) that did not allow for self-defense. They had no immediate resources to ward off the perceived attack. Consequently, the stress value of the event was high.

Third, many of the students in the raid might have been more vulnerable to the immediate, negative effects of stress because of limited support resources. Stress-buffering resources include social supports available following a stressful event,²¹¹ thus students with strong social supports are more likely to resist the potentially negative outcomes of trauma. For students, schools are frequently a source of valuable social support for adolescents, providing opportunities for peer interaction and contact with caring adults.²¹² In the case of Stratford High, however, the school was the source of the trauma, and its ability to act as a stress buffer was not only diminished, but the school also became a source of stress itself if it was appraised as dangerous. That this may well be the case is suggested in a letter dispatched to the editor of the local newspaper following the raid. One parent wrote, “I have two teenage children. My son is in the Army, and my daughter (presently) attends Stratford. The current thought I have is that my son is in a safer environment.”²¹³ Also decreasing the school’s ability to serve as a source of support, Stratford

208. *60 Minutes II: Ambush at Goose Creek* (CBS television broadcast Feb. 4, 2004), available at <http://www.cbsnews.com/stories/2004/02/02/60II/main597488.shtml>.

209. *Class Action Lawsuit Filed on Behalf of Stratford Students*, PR NEWSWIRE, Dec. 5, 2003 [hereinafter *Class Action*].

210. *Id.*

211. Cohen & Wills, *supra* note 200, at 312–14.

212. See Larson et al., *supra* note 162, at 42, 49, 53.

213. Letters to the Editor, *supra* note 99.

officials have responded to student lawsuits by claiming that student injuries and damages incurred from the raid stem, in part, from the students' "own acts of comparative negligence, carelessness, [and] recklessness."²¹⁴ Given this official response to the matter, injured students likely will not turn to the school as a source of support.

As a final comment on the stress impact of the raid, the minority status of most of the students involved must be considered. Research has indicated that race and gender affect vulnerability to stressful events with minority members and females at greater risks for PTSD.²¹⁵ When viewed from the perspective of stress-buffering resources, minority status alone may not result in higher rates of mental illness, but minority group membership could increase vulnerability to stress if group members receive unequal social and economic resources.²¹⁶ A raid targeting minority students, as was the case in the Stratford raid, could easily be perceived by those students as another indication of the limited social support available to them in school. For those students, Stratford High is not a stress-buffering resource, but is itself a source of possible danger. The comments of one student in the raid suggest this may well be the case. Tory Richardson, a senior at Stratford High said, "It hurts. My sister still has to go through that school. I don't want her to go through the same [thing]."²¹⁷ Although the school environment could have provided positive and nurturing social supports, it is now the source of a "humiliating memory."²¹⁸

Given the issues of identity, alienation, and trauma, the possibilities of psychological harm to individual students involved in the raid are many. In order to fully understand the implications of the event, however, it is necessary to consider a broader perspective. As Urie Bronfenbrenner has postulated, the psychological development of children depends on many

214. Bartelme, *supra* note 174.

215. See Margaret Wright Berton & Sally D. Stabb, *Exposure to Violence and Post-Traumatic Stress Disorder in Urban Adolescents*, 31 *ADOLESCENCE* 489 (1996).

216. See Stanley Sue & June Y. Chu, *The Mental Health of Ethnic Minority Groups: Challenges Posed by the Supplement to the Surgeon General's Report on Mental Health*, 27 *CULTURE, MED. & PSYCHIATRY* 447, 459-62 (2003).

217. *Jackson and Marchers Decry Raid at School*, *WASH. POST*, Dec. 17, 2003, at A.03.

218. Lewin, *supra* note 22.

interacting influences, both proximal and distal.²¹⁹ In our analysis of the Goose Creek Incident, we now turn our discussion toward effects of the raid on the school at large, focusing first on the general topic of school climate followed by a more narrow focus on school safety.

D. School-Wide Outcomes: School Climate

School climate can be thought of as the overall psychological atmosphere in a school. It is dependent on many factors, such as “communication patterns, norms about what is appropriate behavior and how things should be done, role relationships and role perceptions, patterns of influence and accommodation, and rewards and sanctions.”²²⁰ Both the Social Climate and Connectedness survey and the Effective School Battery have outlined a number of different dimensions of school climate, including: student-teacher relationships, student-peer relationships, and respect for authority, in addition to students perceptions concerning school safety, clarity and fairness of rules, and student influence on school policy and activities.²²¹ In addition, school culture includes the “unwritten beliefs, values, and attitudes that characterize the style of interaction among students, teachers, and administrators.”²²² Shifting attitudes about how things work in a school, changing patterns of communication between the various players in the social structure of the school, changing trends about what is important in a certain school, and how relationship patterns work all influence a school’s culture.²²³ Thus, increasingly, it is apparent that individual schools have their own unique school climate, reflecting both unwritten attitudinal and more formal organizational aspects of schools.

The importance of positive school climate can hardly be

219. See generally Urie Bronfenbrenner, *Ecological Systems Theory*, in ENCYCLOPEDIA OF PSYCHOLOGY 129, 129–33 (Alan E. Kazdin ed., 2000).

220. Wayne N. Welsh, *The Effects of School Climate on School Disorder*, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 88, 92 (2000) [hereinafter *Effects of School Climate*].

221. See *Effects of School Climate*, *supra* note 220, at 94 (discussing the Effective School Battery); Dorian Wilson, *The Interface of School Climate and School Connectedness and Relationships with Aggression and Victimization* 74 J. SCH. HEALTH 293, 294 (2004) (discussing the Social Climate and Connectedness survey).

222. *Macro-Level Model*, *supra* note 166, at 248.

223. See generally ROBERT S. FOX ET AL., *DIAGNOSING PROFESSIONAL CLIMATE OF SCHOOLS* (1973).

overstated. Student perceptions of a positive school climate have been linked to a host of desired outcomes: a reduction in low-level violence and behavior problems in schools, higher levels of student achievement, and better student perceptions of safety.²²⁴ Strong community-school communication, for example, has been a feature of positive school climate consistently linked with violence prevention and with strengthening positive student interpersonal skills.²²⁵

Just as positive school climate is linked to numerous desirable outcomes, however, so too is a negative school climate linked to undesirable ones. The benchmark Safe School Study showed that administrative policies perceived as arbitrary, schools in which students feel powerless and alienated, and situations in which students feel victimized are all linked to increased school violence and disruption.²²⁶ “Schools with the worst discipline problems were schools where the rules were unclear, unfair, or inconsistently enforced; . . . schools where teachers and administrators . . . disagreed on responses to students misconduct; . . . and schools where students did not believe in the legitimacy of the rules.”²²⁷

What about Stratford High School? How has the raid influenced school climate there and what are the likely long-term effects on school climate? Key to answering these questions is the idea that school climate builds on the perceptions of parents, students, teachers, and administrators of a school.²²⁸ Swift, negative outcries in newspaper editorials by parents and community members following the raid suggest that the raid was viewed by many as “appalling and shameful” and that the school actions were “unprofessional.”²²⁹ When

224. See Kuperminc, *supra* note 124, at 76, 82; Gabriel P. Kuperminc et al., *School Social Climate and Individual Differences in Vulnerability to Psychopathology Among Middle School Students*, 39 J. SCH. PSYCHOL. 141, 144 (2001); Malecki & Demaray, *supra* note 166, at 176; *Effects of School Climate*, *supra* note 220, at 97–101.

225. See Boulter, *supra* note 121, at 34–38; Ronnie Casella, *Where Policy Meets the Pavement: Stages of Public Involvement in the Prevention of School Violence*, 15 INT’L J. QUALITATIVE STUD. EDUC. 349 (2002); *Effects of School Climate*, *supra* note 220, at 102–03.

226. See NAT’L INST. OF EDUC., *VIOLENT SCHOOLS – SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS* (1978) [hereinafter *SAFE SCHOOL STUDY*].

227. *Effects of School Climate*, *supra* note 220, at 93. See generally *SAFE SCHOOL STUDY*, *supra* note 226.

228. See generally *Effects of School Climate*, *supra* note 220, at 92 (stating that “the aggregated perception of individuals constitutes something called climate”).

229. Letters to the Editor, *supra* note 99.

Principal McCrackin was reassigned to another position in the district, the mixed reaction of the community further illustrated the impact of the raid on school climate.²³⁰ Particularly troublesome to Stratford's climate were reports from parents about a backlash against students responding to the raid. According to one account, "Parent LaTise Simpson said she felt students involved in lawsuits concerning the raid were being singled out by teachers."²³¹ With the aid of the American Civil Liberties Union, Simpson's son and almost two dozen other students filed a lawsuit against the school, the Goose Creek police department, and others.²³² The words of Principal McCrackin's replacement, Ms. Brevard, underscored the damage done to school climate when she said her focus would be on "trying to get the school healed," and working to develop open communication and trust with students, teachers, and families.²³³

Perhaps the most damage to school climate has fallen along a racial divide. Since *Brown*, schools in the South have struggled to maintain positive race relations within the school community. Certainly gains have been made, but race tensions exist and often lie dormant beneath the surface. Following the reassignment of Principal McCrackin, Civil Rights activist Jesse Jackson alluded to the problem by stating that McCrackin "[c]learly . . . had to go, but he's a scapegoat. It goes much deeper than the principal."²³⁴ A rekindling of racial tension was also evident within the community, as some linked the raid to earlier struggles for equality.²³⁵ "Older blacks who vividly recall segregation in the South," stated one report from a church-based protest against the raid, "acknowledge that the song [*We Shall Overcome*] does not have the same resonance with youth, but they [older Blacks][now] say incidents such as the Stratford raid . . . have a way of putting it back in perspective."²³⁶ Whether or not by design, the raid gave the

230. Seanna Adcox & Allison L. Bruce, *Reaction Mixed on Principal's Departure*, POST & COURIER, (Charleston, S.C.), Jan. 7, 2004, at B1.

231. *Id.*

232. Complaint Jury Demand, *supra* note 40; *see also Class Action*, *supra* note 209.

233. Adcox, *supra* note 14.

234. *Id.*

235. Michael Gartland, 'We Shall Overcome' Loses Resonance with Young Blacks, POST & COURIER, (Charleston, S.C.), Jan. 12, 2004, at B1.

236. *Id.*

inescapable impression to many that school official's actions were discriminatory, authoritarian, and without regard for student welfare.²³⁷ When Jackson staged rallies and protests in the vicinity of Goose Creek following the incident, hundreds of parents and members of the community joined to lament these events.²³⁸

In terms of school climate, debates over the intentions of the raid hardly matter. It is the *perceptions* of students, teachers, and parents that influence the culture of the school, and thus affect change in the school climate. At least for some in Goose Creek, Stratford High's climate is perceived as less friendly, less fair, and less safe.²³⁹ This last point—safety—deserves further attention because it was in the interest of safety that Principal McCrackin justified his actions.²⁴⁰

E. School-Wide Outcomes: School Violence

Increasing safety in high schools has long been touted as one of the most important concerns for public education.²⁴¹ School violence encompasses frequent, low-level events (e.g., incidents of bullying) as well as less frequent, high-level events (e.g., school shootings). All levels of school violence are of concern, but high-level violence has received far more attention—with the result that low-level violence and related interventions may too often be overlooked.²⁴² It is not within the purview of this analysis to articulate the types and frequency of school violence or even to judge the merits of focusing on one at the expense of the other. Rather, it is our intent to demonstrate how events like the Stratford raid are linked to increased risk for all levels of school violence and how those events can have a synergistic effect on the safety of the school at large.

Despite perceptions to the contrary, schools are in many

237. Letters to the Editor, *supra* note 99.

238. Scott, *supra* note 102.

239. Letters to the Editor, *supra* note 99; ACLU, *Profile of Le'Quan Simpson*, Dec. 15, 2003, available at <http://www.aclu.org/drugpolicy/gen/10679res20031215.html>; ACLU, *supra* note 180.

240. CNN, *supra* note 24.

241. See generally AUGUSTINA H. REYES, DISCIPLINE, ACHIEVEMENT, AND RACE: IS ZERO TOLERANCE THE ANSWER? 2 (2006); Boulter, *supra* note 121, at 27.

242. See generally Boulter, *supra* note 121, at 28 (explaining that “[t]he incidence of non-homicidal school violence is more difficult to determine because there is less of a demand to keep detailed, consistent records”).

ways safer than they were in the 1990s.²⁴³ For example, victimization rates have declined since 2003 for middle and high school students, and although the homicide rate at schools has increased slightly over the last few years, it remains lower than 1990 levels.²⁴⁴ To illustrate the relatively safe environment of schools compared to communities, consider that school homicides account for less than two percent of all youth homicides.²⁴⁵ Lacking clear data, the high profile nature of school shootings and the following media frenzy lead many to believe that violence is rampant. Although it would be irresponsible to suggest that violence is not a problem in schools, it is important to understand that the problem of school violence has been in some ways overstated. This overstatement has led to unhelpful and even counterproductive, fear-driven reactions on the part of schools.²⁴⁶ Anjali Verma, public education coordinator at the American Civil Liberties Union, has argued that extreme school policies appeared “sheerly out of fear” after the Columbine incident and that the Stratford raid provides an example of the “criminal, adult police tactics” that have resulted at schools as a result of post-Columbine overreaction.²⁴⁷

The school violence literature has resoundingly argued that coercive and extreme measures like the Stratford raid are unlikely to reduce school violence and may be counterproductive.²⁴⁸ Such measures have the potential for

243. See generally NAT'L CTR. FOR EDUC. STATS., INDICATORS OF SCHOOL CRIME AND SAFETY: 2006, available at <http://nces.ed.gov/pubs2007/2007003.pdf> [hereinafter SCHOOL CRIME AND SAFETY]; NAT'L INST. ON DRUG ABUSE, *High School and Youth Trends* (2005), available at <http://www.nida.nih.gov/Infobox/HSYouthtrends.html> (last visited on Aug. 31, 2007) (stating that illicit drug use among eighth-graders has dropped by 44% since 1996 and illicit drug use among tenth-graders has dropped by 27% since 1997).

244. SCHOOL CRIME AND SAFETY, *supra* note 243, at 10–11, 15.

245. *Id.* at 6.

246. See generally Matthew K. Burns et al., *Assessment of Violence Potential Among School Children: Beyond Profiling*, 38 PSYCHOL. SCH. 239, 240 (2001) (stating that policies such as “preventative discipline” against those identified as at risk for violence can actually “increase student anger, hostility, and aggressive behavior”).

247. Alicia Caldwell, *Columbine: A Recurring Nightmare?*, DENVER POST, Apr. 18, 2004, at A01.

248. See Boulter, *supra* note 121, at 35 (stating that “increase in punishment may, in fact . . . increase the undesirable behavior”); Douglas C. Breunlin et al., *Conflict Resolution Training as an Alternative to Suspension for Violent Behavior*, 95 J. EDUC. RES. 349, 349 (2002) (noting the down sides and risks to both security-based approaches and punishment-based approaches as deterrents against violence); Irwin Hyman et al., *Discipline in the High School: Organizational Factors and Roles for the*

giving the false impression of safety with such “quick-fix” security measures as zero-tolerance policies, metal detectors, surveillance cameras, and locker checks.²⁴⁹ Such measures may take focus and effort away from approaches already mentioned as showing consistent promise in reducing school violence, such as promoting trusting relationships with adults at school, strengthening communication among teachers, students, and administrators, creating school-community partnerships, and the teaching of pro-social and conflict-resolution skills in school. As Alfie Kohn notes, treating only the surface behaviors of aggressive students overlooks the fact that it is more than students who need fixing, adding, “When we’re preoccupied with behaviors, we’re less likely to dig deep in order to understand the reasons, values, and motives that give rise to those behaviors.”²⁵⁰

Fear-based security measures also run the risk of undermining positive in-school and school-community relationships, especially when school safety interventions that depend on those relationships are undermined. For example, although feeling safe is one aspect of positive school climate, another aspect is the degree to which students perceive schools to be warm, welcoming environments.²⁵¹ To the extent that lock-down locker searches, and the use of police, metal detectors, and other visible security measures interfere with student perceptions of warmth, they negatively impact school climate. Also, some highly visible security measures (such as the police interventions in the case of Stratford High) may inadvertently suggest possible threats to safety for some students—especially for minority students who may perceive some security measures as unfairly directed at them.²⁵²

School Psychologist, 11 SCH. PSYCHOL. REV. 409, 413 (1982) (stating that the “force” model approach has been ineffective at reducing school problems).

249. Caldwell, *supra* note 247. See generally Breunlin, *supra* note 248, at 349.

250. Alfie Kohn, *Safety from the Inside Out: Rethinking Traditional Approaches*, 83 EDUC. HORIZONS 33, 33–41 (2004). See generally Joseph C. Gagnon & Peter E. Leone, *Alternative Strategies for School Violence Prevention*, in ZERO-TOLERANCE: CAN SUSPENSION AND EXPULSION KEEP SCHOOLS SAFE?, 101–25 (Russell J. Skiba & Gil G. Noam eds., 2002); Boulter, *supra* note 121; Breunlin, *supra* note 248; Caldwell, *supra* note 247; Casella, *supra* note 225.

251. See Wilson, *supra* note 221.

252. Martin D. Ruck & Scot Wortley, *Racial and Ethnic Minority High School Students’ Perceptions of School Disciplinary Practices: A Look at Some Canadian Findings*, 31 J. YOUTH & ADOLESCENCE 185, 186 (2002); see also Casella, *supra* note 225; Wilson, *supra* note 221.

Illustrating this point is the work of Martin Ruck and Scott Wortley, which stated that “American as well as Canadian studies have found that racial and ethnic minorities believe that the police are more likely to discriminate against members of minority groups than against Whites.”²⁵³ “As student fear increases,” argues school climate researcher Wayne Welsh, “confidence in school administrators or other adults diminishes, and informal social controls against violence weaken.”²⁵⁴ The net effect of actions aimed at school safety may thus be a school that is in reality less safe.

With regard to the potential for school violence as a result of the Stratford High raid, our analysis suggests two points that have become apparent since the incident. First of all, the raid attempted a “quick-fix” solution that interfered with the positive social relationships, relationships that help prevent school violence. Students and their families have assumed postures of distrust in relation to the school.²⁵⁵ The warning signs of damage to student-teacher relationships have mushroomed as parents report fears of a teacher backlash against students following McCrackin’s reassignment.²⁵⁶ On January 6, 2004, for example, a group of concerned parents went to the local school board asking that teachers not target students who were filing complaints.²⁵⁷ Moreover, the “quick-fix” approach has since diverted untold financial resources following the raid. For instance, after McCrackin stepped down from his position, the school district continued to pay his previous salary for work on defending the school from raid-related lawsuits and also incurred the expense of hiring an interim principal.²⁵⁸ Such resources could have been more productively spent on more meaningful anti-violence social change strategies.

Second, research suggests that the Stratford raid’s coercive qualities have, in all likelihood, negatively predisposed the behavior of affected students toward violent acts. The increased perception of fear and threat, particularly on the part of minority students, has the potential to lead toward self-

253. Ruck & Wortley, *supra* note 252, at 186.

254. *Effects of School Climate*, *supra* note 220, at 89.

255. Lewin, *supra* note 22.

256. Adcox & Bruce, *supra* note 230.

257. *See id.*

258. *Id.*

protective counteractions, including carrying weapons to school, increased engagement in fights, or increased retaliation against the perceived source of the threat.²⁵⁹ Moreover, as research on violence in southern public schools suggests, the formation of loosely affiliated peer groups (such as the students in the hallway during the raid) encourages violent behavior.²⁶⁰ In situations where loosely affiliated peer groups share common threats, the power of the groups to incite violence increases.

In the case of Stratford High, the raid appeared to target a specific group of students, students who typically spent time together in a particular hallway before school.²⁶¹ These students, many of whom were already bound together by their shared minority status, now had increased reason to identify as a group. The incident is further complicated by the degree to which Black and Hispanic students in America are already more fearful for their safety at school than their White peers.²⁶² The loosely affiliated group of vulnerable students affected by the Stratford raid is highly likely to share what they view as a significant threat, increasing their perceived need for higher self-protective countermeasures. Given this scenario, the potential for student violence at Stratford is greatly increased. Community reaction in local editorials suggest this risk was recognized and of significant concern to outside observers.²⁶³ A former Stratford teacher has indicated that “[k]nowing the nature of children and how they sometimes panic in fearful situations, we can only be thankful that nothing worse took place in this raid.”²⁶⁴

Many in the Goose Creek community have concluded what research has long considered likely: that coercive overreactions to suspicious student behavior has done little to make Stratford High safer.²⁶⁵ There are long-term after-effects—damage to positive school community interactions and student-teacher

259. See DANIEL LOCKWOOD, *VIOLENCE AMONG MIDDLE SCHOOL AND HIGH SCHOOL STUDENTS: ANALYSIS AND IMPLICATIONS FOR PREVENTION*, NAT’L INST. JUST. NCJ-166363 (1997).

260. See generally Corwyn & Benda, *supra* note 166.

261. Reeves & Bruce, *supra* note 21.

262. *SCHOOL CRIME AND SAFETY*, *supra* note 243, at viii.

263. Letters to the Editor, *supra* note 99.

264. *Id.*

265. *Id.*

relationships as well as an increase in tension over the racial divide—that will likely affect Stratford and the students involved for some time to come. At bottom, the new social environment at the high school is now one in which the risks for school violence are likely higher than before the raid.

V. “IF WE HAVE TO, WE WILL”: AN EDUCATIONAL POLICY ANALYSIS

Despite its potentially controversial psychological impact, Principal McCrackin’s initial response to the police raid was one of support. The raid, he claimed, was a valuable experience, one that he would not hesitate to do again.²⁶⁶ Moreover, school officials and police characterized the action as an example of zero-tolerance.²⁶⁷ For McCrackin, zero-tolerance meant prohibiting illegal drugs at Stratford High by whatever means necessary.²⁶⁸

A. History of Zero-Tolerance Policy

McCrackin’s definition of zero tolerance, however, represents a significant departure from traditional understandings of the policy. The zero-tolerance movement began with the U.S. war on drugs of the early 1980s.²⁶⁹ Customs agencies at the state and federal level adopted a stringent no tolerance approach to drug trafficking in cases ranging from large cross-border shipments of contraband to cases involving trace drug amounts on individuals.²⁷⁰ By 1990, the policy lost support due to its rigid, heavy-handedness—resulting in unintended government seizures of private property—and was abandoned.²⁷¹ At around the time customs agencies dropped the controversial measure, schools turned to it as a potential solution to the swelling problem of school violence, particularly the school shootings of the early 1990s.²⁷²

266. *Id.*

267. *See Some Goose Creek Students, Parents Agree with Drug Raid at Stratford HS*, ASSOCIATED PRESS, Nov. 13, 2003 [hereinafter *Parents Agree*].

268. *CNN*, *supra* note 24.

269. *See* Cherry Henault, Note, *Zero-Tolerance in Schools*, 30 J.L. & EDUC. 547, 547 (2001).

270. *See id.*

271. *Id.*

272. *Id.* at 547-48.

In a move designed to address the fears and concerns of parents across the nation, Congress passed the 1994 Gun-Free School Zones Act.²⁷³ At first, the federal legislation had a very narrow focus. It required schools to enforce a one-year mandatory expulsion for any student who brought a gun to campus.²⁷⁴ Schools that failed to comply would lose federal funding.²⁷⁵ A year later, Congress broadened the Act. Legislators revised the law, changing the focus from “firearms” violations to “weapons” violations.²⁷⁶ In 1997, still more changes to the Act were forthcoming, ones that empowered schools to expel students caught with drugs or drug paraphernalia on school grounds.²⁷⁷ Although zero tolerance had a checkered history in law enforcement, it reemerged in education to address the problems of firearms, weapons, and drugs.²⁷⁸

Given the federal requirements linked to the measure, it is not surprising that by the end of the twentieth century almost all schools had adopted zero-tolerance policies.²⁷⁹ As reported by the National Center for Education Statistics, over ninety percent of all schools implemented zero-tolerance policies for firearms and weapons violations.²⁸⁰ Well over three-fourths of the nation’s schools had similar policies for drugs, alcohol, and fighting.²⁸¹

B. Effectiveness of Zero-Tolerance Policy

Since its inception, little consensus has emerged regarding zero tolerance’s effectiveness and impact.²⁸² Some data bolster

273. *Id.*

274. *Id.* at 547; see also Ronnie Casella, *Zero-Tolerance Policy in Schools: Rationale, Consequences, and Alternatives*, 105 *TCRS. C. REC.* 872, 874 (2003).

275. See Casella, *supra* note 274, at 874.

276. *Id.*

277. *Id.*

278. *Id.* at 874–75.

279. See *id.*

280. NAT’L CTR. FOR EDUC. STATS., *INDICATORS OF SCHOOL CRIME AND SAFETY: 2002*, at 135 (2003), available at <http://nces.ed.gov/pubs2003/2003009.pdf> (last visited on Aug. 31, 2007).

281. *Id.*

282. For a sampling of advocates of zero tolerance, see Ethelda Burke & Don Herbert, *Zero-Tolerance Policy: Combating Violence in Schools*, 80 *NAT’L ASS’N SECONDARY SCH. PRINCIPALS BULL.* 49, 53 (1996); Tobin McAndrews, *Zero-Tolerance Policies*, 146 *ERIC DIGEST EDO-EA-01-03* (2001); Michael E. Schreiner, *Bold Steps Build Safe Havens*, 62 *SCH. BUS. AFF.* 44, 46 (1996). Reports critical of zero tolerance

the views of supporters in their promotion of the policy as an unqualified success. A Tacoma, Washington school, for example, instituted zero tolerance to address discipline problems and, consequently, witnessed a ninety-five percent drop in violent behaviors as well as a record breaking enrollment increase linked to public perceptions of campus safety.²⁸³ A school district in New Jersey has credited zero tolerance for an almost fifty percent drop in campus drug violations.²⁸⁴ What these examples suggest to supporters is that schools that experience extreme problems require extreme solutions. From this view, zero tolerance has met the needs of schools facing the crises of guns, weapons, drugs, and fighting. The automaticity of consequences, moreover, offers safeguards for school officials against charges of arbitrariness and capriciousness.

It is the uniformity and consistency of zero tolerance that attracts many supporters. They can point to the fact that specific violations require specific consequences and disciplinary action, regardless of circumstances and student background. Zero-tolerance can equalize the punishment for all students without regard to race, ethnicity, gender, and other socio-economic factors. The privileged as well as the disadvantaged receive equal treatment under zero tolerance, and this communicates the presence of blind justice in education. By this measure, students are afforded a rational choice between compliance with school safety rules and facing immediate suspension or expulsion.

Critics cite other data that challenge the claims made by supporters. The policy's consistency and uniformity, they argue, does not reflect the disparate impact that it has on minority populations.²⁸⁵ Because many Latino and African American students come from lower socioeconomic classes, they

include A NATIONAL SUMMIT ON ZERO TOLERANCE, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES, at vi (2000); Henry A. Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 16 INT'L J. QUALITATIVE STUD. EDUC. 553, 561-62 (2003); Gale M. Morrison & Barbara D'Incau, *The Web of Zero-Tolerance: Characteristics of Students Who Are Recommended for Expulsion from School*, 20 EDUC. & TREATMENT CHILD. (1997).

283. Burke & Herbert, *supra* note 282, at 53.

284. Schreiner, *supra* note 282, at 46.

285. A NATIONAL SUMMIT ON ZERO TOLERANCE, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE POLICIES, at vi (2000).

are at a much higher risk of being penalized by zero tolerance than Caucasian students.²⁸⁶ Once the penalties, whether suspension or expulsion, are imposed, students from higher socioeconomic families can afford tutoring to compensate for the lost educational opportunities. Those from lower socioeconomic standing have a higher probability of falling behind and become more likely to drop out of school altogether.²⁸⁷ Research also suggests that inconsistency reigns in the interpretation of the policy from administrator to administrator.²⁸⁸ Interviews with thirty-six principals in an urban Midwest school district gave conflicting or uncertain responses when asked to define zero tolerance.²⁸⁹ The response that “best represented the general understanding of zero tolerance held by the majority of respondents” was as follows:

My understanding is [that] any youngster that brings a weapon to school whether it be a knife, gun or any kind of weapon that could cause bodily harm is suspended for the duration of the semester or the year or whatever. I don't know exactly what the terms are, but that's my understanding of the zero-tolerance policy.²⁹⁰

Other principals interviewed gave general rather than precise definitions of the policy, indicating that inconsistency is more likely than consistency and uniformity across districts.²⁹¹

Besides matters of consistency and uniformity of application, detractors point to the lack of discretion zero tolerance allows school authorities in assessing the severity of specific cases. Thus, the very automaticity supporters hail becomes a point of contention for critics.²⁹² Zero tolerance in education, much like its analog in law enforcement, has produced a variety of unintended consequences due to its rigid, heavy-handedness.²⁹³ Students have been suspended or expelled for cases involving cough drops, breath mints,

286. *Id.* at 12.

287. Casella, *supra* note 274, at 881.

288. Christopher Dunbar, Jr. & Francisco A. Villarruel, *Urban School Leaders and the Implementation of Zero-Tolerance Policies: An Examination of Its Implications*, 77 PEABODY J. EDUC. 82, 91 (2002).

289. *Id.* at 89–90.

290. *Id.* at 91.

291. *Id.* at 91–92.

292. See Russ Skiba & Reece Peterson, *The Dark Side of Zero-Tolerance: Can Punishment Lead to Safe Schools?*, 80 PHI DELTA KAPPAN 372 (1999).

293. *Id.* at 372–75.

manicure kits, and toy guns.²⁹⁴ Cases in which a six-year-old kissed a classmate, and a five-year-old brought a pager to a school field trip are other such incidents.²⁹⁵ As these cases suggest, principals no longer use zero-tolerance measures exclusively for situations involving clear, present, imminent danger.²⁹⁶ They indicate that use of the policy has expanded to include instances involving the appearance of danger as well.²⁹⁷ Researchers have argued that the policy's automaticity of punishment deprives administrators of the opportunity to match violation to consequence on a case by case basis, creating an environment in which schools abdicate their responsibility for modeling the procedures of justice in a democratic society.²⁹⁸ In doing so, schools have increasingly criminalized behaviors that were previously handled as a matter of school discipline and have increased their dependency on the juvenile and criminal justice system.²⁹⁹

C. Zero-Tolerance Policy at Stratford High

School officials and police described the approach to handling the drug problem at Stratford High as "an example of zero tolerance."³⁰⁰ But how, precisely, was the drug raid a zero-tolerance measure? Scholarly advocates and critics tend to agree that zero tolerance usually refers to a specific punishment (e.g., expulsion) given to a specific individual (i.e., a student who brings a gun to school) for a school violation (e.g., possession of guns on school grounds).³⁰¹ The Goose Creek incident, however, inverts the definition. McCrackin's zero-tolerance policy called for a blanket consequence (i.e., school raid; random detention of 107 students) to search for a general violation (i.e., contraband of unknown quantity or kind). Typically, violations come first and are followed by specific consequences.³⁰² McCrackin's description of the police

294. *Id.* at 375.

295. *Id.*

296. Henault, *supra* note 269, at 548–51.

297. *Id.* at 551–53 (giving examples of punishments handed out for behaviors that arguably did not endanger the safety of others).

298. *See id.* at 548–49.

299. *See* Pinard, *supra* note 57.

300. *See* Parents Agree, *supra* note 267.

301. *See* Casella, *supra* note 274, at 874–75; Henault, *supra* note 269, at 547–51.

302. *See* Henault, *supra* note 269, at 548–49.

raid as a zero-tolerance action reflects a broad, even “preemptive” understanding of zero tolerance. To him, the appearance of rule-breaking was sufficient cause for disciplinary action.³⁰³

The impact of McCrackin’s preemptive zero-tolerance policy conforms to a greater degree with the conclusions of critics and detractors rather than supporters. For one thing, the raid targeted a disproportionate number of minorities as opposed to Caucasians, a common outcome for zero-tolerance policies.³⁰⁴ Interpreted from a zero-tolerance perspective, the policy unduly disadvantaged African American students, thereby undermining the credibility of zero tolerance as neutral, fair, uniform, and consistent in its application. Second, the invertedness of McCrackin’s definition of zero tolerance (i.e., consequences before evidence of violation) adds to research findings that suggest principals do not have a clear understanding of what zero tolerance means.³⁰⁵ Historically, zero tolerance has referred to a violation resulting in a consequence rather than a consequence in search of a violation.³⁰⁶ Third, McCrackin at first supported the raid unequivocally, but then later described being “surprised and extremely concerned” at losing control over the process and outcome after the zero-tolerance raid had been set in motion.³⁰⁷ “[O]nce police are on campus,” stated McCrackin, “they are in charge.”³⁰⁸ This sense of loss of control supports research studies that have cited cases of minor infractions resulting in major penalties due to zero tolerance.³⁰⁹

Just as important, but perhaps less attended to in the literature, is the direct educational impact of zero-tolerance policies. The raid sent students a conflicting message about the rights of individuals in democratic society—that school officials and uniformed police officers can consider individuals guilty until proven innocent. When asked why no drugs were

303. *Parents Agree*, *supra* note 267.

304. See REYES, *supra* note 241, at 2 (commenting on the overrepresentation of minorities in zero-tolerance discipline categories); see also REYES, *supra* note 241, at 25 (claiming that “minority students are punished more often and more severely than majority group students”).

305. Dunbar & Villarruel, *supra* note 288.

306. See *supra* notes 297–99 and accompanying text.

307. Lewin, *supra* note 22.

308. *Id.*

309. See REYES, *supra* note 241, at 71–86.

discovered after the police investigation, McCrackin continued to assume student guilt and, despite lack of evidence, replied, "They had already gotten rid of it."³¹⁰ One police officer during the raid went so far as to state, "If you're an innocent bystander to what has transpired here today, you can thank those people that are bringing dope into this school."³¹¹ The educational impacts of such messages are not without consequence. Stratford High sixteen-year-old Joshua Ody experienced the incident and has since remarked, "I felt like I had less rights than other people that day."³¹² Joshua's brother, Samuel, also witnessed the raid and has stated that he believes authorities were "trying to find him doing something wrong" and that he was "made to feel like [a] criminal even though [he] didn't do anything."³¹³ According to an American Civil Liberties Union report, another student affected by the incident "ff[elt] betrayed by the police and worries that he will always be watched by them."³¹⁴ Students' commentary on the raid offers insight into how zero-tolerance decisions have lessons of their own.

D. Alternatives to Zero-Tolerance Policy

Several alternatives to zero tolerance have appeared in the literature that might have averted the need for a preemptive zero-tolerance policy at Stratford High. A commonly cited alternative is the "tough as necessary" approach to educational leadership.³¹⁵ In this approach, teachers, administrators, students, paraprofessionals, and parents set basic guidelines for school safety and establish consequences that take into account student backgrounds and circumstances.³¹⁶ The aim in the "tough as necessary" approach is to give greater discretion to the school community rather than remove it by way of

310. School Surveillance Videotape, *supra* note 22.

311. *Police Didn't Follow Rules on Using Drug Dogs at High School*, ASSOCIATED PRESS ST. & LOC. WIRE, Dec. 7, 2003.

312. ACLU, *South Carolina Students Were Terrorized by Police Raid with Guns and Drug Dogs*, *ACLU Lawsuit Charges*, Dec. 15, 2003, <http://www.aclu.org/DrugPolicy/DrugPolicy.cfm?ID=14576&c=19>.

313. ACLU, *supra* note 180.

314. ACLU, *supra* note 239.

315. Richard L. Curwin & Allen N. Mendler, *Zero Tolerance for Zero Tolerance*, 81 PHI DELTA KAPPAN 119, 120 (1999).

316. *Id.*

automatic procedures.³¹⁷

Another approach centers on both prevention and punishment, rather than on punishment alone.³¹⁸ Preventive strategies could include combinations of the following: tutoring programs, conflict resolution programs, character study in the curriculum, increased access to and quality of counseling, increased student government and school official relations, in-service violence prevention training for teachers, and reduction or elimination of policies that isolate potentially violent students.³¹⁹ Reformatory punishments, moreover, can involve increased access to educational opportunities such as in-school suspensions or in-school expulsions that offer tutoring and special services to high-risk students likely to drop out of school.³²⁰

Alternatives such as “tough as necessary,” prevention, and reformatory punishment might have prevented the pitfalls of McCrackin’s preemptive zero-tolerance approach to the drug raid. Creating a collaborative rule-making body has the advantage of reducing the potential and perception of race discrimination, particularly when the broader community has participated in the process.³²¹ Prevention strategies can potentially address school-wide, drug-related concerns before resorting to police intervention. And reformatory punishments would narrowly tailor the scope of disciplinary actions to those who had violated school policy without encumbering students who had not, reflecting more closely the principles of justice in a democratic society.³²²

E. Tensions Between the Zero-Tolerance Policy and Constitutional Protections

Alternatives for zero tolerance are all the more relevant in light of recent litigation that suggests the unconstitutionality of the policy.³²³ Due process rights afforded to students under

317. *Id.*

318. *See* Casella, *supra* note 274, at 884–89.

319. *See id.* at 885.

320. *See id.*

321. David M. Schimmel, *Collaborative Rule-Making and Citizenship Education: An Antidote to the Undemocratic Hidden Curriculum*, 31 *AM. SECONDARY EDUC.* 16, 16–35 (2003).

322. *Id.*

323. *See* Seal v. Morgan, 229 F.3d 567 (6th Cir. 2000); Colvin v. Lowndes County,

the Fifth and Fourteenth Amendments to the U.S. Constitution come in two forms: procedural due process and substantive due process. The extent of procedural due process, involving notice to students of infractions committed and a hearing to respond to charges, is, in theory, supposed to correspond with the severity of the punishment.³²⁴ As the degree of punishment increases, the degree of formality of notice and hearing should also increase. Substantive due process centers on whether the hearing itself is fundamentally fair. Given the automaticity of zero-tolerance procedures, student rights to notice and hearing may not prevail. Recent zero-tolerance cases such as *Lyons v. Penn Hills School District* (1999) and *Colvin v. Lowndes County* (1999) have reviewed whether zero tolerance denies students their constitutional protections.³²⁵ In each case, courts have found that schools have either exceeded their authority or substantially diminished students' due process rights.³²⁶ A recent study of these cases concludes that "school officials are not empowered to disregard students' constitutional rights to due process when administering disciplinary consequences to students."³²⁷ Courts can therefore potentially find school officials personally liable for actions within their power that have denied students their due process rights, regardless of the presence of stated or unstated zero-tolerance policies.³²⁸

Despite its short career in law enforcement, its debated effectiveness and impact in education, the availability of viable alternatives, and liability issues, zero tolerance maintains public appeal.³²⁹ It conveys the message of decisiveness; it fosters hope in a simple solution to an otherwise complex problem; and it suggests uniformity and consistency, even when the policy has a disparate impact on select groups of students. For these reasons, McCrackin's depiction of the Goose Creek incident as based in zero tolerance likely carried an air of gravitas and respectability. It is perhaps for this reason that

114 F. Supp. 2d 504 (N.D. Miss. 1999); *Lyons v. Penn Hills Sch. Dist.*, 723 A.2d 1073 (Pa. Commw. Ct. 1999).

324. Grona, *supra* note 80, at 244.

325. See *Lyons*, 723 A.2d at 1073; *Colvin*, 114 F. Supp. 2d at 504.

326. See *Lyons*, 723 A.2d at 1073; *Colvin*, 114 F. Supp. 2d at 504.

327. J. Kevin Jenkins & John Dayton, *Students, Weapons, and Due Process: An Analysis of Zero Tolerance Policies in Public Schools*, 171 EDUC. L. REP. 13, 29 (2003).

328. See *Seal*, 229 F.3d at 581 (stating that a school board could not "absolve itself of its obligation . . . by hiding behind a Zero Tolerance Policy").

329. See Casella, *supra* note 274, at 874-76.

McCrackin, when asked if he would repeat a raid of this kind, stated “if we have to, we will.”³³⁰

VI. CONCLUSION

The Goose Creek incident highlights the need to critically reexamine student rights in twenty-first century America. It has afforded us an opportunity to integrate the sometimes segregated, distinct bodies of literature produced by the fields of law, psychology, and education. But the police raid should tell us more. *Brown* taught us, among other things, that schools are reflections of society and that the experiences of the nation’s Stratford High Schools are indicators of broader trends in American society. Recent federal legislation, such as the first and second Patriot Acts, has raised concerns from civil libertarians that freedoms on a much broader scale are eroding. They decry its potential for casting all citizens as guilty until proven innocent.³³¹ The long-term detention of U.S. citizen Jose Padilla as part of the war on terror, for example, adds credence to this view. Padilla’s incarceration for over three years without being charged, without being granted a hearing, and, almost as long, without access to legal counsel affects the rights of all Americans.³³² Whether the nation accepts or rejects these current trends depends, in part, on the practices employed in our nation’s schools. Thus, the experiences of Stratford High students—those legally affected by the raid, those influenced by its psychological implications, those learning about leadership and justice through the lens of zero tolerance—should, in essence, affect us all. As Martin Luther King once put it, “Injustice anywhere is a threat to justice everywhere.”³³³ If *Brown* taught the nation that segregationist ideals were antithetical to the educational mission of schools, it would seem to follow that such police actions as the raid in

330. CNN, *supra* note 24.

331. See generally John W. Whitehead & Steven H. Aden, *Forfeiting “Enduring Freedom” for “Homeland Security”: A Constitutional Analysis of the USA Patriot Act and the Justice Department’s Anti-Terrorism Initiatives*, 51 AM. U. L. REV. 1081 (2002).

332. See Curt Anderson, *U.S. Prosecution of Padilla No Slam Dunk So Far*, ASSOCIATED PRESS, Sept. 24, 2006; Robert A. Levy, *Will They Let Padilla Go? Logic of Supreme Court’s Decisions Says That Alleged ‘Dirty Bomber’ Must Be Charged or Freed*, LEGAL TIMES, Aug. 2, 2004, at 52.

333. *Martin Luther King’s Letter from Birmingham Jail* (Apr. 16, 1963), available at http://www.stanford.edu/group/King/popular_requests/frequentdocs/birmingham.pdf.

Goose Creek would also conflict with the teaching of democratic values in a free society.