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Todd A. DeMitchell

Christine C. Rath

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ARMED AND DANGEROUS – TEACHERS? A POLICY  
RESPONSE TO SECURITY IN OUR PUBLIC SCHOOLS

*Todd A. DeMitchell\**  
*Christine C. Rath\**

Kenneth S. Trump, President of the for-profit National School Safety and Security Services, asserts, “The majority of teachers want to be armed with textbooks and computers, not guns.”<sup>1</sup>

I. INTRODUCTION

Our schools should be places of teaching and learning, safe havens free of crime violence and death.<sup>2</sup> However, once again, and again, and again (23 times from January to November 28, 2018<sup>3</sup>), we are confronted with the unthinkable in one of our Nation’s schools: students and teachers mercilessly

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\* Todd A. DeMitchell, Ed.D. is the John & H. Irene Peters Professor of Education and Professor, Justice Studies Program at the University of New Hampshire. He is a former elementary school teacher, principal (K-8), and superintendent (K-8).

\* Christine C. Rath, Ed.D. is an affiliate professor at the University. She has served as the superintendent of schools (PK-12) in Concord, NH (named New Hampshire Superintendent of the Year: 2012), and as a math and special education teacher and principal at the middle and high school levels.

1. *Arming Teachers and School Staff with Guns*, NAT’L SCH. SAFETY AND SECURITY SERVS., <http://www.schoolsecurity.org/trends/arming-teachers-and-school-staff/> (last visited Feb. 23, 2018).

2. SIMONE ROBERS ET AL., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC. INDICATORS OF SCHOOL CRIME AND SAFETY: 2011, iii (Feb. 2012), <http://www.bjs.gov/content/pub/pdf/iscs11.pdf>.

3. Evie Blad & Holly Peele, *School Shootings This Year: How Many and Where*, EDUC. WEEK (Nov. 26, 2018), <https://www.edweek.org/ew/section/multimedia/school-shootings-this-year-how-many-and-where.html?cmp=eml-enl-eu-news2&M=58655091&U=2632559&UUID=74564df4a8a30c4ecfc170453538c42f>.

gunned down in their classrooms and hallways<sup>4</sup>, the reason unknown except by the demons that possessed the killer. We long thought that our schoolhouse gate kept our school a refuge from the troubles and conflicts that swirl outside the gate. We have been stripped of that false sense of safety. We fear that our schools no longer serve as a safe harbor for our children and adults;<sup>5</sup> our waters are troubled and tossed by winds we do not control nor can harness.

Policy makers and educators have responded to the school shootings by taking a number of measures.<sup>6</sup> Following the February 14, 2018 mass murder at Marjory Stoneman Douglas High School in Florida, a number of policy changes were implemented including changes to laws in 16 states.<sup>7</sup> President Trump established the Federal Commission on School Safety “to review safety practices and make meaningful and actionable recommendations of best practices to keep students safe.”<sup>8</sup> The noted takeaways from the Commission report include to eliminate the Obama Department of Education guid-

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4. In the first eleven months of 2018, 113 people were killed or injured in school shootings. *Id.*

5. For a discussion of the impact that school shootings have on teachers, see Jennifer Interlandi, ‘How Do You Walk Back Into a Classroom Again?’ *Teaching in the Age of School Shootings*, N.Y. TIMES (Sept. 5, 2018), <https://www.nytimes.com/interactive/2018/09/05/magazine/school-shootings-teachers-support-armed.html?action=click&module=Top%20Stories&pgtype=Homepage>. The author writes:

Teachers are at the quiet center of this recurring national horror. They are victims and ad hoc emergency workers, often with close ties to both shooter and slain and with decades-long connections to the school itself. But they are also, almost by definition, anonymous public servants accustomed to placing their students’ needs above their own. And as a result, our picture of their suffering is incomplete. *Id.*

6. See Cheryl Lero Jonson, *Preventing School Shootings: The Effectiveness of Safety Measures*, 12 VICTIMS & OFFENDERS 956 (2017), <https://doi.org/10.1080/15564886.2017.1307293>.

7. Yiran Zhu, Aric Chokey & Doreen Christensen, *Tracking change since the Parkland school shooting*, SUN SENTINEL (June 11, 2018), <http://interactive.sun-sentinel.com/parkland-change-tracker/#nt=oft09a-2gp1>.

8. FEDERAL COMMISSION ON SCHOOL SAFETY, FINAL REPORT OF THE FEDERAL COMMISSION ON SCHOOL SAFETY 6 (2018), <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

ance focusing on the disparities in discipline for students of color and students with disabilities,<sup>9</sup> while recommending that schools “consider arming some specifically selected and trained school personnel (including but not limited to SROs and SSOs) as a deterrent.”<sup>10</sup>

This last policy – arming school personnel – has tended to dominate much of the recent policy debate and many of our policy leaders are paving the way for an armed faculty.<sup>11</sup> This policy raises the all important question: Is arming educators and school staff good public policy? Should teachers be armed and constitute a dangerous force to respond to weapon carrying intruders or students?

## II. VIOLENCE IN THE SCHOOLS

School violence<sup>12</sup> is a broad public health problem<sup>13</sup>, and student safety remains a “serious social, cultural, policy, educa-

9. The Commission recommends rescinding the Guidance on school discipline writing, “The Commission is deeply troubled that the Guidance, while well-intentioned, may have a paradoxically contributed to making schools less safe.” *Id.* at 72. U.S. Secretary of Education Betsy DeVos rescinded the jointly issued (with the Justice Department) 2014 Guidance on December 21, 2018, that suggested that school districts could violate civil rights laws if they disproportionately disciplined students of color. Andrew Ujifusa, *Betsy DeVos Revokes Obama Discipline Guidance Designed to Protect Students of Color*, EDUC. WEEK (Dec. 21, 2018), [http://blogs.edweek.org/edweek/campaign-k-12/2018/12/betsy\\_devos\\_revokes\\_obama\\_discipline\\_guidance\\_students\\_of\\_color\\_protect.html?cmp=eml-enl-eu-news1&M=58710816&U=2632559&UUID=74564df4a8a30c4ecfc170453538c42f](http://blogs.edweek.org/edweek/campaign-k-12/2018/12/betsy_devos_revokes_obama_discipline_guidance_students_of_color_protect.html?cmp=eml-enl-eu-news1&M=58710816&U=2632559&UUID=74564df4a8a30c4ecfc170453538c42f).

10. *Final Report*, *supra* note 8, at 106.

11. See, e.g., President Trump’s tweets on arming teachers. Dartunorro Clark, *Trump defends arming teachers, applauds NRA*, NBCNEWS (Feb. 22, 2018), <https://www.nbcnews.com/politics/politics-news/trump-defends-arming-teachers-protect-students-sicko-shooter-n850216>; *Should Teachers Carry Guns?*, EDUC. WEEK (Nov. 28, 2018), <https://www.edweek.org/ew/issues/arming-teachers.html?cmp=eml-enl-eu-news2&M=58683394&U=2632559&UUID=74564df4a8a30c4ecfc170453538c42f>.

12. The Centers for Disease Control and Prevention defines school violence as “youth violence that occurs on school property, on the way to and from school or school-sponsored events, or during a school-sponsored event.” CTRS. FOR DISEASE CONTROL & PREVENTION, UNDERSTANDING SCHOOL VIOLENCE: FACT SHEET 1 (2016), [https://www.cdc.gov/violence-prevention/pdf/school\\_violence\\_fact\\_sheet-a.pdf](https://www.cdc.gov/violence-prevention/pdf/school_violence_fact_sheet-a.pdf).

13. “School violence is a subset of youth violence, a broader public health problem. Violence is the intentional use of physical force and power, against another person, group, or

tional, and juvenile justice issue in the United States today.”<sup>14</sup> How best to protect students from school violence is an important part of the public policy debate, which has taken center stage following the killing spree in a Florida public high school, with students helping to drive the debate through their effective use of social media in organizing protests. While they accepted thoughts and prayers, the dutiful and repetitive response to school shootings, these students wanted legislative action. Five weeks after the killing at Marjory Stoneman Douglass High School, a nationwide student protest, with the hash tag #NeverAgain took center stage in the policy debate.<sup>15</sup> Teachers also responded to the push for arming teachers with the hash tag #ArmMeWith—the educators filled in the blank, such as “ArmMeWith resources and funds to help students who need it.”<sup>16</sup> Students and teachers did not wait on the sidelines of the policy debate. They joined it and in many cases used social media to shine a bright light on the debate and its consequences.

The challenge of establishing and maintaining a safe and secure learning environment is critical. School shootings impact the daily lives of many students. Students today attend school in the wake of the shootings in Columbine High School, the invasion of Sandy Hook Elementary School, and the early

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community, with the behavior likely to cause physical or psychological harm.” *Violence Prevention: About School Violence*, CTNS. FOR DISEASE CONTROL & PREVENTION (Sept. 22, 2016), <https://www.cdc.gov/violenceprevention/youthviolence/schoolviolence/>.

14. Anthony A. Peguero, Nadine M. Connell, & Jun Sung Hong, *Introduction to Special Issue: School Violence and Safety*, 16 *YOUTH VIOLENCE AND JUSTICE*, no. 2, Dec. 3, 2016, at 119.

15. Emanuella Grinberg & Nadeem Muaddi, *How the Parkland Students Pulled Off a Massive Nation Protest in Only 5 Weeks*, CNN (March 26, 2018), <https://www.cnn.com/2018/03/26/us/march-for-our-lives/index.html> (the march had three demands: “Pass a law to ban assault weapons; Stop the sale of high-capacity magazines; Implement laws that require background checks on all gun purchases, including online and at gun shows.”); Catherine Gewertz, *“March for Our Lives” Draws Massive Crowds Pushing for Tighter Gun Restrictions*, *EDUC. WEEK* (March 25, 2018), <https://www.edweek.org/ew/articles/2018/03/24/march-for-our-lives-draws-massive-crowds.html>.

16. Hannah Hudson, *Teachers Say #ArmMeWith Counselors and Resources, Not Guns*, *WE ARE TEACHERS* (Feb. 20, 2018), <https://www.wareteachers.com/armmewith/>.

morning rage at Santa Fe High School. Concerns about school shootings are part of many students' daily attendance, a reality of life at school through news of school shootings and regular active shooter response drills. "Shootings are so common that students talk in frighteningly practical terms about the location of doors and windows in their classrooms as risk factors. They calculate escape routes. And they ponder hiding spots in wide-open rooms."<sup>17</sup> The impact of school shootings is far reaching, requiring that we get the calculus right to balance the physical and emotional safety of students and faculty with the mission of schools. Even three and four-year olds are asking about school shootings, "What about me, am I going to be OK?"<sup>18</sup>

As an example of the educational impact of a school shooting, a 2016 study of student-level data from California by professors Beland and Kim provides an examination of the effect of high school shootings and asks whether deadly shootings resulted in increased dropout rates, lower test scores, and the impact on behavioral variables such as graduation, attendance, and suspension rates.<sup>19</sup> They found there was a decrease in enrollment in 9<sup>th</sup> grade following a shooting at the school.<sup>20</sup> They also found that there was a drop in test results in math and English. The effect on test results was significantly higher when there was multiple homicides rather a single homicide.<sup>21</sup> The authors conclude, "Our estimates indicate that students, on av-

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17. Audra D.S. Burch, Harmon Amy, & Gabriel, Trip, *New Reality for High Schools: Calculating the Risk of Getting Shot*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/2018/05/20/us/school-shootings-drills-risks.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news>.

18. Marva Hinton, *Early Educators Help Children Navigate Fears of Violence*, *Times of Protest*, EDUC. WEEK (March 23, 2018), [http://blogs.edweek.org/edweek/early\\_years/2018/03/early\\_educators\\_forced\\_to\\_navigate\\_fears\\_of\\_violence\\_times\\_of\\_protest.html?cmp=enl-enl-eu-news3&M=58428349&U=2632559](http://blogs.edweek.org/edweek/early_years/2018/03/early_educators_forced_to_navigate_fears_of_violence_times_of_protest.html?cmp=enl-enl-eu-news3&M=58428349&U=2632559).

19. Louis-Philippe Beland & Dongwoo Kim, *The Effect of High School Shootings on Schools and Student Performance*, 38 EDUC. EVAL. & POLICY ANALYSIS. Mar. 2016, at 113.

20. *Id.* at 120.

21. *Id.* at 121.

erage, are highly affected when there is a homicidal shooting.”<sup>22</sup> They recommend to policymakers to consider gun control, and making more resources available to students, especially in the aftermath of the shootings.<sup>23</sup> Arming teachers was not mentioned as a policy consideration.

A 2013 research summary of the impact of school security measures on students provides an excellent overview of the research and serves as a window into the concerns raised by hardening the school site.<sup>24</sup> A selection from the section on students’ perceptions of safety is germane to this commentary; they include the following:

- “Studies have shown that the presence of security guards and metal detectors in schools negatively impacts students’ perceptions of safety and even increases fear among some students.”<sup>25</sup>
- Many types of school security correspond with a significantly greater likelihood that students will be worried about crime—while none reduce feelings of worry.<sup>26</sup>
- “The use of metal detectors is negatively correlated with students’ sense of safety at school, even when taking into account the level of violence at the schools.”<sup>27</sup>

Another study found that the use of security cameras inside the building was negatively correlated with students’ per-

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22. *Id.* at 124.

23. *Id. See, e.g.,* Randy Borum, Dewey G. Cornell, William Modzeleski & Shane J. Jimerson, *What Can Be Done About School Shootings?: A Review of the Evidence*, 39 EDUC. RES. 27, 34 (2010) (recommending the PREPaRE Model of School Crisis Prevention and Intervention developed for school-based mental health professionals).

24. Nat’l Ass’n of Sch. Psychologists, *School Security Measures and Their Impact on Students*, RES. SUMMARIES (2013), [https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/School\\_Security\\_Measures\\_Impact.pdf](https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/School_Security_Measures_Impact.pdf).

25. *Id.* at 1.

26. *Id.*

27. *Id.*

ceptions of safety, equity, and support. However, outside cameras produced mixed effects. The authors speculated that students might perceive that outside facing cameras were a protection from intruders while inward facing cameras were a form of monitoring them.<sup>28</sup>

In addition, an early March 2018 poll of teachers conducted by the National Education Association found that its members oppose arming fellow teachers by a wide margin.<sup>29</sup> Nearly three-quarters of the respondents were opposed to arming teachers and other school employees and 64 percent stated that they would feel less safe knowing that they worked with armed fellow school employees.<sup>30</sup> Taken together, the current research does not provide a strong empirical base either from the perspective of students or teachers that arming school personnel to provide security and first responder actions is sound public policy. They are on the front-line of the issue.

### III. SECURITY: A FUNDAMENTAL POLICY VALUE

Security as an educational value has entered the lexicon of educational policy making. Starting in the early 1990s, we saw the rise of policies that seem to focus on security in schools<sup>31</sup>—use of magnetometers, circles of protective rings, ze-

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28. Sarah Lindstrom Johnson, Jessika H. Bottiani, Tracey E. Waasdorp, & Catherine P. Bradshaw, *Surveillance or Safekeeping? How School Security Officer and Camera Presence Influence Students' Perceptions of Safety, Equity & Support*, 63 J. OF ADOLESCENT HEALTH 1,4 (Sept. 2018), [https://www.researchgate.net/publication/327472383\\_Surveillance\\_or\\_Safekeeping\\_How\\_School\\_Security\\_Officer\\_and\\_Camera\\_Presence\\_Influence\\_Students%27\\_Perceptions\\_of\\_Safety\\_Equity\\_and\\_Support](https://www.researchgate.net/publication/327472383_Surveillance_or_Safekeeping_How_School_Security_Officer_and_Camera_Presence_Influence_Students%27_Perceptions_of_Safety_Equity_and_Support).

29. Andrew Ujifusa, *Most Teachers Oppose Arming Educators and Fear a School Shooting, Says NEA Poll*, EDUC. WEEK (March 13, 2018), [http://blogs.edweek.org/edweek/teacherbeat/2018/03/most\\_teachers\\_oppose\\_arming\\_educators\\_and\\_fear\\_a\\_school\\_shooting\\_says\\_NEA\\_poll.html?cmp=enl-enl-eu-news2&M=58413682&U=2632559](http://blogs.edweek.org/edweek/teacherbeat/2018/03/most_teachers_oppose_arming_educators_and_fear_a_school_shooting_says_NEA_poll.html?cmp=enl-enl-eu-news2&M=58413682&U=2632559).

30. *Id.*

31. See Todd A. DeMitchell, *Security: An Emerging Fundamental Value in Educational Policy Making?* 3 INT'L J. EDUC. REFORM 348 (1994); Todd A. DeMitchell, *Security Within the Schoolhouse Gate: An Emerging Fundamental Value in Educational Policy Making*, 120 ED. LAW REP. 379 (1997); Todd A. DeMitchell, *School Security: The New Fundamental Val-*



ro tolerance, anti-gang regulations, photo-identification tags, clear backpacks, drug testing of specific groups of students, and hardened school openings as well as erecting bullet-proof walls for example.<sup>32</sup> Security policies<sup>33</sup> are designed to reduce harm and death at school; they are not designed to address regular school discipline. Security, as a policy value, “strikes at the heart of what is important in the manner in which government relates to its citizens and values its citizens.”<sup>34</sup>

DeMitchell and Cobb in an exploratory study of New England school superintendents found empirical evidence of security emerging as a fundamental value in educational policy making in the early 2000s.<sup>35</sup> The respondents, without regard for location or size of their school district, supported the expenditure of their scarce funds on security for their schools.<sup>36</sup> The search for security in our schools continues into the second decade of the 21<sup>st</sup> century, a quarter of a century since it was first identified.<sup>37</sup>

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*ue in Educational Policy Making: The Columbine Effect*, 34 ELA NOTES, no. 2, Oct. 1999, at 1.

32. See Todd A. DeMitchell, Carla M. Evans, & Suzanne E. Graham, *Guns, Grizzlies, and Fences: Security Responses in Our Schools*, 344 ED. L. REP. 1, 5-6 (2017).

33. *Id.* DeMitchell, Evans, and Graham, analyzed data from *Principal Questionnaire: Schools and Staffing Survey 2011-2012 School Year* for the complete questionnaire including the questions (23a-m, at 12-13) and organized principal responses to school security measures into three loci; Securing the Premises, Police-Type Actions, and Student identification. It is interesting to note that arming teachers was not one of the potential security options from which principals could choose. It is unknown how they would rate arming teachers in relation to the 12 listed options. Securing the premise focus had the highest Yes responses (mean 44.2%) followed by police-type actions (mean 21.4%), and student identification as the least used responses (mean =20.4%). The safety item, Control access to building received the highest positive responses (88.2%) with requiring students to pass through metal detectors daily (2.7%) the lowest Yes response. *Id.* at 9.

34. *Id.* at 7.

35. Todd A. DeMitchell & Casey D. Cobb, *Policy Responses to Violence in our Schools: An Exploration of Security as a Fundamental Value*, 2003 BYU EDUC. & L. J. 459, 462-63 (2003).

36. *Id.* at 479.

37. See DeMitchell (1994), *supra* note 31, at 350 (writing, “While security as a fundamental value appears to be emerging in educational policy making, it has long been part of policy making at the national level.”).

IV. SCHOOLS AS GUN-FREE ZONES<sup>38</sup>

While school shootings are gut wrenching, schools are relatively safe and may well be the safest environment for too many children. However, even one shooting is one too many. In the 2014-2015 school year there were 91,176 public elementary and secondary schools.<sup>39</sup> But is the refrain accurate that a school as a gun-free zone creates a free fire range for criminals and disturbed individuals?<sup>40</sup> A 2014 study by the FBI on active shooters from 2000 to 2013 found that of the 160 active shooter incidents most occurred in businesses (N=73, 45.6%) followed by 39 in education, (27 pre-K-12 and 12 in higher education,) with government properties including the military as the third highest location with 10% of the shooting incidents taking place there.<sup>41</sup> The majority of the high school (12 of 14) and middle school (5 of 6) shooters were students at the school, with no students acting as the shooter in the elementary schools.<sup>42</sup> Unarmed principals, teachers and other school staff

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38. The Gun-Free Schools Act states, “Each State receiving Federal funds under any title of this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.” 20 U.S. Code § 7961(b)(1) (2012). *See also*, 18 U.S. § 922(Q)(2)(A) (2012) stating: “It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.”

39. *Fast Facts: Educational Institutions*, NAT’L CTR. FOR EDUC. STAT. (2018), <https://nces.ed.gov/fastfacts/display.asp?id=84>.

40. *See* Kevin Liptak & Noah Gray, *Trump Proposes Bonuses for Teachers Who Get Gun Training*, CNN POL. (Feb. 24, 2018), <https://www.cnn.com/2018/02/22/politics/donald-trump-gun-reforms-school-shooting/index.html> (president Trump stated, “We have to harden those schools, not soften them. A gun-free zone, to a killer, or somebody that wants to be a killer, that’s like going in for ice cream. That’s like saying, “Here I am take me.”).

41. J. PETE BLAIR & KATHERINE W. SCHWEIT, FEDERAL BUREAU OF INVESTIGATION, U.S. DEP’T OF JUSTICE, A STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013, 13 (2014), <https://www.fbi.gov/file-repository/active-shooter-study-2000-2013-1.pdf/view>.

42. *Id.* at 16.

ended the threat resolving nine of the 17 student shooter incidents.<sup>43</sup>

A recent example of an unarmed educator averting a catastrophe occurred in May of 2018, a week after the shooting in Santa Fe, Texas. A middle school science teacher, Jason Seaman, confronted a student who had entered his classroom armed with two handguns. Seaman immediately ran at the student, swatted the gun out of his hand, and tackled him, subduing him until help arrived. Seaman was shot three times but recovered from his wounds and one student was also shot.<sup>44</sup>

If a sign announces that this school is a gun-free zone and it is, as some, like President Trump following the school massacre at Parkland<sup>45</sup> have asserted, actually a magnet for killers<sup>46</sup>, should there not be greater instances of killings at schools (91,176 public schools as of 2014-15<sup>47</sup>) than in other places in society? For example, the sign outside the schools of the Argyle Independent School District in Argyle, Texas, reads, “Please be aware that the staff at Argyle ISD are armed and may use whatever force is necessary to protect our students.”<sup>48</sup> Were would-

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43. *Id.* at 11.

44. Associated Press, *Teacher Hailed as Hero for Stopping Indiana School Shooter*, N.Y. POST (May 26, 2018), <https://nypost.com/2018/05/26/teacher-who-confronted-indiana-school-shooter-lauded-as-hero/>.

45. Robert Mackey, *Trump Blames Gun-Free Zones for School Shootings, Echoing Myth Spread by NRA*, THE INTERCEPT (Feb. 22, 2018), <https://theintercept.com/2018/02/22/trump-blames-gun-free-zones-school-shootings-echoing-myth-spread-n-r/>. See also, Carolyn Phenicie, *GOP Education Priorities: 13 Stalled House and Senate Bills That Could Now Make It to President Trump's Desk*, THE 74 (Nov. 20, 2016), <https://www.the74million.org/article/13-gop-education-bills-that-may-no-longer-be-dead-on-arrival-with-trump-in-the-white-house/>.

46. For example, Colorado State Representative Carole Murray stated in a floor debate, “Most of the mass killings that we talk about have been effected in gun-free zones. So when you have a gun-free zone, it’s like saying, ‘Come and get me.’” Mark Follman, *The NRA Myth of Gun-Free Zones*, MOTHER JONES (April 1, 2013), <https://www.motherjones.com/politics/2013/04/gun-free-zones-mass-shootings/>.

47. *Fast Facts*, *supra*, note 39.

48. Evie Blad, *Educators Join New Fight to Stop Gun Bills*, 36 EDUC. WEEK, no. 23, 11 (March 1, 2017) (discussing whether educators should be armed in their schools. Shannon Watts, Founder of Moms Demand Action for Gun Sense in America states, “It shouldn’t be up to teachers to stand up to gunmen because our Congress wouldn’t stand up to the gun lobby.”).

be-killers deterred from attacking this school and instead finding another school to attack with a gun-free school sign? Schools with gun-free designations and armed resource officers were still attacked. Fort Hood and the Washington Navy Yard, which were gun-free but guarded by armed security members, were still attacked. Umpqua College in Oregon did not have signage or a policy about being a gun-free zone and allowed students with concealed carry licenses to bring firearms on campus and the students were attacked<sup>49</sup>. A lack of signage did not entice the shooter to campus and the presence of armed students did not deter him from murdering students.<sup>50</sup>

The Argyle type signs not only warn adults about the use of deadly force on school grounds, students are reminded daily that deadly force is needed at their school; they are at high risk of death in their classrooms and on their playfields. Where else do students go where notice is given that deadly force may be used in order to protect them? Is the message that we have provided a safe environment, or is the message that our environment may be so hostile that we have to warn others that deadly force is available and will be used?

## V. ANOTHER SCHOOL MASSACRE—A CALL TO ARMS!

While prayers and thoughts are offered time and time again, many demand that discussions of reasonable weapon

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49. A shooter invaded the quiet Umpqua Community College campus in picturesque, rural Roseburg Oregon in the fall of 2015 killing 10 before being killed by the police. Dana Ford & Ed Payne, *Oregon Shooting: Gunman Dead After College Rampage*, CNN (Oct. 2, 2015), <http://www.cnn.com/2015/10/01/us/oregon-college-shooting/>.

50. Amy Sherman, *Do Most Mass Shootings Happen in Gun-Free Zones?*, POLITIFACT FLA. (Feb, 21, 2017), <http://www.politifact.com/florida/statements/2017/feb/21/richard-corcoran/do-most-mass-shootings-happen-gun-free-zones/>. See Bryan R. Warnick, Sang Hyun Kim, & Shannon Robinson, *Gun Violence and the Meaning of American Schools*, 65 EDUC. THEORY 371, 373 (2015) who studied the question, “Why are schools appropriate places for violence?” The researchers did not find that schools were targets because of their gun-free zones designation. Instead they posited other factors unrelated signage attracts those bent on murder.

control be tabled for a “better,” less political time.<sup>51</sup> Simultaneously, the current policy solution of bringing more guns into the schools was advanced once again following the massacre at Florida’s Marjory Stoneman Douglas High School.<sup>52</sup> President Trump not only supports the idea of arming teachers, he suggests that they should receive a bonus for carrying a gun at school.<sup>53</sup> U.S. Secretary of Education Betsy DeVos signaled, in addition to asserting that more conversation is needed concerning “tracking and tackling mental health issues,” that arming teachers is an important issue for states to address.<sup>54</sup>

President Trump formalized his comments and meetings about making schools secure by releasing a plan establishing the Federal Commission on School Safety, in part to “Harden Our Schools.”<sup>55</sup> Another proposal from President Trump provides school personnel with “rigorous” firearms training.<sup>56</sup> The Commission, in addition to other approaches

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51. Following the Umpqua shooting President Obama lamented how easy it is for individuals to get their hands on guns. He responded, “And what’s become routine, of course, is the response of those who oppose any kind of common-sense gun legislation. Right now, I can imagine the press releases being cranked out: We need more guns, they’ll argue. Fewer gun safety laws.” President Barack Obama, Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon (Oct. 1, 2015), <https://www.whitehouse.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon>.

52. Sarah Ferguson, *Florida Shooting Reignites Debate About Arming Teachers*, FOX21NEWS (Feb. 16, 2018), <http://www.fox21news.com/news/local/arming-teachers-debate/976147941>.

53. Julie Hirschfield Davis, *Trump Suggests Teachers Get a ‘Bit of a Bonus’ to Carry Guns*, N.Y. TIMES (Feb. 22, 2018), <https://www.nytimes.com/2018/02/22/us/politics/trump-guns-school-shootings.html>.

54. Rebecca Savransky, *DeVos ‘Congress Needs to be Holding Hearings’ on School Shootings*, THE HILL (Feb. 15, 2018), <http://thehill.com/homenews/administration/374033-devos-congress-needs-to-hold-hearings-regarding-school-shootings>. However, she cited an example of a gun in school to protect students from potential grizzlies. See DeMitchell, et al., *supra* note 32, at 1-2.

55. Nat’l Sec. & Def., *Fact Sheets: President Donald J. Trump is Taking Actions to Secure Our Schools*, THE WHITE HOUSE (Mar. 12, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools/>.

56. Allie Malloy & Noah Gray, *White House proposes arming teachers, backpedals on raising age to buy guns*, CNN POL. (Mar. 12, 2018), <https://www.cnn.com/2018/03/11/politics/white-house-gun-school-safety-proposals/index.html>.

including arming educators, will consider “killing the Obama policy known as ‘Rethink School Discipline’” a program that addresses the disparity in unjustified and disparate impact of discipline meted to minority students, thus creating the school-to-prison pipeline.<sup>57</sup> Secretary DeVos told a Senate Committee in early June 2018, that the federal commission “will not focus on the role guns play in school violence.”<sup>58</sup>

## VI. ARMED AND DANGEROUS TEACHERS

Will more armed personnel lead to a safer school or will it lead to a more dangerous school?<sup>59</sup> Nebraska State Senator Mark Christensen argues that he “doesn’t want every teacher to carry a gun but believes more is better.”<sup>60</sup> He asserts, “If you

57. David Boyer, *Trump School Safety Commission to Consider Repealing Obama Rule that Eased Discipline of Students*, THE WASH. TIMES (Mar. 12, 2018), <https://www.washingtontimes.com/news/2018/mar/12/commission-mulls-repeal-rule-discipline-students/>. See also Erica L. Green, *Trumps finds Unlikely Culprit in School Shootings: Obama Discipline Policies*, N.Y. TIMES (Mar. 13, 2018), <https://www.nytimes.com/2018/03/13/us/politics/trump-school-shootings-obama-discipline-policies.html>, for a critical review of the assertion. For a discussion of the school-to-pipeline, see “Trey” M.P. Marchbanks, III, et al., *School Strictness and Disproportionate Minority Contact: Investigating Racial and Ethnic Disparities With the “School-to-Prison Pipeline,”* 16 YOUTH VIOLENCE AND JUV. JUSTICE 241 (Apr. 2018).

58. Erica L. Green, *Trump’s School Safety Commission Won’t Look at Guns, Betsy DeVos Says*, N.Y. TIMES (June 5, 2018), <https://www.nytimes.com/2018/06/05/us/politics/devos-guns-school-safety-commission.html>. For a critique of the decision that the role of firearms in school violence is a mistake, see F. Chris Curran, *School Safety Commission Misses the Mark by Ignoring Guns*, THE CONVERSATION (June 12, 2018), <http://theconversation.com/school-safety-commission-misses-the-mark-by-ignoring-guns-98115> (writing, “I similarly believe if the commission ignores one of the main contributors to school shootings — particularly one as important as the instruments used to carry out the shootings — it could discredit any other recommendations the commission makes.”).

59. See, e.g., Josh Delk, *Murphy Responds to DeVos on Arming Teachers to Prevent Gun Violence*, THE HILL (Feb. 15, 2018), <http://thehill.com/blogs/blog-briefing-room/374155-murphy-responds-to-devos-on-arming-teachers-to-prevent-gun-violence> (Murphy stating on ABC’s “This Week”, “There’s zero evidence, empirical or anecdotal, that more guns lead to less gun crime.”); John J. Donahue, Abhay Aneja, & Kyle D. Weber, *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NBER WORKING PAPER SERIES, (Jan. 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2988731](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2988731).

60. Joe Jordan, *Lawmaker’s Reloaded Plan to Arm Teachers in for a Fight*, THE GOV. WATCHDOG (Nov. 26, 2013), <https://www.watchdog.org/nebraska/lawmaker-s-reloaded-plan>

have a gunman coming into a school, I don't want kids shot up and killed until the police arrive, which could be four or five minutes. It could be 10 minutes. Ten minutes could mean a lot of dead kids."<sup>61</sup> Time is the critical factor in this assertion. Students die with each tick of the clock that an armed force is not on campus confronting the shooter.

The argument behind arming unknown numbers of educators is their quick and effective response to neutralize (kill) an active shooter. Schools need a deterrent force to quickly save lives. The common lament following the Sandy Hook shootings is that if only the principal had a weapon, she could have stopped the carnage before it happened. Louie Gohmert (R-Texas), referring to the principal, Dawn Hochsprung, of Sandy Hook Elementary School, stated, "I wish to God she had an M-4 in her office locked up so when she heard gunfire she pulls it out and she didn't have to lunge heroically with nothing in her hands but she takes him out, takes his head off before he can kill those precious kids."<sup>62</sup> Second, if criminals know that some of the adults are armed they will not venture into heavily armed schools and find softer targets elsewhere. There is scant data that shooters bent on killing innocents shop for the safest place, avoiding those places where there is an armed presence. To the question of whether armed personnel (school resource officers) reduce crime, Professor Jonson in the Department of Criminal Justice at Xavier University, writes, there is "no study assessing

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to-arm-teachers-in-for-a/article\_22619e43-4e9d-5f32-8cd8-bfb13a89f2f2.html.

61. *Id.* Police have changed their tactics from securing the perimeter and assembling a tactical team before action is taken, to a Quick Action Deployment to locate and stop the active shooter. William E. Stone & David J. Spencer, *Using Textbooks as Ballistic Shields in School Emergency Plans*, 12 INT'L J. OF POLICE SCI. & MGMT. 536, 539 (2010).

62. Alexander Bolton, *GOP Lawmaker Wishes Sandy Hook Principal was Armed with Assault Rifle*, THE HILL'S BLOG BRIEFING ROOM (Dec. 16, 2012), <http://thehill.com/blogs/blog-briefing-room/news/273113-gop-rep-gohmert-wishes-conn-school-principal-was-armed>. ("The M-4 carbine is a smaller version of the M-16 and AR-15 assault rifles. It was developed for urban combat and its semi-automatic version, which is available to civilians, can fire 45 rounds per minute.").

the preventative capabilities of an SRO with mass school shootings.”<sup>63</sup>

However, there is evidence that knowledge of armed security individuals does not deter shooters. For example, Umpqua Community College has a three-member full time police force<sup>64</sup> and the college offers a Certificate of Completion for its nine-month Police Reserve Academy, which uses instructors who are criminal justice professionals.<sup>65</sup> In the 1999, Columbine shootings the school had both an armed SRO and an unarmed security guard. Gunfire was exchanged between the SRO and one of the shooters, yet the murder continued.<sup>66</sup> The presence of armed officers on campus did not send the shooter to other targets. There was also an armed officer at Stoneman Douglas High School, yet the killer still came to the school.<sup>67</sup> If anything, it is most likely that the selection of the place to attack is related to their reason for the rampage and not whether there is a sign out front about it being a gun-free zone for students.

The facile assertion of numbers of armed faculty and staff preventing and repelling rampage attacks needs to be examined as a policy approach to a critically important problem. Support for arming educators appears to be on the rise, with school districts in California, Texas, Oklahoma, Ohio, and

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63. Cheryl Lero Jonson, *Preventing School Shootings: The Effectiveness of Safety Measures*, 12 VICTIMS & OFFENDERS 962 (2017), <https://doi.org/10.1080/15564886.2017.1307293>.

64. *Campus Security*, UMPQUA COMMUNITY COLLEGE (2019), <https://www.umpqua.edu/security>.

65. *Criminal Justice: Police Reserve Academy*, UMPQUA COMMUNITY COLLEGE (2019), <https://www.umpqua.edu/criminal-justice-career-technical/police-reserve-academy>.

66. *Id.*

67. Lori Rozsa & Mark Berman, *Armed sheriff's deputy stayed outside Florida school while mass killing took place*, THE WASH. POST (Feb. 23, 2018), [https://www.washingtonpost.com/news/post-nation/wp/2018/02/22/armed-sheriffs-deputy-stayed-outside-florida-school-while-mass-killing-took-place/?noredirect=on&utm\\_term=.73928749b536](https://www.washingtonpost.com/news/post-nation/wp/2018/02/22/armed-sheriffs-deputy-stayed-outside-florida-school-while-mass-killing-took-place/?noredirect=on&utm_term=.73928749b536).



Utah to name a few adopting such policies.<sup>68</sup> The potential proliferation in the Nation's approximate 90,000 schools presents a number of concerns that need to be addressed. In the fall of 2015, there were approximately 3.1 million public school teachers.<sup>69</sup> Using President Trump's speech before the Conservative Political Action Conference (Feb. 23, 2018) in which he called for arming of 10% to 20% of the faculty at a school,<sup>70</sup> this would result in approximately 310,000 to 620,000 guns being brought into our public schools. At your local high school with close to 100 teachers, there would be 10 to 20 armed faculty members.

The most recent call to arm teachers comes from the Marjory Stoneman Douglas Public Safety Commission (Jan. 2, 2019) initial report.<sup>71</sup> The report is a 439 page report on the shootings at Stoneman Douglas High School in Parkland, Florida. Specifically, the Report recommends a more expansive use of the Coach Aaron Feis Guardian Program, which provides for the training and a \$500 one-time stipend, so that properly trained and selected volunteers can "carry concealed firearms on campuses for self-protection and the protection of other

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68. Yanan Wang, *Across the Country, School Districts Are Quietly Arming Teachers for the Next Shooting*, THE WASH. POST (April 14, 2016), [https://www.washingtonpost.com/news/morning-mix/wp/2016/04/14/across-the-country-school-districts-are-quietly-arming-teachers-for-the-next-shooting/?utm\\_term=.d7b41d28d8fb](https://www.washingtonpost.com/news/morning-mix/wp/2016/04/14/across-the-country-school-districts-are-quietly-arming-teachers-for-the-next-shooting/?utm_term=.d7b41d28d8fb); Tawnell D. Hobbs & Leslie Brody, *Some Teachers Already Have Guns*, WALL STREET J. (Feb. 22, 2018), <https://www.wsj.com/articles/some-teachers-already-have-guns-1519347813> (citing 8 states that allow teachers in some capacity to carry guns on PK-12 school grounds).

69. *Fast Facts: Educational Institutions*, NAT'L CTR. FOR EDUC. STAT. (2018), <https://nces.ed.gov/fastfacts/display.asp?id=84>.

70. Rachel Wolfe, *Trump: 10 to 20% of Teachers Are "Very Gun Adept." Reality: Not Even Close*, VOX (Feb. 25, 2018), <https://www.vox.com/2018/2/25/17046184/arming-teachers-trump-quote-school-shooting> (asserting that there is only a fraction of the teaching force who have significant experience with guns). Further confounding the President's solution, is that approximately three-quarters of the teachers are women but only about 22% own guns and of that percentage about a quarter have bachelor's degrees as prerequisite for teaching. *Id.*

71. MARJORY STONEMAN DOUGLAS HIGH SCH. PUB. SAFETY COMM'N, INITIAL REPORT (Jan. 2, 2019), <http://www.fdle.state.fl.us/MSDHS/Meetings/2019/January/Documents/MSD-Report-Public-Version.aspx>.

staff and students.”<sup>72</sup> The Commission further recommends that the program be expanded. Currently, the implementation of the Guardian Program must be initiated by the Sheriff. The Commission recommends a modification of the law to allow a school board to vote to establish the Guardian Program “to aid in the prevention or abatement of active assailant incidents on school premises.”<sup>73</sup>

Whether it is the school or the educator who pays for the weapon and the ammunition, it will be a boon to gun manufacturers and a potential drain on the overly stretched public school budgets. When bonuses are added in, the new costs impact the public and require a deep policy discussion. The first parts of the commentary discussed the background and security responses to school shootings as well exploring the impact and efficacy of the security measures, including the proposal to arm teachers. The second part of the article offers an analysis of arming teachers as an important public policy issue. We start our analysis of arming educators with an overarching policy concern. Does the introduction of more weapons in the hands of school personnel potentially protect or potentially harm the special environment of our public schools?

## VII. SCHOOLS AS A SPECIAL PLACE

Schools are special places as identified by the U.S. Supreme Court in two landmark cases on two different legal issues. First, in the seminal student free speech case, the Court held that the First Amendment should be applied “in light of the special characteristics of the school environment.”<sup>74</sup> If the school is a special place for the First Amendment in which

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72. *Id.* at 104.

73. *Id.*

74. *Tinker v. Des Moines*, 393 U.S. 503, 506-507 (1969).

rights are constrained, should the school as a special place also in constraining Second Amendment Rights? In the second case, *District of Columbia v. Heller*, a Second Amendment case, the Supreme Court upheld, within certain restrictions, the right to possess a firearm for protection. The Supreme Court carved out schools as “sensitive” places.<sup>75</sup> The Court asserted the right of the individual to keep and bear arms should not “not be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . .”<sup>76</sup>

Clearly, bringing guns on a daily basis into the classrooms of this special place is a cause for heightened concern. Schools are not like banks, jewelry stores, or airports requiring a plethora of armed individuals. If public policy, under *Heller*, considers the sensitivity of schools for the control of weapons within its hallways and classrooms, a policy that allows guns to be brought to school for the use by school personnel should be reviewed with an exacting analysis to ascertain if the introduction of weapons into this sensitive place is harmful.

### VIII. POLICY CONCERNS ABOUT ARMING TEACHERS

We offer four policy concerns regarding arming educators. The list is not exhaustive, but it can inform the policy debate of what policies best provide security in our nation’s schools. The four concerns are: 1) guns are dangerous and the role of teachers now armed and tasked with security is altered; 2) what liability accrues and to whom with an armed faculty; 3) more armed individuals in schools increases the likelihood

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75. *D.C. v. Heller*, 554 U.S. 570, 626-27 (2008). For a discussion of the right to self-defense in *Heller* extended beyond the home, see Jordan E. Pratt, *A First Amendment-Inspired Approach to Heller’s ‘Schools’ and ‘Government Buildings’*, 92 NEV. L. REV. 537 (2014).

76. *Heller*, 554 U.S. at 626-27.

death and injury by errant gunshots; and 4) who is the person with the gun in the hallway, friend or foe?

### *A. Guns Change Classrooms*

#### *1. Guns Are Dangerous*

First guns are dangerous, in spite of the National Rifle Association's (NRA) mantra that guns don't kill people, people kill people. Guns in the hands of people kill and maim. If guns are left in their packing boxes and are never handled by people the NRA would be accurate. But they are not designed to remain in boxes unpacked and unused. Firearms are designed to be used to shoot at something or someone.

An example of the danger presented by guns is found in Texas HB 1009 the 2013 Protection of Children Act allowing guns on campus.<sup>77</sup> The Act requires that the gun be under lock and key within immediate reach if the school marshal has "regular, direct contact with students" and cannot carry a concealed handgun<sup>78</sup>, and that a school have no more than one marshal per 200 students.<sup>79</sup> The teacher/marshal can only access the gun under circumstances that "justify the use of deadly force."<sup>80</sup> Georgia and Missouri allow teachers to bring guns on school property as long as they are housed in a locked car.<sup>81</sup> These

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77. Protection of Texas Children Act, ch. 655, 2013 Tex. Gen. Laws.

78. *Id.* § 3 (Subchapter C, Chapter 37, TEX. ED. CODE § 37.0811(d)), <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.37.htm>. The law does not specify how a teacher/marshal who will go to different sections of the school shall have the gun under lock and key.

79. *Id.* § 3 (Subchapter C, Chapter 37, Education Code § 37.0811(a)(1)), <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.37.htm>.

80. *Id.* § 3 (Subchapter C, Chapter 37, Education Code § 37.0811(e)), <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.37.htm>.

81. Kim Severson, *Guns at School? If There's a Will, There Are Ways*, N.Y. TIMES (Sept. 27, 2013), <https://www.nytimes.com/2013/09/28/us/guns-at-school-if-theres-a-will-there-are-ways.html>. A Georgia teacher barricaded himself in his classroom (no students were in the classroom) and fired a shot through an exterior window. See Jacey Fortin, *Georgia*

conditions may not provide the speedy responses that proponents of arming faculty and staff assert are necessary. The policy option to these restrictions is for teachers and staff to carry a concealed weapon in their classrooms and throughout the school or to have locked gun cabinet in the classroom or office.<sup>82</sup>

## 2. *Situational Awareness: The Classroom and/or Protection*

The very essence of the work of the teacher is a relentless focus on their classroom.<sup>83</sup> The crush of the classroom absorbs their attention. A security guard, a resource officer, and a police officer focus on potential threats. Police officers refer to their situational awareness of potential threats, knowing your surroundings and being able to react to them.<sup>84</sup> “Situational awareness is a critical skill for police officers, who must make quick decisions under high-pressure, high-stakes circumstances.”<sup>85</sup> Suggestions for attaining situational awareness that may apply to armed teachers includes:

- “Are you carrying your authorized equipment?[For teachers, where is your firearm?]
- Are you scanning, looking over the area considering options for the unexpected action?

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*Teacher Fired Gun While Barricaded in Classroom, Police Say*, N.Y. TIMES (Feb. 28, 2018), <https://www.nytimes.com/2018/02/28/us/georgia-teacher-gun-shooting.html>.

82. For an example of handgun safes, see *Handgun Safes*, DICK’S SPORTING GOODS, <https://www.dickssportinggoods.com/products/handgun-safes.jsp>.

83. DAN C. LORTIE, *SCHOOLTEACHER: A SOCIOLOGICAL STUDY* 187 (U. of Chicago Press, 1975) (writing, teacher rewards and sentiments “rotate around classroom events and relationships with students: the cathexis of classroom life underlies much of what teachers feel about their work.”).

84. PoliceOne BrandFocus Staff, *How to maintain situational awareness while on duty*, POLICEONE.COM (Aug. 22, 2017), <https://www.policeone.com/police-products/apparel/articles/412911006-How-to-maintain-situational-awareness-while-on-duty/>.

85. *Id.*

- Do you have a plan ready to counter an attack, a subject running off or think of something unusual that could happen as it usually does.”<sup>86</sup>

Arming teachers and expecting them to act in a security capacity protecting the members of the school community from intruders who pose an imminent threat to the students is similar to school resource officers responsibilities. Because students, parents, faculty, and staff may rely on this protection, it must be met in a reasonable manner.

The armed teacher is still a teacher, with all of the duties and responsibilities associated with the position. If the teacher’s focus is split between the necessary and complex intense interaction with her/his students<sup>87</sup> and scanning for potential threats in the hallway or coming through the door, this requires not just weapons training but also requires educational training to refocus on what is most important—teaching or protecting as an armed faculty member. What is the focus of first responders in school security, teach or protect? “One thing is certain: Carrying around a loaded weapon and being prepared at a moment’s notice to use deadly force changes how people perceive their environment.”<sup>88</sup>

The Buckeye Firearms Foundation prepares teachers to carry and use firearms in their schools. Teachers develop a mindset to shoot after a split-second assessment.<sup>89</sup> They are

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86. Mark St. Hilaire, *Situational Awareness is Critical in Law Enforcement*, COPSALIVE.COM (March 23, 2013), <http://www.copsalive.com/situational-awareness-is-critical-in-law-enforcement/>.

87. See Charlotte Danielson’s framework for teaching. The four domains are 1) Planning and Preparation, 2) Classroom Environment, 3) Instruction, and 4) Professional Responsibilities. *The Framework*, THE DANIELSON GROUP (2017), <https://www.danielsongroup.org/framework/>.

88. John Burnett, *Does Carrying a Pistol Make You Safer?* NAT’L. PUB. RADIO (April 12, 2016), <https://www.npr.org/2016/04/12/473391286/does-carrying-a-pistol-make-you-safer>.

89. Patricia J. Williams, *Shooting Students*, 306 THE NATION, no. 4, Feb. 26, 2018, at 10.

taught to imagine their students as the target. This presents an ethical dilemma in which “[t]hey must labor from the untenable position of actively imagining their students in the crosshairs, the objects of target practice.”<sup>90</sup> Visualizing students as potential targets is fundamentally different than seeing students as the focus of instruction.

This raises the issue of whether the locked and loaded teacher’s new and additional duty is to protect the students in their classroom, which is a defensive posture, or is to leave their classroom and students to rush to any potential threat as part of an offensive force.<sup>91</sup> When they leave their classroom who protects their students?

### *B. Firearm Liability*

The second policy issue, related to the one above, is the liability associated with bringing guns into the school. A tort of liability is established when the injured party establishes that a duty is owed to the plaintiff by the defendant, the duty was breached, the breach was the proximate cause of the injury, and there was a sufficient injury.<sup>92</sup> Foreseeability of injury is an important concept and the lethality of firearms is not in dispute. Consequently, “courts have declared firearms to be dangerous and have urged owners to exercise the highest degree of care

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90. *Id.*

91. In the Sydney City School Schools, Ohio, teachers have an armed response team with biometric safes with loaded firearms and biometric safes placed strategically throughout the school. They are considered first responders—” Once an active shooter is in the building and identified, we can address that threat not within a matter of minutes but in a matter of seconds. . . And that armed response can mitigate the amount of damage an active shooter can do.” Lori Higgins, *A Warning to Potential Shooters: These Schools Are Armed*, USA TODAY (March 9, 2018), <https://www.usatoday.com/story/news/education/2018/03/09/potential-shooters-school-guns/390126002/>.

92. For a general discussion of tort liability as applied in schools, see TODD A. DEMITCHELL, *NEGLIGENCE: WHAT PRINCIPALS NEED TO KNOW ABOUT AVOIDING LIABILITY* (Rowman & Littlefield Education, 2007).

when storing and using them.”<sup>93</sup> Therefore, when handling and storing guns around students it is reasonable that there would be a heightened duty and level of care owed to minor students by teachers who, through *in loco parentis*, must take reasonable steps to reduce the likelihood of foreseeable harm. One example is the Child Safety Lock Act in 2005 designed to prevent access to firearms by children. In addition, twenty-five states “have enacted child access prevention (CAP) laws, which impose criminal liability on gun owners who negligently store their firearms if this enables a child to obtain access to a weapon and cause [harm] to himself or another.”<sup>94</sup>

The issue, for this discussion, is not gun manufacturer liability or gun seller liability; it is school and educator liability.<sup>95</sup> If a student is injured by either accessing a weapon at school, or through a shooting (see the next issue) will liability follow? The basic question is whether the educator, teacher, administrator, or school board (e.g., training and selection of armed employees ) acted as a reasonable and prudent person would under the same or similar circumstances.

As guns are brought into the school, the potential harm to students increases. Prosser and Keeton write,

The amount of care demanded by the standard of reasonable conduct must be proportional to the apparent risk. As the danger becomes greater, the actor is required to exercise a caution commensurate with it. Those who deal with instrumentalities that are known to be dangerous . . . must ex-

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93. Richard C. Ausness, *Gun Control Through Tort Law*, 68 FL. L. REV. FORUM, 89, 92 (2017), [https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1610&context=law\\_facpub](https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1610&context=law_facpub).

94. *Id.* at note 21.

95. *Bridge v. Dahl*, 108 F.2d 228, 229 (6th Cir. 1939) (writing, “utmost caution must be exercised by those in possession and control of dangerous instrumentalities such as firearms and explosives”).



ercise a great amount of care because the risk is great.<sup>96</sup>

How will guns be secured or will they? Will educators have them available for instant use by keeping them on their person or do they have to go to a secure gun location? It is foreseeable that guns in school will increase the risk of harm that was not present before the introduction of weapons in school classrooms and administrator offices. “Even locking guns up is not sufficient care to protect against accidental shootings if the guns remain easily accessible to children.”<sup>97</sup>

Another danger with bringing more guns into schools is the incidence of accidental discharge. An Associate Press article found more than 30 publically reported mishaps involving police officers and educators with guns at schools since 2014.<sup>98</sup> Guns went off by mistake, were fired by curious or unruly students, and were left unattended in bathrooms and other locations.<sup>99</sup> Emily Stewart, in a March 14, 2018 *Vox* article, discussed several recent incidents of accidental firearm discharges.<sup>100</sup> In one day two accidental discharges took place at school in Monterey, California. In one, a teacher, who is also a reserve police officer, accidentally fired his gun at the ceiling while teaching a course on gun safety slightly wounding a student with fragments from the shooting. In the second instance,

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96. W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 34 at 208. See *Wroth v. McKinney*, 373 P.2d 216, 218 (Kan. 1962) (writing, “it is well settled that one who has in his possession, or under has control, an instrumentality exceptionally dangerous in character is bound to take exceptional precautions to prevent an injury being done thereby.”).

97. Andrew J. McClurg, *Armed and Dangerous: Tort Liability for the Negligent Storage of Firearms*, 32 CONN. L. REV. 1189, 1220 (2000).

98. AP, *More than 30 mishaps from armed adults at schools*, CBS NEWS (May 6, 2018), <https://www.cbsnews.com/news/armed-adults-schools-mishaps-analysis-2018-05-06/>.

99. *Id.*

100. Emily Stewart, *2 “good guys with guns” accidently fired then in schools on Tuesday*, VOX (March 14, 2018), <https://www.vox.com/2018/3/14/17120046/school-shooting-accidental-california-virginia-gun-control>.

a police officer accidentally discharged his weapon while inside an Alexandria middle school.<sup>101</sup> The article concludes noting that these two shootings on the same day by trained individuals “highlight[s] the dangers of putting more guns in schools.”<sup>102</sup> Bringing more lethal weapons into schools increases the potential for harm and increases liability.

### *C. Increased Danger: Missed Shots and Ricochets*

Schools are crowded places. Their hallways fill several times a day with students passing from one period to another; their classrooms most often have two dozens students working at desks and tables at any point during the school day. The average US public school enrollment is 526 students.<sup>103</sup> That does not count the number of teachers, administrators, staff, and paraprofessionals who work in the school adding to the press of individuals in various parts of the school. Indeed, schools are crowded with students and adults. The discharge of a firearm either intentionally or negligently in this crowded environment runs the high risk of injuring or killing individuals. The third policy consideration is the untended but reasonably foreseeable increased risk of injury caused by more guns at school and more shots fired into these crowds.

President Trump stated following the mass shooting in Parkland, Florida, “If you had a teacher who was adept with the firearm, they could end the attack very quickly.”<sup>104</sup> The ideal-

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101. *Id.*

102. *Id.* The article also noted other accidental shootings including the Utah teacher who accidentally shot herself in the leg, shattering a toilet in the school’s restroom, a Georgia teacher who barricaded himself in his room and fired his gun into a window in his classroom, and a third grader who accidentally fired a school police officer’s gun. *Id.*

103. Maya Riser-Kositsky, Education Statistics: Facts About American Schools, EDUC. WEEK (Jan. 3, 2019), <https://www.edweek.org/ew/issues/education-statistics/index.html?cmp=eml-enl-eu-news1&M=58712887&U=2632559&UUID=74564df4a8a30c4ecfc170453538c42f>.

104. Maureen Downey, *In gunfights, trained officers have 18 percent hit rate. Yet, we*

ized picture of an armed teacher taking down an active shooter with a single well-placed shot, may well be that, an idealized picture and not a reality. In a study of 134 officer-involved shootings in Dallas, Texas found that the “hit” rate was 35% meaning six of every ten shots missed. The data was not able to account for all of the errant shots, “but at worst they struck other officers or innocent bystanders.”<sup>105</sup> Politfact found that New York Police Department officers in 2016 had a hit rate of roughly 35% while in 2017 they had an uptick in their hit ratio to 44%.<sup>106</sup> Missed shots at school will go somewhere and this somewhere will be classrooms and hallways filled with students and adults.

While most police officer shootings take place within three and one-half feet, the accuracy rate of shooting within that range averaged 9% accuracy while increasing up to 45% between four and twenty feet.<sup>107</sup> If police officers have an accuracy rate of less than 50%, will educators add to the number of errant bullets? Missed shots are not without potential injury to students and educational personnel, as well as parents and community members who happen to be visiting the school. Friendly fire still results in death and injury.<sup>108</sup> The stress that

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want to arm teachers? ATLANTA JOURNAL-CONSTITUTION (Feb. 22, 2018), <https://www.ajc.com/blog/get-schooled/gunfights-trained-officers-have-percent-hit-rate-yet-want-arm-teachers/mDBlhDtV6Na4wJVpeu58cM/>.

105. Force Science Institute, *New study on shooting accuracy: How does your agency stack up?*, POLICEONE.COM (Dec. 3, 2018), <https://www.policeone.com/police-training/articles/482251006-New-study-on-shooting-accuracy-How-does-your-agency-stack-up/>.

106. John Kruzel, *Do more than 7 in 10 police bullets miss their mark, as this gun control advocate said?* POLITIFACT (May 25, 2018), <https://www.politifact.com/truth-o-meter/statements/2018/may/25/shannon-watts/do-more-7-10-police-bullets-miss-their-mark-gun-col/>.

107. William J. Lewinsky, et al., *The Real Risks During Deadly Police Shootouts: Accuracy of the Naïve Shooter*, 17 INT’L J. OF POLICE SCI. & MGMT. 117, 118 (2015).

108. See Associated Press, *NYPD: 9 shooting victim bystanders hit by police gunfire*, FOX NEWS (Dec. 1, 2015), <https://www.foxnews.com/us/nypd-9-shooting-bystander-victims-hit-by-police-gunfire>.

the police feel in a firefight may be magnified for a teacher carrying a gun into a firefight.<sup>109</sup>

A Pennsylvania School District, the Blue Mountain School District, adopted an interesting approach that addresses this concern of stray bullets. Every classroom has a five-gallon bucket filled with river stones. “If an armed intruder attempts to gain entrance into any of our classrooms, they will face a classroom full of students armed with rocks, and they will be stoned” Superintendent David Helsel told the Pennsylvania legislative education committee.<sup>110</sup> The rocks are the right size for throwing “and they will create or cause pain, which can distract” the shooter.<sup>111</sup> The buckets are called “go buckets” and had been in use for two years.

The “go buckets” are part of the school district’s routine drills and active shooter program called ALICE. This stands for Alert, Lockdown, Inform, Counter, Evade.<sup>112</sup> The rocks are part of the counter protocol. They are considered a last-ditch effort to use as an alternative to passively hiding under the desk. It is similar to the federal guidelines of Run, Hide, Fight in the case of an active shooter. The Department of Homeland Security recommends under Fight:

- “As a last resort and only when your life is imminent danger
- Attempt to incapacitate the shooter

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109. See Rachel Nuwer, *Stress Training for Cops’ Brains Could Reduce Suspect Shootings*, SCIENTIFIC AMERICAN (Sept. 20, 2016), <https://www.scientificamerican.com/article/stress-training-for-cops-brains-could-reduce-suspect-shootings/>.

110. Eli Rosenberg, *This School District’s Plan to Stop Shooters: Arming Students with a Bucket of Rocks*, THE WASH. POST (March 24, 2018), [https://www.washingtonpost.com/news/grade-point/wp/2018/03/23/this-school-districts-plan-to-stop-shooters-a-bucket-of-rocks-for-students-to-throw-at-them/?noredirect=on&utm\\_term=.ce6c561abf51](https://www.washingtonpost.com/news/grade-point/wp/2018/03/23/this-school-districts-plan-to-stop-shooters-a-bucket-of-rocks-for-students-to-throw-at-them/?noredirect=on&utm_term=.ce6c561abf51).

111. *Id.*

112. *ALICE Training K-12 Program*, ALICE TRAINING INST., <https://www.alicetraining.com/our-program/alice-training/k12-education/> (last visited June 9, 2018).

- Act with physical aggression and throw items at the active shooter.”<sup>113</sup>

#### *D. The Good Guy with a Gun?*

And fourth, will the good guy with the gun be easily distinguished from the bad guy with a gun? Kevin Quinn, a spokesperson for the National Association of School Resource Officers, stated that while educators may recognize a teacher with a weapon defending students the police may not thus wasting precious time confronting the armed individual.<sup>114</sup> An example of mistaken identity occurred when Arkansas State Senator Jeremy Hutchinson, who was interested in arming school personnel, shot a person playing a teacher, a good guy with a gun shooting at bad guy in a simulation. The headline may well have been a good guy with a gun shoots another good guy with a gun, bad guy escapes. Senator Hutchinson stated, “I learned how little I know about school safety.”<sup>115</sup>

Increasing the number of people carrying a gun in the hallway or classroom crowded with frightened students most likely does not increase safety but, rather, it may result in a tragic outcome. In order for the “good guy” with a gun to take down the “bad guy” with a gun, there must be a clear understanding of who is good and who is bad. Both will be carrying guns in an already cha-

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113. U.S. Dep’t of Homeland Sec., *Active Shooter Pocket Card*, [https://www.dhs.gov/sites/default/files/publications/active\\_shooter\\_pocket\\_card\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/active_shooter_pocket_card_508.pdf) (last visited June 9, 2018).

114. Andrew Ujifusa, *Debate Stirred on Arming Teachers, School Staff*, EDUC. WEEK (Dec. 19, 2012), <https://www.edweek.org/ew/articles/2012/12/19/15newtown-arms.h32.html>.

115. Josh Voorhees, *Lawmaker Who Wants to Arm Teachers Almost Learned Why That May Not Be a Good Idea*, SLATE (Aug. 29, 2013), <http://www.slate.com/news-and-politics/2018/03/bernie-style-progressives-our-revolution-pick-a-texas-sized-fight-with-the-democratic-establishment.html>.

otic environment.<sup>116</sup> The incidents of blue-on-blue shootings (police officer shooting of another police officer), while not common, do occur. Police officers and armed teachers with guns drawn in a tense situation may exacerbate the circumstances that give rise to friendly fire. Police officers focus on the gun or face of the person with a gun.<sup>117</sup> A school identification lanyard may not be visible and recognizable to the police officer who is used to looking for a badge to identify a “friend.” Bringing more guns into schools may make for good headlines and sound bites but does not for better secure our schools or enhance the safety of our students, faculty, and staff. More guns may lead to more mistakes, and these mistakes can be deadly.

## IX. CONCLUSION

The easy nostrum of a school locked down and teachers armed may make adults feel good and give politicians the opportunity to congratulate themselves on a problem solved. Rather than finding those difficult approaches that create a climate and culture of trust, fairness, and acceptance, arming teachers may create a false hope and a vain promise of establishing a safe school. Schools must conduct drills, create procedures and exercise reasonable safety precautions to protect their students. This is necessary but it is not sufficient. This hard

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116. One business that trains teachers to carry firearms at school, Shield Solutions, offers a 28-hour program. One aspect of the training is for the armed teachers to pull a neon yellow sash from the belts and wear them around their necks to “identify themselves as ‘good guys’ to law enforcement.” Jackie DelPilar & Kate Murphy, *Teachers train to pack guns with lesson plans*, USA TODAY (Aug. 19, 2014), <https://www.usatoday.com/story/news/nation/2014/08/19/teachers-lesson-plans-guns/14244113/>.

117. David Blake, *8 Ways to prevent blue-on-blue shootings*, POLICEONE.COM (Jan. 5, 2018), <https://www.policeone.com/Officer-Safety/articles/468651006-8-ways-to-prevent-blue-on-blue-shootings/>.

path of building the capacity to care in our schools is, in the long run, what enables students to feel safe, secure, wanted, and valued. This is a task for schools and their communities. Superintendent Dale Marsden of the San Bernardino City Unified School District (CA) with its 53,000 students had two armed intruders on his school campuses in five years. He states, “We want to make sure our schools are safe places, and that means emotionally safe too.”<sup>118</sup>

Simply stated, a policy of bringing more guns on campus to arm faculty and staff is not the answer to violence in our schools. Building safe schools involves both guarding the site to the outside and strengthening bonds and relationships inside the school<sup>119</sup> — guns do not build relationships, people build relationships. When the bell rings at the end of the school day, it is the people inside the school and their relationships that matter most and the ones most likely to make the most difference in establishing and maintaining a safe environment for all.

Arming teachers is not good public policy. Teachers are educators, not security guards or resource officers; their responsibilities are instructional, and not providing armed security services. Teachers bring care, concern, and professionalism to their classrooms, not weapons. A gun owning psychologist may well have captured for many teachers the disconnect between having a security responsibility and an instructional responsibility. He writes, “My students trust me, and they are entrusted to me to educate them and to care for them and to help them grow. Any attempt to merge this duty with the attitude of being an armed enforcer in their midst is simply not possible.”<sup>120</sup>

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118. Catherine Gewertz, *Making Schools an Oasis of Calm and Safety in San Bernardino, Calif.*, EDUC. WEEK (Feb. 21, 2018), <https://leaders.edweek.org/profile/dale-marsden-superintendent-school-climate-safety/?cmp=eml-enl-eu-news1&M=58395833&U=2632559>.

119. For a discussion of a positive benefit from building relationships in schools, see Eric Madfis, *Averting School Rampage: Student Intervention Amid a Persistent Code of Silence*, 12 YOUTH VIOLENCE AND JUV. JUSTICE 229 (2014).

120. Joshua Grubbs, *Why I Won't Bring My Gun Into My Classroom*, CITYLAB (Feb.

**Postscript:**

A safe school environment, one in which guns do not invade the classrooms, hallways and walkways, is more than just stopping rampage shootings. Broward County Superintendent Robert Runcie and 22 educational leaders wrote on gun violence following the Parkland tragedy.

Gun violence is not merely about mass shootings. Guns infect our schools in far more frequent and insidious ways. Every day, children in high-crime communities enter our classrooms traumatized by gun violence and tragic loss. This trauma hampers their learning and engagement in school. Educators confiscate guns in schools all too regularly. Many of us only glimpse the trauma of gun violence when mass shootings occur. But the seldom-discussed invisible impact is that thousands of students experience gun violence daily in urban, suburban, and rural America.<sup>121</sup>

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23, 2018), <https://www.citylab.com/life/2018/02/why-i-wont-bring-my-gun-into-my-classroom/554129/>.

121. Robert Runcie et al., *'We Must Not Stand Idle': A Call to Action on Gun Control from Educational Leaders*, EDUC. WEEK (March 1, 2018), <https://www.edweek.org/ew/articles/2018/03/01/we-must-not-stand-idle-a-call.html?cmp=eml-enl-eu-news2&M=58400868&U=2632559>.