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# Back to School: Technology, School Safety and the Disappearing Fourth Amendment

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## I. INTRODUCTION

American students are unlikely to be victims of violent crimes at school. In fact, during the 1998-1999 school year, students faced a one in one million chance of dying on campus.<sup>1</sup> However, highly publicized tragedies such as those in Pearl, Mississippi; West Paducah, Kentucky; Jonesboro, Arkansas; Littleton, Colorado; and Santee, California have captured America's attention and driven public policy—placing incredible pressure on legislators, school administrators and local law enforcement to respond decisively. And respond they have: from the introduction of sweeping zero-tolerance policies to the development of intricate safety plans consisting of evacuation routes and SWAT maneuvers to the installation of metal detectors, entry control devices and security cameras, American school officials have altered the ways in which they go about the business of protecting their students.<sup>2</sup>

However, while school districts across the nation have spent hundreds of thousands of dollars on safety and safety technologies, there is very little data about the relative effectiveness of these measures.<sup>3</sup> While concern for student safety is certainly warranted, sound public policy should be based upon evidence

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of the efficacy and cost-effectiveness of these technologies, as well as their congruity with basic constitutional principles.<sup>4</sup>

In recognition of the need for empirical study in this area, in 1999 the National Institute of Justice made an award to the Institute for Forensic Imaging (IFI) to develop a “snapshot” of current school safety technology use and perceived effectiveness.<sup>5</sup> The study included forty-one school safety administrators from fifteen states. In addition to demographic information (such as the size of the student population, the number of schools in the district, and whether the schools were urban, suburban, or rural), school administrators were queried about technology already in place and perceptions of its effectiveness, the level of school violence, and plans for future technology acquisition, among other things.<sup>6</sup> (See Tables.) While the relatively small sample of forty-one school districts may limit the generalizability of the study’s results, it provides a fascinating glimpse of what we might call the current “security climate” in American public schools.

## II. SECURITY IN THE SCHOOLS

Despite the national concern about school violence generally, most who responded to the study believed that their own faculties and student bodies felt and were safe at school. (See Table 3.) Nevertheless, significant majorities reported plans to acquire or upgrade safety technology.<sup>7</sup>

Currently, the five most commonly used technologies in use in the schools are cameras, recording systems, weapon detection systems, duress alarms, and entry control devices (See Table 4.)

- **Cameras.** Ninety percent of districts questioned reported the use of security cameras in their schools, with the most common being a closed-circuit TV system. Most districts with cameras fed signals to monitors in real time. Eighty-five percent used both interior and exterior cameras.
- **Recording Systems.** Safety administrators were asked if they had some form of recording capability. If they did, they were asked which type of system they used: VCRs, multiplexers, time-lapse recorders, event recorders, digital recorders, and/or continuous monitoring.<sup>8</sup> Of the eighty-seven percent that reported having recording systems, the majority used VCRs, multiplexers, time-lapse recorders, and continuous monitoring.
- **Weapons Detection Systems.** These systems include various forms of metal detectors—wands, walk-through metal detectors, and x-ray baggage scanners. They were far less common than cameras and recorders, although fifty-five percent of the schools reported having them in some form. Hand-held wands were by far the most common, although nearly a quarter of the schools in the

survey had the more expensive walk-through detectors.

- ***Duress Alarms.*** These are electronic devices that allow an individual to summon help. They may be wall-mounted or carried by school personnel. Most commonly, they are placed in areas prone to problems: cafeterias, administration offices, teachers' lounges, and sometimes classrooms. The use of these systems was far less common than cameras, recorders, or weapon detectors.
- ***Entry Control Devices.*** These may be turnstiles, scanner cards, passwords/pincodes, or biometric identifiers. As a category, entry control devices were least common among responding schools, although school security administrators expressed considerable interest in biometric identifiers. Currently, the expense of such system is a barrier to their acquisition and use; should the cost decline and courts approve, their use will undoubtedly increase substantially.

The substantial differences between these security devices make it impossible to generalize about their use; indeed, there are a number of legal and policy questions attending the acquisition and use of each of these (and other) technologies. Whether they are the most cost-effective approach to student safety is certainly an open question, as we discuss below. In addition, use of certain of these security devices may infringe upon students' constitutional rights, although, as the following section demonstrates, case law over the past several years has substantially attenuated those rights.

### III. CONSTITUTIONAL PROTECTIONS AND THE SCHOOLS

Despite the Supreme Court's famous dictum in *Tinker v. Des Moines Independent Community School District*<sup>9</sup> to the effect that schoolchildren do not shed their constitutional rights at the schoolhouse gate, case law since *Tinker* suggests otherwise. The Court has steadily diminished the reach of schoolchildren's rights, while increasing the power and authority of school officials. As Dorianne Beyer has noted, the cases "suggest that the delicate balance between students, rights and school safety procedures is strongly tilting towards the rights of school [sic] authorities to proactively isolate and reduce perceived causes of school violence."<sup>10</sup>

*Tinker* implicated First Amendment free speech rights. The leading case on students' Fourth Amendment rights is *New Jersey v. TLO*.<sup>11</sup> That case involved a search of a female student's purse by a vice-principal, triggered by accusations that the student had been smoking in violation of school policy. Although the vice-principal was looking for cigarettes, he found marijuana paraphernalia, a large amount of cash, and other evidence suggesting that she had been engaged in dealing drugs. The

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Supreme Court ruled that students subjected to searches are citizens who fall within the protection of the Fourth Amendment and that school officials conducting such searches are government agents subject to constitutional constraints. School searches must therefore meet the constitutional standard of reasonableness. The Court in *TLO* defined the reasonableness standard as:

reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction.<sup>12</sup>

Under the rule enunciated in *TLO*, when the propriety of a search is challenged the court must make a two-part inquiry in order to determine 1) whether the search was justified at its inception, and 2) whether the search as actually conducted was reasonably related in scope to the circumstances which justified the search in the first place.

Appellate courts have fleshed out these requirements in a number of subsequent cases. In *Cornfield by Lewis v. School Dist. No.230*,<sup>13</sup> for example, the Seventh Circuit Court of Appeals held that “fishing expeditions,” engaged in without reasonable suspicion that a particular rule or law has been violated, violate the Fourth Amendment. The court stated:

Justified at its inception, in the present context, does not mean that a school administrator has the right to search a student who merely acts in a way that creates a reasonable suspicion that the student has violated *some* regulation or law. Rather, a search is warranted only if the student’s conduct creates a reasonable suspicion that a particular regulation or law has been violated, with the search serving to produce evidence of that violation.<sup>14</sup>

The first prong of the TLO test, which has been adopted by the courts in subsequent cases,<sup>15</sup> is particularly important to the constitutional analysis of entry control devices, weapons detection systems, and recording devices, because all students are subject to the search. No suspicion is involved. And, indeed, until 1995 challenges to the propriety of student searches revolved around the question of whether reasonable, *individualized* suspicion justified the search, as well as the scope of the ensuing search itself. One commentator wrote, “Until 1995, the short answer to the question of whether schools could mandate all or a class of students to submit to blood or urine tests for drugs could be clearly answered ‘no.’”<sup>16</sup> Such testing was seen as a violation of students’ reasonable expectations of privacy.<sup>17</sup>

In 1995, however, the Supreme Court substantially changed the rules governing student drug testing. The case it chose as a vehicle for that change was *Vernonia*

*School District 47J v. Acton.*<sup>18</sup>

James Acton, then a seventh grader, had wanted to be on his school's football team; the school required student athletes to consent to random urinalyses to screen for the use of drugs. The school did not assert that there was any individualized suspicion of James, nor any factual basis for believing that he was engaging in drug use. Rather, school officials argued that the school confronted a growing drug problem and that measures like random, suspicionless testing were required if they were to deal with these behaviors. The Ninth Circuit Court of Appeals struck down the testing program, finding that it constituted an unreasonable search requiring students to surrender important privacy rights as a condition of participating in athletics. The Supreme Court, however, reversed.

While agreeing that a urinalysis is a search, the Supreme Court nevertheless found Vernonia's testing program reasonable, ruling that the legitimate interests of the government in maintaining order and discipline outweighed any intrusion on student privacy rights. The Court further noted that student athletes, who share communal showers and locker rooms, have a diminished expectation of privacy. The Court found that the "special needs" of the school district, as described by school administrators, justified the intrusion. Those special needs included a reportedly high incidence of drug use among students and student athletes, and athletes were at greater risk of injury should they engage in sports while impaired.<sup>19</sup>

In a series of cases following *Vernonia*, federal district and appellate courts further restricted students' rights. Particularly noteworthy were *Thompson v. Carthage School District*,<sup>20</sup> which permitted a general search of all male students in grades six through twelve, and *Wallace by Wallace v. Batavia School District*,<sup>21</sup> in which the court upheld the behavior of a teacher who had grabbed a student by the wrists and elbow and physically pulled her out of a classroom after witnessing an altercation between the girl and another student.

In its 2001-2002 Term, the Supreme Court extended the authority of schools yet again. In a five-four decision in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, et al.*,<sup>22</sup> the Court considered a school policy requiring all middle and high school students to consent to urinalysis testing for drugs in order to participate in *any* extra-curricular activity. Despite the absence of a demonstrated drug problem at the school, the Court found the suspicionless, random drug-testing program a "reasonable means" of furthering an important interest in deterring drug use among schoolchildren. Writing for the Court, Justice Thomas ruled that the "reasonableness inquiry cannot disregard the schools' custodial and tutelary responsibility for children . . . . In particular, a finding of individualized suspicion may not be necessary when a school conducts drug testing."<sup>23</sup> Justice Ginsburg, writing for the dissent, saw the situation differently:

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Although special needs inhere in the public school context [citations omitted], those needs are not so expansive or malleable as to render reasonable any program of student drug testing a school district elects to install. The particular testing program upheld today is not reasonable, it is capricious, even perverse: Petitioners' policy targets for testing a student population least likely to be at risk from illicit drugs and their damaging effects.<sup>24</sup>

After *Pottawatamie*, it is difficult to discern what Fourth Amendment rights school children still retain, at least in the context of drug law enforcement.<sup>25</sup>

#### **IV. SAFETY TECHNOLOGIES AND THE LAW**

As if the precedents governing student searches were not expansive enough, in the case of safety technologies, current and emerging, we confront an important threshold question: is this a search at all? The answer to that question will vary with the nature of the technology employed, and whether the focus is on person or property. (Courts have held that a canine sniff of property, for example, is not a search, and may provide probable cause for conducting one.<sup>26</sup> Dog sniffing of persons, however, may be characterized as a search.<sup>27</sup>)

Panic devices that allow someone to call for assistance obviously cannot be characterized as a search; neither can entry control devices. Metal detectors present a somewhat different issue. At airports, their use can be constitutionally justified on the basis of consent; people voluntarily choose to fly and are deemed to have consented to the safety rules governing that activity.<sup>28</sup> Conversely, children are compelled to attend school; furthermore, younger children are statutorily unable to give meaningful legal consent.

It is highly unlikely that courts will find constitutional impediments to deployment of most technologies currently in the schools; indeed, with the exception of metal detectors, use of such devices has not usually generated legal challenges. Such constitutional problems as currently exist are more likely to involve discriminatory use or an impermissible location of the technology. A camera placed in a school hallway, for example, sees only what an alert teacher or monitor would see. A smoke detector placed in a school restroom would be constitutionally inoffensive. A camera in that same restroom, on the other hand, might constitute an invasion of student privacy. Handheld metal detectors used only to search Asian or Hispanic students, or any other discrete minority, would likewise be subject to challenge on equal protection grounds.

That the diminished Fourth Amendment rights of students and non-invasive nature of current school safety technologies combine to make most current technologies constitutionally acceptable, however, should not suggest to school

officials that future technologies will be equally non-exceptional. A potential cautionary note was sounded by the Supreme Court in *Kyllo v. United States*.<sup>29</sup> While *Kyllo* did not arise in the context of school safety, it involved a new technology that did not require police to physically enter the premises in question and suggested that the Supreme Court will look critically at the attributes of such new methodologies.

The issue for the Court in *Kyllo* was whether a warrantless search of a home had occurred when police employed a thermal imaging device to detect heat radiating from the external surface of the house. The device allowed police to obtain information regarding the home's interior (here, the growing of marijuana) that previously could have been obtained only by a physical search. The Court invoked the rule formulated in *Katz v. United States*,<sup>30</sup> which had held that wiretaps of a telephone booth were searches within the meaning of the Fourth Amendment, even though public telephone booths were not among the persons, houses, papers, and effects expressly protected by that Amendment. "As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable," the *Kyllo* Court reasoned.<sup>31</sup>

As technology becomes more sophisticated, it is by no means clear what sorts of devices will be held to constitute a violation of a reasonable expectation of privacy and, thus, a search for purposes of Fourth Amendment analysis. Once a particular method is deemed to be a search—once that threshold question is answered in the affirmative—it must meet the criteria for reasonableness even in the constitutionally permissive corridors of our public schools.

Finally, it is worth noting that one element of student searches often relied upon by courts when allowing such searches is the lack of penal consequences that attach in the school environment.<sup>32</sup> Particularly in the context of drug testing, the courts have justified holding that such testing does not run afoul of the Fourth Amendment by noting that school drug testing does not occur as part of a criminal investigation, but in furtherance of educational or disciplinary objectives that are common in, and appropriate to, schooling. In *Vernonia*, the Supreme Court emphasized that the most severe sanction imposed by the school district for refusing or failing the test was exclusion from the school's athletic programs.

## V. OTHER LEGAL CONSIDERATIONS

If the constitutional landscape surrounding student searches remains murky, it is also worth noting that constitutional concerns are not the only legal issues facing school personnel who wish to use new safety technologies. At the federal level, there is Title III of the Omnibus Crime Control and Safe Streets Act (Title III), prohibiting

interception of oral or wire communications without consent of one party to the communication.<sup>33</sup> An “oral communication” is “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication.”<sup>34</sup> While Title III, by its terms, would not apply to silent video monitoring, how it might apply to school listening or recording devices is uncertain.

Finally, virtually every state has a state constitutional provision analogous to the Fourth Amendment, and in many cases a more expansive provision, to protect individual rights. Some states have separate provisions guaranteeing a right of privacy. The vast majority of states have enacted statutes governing various forms of electronic surveillance. While some of these laws address public school practices, most do not, and their application to schools remains unclear.

The legality of school safety systems thus depends upon the type of technology deployed, the manner of its deployment, and the congruence of the program as a whole with applicable state and federal law.

## **VI. DEVISING EFFECTIVE AND LEGAL SAFETY POLICIES**

What can the research described above—legal and empirical—teach us about policies intended to ensure school safety?

First, despite substantial public expenditures for safety devices, perceptions of the effectiveness of these devices were decidedly mixed.<sup>35</sup> (See Table 6.) Cameras and recording systems were considered to be the most effective, particularly in preventing and minimizing disorder behaviors, drug crimes, and violent crimes. School officials overwhelmingly believed that cameras and recorders were a deterrent to such behaviors. Some of the respondents to the Garcia study said that cameras allowed them to reduce the number of safety personnel, and thus costs. Interestingly, an equal number argued that cameras *increased* staffing needs. Fewer than half of school officials felt that metal detectors were effective, and those who did think they were useful cited their value as a deterrent. Perceived performance of duress alarms and entry control devices was poor.<sup>36</sup>

Second, depending upon the nature of the system employed, technology can be extremely expensive. Indeed, in the Garcia study, only one technology was ever referred to as cost-effective: recording systems. Cameras were not considered to be cost-effective, while weapon detection systems and entry control devices were characterized as prohibitive.<sup>37</sup> It is interesting to note that the public outcry that has prompted many of these acquisitions was a response to harm inflicted by angry, isolated, and determined students—harms that entry control devices would not prevent. Similarly, the areas considered to be most vulnerable to behavior disorders and crime

were those where camera and recording placement was least likely: restrooms and parking lots. Legal concerns for student privacy would constrain the use of cameras in bathrooms, while costs for monitoring parking areas would be prohibitive for most school corporations. Similarly, duress alarms tend to be placed in areas that are not particularly vulnerable to crime.<sup>38</sup>

In addition to questions of cost-effectiveness are the pedagogical implications of technology use. As the New York State School Boards Association stated, “The presence of metal detectors in schools can lead students and staff to feel that schools are jail-like facilities instead of institutions of learning.”<sup>39</sup>

If school administrators are to make effective use of technology, they need to complete the following steps:

- Identify the major security concerns of the school, on a school-by-school basis. “One size fits all” solutions are rarely, if ever, cost-effective.
- Identify the locations in each school most vulnerable to security concerns.
- Identify the technologies, if any, which might have a *measurable* effect on safety.
- Consider the legal constraints, if any, governing use of that technology in that location.
- Develop proper support functions, to be performed by school personnel that will bolster the performance of the designated technology.

Without engaging in this sort of analysis, use of technology is simply public relations. Not only will such indiscriminate use not enhance school safety, it may well compromise it by creating a false sense of security.

What can schools do to enhance the safety of the learning environment? The author suggests funneling scarce resources into one or more of the following policies:

- Recruiting parent volunteers, hiring more safety personnel, on-site counselors, and mental health service providers;<sup>40</sup>
- Enhancing training about troubled youth offered to school safety officers, teachers, and administrators;<sup>41</sup>
- Expanding the cadre of youth-led violence reduction programs;<sup>42</sup>
- Implementing mentoring programs and providing after-school activities;<sup>43</sup>
- Offering meaningful alternative programming for suspended or expelled youth; and
- Reinstating many of the extra-curricular activities recently removed from school budgets.

These policy prescriptions do not offer the “quick fix” promised by technology. They require a commitment of resources—human and fiscal—and an awareness of the complexity of the issues involved. But they also represent a consensus of scholars

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and educators about what measures are most likely to be consistent with sound pedagogy: be cost-effective, and ensure tranquility in our nation's schools.

**TABLE 1: CONCERN ABOUT SCHOOL VIOLENCE AND CHANGES IN SECURITY**

<b>ISSUES</b>	<b>Percentage of School Safety Administrators Responding</b>		
	Minor or Somewhat Minor	Average	Somewhat Major Or Major
Concern About School Violence	12	22	66
Changes to School Security	15	15	71
Impact of School Shooting Stories	17	29	54

Note: Due to rounding, percentage total may not equal 100.

**TABLE 2: SCHOOL DISTRICT EXPENDITURES  
FOR SAFETY TECHNOLOGIES**

<b>Expenditures</b>	<b>Number of School Districts</b>	<b>Percentage of Total</b>
\$0	4	11
<\$5,000	1	3
\$5,001 – \$10,000	3	8
\$10,001 - \$25,000	2	5
\$25,001 – \$50,000	2	5
\$50,001 – \$100,000	3	8
\$100,001 – \$500,000	8	21
\$500,001 and Greater	15	40

Note: Due to rounding, percentage total may not equal 100.

**TABLE 3: PERCEPTIONS OF SAFETY ON CAMPUS**

<b>Statements</b>	<b>Percentage of School Safety Administrators Responding</b>		
	<b>Strongly Disagree or Disagree</b>	<b>Neutral</b>	<b>Agree or Strongly Agree</b>
Faculty/Staff Feel Safe at Our Schools	7	27	66
Students Feel Safe at Our Schools	12	34	54

**TABLE 4: SCHOOL DISTRICT USE OF SAFETY TECHNOLOGIES**

<b>Type of Technology</b> (n = number of respondents answering question)	<b>Percentage of School Districts with the Technology</b>
<b>Video Cameras (n = 40)</b>	<b>90</b>
Monitor Fed to Viewer in Real Time (n = 40)	78
Computer Based Camera Networks (n = 40)	35
Closed Circuit TV System (n = 39)	82
Cameras with Color Images (n = 40)	58
Cameras with Pantilt Zoom (n = 40)	60
<b>Recording Systems (n = 40)</b>	<b>88</b>
VCR (n = 40)	83
Multiplexers (n = 40)	78
Time Lapse Recorders (n = 39)	69
Event Recording (n = 39)	23
Digital Recorders (n = 39)	31
Continuous Monitoring (n = 39)	64
<b>Weapons Detection Systems (n = 40)</b>	<b>55</b>
Metal Detector Wands (n = 39)	56
Walk Through Metal Detectors (n = 40)	23
X-Ray Baggage Scanners (n = 40)	3
<b>Duress Alarms (n = 40)</b>	<b>40</b>
Strategically Placed Alarms (n = 40)	38
Alarms Worn by Personnel (n = 40)	5
<b>Entry Control Devices (n = 40)</b>	<b>18</b>
Turnstiles (n = 40)	0
Scanner Cards (n = 40)	10
Password/Pincode (n = 40)	10
Biometric Identifiers (n = 40)	0

**TABLE 5: PERCEIVED SUPPORT FOR USE OF SCHOOL SAFETY TECHNOLOGIES**

CONSTITUENCIES	Percentage of School Safety Administrators Responding		
	Minor or Somewhat Minor	Average	Somewhat Major or Major
Administration (n = 40)	10	29	61
Teachers (n=40)	20	32	49
Students (n=39)	41	26	33
Parents (n=40)	18	28	55
Safety Personnel (n=38)	5	8	87
Law Enforcement (n=39)	15	13	72
Community Leaders (n=38)	13	26	61
Gov. Officials (n=38)	16	26	58

Note: Due to rounding, percentage total may not equal 100.

**TABLE 6: PERCEIVED EFFECTIVENESS OF SCHOOL SAFETY TECHNOLOGIES**

Question: <i>How effective do you believe the safety technologies used in your district are at preventing and controlling crime?</i>	Percentage of School Safety Administrators Responding		
	Not Effective or Somewhat Effective	Neutral	Effective or Very Effective
Video Cameras (n = 40)	19	14	67
Recording Systems (n = 33)	21	15	64
Weapons Detection Systems (n = 18)	28	28	45
Duress Alarms (n = 6)	33	33	33
Entry Control Devices (n = 14)	36	43	21

Note: Only districts having these technologies in place were allowed to answer effectiveness questions.

**Notes**

1. KIM BROOKS ET AL., JUSTICE POLICY INSTITUTE AND CHILDREN'S LAW CENTER, INC., SCHOOL HOUSE HYPE: TWO YEARS LATER (1999). *See also* MARGARET SMALL & KELLIE DRESSLER TETRICK, SCHOOL VIOLENCE: AN OVERVIEW, 8 Juv. Just. J. (2001), available at [http://www.ncjrs.org/html/ojjdp/jjjournal\\_2001\\_6/jjl.html](http://www.ncjrs.org/html/ojjdp/jjjournal_2001_6/jjl.html); DWYER, K., OSHER, D., & WARGER, C., EARLY WARNING, TIMELY RESPONSE: A GUIDE TO SAFE SCHOOLS (1998), available at <http://www.ed.gov/offices/OSERS/OSEP/earlywrn.html>.  
Actually, despite the headlines, school crime is down, and has continued to decline over the last several years. *See* Nancy D. Brener et al, *Recent Trends in Violence-Related Behaviors Among High School Students in the United States*, 282:5 JAMA 440, 2-5 (1999), available at <http://jama.ama-assn.org>; P. KAUFMAN ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY, 1999 (1999), available at <http://www.ojp.usdoj.gov/bjs/>. Schools are as safe today as they were in the 1970s. In 1968, for example, there were twenty-six homicides on school campuses, compared with eleven during the 1999-2000 school year. Indeed, between the 1997-1998 and 1998-1999 school years (the year of the Columbine tragedy) the number of school-associated violent deaths actually dropped by forty percent. NATIONAL SCHOOL SAFETY CENTER, SCHOOL-ASSOCIATED VIOLENT DEATHS (2000).
2. Timothy Harper, *Shoot to Kill*, ATLANTIC MONTHLY, Oct., 2000, at 28-33, available at <http://www.theatlantic.com/issues/2000/10/harper.htm>.
3. R. Lawrence, *School violence, the media, and ACJS*, 20:2 ACADEMY OF CRIMINAL JUSTICE SCIENCES TODAY, 1-6 (2000).
4. Garcia, C., *School Safety Technology in America: Current Use and Perceived Effectiveness*, CRIM. JUST. POL'Y REV. (forthcoming). This study was supported by grant 1999-9205-IN-IJ from the National Institute of Justice and the Institute for Forensic Imaging at IUPUI.
5. *Id.*
6. *See* Garcia, *supra* note 4, for a detailed description of the study's methodology and response rate.
7. *Id.*
8. Multiplexers combine two or more camera signals and send them to a single recorder; time-lapse systems incrementally record frames at specified intervals; event recorders store images when an intrusion detection alarm notifies the system that an incident should be reported.
9. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that a school regulation prohibiting students from wearing armbands in protest of the Vietnam War violated the students' constitutional right to free speech).
10. Beyer, Dorianne, *School Safety and the Legal Rights of Students*, ERIC/CUE DIGESTS NO. 121 (1997), at [www.ed.gov/databases/ERIC\\_Digests/ed414345.html](http://www.ed.gov/databases/ERIC_Digests/ed414345.html).
11. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
12. *Id.* at 342.
13. *Cornfield v. Consol. High Sch. Dist.*, 991 F.2d 1316 (7th Cir. 1993)
14. *Id.* at 1320. *See also* *Willis v. Anderson Cmty. Sch. Corp.*, 158 F.3d 415, 418 (7th Cir. 1998); *Cales v. Howell Pub. Sch.*, 635 F. Supp. 454, 456-57 (E.D. Mich. 1985).
15. *O'Connor et al. v. Ortega*, 480 U.S. 709, 726 (1987); *Gossmeier v. McDonald*, 128 F.3d 481, 490-91 (7th Cir. 1997); *In Re William G.*, 709 P.2d 1287, 1296 (Cal. 1985); *People in the Interest of*

- P.E.A., 754 P.2d 382, 388 (Colo. 1984).
16. J. R. PRICE, *THE RIGHTS OF STUDENTS* (1998).
  17. *Jones v. McKenzie*, 628 F. Supp. 1500, (D.D.C. 1986) *rev'd*, 833 F.2d 335 (D.C. Cir. 1987).
  18. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).
  19. There are, of course, other school activities that pose a danger to impaired students. Shop classes come immediately to mind.
  20. *Thompson v. Carthage Sch. Dist.*, 87 F.3d 979, 979 (8<sup>th</sup> Cir. 1996).
  21. *Wallace ex rel. Wallace v. Batavia Sch. Dist.*, 68 F.3d 1010 (7<sup>th</sup> Cir. 1995).
  22. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, No. 01-332, 2002 U.S. LEXIS 4882, at \*4 .
  23. One wonders whether the same reasoning—responsibility for the welfare of children—wouldn't justify subjecting teachers and coaches to drug testing, and whether the extension of testing to such adults would affect the level of support for these technologies shown in Table 5.
  24. *Earls*, 2002 LEXIS at \*13 (Ginsburg, J., dissenting).
  25. Courts have been notably more solicitous of student's First Amendment rights. *Tinker*, as noted previously, was a First Amendment case; in *Cheema v. Thompson*, 67 F.3d 883 (9<sup>th</sup> Cir. 1995), the court ruled that Sikh students in California could not be forced to relinquish the ceremonial knives carried in furtherance of their religious beliefs. However, even while upholding the Free Exercise rights of the Sikh students, the court emphasized the wide latitude enjoyed by school authorities.
  26. *United States v Place*, 462 U.S. 696, 697 (1983); *See, e.g., United States v. Sokolow*, 490 U.S. 1 (1988); *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 479 (5<sup>th</sup> Cir. 1982).
  27. *United States v. Kelly*, 302 F.3d 291, 295 (5<sup>th</sup> Cir.2002); *B.C. v. Plumas Unifed Sch. Dist.*, 192 F.3d 1260, 1270 (9<sup>th</sup> Cir. 1999); *Horton*, 690 F.2d at 479.
  28. Before September 11, 2001, it could also be argued that airport searches were not state action. Although most airports are owned by a governmental unit, ownership, without more, would not be sufficient to find state action. *Cf. Shelia S. Kennedy, When Is Public Private? State Action in the Era of Privatization, and Public-Private Partnerships*, 11 GEO. MASON L. REV. 203-23 (2001).
  29. *Kyllo v. United States*, 533 U.S. 27 (2001).
  30. *Katz v. United States*, 389 U.S. 347, 353 (1967).
  31. *Kyllo*, 533 U.S. at 33.
  32. This raises an interesting issue—particularly in the case of metal detectors. Typically, if a gun is detected through this technology, police are called, and federal law requires that the student be suspended for one full year. Furthermore, many states have passed legislation requiring a brief period of mandatory detention of such students in a juvenile facility, during which the students may be evaluated by mental health professionals or others. *Kyllo* did not include these sanctions, and from the language of the opinion, it would appear that the existence of such punitive consequences would have changed the result.
  33. 18 U.S.C. §§ 2510-2520 (1994).
  34. *Id.* at § 2510(2) (1994).
  35. *Garcia, supra* note 4.
  36. *Id.*
  37. Entry control devices can cost between \$1,200 and \$50,000 to purchase, and a considerable amount to maintain. Weapons detection systems can range from \$150 to \$200 for hand-held

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- wands, to \$1,000 to \$3,000 for walk-through detectors, to \$30,000 for x-ray baggage machines—all excluding maintenance. *See Garcia, supra* note 4.
38. Garcia, *supra* note 4. It should be noted that recent tragedies giving rise to the current concern for school safety, such as the Littleton, Colorado incident, were acts perpetrated by students who were lawfully and properly on school premises.
  39. *New York State School Boards Association, Districts Should Proceed Cautiously on Metal Detectors*, at <http://www.nyssba.org/adnews/employee/employee052200.3.html>.
  40. JACK LEVIN, & JAMES ALAN FOX, *DEAD LINES: ESSAYS IN MURDER AND MAYHEM* (2000).
  41. BROOKS ET AL, *supra* note 1; *Arnette & Majorie C. Walsleben, U.S. Department of Justice, Combating Fear and Restoring Safety in Schools* (1998) at <http://ojjdp.ncjrs.org/jjbulletin/9804/schools.html>
  42. *Arnette & Walsleben, supra* note 41, at <http://ojjdp.ncjrs.org/jjbulletin/9804/community.html>
  43. Levin & Fox, *supra* note 40.