
Circumventing the Law: Students' Rights in Schools With Police

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Abstract

Over the past several decades, public schools in the United States have been increasingly transformed into high security environments, complete with surveillance technologies, security forces, and harsh punishments. The school resource officer (SRO) program, which assigns uniformed police officers to work in public schools, is one significant component of this new brand of school security. Although the intentions of the SRO program are clear—to help administrators maintain order in schools, deter students from committing criminal acts, and arrest students who do break the law—the potential unintended consequences of this program are largely unknown. This study employs ethnographic methodology in two public high schools with SROs to examine how students' rights, including Fourth Amendment rights, Fifth Amendment rights, and privacy rights, are negotiated in public schools with full-time police presence. The results of this study suggest that schools administrators and SROs partner in ways that compromise and reduce the legal rights of students.

Keywords

school security, school police, rights, surveillance, school searches

Despite the attention they have garnered in the past decade, school crime and school crime prevention are not entirely new concerns in the United States. Controlling crime and maintaining order in schools have been objectives since the beginning of the public school system (Crews & Counts, 1997). Over the past several decades, however, the problem of school crime has been mischaracterized. Educators, legislators, parents, and community members have all expressed concerns about rising rates of

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violence in schools, despite data showing that school violence has been declining (Hyman et al., 1996; Morrison & Furlong, 1994). These concerns about school crime, despite their disconnection from actual crime rates, have created a powerful demand for tougher policies to make schools safer and have contributed to the physical and ideological transformation of public schools into regimented, high-security environments (Simon, 2007).

Although most severe crime problems are concentrated in a small proportion of urban schools, school crime has increasingly come to be understood as a serious problem of all schools (Simon, 2007). This perception has been exacerbated by a handful of highly publicized incidents of suburban and rural school violence, such as the 1997 shootings in West Paducah, Kentucky, the 1999 shootings at Columbine High School, and 2001 shootings at Santana High School (Herda-Rapp, 2003). Due to the scale and novelty of these tragedies, they garnered a significant amount of national news media attention, which fueled public concerns that school violence could strike anywhere, at any time. In a study by Kupchik and Bracy (2009), the authors find that newspaper articles portray school violence as bad and/or getting worse, despite declining national rates of school violence. The depiction of school violence in this manner heightens public fear and supports the notion that intensive school security measures are warranted (Kupchik & Bracy, 2009).

Public perceptions of failing, disorderly schools and fears of increasing school violence have created demands for accountability and reform in public schools across the country.¹ Contemporary public schools can be described as high security environments, complete with police officers (known as School Resource Officers or SROs), security guards, surveillance cameras, metal detectors, in-school suspension rooms, locker searches, drug-sniffing dogs, ID badges, and dress codes in public schools across the country (Dinkes, Cataldi, & Lin-Kelly, 2007). These measures are used to deter students from committing crimes at school and to swiftly apprehend those that do (Jackson, 2002). Surveillance strategies are then supplemented with exclusionary punishments, such as suspension, expulsion, and arrest, of students who break school rules. Surveillance and punishment comprise the new face of school safety.

When considering why schools have chosen to implement these particular methods for the purposes of promoting safety and reducing crime over alternatives (such as drastically increasing the number of school counselors, for example) it is useful to look at larger social changes in addressing crime and criminals. David Garland (2001) contends that contemporary American society is preoccupied with policing and punishment, citing a dramatic increase in the use of imprisonment over the past 30 years as evidence of this fixation. He points to the structural and cultural changes of the late modern period, which have led to the politicization of crime issues and subsequent decline of penal welfarism. The result of this shift is a society disinterested in rehabilitating offenders and progressively more interested in removing them from society. Loic Wacquant (2009) argues that the poor have borne the brunt of this shift as the penal state has replaced the welfare regime, and the poor are controlled through incarceration and the surveillance of parole.

As primary social institutions, public schools have increasingly been affected by and participated in America's crime and punishment preoccupation. In *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*, Jonathan Simon (2007) documents how America's obsession with crime has resulted in the framing of many social problems, including a failing educational system, in terms of crime. Crime agendas have made their way into schools via laws like No Child Left Behind, which requires states to identify "persistently dangerous schools," and through school zero-tolerance policies and surveillance technology, where every student is treated as a potential criminal. In *Punishing Schools: Fear and Citizenship in American Education*, William Lyons and Julie Drew (2006) describe how schools are simultaneously the punished and the punishers. Schools are punished by government bureaucrats who cut funding and abandon schools in favor of corporate interests; they are also themselves the punishers in the way that they impose punitive discipline and security measures on students in urban and suburban schools alike. The result of this punishment-oriented shift is a *new American school*, as Kupchik and Monahan (2006) describe it, which prepares students for postindustrial futures and the realities of mass incarceration.

These changes in the ways that schools maintain security and punish students may have profound implications for the legal rights of students at school. Students are regularly subjected to policies and procedures that have potentially significant scholastic and criminal consequences. In fact, high-security school environments have become so routinized that by the time students get to high school many have already grown accustomed to police, metal detectors, and cameras via their middle school experiences (Casella, 2001). Despite the widespread and regular use of these measures, very little is known about their impact on the public school environment.

This study focuses on one key security practice and its impact on students' rights—the presence of police officers as permanent fixtures in public schools. I qualitatively explore how schools with full-time SROs operate on a daily basis and what roles the SROs play in the security and discipline process. I consider how the regular presence of police officers in schools can influence how students' legal rights are handled in situations where they are being disciplined, suspects in a crime, or arrested.

Students' Rights at School

Although students do not "shed their constitutional rights at the schoolhouse gate" (*Tinker v Des Moines*, 1969), the way students' legal rights are negotiated on a daily basis in schools is largely unknown. Harsh disciplinary policies and increasing law enforcement involvement in schools have raised concerns regarding the exacerbation of the *school-to-prison pipeline*, a phrase that refers to the systematic funneling of disadvantaged youth out of schools and into the criminal justice system. Some have blamed the increasing criminalization of school discipline for perpetuating this pipeline (see, e.g., Advancement Project, 2005; Beger, 2002; Mukherjee, 2007; Wald & Losen, 2003). Students were once punished for minor school infractions by being sent

to the principal's office or serving after-school detention; today, they may end up arrested and incarcerated for the same infractions (New York Civil Liberties Union, 2007). For example, 25 middle school students in Chicago made national news in 2009 after they were arrested for participating in a lunchtime food fight (Saulny, 2009). A month earlier, a first grader in Delaware was suspended and ordered to attend reform school for bringing a camping utensil containing a small knife to school, a violation of his school's zero-tolerance policies (Urbina, 2009). Also in 2009 (*Safford Unified School District #1 et al. v. Redding*, 2009), the U.S. Supreme Court ruled that 13-year-old Savana Redding's Fourth Amendment rights were violated when school officials strip-searched her looking for prescription medication she was suspected (but not found) to be carrying. These incidents demonstrate the willingness of schools to mete out harsh punishment for student misbehavior (or suspected misbehavior), the salience of the school-to-prison pipeline, and the important role that legal rights may play as a layer of protection for students facing school discipline.

The now widespread presence of police officers in schools presents additional quandaries when it comes to students' rights. Traditionally, schools and law enforcement officers are held to different standards under the law. Schools act in loco parentis, which means that while students are in custody of the school the school can and often should act as a parent. In this capacity, school officials are given greater leeway with students and can make decisions that are outside the normal governmental purview in the interest of doing what is best for students. In one of the most well-known school cases supporting the in loco parentis doctrine, *New Jersey v. T. L. O.* (1985), the court ruled that students do have Fourth Amendment rights in schools but that school officials only need reasonable suspicion to search a student, not the traditional law enforcement standard of probable cause. The reasonable suspicion standard is met if the school has evidence or information that leads school officials to believe that a school rule has been broken (Alexander & Alexander, 1998). In contrast, for a police officer to find probable cause to search a person, he or she would have to have specific knowledge that a person has committed a crime, is about to commit a crime, or that evidence of a crime will be found in the search (Baskin & Thomas, 1986). The justification behind the T.L.O. ruling was that the less cumbersome reasonableness standard would give school officials the flexibility to maintain order and discipline in their buildings while still protecting students' legitimate expectations of privacy (Torres & Chen, 2006).

The widespread placement of police officers in public schools, however, fuses the justice system and schools in a new way—a way for which the court in *T. L. O.* was not fully prepared. The court's ruling in *T. L. O.* stops short of addressing the appropriate standard for police or other officials acting in a law enforcement capacity within schools (Torres & Chen, 2006). In fact, part of the court's rationale for maintaining the lower reasonable suspicion standard for school officials was that they are not experts in the law and so would not know how to distinguish probable cause in a timely manner (Baskin & Thomas, 1986). However, now that police officers are a part of the daily fabric of most public high schools, this reasoning may be less relevant.

More recently, when courts have considered the legality of searches by police officers in schools, they have focused on distinguishing whether a police officer is acting as a law enforcement officer or as a school official by taking into account factors such as whether the officer is employed by the school district or by an independent law enforcement agency (*State v. D. S.*, 1996; *T. S. v. State*, 2007) and whether the officer was in uniform (*T. S. v. State*, 2007). In *People v. Dilworth* (1996), the Illinois Supreme Court upheld the search of a student by a school liaison officer (SLO) that was based solely on reasonable suspicion, arguing that the SLO was acting in the capacity of a school official, based in part on the description of the SLO's duties in the school handbook. Although some state courts have followed the rationale of the court in *Dilworth* (e.g., *In re Angelia D. B.*, 1997), others have found reason to apply the probable cause standard to searches by police officers in schools (e.g., *A. J. M. v. State*, 1993; *Patman v. State*, 2000). Variation in these decisions demonstrates the legal murkiness of school-law enforcement mergers.

This research offers a critical analysis of how SROs attempt to balance the integrity of students' rights with the overall safety of the school. I examine some of the legal rights of students that have historically been at the forefront of legal debates and court cases involving schools, such as students' Fourth Amendment rights against unreasonable searches (see *New Jersey v. T. L. O.*, 1985; *Safford Unified School District #1 et al. v. Redding*, 2009; *Vernonia v. Acton*, 1995) and students' education rights (see *Goss v. Lopez*, 1975) in schools with full-time police officers.² Even in schools without police presence, these have been contested and problematic issues for schools to deal with; the introduction of law enforcement into schools presents additional complications. Students' Fifth Amendment rights against self-incrimination during custodial police questionings, a newer issue facing students in schools with regular police presence, are also examined.³

The Role of the SRO

The Community Oriented Policing Services (COPS) Program, created under the Clinton administration, funded local law enforcement agencies to hire police officers specifically for work in public schools. In 1999, 54% of public middle and high school students reported having security guards or assigned police officers in their schools. This number increased to 68% by 2005 (Dinkes, Cataldi, Kena, & Baum, 2006). As this is a practice that now affects the majority of public schools and is the fastest growing area of law enforcement (National Association of School Resource Officers, 2007), it is critical to understand how SROs interact with students.

Although the actual responsibilities and activities of SROs vary from school to school and officer to officer, the general duties of SROs are twofold. The first role is that of traditional law enforcement, including responding to potential threats to safety at school, enforcing laws (and sometimes rules) at school, and conducting investigations when a law has been broken or is suspected to have been broken (Beger, 2002). The

second role is relational—to build positive relationships with youth, make contacts or gain information that could improve police knowledge of problems or issues in the community, mentor youth to resolve conflicts without violence, and to teach students about the law through classes on safety, drug prevention, and drunk driving (Lawrence, 2007).

From the school's standpoint, the presence of an SRO presents several benefits. The SRO is assumed to serve a deterrent effect, such that students are less likely to bring a weapon or drugs to school or commit other crimes at school if they know that the police officer is there (Johnson, 1999). The presence of the SRO also benefits schools by enabling an immediate response to crime or threats in schools. Prior to having SROs, for example, school administrators would have to call the local police department in case of a problem at school and then wait for a response. Having a police officer on site allows for immediate action and increased daily support for school administrators and staff.

There have been mixed results, however, considering the effectiveness of police officers in schools on reducing school crime. Although some research suggests that schools are safer with the presence of SROs (Johnson, 1999; May, Fessel, & Means 2004), other research points out the ways students can be negatively affected by the presence of police officers in schools (Beger, 2003; Devine, 1996; Mukherjee, 2007). A recent New York Civil Liberties Union report (Mukherjee 2007) describes how New York City high school students are subjected to intrusive searches and intimidation by police officers on entering their schools' buildings. Although one of the goals of the SRO program is to foster better relationships between youth and police officers, youth may instead be alienated because of negative interactions (Jackson, 2002).

Although prior research has raised questions about ways that police in schools could adversely affect students, students' rights have not been at the center of these studies. Only a handful of studies have empirically examined aspects of the SRO program. Most recently, Kupchik and Bracy (2010b) describe what SROs do in schools, how they interact with students, and the benefits and drawbacks of SRO presence for schools, police departments, and students. Two earlier studies of SROs focus on students' perceptions of their school's police officer and conclude that students do not regard their school's police officer as a typical officer (Hopkins, 1994) and that SROs have no impact on students' perceptions of the police or on attitudes about delinquency (Jackson, 2002). In a fourth study, Ronnie Casella (2001) examines how one school with an SRO faces the challenges of preventing violence. Although Casella acknowledges the tension between the school's authority and the SRO's authority, he does not examine how this plays out in the school he observed. Ida Johnson (1999) does examine the effectiveness of an SRO program in a southern city on reducing school violence, but she does not examine any outcomes of the SRO program beyond crime reduction. Her research, while demonstrating how an SRO program can meet its goal of reducing school crime, does not provide insight to how the presence of SROs in schools affects the overall school climate.⁴

The present study considers what scholars have long documented—that there are often discrepancies between the law on the books and the law in action (Grattet & Jenness, 2005; Skolnick, 1966). Because laws are created and enforced in varying social contexts

by different actors, lawmakers may intend for a law to be implemented in a particular way, whereas the actual implementation can be quite different. Similarly, we know that the SRO program outlines roles and guidelines for police officers working in schools and that it is designed to improve school safety; however, we still know very little about the roles police officers actually assume in schools and what consequences their presence has for students and staff.

Research Expectations

Prior research on school discipline and the broader literatures on crime and punishment in America lead to two competing expectations for the outcomes of this research. On one hand, work on contemporary America's crime and punishment fixation (e.g., Garland, 2001; Simon, 2007; Wacquant, 2009) and prior research on policing and social control in schools (e.g., Devine, 1996; Lyons & Drew, 2006; Mukherjee, 2007) suggest that a carceral regime thesis will characterize the way students' rights are negotiated in schools with regular police presence.⁵ The focus on accountability in American schools, accompanied by prioritization of security and discipline agendas, lead to the expectation that students' rights will take a backseat to policing and punishment imperatives. On the other hand, some scholars have presented arguments suggesting an opposite expectation—one that indicates students' rights in schools have extended too far (see Arum, 2003; Grant, 1988, for example). These scholars point to legal cases in which courts have ruled against schools for taking various courses of disciplinary action with students, which they claim serves to undermine the legitimacy of schools' power and create legally entitled students. Richard Arum (2003), for example, blames courts for "contributing to the decline of moral authority and the erosion of effective disciplinary practices in American public schools" (p. 4). This argument presents an opposite expectation—that students' rights are too carefully considered in public schools and that these considerations interfere with proper discipline.⁶

Sample Description

To explore how students' rights are negotiated in schools with regular police presence, this study draws on ethnographic data collected in two mid-Atlantic public high schools. The two schools, given the pseudonyms City High School and Central High School, are located in the same county but in different school districts and different towns. Each school has a full-time SRO who has an office within the school buildings and typically spends the entirety of each day at school. City High's SRO, Officer Steve, is an African American man in his mid-30s. Officer Steve had been in law enforcement for 12 years, but this is his first year as a SRO. Officer Mike, Central High School's SRO, a White male in his 50s, has been a state police officer for more than 20 years. This is his first year as an SRO at Central High School, but he previously worked as an SRO in another high school for 5 years and has worked in schools in a law enforcement capacity for at least half of his career.

Central High School opened in 1997 and is a large modern building on a sprawling campus. At the time of this research, Central High was the only high school in its district, though a second was in the process of being built. As a result, Central High is overcrowded with more than 2,000 students and an instructional staff of only 127. There are far more students than the school building could accommodate, and so makeshift trailer classrooms are placed in the back of the school to handle the overflow. Everyone at Central High feels the burden of having too many students. There are not enough lockers or parking spaces, classrooms are too full, and in between classes the hallways become so congested that it is sometimes difficult to move.

City High School is located in a small suburb of approximately 30,000 people. In addition to serving students from the surrounding suburban neighborhoods, students are also bused to City High School from urban areas of a larger neighboring city, Placeville. This busing plan resulted from the forced desegregation of schools in predominately Black Placeville, dating back to the 1970s. In the years after Placeville schools desegregated, one by one the high schools in Placeville closed until there were none remaining, and all high school students had to be bused to the suburbs. City High School is a two-story building, built in the 1970s. The style and décor of the structure reflects the era in which it was built and is deteriorating and in need of renovation. Over the 2006-2007 school year, City High School enrolled approximately 1,500 students; the size of the instructional staff during this year was slightly greater than 100.

In addition to differing physical characteristics of the schools and their SROs, the schools also have notably different student bodies. Central High School hosts a largely White, middle-class student population, where only 11% of the students are considered low income.⁷ Approximately 75% of the students at Central High School are White; 20% are African American. In contrast, City High School has a much larger percentage (41%) of students from low-income families. The City High School student body is more racially mixed than Central High School; approximately 36% of the students at City High School are White, 50% are African American, and 11% are Latino/Latina.

Data Collection and Analysis

The data-collection process was completed during 1 school year, from September 2006 to June 2007. Two ethnographers, a female graduate student and a male professor, spent several days a week in the schools observing the way that school staff (including the SRO, administrators, disciplinarians, and teachers) interacted with students. This was accomplished by shadowing school staff, observing classrooms, talking to staff and students, and listening to staff and students talk to each other. We paid special attention to situations in which students were in trouble, being disciplined or, in some cases, even arrested. We also intentionally varied the days and times of our school visits so as to capture the full experience of each school and kept visits relatively short (they ranged approximately 1-3 hr long) to ensure that the

details of the visits could be recalled. We wrote detailed fieldnotes immediately on leaving the schools.

In the fieldnotes, we documented SROs' interactions with the students, their routines and duties, and what they described as their mission in the school. We also documented lunchtime activities, classroom activities, and activities of the in-school suspension rooms. We further noted casual interactions and conversations between school staff and students as well as disciplinary interactions between staff and students. In cases of discipline, we noted what was said to students about what they had done wrong, what opportunities they were given to reply, and what consequences were given. As a result of making repeated visits month after month, we were able to keep track of how certain situations were resolved within the school over time. We were also able to document inconsistencies between what school staff, including the SRO, said and what they actually did.

In addition to observations, we conducted 26 face-to-face, audiotaped interviews at each school. At each school, we interviewed every administrator, every disciplinary staff member, the SRO, and approximately 5 teachers, 10 students, and 5 parents. As we were introduced to students (both those who got in trouble at school and those that did not) and teachers throughout the course of our fieldwork we asked them if they would be willing to participate in one-on-one interviews. We scheduled those who were willing to participate for interviews after school or at another convenient time during the school day. These interviews focused on disciplinary and safety policies and practices and included specific questions about the SRO and his role in the school. All interviews were professionally transcribed.

I coded and analyzed the fieldnotes and interviews in two waves, using the qualitative software program Atlas.ti 5.2. During the first wave, I created codes consistent (and inconsistent) with the two competing hypotheses described at the outset of this article and labeled all corresponding passages of text. As new or unexpected themes emerged in the data during this first wave of coding, I created new codes to capture these themes. During a second wave of coding, I went back through the data again to make sure that every example of each code was captured.

Once the coding was complete, I closely examined patterns in the data to evaluate the competing hypotheses presented above. For example, I analyzed instances when students' legal rights were mentioned, both explicitly and implicitly, to understand how students' rights issues are framed in these schools. To understand how schools cope with and manage students' rights issues, I analyzed excerpts from fieldnotes and interviews where school administrators and staff talk about the protocols of administering school punishment and noted any deviations from these protocols. I also looked to the data for any demonstrations of legal entitlement, such as the example Arum (2003) uses of students threatening teachers with "I'll sue you," but also other more subtle mentions of lawsuits or grievances against teachers or administrators. Throughout the analysis process, I carefully compared patterns in the data both within and between the two school sites. The passages of text that are highlighted as examples in the sections that follow were selected because they most clearly illustrate these patterns.

Results

At City and Central High Schools, students' rights are not ignored. Particularly in situations that involve potential criminal consequences, students' legal rights are addressed by the school and SRO in a very calculated manner, though not one that benefits students and not necessarily in the way the law intended. Clearly cognizant of their respective positions under the law, the SRO and school officials are careful to act within the law but in a manner that still allows them to accomplish goals that sometimes run counter to the spirit of the law. Thus, in their partnership, the schools and the SROs are found circumventing the law. By circumventing the law, I mean that they proceed in ways that are usually legal but that evade some of the legal protections afforded to youth in schools. Circumventing the law is not only a product of police presence on school campuses but of the types of partnerships that school administrators and SROs form. This is seen throughout the data and occurs similarly in both schools when considering three types of actions: searches of students, questioning students, and sharing information about students.

Searching Students

In the following excerpt from fieldnotes, two students have been caught reentering the school building during school hours. At City High School, when any student leaves the school building and then returns (a violation of the school rule, as it is a closed campus), administrators can search the student. The rationale behind this policy is that the violation of the school rule amounts to reasonable suspicion for administrators; the school might argue, for example, that the student could have returned to school with drugs or a weapon that could place the rest of the student body in jeopardy. The two City High School students in the following scenario were brought into an administrator's office, and the administrator then called the SRO, Officer Steve, to come to the office and stand by. The administrator conducted the search, but the SRO was in the same room and observed the entire search:

Mr. Johnson called the male student into the office. "Officer Steve, I'm going to need you to stand by," he said. Officer Steve went into the office and watched as Mr. Johnson directed the student to take off his shoes. He proceeded to search the student while Officer Steve observed the entire time.

I consider this type of search procedure to be circumventing the law for several reasons. First, a student leaving the building during school hours and then returning, although a violation of school rules, is not a crime. Although some SROs (like Officer Steve) participate in rule enforcement in their assigned schools, this is not an official role of an SRO (Kupchik & Bracy, 2010b). Instead, the participation of an SRO in a search of a student based on reasonable suspicion, as seen in the example above, is an informal arrangement made in individual school-police partnerships. Furthermore, it

becomes clear that these arrangements are deliberately made between SROs and administrators to deal with the delicate legal issue of student searches. In the following excerpt from an interview, Central High's SRO explains why he prefers to let administrators search students:

I've never done a locker search. Yeah, the Supreme Court kinda' gives SROs a certain level of leniency because they understand the complicated position that we're in and they also understand that safety is paramount in the building, so they tend to give us a little bit of leniency. Every SRO I know doesn't even come close to take advantage of that leniency, and even with our own policies about search and seizure, you know, we let the school do their thing and their requirements for search aren't nearly as strict as ours, and so why test the Supreme Court waters when we have a perfectly good administrator that has perfectly good reasonable suspicion to search a student?

Not only does Officer Mike describe the deliberate arrangement of working under school administrators' reasonable suspicion standard for searches conducted at Central High School, but he also indicates his belief that this is a common practice used by many schools and SROs.

As Officer Mike continues to talk about his partnership with the school, the interviewer probes as to what role the SRO might have in suggesting to administrators who to search or what to look for during a search. The way the SRO and the school manipulate the law, when it comes to searching students, becomes even clearer in his response:

Interviewer: Can you help them [administrators] by making suggestions of who they might want to look [at]?

SRO: No. No, I don't do that. No.

Interviewer: Is that not allowed or?

SRO: Well, if I did that, then they would essentially become an agent for me, and then the laws of probable cause would come into effect.

Interviewer: Right, I see, that makes sense.

SRO: You know I mean, I might, you know I could say "you might wanna keep an eye out for this student," and then they develop their own reasonable suspicion; I don't give them the reasonable suspicion.

Although the SRO attempts to differentiate between these two courses of action—one he claims he does not take because it would render the school an agent and necessitate probable cause and one that he suggests is permissible because it allows the school to "develop their own reasonable suspicion"—there is no practical difference between these two scenarios. This further demonstrates the efforts of the school and SRO to work solely under the school's reasonable suspicion standard.

Students' rights are compromised in these situations because law enforcement enters the picture at a point when no crime has taken place and yet, as a result of his

observance, students are subject to the same serious consequences as any other police search. Consider a hypothetical situation in which a school or SRO obtained information about a student and a crime that reached the threshold of probable cause. Certainly, in such a case, the SRO would conduct the search himself, without hesitation. Yet with the type of cooperative practice in place described above, an SRO would never need to find probable cause to search a student because administrators are willing to search students with the SRO present.

This finding is consistent with the carceral regime hypothesis; warrant-less searches, reminiscent of prisoner shakedowns, are physically conducted by school administrators but done under the watchful eye of the SRO. The security-obsessed climate of public schools legitimizes student searches (presumably for weapons or drugs) based on unrelated, noncriminal rule violations.

Questioning Students

A second way in which SROs and school officials were observed circumventing the law occurred within the context of questioning students about a crime. As established in *Miranda v. Arizona* (1966), a police officer cannot question a person (in a custodial setting) who is a suspect in a crime without advising the person of his or her rights to silence and to an attorney. School administrators, however, can question students without these restrictions. In this excerpt from fieldnotes at City High School, two students were suspected of stealing another student's cell phone and were escorted by the SRO into his office. The SRO then radioed for Ms. Smith, an administrator, to come to his office. The ethnographer describes the conversation and occurrences that transpired:

Officer Steve told me that he can't interrogate them because they are juveniles and suspects in a crime—but school officials can question them. We returned to Officer Steve's office, and Ms. Smith came in a couple of minutes later. When Ms. Smith arrived, Officer Steve started to direct the discussion. When he mentioned having a stolen phone, (student) got very upset.

Clearly aware of the boundaries of the law, the SRO waits for a school official before talking to the student. Yet rather than allowing Ms. Smith to talk to the students, Officer Steve directly questions the student once Ms. Smith arrives. The student's Fifth Amendment rights in this situation are in jeopardy as he has not been Mirandized but is being questioned about a crime by a police officer.⁸ This again demonstrates a discrepancy between the law on the books and the law in action—even though the SRO is not supposed to question this student (even by his own admission), his partnership with school administrators enables him to do so anyway.

This particular practice is problematic because students may not be aware that what they say in the presence of a police officer could have far more significant consequences than what they say to a school administrator. A contrite admission to stealing a cell phone in front of the school principal might result in school punishment, whereas

the same admission to the SRO could result in arrest. Interviews with students at City and Central High Schools reveal that at least some students do not regard their SRO much differently than any other school staff member. This suggests that students may not fully appreciate the law enforcement responsibility of the SRO in their school. For example, when asked in an interview if he noticed any difference in attending a school that has an SRO as compared to his previous school that did not have an SRO, one student at City High School replied, "No, not really. He's just working like one of the deans."⁹ A student at Central High School reported a similar sentiment when asked what it is like having an SRO in school, "It really don't make a difference . . . there really ain't no difference between a principal and a cop." When asked to describe how the SRO acts around school, a third student actually refers to the SRO as an "administrator" in his response:

Student: Yeah, he's an easy guy to talk to, he's easy going. He doesn't take anything too seriously like most administrators would in school.

Interviewer: Would you go to him if you had a problem?

Student: Yeah I would, I think he'd be the first administrator I'd go to.

This student's reference to the SRO as an administrator suggests that he sees their role, function, and authority as being the same. Although his response indicates a level of comfort and trust in the SRO, as indicated when he says he would go to the SRO first if he had a problem, it also demonstrates a level of naiveté that could be detrimental to him should he ever be a suspect in a crime at school.

These findings about students' views of their SRO parallel what other researchers have discovered when evaluating students' perceptions of their SRO: in particular, that students don't regard their SRO as a typical police officer (Hopkins, 1994; Jackson, 2002). Perhaps because of regular exposure and casual interaction with the SRO, it does not seem to students like the SRO is a "regular police officer." If, thereby, students come to regard their SRO casually, they may be lulled into a level of comfort with him or her that is precarious for them from a rights standpoint. The SRO is first and foremost a law enforcement officer, and students' failure to differentiate between school staff and the SRO places them in jeopardy, as it could make them less likely to safeguard their rights.

Not only can the SRO's physical presence during the questioning of students about crimes jeopardize students' rights but students' rights might also be jeopardized through other strategies that SROs and school administrators employ to question students. At Central High School, the SRO describes how he handles situations where a student needs to be questioned about a crime:

Officer Mike talked about how he always waits for a parent before he talks to a student about a crime. He said that the last thing he would ever want to do is violate a child's rights because it's too easy to do. Kids don't know what they can and should say, and you can manipulate them too easily. So he would never want

to do that. Sometimes he knows that somebody needs to talk to the student, and the school can do it without a parent present. So he'll suggest that an administrator get the information and then he can use that—But he can't get it himself.

On one hand, the SRO purports to appreciate the fragility of students' rights saying that he waits for a parent before questioning a student about a crime. He then contradicts his own philosophy by describing how if a student really "needs" to be questioned, he'll have an administrator do it without a parent present and then get the information from the administrator.

Again, in this admitted practice, the school and the SRO are circumventing the law. When faced with a boundary that the law has imposed—in this case, needing to wait for a parent to be present before the SRO can question a student—the school and SRO find a way to get around the law to accomplish their goal of questioning the student by having an administrator do the questioning and relay the information learned to the SRO. In doing so, schools and police officers operate in ways that explicitly contradict their own guidelines. This finding does not support the hypothesis that students' rights are too carefully considered in schools or that administrators are overly cautious to protect students' rights. On the contrary, the fact that students regard their SRO as no different from a school administrator indicates how powerful and ubiquitous the carceral regime is in schools.

Information Sharing

A third way in which students' rights may be compromised as a result of the way school administrators and police partner in contemporary schools concerns the issue of privacy of students' personal information. In City and Central High, students' privacy was sometimes compromised through the sharing of information about students between the school and the justice system (via the SRO). In these cases, the SRO acted as a transporter of information between the school and the justice system.

At Central High School, the SRO and the school registrar had a conversation about a student, Travis, who was new to the school that year and was distrusted and disliked by school staff. Travis recently transferred from a school in another state, where Central High administrators suspected he had been in trouble, and was now living with his grandmother near Central High. The administration at Central High School openly expressed wanting Travis kicked out but to this point had no justification to do so. In this conversation documented in fieldnotes, the school's registrar commented to the SRO that she had a bad feeling about Travis when he came in to register. The SRO then advised the registrar of how they could work together to handle situations like this in the future:

He said to her, "I have a way of dealing with things like this which is borderline against the rules, so I shouldn't announce it." But then he did describe it. He told her that if she sensed a problem with a student, she should tell Officer Mike and he will look up the student's arrest record. He isn't allowed to share that information with the school, but he can tell them that they might want to look into

this student more, and they can have the district request that Officer Mike do a background check.

This kind of information sharing may (and in this case did) result in a school and SRO teaming up against a student—even one that had not done anything wrong and may have just been trying to make a fresh start in a new school. Later on at Central High School, I observed Officer Mike putting this practice into action when he used his law enforcement connections to gain information about Travis; he then shared this information with the school, which used it to justify searching Travis on a regular basis. In a conversation with a representative from the district who is in charge of disciplinary matters,

Officer Mike then said that the other officer on the phone just told him that the word on the street is that this student is “sometimes strapped” [carrying a weapon]. Officer Mike said that he was going to have to start searching the student when he comes to school. [District representative] said she definitely thinks he needs to let the administration know right away so that they can start to search this student. She said, “because the school doesn’t need reasonable suspicion, right?” Officer Mike corrected her saying that he needs probable cause but the school only needs reasonable suspicion.

Because of an SRO’s unique position as a member of the school community and a member of the law enforcement community, he is privy to private and confidential information from both sides. When Officer Mike deliberately shares information he learned from a fellow officer with school administrators so that they can search Travis under the lower reasonable suspicion standard, he and the school are effectively circumventing the law. Travis has done nothing wrong at school to justify these searches yet is subject to their intrusiveness and ultimately their consequences. Had there not been an SRO working in the school and had the SRO not been aware that the school was leery of Travis and wanted to kick him out, this type of information sharing would not have happened. Again, as seen in this example, the school and SRO partner in a way that evades students’ rights. These actions have the potential to produce negative consequences for students ranging from stigmatization and humiliation to exclusionary punishments (e.g., suspension and expulsion) and arrest.

The sharing of information about students between schools and the criminal justice system further supports the notion that a carceral regime thesis characterizes contemporary schools. The boundary between the school and the justice system blurs, and students are constantly surveilled as if they are dangerous criminals with little regard for their privacy rights.

Discussion

The regular presence of police officers in public schools today presents a very atypical environment. There are very few social contexts in which a group of people are subject to police supervision on a daily basis. Therefore, it is not surprising that some

have drawn comparisons between schools and prisons (Advancement Project, 2005; Noguera, 2003; Wacquant, 2000). Trepidation about rising rates of school violence, despite crime statistics to the contrary, has prompted schools to search for swift solutions to school crime and violence. In their quest to solve the problem of school violence, schools have increasingly turned to policing rather than relying on teachers, counselors, and other school staff to work with students to change problem behavior (Hyman & Perone, 1998).

The manner in which students' legal rights are handled in schools with SROs is important to examine critically considering the regularity of police presence in contemporary public schools and the potentially criminal consequences for students facing school punishment. This research demonstrates that the merger of schools and law enforcement has not only been physical but practical as well. The way that contemporary school administrators and SROs work together virtually renders irrelevant any stricter standards outlined for law enforcement, as SROs and schools regularly find ways to work under the lower school standards. Similarly, when the law or students' rights pose a potential roadblock to the security or disciplinary goals of schools, schools and SROs find ways to get around these restrictions. Although the school and SRO are, for the most part, abiding by the letter of law by proceeding in ways that are usually legal, they often act in ways that seem to violate the spirit of what the law intended for these situations.

At the outset of this article, I outline two competing perspectives that offer opposite depictions of the student rights climate of contemporary public schools. The first perspective suggests that schools operate as part of the larger American carceral state and that as such students' rights are trumped by security and punishment agendas. The second suggests schools are overly sensitive to students' rights, primarily from fear of legal retribution, and that school discipline is hampered by hesitancy. If the latter perspective is accurate, I would have seen administrators, teachers, and SROs at City and Central High Schools proceeding cautiously when it came to students' rights and students threatening them with legal retribution; however, this was not the case. Instead, discipline and punishments dominate in these schools, and students' rights are treated as an obstacle, suggesting that logics of a carceral regime indeed influence how SROs and disciplinary staff work with students. Even students who are merely suspected to have done something wrong are subject to criminal treatment, such as police questionings and intrusive and humiliating searches.

The results of this study present several concerns for students. Circumventing the law reduces students' rights, placing students at risk for severe punishment, such as suspension, expulsion, and arrest without adequate protections. Ideally, students' legal rights would protect them in the moment; however, in practice, punishment decisions in schools are often made swiftly as administrators and school police officers act to preserve school safety. In most cases, students' rights are an afterthought considered by a judge in a courtroom. In *Safford Unified School District #1 et al. v. Redding* (2009), for example, 6 years passed before the Supreme Court ruled that a 2003 strip search violated Savana Redding's Fourth Amendment rights. Nineteen years old by

the time of the ruling, it could be argued that although this legal decision is a moral victory, any damage to Savana, her reputation, or her school career as a result of this search had already been done. The way contemporary public schools operate when it comes to security and discipline practices places the onus on students and their families to take legal action against schools if they think their rights have been violated. However, as decades of school discipline research shows, the students disproportionately likely to experience school discipline are the ones with the fewest resources to fight the outcomes (Chambliss & Nagasawa, 1969; Children's Defense Fund, 1975; Costenbader & Markson, 1998; Gregory, 1997; McCarthy & Hoge, 1987; Shaw & Braden, 1990; Skiba, Peterson, & Williams, 1997; Skiba, 2001). As a result, these practices are likely to continue to exacerbate the school-to-prison pipeline by facilitating disadvantaged students' entry into the criminal justice system.

When students have taken legal action against schools based on rights' arguments, U.S. courts send somewhat mixed messages regarding the scope of students' legal rights in schools. On one hand, the 8-1 ruling in Savana Redding's favor suggests the Supreme Court's agreement that school security can go too far. Delivering the majority opinion, Justice Souter cited the work of social scientists Hyman and Perone (1998), documenting emotional damage that can be caused to young people as a result of being strip searched, to support Savana's claim that this search violated her reasonable expectation to privacy. On the other hand, the court partially supported the actions of school officials in this case writing, "We mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students" (*Safford Unified School District #1 et al. v. Redding*, 2009, U.S. Lexis 4735, 24). Although disagreeing with the extent of the search in this particular situation, the Redding decision affirmed the constitutionality of student strip searches, particularly in cases of dangerous drugs or when there is reason to suspect medicine or drugs are hidden in a student's undergarments. Here we see that even when the rights of an individual student are supported, the legal rights of students, more broadly, are being reduced.

This study of the way police-school partnerships affect students' rights makes important contributions to two key literatures: the literature on security and policing practices in schools and the literature on students' rights in schools. First, although a handful of authors have written on the topic of SROs (e.g., Brown, 2006), empirical studies of SROs are almost nonexistent.¹⁰ The present study begins to fill this void by providing an empirical examination of how SROs work within schools and how they partner with school administrators. The results from this research suggest that SRO presence in schools is not definitively positive for students and point to ways that students could be negatively affected by police presence in schools. In addition, this research makes a contribution to the literature on students' rights at school. The largest body of existing research on this topic centers on students' Fourth Amendment rights (see Beger, 2003; Torres & Chen, 2006). Although this investigation into the impact of SROs on students' rights also uncovers implications for students' Fourth Amendment rights, implications for students' Fifth Amendment and privacy rights are revealed as well.

Considering the state of punishment and security in American public schools and the fact that the majority of public high schools have SROs, further examination into this issue of SRO and students' rights in school is warranted. The present study is limited to examining school–SRO partnerships in two public high schools. However, the pressures and problems faced by these two schools are not unlike those facing thousands of schools across the country, and their strategic responses to these problems are clearly widespread. The literature would, however, benefit from studies that compare schools with SROs to those without, given that this study is limited in examining SRO-present schools only.

Despite demographic differences between the student bodies at City and Central High Schools, the discipline and security practices across schools are very similar. A few observed differences are worthy of future research and may reveal how individual students' rights can be differentially affected according to their race, class, or gender. At Central High, for example, the administrators and SRO have an agreement to arrest all students (even first-time offenders and noninstigators) involved in fistfights; City High, however, only makes arrests when a student is a second-time offender (and instigator). Another noteworthy difference is the heavy reliance on out-of-school suspension as punishment at City High (the school that hosts primarily poor and working-class African American students). Considering what is already known about the disproportionate punishment of students of color in schools, future studies should consider whether this disproportionate punishment also jeopardizes the education rights of students of color.

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Notes

1. The 2001 No Child Left Behind (NCLB) Act epitomizes the accountability movement in American public schools, setting out to reform schools using standardized testing and incentivized funding. Reforms to school safety and security preceded NCLB but have become even more meaningful as schools face pressures to whittle down their student bodies to contain only the best-performing students (Kupchik & Bracy, 2010a).
2. In *Goss v. Lopez* (1975), the Supreme Court recognized public education as a property right protected by the Fourteenth Amendment, which cannot be denied without due process.
3. Schools without school resource officers (SROs) are not faced with Fifth Amendment concerns, as school officials can question students about crimes without the legal restrictions that are placed on law enforcement in same situation.
4. In addition, Johnson's study takes place during the 1990s when crime was declining nationally, but it employs no comparison group.

5. Foucault (1975) uses the term *carceral* to describe how surveillance, examination, and incarceration dominate modern life and public spaces are controlled by gates, security forces, and surveillance cameras.
6. When considering this viewpoint, it is important to recognize that schools have adapted to these (real or perceived) litigation threats by developing new “humane” methods of punishment, such as in-school suspension, which do not require lengthy hearings or attorney representation (Adams, 2000). Examinations of in-school suspension programs, however, present a variety of concerns about the quality of these programs that could affect students’ rights, including poor supervision, insufficient resources, and exclusion from educational delivery (Adams, 2000).
7. The school districts in this state use free and reduced lunch lists to indicate the percentage of students that are low income in each school.
8. Whether this was a custodial situation or not (and so whether it warrants the Miranda warning) could be debatable; however, I argue that any questioning of students by police in a school setting is custodial, as the school setting itself is custodial. Just as it is constantly reinforced to students that they cannot leave school at will, a student being questioned by a police officer at school most likely does not understand that he/she can get up and leave at any time.
9. A dean at City High School is a school employee who is responsible for dealing solely with security and disciplinary matters.
10. Kupchik and Bracy (2010b), Johnson (1999), and Schuiteman (2001) are exceptions.

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Bio

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