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# Zero Tolerance for Marginal Populations: Examining Neoliberal Social Controls in American Schools

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Zero Tolerance for Marginal Populations:  
Examining Neoliberal Social Controls in American Schools

by

Brian G. Sellers

A dissertation submitted in partial fulfillment  
of the requirements for the degree of  
Doctor of Philosophy  
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## DEDICATION

I dedicate this dissertation in loving memory of my grandfather, Silas J. Walker, Jr., whose life influenced so many for the better. I am truly grateful for all the love, support, inspiration, and guidance he gave me throughout my life, because I am a stronger and more dedicated person for it. The happiness he brought to the lives of others is beyond measure. Indeed, the story of his life, both hardships and triumphs, is remarkable and one to be admired. A man who achieved such great goals without the aid of wealth inherited or welcoming surroundings, which others may benefit from, but rather through strength of character, honor, integrity, and affection. We celebrate your life!

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## ABSTRACT

This study's purpose is to investigate the expansion of social control efforts in American elementary and secondary school settings, particularly the use of zero-tolerance policies. These policies entail automatic punishments, such as suspensions, expulsions, and referrals to the juvenile and criminal justice systems for a host of school-based infractions. The widespread implementation of zero-tolerance policies and the application of harsh, exclusionary sanctions have intensified over the past decade. Numerous studies have documented this rise; however, there has been little effort to explore the explanation of the expansion of school-based social controls.

A potential explanation is found in the application of political economic theories in relation to the increased use and evolving nature of social control in the neoliberal era of capitalism. As such, the current study employs a new theoretical approach, which utilizes neoliberal theory combined with theoretical components from existing metanarratives in the literature. By using this new approach in regard to school-based social control, the connection between the expansion of social control of the working class and marginal populations in the criminal justice process, and the retraction of the social safety nets that characterized neoliberal capitalism is extended to the explanation of trends in the social control of school-based infractions.

This investigation incorporates a qualitative, empirical exploration of how these school criminalization efforts have been implemented and legitimized by the state, specifically through the authority of the courts. By engaging in textual analysis, the jurisprudential intent that informs both the relevant state appellate and Supreme Court decisions was subjected to legal exegeses to determine how and if the judicial system legitimizes the practice of zero tolerance in schools, which are consistent with neoliberal ideals. In addition, a quantitative component, to this overall study, examined nationally representative School Survey on Crime and Safety (SSOCS) data across three academic years to determine if school security measures and disciplinary actions were increasingly applied to marginal populations in elementary and secondary schools over time.

Results from the qualitative inquiry revealed that in the overwhelming majority of court cases evaluated, the courts decided in a fashion that reinforces zero-tolerance policies as legitimate neoliberal social controls in schools. Several theoretically relevant themes emerged from the jurisprudential intent, which are transferable for further theory development and future research. Quantitative findings reveal that, over time, the total disciplinary actions and removals from school without continued educational services are disproportionately applied to schools with the highest percentages of minority students and students who reside in high-crime areas compared to schools with the lowest percentages of minority students and students who reside in high-crime areas. Conversely, the results also reveal that the average use of school security measures (e.g., metal detectors, access controls, security guards, etc.) are more likely to be used in schools with the lowest percentages of minority students than schools with the highest percentages of minorities over time.

These results are discussed in detail, and recommendations for changes in school policies and practices are offered, while being mindful of evidence-based best practices that may serve as viable alternatives to the zero-tolerance policies currently being used. Avenues for future research and theory development are also outlined.

## CHAPTER ONE:

### INTRODUCTION

The use of school-based sanctions has increased dramatically over the past decade. While studies have documented this increase, there has been little effort to explore the explanation of the expansion of school-based social control. A potential explanation is found in the application of political economic theories concerning the expansion and nature of social control in the neoliberal era of capitalism. By employing this argument in relation to school-based social control, the connection between the expansion of social control of the working class and marginal populations in the criminal justice process, and the retraction of social safety nets that characterized neoliberal capitalism is extended to the explanation of trends in the social control of school-based infractions. Thus, the purpose of this study is to examine the expansion of social control in American school settings in relation to the use of infractions, such as suspensions and expulsions for school age children.

Current trends reveal that suspension and expulsion rates in American elementary and secondary schools are increasing annually. In 2006, over 3 million students were suspended and over 100,000 were expelled (National Center for Education Statistics [NCES], 2009). Recent data collected from the United States Department of Education (USDOE) found that African-American students comprised 35% of students suspended

once, 46% of students suspended more than once, and 39% of students expelled from school (USDOE, 2012). Compared to their White counterparts, African-American students are over three and a half times more likely to be suspended or expelled, especially due to enhanced use of zero-tolerance policies (USDOE, 2012).

Zero tolerance is a widely implemented school disciplinary policy in the US that designates predetermined punishments for school-based infractions, regardless of circumstance or context (Boccanfuso & Kuhfeld, 2011). These exclusionary punishments may include automatic suspensions, expulsions with some continued educational services, expulsions without any continued educational services, mandated referrals to law enforcement, automatic exclusion from extracurricular or co-curricular activities, and referrals to and/or placement in alternative educational settings (Giroux, 2003; Hirschfield, 2008). Under these policies, 56% of students who are expelled are either Hispanic or African-American (USDOE, 2012). Moreover, Hispanic and African-American students make up 70% of students involved in school-related arrests or referrals to law enforcement (USDOE, 2012).

Additionally, empirical studies have consistently found that zero-tolerance policies are disproportionately applied to minorities (Lawrence, 2007; Reyes, 2006; Skiba & Knesting, 2001; Skiba, Michael, Nardo, & Peterson, 2002; Sughrue, 2003)<sup>1</sup>. Interviews conducted by Dunbar and Villaruel (2002) of 36 principals working in urban Michigan schools suggests that the perception of African American and Latino students puts them at a disadvantage of receiving harsher disciplinary actions. Although African American

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<sup>1</sup> Previous research provides a clear implication that, like other forms of social control and criminal justice (CJ) processes, school suspensions/expulsions exhibit racial and ethnic biases, and this study extends the scope of research on racial bias. As a result, it is possible that other explanations for this process, which draw on explanations of the production of racial biases in the CJ system, may be applicable.

students receive school disciplinary action much more often than their White counterparts, research has also shown that minority students are expelled typically for nonviolent infractions, while White students tend to receive punishment primarily for only serious violations (Fenning & Rose, 2007; Giroux, 2003; Skiba et al, 2002). Some researchers (Christle, Nelson, & Jolivet, 2004; Skiba et al., 2002) argue that students from low-income backgrounds are disproportionately targeted for disciplinary action; however, disproportional school punishment for those of minority status continues to exist even after controlling for socioeconomic status (Fenning & Rose, 2007; Giroux, 2003; Skiba et al., 2002).

In theory, zero tolerance is expected to deter students from violent, illegal, or disruptive behavior because the subsequent punishment is harsh and certain, which serves to incapacitate the students who are perceived to be most dangerous (Chen, 2008; Fries & DeMitchell, 2007; Hirschfield, 2008; Morrison & Skiba, 2001; Noguera, 2003). Normally, zero-tolerance policies have been widely accepted for their crime suppression effect, and much literature has been written to support the connection between zero tolerance policies and the long-term reduction in crime that has occurred in the US over the past two decades (Burke & Herbert, 1996; Chen, 2008; Devine, 1996; Ewing, 2000; Hyman & Snook, 1999; Jones, 1997; Larson & Ovando, 2001). As a result, zero-tolerance efforts are often referred to as the “school-to-prison pipeline,” (Fenning & Rose, 2007, p. 548; Kim, Losen, & Hewitt, 2010; Sullivan, 2010, p. 189) where schools punish the troubled students who need the most academic, social, economic, and emotional help rather than apply more restorative sanctions that do not deny them access to educational services (Fries & DeMitchell, 2007; Giroux, 2003; Noguera, 2003;

Sughrue, 2003). Violators of zero-tolerance policies are often labeled “trouble makers,” (Bowditch, 1993; Fenning & Rose, 2007) and contact with the criminal or juvenile justice system might lead to other stigmatizing labels, which may actually perpetuate future delinquent involvement (Cocozza et al, 2005; Potter & Kakar, 2003). Furthermore, referrals to the juvenile justice system have overwhelmed the courts, which already have overburdened dockets (Hirschfield, 2008; Sullivan, 2010).

While a growing body of literature has attempted to elucidate many of the negative outcomes associated with zero-tolerance policies and the closely linked school-to-prison pipeline (Fenning & Rose, 2007; Giroux, 2003; Hanson, 2005; Kim et al., 2010; Skiba & Knesting, 2001; Stader, 2006), these studies ignore the issues central to the theoretical examination of the emergence of those policies. One relevant critique is posed by research (see Hirschfield, 2008) that examines the role economic structures and assumptions play as they influence social institutions under neoliberal capitalism. A primary outcome of neoliberal economic policies is the removal of social safety nets, and the adoption of more conservative and punitive responses to social problems. In the school setting, the adoption of zero-tolerance policies can be seen as an extension of the influence of neoliberal capitalism on social institutions. Some researchers argue that the enforcement of zero tolerance policies across the nation’s educational system is one way that the state may punish and remove those who are perceived to have no market value such as those who are identified as flawed consumers, and who are classified as “other” because of their perceived associations with crime, redundancy, poverty, or expendability (Giroux, 2003; Hall & Karanxha, 2012).



In order to better understand the influence structural conditions have on institutions such as public education, it is necessary to examine the historical context of such changes in a political economic context. Contemporary, neoliberal restructuring of capitalism in the US, which began in the 1990s, continues to greatly reduce the welfare state, privatize state enterprises, and eliminate state regulations on the economy (Kotz, 2003, 2008, 2009; Wacquant, 2009a, 2009b). The consequence is the restriction of forces of controls that would seek to redistribute resources more equitably in response to evidence of injustice (Kotz, 2008, 2009; Wacquant, 2009b). Ironically, in order for the markets to enjoy such freedom from controls, it is also necessary to undermine working class power to facilitate the expansion of social control over workers and the economically marginalized (Kotz, 2009; Wacquant, 2009a, 2009b). Thus, neoliberal capitalism frees the mobility of capital across markets from government regulations, while also increasing formal social controls on marginal populations to manipulate the labor market and perpetuate the existing class structure (Wacquant, 2009a, 2009b). The social controls which are exerted, tend to be punitive and carceral<sup>2</sup> in nature (Wacquant, 2009b). In addition, zero tolerance is expected to be increasingly applied to marginalized groups, including minorities and those living in concentrated disadvantage (Wacquant, 2009a).

Additionally, the recent neoliberal restructuring of the economy and its intrusion into other social institutions, such as the educational system (Shapiro, 1984), presents a legitimation crisis in need of reconciliation. Classical liberalism refers to a market-based ideology, which justifies a capitalist mode of production by freeing the market from

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<sup>2</sup> Carceral refers to practices of social control and discipline that transforms public spaces into prison-like settings characterized by heightened surveillance and security (see Foucault, 1977).

government regulations and encouraging self-interested individualism among citizens (Wolfe, 1977). Conversely, democracy promotes the maximization of civic participation by the populace in an effort to establish a community defined by equality, mutual respect, and cooperative interaction among citizens toward commonly agreed-upon goals (Wolfe, 1977). The logic behind these dueling ideologies presents a contradiction, whereby liberalism creates inequality via power imbalances across rigid class lines, while democracy struggles to respond by promoting social welfare remedies and state regulations to alleviate social ills (Habermas, 1975; Shapiro, 1984; Wolfe, 1977). When punitive social control efforts consistent with the neoliberal agenda conflict with the equitable and democratic roles the educational system traditionally serves by being a public good, the state must overcome attempts to challenge its credibility and authority in light of such a legitimation problem. To date, no study has investigated the manner in which these zero-tolerance policies are legitimized by the state when constitutional challenges are raised in the courts by those affected.

Concurrent with the neoliberal restructuring efforts of 1990s, serious violent juvenile offending reached a peak in the US in 1993 at 1.2 million victimizations with at least one juvenile involved, its highest level since 1973 (Snyder & Sickmund, 1999). These rates sparked renewed concern over youthful offenders, and many prominent public figures, including James Alan Fox, John J. DiIulio, and William J. Bratton, inflamed the rhetoric being publicized by mass media when they exaggerated reports of youth “wilding” and growing legions of juvenile “*superpredators*” (Fuentes, 2003; Welch, 2005, p. 168-169; Welch, 2011, p.216-217). Indeed, wilding became synonymous with youth violence and fed the media-driven moral panic by drawing on racial and

ethnic stereotypes already embedded in the prevailing political economy (Welch, 2005). As a result, minority youth were targeted as threats to society, while racial and economic inequalities were reinforced via ever-increasing, “get tough” responses to the perceived panic over youth crime (Welch, 2005, 2011).

Recent instances of deadly school shootings (e.g., Sandy Hook Elementary, Columbine High School, Chardon High School shootings, and Lake Worth High School) resulted in efforts to increase security within schools through the widespread adoption of zero-tolerance policies (Hirschfield, 2008; Stinchcomb, Bazemore, & Riestenberg, 2006; Sullivan, 2010). Thus, society’s focus on social control efforts shifted from street corners to school yards (Stinchcomb et al., 2006). In fact, the rigid, punitive response to the moral panic caused by the school shootings of the 1990s and 2000s has allowed the juvenile justice system to broaden its reach to include school disciplinary policy (Boccanfuso & Kuhfeld, 2011; Chen, 2008; Hirschfield, 2008). As a result, students now face juvenile court proceedings and expulsion for even minor school misconduct instead of the brief school suspension they would have received years ago (Scott & Steinberg, 2008).

Whereas zero-tolerance policies were first intended to punish possession of weapons and drugs at school, these policies have undergone net-widening to include minor offenses such as speech, truancy, excessive tardiness, shoving matches, dress code violations, profanity, and possession of common health aids (e.g., Advil and cough drops; Black, 1999; Hirschfield, 2008; Insley, 2001; Morrison & Skiba, 2001; Sughrue, 2003). Such harsh realities are becoming more and more commonplace in light of the fact that the actual probability of an American student being murdered in school is lower than that

of being struck by lightning (Orpinas, Horne, & Staniszewski, 2003; Scott & Steinberg, 2008). Ironically, juvenile offending has been declining ever since 1993 (FBI, 2008), but school criminalization efforts have continued to escalate (Hirschfield & Celinska, 2011). While episodic moral panics may provide the impetus for school criminalization via the expansion of zero-tolerance efforts, there appears to be larger political, organizational, and structural forces needed in order for these policies to become institutionalized (Hirschfield & Celinska, 2011).

### The Current Study

This study examines the enforcement of zero-tolerance policies in school settings and seeks to explain the emergence and sustained longevity of such policies. A thorough examination of the historical and structural conditions necessary for the development of such punitive policies within the educational system will be conducted. Several meta-narratives regarding the theoretical mechanisms influencing school criminalization and the increased use of zero-tolerance policies will be explored and critiqued for their necessity and sufficiency in conceptualizing this phenomenon. In addition, the various explanations offered by the extant literature will be pieced together to offer a more complete theoretical explanation of the expansion of zero-tolerance policies in the school setting. Unlike previous investigations, this study will also incorporate an empirical exploration of how these school criminalization efforts have been implemented and legitimized by the state, specifically through the authority of the courts.

As part of that effort, attention will also be focused on the court's responses to legal challenges to penalties carried out to reinforce zero-tolerance school-based social control. Attempts by youthful defendants to challenge zero tolerance outcomes on the

grounds of violations of First, Fourth, Eighth, and Fourteenth Amendment rights have largely been dismissed by the courts (Kim et al., 2010; Sullivan, 2010; Yell & Rozalski, 2000). It is hypothesized that the affirmation of zero tolerance policies through court decisions legitimates the state's control of marginal populations. Examination of both the relevant state appellate and Supreme Court decisions surrounding the possible constitutional rights violations exhibited by zero tolerance policies is warranted to extract this jurisprudential intent, which permits and regenerates these crime control processes. Court decisions, like other legal documents, serve as archival data that record mainstream legal thoughts on several justice-related matters, and as such, they can be interpreted to reveal societal meaning. A qualitative textual analysis via a case law method approach is employed to investigate the underlying jurisprudential intent guiding these legal decisions, which provides legitimacy to the practice of zero tolerance in the education system and promote disciplinary strategies that will be consistent with neoliberal ideals.

An examination of neoliberal policies' influence on the national trends regarding increased mandatory disciplinary actions across elementary and secondary schools is largely absent from the current research. As a result, studies tend to ignore the historical association between the impacts of neoliberal policies on social control outcomes, such as the expansion of zero-tolerance policies and their outcomes. In addition, prior studies have failed to explore the scope of this extension of this form of social control, and have tended to employ case study approaches. Few existing quantitative studies are cross-sectional in scope (Chen, 2008; Kupchik & Ellis, 2008; Mayer & Leone, 1999). This study expands prior research by exploring this issue across both time and location. Relevant data collected nationally from the School Survey on Crime and Safety (SSOCS)

provides a source for information regarding disciplinary problems and actions across several years (e.g., 2004, 2006, and 2008) and across locations. SSOCS surveys a nationally representative sample of public elementary and secondary school principals. Principals were asked about the amount of crime and violence, disciplinary actions, prevention programs and policies, and other school characteristics, including some demographic variables. Quantitative analyses of the available variables regarding the various forms of disciplinary actions taken, with or without continued educational services, in response to a variety of school-based infractions, are conducted to identify trends that may reflect the increased punitiveness in the social control of marginal populations within the educational system during the recent neoliberal transition.

Finally, a critical evaluation of the qualitative and quantitative findings will inform implications for policy and practice. Viable alternatives for zero-tolerance policies will be explored and future directions for research will be explicated.

## CHAPTER TWO

### LITERATURE REVIEW

There are several bodies of literature on zero tolerance policies, which need to be reviewed. First of all, there were numerous historical events that led to the development of school criminalization. How these developments factored into the widespread implementation of zero tolerance policies across schools in America will be discussed. Secondly, the various theoretical rationales that underpin zero tolerance policies will be explained to elucidate how proponents buttress their support for the application of such policies. Thirdly, the empirical evidence of the net-widening of zero tolerance policies and their adverse impact on minority and disabled students will be clarified. Next, the existing metanarratives<sup>3</sup> that attempt to critically explain the theoretical foundations for the origins and growing use of zero tolerance policies in school will be reviewed and appraised. Finally, neoliberal theory and the crisis of liberal democracy will be described in detail to provide a historical context of how market forces affected the emergence zero tolerance policies in the educational system.

#### Factors Affecting the Accelerated Criminalization of Schools

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<sup>3</sup> Metanarrative refers to a grand narrative or story-like explanation that attempts to provide a comprehensive account to various historical events, experiences, and social/cultural phenomena by appealing to some kind of universal knowledge, theoretical basis, or schema (See, Habermas, 1981; Lyotard, 1979).

Several rationales for why harsh, punitive school disciplinary practices have emerged in recent years are noted in the existing literature on school violence and discipline. Most of the potential factors affecting the acceleration of the criminalization of school children have been identified as instilling fear in a reactionary public and the power brokers of the current political-economic system (Hirschfield, 2008; Hirschfield & Celinska, 2011; Simon, 2007; Welch, 2005, 2011). Zero-tolerance policies, which automatically impose severe punishments regardless of the circumstances, are prominently featured in recent school criminalization efforts (Kim et al., 2010). Traditionally, criminalization refers to the development and diffusion of criminal law that “targets a set of activities perceived to be attached to a social group” in need of control (Jenness, 2004, p.150). Thus, school criminalization includes policies and practices that sanction student misconduct as crime and casts students as suspects, criminals, or prisoners in need of control (Hirschfield, 2008; Hirschfield & Celinska, 2011).

The 1960s and 1970s were a period that experienced high tides of youthful violence in schools (Gottfredson & Gottfredson, 1985; Snyder & Sickmund, 1999; Toby, 1998). This period was also marked by social unrest due to the civil-rights revolution, the women’s liberation movement, and anti-war protest, which questioned authority, the status quo, and conformity to outdated social structures and controls. The sentiments that emerged from these social movements spread into public schools (Toby, 1998). As such, teachers and school administrators began to express concerns over maintaining control within the classroom when students misbehaved, especially since U.S. Supreme Court decisions in the 1960s and 1970s extended greater due process protections to juveniles (Bowditch, 1993; *Goss v. Lopez*, 1975; *In re Gault*, 1967; *In re Winship*, 1970; *Kent v.*



*United States*, 1966; Toby, 1998). Thus, teachers and administrators perceived that these social and legal changes weakened their authority to swiftly administer punishments, which subsequently undermined order within schools (Toby, 1998). Indeed, it has been hypothesized that school personnel's fear of loss of control, coupled with public scrutiny in regards to school safety, has contributed to an influx of classroom conflict between students and educators (Casella, 2003a; Fenning & Rose, 2007; Noguera, 1995; Vavrus & Cole, 2002). Throughout the 1970s, the number of media reports regarding school violence continued to increase to the point that public concern resulted in Congressional hearings on the matter (Gottfredson & Gottfredson, 1985; Toby, 1998).

Consequently, the Ninety-Third Congress mandated a study on the scope and severity of school violence be conducted in 1974. This comprehensive national study on school crime and safety surveyed principals in 4,014 schools in urban, suburban, and rural areas (Asner & Broschart, 1978). In addition, 31,373 students and 23,895 teachers in 642 junior and senior high schools were also surveyed on their exposure to school crime, especially victimizations (Asner & Broschart, 1978). The final report was published by the National Institute of Education and the findings were presented to Congress in 1978 (Asner & Broschart, 1978). Unfortunately, no previous studies existed by which to compare the findings in order to determine if school violence was increasing and by how much (Asner & Broschart, 1978; Toby, 1998). Regardless, Asner and Broschart (1978) concluded with incomplete evidence that classroom disruption was significantly more serious than 15 years prior but that levels remained steady within the past five years. While the report vacillated on the reasons for this increase in school crime and disruption, it was argued that the single most important difference between safe

schools and violent schools was the presence of a strong, dedicated principal who served as a role model for both students and teachers, and who instituted a firm, fair, and consistent system of discipline (Asner & Broschart, 1978).

Increasing reports of misbehaving students were blamed primarily on teachers abandoning their roles as disciplinarians because they were being intimidated by unruly youths (Bowditch, 1993; Toby, 1998). Some argued that teachers needed to reassert their role as agents of control and bolster their authority, because control of the classroom was deemed a prerequisite for education (Bowditch, 1993; Toby, 1998). Moreover, Jackson Toby (1998), as a social control theorist, claimed that an element of fear was necessary to maintain classroom control, because students would be less likely to be disruptive if it would jeopardize the teacher's approval of them. It was also perceived by some that American students simply did not fear their teachers anymore and they no longer perceived the potential loss of stakes in conformity, which formal education provided (Toby, 1998). Thus, increased security, surveillance, and formal sanctions for disruptive and violent behavior in schools were proclaimed as essential to restore a controlled, disciplined environment so educational processes could be effective, since students would conform to school norms or face strict consequences for misbehaviors (Bowditch, 1993; Toby, 1998).

Also, from the 1960s to the 1980s, an association between youth culture and drugs and drug trafficking was framed by the government and media as a major threat to the safety and educational missions of schools (Simon, 2007). The nationwide crackdown on drug-related offenses during the 1980s gave rise to the concept of zero tolerance, which promotes holding people accountable for their behavior via a punitive,

exclusionary response (Boccanfuso & Kuhfeld, 2011; Fuentes, 2003; Skiba & Knesting, 2001; Stinchcomb et al., 2006). However, the crime-related politics behind the war on drugs has shifted the crime control efforts of drug policy from the street corners to schoolyards (Stinchcomb et al., 2006). In addition, criminologists like James Q. Wilson and John DiIulio predicted a rising tide of violent youth crime to be perpetrated by growing numbers of “superpredators” (Fuentes, 2003; Welch, 2005, p. 168-169; Welch, 2011, p.216-217). By 1997, at least 79% of schools nationwide adopted zero-tolerance policies toward alcohol and drugs (Boccanfuso & Kuhfeld, 2011).

The National Center for Education Statistics (2012) reports that 60% of public high schools utilize random dog sniffs to check for drugs and roughly 29% use some other form of random sweeps to search for contraband and drugs. A Texas company called Interquest Detection Canines has supplied over 1,000 schools in 14 states with drug-sniffing dogs (Beger, 2002). Thus, the potential for profit may motivate the continued expansion of canine searches in schools (Beger, 2002).

Around 13% of public high schools drug test athletes, while 8% drug test students who are participating in nonathletic extracurricular activities (Sullivan, 2010). The *Vernonia School District 47J v. Acton* (1995) decision upheld the school policy allowing for all student athletes to subject to mandatory drug testing under the argument that the testing would not lead to any law enforcement consequences or used for any internal disciplinary actions. A positive drug test would only result in exclusion from the extracurricular activity. Such testing has mostly been restricted to participation in competitive extracurricular activities; however, the district court in one locale has

actually upheld the random drug testing of student drivers (*Joye v. Hunterdon Cent. Reg'l High Sch. Bd. of Educ.*, 2003).

Students who are found possessing or using drugs, including alcohol and tobacco, or drug paraphernalia, while on school property, face not only suspension or expulsion but also a potential referral to the juvenile and criminal justice systems (Beger, 2002; Education Law Center, 2012). Therefore, it is possible for students to receive imprisonment for possession and distribution of drugs in or around schools, especially given the increased use of juvenile waiver in recent years (Arya, 2011; Beger, 2002; Sellers & Arrigo, 2009). However, empirical evidence has revealed that zero tolerance policies were actually encouraging students to “conceal rather than deal with their drug use” and/or abuse and many of those students who are caught and expelled are not necessarily the ones who use drugs the most (Hammersley, Marsland, & Reid, 2003, p. xi; Stinchcomb et al., 2006). In fact, disciplinary action, like in-school suspension has been associated with later drug use and long-term disaffection and alienation (Stinchcomb et al., 2006). Alternative evidence-based programs, like *Reconnecting Youth*, have been implemented in several states (Boccanfuso & Kuhfeld, 2011) and experimental evaluations found that students who successfully completed the program had lower rates of alcohol and drug use than those who did not participate (Eggert, Thompson, Herting, & Nicholas, 1995; Eggert, Thompson, Herting, Nicholas, & Dickers, 1994). Regardless, concerns over the presence of drugs in schools have emboldened the use of zero-tolerance policies for drug-related offenses and they remain largely in place in the majority of elementary and secondary schools (Kim et al., 2010; Simon, 2007).

Perhaps the most salient issue affecting the implementation of draconian disciplinary practices in schools would be the recent incidents of schoolyard shootings and murders in the 1990s and 2000s. The Safe School Initiative identified 37 separate incidents of targeted violence between 1974 and 2000, which involved 41 perpetrators across 26 states (Vossekuil, Fein, Reddy, Borum, & Modzeleski, 2002). The primary weapon used by the attackers in these instances was some type of gun, with over half using handguns ( $n=25$ , 61%) and nearly half using rifles or shotguns ( $n=20$ , 49%; Vossekuil et al., 2002). Possibly the most noteworthy events of this kind were the Columbine High School shootings (by Eric Harris and Dylan Klebold) in Littleton, Colorado, the Chardon High School shootings (by Thomas Lane) in Ohio, and the shootings in Lake Worth High School (by Nathaniel Brazill) in Florida (Greene, 2005; Hirschfield, 2008; Kim et al., 2010; Sullivan, 2010). The media's coverage of such violent incidents has influenced the framing of the issue of school violence as one that is out-of-control (Hirschfield & Celinska, 2011; Simon, 2007). Thus, the public perception in society is that schools are no longer safe and fear has created a moral panic, especially among middle-class families in the suburbs (Hirschfield, 2008; Hirschfield & Celinska, 2011; Schoonover, 2007, Simon, 2007).

Although weapons in schools are relatively rare (Devine, 1996; Stader, 2004), a culture of fear has persevered, whereby control and surveillance are the paramount concerns of new “get tough” policies in schools (Giroux, 2003, p.560). As such, the fear of school-based crime is used as the overarching rationale to tighten controls on the movements of students in and out of schools, as well as the automatic punitive responses for policy violations (Barrett, Jennings, & Lynch, 2012; Noguera, 1995; Simon, 2007).

Thus, the implementation of zero tolerance policies has continued to expand and the scope of their restrictions has broadened to include infractions other than illicit drugs, guns, and serious violence (Casella, 2003b; Schoonover, 2007; Stinchcomb et al., 2006).

### Theory, Rationales, and Policies Supporting Zero Tolerance in Schools

The main underlying theories guiding the implementation of zero tolerance policies in schools are deterrence and rational choice theory (Casella, 2003b). Studies testing deterrence theory often looked either at specific deterrence or general deterrence. Specific deterrence refers to when an individual is deterred from crime because he or she received punishment directly (Akers & Sellers, 2009; Kubrin, Stucky, & Krohn, 2009). Conversely, general deterrence refers to when society overall is deterred from crime because some offender was punished for his or her crime (Akers & Sellers, 2009; Kubrin et al., 2009). Thus, either direct (specific) or indirect (general) punishment is what was traditionally scrutinized by researchers. Both specific and general deterrence can occur during the administration of a single punishment (Kubrin et al., 2009). For example, a person who is punished may be specifically deterred from the personal experience, and in addition, the general public be also be deterred from the indirect knowledge that this individual was punished.

Certainty and severity of punishment are the factors that are most often examined to determine the effects of specific and general deterrence (Akers & Sellers, 2009; Kubrin et al., 2009). Certainty refers to the likelihood of being caught for a crime and subsequently punished. Severity refers to the magnitude or nature of the punishment, which may deter crime if it is perceived as slightly more harmful than the harm caused by the crime (Akers & Sellers, 2009; Kubrin et al., 2009). Celerity refers to the swiftness in

which the punishment is administered, with swifter punishments thought to have more of a deterrent effect (Kubrin et al., 2009). However, there is one fundamental aspect that the past conception of specific and general deterrence has neglected to take into account.

Stafford and Warr (2006) reveal that punishment avoidance can actually affect and distort one's perception of the certainty or severity of punishment. In other words, a person may become more inclined to continue to commit crime in the future if he or she has never actually been caught or knows others who commit crimes and are never caught. Thus, punishment avoidance can have both a direct and indirect effect on one's persistent criminal behavior (Stafford & Warr, 2006). For example, if a student gets into a violent altercation with another student, while at school, and he or she is never stopped by school administrators or teachers, then he or she may perceive the chances of being disciplined and arrested as slim. Similarly, if a student witnessed someone fighting at school, and this person is not stopped by school officials, then the certainty of punishment may be perceived as less likely. Moreover, if such a student were observed but did not receive automatic punishment, then others may not be deterred. Therefore, punishment avoidance may encourage an initial criminal act or recidivism according to such logic (Stafford & Warr, 2006).

Thus, there is a mixture of indirect and direct experiences with punishment and punishment avoidance. This differential experience can either reinforce crime or deter it (Stafford & Warr, 2006). Zero tolerance policies in schools seek to maintain control of students through deterrence by having strict, certain, and automatic punishments that are not delayed by taking in to account the circumstance of the school-based violation (APA Zero Tolerance Task Force, 2008; Casella, 2003b; Heitzeg, 2009). In addition, zero

tolerance policies in schools are intended to overcome the potential phenomenon of punishment avoidance by eliminating discretion in an attempt to improve consistency, and thereby, send a clear disciplinary message to other students (APA Zero Tolerance Task Force, 2008). Zero-tolerance policies seek to deter potential offenders from committing school-based infractions by adhering closely to the strategy of “punishing dangerousness,” which is both preventive and preemptive in nature (Chen, 2008; Robinson, 2001, p. 1432).

This new perspective on deterrence is very compatible with social learning theory, especially since differential reinforcement plays a role in how one perceives the certainty and severity of punishment in relation to direct and indirect experiences with punishment and punishment avoidance (Stafford & Warr, 2006). Besides, social learning theory argues that behavior can be learned through experience as well as by observational or vicarious learning (Akers, 1973; Bandura, 1977). An example of experiential learning would be if a person shoplifts but is never arrested and finds the behavior to be positively reinforced so he or she decides to continue to shoplift based on this experience. An example of vicarious learning would be if a person had a friend who smoked marijuana everyday behind the gym but was never caught, which might result in that person deciding to smoke also. Of course these scenarios can alter behavior if punishment is actually experienced or observed (Stafford & Warr, 2006). It is a more diverse way of thinking about deterrence and why some are deterred, while others are not. Thus, it is reasonable to conclude that the rationales for zero tolerance efforts in schools are buttressed by deterrence theory and differential reinforcement in order to dissuade school



violence and misbehavior by students for fear that they will receive swift, harsh, and certain consequences (Casella, 2003b; Ewing, 2000; Heitzeg, 2009).

Rational choice theory draws greatly from classical criminological theory and economic theory, and hypothesizes that perceived certainty and severity of shame, embarrassment, and legal sanction may deter potential criminals if they engage in a cost/benefit analysis (Cornish & Clarke, 1986, 2006). The theory examines the benefits of crime as well as its costs by applying Bentham's hedonistic calculus to the mechanisms of deterrence theory (Grasmick & Bursik, 1990). In regard to costs, this theory conceptualizes self-imposed shame as an internalized punishment and socially imposed embarrassment as an informal punishment (Grasmick & Bursik, 1990). Shame refers to a person's conscience that causes the individual to feel guilt for committing a crime, while embarrassment refers to a person feeling ashamed of criminal behavior by letting down those who are closest to him or her (Grasmick & Bursik, 1990). Hence, this theory assumes that criminals are rational agents who weigh the costs and benefits of engaging in crime before executing the act (Cornish & Clarke, 1986). Proponents of deterrence and rational choice theories often affix blame to the individual, while dismissing any external social forces that may constrain that individuals options (Pratt, 2009).

Rational choice theory reinforces a primary rationale for the adult criminal justice system, which operates under the premise that adults are rational decision makers who are capable of making cost benefit analyses that deter them from criminal or antisocial behavior for fear of criminal sanctions (Levick, 2000). Mandatory expulsion and the likelihood of a follow-up referral to juvenile court makes zero tolerance policies reflect

adult sanctions, which begs the question of whether school officials should examine and provide proof of the youth's intent or knowledge of his or her actions (Hanson, 2005). Currently, zero tolerance policies do not give discretion to school authorities in order to determine the student's intent (Hanson, 2005).

As a "get tough" strategy for school violence, zero tolerance policies make it possible for students to face imminent punishment without consideration for possible developmental immaturity, or related social and emotional deficits, which may impair their decision making. Empirical evidence specifies that the deficiencies in "psychosocial maturity" among juveniles are caused by their impulsivity (Grisso et al, 2003; Oberlander et al, 2001; Scott & Grisso, 2005), reliance on peer acceptance (Feld, 2003; Katner, 2006; Kupchik, 2006, p. 19; Redding & Frost, 2001; Scott, 2000, p. 304; Scott & Grisso, 2005), lack of autonomy (Katner, 2006), and poor judgment in relation to future consequences (Grisso, 2006; Katner, 2006; Oberlander et al, 2001; Redding & Frost, 2001; Scott & Grisso, 2005, p. 335). In addition, neuroscience research acknowledges that the cognitive capabilities of juveniles are also hindered because of biological development (Arya, 2011; Deitch et al., 2009; MacArthur Foundation Research, n.d.; Sowell, Thompson, Tessner, & Toga, 2001). For instance, the adolescent brain is not fully developed since the prefrontal cortex is still maturing throughout this developmental period (Arya, 2011; Sowell et al., 2001). Moreover, this underdeveloped region of the adolescent's brain is in charge of rational decision-making, long-term planning, impulse control, insight, and judgment (Arya, 2011; Heide & Solomon, 2006, 2009; Miller & Cohen, 2001; Sowell et al., 2001). Thus, the adolescent's brain is typically focused on the immediate present and not the consequences from the overall situation, which may entail severe collateral

consequences affecting future employment and educational aspirations (Heitzeg, 2005; Deitch et al., 2009).

Notwithstanding the findings from social, behavioral, and neuroscience research, public policy has been fashioned to reflect school disciplinary practices in line with deterrence and rational choice principles in an effort to make schools safer. In fact, zero tolerance policies are a part of a larger set of federal school violence prevention initiatives that were developed in the 1990s, which include the following: (1) development of violence prevention and conflict resolution programs, (2) attempts at gun control laws, and (3) the implementation of punitive and judicial forms of discipline (Casella, 2003b). Zero tolerance policies are derived from the latter two initiatives (Casella, 2003b).

The initial federal legislation began with the Gun-Free School Zone Act of 1990, which made it a federal crime to possess a firearm within 1,000 feet of a public, parochial, or private school. However, this law was found unconstitutional under the ruling of *U.S. v. Lopez* (1995). The subsequent Gun-Free school Act (GFSA) of 1994 required all states receiving federal funds to expel any student bringing a gun to school for a period of no less than a year. An amendment to the Elementary and Secondary Education Act of 1965 required that federal funding be withheld from any school that did not conform to the expulsion mandated by the GFSA for students who bring firearms within 1,000 feet of a school (Casella, 2003b).

In addition to the mandatory expulsion of violators for at least a year, GFSA also required the school systems to report these individuals to the criminal justice or juvenile justice system as well as report discipline statistics to the federal government annually

(Sughrue, 2003). Another provision within the GFSA, which was included in the modifications made under the No Child Left Behind Act (2001), permits the school administrators the discretion to reduce disciplinary action for firearm violation on a case-by-case basis (Stader, 2006; Sughrue, 2003). Thus, the school administrators are able to consider extemporaneous circumstances by which the student in question may receive modified disciplinary action. However, zero tolerance policies were widely implemented by the GFSA and amendments to the act in 1995 changed the word “firearms” to “weapons,” which broadened the category of weapons and items that can be used as weapons that will result in mandatory expulsion if a student is found possessing one (Casella, 2003b). Zero tolerance policies aim to prevent violence by punishing youths for their potential for violence and the dangerousness they exhibit (Casella, 2003b; Robinson, 2001).

The Safe Schools Act of 1994 (H.R. 2455--103rd Congress) and the Safe and Drug-Free Schools and Communities Act of 1994 provided funding via grants to educational agencies and non-profit groups to supply violence education programs, peer mediation, conflict resolution, and various other violence prevention programs associated with the first category of federal initiatives, as well as programs to deter use of illegal drugs and alcohol. Under the Violent Crime Control and Law Enforcement Act of 1994, over \$30 billion was authorized to fund more police officers, new prison construction, and community-based crime prevention programs, which were related to school safety efforts by targeting at risk youth in high-crime and high-poverty areas and promoting projects that involve community participation and school cooperation (see also Yell & Rozalski, 2000). Lastly, the Individuals with Disabilities Education Act Amendments of

1997 permitted school administrators to place students in special education in an interim alternative educational setting (IAES) for 45 days if they brought a weapon to school or any school function. In addition, the amendments to this act allows a hearing officer to place a special education student in an IAES for 45 days if the school district can provide cogent evidence that this student presents a danger to self or others (Yell & Rozalski, 2000).

Under these theoretical rationales and federal legislation, zero tolerance policies are assumed to accomplish many objectives. First of all, zero tolerance is expected to make schools safer and more effective in handling disciplinary problems (APA Zero Tolerance Task Force, 2008; Heitzeg, 2009). This argument comes from the assumption that school violence is at a crisis level and ever-increasing, which necessitates the need for stringent, no-nonsense strategies for violence prevention (APA Zero Tolerance Task Force, 2008; Ashford, 2000; Litke, 1996). Also, it is assumed that zero tolerance increases the consistency of school discipline and the clarity of the disciplinary message to students (APA Zero Tolerance Task Force, 2008). Next, it is expected that the removal of students who violate school rules will foster a school climate that is more conducive to learning for those students who do not misbehave (APA Zero Tolerance Task Force, 2008; Bowditch, 1993; Ewing, 2000). Finally, it is assumed that the swift and certain punishments associated with zero tolerance policies will have a deterrent effect on students, and these policies will improve overall student behavior and discipline (APA Zero Tolerance Task Force, 2008).

The American Psychological Association Zero Tolerance Task Force (2008) examined the data from the existing research and literature and found a lack of support

for the above mentioned assumptions. For instance, the empirical evidence does not support the argument that school violence is spiraling out-of-control, as incidents of deadly school violence are a relatively rare occurrence that make up only a small portion of school disruptions (APA Zero Tolerance Task Force, 2008; De Voe et al., 2004; NCES, 2009; Orpinas et al., 2003; Scott & Steinberg, 2008). In addition, there is no evidence that zero tolerance policies have increased the consistency of school discipline, because suspension and expulsion rates vary widely across schools and schools districts (APA Zero Tolerance Task Force, 2008; NCES, 2009). In fact, recent research has found that higher rates of suspension and expulsion are associated with worsening school environments and poor school wide academic achievement (APA Zero Tolerance Task Force, 2008; Skiba & Rausch, 2006). Yet, zero tolerance policies continue to flourish even without evidence that they actually increase school safety and security (APA Zero Tolerance Task Force, 2008; Skiba & Knesting, 2001).

Furthermore, evidence from adolescent development and neuroscience have found that if a particular structure in the youth's brain is still immature, then the functions that it governs will exhibit immaturity (APA Zero Tolerance Task Force, 2008; Baird & Fugelsang, 2004; Luna & Sweeney, 2004). In other words, adolescents are more likely to engage in riskier behaviors and reason insufficiently in regards to consequences for their actions because of their psychosocial immaturity and underdeveloped brain structures (APA Zero Tolerance Task Force, 2008; Grisso, 2006; Sowell et al., 2001).

Developmental research has also identified certain characteristics of secondary schools that conflict with the developmental challenges of adolescence, which includes the need for close peer relationships, autonomy, adult and parental support, identity

negotiation, and academic self-efficacy (Eccles, 2004). If used improperly, zero tolerance policies may intensify the challenges of early adolescence and the possible mismatch between an adolescent's developmental stage and the punitive structure of secondary schools (APA Zero Tolerance Task Force, 2008). For example, if the youth's misbehavior is a result of developmental or neurological immaturity, and the action does not pose a threat to school safety, then the harsh punishments prescribed by zero tolerance may unnecessarily impose detrimentally long-term consequences for poor judgment that is common in the developmental stage of adolescence (APA Zero Tolerance Task Force, 2008). Indeed, zero tolerance policies may create, enhance or perpetuate negative mental health outcomes for students by increasing feelings of alienation, anxiety, and rejection in students, as well as breaking healthy bonds to adult figures in school settings (APA Zero Tolerance Task Force, 2008).

#### Net-widening and the Impact of Zero Tolerance on Minority and Disabled Students

Although the original intent for the GFSA was to require automatic punishments for seriously dangerous violations involving weapons, zero tolerance policies have frequently been applied to very minor and non-violent infractions, such as tardiness, the use of profane language, and disruptive behavior (Heitzeg, 2009). Some of the violations in which zero tolerance sanctions are being applied to are extreme given the nature of the infraction (Hall & Karanxha, 2012; Heitzeg, 2009; Schoonover, 2007; Stinchcomb et al., 2006; Sullivan, 2010). For instance, in 1998, five-year-old Jordan Locke was suspended for wearing a five-inch plastic axe as a part of his firefighter costume he wore to his class's Halloween party (Skiba, 2000). School administrators have in fact "cast a very wide net," especially when students have been expelled for possessing nail clippers,

Advil, and mouthwash (Heiteg, 2009, p. 9; Skiba, 2000). In Texas, students face suspension and placement in alternative programs if they are found cheating, violating dress codes, engaging in horseplay, being excessively noisy, and failing to bring homework to class (Fuentes, 2003).

In some states, an expellable offense can “include willful or continued defiance of authority or disruptive behavior and habitual profanity” (Morrison & Skiba, 2001, p. 174). Another example is the case of *LaVine v. Blaine School District* (2001), where the Ninth Circuit ruled that the school district did not infringe upon a student’s freedom of speech rights for expelling LaVine when he presented a poem to his teacher, which contained violent themes (Sughrue, 2003). School officials believed that the nature of the themes conveyed in the poem posed an imminent threat, and an emergency expulsion of the student was applied (Sughrue, 2003). In addition, two fifth-graders, in Virginia, who were accused of slipping soap into a teacher’s drinking water, were charged with felonies that carried a maximum sentence of 20 years (Giroux, 2003; Heitzeg, 2009). Then there is the case of the youth who was brought up on a drug charge for giving fellow students two cough drops (Giroux, 2003; Gorman & Pauken, 2003). Several other cases are documented in the literature (see Advancement Project, 2005; Heitzeg, 2009, pp. 9-10; Justice Policy Institute, 2009; Sullivan, 2010, p. 190) and include the following:

- A 5-year-old girl handcuffed, arrested, and taken into custody in St. Petersburg, FL for throwing a temper tantrum and disrupting class.
- An 11-year-old girl in Orlando, FL tasered by a police officer, arrested, and charged with battery on a security resource officer for disrupting a school event and resisting with violence because she pushed another student.
- A 14-year-old disabled student in Palm Beach, FL referred to the principal’s office for allegedly stealing \$2 from another student. The principal referred the student to the police, where he was charged with



strong-armed robbery and held in an adult jail for six weeks even though this was his first arrest.

- A 5-year-old boy in Queens, NY arrested, handcuffed, and taken into custody for having a temper tantrum and disrupting class.
- A 12-year-old boy in Ponchatoula, LA, who suffered from hyperactive disorder, warned other students not to eat all the potatoes, or “I’m going to get you.” The student was suspended for 2 days and referred to the police for making “terroristic threats.” He remained incarcerated for 2 weeks while awaiting his trial.
- A 13-year-old boy in Denton County, TX was assigned to write a “scary” Halloween story for class; however, when he wrote a story about shooting up a school, he both received a passing grade by his teacher and was promptly referred to the principal. The police were called and the student spent 6 days in jail before the courts dismissed the case, because they confirmed no crime had been committed.
- In West Virginia, a child in the seventh grade gave a zinc cough drop to another student and was suspended for 3 days because the cough drop had not been cleared by the administration.
- A 6-year-old boy in North Carolina was suspended for a day for violating the school’s rule regarding “unwarranted and unwelcome touching” because he kissed his classmate.
- In Louisiana, a student in the second grade brought his grandfather’s watch to class for show-and-tell. When it was discovered that the watch had a one-inch-long pocketknife attached to it, the youth was suspended and sent to an alternative school for a month.
- An 11-year-old girl in South Carolina brought a knife to school to cut her chicken, which her mother packed in her lunch box and she was taken away in a police car.

As one can see, the examples mentioned above reveal the nature of the net-widening trends that school zero tolerance policies are undergoing. These policies are now punishing minor infractions with force and arrest, while also focusing more on younger elementary and pre-school students (Heitzeg, 2009). Also, the net-widening effect reveals enhanced cooperation between schools and the justice system, and how many of the barriers separating the two in the past have been removed (Hirschfield, 2008).

While such trends are alarming, perhaps the most troubling finding in the extant research is the overrepresentation of minority students, particularly African American

males, in the exclusionary practices enforced by zero tolerance policies (APA Zero Tolerance Task Force, 2008; Casella, 2003b; Fenning & Rose, 2007; Giroux, 2003; Lawrence, 2007; Reyes, 2006; Skiba et al, 2002; Skiba & Rausch, 2006; Skiba & Knesting, 2001; Sughrue, 2003). In fact, empirical evidence dating back to 1975 documented that African American males disproportionately receive exclusionary disciplinary consequences (Children's Defense Fund, 1975). Recent national data reveals that African-American students comprised 35% of students suspended once, 46% of students suspended more than once, and 39% of students expelled from school (USDOE, 2012). Moreover, compared to their White counterparts, African-American students are over three and a half times more likely to be suspended or expelled, especially due to enhanced use of zero-tolerance policies (Heitzeg, 2009; USDOE, 2012). Under zero tolerance policies, 56% of students who are expelled are either Hispanic or African-American (USDOE, 2012). Furthermore, Hispanic and African-American students make up 70% of students who are arrested or referred to law enforcement for school-based infractions (USDOE, 2012).

Minority students are predominantly from lower socioeconomic status and more likely to attend inadequately resourced inner-city schools (Christle et al., 2004; Giroux, 2003; Skiba et al., 2002). However, some studies have found that racial disparities, in regards to disciplinary action, continue to exist after controlling for socioeconomic status (SES; Fenning & Rose, 2007; Skiba et al., 2002). While the association between low SES and minority status is well-documented in social science research, suspension and expulsion as it relates to zero tolerance policies potentially has an additional adverse

effect on poor minority students compared to others because these kids are typically unable to afford tutoring and often fall behind their peers (Casella, 2003b).

Skiba and colleagues (2002) found that African American students received more referrals for subjective and nonviolent offenses, such as insubordination or being too loud, when compared to their White counterparts (See also APA Zero Tolerance Task Force, 2008). A Harvard study reported that even though African American students only comprised 17% of students enrolled in public schools, they represented 33% of out-of-school suspensions due to zero tolerance (Advancement Project/Civil Rights Project, 2000). More recent findings reveal that while African American students make up 17% of the school age population, they represent 37% of suspensions and 35% of all expulsions (Witt, 2007). Usually, when a group of people represents a certain category at a rate of 10% or more than their percent makeup in the general population, they group is being overrepresented for that category (Reschly, 1997).

Studley's (2002) study investigated discipline rates among 4 of the largest school districts in California and found African American students were suspended at the highest rate out of all ethnic and racial groups. Similarly, Mendez and colleagues (2002) analyzed discipline data from 1996-1997 for the second largest school district in Florida, and they found that African American males were suspended at a greater rate than any other racial or ethnic group for all elementary, middle, and high schools in that district. Nelson and colleagues' (2003) review of the literature on administrative referrals for discipline revealed that African American students were twice as likely to receive referrals as their White peers.

Research has also found that students with disabilities, especially those with emotional or behavioral disorders, are disproportionately suspended or expelled (Leone, Mayer, Malmgren, & Meisel, 2000; Wagner, Kutash, Duchnowski, Epstein, & Sumi, 2005). Historically, minorities, predominantly African Americans, are disproportionately placed in special education, and this finding has been documented since the 1960s (Dunn, 1968; Fuentes, 2003; Skiba et al., 2008). Nationally, African American students represent 33% of students who are identified as mentally retarded when they only make up 17% of the school-age population (Skiba et al., 2008). A meta-analysis between 1975 and 2000 found that African American and Latino students received referrals to special education more frequently than White students (Hosp & Reschly, 2003).

Research indicates that African American youth do not violate school rules at a higher rate than other students (Skiba et al., 2002); therefore, racial disparities cannot adequately be explained by differences in behavior, but instead should be explained by differences in application by school teachers and administrators (APA Zero Tolerance Task Force, 2008; Heitzeg, 2009). This differential treatment of minority students may be a reflection of teachers' lack of preparation in classroom management, lack of cultural diversity training, and the perpetuation of racial stereotypes (APA Zero Tolerance Task Force, 2008; Heitzeg, 2009). Eighty-three percent of teachers in the U.S. are White and mostly female (Heitzeg, 2009). Qualitative research findings suggest that White teachers tend to feel more threatened by minority students because they are perceived to be disruptive (APA Zero Tolerance Task Force, 2008; Bowditch, 1993; Fenning & Rose, 2007; Heitzeg, 2009; Hirschfield, 2008; Hirschfield & Celinska, 2011; Morrison & Skiba, 2001; Witt, 2007).

In fact, there is a tendency for teachers and school officials to classify misbehaving White students as in need of psychological or psychiatric intervention rather than of harsh punishment as prescribed by zero tolerance policies (Heitzeg, 2009). For example, psychiatric labels, such as Conduct Disorder (CD), Oppositional Defiant Disorder (ODD), and Attention Deficit Hyperactivity Disorder (ADHD) make it possible for school officials and law enforcement to handle disciplinary infractions and drug use by White students as a mental health problem rather than disruptive or disobedient behavior (Heitzeg, 2009). In fact, studies have revealed racial disparities in the diagnosis and treatment of ADHD and other Disruptive Behavior Disorders, which suggest that teachers are more likely to expect and define these disorders as an issue for White students (Bussing, Zima, Perwien, Belin, & Widawski, 1998; Heitzeg, 2009; LeFever, Dawson, & Morrow, 1999; Rowland et al., 2002; Safer & Malever, 2000; Safer & Zito, 1999; Zito, Safer, dosReis, & Riddle, 1998). Moreover, a child's social class, insurance coverage, and race are often key factors in who receives treatment for such disorders (Bussing et al., 1998; Rowland et al., 2002; Safer & Malever, 2000).

Empirical content analyses have found that poor, minority students are consistently labeled by school officials as "troublemakers" (Fenning & Rose, 2007, p. 544 & 548; Hirschfield, 2008, p. 92; Morrison & Skiba, 2001, p. 178). Casella's (2003b) findings also suggest that African American and Latino students are labeled as potentially dangerous and often in need of removal. Of course the most common nonviolent offenses in which minority students are disciplined for are classroom defiance, disruptive behavior, and profanity (Bowditch, 1993; Mendez et al., 2002). One possible explanation for why teachers label minority students as troublemakers may have to do with a

perceived loss of control whereby teachers feel that their authority is threatened by disruptive behavior, regardless of the absence of violence or threat of harm (Fenning & Rose, 2007). The practice of labeling, as it is associated with the frequently exclusionary nature of zero tolerance approaches to school-based discipline, may actually amplify disruption and crime in schools (Cocozza et al, 2005; Potter & Kakar, 2003).

Lemert (1967) argued that social control precedes deviance just as much as the reverse. Lemert (1967) also stated that when the individual initially commits a deviant act, a societal reaction ensues, which sanctions this individual for violating accepted norms. The repetition of deviant or criminal acts by this individual leads to further public reactions and subsequent labels. By experiencing negative labels the deviant person becomes entrenched in a criminal persona, and thus, the person accepts his or her fate as a publicly and self-identified criminal who continues to engage in such a lifestyle (Lemert, 1967). Thus, as Tannenbaum stated, “The person becomes the thing he is described as being” (1938, p. 20). Similar to labeling theory, Lemert’s arguments suggest that societal reaction is required in order for offenders to become both psychologically and behaviorally rooted in a criminal lifestyle (1976). Zero-tolerance policies, which mandate automatic disciplinary action and referrals to the criminal or juvenile justice system, are examples of reactionary responses to disruptive behavior exhibited by adolescent students who may merely be immature (APA Zero Tolerance Task Force, 2008; Curwin & Mendler, 1997; Grisso, 2006; Sowell et al., 2001). Additionally, the very conceptualization of school criminalization alludes to labeling theory because in order to “criminalize” someone, or a group, one must first label them a criminal (Hirschfield & Celinska, 2011, p. 2).

Thus, it is possible for teachers to project criminal futures onto students, especially African American youth (Hirschfield, 2008). Noguera (2003) found that less than half of African American students in California believed that their teachers cared for their future and supported them. Ferguson's (2000) investigation of how penal practices are adopted by school officials and the overall school's disciplinary process revealed African American students are disproportionally cast into roles as "at-risk of failing," "unsalvageable," and "bound for jail" (p. 9). Indeed, students who are frequently suspended or expelled from school face an increased risk of juvenile or criminal incarceration (Skiba et al., 2003). In addition, studies have found a significant relationship between high rates of minority student suspensions and minority student dropout rates in urban areas (Bullara, 1993; Felice, 1981; Fuentes, 2003; Gordon, Della Piana, & Keleher, 2000; Hall & Karanxha, 2012; Sheley, 2000).

When students experience expulsion, it is very difficult to be readmitted to schools, which also increases the likelihood of dropping out completely (Fenning & Rose, 2007). Thus, racial disparities in the enforcement of zero tolerance policies, which are closely associated with subsequent contact with the justice system and high dropout rates, increase the likelihood that minority students will be funneled into a school-to-prison pipeline (Fenning & Rose, 2007; Giroux, 2003; Hanson, 2005; Hirschfield, 2008; Kim et al., 2010; Skiba & Knesting, 2001; Skiba et al., 2003; Stader, 2006). For example, roughly 60% of African American male high school dropouts are incarcerated by age 30-34 (Pettit & Western, 2004).

### Existing Metanarratives in the Literature

There are several metanarratives, which have been developed in recent years in an attempt to critically explain the theoretical foundation for the origins and growing use of zero tolerance policies in schools (see Hirschfield, 2008; Hirschfield & Celinska, 2011). While these explanations describe conditions that are necessary to the formation and perpetual implementation of such policies in the American educational system, they are not adequately sufficient to explain this phenomenon on an individual basis. In other words, these metanarratives collectively contribute to a better understanding of some of the root causes behind the emergence of zero tolerance in schools. This subsection will briefly explain the tenets of these theoretical frameworks and their potential shortcomings, which will lay the groundwork for a more complete theoretical explanation of the expansion of zero-tolerance policies in school settings that will be developed in Chapter 3.

The moral panic narrative has already been mentioned above, and it functions as one of the major interpretations of school criminalization. School crime and school violence began to surge in the late 1980s and throughout the 1990s, especially in regards to school shootings (Boccanfuso & Kuhfeld, 2011; Chen, 2008; DeMitchell & Cobb, 2003). Unlike the rise in school violence in the 1960s and 1970s, these later decades were met with much more media attention (Hirschfield, 2008; Toby, 1998). Under the moral panic narrative, fear of school violence, as driven by media framing of the issue, serves to unify a frightened public, school teachers, school administrators, and public officials in a stance against a marginalized “folk-devil” (Burns & Crawford, 1999; Cohen, 1972). The emotionally-charged American public often demands immediate solutions to the crisis



that spawned the moral panic (Burns & Crawford, 1999; Hirschfield, 2008). As such, the emotional and political response results in “quick-fix, punitive solutions,” such as zero tolerance policies and increased security measures that are typically excessive given the actual threat of future violence (Hirschfield, 2008, p. 85).

Media framing of social issues can often be distorted and exacerbate the public’s fears (Burns & Crawford, 1999). The media is capable of influencing popular beliefs through an assortment of accessibility and applicability effects that utilize agenda setting and priming in order to provide persistent coverage of particular aspects of issues (Kim, Scheufele, & Shanahan, 2002; Scheufele & Tewksbury, 2007). As a result, the media’s agenda becomes easier to recall for people in order for them draw a connection between two concepts and accept it as fact (Kim, Scheufele, & Shanahan, 2002; Scheufele & Tewksbury, 2007).

Accessibility and applicability effects are complimentary because applicable constructs are much more likely to be acknowledged when made readily accessible to the public (Scheufele & Tewksbury, 2007). Thus, the belief that issue A is connected to issue B will tend to persevere and mold public perceptions and attitudes provided that the message is consistently presented or unless some opposing information is made apparent (Scheufele & Tewksbury, 2007). Thus, agenda setting and priming are utilized by the media to identify what vital issues require an optimal amount of processing time and attention from audiences, while framing focuses on the manner in which these issues are presented to the public (Scheufele & Tewksbury, 2007).

According to Entman (1993), framing entails selecting certain aspects of a perceived reality and making them more prominent in a communication text so that a

particular perspective is promoted over others and people's attitudes may shift. In other words, framing permits the media to tailor perception and shape reality through various methods which include, the amount and placement of coverage, exclusion of factual material, word choice, the repetition of information, and whether or not a link is established between familiar symbols and the subject matter so the coverage is more noticeable and evocative (Bullock, 2007; Bullock & Cubert, 2002; Entman, 1993). The more frequent a particular frame for an issue is utilized by the media, the more likely it is to be accepted and rationalized by the public (Carlyle, Slater, & Chakroff, 2008). Therefore, the successful framing of news can influence the discourse on problems such as crime (Sasson, 2010).

The moral panic perspective argues that prompt political responses, accompanied by policy changes, are a product of media driven outrage over a social problem that mobilizes popular support among the citizenry (Burns & Crawford, 1999; Giroux, 2003; Hirschfield, 2008). Politicians seize the opportunity to bolster public support by attempting to swiftly remedy the problematic situation by instituting social controls targeting the perceived deviant or potentially dangerous offenders (Burns & Crawford, 1999; Giroux, 2003). The reactions of policymakers tend to lead to more sensationalizing of the social problem by the media. Thus, the media's message, which persistently conveys to the public that school violence is an out-of-control social problem, is fueling the implementation of misguided zero tolerance policies by political powerbrokers (Burns & Crawford, 1999; Giroux, 2003). A moral panic exists when a large number of non-deviant people believe there is a larger number of people engaging in the stigmatized

behavior than there actual are and the media's framing of the issue prolongs this sentiment (Burns & Crawford, 1999; Giroux, 2003).

However, such reactionary tactics by policymakers seem unnecessary given that juvenile and school-related violence has been declining ever since 1993 (De Voe et al., 2004; FBI, 2008). In fact, far more children's lives are claimed daily by family violence than by school violence, yet family violence receives less media attention (Burns & Crawford, 1999; Males, 1998). Family violence and child abuse/neglect may even be underlying cause for violence in schools (Males, 1998).

Moral panics tend to be sporadic in nature (Cohen, 1972; Hirschfield, 2008) and driven by alarming media portrayals. However, this type of hysteria does not always result in policy shifts. If the tightening of disciplinary practices and school security are characterized by spikes in school crime and violence, then why were zero tolerance policies not implemented during the school violence panic of the 1970s, which did receive media coverage (Hirschfield, 2008; Toby, 1998)? Perhaps there is a larger political agenda at play regarding recent school criminalization efforts. The moral panic narrative does explain how school criminalization, via the implementation of zero tolerance policies and enhanced security, is potentially initiated; however, it does not sufficiently explain how such policies changes become institutionalized and continually expand when the moral panic recedes (Hirschfield, 2008). It may require powerful political, organizational, and structural forces, beyond public outrage, for school criminalization policies and practices to become long-term protocol in the educational system (Hirschfield, 2008).

Next, the school accountability metanarrative somewhat explains the longevity of school disciplinary reforms produced by episodic moral panics, but does so by focusing on the neoliberal imperative for school accountability rather than politically-motivated reactions from politicians (Burns & Crawford, 1999; Hirschfield, 2008). This narrative suggests that market competition, performance monitoring, and accountability for underperformance and failure are economic principles that have infiltrated the educational system in an effort to promote more efficiency and improve educational outcomes for youth (Hirschfield, 2008). The No Child Left Behind Act (2001) directly ties school funding to scores on annual achievement tests in reading and math (Fuentes, 2003; Heitzeg, 2009).

The accountability perspective argues that teachers and administrators in “financially strapped schools” are under pressure to raise standardized test scores and attendance rates to the extent that they are willing to exclude underachieving students in order to focus on high-achievers (Fuentes, 2003; Heitzeg, 2009; Hirschfield, 2008, p. 85; NAACP, 2005). Zero tolerance policies serve as the mechanism by which teachers can weed out low-performing students who, as outliers, might drag down standardized test scores for struggling schools (Fuentes, 2003; NAACP, 2005). The net-widening of the possible infractions for which a student may receive suspension and/or expulsion makes it easier for school officials to remove failing students and conceal educational deficits caused by a lack of resources and teaching quality (Fuentes, 2003; NAACP, 2005). This perspective acknowledges the promotion of selective or frequent exclusionary practices by school officials to focus on the best performing students and dismiss those who

threaten overall performance on standardized tests so schools may avoid harsh sanctions (Fuentes, 2003; Hirschfield, 2008; NAACP, 2005).

However, zero tolerance policies actually weaken school authorities' discretion and replace it with strict guidelines and security agents (e.g., school resource officers), which means that some promising students will be sacrificed in the process (Fuentes, 2003). The accountability narrative does not explain this possibility very well, especially since it is possible for honor roll students to face expulsion for infractions covered under zero tolerance policies (Hirschfield, 2008). Thus, there are larger social, legal, cultural, political, and economic contexts that influence how the educational system acts in response to moral panics and greater demands for accountability (Hirschfield, 2008).

In regard to a portion of the legal context underpinning disciplinary reforms in schools, the due process narrative offers a rationale for why school officials support zero tolerance policies, which minimize their discretion in matters of enforcing punishment on misbehaving students (Hirschfield, 2008). Under this perspective, it is argued that the ineffectiveness of school discipline and low educational achievement is associated with the erosion of moral authority in public schools, which creates an "atmosphere of disorder" (Arum, 2003, p. 3). When schools become unable to enforce moral authority over the student body, their objective to effectively socialize youth appropriately is threatened and the teaching environment becomes chaotic as a result (Arum, 2003).

The due process narrative claims that the students' rights movement of the 1960s and 1970s, which led to a series of judicial rulings that curtailed arbitrary and capricious disciplinary practices by school officials and standardized many disciplinary procedures, actually undermined the traditional moral authority that school administrators

traditionally exerted (Arum, 2003; Toby, 1998). Arum (2003) and Toby (1998) both argue that the court decisions also encouraged students to overtly defy their teachers' authority. As such, school principals became cautious when administering suspension and expulsion for fear of litigation (Arum, 2003; Hirschfield, 2008). In fact, among the crucial stakeholder groups supporting zero tolerance policies in schools are the national school principals associations (Boylan & Weiser, 2002). Furthermore, the due process narrative elucidates that reasoning behind the increased role that police and the justice system play in school disciplinary matters, because by expanding law enforcement entities' involvement, school administrators are able to reduce their susceptibility to litigation (Hirschfield, 2008). With both school violence and school funding crises coinciding at similar periods, the political atmosphere necessary to support zero tolerance initiatives was reached (Hirschfield, 2008). However, this narrative neglects to adequately explain why strict zero tolerance codes and an armed police presence are mostly found in inner-city school systems (Hirschfield, 2008). Disadvantaged, minority students and their families are less likely to seek legal challenges against school officials and sustain the cost of drawn out court proceedings without institutional assistance (Arum, 2003). Therefore, concerns over liability explain only a portion of the rationale for school criminalization efforts, but do not clarify the reasoning for racial disparity in the application of harsh zero tolerance policies and practices (Hirschfield, 2008).

A governing through crime metanarrative also exists, and it offers an understanding of the governance pertaining to the highest levels of policy making in the American educational system, especially zero tolerance and school criminalization initiatives (Simon, 2007). School criminalization reflects a political agenda to refocus

social control measures and enforce harsh punishment for crimes (Simon, 2007). Of course “the consent and complicity of the governed” are necessary in order for the focus to be placed on personal responsibility, such that students, teachers, and failing schools bear the burden for transgressions and attention is diverted away from deep-rooted and complex social, structural, and cultural problems affecting school violence (Hirschfield, 2008, p. 88; Simon, 2007). Federally mandated legislation, such as zero tolerance policies, are instrumental in shifting school governance toward a crime control model (Simon, 2007).

The fear of crime becomes an overarching rationale to bolster support for increased social controls over students in hopes of creating safer school environments (Simon, 2007). Much of this fear is associated with “parental insecurity” (Simon, 2007, p.230). Schools used to be a mechanism used to promote racial segregation and inequality, but social reforms in the 1960s and 1970s reversed this trend and actively pursued racial equality and interracial solidarities (Simon, 2007). However, not all Americans saw racial justice as essential to improving educational experiences (Simon, 2007). Actually, some parents perceive compulsory education through desegregation was a way in which parents were forced to surrender control over their children’s safety, while at school, because now their kids would be required to attend dangerous schools (Simon, 2007). Just like the accountability narrative acknowledges school criminalization as a tool to exert political pressure for a school voucher system (Arum, 2003), this narrative similarly recognizes the role that parents and communities give to the criminalization of schools in hopes of gaining back control over their children’s safety (Simon, 2007).

Consequently, the governing through crime narrative claims that in the school context, disruptive students and failing schools must be recast as criminals, while high-performing students and their parents are recast as victims, and educational policymakers are elevated to the role of prosecutor and judge (Simon, 2007). Zero tolerance policies become the means through which schools are expected to document and manage problems of violence and crime, or otherwise face sanctions (Simon, 2007). Thus, the criminal element in schools must be isolated and removed in hopes of improving educational achievement among deserving students (Simon, 2007). As mentioned before, the No Child Left Behind Act embraces market mechanisms in order to link funding of public schools with test scores and hold failing schools accountable, which in essence creates a climate of competition for resources (Simon, 2007). The reform structure of this legislation is very much in sync with the crime model because those schools with worsening overall test scores will suffer serious consequences (Simon, 2007). In addition, the formal barriers between the school system and the juvenile justice system are eradicated and criminal justice officials receive greater access to student files and administrative databases, which may allow law enforcement to make schools a favored place to search for suspects (Simon, 2007). However, the governing through crime metanarrative does not account for some provisions in recent legislation that promotes violence prevention and conflict resolution programs, which are not in step with a crime control paradigm (Casella, 2003b; Hirschfield, 2008).

Hirschfield (2008) developed another metanarrative that acknowledges two emergent structural realities, which have surfaced under recent political-economic conditions marked by deindustrialization and mass incarceration. These realities include



the following: (1) that prison awaits African American youth who fail or dropout of school, and (2) that schools do not possess the necessary resources to reverse the wayward paths of problematic students without also detracting from the quality of teaching and services meant for those perceived as more deserving and promising students (Hirschfield, 2008). When coupled with school criminalization policies, such as zero tolerance, the realities imply that troublesome, African American students are “unsalvageable,” and thus, teachers and administrators project criminal futures onto their most disruptive and chronically disobedient African American students (Hirschfield, 2008, p.92). This classification and socialization narrative identifies the anticipatory labeling of students, by education professionals, as “future prisoners” who must be controlled or excluded for the sake of other students (Hirschfield, 2008, p.92).

It is argued by many sociologists that structural forces “condition” and “constrain” individual perceptions and interactions with others (Bourdieu & Passeron, 1977; Hirschfield, 2008, p. 91). Therefore, changes in the political-economic system, which may affect social class status, can influence teachers’ perceptions of students’ future prospects by linking social structure with students’ educational and occupational aspirations and classroom effort (Hirschfield, 2008). As a result, how teachers decide to call upon school resource officers to remove a disruptive student or how principals determine if they want to refer a student to law enforcement for arrest is all mediated by individual interpretation of social and structural realities (Hirschfield, 2008). If a poor, African American student is already being labeled as “bound for jail,” then a teacher is more likely to have that student removed to hasten his or her projected future reality, so

instruction can be focused on more economically viable students (Ferguson, 2000, p. 9; Hirschfield, 2008).

Zero tolerance policies make it possible for school officials to “fast track” undesirable and disruptive students into the school-to-prison pipeline (Hirschfield, 2008, p. 92). In addition, the neoliberal push for the accountability of underperforming schools creates an added impetus to motivate teachers to control and remove disaffected or disruptive students, who hinder the collective improvement on standardized test scores (Hirschfield, 2008). For these reasons, school officials, who may be politically progressive, tend to comply with school criminalization policies that are consistent with neoliberal ideals (Hirschfield & Celinska, 2011).

Criminal justice agents, including school resource officers (SROs), police officers, and judges also play a crucial role in the recent transformation of school disciplinary practices and policies (Arum, 2003; Hirschfield, 2008; Simon, 2007). Justice system professionals constantly strive to preserve and increase their legitimacy, and a thorough theoretical explanation of zero tolerance policies must explicate their role in conjunction with other actors (e.g., teachers, school administrators, and policymakers), who also promote the prevailing neoliberal political agenda underpinning school criminalization (Giroux, 2003; Hirschfield & Celinska, 2011; Kupchik & Monahan, 2006; Lyons & Drew, 2006). The metanarratives described above all contribute to the theorizing of the emergence and expansion of zero tolerance policies (Hirschfield, 2008; Hirschfield & Celinska, 2011). However, the manner in which these theoretical components function to also promote the neoliberal goal of limited government, the retraction of social welfare, and the coercive control over marginal populations in

educational settings needs to be further developed (Hirschfield, 2008; Hirschfield & Celinska, 2011; Lyons & Drew, 2006).

Undoubtedly, the methods of school criminalization have been recognized as reinforcing the dominant neoliberal political agenda and governing model (Giroux, 2003; Kupchik & Monahan, 2006; Lyons & Drew, 2006). Furthermore, zero tolerance policies aid the government in concealing social injustices and underinvestment in public schools by removing discretion and the relevance of mitigating circumstances (Giroux, 2003). Hence, the penetration of the neoliberal agenda into school governance encourages a contracted public sphere and a docile citizenry (Hirschfield & Celinska, 2011; Lyons & Drew, 2006). How this neoliberal agenda and its various agents of enforcement overcome legal challenges, which are often based on a lack of due process and fairness and threaten the perceived legitimacy of school disciplinary reform, requires further investigation (Hirschfield & Celinska, 2011).

#### Extending the Neoliberal State and the Crisis of Liberal Democracy

According to neoliberal theory, the state should support strong individual property rights, legal certainty, and the strengthening of financial institutions of free markets and trade (Harvey, 2005). These aims are best achieved through privatization and deregulation of economic sectors, which are expected to promote and guarantee individual freedoms (Harvey, 2005). As such, competition (between individuals, companies, and other entities) is a virtue necessary to garner in new modes of efficiency, economic growth, innovation, and prosperity for all (Harvey, 2005; Kotz, 2003). Thus, unbridled individualism is championed over social solidarity, which has long been a hallmark of social justice (Harvey, 2005).

Government intervention in the functioning of free markets and free trade is seen only as an obstruction that will hinder the establishment of a healthy business climate (Harvey, 2005). Therefore, privatization and deregulation, coupled with competition, are perceived to eradicate bureaucratic red tape, enhance productivity, increase product and service quality, and lower costs to the consumer by generating cheaper commodities and reducing tax burdens (Harvey, 2005). Increased productivity is expected to raise the standard of living for everyone, because neoliberal theory assumes that “a rising tide lifts all boats,” and poverty can be eliminated only by freeing markets and trade from government constraints (Harvey, 2005, p.64).

The theory holds the individual accountable and personally responsible for his or her actions and overall well-being (Harvey, 2005; Wacquant, 2009a, 2009b). Furthermore, this principle of individual responsibility encompasses the domains of welfare, education, healthcare, and social security (Harvey, 2005). Neoliberal theory assumes that every citizen has equal access to information and opportunity; therefore, there are no power imbalances that would allow more powerful people to take advantage of the free market system (Harvey, 2005). Those who fail to succeed where others have are simply lazy and unwilling to work hard (Harvey, 2005). So individual success or failure is perceived to be blamed on the individual, while structural and social inequalities are overlooked and dismissed (Harvey, 2005).

As Margaret Thatcher stated, there is “no such thing as society, only individual men and women” (Harvey, 2005, p.23). Under a neoliberal state, all forms of social solidarity are replaced with individualism, private property, personal responsibility, and family values (Harvey, 2005). Ironically, according to this logic, individuals are allegedly

free to choose, but they should not choose to organize collectively in the form of worker unions or social movements (Harvey, 2005). The neoliberal state is overtly hostile to organized labor, or any form of social solidarity for that matter (Harvey, 2005).

Neoliberals are seriously suspicious of democratic governance, and they see majority rule, under a democracy, to clearly be a potential threat to individual rights and liberties (Harvey, 2005). Consequently, neoliberals prefer a government run by elites and laws determined by executive order or judicial decision making rather than democratic decision making by a representative legislature (Harvey, 2005).

In practice, the neoliberal state treats labor and the environment as mere commodities to be exploited in order to benefit the financial system regardless of the means (Harvey, 2005). The health of workers and the protection of the environment are sacrificed for the freedom of the market from intrusive government regulations (Harvey, 2005). Unsafe working conditions and polluted ecosystems are necessary side effects to a robust, global financial market (Harvey, 2005). Neoliberals desire flexible specialization in labor markets, which allow real wages to be suppressed, job insecurity to be increased, and the reduction of benefits and job protections to workers (Harvey, 2005). These conditions create a labor market that is void of bargaining power and a welfare state that is greatly reduced (Harvey, 2005; Kotz, 2003, 2008, 2009). In fact, the only thing in need of strict regulation in the neoliberal state is the labor market, which enables wages to be low and the labor force compliant (Harvey, 2005).

To better understand why the US political economy recently underwent a neoliberal restructuring, one must first reflect on the historical conditions and social climate that permitted this transformation. Then it is easier to recognize the

contradictions between neoliberal theory and representative democracy. Additionally, one may also begin to comprehend how a neoliberal agenda can extend into other institutions, such as public education.

After World War II, the US government chose a tightly regulated economy under a Keynesian framework (Harvey, 2005; Kotz, 2008). The US government feared a return to the conditions that led to the Great Depression; thus, the Keynesian model permitted the state to regulate the market, create a number of social welfare programs, and empower strong trade unions (Harvey, 2005; Kotz, 2003, 2008). Keynesian economics authorized the state to pursue full employment, economic growth, and the welfare of the citizenry by using its power to intervene and regulate business cycles and influence sound fiscal policies (Harvey, 2005).

This form of political-economic organization is known as “embedded liberalism,” whereby several social and political restrictions are placed on market processes and actions by corporations (Harvey, 2005, p.11). Neoliberalism seeks to disembed the market and capital from such restraint (Harvey, 2005). The 1950s and 1960s were marked by high rates of economic growth, and these successes were largely attributed to effective functioning of embedded liberalism and an interventionist state (Harvey, 2005). However, by the end of the 1960s, embedded liberalism was threatened by a serious crisis of capital accumulation that saw a surge in unemployment and inflation (Harvey, 2005; Kotz, 2003, 2008). This stagflation lasted well into the 1970s where a social and economic crisis reached critical levels (Giroux, 2003; Harvey, 2005, Kotz, 2008).

Keynesian policies and social democratic solutions proved inconsistent by the mid-1970s (Harvey, 2005). As a result, corporate and conservative groups from the

political right blamed the crisis on government meddling in the economy (Harvey, 2005; Kotz, 2003). Moreover, economic elites and the ruling class felt threatened by the widespread reforms and state interventions under the Keynesian model (Harvey, 2005). The growth collapse of the 1970s, which saw real interest rates plummet into the negative range and dividends and profits dwindle, gave the ruling classes plenty of reason to feel threatened (Harvey, 2005).

In October 1979, Paul Volcker, chairman of the US Federal Reserve Bank, shifted US fiscal policy to abandon the Keynesian model and implement policies with the sole purpose to quash inflation regardless of the effects on unemployment rates (Harvey, 2005). After all, neoliberal theory contends that unemployment is always voluntary and a reflection of the ability of the worker (Harvey, 2005). As a result, the nominal rate of interest rose immediately, and the newly elected Reagan administration ushered in a new era of neoliberal reforms that sought further deregulation, tax cuts, budget cuts, and an assault on trade unions and organized labor (Harvey, 2005). Tax cuts on investment led to capital flight out of the unionized Northeast and Midwest into the non-union South and West, as well as markets abroad (Harvey, 2005). Under Reagan, deindustrialization rapidly increased and manufacturing moved to countries like China and India, where taxation and environmental regulations were much more lax (Harvey, 2005). In addition, Reagan lowered corporate taxes and reduced the top personal tax rate from 70 to 28%, which created a wider gap between the rich and the poor, as well as a restoration of economic power to the upper class (Harvey, 2005). US investment banks increased the amount of capital loaned to foreign governments, which required the further liberalization of international credit and financial markets (Harvey, 2005). Among the many

institutional reforms, there were cuts to welfare programs and the establishment of more flexible labor market laws (Harvey, 2005). This neoliberal restructuring led to the slow growth and economic instability until the economic expansion of the 1990s (Kotz, 2003).

The Clinton administration continued the neoliberal agenda by cutting government spending, advocating free trade agreements (e.g., NAFTA), and freeing markets and trade from barriers (Kotz, 2003). The rate of profit reached its peak in the 1990s, while real wages continued to decline and the tax burden was shifted from capital to labor (Kotz, 2003). The rate of profit refers to “the ratio of total surplus value to capital invested, where total surplus value includes not just profit narrowly defined but also interest, some tax payments, and some wage and salary incomes” (Kotz, 2008, p.3). There was also a shift from high-wage jobs to temporary or part-time work in the service sector, which brought in lower wages for employees (Kotz, 2009). Tax cuts on business and the wealthiest Americans created drastic income inequality where the ratio of average CEO’s salary compared to the average worker’s salary was 500 to 1 by the year 2000 (Harvey, 2005). Business and technology investments and consumer spending rose rapidly in the late 1990s, and eventually led to the speculative stock market bubble (Kotz, 2003).

Consumers were able to continue to spend in spite of decreasing wages by borrowing against appreciating assets (Kotz, 2003). Stock prices rose by 24% per year from 1995 to 1999, and middle-class Americans felt the momentary benefits, which were followed by a stock market crash in 2000 and the 2001 recession (Kotz, 2003). Consumer spending, which was financed by Americans leveraging assets by adding debt, prevented the 2001 recession from becoming severe (Kotz, 2008). Asset bubbles tend to emerge



under neoliberal structure, because increased borrowing against assets, like home equity, is necessary in order to keep economic expansion growing under neoliberal capitalism and offset crises of overproduction (Kotz, 2008, 2009). Thus, further financial deregulation, speculative and high-risk activities of the financial sector, and the development of the housing bubble led to the economic crisis of 2008 and the current recession (Kotz, 2009).

Neoliberal theory adheres to the free market principles of neoclassical economics, which developed in the late nineteenth century (Harvey, 2005; Wolfe, 1977). However, the neoliberal theoretical framework is not very compatible with its political obligation to individual freedom, and its demand for a strong coercive state that will defend property rights and individual liberties does not mesh well with its distrust of all state power (Harvey, 2005; Wolfe, 1977). Karl Polanyi (1954) stated that the neoliberal interpretation of freedom may very well mean the freedom to exploit others, the freedom to make excessive gains without reinvesting them in the community, the freedom to prevent the public from benefiting from certain technological innovations, and the freedom to profit from national catastrophes that are secretly concocted for private gain. Appeals to tradition and fear were used by the economic elite to drum up support for neoliberalism in the late 1960s (Harvey, 2005).

The political movements of the late 1960s, especially the student movements for greater due process rights, demanded freedom from parental, educational, corporate, bureaucratic, and state constraints (Arum, 2003; Harvey, 2005; Toby, 1998). However, the enhanced individual freedoms sought in the student movement clashed with the traditional objectives of social justice (Harvey, 2005). Social justice assumes that

individual wants, needs, and desires will be suppressed in favor of striving for a more collective good, such as social equality (Harvey, 2005). Neoliberal reformers, in the economically troubled 1970s, used the rhetoric of individual freedoms to bolster popular support against the interventionist and regulatory policies of the Keynesian model (Harvey, 2005). Neoliberalism offered a message of differentiated consumerism and individual libertarianism, which would combat the intrusive state and allow individual freedoms to triumph (Harvey, 2005). Individualism is grounded in the American culture and history, so neoliberal perspectives were easily disseminated and well-received by academics, politicians, corporations, and citizens who were tired of the economic slump of the late 1970s (Harvey, 2005). Thus, the neoliberal appeal to individualism constructed the necessary consent from the public to elect political leaders, like Reagan, who promised to carry out the neoliberal restructuring of the US economy (Harvey, 2005).

The duality of liberal democracy, within the US, currently faces a crisis of legitimacy (Habermas, 1975; Harvey, 2005; Wolfe, 1977). Classical liberalism refers to a market-based ideology, which justifies a capitalist mode of production by freeing the market from government regulations and encouraging self-interested individualism among citizens (Harvey, 2005; Wolfe, 1977). Conversely, democracy promotes the maximization of civic participation by the populace in an effort to establish a community defined by equality, mutual respect, and cooperative interaction among citizens toward commonly agreed-upon goals (Harvey, 2005; Wolfe, 1977). The logic behind these dueling ideologies presents a contradiction, whereby liberalism creates inequality via power imbalances across rigid class lines, while democracy struggles to respond by promoting social welfare remedies and state regulations to alleviate social ills (Habermas,

1975; Harvey, 2005; Wolfe, 1977). Neoliberalism exerts an ideology that is highly suspicious of democracy (Harvey, 2005). Neoliberal policies and practices are determined to return all responsibility to the individual, and in the process, severely diminish welfare provisions, such as healthcare, public education, and other social services that will leave greater segments of society impoverished (Harvey, 2005; Wacquant, 2009a, 2009b). The social safety net created in the era of embedded liberalism is reduced to a “bare minimum” under a neoliberal system emphasizing individual accountability (Harvey, 2005, p.76). Neoliberal theory embraces the rule of law and any conflict or opposition must be “mediated through the courts” (Harvey, 2005, p.66). Therefore, judicial rulings may serve as the vehicle by which neoliberal contradictions are legitimized in a representative democracy, like the US.

Loïc Wacquant (2009a, 2009b) argues that contemporary, neoliberal restructuring of capitalism in the US continues to greatly reduce the welfare state, privatize state enterprises, and eliminate state regulations on the economy. The consequence is the restriction of forces of controls that would seek to redistribute resources more equitably (Wacquant, 2009a, 2009b). Ironically, in order for the markets to enjoy such freedom from controls, social controls on marginal populations representing the surplus labor force and underclass must be exerted to weaken trade unions, reject worker’s bargaining power, regulate the poor, and repress wages (Harvey, 2005; Kotz, 2003, 2008, 2009; Wacquant, 2009a, 2009b). Thus, neoliberal capitalism frees the mobility of capital across markets from government regulations, while also increasing formal social controls on marginal populations to manipulate the labor market and perpetuate the existing class structure (Harvey, 2005; Kotz, 2003, 2008, 2009; Wacquant, 2009a, 2009b). As Polanyi

(1954) feared, the freedoms of the masses are controlled to secure the freedoms of the few. The social controls which are exerted, tend to be punitive and carceral in nature (Wacquant, 2009a, 2009b). Thus, the neoliberal state resorts to coercive legislation and policing tactics to quell and subdue any collective forms of opposition to corporate power (Harvey, 2005; Wacquant, 2009a, 2009b). In the US, incarceration becomes the ideal strategy to overcome problems coming from discarded workers and marginalized populations (Harvey, 2005; Wacquant, 2009a, 2009b). In addition, zero tolerance policies and practices are expected to be increasingly applied to marginalized groups, such as impoverished minorities (Wacquant, 2009a, 2009b).

According to Wacquant (2009b), the regulation of the poor is accomplished through two processes: prisonfare and workfare. Prisonfare refers to the hyper-intensive and extensive use of punitive controls over the economically superfluous, while workfare refers to the retraction of welfare safety nets through new responsibilities, obligations, and surveillance (e.g., welfare-to-work requirements) associated with access to public services (Wacquant, 2009b). The penal arm of the state (i.e., the police, the courts, and corrections) serves not only to enforce law but also as a mechanism to produce the political reality favored by the ruling upper class (Harvey, 2005; Wacquant, 2009b). The neoliberal reshaping of the state exerts control over all facets of social life except for the economy (Wacquant, 2009b). The “rolling out of the police-to-prison dragnet” and the “rolling back of the social safety net” is the state’s response to contain poor, marginalized populations produced by neoliberal practices (Wacquant, 2009b, p.304). Thus, Wacquant (2009b) argued that for the neoliberal state to be fully actualized four institutional logics must be achieved: (1) economic deregulation, (2) welfare state retraction and

reconfiguration, (3) societal emphasis on individual responsibility, and (4) an extensive and proactive penal apparatus. This recipe permits the state to embrace laissez-faire market values to benefit the wealthiest Americans, while providing the means to punitively deal with the social insecurity arising from the growing poor populations and surplus laborers (Wacquant, 2009b).

Public schools did not escape the neoliberal offensive (Hirschfield, 2008; Hirschfield & Celinska, 2011; Noguera, 2003; Nolan & Anyon, 2004). Neoliberal initiatives to enhance school accountability have made it easier for school officials to rationalize the use of zero tolerance policies in order to isolate disruptive students who are believed to be “bound for prison” and incapable of functioning in today’s economy (Ferguson, 2000, p. 9; Fuentes, 2003; Hirschfield, 2008; NAACP, 2005). Wacquant (2001) argues that just like ghettos have become more like prisons, so have inner-city public schools become like “institutions of confinement” (p.108). He further argues that the neoliberal transformations of the political economy have repositioned inner-city public schools to act as lockdown environments to “neutralize” disadvantaged African American and Latino youths who are deemed “unworthy” and “unruly” (Wacquant, 2001, p. 108). Thus, the political practices of the penal realm of the state have infiltrated the educational system (Giroux, 2003).

Zero tolerance policies emerged as a mechanism in which to punish and remove students perceived to have no market value and identified as flawed consumers because they are associated with crime, redundancy, poverty, and expendability (Giroux, 2003; Hall & Karanxha, 2012; Hirschfield, 2008; Wacquant, 2001). Subsequent referrals to the justice system hinder future hopes of higher education and jeopardize the economic

viability for these stigmatized youth (Hall & Karanxha, 2012). Thus, the nation's most at-risk youth are controlled and funneled into confinement, which perpetuates their marginalization prior to entering the workforce (Hall & Karanxha, 2012). The neoliberal agenda advanced through school criminalization promotes a "narrow public sphere" and a "docile citizenry" (Hirschfield & Celinska, 2011, p.7). Whereas public schools traditionally provided the arena for battles over full citizenship and equal opportunity, their role has now transformed to serve as a model of disempowered citizenship where students' rights are weakened and their movements are controlled (Lyons & Drew, 2006; Nolan & Anyon, 2004). School criminalization may aid in instilling a "passive acquiescence to state and corporate power" among the student population and their parents (Lyons & Drew, 2006, p. 195). Furthermore, state legislators, with vested interests in building or expanding prisons, are likewise able to vote on the funding of urban education, school security, and punitive school policy (Hirschfield, 2008). Thus, states with large prison populations may benefit more politically by expanding exclusionary school policies in order to keep prisons full rather than finance urban schools that lack adequate resources (Hirschfield, 2008). In addition, school criminalization may facilitate teacher disengagement, which reduces their ability to understand and confidently address their students' problems (Hirschfield & Celinska, 2011). Disengagement coupled with aggressive, exclusionary practices that result in racial disparities may erode students' trust and threaten the perceived legitimacy of school rules because they are seen as unfair given their lack of due process (Brotherton, 1996; Hirschfield & Celinska, 2011; Kupchik, 2010).

The American educational system reproduces the structure of capitalist society by socializing students in the values of the market place as favored by the economic ruling class (Shapiro, 1984). At the same time, schools face a legitimation crisis since they also serve to represent democratic principles, such as equality of access, mutuality, universal responsibility, and collective obligation (Shapiro, 1984). Democratic ideals are increasingly opposed by the neoliberal imperatives of a class-divided society (Shapiro, 1984). When students experience unfairness in regard to the limitation of due process via mandatory zero tolerance policies, they are acknowledging the contradictory nature of the socialization processes that promotes the values and norms of a dominant economic class while drawing into question the legitimacy of a public educational system claiming to serve as a communal good (Shapiro, 1984). The legitimation problem facing education is inflamed by the neoliberal goals of the ruling class conflicting with the traditional democratic aims of an educational system based on equity and fairness (Shapiro, 1984). Therefore, as neoliberal theory affords, challenges to the contradictory nature of the expansion of the neoliberal agenda into school disciplinary policy must be “mediated through the courts” (Harvey, 2005, p.66). As such, affirmation of zero tolerance policies through court decisions may legitimate the state’s control of marginal populations in school settings and the neoliberal influence on educational policy, regardless of the infringement on democratic rights and liberties of students.

## CHAPTER THREE

### THEORETICAL FRAMEWORK

Scholars have developed comprehensive, theoretical causal narratives to conceptualize school criminalization efforts in recent decades (Hirschfield, 2008). Indeed, five meta-narratives, which were described in detail above, are currently the predominate theoretical explanations for the emergence of zero tolerance policies. While these explanations define theoretical mechanisms that are necessary for the creation and longevity of such policies in the American educational system, they are not adequately sufficient to explain this phenomenon on an individual basis. Moreover, while a couple of the narratives allude to neoliberal influences, most are not grounded in the context of recent social and political-economic transformations in the US. In other words, these metanarratives collectively contribute to a better understanding of some of the root causes behind the emergence of zero tolerance in schools.

However, a more complete theoretical framework that accounts for the historical context of the neoliberal restructuring of the US political economy is needed to explicate how these theoretical mechanisms function processually in order to overcome threats to legitimacy, which the neoliberal agenda faces as it conflicts with the traditional democratic aims of the American educational system (Shapiro, 1984). What follows is a new conceptualization that reconfigures components of the prevailing theoretical



narratives along with neoliberal theory to better construct a theoretical framework that accounts for historical context and incorporates descriptions of the political, organizational, and structural forces that enable school criminalization to become institutionalized and legitimized in America (see Appendix A for visual depiction).

### The Backdrop of Neoliberal Restructuring

Neoliberal restructuring of the US economy began amid the crisis of capital accumulation in the middle to late 1970s, which led to a shift away from the Fordist model of mass production and toward a more flexible, service-oriented economic system in the 1980s and 1990s (De Giori, 2006, 2007; Harvey, 2005; Kotz, 2003, 2008, 2009; Kupchik & Monahan, 2006; Lynch, 2007, 2010). The practices performed during this restructuring of the political economy reflect the principles of neoliberal theory, which holds that the state should not interfere in the economy and should only concern itself with providing stronger individual property rights to individual citizens and corporate entities, while reinforcing legal certainty and further strengthening financial institutions of free markets and trade (Harvey, 2005). Under this neoliberal logic, several practices were put into play, such as deregulation, labor outsourcing, decentralization, moving production abroad, computerized automation, privatization, and displacement of workers into low-wage, service sector jobs where temporary employment is more common (Harvey, 2005; Kotz, 2003, 2008, 2009; Kupchik & Monahan, 2006; Lynch, 2007, 2010). The neoliberal principles of individualism and personal responsibility were rhetorically used to reinforce the movement to deregulate industry and promote competition among individuals and companies (Harvey, 2005; Kotz, 2003; Lynch, 2007). In the neoliberal state, the individual is to blame for success or failure, while economic, racial, and social

inequalities are ignored because it is assumed everyone has equal access and opportunity (Harvey, 2005).

Deindustrialization and mass incarceration are two major developments that occurred in the neoliberal era of American capitalism. In fact, in 1973 the rate of imprisonment began to steadily rise in the US just as the US economy was experiencing a contraction of the manufacturing sector and an expansion of the service sector (Lynch, 2007, 2010). These two trends are characteristic of how the neoliberal transformation of the American economy produces economic marginalization and the need for social control to manage class conflict (De Giorgi, 2007; Harvey, 2005; Kupchik & Monahan, 2006; Lynch, 2007, 2010; Wacquant, 2009a, 2009b). Rusche and Kirchheimer (1939) argued that every system of production discovers punishments consistent and compatible with the primary focus of that system's form of production. Their work examined the relationship between rates of unemployment and incarceration, and they found that imprisonment, in capitalist societies, served to control surplus labor populations, potentially provide production of goods without labor costs, and resocialize marginalized workers through hard work (Lynch, 2007, 2010; Rusche & Kirchheimer, 1939). However, counter to Rusche and Kirchheimer's labor market model, imprisonment did not decline in the 1980s and 1990s as the US experienced a mild economic recovery and unemployment rates decreased due to the expansion of service sector employment (Lynch, 2007, 2010). The unique transformation that the US system of production underwent must be taken into account in order to understand why incarceration exploded while unemployment rates vacillated (Lynch, 2007, 2010).

Michalowski and Carlson (1999) addressed this phenomenon with their empirically-based argument that the economy passed through stages of social structures of accumulation (SSAs), which include economic exploration, decay, consolidation, and expansion. Thus, the relationship between unemployment and incarceration is conditioned by the characteristics of the stage the economy is experiencing as it progresses through the long cycles of SSA (Lynch, 2007; Michalowski & Carlson, 1999). SSAs also affect how imprisonment is used to control economically marginalize groups (Lynch, 2007; Michalowski & Carlson, 1999). The contraction of manufacturing and the expansion of the service industry, during the neoliberal restructuring of the economy, was characterized by job losses due to technological automation, moving production abroad, deregulation, and privatization (Lynch, 2007, 2010).

Deindustrialization displaced workers into lower-paying service sector jobs or into the ranks of the marginalized unemployed (De Giorgi, 2007; Harvey, 2005; Kotz, 2003, 2008, 2009; Kupchik & Monahan, 2006; Lynch, 2007, 2010). Economic marginalization encompasses more than just unemployment, and it can include partial and seasonal employment, economic exploitation common in wage-based economies where class membership defines owning and laboring options, and broad shifts in the salary structure correlated with service sector expansion (Lynch, 2007, 2010). From the 1970s through the 1990s, there was a long-term decline in unemployment; however, economic marginalization continued because income inequality expanded during this same period (Lynch, 2007, 2010). Aggregate income growth grew for the top 20 percent of families, while the bottom 20 percent experienced an approximate \$2,000 decrease in average income (Lynch, 2007). The gap between the rich and poor has never been as

wide as it is currently, and the social insecurity stemming from the growing economic inequality has created the conditions in which social safety nets can be retracted and punitive penal practices of social control can be extended by the state, while enjoying popular public support that driven is by fear (Harvey, 2005; Wacquant, 2009a, 2009b).

In the service sector, capitalists desire commodities or services that have a relatively frequent replacement cycle (e.g., barber shop) and long-term inelastic demand (e.g., food) compared to commodities with longer consumption cycles, such as automobiles (Lynch, 2007). Moreover, the service-sector capitalist wants an inelastic market that is also expanding to maximize accumulation (Lynch, 2007). The prison apparatus provides such a marketplace because the correctional system requires services, such as data storage and retrieval; food services; laundry and clothing services; telecommunications services; Internet services; electronic monitoring systems; healthcare services; insurance; mailing services; financial services; transportation services; maintenance services; educational and vocational services; housing services; building services; and security (correctional officers) services (Lynch, 2007). Of course, unemployment cannot be the only reason why the correctional industrial complex has become a “service marketplace” and “viable financial investment,” especially since the service sector offset some of the rise in unemployment (Lynch, 2007, p. 133).

The increase in economic inequality creates the potential for class conflict, and social control is used to manage this conflict and prevent it from upending the existing power structure (De Giorgi, 2006, 2007; Lynch, 2007, 2010; Wacquant, 2009a, 2009b). In addition, the privatization of state services, which started under the Reagan administration, allows for billions of tax dollars to be redirected to the purchase of private

sector services rather than the state providing them (Lynch, 2007). The growth of the private prison apparatus parallels the Reagan-initiated privatization efforts (Lynch, 2007). Furthermore, the private prison sector has a powerful lobby, political action committees (PACs), and industry groups to pressure politicians to support expanding prison growth and the services it requires (Lynch, 2007). Therefore, privatization permits the state to spend revenue it has obtained through taxation on private service providers who absorb a portion of the state's social expense bill as profit via a service provision fee before the services are provided to the state (Lynch, 2007). Through this process, the American taxpayer bears the burden of operating the US correctional system and private entities get to profit from prison expansion (Lynch, 2007). In fact, the per capita expenditures, via taxpayer dollars, on the correctional system increased to over 480 percent since 1980, while imprisonment rose by 243 percent and the number of inmates rose by 318 percent in the same time period (Lynch, 2007).

Recent U.S. Census Bureau data on income distribution, as measured by the GINI index of income concentration, revealed that income inequality between the 20 percent of households making the lowest level of income and the top 5 percent making the greatest amount of income has increased by 25 percent since 1968 (Lynch, 2007). Class conflict typically goes unnoticed but is waged through the mechanisms of the criminal justice system, which magnifies the crimes of the marginal classes and minimizes the crimes of the rich and powerful (Lynch, 2007; Wacquant, 2009a, 2009b). Social control achieves the conditions required by capitalism in a number of ways. First of all, mass incarceration reinforces individual and private property rights, because the majority of criminals punished in the US have committed property crimes (Lynch, 2007). Next, imprisonment

attaches a criminal label to offenders, who predominantly come from the lower and working classes, which further marginalizes them into the surplus labor market of unemployable workers (Lynch, 2007). Finally, mass incarceration expands the marketplace for goods and services sold by the ruling capitalist class, who profit from this social control process via the prison apparatus (Lynch, 2007). Additionally, keeping class conflict manageable requires the average citizen to pay more in taxes for the growing prison industrial complex through the privatization of state services, which enables for-profit, private service providers to benefit from the social control of the economically marginalized populations produced by neoliberal capitalism (Lynch, 2007).

In order for prison to remain a viable financial investment, a mechanism must be in place to continually expand the types and numbers of people who are defined as “dangerous” and in need of social control (Di Giorgi, 2007; Lynch, 2007, p. 133). In the US, incarceration becomes the ideal strategy to overcome problems coming from discarded workers and marginalized populations (Harvey, 2005; Wacquant, 2009a, 2009b). In addition, zero tolerance policies and strategies are expected to be increasingly applied to marginalized groups, such as impoverished minorities (Lynch, 2007; Wacquant, 2009a, 2009b).

Public schools were also influenced by the neoliberal conversion of the political economy, especially since they reproduce the economic and racial inequalities present in the community and society at large (Hirschfield, 2008; Hirschfield & Celinska, 2011; Noguera, 2003; Nolan & Anyon, 2004; Shapiro, 1984). Zero tolerance policies in public schools now serve as one such mechanism to identify troublesome students who are considered a danger to the success of other more promising students who are expected to

adapt well to a more flexible, service-oriented economy (Giroux, 2003; Hall & Karanxha, 2012; Hirschfield, 2008; Wacquant, 2001). How zero tolerance policies emerged as a tool of neoliberal social control in American public schools to isolate at-risk, marginalized youth and funnel them away from education and toward imprisonment before they may compete in an increasingly competitive labor market (Hall & Karanxha, 2012) will now be further discussed and theorized.

### School Violence, Media Effects, and Moral Panic Amidst Child-Saving Rhetoric

High-profile instances of school shootings and violence captured immediate media attention in the late 1980s and 1990s, just as neoliberal changes in the political economy were taking hold (Blumstein & Wallman, 2006; Boccanfuso & Kuhfeld, 2011; Chen, 2008; DeMitchell & Cobb, 2003). The media's coverage of school-based crime and violence depicted this social issue as a crisis that threatened the safety of school children across the US (Burns & Crawford, 1999; Hirschfield, 2008). Media portrayals of gruesome murder scenes at schools depicted assailants as extremely dangerous threats, risky "others," and even "folk-devils" in need of control and harsh punishment (Burns & Crawford, 1999; Hirschfield, 2008; Hirschfield & Celinska, 2011). The exaggerated perception of defenselessness in America's relatively low-violence schools is shaped by the media's framing of this social issue, which feeds off of the fears of an already frightened and hyper-vigilant public (Burns & Crawford, 1999; Giroux, 2003; Hirschfield & Celinska, 2011; Lyons & Drew, 2006; Simon, 2007). These alarming media portrayals spark moral panics that are fueled by public outrage and "parental insecurity," which are later seized by politicians as opportunities to bolster popular support in order to seek punitive policy changes that enable broader social controls over the perceived threats to

school safety (Burns & Crawford, 1999; Hirschfield, 2008; Giroux, 2003; Simon, 2007, p. 230).

Media framing of social problems can have an impact on public opinion through a variety of agenda setting and priming techniques that have previously been discussed (Kim et al., 2002; Scheufele & Tewksbury, 2007). Often the media's primary agenda is to increase viewer ratings and seek profits by providing news coverage that is controversial and entertaining; therefore, a logic of "if it bleeds, it leads" is often applied (Beale, 2006). By increasing the amount of time a particular news story is accessible to viewers and what aspects of it are predominantly presented (e.g., placement of coverage, exclusion of factual material, emotional word choices, and repetition of startling information), the media is able to tailor the public's perception of violent crime in schools as out-of-control, regardless of evidence suggesting the contrary (Beale, 2006; Blumstein & Wallman, 2006; Bullock, 2007; Bullock & Cubert, 2002; De Voe et al., 2004; Dorfman & Schiraldi, 2001; Entman, 1993; FBI, 2008; Scheufele & Tewksbury, 2007). In fact, fatal assaults in or around schools are rare and make up less than one percent of the violent deaths of school-age children (Blumstein & Wallman, 2006).

Indeed, despite statistics revealing falling crime rates in the 1990s, media networks intensified their coverage of crime-related newscasts during prime time viewing slots (Beale, 2006; Dorfman & Schiraldi, 2001). The increased prevalence of violent crime stories (including school shootings and other school violence) in the news during the 1990s and 2000s was a result of economic pressures driven by profit motives that forced networks to shift away from objective news toward "tabloid-style" crime stories (Beale, 2006, p. 424). Neoliberal-style mergers and deregulation changed how network



news operated in the 1980s and 1990s (Beale, 2006). The new economic environment made it so that the Federal Communications Commission (FCC) no longer policed the public service requirements of networks, and large-scale mergers made it so that the majority of news networks were owned by only a few corporate conglomerates (Beale, 2006). The pressure from corporate owners to increase profit margins forced network news to seek programming that was deemed more entertaining, so it would attract and maintain viewers (Beale, 2006). Thus, a focus on violent crime stories was pursued across news networks since the 1980s (Beale, 2006).

Research in crime and media studies has found that racial typification, which is the media's stereotypical portrayal of crime as a minority phenomenon, is associated with increased punitiveness among viewers (Beale, 2006; Chiricos & Eschholz, 2002; Chiricos, Eschholz, & Gertz, 1997). Moreover, several studies examining race in crime-related news found that African Americans are disproportionately depicted as dangerous and that they appear more frequently in crime news stories overall (Dorfman & Schiraldi, 2001). In 75 percent of studies examined by Dorfman & Schiraldi (2001), minorities were overrepresented as perpetrators of crime. Furthermore, 86 percent of the studies paid more attention to White victims than to African American victims, and their conclusions argued that the story was deemed more newsworthy when the victim was White (Dorfman & Schiraldi, 2001).

Dorfman & Schiraldi (2001) also found that when youth appeared in the news, they were linked to crime and violent contexts, suggesting that juveniles, as well as minorities, are more criminally dangerous than others (also see Beale, 2006; Schiraldi, 1999). Likewise, researchers found that media coverage inflates the prevalence of

juvenile crime, which in turn, inflames the public's fear of youthful "predators" (Soler, 2001, p. 5; Schiraldi, 1999). Several scholars argue that root fears of school violence and crime are actually generalized fears of youth (Giroux, 2003; Hirschfield, 2008; Lyons & Drew, 2006; Simon, 2007), which are influenced by the media. Some empirical evidence suggests that skewed news coverage, which typifies crime according to race and youth, contributes to increased punitiveness among a viewing public (Beale, 2006; Chiricos et al., 1997). For example, researchers surveyed the public about their attitudes toward punishment and African American involvement in crime, as depicted in the news, and they found that white participants who associated crime with African Americans exhibited more punitive attitudes (Chiricos et al., 1997).

Thus, well-publicized and sensationalized media coverage of school shootings in the 1980s and 1990s served as a catalyst to intensify fear among parents, school officials, and local politicians, which resulted in an emotionally driven and media-fed moral panic (Burns & Crawford, 1999; Hirschfield, 2008). These media representations captured the attention of political elites who then become compelled to respond (Burns & Crawford, 1999). Such a climate provided the opportunity for political power brokers to pursue new legislation that would reflect a neoliberal-influenced agenda of zero tolerance for "dangerous" youth in public schools.

Therefore, students became the new potentially dangerous offender group in need of social control. Politicians seized the opportunity to encourage popular public support in an attempt to swiftly remedy the media-inflated problem of school violence by instituting new social controls for this group of perceived deviants and dangerous youth (Burns & Crawford, 1999). As a result, troublesome and marginalized youth served as the

scapegoats onto which the media and politicians shifted social anxieties about urban social pathologies, economic inequality, and the diminishing ability of the government and corporations to insulate the white ruling majority from them (Giroux, 2003; Hirschfield, 2008; Kupchik & Monahan, 2006; Lyons & Drew, 2006, Simon, 2007).

Policy makers generated public support in favor of the application of zero tolerance policies that would act as new mechanisms of social control to further advance neoliberal trends across the public sector and institute the adoption of market logics that harmonize public education with the needs of the post-industrial, neoliberal economy (Kupchik & Monahan, 2006). The tightening of school disciplinary practices serves to mold students into compliant future employees who conform to the service-oriented needs of the neoliberal economy (Kupchik & Monahan, 2006; Hirschfield, 2008). In other words, the production of “compliant bodies” for the demands of the deindustrialized neoliberal state requires a reconfiguring of social control agents and mechanisms within public schools (Kupchik & Monahan, 2006).

As described by Kupchik and Monahan (2006), “These idealized students embody extreme and flexible compliance to the vicissitudes of the marketplace; they submit willingly to scrutiny and manipulation; they demand nothing more than a chance to participate in rituals of mass consumption; and, when required, they provide a criminal counterpoint to justify the system’s necessary exclusions and deferrals” (p. 627). Thus, under these reconfigurations, schools would serve to prepare students for the volatile labor markets and uncertain service sector employment, which are characteristic of the neoliberal state, by socializing them into class-defined roles, while the school environment transformed to resemble and contribute to mass incarceration (Hirschfield,

2008; Kupchik & Monahan, 2006; Kim et al., 2010). Additionally, students were socialized to expect a police presence in their lives as pro-law enforcement views were fostered among students since SROs and other security personnel maintained a constant visible presence in schools (Horne, 2004; Kupchik & Monahan, 2006). Therefore, the media-driven moral panic resulting from episodes of school violence in the 1980s and 1990s presented the window of opportunity necessary for policy makers to gain public support to push through policies that would allow this reconfiguration of neoliberal social control mechanisms to be enforced in the public educational system (Burns & Crawford, 1999; Hirschfield, 2008; Kupchik & Monahan, 2006).

In order to obtain the necessary public support for zero tolerance policies in schools, policy makers needed to employ the political utility of fear mongering in an effort to convince parents and school officials that schools should and could be safer through the implementation of such policies (Giroux, 2003; Hirschfield, 2008; Lyons & Drew, 2006). In congruence with the media messaging of fear, politicians employed rhetoric similar to the child-saving movement of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries to manipulate and bolster public opinion.

The child-saving movement was led predominantly by politically conservative, socially prominent, middle-class women who sought to serve as caretakers for juveniles identified as delinquent or troublesome youth (Platt, 2009). However, the underlying motivation to the child-saving movement was to reinforce a code of White, middle class moral values, which were threatened by the rapidly changing and complex urban life of the working classes during industrialization at the beginning of the 20<sup>th</sup> century (Platt, 2009). While progressive, middle-class women's groups and professionals where the

most active figures in the child-saving movement, their vision was shared and financed by the ruling class elites (Platt, 2009). Thus, the child-saving movement sought to properly socialize and expand government control over the movements and actions of working class, urban youth, which typically was informally handled (Platt, 2009). The movement was also an “attempt to regulate deviant behaviors of working class men and women, using ‘panics’ to either establish new or re-instate fragile, social norms” (Evans, Davies, & Rich, 2008, p. 119).

The child-saving movement directly affected the children of the urban poor as they were depicted as “sick,” “maladjusted,” “unsocialized,” “pathological,” or “troublesome” youth, who needed to be confined “for their own good” (Platt, 2009, p. 177). Therefore, the movement focused on delinquent youth via a social Darwinian perspective, which perceived the working class poor as morally bankrupt (Platt, 2009). Thus, delinquent youth were stigmatized as dangerous “others” in the political rhetoric during the movement (Mills, 1943). The child-saving movement brought about new forms of control, restraint, and punishment for poor, urban youth with the creation of the juvenile court, reformatories, detention centers, and new categories of youthful crime (Platt, 2009). The political rhetoric of the child-saving era functioned under the distress of a media-influenced moral panic, which argued for the immediate need to control juvenile delinquency and crime that was perceived to be increasingly unmanageable (Platt, 2009).

The founders of the child-saving movement argued that it was an effort to alleviate the miseries of urban life resulting from the structural inequalities of unregulated capitalism (Platt, 2009). However, this so-called, benevolent rhetoric from the child

savers was really masking a class-based system of harsh punishment, which deprived impoverished youth of due process while increasing the role the state played in the daily lives of the working class (Platt, 2009). One of the overarching aspects of the child-saving movement was the characterization or demonization of lower- and working-class youth as problematic and deserving of intervention from law enforcement and the courts (Platt, 2009).

Over time, media-based “child saving” techniques have been employed to manufacture biased and misguided opinions about the need to regulate dangerous youth. Indeed, rhetoric from James Alan Fox, John J. DiIulio, William Bennett, John Walters, and William J. Bratton exaggerated the reports being publicized by the mass media in the 1990s of youth “*wilding*” and the growing legions of juvenile “superpredators” (Bennett, DiIulio, & Walters, 1996; Fuentes, 2003; Welch, 2005, p. 168-169; Welch, 2011, p. 216-217). Of course, this political rhetoric coincided with the neoliberal restructuring of the US economy in the 1990s (Harvey, 2005; Simon, 2007). Collectively, their descriptions of inner city adolescent offenders as being criminogenic, valueless, and “new threats to public safety” received constant and sustained media coverage (Welch, 2011, p. 216).

In addition, the school shootings of the 1990s were linked to this growing juvenile crime problem (Hirschfield, 2008; Stinchcomb et al., 2006; Sullivan, 2010). This stigmatizing rhetoric was reiterated by policy makers and the media, which played a crucial role in vilifying and demonizing disruptive and troublesome youth in America’s schools (Burns & Crawford, 1999; Hirschfield, 2008; Hirschfield & Celinska, 2011). As a result, minority, urban youth were targeted as threats to society, while racial and economic inequalities were reinforced by the state legislatures’ ever-increasing, “get

tough” responses to the perceived panic over youth crime (Welch, 2005; 2011). Moreover, increased security, surveillance, and formal sanctions for disruptive and violent behavior in schools were proclaimed as essential to restoring a controlled, disciplined environment in which educational processes could be effective, because students would conform to school norms or face strict consequences for misbehaviors (Bowditch, 1993; Toby, 1998). Zero tolerance policies served as the legislative answer to controlling school violence and crime caused by a perceived growing number of “dangerous” youth in American schools (Boccanfuso & Kuhfeld, 2011; Hirschfield, 2008; Hirschfield & Celinska, 2011; Stinchcomb et al., 2006).

The political-economic pressures to prepare American students for the deindustrialized, service-oriented labor market of the neoliberal state has also played an influential role in the political rhetoric that seeks to strengthen school disciplinary policies (Kupchik & Monahan, 2006). The punitive responses from policy makers to the moral panic caused by media portrayals of school violence have allowed the juvenile justice system to broaden its reach into school disciplinary practices (Boccanfuso & Kuhfeld, 2011; Chen, 2008; Hirschfield, 2008). Over time, zero tolerance policies have undergone net-widening, which allows rather minor offenses, such as disruptive behavior, speech, excessive tardiness, shoving matches, dress code violations, profanity, and insubordination to receive suspension and expulsion penalties (Black, 1999; Hirschfield, 2008; Insley, 2001; Morrison & Skiba, 2001; Scott & Steinberg, 2008; Sughrue, 2003). The mass hysteria over schools shootings enabled policy makers to garner the essential public support for zero tolerance policies that would attempt to deter the presence of guns and drugs on school campuses; however, once in place, these

policies have been extended to criminalize troublesome behaviors that might inhibit teachers' roles in socializing the "compliant bodies" needed for the flexible labor force of the new neoliberal state (Kupchik & Monahan, 2006).

Students who exhibit these forms of disruptive behaviors are stigmatized and labeled as "at-risk of failing," "unsalvageable," and "bound for jail," which mirrors the otherizing rhetoric of the original child-saving movement that sought to contain and control problematic youth because their behavior was not in accordance with the mainstream American values and norms (Ferguson, 2000, p. 9; NAACP, 2005; Platt, 2009). In the case of broadening zero tolerance policies, the tightening of school disciplinary practices attempts to mold students into compliant future employees who conform to the service-oriented needs of the neoliberal economy (Kupchik & Monahan, 2006; Hirschfield, 2008). Those students who disturb this socializing process are perceived to hinder the future prospects of other "promising" students who are expected to be economically viable laborers and consumers in the neoliberal economy (Hirschfield, 2008; Kupchik & Monahan, 2006). Media depictions of school violence and the political efforts of policy makers have shaped public opinion so that harsh punishment of those who violate school policies is considered necessary to control the "folk devils" deemed risky threats to the safety of their children, as well as threats to their children's future occupational prospects if their education is obstructed in any way (Burns & Crawford, 1999; Hirschfield, 2008).

The labeling and categorizing of particular groups of students as "unworthy," "unruly," and "unsalvageable" (Ferguson, 2000, p. 9; Wacquant, 2001, p. 108) is reminiscent of the child-saving movement of the 19<sup>th</sup> and 20<sup>th</sup> centuries that was harmful



to poor, urban youth identified as delinquents and treated as dangerous (Platt, 2009). Such rhetoric suggests that certain groups are indeed different and require social control, which may perpetuate racialized fears of urban youth. Numerous studies and national statistics reveal that the exclusionary practices enforced by zero tolerance policies in schools are disproportionately applied to racial and ethnic minorities, especially African Americans (APA Zero Tolerance Task Force, 2008; Skiba et al., 2002; USDOE, 2012; Witt, 2007).

The child savers established a movement that responded to a media-driven moral panic in which the threat posed by marginalized, urban youth to society and the economy required new forms of social control (Platt, 2009). Essentially, the child-savers movement was motivated by class warfare that pitted White, middle-class values and norms against the delinquent behaviors of wayward, working-class youth (Platt, 2009; Sutherland, 1969). Similar to the original child-savers movement, current school criminalization efforts have further stigmatized marginal populations of poor, inner-city youth, which predominantly consist of racial and ethnic minorities (Giroux, 2003; Hirschfield, 2008; Wacquant, 2001). Thus, zero tolerance policies effectively function as the neoliberal social control mechanisms needed to punish and remove students perceived to have no market value and identified as flawed consumers because of their associations with crime, redundancy, poverty, and expendability (Giroux, 2003; Hall & Karanxha, 2012; Hirschfield, 2008; Wacquant, 2001). The school criminalization policies and practices enforced in the neoliberal state attempt to instill a “passive acquiescence to state and corporate power” among the student populations and their parents (Lyons & Drew, 2006, p. 195). This goal is pursued by isolating and funneling those students, who disrupt this

socialization process, out of school and onto a path leading to confinement and perpetual marginalization before they can even enter the labor force (Hall & Karanxha, 2012).

Thus, the new American educational apparatus assists in the criminalization of poor students, which aids in the establishment and maintenance of a criminal class that legitimates systems of inequality in modern capitalist societies, while flexible students who adapt or succumb easily to the labor instability, invasive monitoring, and exploitative working conditions of the neoliberal state are rewarded (Kupchik & Monahan, 2006).

#### Legislation Reflecting Neoliberal Agenda of Zero Tolerance

In 1990, original federal legislation efforts by policy makers to create safer schools made the possession of firearms within 1,000 feet of school campuses a federal felony, but this was found unconstitutional (see *US v. Lopez*, 1995). Later, the Gun-Free School Act (GFSA) of 1994 required all federally funded schools to automatically expel any student who brought a firearm to school for no less than a year. Subsequently, amendments to the Elementary and Secondary Education Act of 1965 required federal funding to be withheld from schools that did not abide by the mandatory expulsion policy for students possessing firearms within 1,000 feet of school under the GFSA (Casella, 2003b). Thus, the initial legislation appeared to be responding solely to the issue of gun violence in schools as supported by the public, which was struggling to recover from the media-fed moral panic. However, the GFSA was later amended in 1995 to broaden the categories of weapons and items that could potentially be used as weapons that would also result in mandatory expulsion if found in a student's possession (Casella, 20003b). The application of formal social controls in schools quickly became a slippery slope in

which a variety of student behaviors faced swift and harsh punishments (Heitzeg, 2009).

Legislative efforts widened to further implement zero tolerance policies for students possessing drugs, including alcohol, tobacco, and drug paraphernalia, while on school property (Beger, 2002). Moreover, under the new policies, if students were found with weapons or drugs, they also faced referral to the juvenile or criminal justice systems on top of the automatic suspension or expulsion they would receive for violating the zero tolerance policies of the school (Berger, 2002; Education Law Center, 2012). Net-widening continued through the 1990s and 2000s, so that zero tolerance policies are now regularly applied to very minor and non-violent school infractions, such as tardiness, the use of profane language, disruptive behavior, insubordination, possession of health aids (e.g., Advil, mouthwash, cough drops), cheating, violating dress code, engaging in horseplay, being excessively noisy, failing to bring homework to class, throwing temper tantrums, shoving, speech, and writing on topics with violent or criminal themes (Fuentes, 2003; Giroux, 2003; Heitzeg, 2009; Hirschfield, 2008; Justice Policy Institute, 2009; Schoonover, 2007; Skiba, 2000; Stinchcomb et al., 2006; Sullivan, 2010). These policies are now punishing minor infractions with force and arrest (Giroux, 2003; Heitzeg, 2009; Justice Policy Institute, 2009).

Net-widening effects reveal an elevated effort between schools and the justice system to cooperate in the implementation of zero tolerance policies and the execution of punishment for violators (Heitzeg, 2009). Under the Violent Crime Control and Law Enforcement Act of 1994, over \$30 billion was authorized to fund more police officers and new prison construction that was related to school safety efforts (Yell & Rozalski, 2000). Additionally, the Department of Justice's Office of Community Policing Services

(COPS) was given over \$350 million to hire new SROs across the US (Beger, 2002). As a result of this funding, public schools in the US added more full-time police officers and security personnel to their staffs since 1990, and the number of SROs continues to grow rapidly (Beger, 2002; Kupchik & Monahan, 2006). While these officers are stationed in schools throughout American cities, they are typically concentrated in schools found in areas marked by adverse poverty (Devine, 1996; Kupchik & Monahan, 2006).

Surveillance technologies, such as metal detectors, video recording devices, Internet tracking, biometrics, ID cards, transparent lockers and book bags, electronic gates, and two-way radios were also increasingly used in schools throughout the 1990s and today (Kupchik & Monahan, 2006). The increased presence of police officers and surveillance technologies makes it easier for students to be socialized into disciplinary roles and for zero tolerance policies to be enforced efficiently (Kupchik & Monahan, 2006).

The practices put in place in accordance with zero tolerance disciplinary reforms reflect many of the principles of the neoliberal agenda. Specifically, legislation like the No Child Left Behind Act (2001) introduced the neoliberal imperative of school accountability by connecting school funding directly to scores on annual achievement test in reading and math (Fuentes, 2003; Heitzeg, 2009). Under the accountability standards enforced by this legislative act, neoliberal concepts of market competition, performance monitoring, and accountability for underperformance and failure infiltrated the American educational system (Fuentes, 2003; Hirschfield, 2008; Kupchik & Monahan, 2006).

These neoliberal embodiments served to promote more efficiency and increase culpability for students and teachers, while enhancing the mechanisms of social control available to school administrators and law enforcement (Fuentes, 2003; Hirschfield,

2008; Kupchik & Monahan, 2006). Additionally, the market mechanisms embraced by the No Child Left Behind Act (2001) creates a climate of competition for resources, which is expected to motivate school officials to obtain better scores regardless of the means (Simon, 2007).

Thus, under the neoliberal push for accountability requirements, teachers and administrators at “financially strapped schools” are under such tremendous pressure to improve standardized test scores and attendance rates that they are prepared to exclude underachieving students to benefit of high-achieving students (Fuentes, 2003; Heitzeg, 2009; Hirschfield, 2008, p. 85). The expanded application of zero tolerance policies to a wide array of disciplinary problems provides school officials with the social control mechanism in which teachers can weed out low-performing students who affect the overall standardized test scores for struggling schools (Fuentes, 2003; NAACP, 2005). Because of net-widening, school officials are able to enforce suspensions and/or expulsions for disruptive behaviors, insubordination, cheating, failure to complete homework, and other infractions common among failing students while concealing educational deficits caused by a lack of resources and poor teaching quality (Fuentes, 2003; NAACP, 2005). Therefore, by using zero tolerance exclusionary practices, school administrators and educators are able to focus on the best performing students and remove those students who threaten overall school performance, as well as undermine the controlled and disciplined school environment required for the didactic socialization efforts promoted under the neoliberal state to produce students who accommodate the needs of the restructured economy (Bowditch, 1993; Fuentes, 2003; Giroux, 2003; Hirschfield, 2008; Kupchik & Monahan, 2006; Toby, 1998).

This form of zero tolerance discipline assists the neoliberal state in masking social injustices, economic inequality, and underinvestment in public education by explicitly denying the significance of political, structural, and social factors underpinning school misconduct and focusing on the individual student offenders (Giroux, 2003; Hirschfield & Celinska, 2011; Lyons & Drew, 2006). School criminalization, in the new zero tolerance culture, transfers disciplinary authority away from traditional school authorities and into the control of inflexible disciplinary codes, law enforcement, and the justice system (Beger, 2002; Hirschfield & Celinska, 2011; Lyons & Drew, 2006). The students' rights movement of the 1960s and 1970s secured due process for students by curbing arbitrary and capricious disciplinary practices by school officials and standardizing many of the existing disciplinary practices (Arum, 2003; Toby, 1998). Some scholars believe that the added due process undermined the traditional moral authority exhibited by school administrators and emboldened students to defy their teachers (Arum, 2003; Toby, 1998). This perspective suggests that the ineffectiveness of school discipline, coupled with low educational achievement, was associated with the erosion of moral authority in schools, which created an "atmosphere of disorder" (Arum, 2003, p. 3). However, after the judicial rulings of the 1960s and 1970s, school principals were reluctant to administer suspensions and/or expulsions for fear of litigation (Arum, 2003; Hirschfield, 2008).

By increasing the role that the police and the justice system play in school disciplinary matters by way of school criminalization and zero tolerance, school administrators are able to reduce their likelihood of being sued (Hirschfield, 2008). Thus, discipline is "outsourced" to other law enforcement and state agencies, so that teachers are now simply responsible for students' minds while security staff are responsible for

their bodies (Beger, 2002; Devine, 1996; Kupchik & Monahan, 2006). Furthermore, the transfer of disciplinary authority to strict zero tolerance codes and law enforcement entities allows school administrators to circumvent litigious claims from students who believe their constitutional privacy and due process rights have been violated by zero tolerance practices (Arum, 2003; Hirschfield, 2008). Consequently, the manner in which neoliberal social controls are exerted via school-based zero tolerance policies and an increased law enforcement presence at schools has reinforced the formation of a crime control model where students' rights are weakened, due process is minimized, and the movements of students are controlled (Lyons & Drew, 2006; Nolan & Anyon, 2004). School criminalization teaches students three things: (1) they have no meaningful influence over their schools, (2) they have little recourse should the government violate their rights, and (3) they have few rights to begin with (Hirschfield & Celinska, 2011; Kupchik & Monahan, 2006; Lyons & Drew, 2006).

Zero tolerance furthers the neoliberal agenda in public schools by supporting a governing through crime initiative, which approaches problems faced by schools or students as criminal problems rather than social or counseling problems (Kupchik & Monahan, 2006; Simon, 2007). As such, disruptive students and failing schools are recast as criminals, while high-performing students and their parents are recast as victims, and educational policymakers are elevated to the role of prosecutor and judge (Simon, 2007). Under this governing through crime logic, the criminal element threatening schools must be identified and expelled in order to improve the prospects and performance of deserving students, such as those who are flexible and compliant to the needs of the economy that awaits them (Kupchik & Monahan, 2006; Simon, 2007).

Thus, the classification of students, via anticipatory labeling, allows teachers and school administrators to project perceived future social and structural realities onto their disaffected and disruptive students (Hirschfield, 2008). Sociologists argue that structural forces, like those relevant to neoliberal restructuring, “condition” and “constrain” individual perceptions and interactions with others (Bourdieu & Passeron, 1977; Hirschfield, 2008, p. 91). Therefore, the neoliberal transformation of the US political economy can influence teachers’ perceptions of students’ future prospects by linking social structure to the students’ educational and occupational aspirations and classroom effort (Hirschfield, 2008). Teachers are able to perceive the changes in occupational structure and acknowledge which students will be able to perform best in the flexible, service-orient labor market of the neoliberal state (Hirschfield, 2008).

Students who are already being labeled as “at risk of failing,” “bound for jail,” “unsalvageable,” “unworthy,” and “unruly” are more likely to be removed in order to accelerate their projected future reality, and in the process, allow educators to focus classroom instruction on more economically viable students (Ferguson, 2000, p. 9; Hirschfield, 2008; Kupchik & Monahan, 2006; Wacquant, 2001, p. 108). Zero tolerance policies serve as the neoliberal social control mechanism that allows school officials to “fast track” undesirable and disruptive students into the school-to-prison pipeline (Hirschfield, 2008, p. 92). The tasks of classification and socialization forces teachers to consciously and unconsciously prepare students for their rightful position in the social strata by sorting future “dropouts” from those students who have a legitimate chance at functioning in the new workplace environment (Bowditch, 1993; Ferguson, 2000; Hirschfield, 2008). Moreover, the pressure to achieve neoliberal standards of



accountability for underperforming schools further motivates educators to control and remove disaffected and disruptive students, who obstruct the socialization processes that promote the values and norms of a dominant economic class (Kupchik & Monahan, 2006; Shapiro, 1984).

In practice, the exclusionary practices enforced by zero tolerance policies disproportionately affect minority students, especially African American males (APA Zero Tolerance Task Force, 2008; Casella, 2003b, Fenning & Rose, 2007; Giroux, 2003; Skiba & Rausch, 2006; USDOE, 2012). A large proportion of minority students attend inner-city schools in low-income neighborhoods (Christle et al., 2004; Giroux, 2003; Skiba et al., 2002). There are often bleak employment and imprisonment prospects for inner-city students, which affects the future realities that teachers and school administrators project for these students (Hirschfield, 2008). The reasons for why minority students engage in disruptive or disobedient behaviors while at school may be a reflection of the extreme poverty, economic inequality, and social marginalization they experience daily in their communities and home environments (Ferguson, 2000; Hirschfield, 2008).

Two structural realities emerged from the neoliberal transformation, which include the following: (1) that prison awaits African American youth who fail or dropout of school, and (2) that schools do not possess the necessary resources to reverse the wayward paths of problematic students without also detracting from the quality of teaching and services meant for those perceived as more deserving and promising students (Hirschfield, 2008). These structural realities are produced by unregulated neoliberal capitalism (Harvey, 2005; Kotz, 2003, 2008, 2009; Wacquant, 2001, 2009a,

2009b). Regardless of the potentially numerous sources for disruptive behavior, which likely stems from the polarizing social conditions of the neoliberal state, chronically disobedient African American boys are consistently viewed by school authorities as “bound for jail” and “unsalvageable” (Ferguson, 2000). As a result, poor, urban minority youth are disproportionately suspended and expelled, which further perpetuates their marginalization in society (APA Zero Tolerance Task Force, 2008; Casella, 2003b, Fenning & Rose, 2007; Giroux, 2003; Skiba & Rausch, 2006; USDOE, 2012; Wacquant, 2001).

### Legitimacy Crisis and the Role of the Courts

Neoliberal initiatives, which reconfigure social control agents and mechanisms within public schools, as well as enhance the accountability for underperforming schools has transformed public schools to become more like “institutions of confinement” (Wacquant, 2001, p. 108). Now school-based zero tolerance policies serve as a social control mechanism to punish and remove those students perceived to have no future market value in the restructured labor market that is more flexible and service-oriented (Giroux, 2003; Hall & Karanxha, 2012; Hirschfield, 2008; Lynch, 2007; Wacquant, 2001). The neoliberal agenda applied to school criminalization efforts endorses a “narrow public sphere” and a “docile citizenry” (Giroux, 2003; Hirschfield, 2011, p. 7). In the past, public schools provided the venue for battles over full citizenship and equal opportunity; however, their role has now converted to replicate a model of disempowered citizenship that is similar to neoliberal labor dynamics, where students’ rights are weakened and their movements are controlled and scrutinized (Giroux, 2003; Lyons & Drew, 2006).

The pedagogical imperatives of the neoliberal agenda conflicts with the traditional, more progressive pedagogical imperatives of public education rooted in values of liberty, equality, tolerance, citizenship, and personal growth (Giroux, 2003; Hirschfield, 2008). Liberal democracies confront crises of legitimation because economic liberalism creates inequality through power imbalances across rigid class lines, while democracy struggles to respond by upholding social welfare through the promotion of social equality, mutual respect, and cooperative interaction among citizens (Habermas, 1975; Harvey, 2005; Wolfe, 1977). American schools can reproduce the structure of capitalist society by socializing students in the values of the market place as preferred by the ruling elites (Kupchik & Monahan, 2006; Shapiro, 1984). Schools, similar to other social institutions, serve as “sites of dynamic social interaction” in which the dueling ideologies of liberal democracy are continuously negotiated to legitimize these conflicting forces (Hirschfield, 2008).

Public schools represent democratic ideals and principles, such as equality of access, mutuality, universal responsibility, and collective obligations, which oppose the neoliberal imperatives of a class-divided society (Giroux, 2003; Shapiro, 1984). Thus, the enforcement of the neoliberal agenda by way of school criminalization has put the traditional role of public schools as a public good at odds with itself (Giroux, 2003; Shapiro, 1984). School criminalization alters the role of teachers so that they manage and classify students much like employees would be treated in a neoliberal economy (Hirschfield & Celinska, 2011; Kupchik & Monahan, 2006). In addition, school criminalization facilitates teacher disengagement, because their new role reduces their capacity to understand and address the needs of their students (Brotherton, 1996; Devine,

1996; Hirschfield & Celinska, 2011). This disengagement, along with racially disparate exclusionary disciplinary practices, serves to erode students' trust of their teachers and threatens the overall legitimacy of school rules because students interpret their treatment as unfair due to a perceived lack of due process (Brotherton, 1996; Hirschfield & Celinska, 2011; Kupchik, 2010).

According to neoliberal theory, any challenges to the expansion of the neoliberal agenda into school disciplinary policy must be mediated through the courts (Harvey, 2005). School criminalization subjects students to conditions of constant monitoring, which reinforces a surveillance culture that individualizes students and presumes their guilt until proven otherwise (Kupchik & Monahan, 2006). Civil liberty advocates have targeted the application of school criminalization efforts from an approach that focuses on violations of privacy (ACLU, 2001). However, the net-widening of zero tolerance policies broadens the number of constitutional rights that they potentially violate. In addition to students' privacy rights, their freedom of speech protections, protection from unlawful searches and seizures, protections from cruel and unusual punishments, and due process rights are also potentially violated when zero tolerance policies are enforced.

Attempts by youthful defendants to challenge zero tolerance outcomes on the grounds of violations of the First, Fourth, Eighth, and Fourteenth Amendment rights have largely been dismissed by the courts (Kim et al., 2010; Sullivan, 2010; Yell & Rozalski, 2000). The courts interpret and apply the law in order to arbitrate legal disputes between parties in accordance with the rule of law, and they are the primary means for dispute resolution in the neoliberal state (Harvey, 2005). When court rulings uphold zero tolerance policies in light of challenges based on constitutional violations, they create a

precedent, which establishes the policies and practices of the state as legitimate under the law. Thus, it is theorized that affirmation of zero tolerance policies through court decisions serves to legitimate the state's social control of marginal populations in schools and the neoliberal influence on educational policy by declaring that they do not infringe on the democratic rights and liberties of students. Verification by the courts that zero tolerance policies are legitimate allows neoliberal social control mechanisms to be institutionalized and further applied in the American educational system.

## CHAPTER FOUR

### METHODOLOGY

#### Qualitative Research Design

Attempts by student defendants to challenge zero tolerance outcomes on the grounds of violations of First, Fourth, Eighth, and Fourteenth Amendment rights have largely been dismissed by the courts (Kim et al., 2010; Sullivan, 2010; Yell & Rozalski, 2000). Given the neoliberal influence over the transformation of school disciplinary practices, which is documented in the literature, affirmation of zero tolerance policies through court decisions may serve to legitimate how the state controls marginal populations in educational settings through zero tolerance. Examination of both the state appellate and Supreme Court decisions surrounding the possible constitutional rights violations exhibited by zero tolerance policies is warranted to extract this jurisprudential intent, which permits and regenerates these crime control processes.

Jurisprudential intent refers to an evaluation of the “judicial construction of the opinion,” which is derived from a close analysis of specific phrasing or language used to express the plain meaning of the ruling more thoroughly (Arrigo, 2003, p.59). Court decisions, like other legal documents, serve as archival data that record mainstream legal thought on several justice-related matters, and as such, they can be interpreted to reveal societal meaning (Arrigo, Bersot, & Sellers, 2011). Therefore, legal inquiries of existing

case law permit researchers to identify the many facets of juridical decision making that influence how the law is socially structured to reflect the dominant ideology of the political economy (Banaker & Travers, 2005, p. 134). A qualitative textual and discourse analysis via a case law method is proposed to investigate the underlying jurisprudential intent guiding these legal decisions, which provide legitimacy to the practice of zero tolerance in the education system and promote disciplinary strategies that will be consistent with neoliberal ideals.

Legal anthropology is the study of how societies construct and implement laws and legal systems to control antisocial deviance and other forms of behavioral patterns among citizens, as well as control access to justice (Conley & O' Barr, 1993). Thus, legal anthropologists investigate both how the law works and how society is regulated (Conley & O' Barr, 1993). Regardless of the research questions posed or the theoretical positions taken, legal anthropologists usually rely on court cases as the basic unit of analysis and the case method as a qualitative analytic paradigm (Conley & O' Barr, 1993). Case law will be the unit of analysis in the study at hand. Court decisions are forms of narratives, and as narratives, they portray a meaningful sequence of temporal events that organize human experience and understanding through documented language and discourse (Rapport, 2000). Narratives articulate and “emplot” events, experiences, sensations, rationales, and interpretations, which serve as a rich source for ethnographic examination from which legal reasoning and contextual meaning may be unearthed (Conley & O' Barr, 1993; Rapport, 2000, p. 76). Thus, the narrative of the court decisions becomes the landscape that the embedded legal researcher uses to construct the field of legal inquiry (Rapport, 2000).

Qualitative research of this nature requires the qualitative evaluation concept of *justifiability of interpretation* in order to take into account subjectivity, interpretation, and context rather than apply quantitative concepts of reliability and validity (Auerbach & Silverstein, 2003). Qualitative methodologists believe it is justifiable and often inevitable for a researcher to use his or her subjectivity in analyzing and interpreting data; however, it is never justifiable for a researcher to impose his or her own subjectivity in an arbitrary manner that is not grounded in his or her data (Auerbach & Silverstein, 2003). Thus, qualitative studies employ different criteria for methodological rigor compared to quantitative studies (Auerbach & Silverstein, 2003; Whitley & Kite, 2012).

The criteria used to check against the tendency of a qualitative researcher imposing his or her own subjectivity in data analysis includes *transparency*, *communicability*, *coherence*, and *confirmability* (Auerbach & Silverstein, 2003). In order for qualitative data analysis to be justifiable it must be *transparent*, which means that others are made aware of the steps by which the researcher arrived at his or her interpretation (Auerbach & Silverstein, 2003). This check is accomplished through clearly describing the process of data collection and analysis and being consistent (Whitley & Kite, 2012). *Transparency*, also referred to as *dependability* (see Whitley & Kite, 2012), does not mean that other researchers need to actually agree with the researcher's interpretation; however, they only need to know how he or she arrived at it (Auerbach & Silverstein, 2003). In this study, each step of the case law method procedure will be explained; so that others will know exactly how theoretical themes were built up from the repeating ideas that were derived from relevant text (see Auerbach & Silverstein, 2003). Identifying relevant text segments, or passages, from the court cases



allows for repeating concepts to be grouped into themes in an understandable way that will tie them to theoretical mechanisms, which reflect the patterns among the themes (see Auerbach & Silverstein, 2003).

In order for the data analysis to be *communicable*, the themes and constructs must be understood by, and make sense to, other researchers (Auerbach & Silverstein, 2003). *Communicability* does not mean that other researchers would have to come up with the same themes, constructs, or concepts, or agree with them; however, it does mean that the themes or constructs need to be explainable so others will understand why the researcher has arrived at his or her conclusions (Auerbach & Silverstein, 2003). *Communicability* is achieved in the second level of analysis in the case law method procedure. In this second step, the researcher explains how the plain meaning of particular text segments reflects language that identifies with constructs and conceptual mechanisms in the theoretical framework (see Arrigo et al, 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009).

*Coherence* means that theoretical constructs or concepts must fit together so that the researcher can tell a *coherent* story (Auerbach & Silverstein, 2003). Of course, *coherence* does not require that the story developed by the researcher be the only possible version, but that his or her story helps to organize the data to produce *coherent* ideas by identifying themes and constructs that fit into an organized theoretical narrative (Auerbach & Silverstein, 2003). *Coherence* is achieved in the third level of the case law method in which a thematic analysis is conducted across the cases to identify the theoretical mechanisms that are predominantly applied to the court decisions and how they allow for the larger theoretical framework to be evidenced in the body of relevant

case law under investigation (see Arrigo et al, 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009).

In order to obtain *confirmability*, the qualitative researcher must actively seek out instances within his or her data that does not fit with initial conclusions or fails to support research hypotheses (Auerbach & Silverstein, 2003; Whitley & Kite, 2012). This step also helps to reinforce that the data analysis is transparent (Auerbach & Silverstein, 2003). In the case law method, the researcher keenly searches the court decisions for text segments that either support or fail to support the research questions, which are used to guide the careful reading of each case (see Arrigo et al, 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009). Qualitative data that supports or fails to support hypotheses or research questions will be gleaned and documented via written field notes. To be clear, text segments that represent, or fail to represent, plain meaning responses to the research hypotheses will be highlighted in the court decision and written down as evidence for or against, the corresponding research hypothesis. In this study, eight research questions are applied to the textual analysis. If no data can be found in a court decision that either supports or fails to support a hypothesis, then “no data could be ascertained” will be documented in the field notes (see Arrigo et al, 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009).

In qualitative research, *transferability of theoretical constructs* is used instead of the quantitative concept of generalizability (Auerbach & Silverstein, 2003; Whitley & Kite, 2012). If a qualitative study is *transferable*, then its theoretical constructs or concepts can be applied to different samples (Auerbach & Silverstein, 2003). In other words, the theoretical constructs defined and identified in the study at hand will serve as a

guide for investigating a new sample, and once applied, these constructs will help the researcher to understand textual patterns in the new sample (Auerbach & Silverstein, 2003). Of course, theoretical constructs may not apply automatically, and the researcher may need to extend their meaning or develop them further, which will refine and further develop the theory (Auerbach & Silverstein, 2003). It is expected that the theoretical constructs in the current study will serve as *transferable* in other empirical applications of this theory in new samples of case law, where neoliberal social controls in either similar or different social institutions are being applied.

*Criterion-based Sampling.* A selective criterion-based sampling design was employed. Criterion-based sampling is a form of purposive sampling, which allows the researcher to purposely select court cases for their relevance to the issue being studied (see Gray, Williamson, Karp, & Dalphin, 2007). This sampling strategy is typically used in studies of social phenomena that are either extremely rare or so specific that a representative cross section of a population would not be effective (Gray et al., 2007). Samples for qualitative content analyses typically consist of purposively selected texts, which may inform the research questions under examination (Zhang & Wildemuth, 2009). Thus, criterion-based sampling ensures that at least some information from legal data sources, which are either hard to locate and/or essential to the study, are included in the sample (Gary et al., 2007).

The following case law methodology (Arrigo et al., 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009) sourced jurisprudential intent as communicated in district court, state appellate court, and Supreme Court decisions addressing school zero tolerance policies and privacy rights of students, where the First Amendment's freedom of speech

protections, the Fourth Amendment's prohibition on unlawful searches and seizures, the Eighth Amendment's prohibition on cruel and unusual punishment, and the Fourteenth Amendment's protection of due process rights are at issue. In order to identify this judicial temperament, specific criteria were established to determine which court cases would be considered for examination. The individual court cases will serve as the units of analysis. First, an initial search on LexisNexis was conducted for key terms and phrases. Those words/phrases included "zero tolerance," "school," "student\*," "privacy right\*," "First Amendment," "Fourth Amendment," "Eighth Amendment," and "Fourteenth Amendment."

"Zero tolerance" was chosen because this term is the one most commonly applied to school policies that mandate automatic sanctions for students found in violation of rules without any consideration given to mitigating circumstances. Additionally, "school" was included because zero tolerance policies can be utilized in various workplace settings and even public transportation. For the purpose of this investigation, the researcher is primarily interested in the application of zero tolerance policies in middle or high school settings only. Any cases involving college settings were excluded from the final data set. "Student" was also added to the search criteria to identify court decisions where defendants were actual youths attending school and not teachers or administrative officials working in the school. Only cases with juvenile defendants were included in the final data set. Next, "privacy right\*" was included to yield all cases involving issues of the privacy rights of students with regard to the application of zero tolerance practices in schools. Finally, "First Amendment," "Fourth Amendment," "Eighth Amendment,"

and/or “Fourteenth Amendment” were all included in the search criteria to identify those cases where violations of these constitutional rights were raised.

*Criterion-Sample Results:* With these criteria in mind, the LexisNexis search yielded a preliminary 122 court cases. These initial 122 court cases were examined to ensure that they substantively met the sampling criteria. Seventy-five cases that did not specifically address zero tolerance policies in schools, issues of privacy rights, and/or First, Fourth, Eighth, and Fourteenth Amendment protections for students were excluded from the final data set. These excluded cases dealt with zero tolerance policies in other arenas, such as universities, the transit authority, or various workplace settings and not in public elementary and secondary schools. The 47 remaining cases of interest were shepardized, and internal cites were scrutinized in order to ascertain any other important court decisions that should be included in the sample, notwithstanding their lack of identification as derived from initial LexisNexis inquiries. As a result, 28 additional court decisions were added to finalize the sample at 75 court cases that met the inclusion criteria.

*Case Law Method.* In this inquiry, a recently developed case law methodology was applied (see Arrigo et al., 2011; Bersot & Arrigo, 2010; Sellers & Arrigo, 2009), whereby the plain meaning of particular terms within the existing case law of interest was scrutinized for textual context and usage to unpack jurisprudential intent. There were several steps to this process.

Probing the legal language of these court decisions for embedded perceptions and attitudes entailed the first step of the textual analysis. This first step extracted jurisprudential intent from the documents, which is the plain meaning made apparent in

the judicial opinion. The second steps entailed identifying the use of neoliberal mechanisms embedded within court decisions that reflect the prevailing jurisprudential perspective on zero tolerance policies, the privacy rights of students, and whether such practices infringed upon the First, Fourth, Eighth, and Fourteenth Amendment rights of students were made explicit. The data extracted in the second step addressed the question of whether and how the court employed neoliberal justifications to reinforce zero-tolerance social control efforts in schools.

Previous studies have utilized textual or narrative inquiry to conduct statutory analyses, and this strategy is a common form of legal analysis. For example, in order to unearth legislative intent, legal scholars have investigated the “ordinary usage” of terms and the “textual context” distinguished within various legislative provisions (Hall & Wright, 2008; Karkkainen, 1994; Phillips & Grattet, 2000; Randolph, 1994). However, some researchers have challenged the subjective nature of this qualitative technique, because it is often difficult to extract the complex meaning behind the perspectives of the policymakers (Easterbrook, 1994; Posner, 2008). Therefore, critics of this approach argue that meaning is interpreted based on context. Thus, results from such an approach may vary according to an individual’s comprehension of the language (Posner, 2008).

However, others (Arrigo et al., 2011; Randolph, 1994) argue that determining a court’s jurisprudential intent through rigorous textual examination of its judicial decisions is an essential, although certainly heuristic, approach to interpreting juridical meaning when experiments are not ethically possible or feasible. Additionally, it is logistically and physically impossible to observe courtroom proceedings and rulings for all relevant cases, which may span several decades. Also, quasi-experimental designs using survey

sampling methods may prove difficult since judges, as elected officials, may be reluctant to provide candid details on their decision making, especially if the case may undergo appeal. Thus, interpretive analyses of legal texts are better served by seeking jurisprudential plain meaning from judicial decisions themselves rather than attempting to peer into the minds of policymakers in which the “broader systems of meaning” that justify and rationalize a court’s rulings are determined (Phillips & Grattet, 2000, p. 569; see also, Easterbrook, 1994; Sellers & Arrigo, 2009). It should also be noted that the purpose of the legal text that discusses the basis for the legal opinion rendered in a given case is designed in such a way as to preclude the necessity of directly observing trials, or surveying judges, who have already self-described their rationale in legal materials. Therefore, the variant of the plain meaning rule described above was utilized to engage in an interpretive analysis of the legal language expressed in the court decisions that made up this data set.

Given the proposed theoretical approach, it was hypothesized that relevant court decisions regarding zero tolerance school policies would be more likely to embrace public safety rationales and disciplinary goals rather than the individual rights of juveniles. In order to conduct an interpretive analysis in which the plain meaning of the courts’ rhetoric is discerned, a series of research questions were compiled from this general hypothesis:

(RQ<sub>1</sub>) Court cases will contain reference to: (A) the control of potential threats of danger, and/or disruption that are posed by school-based infractions, regardless of circumstance or context, or (B) the focus on potential individual rights violations. Empirical evidence favoring A over B would

support the hypothesis that neoliberal court mechanisms are employed to reinforce zero-tolerance social control efforts in schools.

(RQ<sub>2</sub>) Court cases will include reference to (A) the intentions, good or bad, of the student(s) among the criteria used by the courts for deciding zero tolerance school policy cases, and (B) will discuss striking a balance between the intent of students and school safety concerns. If empirical evidence favors B over A, this finding would support the hypothesis that courts employ neoliberal mechanisms to reinforce zero-tolerance social control efforts in schools.

(RQ<sub>3</sub>) In some court decisions on zero tolerance policies, the court will make decisions related to the liability of school administrators for alleged infringement of student rights, and in order to determine if student rights were violated. The court may exclude or refuse to rule on certain legal issues, and may find school administrators immune from any charges of liability for the alleged infringement on the individual rights of students. At issue in these cases is the content of the ruling and its reference to neoliberal rationale. Data supporting this interpretation would support the effort of neoliberal court mechanisms to reinforce zero-tolerance social control efforts in schools.

(RQ<sub>4</sub>) The court's preference for security over individual rights reflects a preference for neoliberal policy, and will tend to result in decisions to uphold automatic expulsion or suspension for disruptive behaviors. Thus,



with respect to decisions, it is hypothesized that the court will more often decide in favor of schools over individuals.

- (RQ<sub>5</sub>) The court's preference for neoliberal policy over individual rights will impact decisions where the security threat presented by students is small. If this is true, it can be hypothesized that even when the cases involve student behaviors that poses no imminent physical threat, the court will preference the use of automatic expulsions and suspensions as appropriate sanctions over claims that such practices constitute cruel or unusual punishment.
- (RQ<sub>6</sub>) If the courts are strongly committed to neoliberal policy, then it can be hypothesized that courts will tend to dismiss allegations of violating constitutional protections as being without merit and not binding on the court's decision. Data supporting this interpretation would support the effort of neoliberal court mechanisms to reinforce zero-tolerance social control efforts in schools.
- (RQ<sub>7</sub>) The court's preference for neoliberal policy will affect the likelihood of the court accepting non-punitive responses to school infractions. As a result, it can be hypothesized that the court will reject recommendations for viable alternative punishments that are rehabilitative in nature or which seek to continue educational services in place of expulsions or suspensions. Data supporting this interpretation would support the effort

of neoliberal court mechanisms to reinforce zero-tolerance social control efforts in schools.

(RQ<sub>8</sub>) The court's emphasis on security is hypothesized to lead to decisions that promote strict disciplinary actions that preemptively seek to prevent possible future disruption over school policies that promote restorative sanctions. Data supporting this interpretation would support the effort of neoliberal court mechanisms to reinforce zero-tolerance social control efforts in schools.

These questions guided a careful reading of the legal language used in the various court rulings in the data set. The words, phrases, or passages, which constitute respective responses to these guiding questions, will reveal the plain meaning of the underlying judicial intent embedded within each judicial decision.

To summarize, the case law method used in this study engaged in a qualitative textual analysis of judicial decisions regarding school zero tolerance policies when challenges were raised on the grounds of violations of First, Fourth, Eighth, and Fourteenth Amendment rights of students. The first step, in this analysis, elicited information underpinning the jurisprudential intent by applying the eight research questions that guided an examination of the plain meaning of the court cases in the data set. Secondly, the evidence gathered from the first step were contextualized and examined to unpack terms or expressions that signified principles representative of the various mechanisms identified in the theoretical framework detailing how neoliberal court mechanisms supported zero-tolerance social control initiatives in schools. Finally, the theoretical mechanisms employed by the courts were inspected across the cases to

determine which mechanisms were predominantly applied to legitimate neoliberal judicial support for zero tolerance social control efforts in schools.

### Quantitative Research Design

There is a surprising dearth of quantitative studies examining school criminalization measures (Hirschfield & Celinska, 2011). In fact, the few published quantitative studies that exist are cross-sectional and tend to rely primarily on measures of school characteristics rather than the political economic dynamics of this social problem (Brady, Balmer, & Phenix, 2007; Chen, 2008; Kupchik & Ellis, 2008; Mayer & Leone, 1999). Currently, data collected nationally from the School Survey on Crime and Safety (SSOCS) by the National Center for Education Research (NCES), provides a source for information regarding school crime, disciplinary problems, programs, and policies across several years (United States Department of Education, 2004, 2006, & 2008). SSOCS surveys a nationally representative sample of about 3,500 public elementary and secondary schools (NCES, 2012). School principals from these roughly 3,500 public schools were asked about the amount of crime and violence, disciplinary actions, prevention programs and policies, and other school characteristics, including some demographic variables (NCES, 2012). The SSOCS was administered in the spring of 1999-2000, 2003-04, 2005-06, 2007-08 school years (NCES, 2012). Three waves of data were used. Data from 1999-2000 was not used in this study because this wave of data did not have the variables of interest that are available in the other three waves (NCES, 2012).

The SSOCS data provides estimates of school crime, discipline, disorder, programs, policies, and the sociodemographic makeup of the schools (NCES, 2012).

Thus, these data enabled the researcher to investigate the utilization of various school practices as they relate to school security, crime prevention, disciplinary action, the frequency of particular crimes or infractions, and the frequency of incidents reported to law enforcement (NCES, 2012). Therefore, an empirical analysis of relevant variables permitted the researcher to identify whether there was an increased use of neoliberal social controls (e.g., enhanced surveillance, increased security, expulsion and suspension without continued educational services, more referrals to law enforcement for infractions, and the like) in schools over time. Additionally, the researcher was able to determine if these neoliberal social controls adversely affected marginal populations within schools over time.

Eight variables were used from the relevant waves of data. The *percent minority student enrollment* variable and *crime where students live* variable measured sociodemographic characteristics of the schools in the sample, and they were used to statistically test for racial and economic disparities. Four variables measure social control efforts that increase police presence and surveillance technologies in schools. These school security variables include: *access controlled/monitored doors*, *students pass through metal detectors*, *security cameras monitor the school*, and *security used during school hours*. The last two variables served as outcome variables that measured exclusionary school practices. These outcome variables are *total number of disciplinary actions* and *total number of removals with no continued school services*.

### Variables

*Percent Minority Student Enrollment.* The racial/ethnic composition of the school was measured by the percentage of minority students. The four categories include the following: 1= less than 5 percent, 2= 5 to 20 percent, 3= 20 to 50 percent, and 4= 50 percent or more.

*Crime Where Students Live.* This ordinal variable measured the levels of crime reported in the areas where students attending the school live. The four categories included: 1= high level of crime, 2= moderate level of crime, 3= low level of crime, and 4= students come from areas with very different levels of crime.

*Access Controlled Locked/Monitored Doors.* This variable is a measure of school security that documents whether or not access to school buildings are controlled, by being locked or monitored, during school hours.

*Students Pass Through Metal Detectors.* This school security variable measured whether or not students are required to pass through metal detectors upon entering school each day.

*Security Cameras Monitor the School.* This school security variable captured whether schools use one or more security cameras to monitor school buildings and grounds throughout the day.

*Security Used During School Hours.* This variable measured whether or not sworn law enforcement officers, security guards, or security personnel regularly used in or around the school at any time during school hours.

*Total Number of Disciplinary Actions.* This continuous variable measured how many total disciplinary actions were taken overall against students for all varieties of infractions.

*Total Number of Removals with No Continuing School Services.* This continuous variable measured the total times administrative action was taken to expel or suspend a student for any infraction without permitting any educational services to be provided. All of these variables were consistently measured in 2003-04, 2005-06, and 2007-08.

A quantitative analysis of the available variables regarding the various forms of disciplinary actions taken, with or without continued educational services, in response to a variety of school-based infractions, was conducted to identify trends that might reflect the increased punitiveness in the social control of marginal populations within the education system during the recent neoliberal transition. These hypotheses are as follows:

- (H<sub>1</sub>) Over time, the concern with school security will reflect an increased number of security measures in schools with a higher percentage of minority students.
- (H<sub>2</sub>) Over time, disciplinary actions will show an increase in total disciplinary actions taken by the school administrators for schools with a higher percentage of minority students.
- (H<sub>3</sub>) Over time, disciplinary removals, with no continued educational services, will be increasingly applied in schools with a higher percentage of minority students.
- (H<sub>4</sub>) Over time, students living in areas with higher levels of crime will be more likely to attend schools with a higher percentage of minority students.

(H<sub>5</sub>) Over time, disciplinary removals, without continued educational services, will be more likely to be applied in schools that have students living in areas with higher levels of crime.

These proposed quantitative analyses are exploratory and descriptive in nature. The aim is to identify the nature of the relationships between the relevant variables and possibly understand how social controls are being applied in elementary and secondary schools in the US.

#### Data Analytic Plan

In order to test the first hypothesis, four one-way ANOVAs, one for each of the three waves of school data were conducted. To clarify, the independent variable to be used in each of the four ANOVAs were the *percentage of minority students* and the four dependent variables were *access controlled*, *students pass through metal detectors*, *security cameras used*, and *security used during school hours*. Thus, a total of 12 ANOVAS were run for hypothesis number one; four for each wave of data.

For the second hypothesis, 3 one-way ANOVAs (i.e., one for each wave of data) were conducted, where the independent variable is the *percentage of minority students* and the dependent variable is the *total number of disciplinary actions*. The third hypothesis also required 3 one-way ANOVAS, where the independent variable remained as the *percentage of minority students*, but the dependent variable was the *total number of removals with no continuing school services*.

Testing the fourth hypothesis required chi-square analyses (i.e., one for each wave of data) that used *percentage of minority students* and *crime where students live* as the variables of interests. The fifth hypothesis required 3 one-way ANOVAs (i.e., one for

each wave of data) to be conducted, where the independent variable was *crime where students live* and the dependent variable was the *total number of removals with no continuing school services*.

Analysis of Variance (ANOVA) and chi-square analyses were conducted using SPSS statistical software. Statistical significance was set at the .05 level. For the ANOVAs, Tukey and Games-Howell post-hoc tests were used to identify where the significant differences between groups are. Additionally, a test of homogeneity of variances was conducted for each ANOVA to assess the assumption that variances are homogenous. The Welch statistic was calculated to determine whether significant differences between groups are robust. Phi or Cramer's  $V$  statistics were calculated for chi-square analyses to evaluate effect size of significant relationships. Also, Bonferroni adjustments were used in the crosstabulations to compare column proportions and subsequently adjust  $p$  values to identify the statistically significant relationships from the chi-square analyses. Finally, the means for all ANOVA calculations were plotted and graphed to visually depict any patterns or changes over time.



## CHAPTER FIVE

### QUALITATIVE RESULTS

The qualitative data set, which consisted of 75 court decisions that met the relevant search criteria, was subjected to two levels of qualitative textual analysis, via the case law method, and a third overall thematic analysis. The dates of the court decisions ranged between the years of 1969 to 2012. There were forty-one U.S. District Court (DC) cases, fifteen U.S. Court of Appeals (CA) cases, twelve State Supreme Court (SSC) cases, and seven U.S. Supreme Court (SC) cases in the final sample. Appendix B includes a brief synopsis of all the court cases.

The first level of textual analysis identified terms, phrases, and passages that reflect the plain meaning from which the court's jurisprudential intent can be unpacked (Arrigo et al., 2011). In other words, the text segments extracted from the judicial decisions, as guided by the research questions, reflect the factors that influence the attitudes, motivations, and rationales informing the courts' decision making in zero tolerance cases where students have alleged that their constitutional rights have been violated. Tables 1.1A through 1.1O display key text segments and passages as derived from the plain meaning findings, which represent the responses to the eight research questions through which these legal decisions were filtered<sup>4</sup>. Explained differently, court

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<sup>4</sup> Data is available upon request.

cases that contained reference to specific elements mentioned in the research questions were acknowledged as either supporting or failing to support the appropriate research question. For instance, if a court decision reflected language that found the control of potential threats and disruptions deserved more weight when balanced against the potential intrusion into the individual rights of students, then that passage, or text segment, was categorized as support for research question number one.

Consistent with *confirmability*, any passages in the plain meaning results tables that are underlined represent text segments that fail to support the corresponding research question. Conversely, text segments, which are not underlined, represent support for the applicable research question. When qualitative data could not be ascertained for a research question, “No data” was listed in the table under the appropriate case. Data were presented in fifteen tables with five cases to a table in the order they appeared in the criterion-based sample search produced by LexisNexis.

Abbreviations (e.g., DC, CA, SSA, and SC) signifying court level of each case are also included in Tables 1.1A through 1.1O, as well as Tables 1.3A through 1.3E. For instance, the columns in these tables provide the name of the case followed by the decision date and court level in parentheses just like the following example: *Stafford v. Redding (2009, SC)*. Thus, the column heading in this example means that the *Stafford* case was a U.S. Supreme Court case decided in 2009.

**Table 1.1A. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Stafford v. Redding</i> (2009, SC)	<i>K.M. v. Sch. Bd.</i> (2005, CA)	<i>S.G. v. Sayreville Bd. of Educ.</i> (2003, CA)	<i>Cuesta v. Sch. Bd.</i> (2002, CA)	<i>Ratner v. Loudoun</i> (2001, CA)
RQ1 Threat vs. Individual Rights	Because there <u>was no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution</u> (p. 368).	No data	A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school (p. 422).	...it requires a balancing of the need for the particular search against the invasion of personal rights...officers had reasonable suspicion to search based upon the violent and threatening language...(p. 968-969).	Ratner's complaint asserted that his suspension... amounted to violations of Ratner's Fourteenth Amendment rights... Having heard oral argument...we find no reversible error, and we affirm...(p. 142).
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	...Ratner acted in what he saw as the girl's best interest and that at no time did Ratner pose a threat to harm anyone with the knife... Nonetheless, Ratner was then suspended...(pp. 141-142).
RQ3 Immune from Liability	The official who ordered the unconstitutional search is entitled to qualified immunity (p. 368).	No data	In any event, defendants are entitled to qualified immunity (p. 423).	...the school board cannot be held liable for any constitutional deprivation...(p. 968).	No data
RQ4 Prefer Security	No data	No data	No data	No data	No data

Table 1.1A Continued					
RQ5 No Imminent Threat	No data	No data	No data	No data	However harsh the result in this case, the federal courts are not properly called upon to judge the wisdom of a zero tolerance policy of the sort alleged to be in place...or of its application to Ratner (p. 142).
RQ6 Deemed Not Binding on the Courts	Standards of conduct are for school administrators to determine without second-guessing by the courts lacking the experience to appreciate what may be needed (p. 356).	...the denial of his records could not be pursuant to a custom of delaying complete copies of records...that circumstance does not establish a custom (p. 959).	...the determination or what manner of speech is inappropriate properly rests with the school officials (p. 423).	Because we hold that the school board's policy was not the moving force behind the arrest, there is no need for us to address whether § 836.11 was "grossly and flagrantly unconstitutional" (p. 967).	The district court also concluded, correctly, that the school officials gave Ratner constitutionally sufficient, even if imperfect, process in the various notices... and we agree (p. 142).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevent Future Disruption	No data	No data	It was not unreasonable for the principal to seek to avoid conduct which has the capacity to interfere with the orderly conduct of the school (p. 425).	No data	No data

**Table 1.1B. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Seal v. Morgan</i> (2000, CA)	<i>West v. Derby</i> <i>Unified Sch.</i> (2000, CA)	<i>Piekosz-</i> <i>Murphy v. Bd.</i> <i>of Educ.</i> (2012, DC)	<i>Ottaviano v.</i> <i>Kings Park</i> (2010, DC)	<i>Evans v. Bd. of</i> <i>Educ.</i> (2010, DC)
RQ1 Threat vs. Individual Rights	...what process is due depends on appropriate accommodation of the competing interests involved. In the context of disciplining public school students, the student's interest is to avoid unfair or mistaken exclusion... Schools, of course, have an unquestionably powerful interest in maintaining the safety of their campuses... <u>That said, suspending or expelling a student for weapon possession even if the student did not knowingly possess any weapon, would not be rationally related to any legitimate state interest</u> (p. 574-575).	...where school authorities reasonably believe that a student's uncontrolled exercise of expression might substantially interfere with the work of the school or impinge upon the rights of other students, they may forbid such expression (p. 1366).	No data	It is reasonable to conclude that the regulations require suspension for any drug use... while permitting suspension for drug use off school premises. Whatever may be the judge's personal view as to the wisdom of its decision, the board acted on rational and specific grounds relevant to the education and welfare of the school children... (pp. 32-33).	No data

Table 1.1B continued					
RQ2 Intent vs. Balance of Intent vs. Safety	<u>We believe, however, that the board's zero tolerance policy would surely be irrational if it subjects to punishment students who did not knowingly or consciously possess a weapon</u> (p. 578).	...rejecting any notion that the Constitution requires a finding of an intent to harass or intimidate before the Derby School District may apply its Racial Harassment and Intimidation policy... (p. 1363).	N.M. nevertheless argues that the school's disciplinary policy is arbitrary... because it does not require a scienter... Under these circumstances, the school's discipline of N.M. does not shock the conscience (pp. 960-961).	No data	No data
RQ3 Immune from Liability	Because we have concluded that Superintendent Morgan was entitled to summary judgment on the basis of qualified immunity, we need not and do not address the question... of whether he had the authority... (p. 581).	No data	No data	No data	<u>...he failed to address the situation or take any remedial measures, and that he then retaliated against L.E. by suspending her when she was subject to forced sexual conduct. Therefore, Smathers is not entitled to qualified immunity...</u> (pp. 32-33).

Table 1.1B Continued					
RQ4 Prefer Security	No data	School officials in Derby had evidence from which they could reasonably conclude that possession and display of Confederate flag images, when unconnected with any legitimate educational purpose, would likely lead to a material and substantial disruption of school discipline (pp. 1361-1362).	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 961).	The system of public education that had evolved...relies necessarily upon the discretion and judgment of school administrators and school board members and section 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion... (p. 25).	No data
RQ5 No Imminent Threat	No data	No data	No data	...the plaintiff argues that there is no rational basis for her excessive punishment in light of her relatively minor alcohol related infraction... contrary to the plaintiff's argument, the severity of the alcohol related transgression is not the underlying basis for the difference in punishment. Rather it is the perceived danger posed... (pp. 32-33).	No data

Table 1.1B Continued					
RQ6 Deemed Not Binding on Courts	The fact that we must defer to the Board's rational decisions in school discipline cases does not mean that we must, or should rationalize away its irrational decisions (p. 579).	T.W.'s argument is meritless...To impose in countless disciplinary suspensions a requirement that the suspect student possess a mens rea akin to criminal intent might well require trial-like procedures and proof which could overwhelm administrative facilities... (p. 1364).	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion...It seems that the professionals in this sad train of events exercised questionable judgment...But we can't say what the defendant's did violated the due process clauses... (p. 961).	...the Supreme Court has stated that federal courts are not authorized to construe school regulations... the court is sadly mindful of the collegiate opportunities that Nina may miss out on as a result of this situation. However... viewing it in the light most favorable to Nina, the court cannot conclude that she is likely to succeed... (pp. 25-26 & pp. 32-34).	Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators... (p. 16).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data



Table 1.1B Continued					
RQ8 Preemptive Prevention of Future Disruption	No data	The history of racial tensions in the district made administrators' and parents' concerns about future substantial disruptions from possession of Confederate flag symbols at school reasonable...The district had the power to act to prevent problems before they occurred; it was not limited to prohibiting and punishing conduct only after it caused a disturbance (pp. 1366-1367).	No data	No data	No data

**Table 1.1C. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Cuff v. Valley Cent. Sch. Dist. (2010, DC)</i>	<i>Lee v. Lenape Valley Reg'l (2009, DC)</i>	<i>Hardie v. Churchill (2009, DC)</i>	<i>Doran v. Contoocook (2009, DC)</i>	<i>Brett N. v. Cmty. Unit Sch. Dist. (2009, DC)</i>
RQ1 Threat vs. Individual Rights	...Not only are school officials free to act before the actual disruption occurs, they are not required to predict disruption with absolute certainty to satisfy the <i>Tinkers</i> standard...the risk of substantial disruption is not only reasonable, but clear (pp. 468-469).	<u>Defendants cannot shield themselves from liability by enacting anti-discrimination policies if they do not follow them...There is also a question of fact as to whether defendants were willfully indifferent to</u>	...the court finds that the process used for Hardie's expulsion proceedings struck the proper balance between administrative efficiency and protecting Hardie's interest in attending school. The benefit of an additional hearing to ensure Hardie's punishment was	Reasonableness is the touchstone in any assessment of the constitutionality of a search or seizure, and while, in most cases, reasonableness demands a warrant and a showing of probable cause, such is not necessarily the case in the	The parties agree that the zero tolerance policy does not create a suspect class...the policy aims to minimize violence by deterring students from escalating fights, even if merely in self-defense... Here, Section 7:190 is not impermissibly

Table 1.1C Continued					
		<u>harassment of E.L.</u> (p. 21).	just was outweighed by the cost imposed on the limited resources of the school board (pp. 19-20).	public school context... searches and seizures in public schools can be conducted without warrant or probable cause (p. 191). <u>Plaintiffs argue that the New Hampshire Constitution is more protective...with respect to searches and seizures...plaintiffs deserve a full and fair hearing on this issue, and because the state court is better equipped to interpret...the case shall be remanded</u> (pp. 194-195).	vague because the disciplinary code is publically available and all students are put on notice that if they fight, even in self-defense, they are subject to punishment. (pp.8-12).
RQ2 Intent vs. Balance of Intent vs. Safety	Under <i>Tinker</i> , it is the objective reasonableness of the school administrators' response, rather than the student's private intentions, that are relevant...Finally , whether or not B.C. had the capacity to blow up the school, or was at all likely to do so, is not dispositive, and indeed has only minimal relevance(p. 469).	No data	Hardie admitted to bring the knife onto the bus, albeit by accident. His intent did not matter, however, because the disciplinary policy followed by his high school treats possession of a weapon as a strict liability offense that results in either a mandatory suspension or expulsion (p. 17).	No data	No data

Table 1.1C Continued					
RQ3 Immune from Liability	School administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students, without worrying that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance (p. 470).	<u>Whether Mr. deMarrais qualifies for immunity is a triable issue because there exists questions of fact as to whether Mr. deMarrais' failure to comply with board policy rises to the level of a knowing violation of a right...</u> (pp. 27-28).	Plaintiff argues that the municipality should be liable for the board's violation of Hardie's due process right due to failure to train or adequately supervise school district personnel...the court dismisses this claim (p. 20).	No data	Public officials may have qualified immunity if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known... Here, the individual defendants are entitled to qualified immunity... (p. 13).
RQ4 Prefer Security	Under this standard, defendants need not prove that school administrators' initially-stated justifications for punishment fully incorporate all the objective facts that could support a likelihood of substantial disruption, and they need not demonstrate that substantial disruption was inevitable... (p. 468).	No data	While there is a colorable argument that this constituted a departure from the applicable administrative regulations, the failure to follow state or local regulations does not ordinarily establish a procedural due process violation... While Hardie received a severe punishment for what may have been an innocent	...Plaintiffs complain that Dell's orders instructing the students to leave their personal belongings inside the building resulted in an improper seizure. I am unpersuaded by plaintiff's argument. Again, the school setting is crucial to the analysis. Students are often restricted in what items	The court notes that while it is within the power board to devise and implement a policy to check violence in schools, the results of enforcement of Section 7:190 can be draconian when applied to the student who unwittingly finds himself under attack by a schoolyard bully...If the

Table 1.1C Continued					
			mistake, CCHS school administrators likely adopted their zero tolerance policy as a result of a rising tide of violence in our public schools (p. 14 & pp. 19-20).	they can bring to school and where they can leave those items. Accordingly I reject plaintiff's contention... (p. 194).	student-victim cannot flee, his choice is either be pummeled, or to fight back and face certain suspension. Despite this observation, it is not the role of the court to second-guess the board's policy, however misguided it may be, so long as it is rationally related to the interests sought to be protected (p. 11).
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts...It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (pp. 469-470).	No data	...a school administrator involved with initiating charges may participate in the deliberations, reasoning that due process requires an impartial decisionmaker but not a full adversarial process...granting Hardie another opportunity to address the board would do nothing to mitigate the risk of an erroneous deprivation... (pp. 14-15 & p. 18).	The traditional understanding of what constitutes a seizure-that a reasonable person would have believed that he was not free to leave-is analytically inapplicable to the school setting, because students are generally not at liberty to leave the school building when they wish... Unemancipated minors lack some of the most fundamental rights of self-determination-including the	The Seventh Circuit has held that the right to self-defense is not a fundamental right within the Due Process Clause of the Fourteenth Amendment...i t is not the role of the court to second-guess the board's policy, however misguided it may be, so long as it is rationally related to the interests sought to be protected (pp. 8-11).

Table 1.1C Continued					
				right to come and go at will... (p. 193).	
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	defendants need not prove that school administrators' initially-stated justifications for punishment fully incorporate all the objective facts that could support a likelihood of substantial disruption, and they need not demonstrate that substantial disruption was inevitable... Such a rule is not required by <i>Tinker</i> , and would be disastrous public policy: requiring school officials to wait until disruption actually occurred before investigating would cripple the officials' ability to maintain order (pp. 468-469).	No data	No data	No data	...the ultimate purpose of the board's zero-tolerance policy is to maintain a peaceful and orderly environment in the schools. Specifically, the policy aims to minimize violence by deterring students from escalating fights, even if merely in self-defense... Consequently, the court finds that Section 7:190 is rationally related to a legitimate government interest (pp. 10-11).

**Table 1.1D. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Barnett v. Tipton County</i> (2009, DC)	<i>Griffin v. Crossett Sch.</i> (2008, DC)	<i>Hill v. Sharber</i> (2008, DC)	<i>Simonian v. Fowler Unified</i> (2008, DC)	<i>Morgan v. Snider High</i> (2007, DC)
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Table 1.1D Continued					
RQ1 Threat vs. Individual Rights	...the court cannot find that plaintiffs' websites are protected as parodies under the First Amendment...in school discipline cases a substantive due process claim will succeed only in the rare case when there is no rational relationship between the punishment and the offense...the court finds the disciplinary proceedings did not violate the plaintiffs' substantive due process rights (p. 985).	No data	The Supreme Court has held that the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause...The Sixth Circuit has also noted that, in the case of searches in the school context, individualized suspicion is not necessarily required (pp. 676-677).	No data	The accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause (p. 15)...In the context of school rules, flexibility or breadth should not necessarily be confused for vagueness... Given the peculiar issues facing school administrators, a school's disciplinary rules need not be drafted as narrowly or with the same precision as criminal statutes (p. 21).
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	<u>Although the Sixth Circuit has warned schools against applying zero-tolerance policies blindly where a student has no knowledge that he possesses contraband, such was not the case here, as Hill acknowledged</u>	No data	The thrust of Kevin's argument at the hearing was that by the time he realized "A" had marijuana, he was on a busy street, close to school, and he did not have a reasonable opportunity to eject "A" from

Table 1.1D Continued					
			<u>that the alcohol contained in the car was his</u> (p. 682).		the car until they were on school grounds and safely out of traffic...he believed he was doing the right thing...Platz rendered her determination... that Kevin knowingly drove a student that was in possession of marijuana onto school property (pp. 7-8).
RQ3 Immune from Liability	Under the TGTLA, all government entities are immune from suit for any injury which stems from the exercise of governmental functions, except as specifically provided by the act (p. 986).	No data	...there is no need to address the defendants' arguments that the claims against Deputy Booker and Ryan are barred under the qualified immunity doctrine, and that the official capacity claims against all four defendants fail because Hill has not established governmental entity liability under Section 1983 (p. 681).	No data	Simmons and Bailey are not liable for any purported constitutional violations arising from the vehicle searches (pp. 14-15)...even if the court somehow found a constitutional violation, the case law probably reassured the defendants that they were on solid legal footing, and thus they are entitled to qualified immunity (p. 28).
RQ4 Prefer Security	No data	No data	No data	No data	In the context of school rules, flexibility or breadth should not necessarily be confused for vagueness... Given the peculiar issues facing school administrators, a

Table 1.1D Continued					
					school's disciplinary rules need not be drafted as narrowly or with the same precision as criminal statutes (p.21).
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	District courts of Tennessee frequently have held they do not have jurisdiction over claims under the TGTLA...Thus, because the court declines to exercise jurisdiction over these claims and because plaintiffs have not put forth any evidence to support them, plaintiffs' claims under the TGTLA are dismissed (p. 986).	Here, the school district's discipline of both Willie and Jacob was controlled by the decisions of their respective 504 committees. Willie's committee found that his behavior was not a manifestation of his disability... Jacob's 504 committee, however, found that his behavior was a manifestation of his behavior. There exists a rational basis for the district's dissimilar treatment of these two students...they have presented no evidence showing that the decision of either committee was affected by racial	...the Sixth Circuit has held that law enforcement officers may sweep a parking lot with drug dogs without implicating the Fourth Amendment, as individuals do not have a reasonable expectation of privacy in a parking lot that is accessible to the public...although the search was not conducted by school officials, there does not appear to be any basis for Hill's assertion that the school is prevented from taking disciplinary action simply because the misconduct was discovered by law enforcement in the process of conducting a legal search (pp. 679-681).	Plaintiff's contention that he was the only pupil at Fowler High School who was expelled for the mere suspicion of possessing marijuana has no evidentiary support other than plaintiff's conclusory declaration... Even if plaintiff could prove plaintiff's assignment to alternate education was unsupported, there is no evidence plaintiff was treated differently from any other student with possession of marijuana (pp. 45-46).	It is not the role of federal courts to set aside the decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. The Seventh Circuit of Appeals also has stressed that federal courts ought to refrain from second-guessing the disciplinary decisions made by school administrators (p. 13)... The role of the courts is not to second-guess the decisions of school administrators (pp. 23-24).



Table 1.1D Continued					
		discriminatory intent...mere allegation is not enough (pp. 14-15).			
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	No data

**Table 1.1E. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Roy v. Fulton County Sch. (2007, DC)</i>	<i>Bogle-Assegai v. Bloomfield (2006, DC)</i>	<i>Langley v. Monroe County (2006, DC)</i>	<i>Vann v. Stewart (2006, DC)</i>	<i>McKinley v. Lott (2005, DC)</i>
RQ1 Threat vs. Individual Rights	<u>...plaintiffs claim that defendants violated Mark's constitutional right to equal protection by: 1) treating Mark, who is black, differently from a white student who was also allegedly involved in the MP3 theft; and 2) applying the zero tolerance policy to black students but not to white students...These allegations are sufficient to state a claim for violation of Mark's right to equal protection of the law...the</u>	<u>Plaintiffs were provided notice of the expulsion hearing, given the opportunity to be represented by counsel (which they were) and given a full-blown hearing</u> (p. 243)... Presentation of summaries of student witness statements at hearing where witnesses were not present and plaintiff thus had no opportunity to cross-examine them did not undermine sufficiency of process	No data	The court cannot conclude that the punishment imposed by school officials in this case bore no rational relationship to plaintiff's offense. Stat authorities have expressed a legitimate interest in maintaining safe and secure learning environments... officials adopted a zero tolerance policy that includes a one year suspension for violations. Plaintiff admits that he possessed a pocket knife in	When society requires large groups of students, too young to be considered capable of mature restraint in their use of illegal substances or dangerous instrumentalities, it assumes a duty to protect them from dangers pose by antisocial activities...and to provide them with an environment in which education is possible... To fulfill that duty, teachers and school administrators

Table 1.1E Continued					
	<p><u>motion to dismiss plaintiffs' equal protection claim is denied</u> (p. 1323).</p> <p>...however, the process that is due when a student is suspended for less than ten days is extremely limited... (p. 1323).</p>	<p>afforded... Including reading or reciting statements made by teachers in response to his inquiries, was not violative of due process (p. 243).</p>		<p>violation...even considering plaintiff's contention that the school officials' action might have been harsh or unwise in view of the circumstances, the decision was not so flawed that it bore no rational relationship to plaintiff's offense (p. 890).</p>	<p>must have broad supervisory and disciplinary powers (pp. 13-14).</p>
<p>RQ2 Intent vs. Balance of Intent vs. Safety</p>	No data	No data	<p>...there is no requirement in the school handbook that a student must knowingly possess alcohol to be subject to the penalties therein (p. 10)...</p> <p><u>In light of the fact that the plaintiffs have presented evidence to indicate that the principal and vice-principal did not believe that Laura knew the beer can was in the vehicle, and the fact that the MCSD has not produced a policy outlining the time period that a student should be sent to alternative school, this court finds that there is a</u></p>	No data	<p>Mr. McKinley became confused about the question that Dr. Lott asked him. He responded yes to a question of whether he had been smoking. However, he believed that Dr. Lott was asking him whether he had ever smoked marijuana in the past and not whether he had smoked marijuana that morning before school. Dr. Lott and Officer Suttles both understood Mr. McKinley to acknowledge and admit that he had smoked marijuana...Mr. McKinley was then informed he was being arrested... (pp. 3-5).</p>

Table 1.1E Continued					
			<u>sufficient jury question as to whether Laura's penalty was rationally related to the school boards interests</u> (pp. 11-12).		
RQ3 Immune from Liability	The gist of the plaintiffs' allegations is that school officials breached various express policies designed to protect students' constitutional rights. Assuming that is true, the school district is not liable for its employee's breach of admittedly constitutional express policies (p. 1321).	In light of the court's dismissal of plaintiffs' claims for the reasons detailed above, the court need not reach defendants' arguments concerning qualified immunity (p. 244).	No data	No data	However, a municipality may not be held liable under Section 1983 under a theory of respondent superior (pp. 9-10).
RQ4 Prefer Security	No data	No data	No data	No data	No data
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	No data	No data	... in a situation where the attorneys moderated the hearing, ruled on objections and procedural matters, and retired with the Board of Trustees to deliberate, there are no grounds for complaint unless it can be shown in fact	Assuming, arguendo, the DHA and school board applied the improper standard when considering plaintiff's case, the court cannot conclude that such a failure was so significant or substantial that it could result in unfair or mistaken	Federal courts have determined that a violation of the Fifth Amendment privilege against self-incrimination only occurs when an incriminatory statement that is obtained unlawfully is introduced at trial...he never faced a criminal

Table 1.1E Continued					
			that the attorney did corrupt or otherwise destroy the impartiality of the process. While this court is concerned about the method in which the board deliberations occurred, the plaintiffs have made no showing of actual corruption (pp. 8-10). <u>...there is enough evidence to present a jury question as to mental anxiety and stress suffered by Laura (p. 13).</u>	findings or misconduct or an arbitrary exclusion from school (p. 889)...the right to attend public school, however, is not a fundamental right or liberty interest...it is not the role of the courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 890).	proceeding...For this reason, the court will dismiss Mr. McKinley's Fifth Amendment claim (pp. 23-25).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	No data

**Table 1.1F. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Posthumus v. Bd. of Educ. (2005, DC)</i>	<i>Collins v. Prince William County (2004, DC)</i>	<i>Sypniewski v. Warren Hills (2001, DC)</i>	<i>Anderson v. Milbank Sch. (2000, DC)</i>	<i>D.G. v. Independent (2000, DC)</i>
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Table 1.1F Continued					
RQ1 Threat vs. Individual Rights	The right to attend public school is not a fundamental right for the purposes of due process analysis. When a fundamental right is not at issue, the government's action must be upheld if it is rationally related to a legitimate state interest (p. 899)...because the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings, school officials may limit speech in schools in ways that the government could not do outside the	A school board's ability to discipline students for offenses occurring off school grounds has been upheld by the vast majority of courts as a reasonable exercise of the board's general authority over the conduct of its students and duty to ensure the safety of its schools, provided that the offense has a material effect on the operation or general welfare of the school (pp. 21-22)... they may subject pupils to punishment for acts committed away from school property and outside of school hours	<u>Regardless of whether, in the abstract, the Foxworthy T-shirt may be banned, moving plaintiffs have established a reasonable probability of success as to the constitutionality inappropriateness and overbreadth and vagueness of the specific provisions of the dress code and racial harassment or intimidation policy...</u> Schools, however, must consider the sensibilities of other students, and the freedom to express unpopular opinions must be balanced against the interest in teaching students the limitations of socially appropriate behavior...the rights of public school students	The student was talking to herself in an office setting with only one other person present. The better course of valor may well have been for the secretary to have strongly reminded the student of the rule...the conduct was certainly not disruptive...the violation was perhaps too much to do about relatively little. Having said all of this, however, the rule was clear...the student, without dispute, violated the rule...the rule was a zero tolerance rule... constitutional rights of public school students are not automatically coextensive with	<u>It is impossible to have a "no tolerance" policy against "threats" if the threats involve speech. A student cannot be penalized for what they are thinking. If those thoughts are then expressed in speech, the ability of the school to censor or punish the speech will be determined by whether it was (1) a "true" or "genuine" threat, or (2) disruptive of the normal operation of the school. Neither of those circumstances exist in the case before the court. In sum, the court finds that any commotion caused by the poem did not</u>
	school context (p. 900).	which are detrimental to the interests of the school or adversely affect school discipline (pp. 23-24).	are also not necessarily as expansive as the rights of adults in society...the school bears the responsibility for determining the manner of speech appropriate in a school (pp. 52-59).	the rights of adults...a school need not tolerate speech that is inconsistent with its pedagogical mission, even though the government could not suppress that speech outside of the schoolhouse... schools must	<u>rise to the level of a substantial disruption required to justify a suspension of the plaintiff</u> (pp. 15-16).

Table 1.1F Continued					
				<p>teach by example the shared values of a civilized social order...These shared values include discipline, courtesy, and respect for authority... civility is a legitimate pedagogical concern...so, too, is compliance with school rules (p. 686).</p>	
<p>RQ2 Intent vs. Balance of Intent vs. Safety</p>	No data	<p>The facts indicated that Collins was not replicating a chemistry experiment and knew, or should have known, that by teaching fellow PWCPs students how to explode bottle bombs...his conduct was likely to cause a disruption so significant that it would impact the school division (p. 34).</p>	<p>The court need not and does not decide the specific role of student motivation and intent in cases of the regulation of speech (p. 76).</p>	No data	<p><u>As far as her intent is concerned, the defendants admit that student did not write the poem as a genuine threat, nor was it written with the intent of putting teacher or any other teacher in fear. In addition, the psychologist who examined student does not believe student intended the poem as a genuine threat, but rather only as a way to express her frustration and anger with teacher (pp. 13-14).</u></p>

Table 1.1F Continued					
RQ3 Immune from Liability	The court finds it unnecessary to address all of defendants' arguments because it concludes that Posthumus' claims fail at the preliminary stage of the qualified immunity analysis...the court finds no valid claim...the court need not reach the issue of qualified immunity (p. 897).	The school officials had qualified immunity as it was not clearly established that they could not recommend expulsion for a student's unlawful activity occurring off school grounds (p. 1). The school board cannot be held liable for the decision to expel Collins... protected by the qualified immunity doctrine (pp. 34-37).	No data	No data	No data
RQ4 Prefer Security	In examining a school's interest in prohibiting lewd or vulgar speech, the court noted that while students have an interest in expressing unpopular and controversial views, schools have a countervailing interest in teaching students the boundaries of socially appropriate behavior (p. 900)... Posthumus' argument cannot be sustained because his statement was	No data	While ensuring that reasonableness is honored, a court should generally defer to the limitations of vulgarity defined by the local school board (pp. 70-71).	No data	No data

Table 1.1F Continued					
	insubordinate speech... (p. 901).				
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	Fraser teaches that judgments regarding what speech is appropriate in school matters should be left to the schools rather than the courts. A school is entitled to make the point to pupils that vulgar speech and lewd conduct is wholly inconsistent with the fundamental values of public school education (p. 901)... School disciplinary rules need not be as detailed as a criminal code (p. 903).	No data	No data	Finally, the education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges... This case, although it presents matters of some concern to the court, as already expressed, is an appropriate case for summary judgment (p. 689).	No data
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	While these restrictions impose real constraints on a school's ability to regulate student speech, a school is not completely without the means to ensure the existence of a	However, school officials may restrict even individual student expression that materially and substantially interferes with the requirements of appropriate discipline in the	No data



Table 1.1F Continued					
			safe and productive learning environment, even under the <i>Tinker</i> substantial disruption test. In fact, a school may prohibit or punish student speech based on a specific fear of disruption (p. 63).	operation of the school, or that would substantially interfere with the work of the school or impinge upon the rights of other students (p. 687).	

**Table 1.1G. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Hammock v. Keys (2000, DC)</i>	<i>Colvin v. Lowndes County (2000, DC)</i>	<i>James P. v. Lemahieu (2000, DC)</i>	<i>Fuller v. Decatur Pub. (2000, DC)</i>	<i>Doe v. Bd. of Educ. (1995, DC)</i>
RQ1 Threat vs. Individual Rights	The purpose in this case, ensuring that schools are drug-free, is certainly a legitimate purpose. In fact, the Alabama legislature finds that this purpose is “a compelling public interest”... suspension and expulsion of a student found to be in possession of a drug, even if “possession” is interpreted by school officials to mean being found in a vehicle or locker, is rationally related to that purpose. While such an interpretation may be severe, it	These zero-tolerance policies provide for immediate suspension or expulsion of students that possess weapons or drugs on school grounds. In general, a student found carrying a weapon, such as a gun or knife, on school property is given no second chance, no appeal, and no guarantee of alternative school programs or education... School boards of this and other states and of their aim to create a school environment	Unlike the right to public education and liberty of reputation, however, a student has no constitutional right to participate in school athletic or social activities... Therefore, if Robert P. was punished under the authority of the athletic department’s rules, it is very unlikely that plaintiffs will prevail on the merits of their claim (p. 1119)... the purposes of Act 90 is to keep alcohol and its use out of the	If the school board had failed to take action against these students or otherwise ignored their conduct at the game, the students who were not involved in the fight, as well as the citizens of Decatur, might be led to believe that the school board was unable to control conduct in schools. It is also important to recognize that the Seventh Circuit Court of Appeals recently noted that the Supreme Court has repeatedly	<u>It is not disputed that Doe received both notice and a formal hearing as to the disciplinary action being considered against him. At that hearing, which lasted five hours, Doe was represented by counsel and had both the opportunity to present and cross-examine witnesses. As a matter of law, therefore, OPRF argues that Doe was afforded all the protections which due process requires (pp. 11-12)...</u> The board’s failure to make

Table 1.1G Continued					
	<p>is not unconstitutionally arbitrary or unreasonable... Given a school's need to be able to impose disciplinary sanction for a wide range of unanticipated conduct disruptive of the educational process, school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions (pp. 1230-1232)</p>	<p>conducive to learning, by eliminating fear of crime and violence, such efforts must be balanced with the constitutional guarantees afforded to the children (p. 506)... <u>To be sure, the court is not offended by the school board's decision to overrule the hearing officer's recommendation</u>, clearly it had the authority to do so. <u>The court is, however, offended by the manner in which it blindly meted out the student's punishment...</u> The district's zero-tolerance policy requires that the board impose the same penalty regardless of circumstances... (p. 513).</p>	<p>schools by suspending students who possess alcohol while attending school. Since this is not a suspect class, there is no other evidence that any other classification was used to punish Robert (p. 1121)... <u>since it would be fundamentally unfair to punish someone for some wrongdoing that he did not commit, a disciplinary body must have evidence of a statutory violation by an individual before it may punish that individual...</u> Robert did not possess intoxicating liquor...while attending school even if he did drink liquor prior to the school event ( p. 1120).</p>	<p>emphasized the need for affirming the comprehensive authority of the states and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools (p. 815)... <u>The court first concludes that each student received notice of a hearing before an independent hearing officer and before the school board...each student received a separate hearing before a hearing officer...</u> accordingly, this court concludes that <u>the students' procedural due process rights were not violated</u> (p. 815).</p>	<p>specific findings as to any possible mitigating circumstances in Doe's case likewise does not violate the plaintiff's rights...Although such a punishment might appear to be harsh under the given circumstances, the decision properly remained within the province of the board (pp. 13-14).</p>
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	No data

Table 1.1G Continued					
RQ3 Immune from Liabi- lity	No data	No data	No data	No data	No data
RQ4 Prefer Security	Indeed, courts staunchly resist the suggestion that school discipline hearings should emulate criminal trials (p. 1229)... the court notes that the system of public education... relies necessarily upon the discretion of school administrators and school board members... Vesting a school official with the discretion to determine which situations warrant expulsion is not only necessary in order to maintain discipline and good order, it is desirable (pp. 1232-1233).	<u>While the court is fully aware that school disciplinary matters are best resolved in the local community and within the institutional framework of the school system, the court is of the opinion that the board employed an erroneous standard in considering Jonathan's case</u> (p. 513).	No data	No data	No data
RQ5 No Immin- ent Threat	No data	No data	<u>First, there is a legitimate possibility of irreparable harm that could result from not rescinding disciplinary action prior to the end of the litigation. For example, Robert P.'s college applications will be tarnished since the actions taken by the school will be on his record.</u>	No data	No data

Table 1.1G Continued					
			<p><u>his grades will suffer if he is not able to make up his work and he will not be able to compete in athletic events. It is also very possible that his inability to participate...will negatively affect his ability to obtain an athletic scholarship</u> (p. 1122).</p>		
RQ6 Deemed Not Binding on the Courts	<p>It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 1224)...In the school context, it is both impossible and undesirable for administrators involved in incidents of misbehavior always to be precluded from acting as decision makers (p. 1229)... Even if the discipline imposed could be construed as harsh or drastic, the United States Supreme Court position on this is clear: § 1983 was not intended to be a vehicle for federal-court corrections of</p>	No data	No data	<p>At the outset, it is important to note that a federal court's role in school disciplinary matters is very limited. School discipline is an area which the courts are reluctant to enter (p. 821)...It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion... Moreover, the right to an education is not guaranteed, either explicitly or implicitly, by the Constitution, and therefore could not constitute a fundamental</p>	<p>It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 10)...The area of school discipline is a realm in which the courts enter with great hesitation and reluctance. Generally, the decision of whether or not to expel a student for gross disobedience or misconduct is best left to the discretion of the school board (pp. 13-14).</p>

Table 1.1G Continued					
	errors by school administrators in the exercise of discretion... (p. 1234).			right (pp. 821-822)...This court ordered Arndt to review school records and, by any means available, to determine the race of each expelled student...the summary indicated that 82% of students expelled from the beginning of the 1996-1997 school year through December 1999, were African American...This court notes the statistics... However, this court cannot make its decision solely upon statistical speculation (p. 824).	
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	No data

**Table 1.1H. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Edwards v. O' Fallon Twp. (1999, CA)</i>	<i>Northwestern Sch. v. Linke (2002, SSC)</i>	<i>In re L.A. (2001, SSC)</i>	<i>Commonwealth v. Lawrence L. (2003, SSC)</i>	<i>Covington County v. G.W. (2000, SSC)</i>
RQ1 Threat vs. Individual Rights	No data	After weighing the students' privacy interests and the character of the search against the nature and immediacy of the governmental concern at issue, we conclude that the drug-testing program here is constitutional (p. 974)...The United States Supreme Court has taken the view that while public schools are state actors subject to constitutional oversight, the nature of a school's role is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults (p. 979)...We find that students are entitled to less privacy at school than adults would enjoy in comparable situations. In any realistic sense, students within the	...a school security officer is not required to give a student Miranda warnings (p. 879)...a schoolchild's interest in privacy must be set against the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. The court noted that maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms...the court pointed out that it previously had recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures and had respected the value of preserving the informality of the student-teacher	...the typical requirements of warrant and probable cause are relaxed when a school official conducts a search of a student. The relaxation of the warrant and probable cause requirements of the Fourth Amendment are only applicable to school officials who are not acting in conjunction with or at the behest of law enforcement agencies...the Supreme Court recognized the particular interests of school officials in maintaining a safe learning environment and taking swift disciplinary action (pp. 880-822).	...school officials need not obtain a warrant before searching a student who is under their authority...the warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in schools (p. 193)...While it is important to note that students have a reasonable expectation of privacy in their school lockers, we must also emphasize that high school students fall into a different and generally less suspect class... the realities of the school setting require

Table 1.1H Continued					
		school environment have a lesser expectation of privacy than members of the population generally (pp. 979-980).	relationship (p. 884)...It is evident that the school setting requires some easing of the restrictions to which searchers by public authorities are ordinarily subject...School officials need not obtain a warrant...the substantial interest of teachers and administrators in maintaining order in the schools does not require strict adherence to the requirement that searches be based on probable cause (p. 885).		that teachers and other school personnel have the power to make an immediate, limited search for contraband, weapons, or other prohibited objects or substances... society places a high value on education, which requires an orderly atmosphere which is free from danger and disruption (pp. 193-194).
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	No data
RQ3 Immune from Liability	No data	No data	No data	Because Ridley was not acting as an agent of the police, he was exempt from obtaining a search warrant, and must only demonstrate that the search was reasonable in all of the circumstances (p. 822).	No data

Table 1.1H Continued					
RQ4 Prefer Security	<p>We are consistently reluctant to intrude upon the disciplinary decisions of school districts. If the opportunity to earn college financial assistance were to elevate participation in interscholastic athletics into a protected property right, school districts would have to afford procedural due process in practically all disciplinary actions...we cannot accept a notion that would invite a due process claim by every student engaged in interscholastic athletics and extracurricular activities. Judicial intervention in school discipline would become the rule rather than the exception unless school districts provided due process hearing in all such disciplinary actions (p. 1078).</p>	<p>That NSC has the responsibility of supervising its students and enforcing desirable behavior in carrying out school purposes is not questioned... Therefore, school corporation personnel have the right, subject to this chapter, to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system. Students must follow responsible directions of school personnel in all educational settings and refrain from disruptive behavior that interferes with the education environment (p. 983).</p>	No data	No data	No data



Table 1.1H Continued					
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding of Courts	<p>A player's hope, no matter how justified, cannot elevate his high school playing privileges to a protectable property interest at any stage where disciplinary action would be taken against those privileges. Jordan did not possess the right to participate in interscholastic athletics. Nor did his scholarship opportunities confer such a right. Therefore, a protectable property interest was not at stake when the school imposed discipline, and a due process hearing was not required... we are consistently reluctant to intrude upon the disciplinary decisions of school districts (p. 1078).</p>	No data	No data	No data	<p>This school district has imposed a zero tolerance policy, which absent a violation of G.W.'s due process rights, it has the discretion to enforce. We find that no such due process violation occurred (p. 192). G.W. contends that he was denied a fair and impartial hearing before the school board because the board considered hearsay testimony... This court rejects this argument and finds it to be without merit... Furthermore, hearsay testimony from school employees is apparently treated differently, and admitting this type of hearsay does not deprive a student of due process... (p. 194).</p>

Table 1.1H Continued					
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	While it is true that there are many punishments that would seem less harsh or more appropriate in this case, we must recognize that the law commits this entire matter to the discretion of the school board (p. 192).
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	No data

Table 1.1I. Level I Analysis: Plain Meaning Results for Jurisprudential Intent

	<i>Hinds County v. R. B. (2007, SSC)</i>	<i>State v. Best (2010, SSC)</i>	<i>In re K.K. (2011, CA)</i>	<i>In the Interest of F.B. (1999, SSC)</i>	<i>In re Hinterlong (2003, CA)</i>
RQ1 Threat vs. Individual Rights	No data	A school administer need only satisfy the lessor reasonable grounds standard rather than the probable cause standard to search a student's vehicle parked on school property (p. 102) ...The need for school officials to maintain safety, order, and discipline is necessary whether school officials are	We join the majority of courts that have examined this issue in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches by based on probable cause	A student's privacy right in personal items was limited and the means of search did not have to be the least intrusive and most efficient possible...the interest in keeping weapons out of public schools was so obvious that failure to develop a record as to why the search was held was superfluous and the trial court had taken judicial notice of the increased	<u>Having determined that the crime stoppers privilege restricts Hinterlong's cognizable common law claims, we next determine whether the abrogation of those claims is arbitrary and unreasonable when balanced against the legislature's actual purpose...His inability to obtain discovery concerning how</u>

Table 1.II Continued					
		addressing concerns inside the school building or outside on the school parking lot. It is the school environment and the need for safety, order, and discipline that is the underpinning for the school official...We have repeatedly declared that the school setting calls for protections geared toward the safety of students (pp. 109-113).	to believe that the subject of the search has violated or is violating the law (p. 653)...There is nothing in the developing case law that indicates school officials must conduct an independent investigation as to the tip or its reliability (p. 654).	rate of violence in schools (p. 663)...Although students possess a legitimate expectation of privacy concerning their person and personal belongings, that privacy right is limited. The need to protect all students, to ensure school discipline, and protect school property, limits the student's expectation of privacy while in the school environment (p. 669)...	<u>the tipster obtained the information provided to Clements severely impedes Hinterlong's prosecution of his common law causes of action against these parties</u> (p. 630)... <u>The purpose of the crime stoppers statute is to promote legitimate reports of criminal activities, not to shield a student who for personal gain or retaliatory motives makes a set up tip to achieve expulsion of a rival</u> (pp. 631-632)...We understand AMHS's unfortunate need for a zero tolerance policy. We also understand the usefulness of a crime stoppers program...and the need for tipster anonymity...the <i>Thomas</i> in camera review procedure would satisfy the government's interest in protecting its witnesses while

Table 1.II Continued					
					satisfying the defendant's Sixth Amendment rights...(p.633).
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	No data
RQ3 Immune from Liability	No data	No data	No data	No data	<u>Absent both pleading and proof of immunity. Clements can be held liable under Hinterlong's claims (p. 627)...</u> <u>Clements is also not cloaked with immunity from personal liability where her actions are not incident to or within the scope of her professional duties...(p. 628).</u>
RQ4 Prefer Security	No data	The court recognized that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject...In weighing the student's expectations of privacy on the one hand and the school's interest in maintaining discipline and	There is nothing in the developing case law that indicates school officials must conduct an independent investigation as to the tip or its reliability (p. 654)...We conclude that it was because of the zero tolerance policy in the school's code of conduct and it was the policy to act on all tips	The interest in keeping weapons out of public schools is a matter so obvious that the need to develop a record on this point is superfluous (p.672)...The myriad of interests at issue include the physical safety of the school students, teachers, administrators and other employees, the	No data

Table 1.II Continued					
		order on the other, the court decided that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause (pp. 109-110).	regardless of the source (p. 654).	public concern of eliminating violence in the community in general and in the schools in specific, and the need to maintain schools as centers of learning free of fear for personal safety (p. 672).	
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	<u>The court finds that the school board's decision was arbitrary and capricious and not supported by substantial evidence. The school board relied solely on the report from the appeals committee and the faxed photocopy of an item purporting to be the "knife" found on R.B. The findings of the appeals committee are themselves deficient, as the appeals committee chose to rely on the written reports characterizing the device as a pocket knife without examining the device themselves...Had the school board</u>	No data	No data	Thus, although we acknowledge that a search of a student involves the greater intrusion of the student's privacy interest than a search of a school locker, where the character of the intrusion is non-invasive such as here, the intrusion remains minimal (pp. 669-670)...a search will not be barred because less intrusive means exist than those actually utilized if the means, as employed, are not so expansive as to be disproportionate to the purpose of the search (p. 670).	Accordingly, we hold that the trial court did not abuse its discretion in determining that the student informant made the tip to an appropriate school official, invoking section 414.008's crime stopper privilege (p. 624)...We have addressed each of Hinterlong's arguments claiming that the crime stopper privilege is not applicable to the present facts; therefore, we overrule his first issue (p. 625). ...because the <u>identity of the tipster and information provided by the tipster may be</u>

Table 1.II Continued					
	<u>conducted even a cursory examination of the actual device, it would have realized that the appeals committee's recommendation ...did not constitute substantial evidence upon which to discipline R.B. for possession of a weapon</u> (pp. 501-502).				<u>crucial to Hinterlong's tort claims...the extent of the abrogation of Hinterlong's right to redress is almost total. He cannot prosecute his common law causes against either Clements, the tipster, or the person or persons who planted the Ozarka water bottle for injury done him, in his...person or reputation without learning the tipster's identity</u> (p. 630).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	The schools are simply not required to wait for a tragedy to occur within their walls to demonstrate that the need is immediate (p. 673).	No data

**Table 1.1J. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>E.M. v. Briggs (1996, SSC)</i>	<i>Cathe A. v. Doddridge (1997, SSC)</i>	<i>J.M. v. Webster County Bd. (2000, SSC)</i>	<i>Goss v. Lopez (1975, SC)</i>	<i>Tinker v. Des Moines Sch. (1969, SC)</i>
RQ1 Threat vs. Individual Rights	No data	The court found that a child could be constitutionally removed from a	Because the state has a compelling interest in	<u>Those young people do not shed their constitutional</u>	<u>...prohibiting students from thus wearing the armbands</u>

Table 1.1J Continued

		<p>classroom when he engaged in disruptive conduct (p. 521)...Because the state has a compelling interest in providing a safe and secure environment to the school children of this state pursuant to W. Va. Const. art. XII, section 1, and because expulsion from school for as much as twelve months...is reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional...another legitimate concern is the need to effectively deter other children from engaging in prohibited conduct (p.524) <u>Where the state is able to safely provide reasonable basic educational opportunities and services to a child who has been removed from regular school under the provisions...there is no compelling state interest in a policy of providing the</u></p>	<p>providing a safe and secure environment to the school children of this state pursuant to W. Va. Const. art. XII, section 1, and because expulsion from school for as much as twelve months...is reasonably necessary and narrowly tailored method to further that interest, the mandatory suspension period of the Act is not facially unconstitutional (p. 498)...In <i>Cathe A.</i>, supra, we were asked whether or not the requirement of a one-year expulsion for violating the statute could pass constitutional muster; we answered that question in the affirmative because the state has a compelling interest in providing a safe and secure environment... (pp. 501-502).</p>	<p><u>rights at the schoolhouse door... Among other things, the state is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause (p. 574)... But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his dereliction and to let him tell his side of the story in order to make sure that an injustice is not done (p.581)...</u> We stop short of construing the Due Process Clause to require,</p>	<p><u>violated the students' rights of free speech under the First Amendment, where there was no evidence that the authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school (p.503)... It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate (p. 506)...</u> Certainly where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained... <u>School officials do not possess absolute authority over</u></p>
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Table 1.1J Continued					
		<p><u>opportunities and services only if the child's parents are able and willing to reimburse the state for the cost</u> (p.524)...Well before the passage of the Safe Schools Act, this court recognized that a child may be constitutionally removed from the classroom environment when he or she engages in disruptive conduct...the pupils were not entitled to reinstatement because the pupils' behavior involved substantial disorder...(p.528).</p>		<p>countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each case even truncated trial-type procedures might well overwhelm administrative facilities in many places, and by diverting resources, cost more than it would save in educational effectiveness (p. 583).</p>	<p><u>their students</u> (pp. 507-511)... But conduct by that student, in class or out of it, which for any reason— whether it stems from time, place, or type of behavior— materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech (p. 513).</p>
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	<p>The coach found the particular expletive chosen by J.M.'s father to be quite objectionable, and feared that the argument might escalate into a physical altercation, so he asked J.M.'s</p>	<p><u>Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the</u></p>	No data



Table 1.1J Continued					
			<p>father to go outside and calm down...After his father left the room, J.M. took out the loaded gun and fifty-six additional rounds of ammunition, and surrendered them to the coach, asking the coach to “take care of them,” and adding that he thought his father “was going to kill him” (p. 500)...</p> <p>There is no question that J.M. had a firearm on his person while on school grounds. However, J.M. argues that he had not intended to be upon school grounds and was transported to the school by his father and against his will. Thus he argues that the lack of a mental element or mens rea of “intent” makes it impossible for him to be guilty of possession (pp. 502-503)...</p> <p>the fact finder determined that J.M.’s actions in having a gun tucked into his</p>	<p><u>disciplinarian himself has witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context</u> (p.584).</p>	

Table 1.1J Continued					
			pants on school property constituted a violation of the statute...even if the initial taking of the gun were defensible (which we question) J.M. had several opportunities to discard the gun or the bullets. While J.M.'s actions might be excusable to some, they were not to the principal, the board, nor the superintendent (p.507).		
RQ3 Immune from Liability	No data	No data	No data	No data	No data
RQ4 Prefer Security	...the board did not act arbitrarily and capriciously in violation of the students' constitutional rights when it expelled them for the remainder of the year with homebound services. The school's drug and alcohol policy and its handbook both stated that expulsion was an appropriate discipline for students possessing illegal drugs on school property	Indeed, a school system that did not take rigorous steps to eliminate violence and weapons could find itself in serious liability problems if a child or teacher were injured by the presence of conditions that the school could have detected and prevented. We conclude that the Safe Schools Act's twelve-month expulsion period sends a strong message that we think the legislature was entitled to believe needs to be sent to	It may be that some of the school officials misunderstand their duty under the statute. I may also be significant that J.M.'s incident, of May 12, 1999, came just three weeks after the April 20, 1999 massacre at Columbine High school in Colorado, where two students murdered many of their classmates. However, we do not feel it appropriate to	No data	No data

Table 1.1J Continued					
	(p. 757).	further a compelling state interest (p. 529)... <u>In applying the mandate... articulating a policy that a child who is removed from the classroom setting...is not entitled to any form of state-funded instruction during the pendency of their expulsion. We are not unmindful of the enormous demands upon our state's educational system... Recognizing that our decision today will do nothing to reduce those demands, we must nevertheless conclude that the broad and sweeping policy set forth...is incompatible with the place of education as a fundamental constitutional right of this state</u> (p. 531).	undermine the authority of school officials, by rejecting the factual findings of those closest to the events in this case (p. 507).		
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	It should be here noted that the management, supervision and determinations of policy are the prerogative and	No data	No data	<u>Among other things, the state is constrained to recognize a student's legitimate entitlement to a public education as a property</u>	No data

Table 1.1J Continued					
	<p>responsibility of the school officials; and that the courts should be reluctant to enter therein...It is the policy of the law not to favor limitations on the powers of boards of education, but rather to give them a free hand to function within the sphere of their responsibilities (p. 757)...</p> <p>Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members, and</p>			<p><u>interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause (p. 574).</u></p>	

Table 1.1J Continued					
	§ 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion (p. 757).				
RQ7 Rejection of Alternative Sanctions	No data	The twelve-month expulsion period... may seem to be a severe penalty. But the legislature is entitled to believe that only such a penalty would serve as an effective deterrent to further the important goal of a strict weapons-free environment in our schools... (p.529).	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	<u>The district court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression (pp. 508-509).</u>

**Table 1.1K. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<b><i>Hazelwood v. Kuhlmeier (1988, SC)</i></b>	<b><i>New Jersey v. T.L.O. (1985, SC)</i></b>	<b><i>Bethel Sch. Dist. v. Fraser (1986, SC)</i></b>	<b><i>Vernonia Sch. Dist. v. Acton (1995, SC)</i></b>	<b><i>Binder v. Cold Spring Harbor (2010, DC)</i></b>
RQ1 Threat vs. Individual Rights	...the control that educators are entitled to exercise over school-sponsored publications, theatrical productions, and other expressive activities that might reasonably be perceived to bear the imprimatur of the school is greater than the control, governed by the standard articulated in <i>Tinker</i> ...A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school (p. 261)... we have nonetheless recognized that the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in	...greater emphasis should be placed on the special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting...the special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justifies the court in [exempting] school searches from the warrant and probable cause requirements, and in applying a standard determined by balancing the relevant interests (p. 325)... But striking a balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need	...the determination of what manner of speech in the classroom or school assembly is inappropriate properly rests with the school board...Given a school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions (p. 676)...The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior (p. 681)...the	Students were not entitled to full Fourth Amendment protections where the state's interest in preventing drug addiction among students was compelling and student athletes had a decreased expectation of privacy (p. 646)...The state may exercise a degree of supervision and control greater than it could exercise over free adults (p. 647)... balancing the intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests (p. 653)...We have found such "special needs" to exist in the public school context. There, the warrant requirement would unduly interfere with the maintenance of the swift and informal disciplinary procedures that	...it is well-established that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject (p. 14)...Under the more flexible approach afforded to school administrators in conducting searches, and especially in light of the seriousness of bringing marijuana to a school, <i>Browne</i> had sufficient cause to conduct the search as a matter of law (p.17).

Table 1.1K Continued					
	other settings, and must be applied in light of the special characteristics of the school environment (pp. 266-267).	to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject (p.326)...Where a careful balancing of governmental and private interests suggest that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard (pp. 340-341).	constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings (p. 682)... maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures... Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code (p. 686).	are needed, and strict adherence to the requirement that searches be based on probable cause would undercut the substantial need of teachers and administrators for freedom to maintain order in the schools (p. 653).	
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	No data
RQ3 Immune from Liability	No data	No data	No data	No data	No data
RQ4 Prefer Security	No data	No data	I wish therefore...to disclaim any purpose...to hold that the	No data	No data

Table 1.1K Continued					
			Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students (p. 686).		
RQ5 No Imminent Threat	No data	...the Eighth Amendment's prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of school children by public school officials (p.334).	No data	No data	No data
RQ6 Deemed Not Binding on Courts	We thus recognized that the determination of what manner of speech in the classroom or in the school assembly is inappropriate properly rest with the school board, rather than with the federal courts (p. 267).	Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not (p.342).	The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board (p. 683)... maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures... Given the school's need to be able to	Accordingly, we reach the same conclusion as in <i>Skinner</i> : that the invasion of privacy was not significant (p. 660).	The Supreme Court has long held that § 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings... The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators



Table 1.1K Continued					
			impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code (p. 686).		and school board members and § 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion (p. 10).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data
RQ8 Preemptive Prevention of Future Disruption	No data	No data	No data	No data	No data

**Table 1.1L. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>C.H. v. Folks (2010, DC)</i>	<i>Beard v. Whitmore Lake (2005, CA)</i>	<i>Sims v. Bracken County Sch. (2010, DC)</i>	<i>Lausin v. Bishko (2010, DC)</i>	<i>Pendleton v. Fassett (2009, DC)</i>
RQ1 Threat vs. Individual Rights	No data	<u>...the character of the intrusion was far more invasive than the character of the urinalysis in <i>Vernonia</i>, where students remained fully clothed...the boys were required to lift their shirts and to remove both their pants and underwear (p.605)...The highly intrusive nature of the searches, the fact</u>	However, students typically have a lesser expectation of privacy than members of the public generally. While students' constitutional rights do not evaporate at the public school's doors, the essence of those rights is balanced	...it is clear that in a school setting the standard for a Fourth Amendment analysis does not require probable cause (p. 629).	Generally, in order to conduct a search, an officer must have probable cause to believe an individual is engaged in illegal activity and that evidence bearing on that offense will be found in the place to be searched. In the school setting, however, the

Table 1.1L Continued					
		<p><u>that the searches were undertaken to find missing money, the fact that the searches were performed on a substantial number of students, the fact that the searches were performed in the absences of individualized suspicion, and the lack of consent, taken together, demonstrate that the searches were not reasonable. Accordingly, under T.L.O. and Vernonia, the searches violated the Fourth Amendment (p. 605).</u>...At the time of the search at issue, the prior law involving strip searches of students did not clearly establish that the defendants' actions in this case were unconstitutional... Given the lack of a factual context similar to that of this case, <i>T.L.O.</i> and <i>Vernonia</i> could not have truly compelled the defendants to realize that they were acting illegally when they participated in the searches of the students in this case... Because the searches in this</p>	<p>against the need for teachers and administrators to have the freedom to maintain order in school...the Supreme court held that the Fourth Amendment applies to searches conducted by school officials, but rejected the adherence to a probable cause requirement (pp. 18-19)... Reasonable suspicion demands a less exacting standard of constitutional scrutiny than does probable cause (p. 22)... To determine the constitutionality of a seizure...courts will look to the school official's actions balanced against the special needs dictated in the public school setting where the state is responsible for maintaining discipline, health, and safety (p. 30).</p>		<p>level of suspicion required to justify a search is less than probable cause...the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause (pp. 15-16)...In a school setting, it is not always necessary that the reasonable suspicion be individualized; that is, school officials my conduct searches of multiple students without a suspicion that a particular student has committed an infraction (p. 18)... Here, the governmental interest was maintaining order...The general governmental interest in safe and disciplined schools in order to promote and</p>

Table 1.1L Continued					
		case did not violate clearly established law, the defendants are entitled to qualified immunity (pp. 607-608).			ensure a productive learning environment is more weighty here...(p. 21). <u>However, the complete lack of any reasonable belief that Pendleton—or any other student on her bus- possessed contraband detracts from the generally compelling nature of the government interest... without any individualized suspicion, the intrusive search of each individual is that much less likely to be successful...she suffered a violation of her Fourth Amendment rights (pp. 22-24).</u>
RQ2 Intent vs. Balance of Intent vs. Safety	No data	No data	No data	No data	No data
RQ3 Immune from Liability	<u>Defendants violated a clearly established constitutional right when the custodian peered into the restroom stall. If plaintiff's</u>	However, the teachers and officer were entitled to qualified immunity because the law at the time the searches were conducted did not clearly establish	Defendant Ray is entitled to qualified immunity relative to her search of the jacket (p. 23)... Defendant Ray is entitled to qualified	...a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the	The available case law therefore did not give the instant officials fair warning that their conduct was unconstitutional. Accordingly,

Table 1.1L Continued					
	<p><u>allegations are proven to be true. Principal Perez and Vice Principal Gray would not be entitled to qualified immunity with regard to the search of the restroom stall</u> ... Plaintiff fails, however, to tie the search of his pockets in any manner to any action or inaction of Perez and Gray. Therefore, at this point, plaintiff fails to allege sufficient facts to implicate their supervisory liability for the pocket search (pp. 25-26)... The district retains its governmental immunity (p.28).</p>	<p>that the searches were unreasonable under the particular circumstances present in the case (p. 598)... Because the searches in this case did not violate clearly established law, the defendants are entitled to qualified immunity (p. 608).</p>	<p>immunity for authorizing the search of K.S.'s person (p. 26)... Defendant Ray is also entitled to qualified immunity relative to this seizure (pp. 33-34).</p>	<p>political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function... Richmond Heights Board of Education is a political subdivision, and as such, it had immunity (p. 631)...the individual school board defendants, Mr. Bishko, Dr. Wallace, and Dr. Calinger, are entitled to immunity (p. 631).</p>	<p>Fisher, Welch, Fassett, and Riggs are protected from a civil damages suit for their allegedly unconstitutional conduct by the doctrine of qualified immunity (p. 32).</p>
RQ4 Prefer Security	No data	No data	No data	No data	No data
RQ5 No Immin- ent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on the Courts	The court agrees. Texas law does not recognize a cause of action in tort for	The actions of the defendants were unconstitutional. However, at the time the searches occurred, the law	In essence, plaintiffs allege municipal liability based on the Board's alleged practice	The fact that plaintiffs did not have counsel at the suspension hearing or that Gina was not	Whether or not the conduct rises to the level of outrageous is a question of law. The court

Table 1.1L Continued					
	<p>money damages for a violation of the Texas Constitution... Accordingly, plaintiff's claims under the Texas Constitution are dismissed (p. 32).</p>	<p>regarding the reasonableness of a strip search under these circumstances was not clearly established. The denial of summary judgment is therefore reversed (p.601).</p>	<p>of tacitly approving its employees' unconstitutional conduct. A municipality, however, only violates § 1983 where its official policy or custom actually serves to deprive an individual of his or her constitutional rights...because the individual defendants did not violate the plaintiff's constitutional rights, plaintiff cannot rely on their conduct to establish a claim of municipal liability (p.39)... When all federal claims are dismissed before trial, the balance of considerations usually will point to dismissing the state law claims (pp. 42-43).</p>	<p>permitted to consult with her mother prior to the hearing does not offend due process (pp. 626-627) The Supreme Court has held that the right to attend public school is not a fundamental right for the purposes of substantive due process analysis ...it is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (pp. 627-628)... While the police officers admit misrepresenting certain facts to Gina, such as their claim that they had handwriting analysis finding that Gina had written the threat...these misrepresentations did not rise to the level of coercive police activity... the suppression of Gina's confession in the juvenile proceedings does not have preclusive effect on this court... (pp. 635-636).</p>	<p>concludes that the conduct the plaintiff complains of is not so outrageous and extreme so as to support this claim. Accordingly, it will grant the defendants summary judgment as to this claim (pp. 52-53).</p>

Table 1.1L Continued					
RQ7 Reject- ion of Alterna- tive Sanction	No data	No data	No data	No data	No data
RQ8 Preemp- tive Pre- vention of Future Disrup- tion	No data	No data	No data	No data	No data

**Table 1.1M. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<i>Wooleyhan v. Cape Henlopen (2011, DC)</i>	<i>Porter v. Ascension (2004, CA)</i>	<i>Demers v. Leominster Sch. (2003, DC)</i>	<i>Bundick v. Bay City Indep. Sch. (2001, DC)</i>	<i>Butler v. Rio Rancho Pub. (2003, CA)</i>
RQ1 Threat vs. Individual Rights	In establishing these minimum procedural guidelines, the court balanced the school's need to maintain order free from the burden of elaborate hearing requirements against the general interest of arriving at the truth inherent in the concept of due process and giving a student in jeopardy of serious loss notice of the case against him and opportunity to meet it (pp. 40-	Because the search of the younger son was reasonable at inception, and conducted in a reasonable manner when balanced against the school's interest in its students' safety and welfare, the younger son's Fourth Amendment claim failed (p. 608)...A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech	While the supreme court has made it clear that public school students do not shed their constitutional rights as the schoolhouse gate, it has also established that a student's First Amendment rights are not coextensive with the rights of adults in other settings (p. 200). In order to suppress speech that is not constitutionally protected, the court must justify its decision by showing facts	However, given the relaxed standard applicable to searches and seizures of school properties, Bundick's claim fails. In striking the balance of students' legitimate expectations of privacy and schools' equally legitimate need to maintain the proper educational environment, the United States Supreme Court eased the restrictions to which searches by public authorities are ordinarily subject; the	There is no doubt the school has a legitimate interest in providing a safe environment for students and staff. It is not unreasonable for the school to conclude that student possession of weapons on school property threatens this interest. In order to protect against this threat and further the school's interest in safety, we believe there is a rational basis

Table 1.1M Continued					
	41).	<p>outside the school... While certain forms of expressive conduct and speech are sheltered under the First Amendment, constitutional protection is not absolute, especially in the public school setting. Educators have an essential role in regulating school affairs and establishing appropriate standards of conduct (p. 615). <u>Because Adam's drawing was composed off-campus, displayed only to members of his own household, stored off-campus, and not purposefully taken by him to EAHS or publicized in a way certain to result in its appearance at EAHS, we have found that the drawing is protected by the First Amendment.</u> Furthermore, we have found that it is neither speech directed at the campus nor a purposefully communicated true threat (p. 620)</p>	<p>which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities (p. 202)... Michael's suspension and subsequent expulsion were rationally related to the school's interest in maintaining a safe school environment, particularly in light of the apprehensive climate that existed at the time due to highly publicized incidents of school violence around the country. In the wake of other episodes of school violence, many of which occurred close in time to the events in this case, student safety had to be considered by the school officials in Leominster when faced with a potentially dangerous situation (p. 206).</p>	<p>Court rejected the requirements of a warrant or probable cause in favor of a simple reasonableness under the circumstances standard (p. 738).</p>	<p>for the school to suspend Mr. Butler, even for one year, when he should have known he brought a weapon onto school property. The school's decision was not arbitrary, nor does it shock the conscience. Accordingly, the decision did not violate Mr. Butler's substantive due process rights, if any (p. 1201).</p>

Table 1.1M Continued					
		...However, a reasonable school official facing this question for the first time would find not pre-existing body of law from which he could draw clear guidance... a reasonable school official would encounter a body of case law sending inconsistent signals as to how far school authority to regulate student speech reaches beyond the confines of the campus (p. 620).			
RQ2 Intent vs. Balance of Intent vs. Safety	No data	<u>Inter alia, the instant court found that the older son did not intentionally or knowingly communicate his drawing in a way sufficient to remove it from First Amendment protection. The drawing's introduction to the school was wholly accidental and unconnected with an earlier display of the drawing to household members. Thus, the state had no authority to issue sanctions for the message it contained</u> (p.608).	The appropriate focus is on what the defendant reasonably should have foreseen. Under this standard, there is no requirement that the speaker had the ability or actually intended to carry out the threat. Michael should have concluded that his drawing and note would be considered a threat to the school and to himself (p. 202).	Bundick relies heavily upon a recent split decision from the Sixth Circuit, <i>Seal v. Morgan</i> ...which held that a school board may not expel a student without first determining that the student intentionally committed the acts for which his expulsion is sought. The court must admit that this argument has a virtuous appeal, however, with all due respect to the <i>Seal</i> majority, it seems Judge Surheinrich, in dissent, has a	...the school board later concluded Mr. Butler should have known, as the driver of the vehicle, that he was in possession of and transporting a weapon onto school grounds...Mr. Butler knew, or should have known that he was responsible for the vehicle he brought onto school property and the contents thereof...As a result of the board's decision, we need not decide



Table 1.1M Continued					
				<p>better understanding of the law in this area. Scientoer is not a requirement of the school district's policy and that policy is entitled to deference. Moreover, scienter can be imputed from the fact of possession. Bundick carried the machete in his truck when he worked and he had worked the day before it was found. While clear findings of fact from the superintendent may have been helpful, it was not irrational to find Bundick knew, even if he had forgotten, of the machete's presence (p. 740).</p>	<p>whether suspending a high school student for unknowingly bringing a weapon onto school property violates the student's substantive due process rights (p. 1201).</p>
RQ3 Immune from Liability	Accordingly, the court concludes that a reasonable official would not know that such conduct violated procedural due process, and Yor, Mrazcek, and Maull are entitled to qualified immunity on the procedural due process claim	Even if we find that the right was clearly established at the time of the alleged violation, however, a defendant will still be entitled to qualified immunity if the defendant's conduct was objectively reasonable in light of clearly established law at the time of the	Even if the law is clearly established, an official is entitled to qualified immunity if at the time of the challenged actions, such official's belief that his or her actions were lawful is objectively legally reasonable...A reasonable,	No data	Since the Butlers failed to state a substantive due process violation, we conclude the school is entitled to qualified immunity on the Butlers' substantive due process claims (p. 1201).

Table 1.1M Continued					
	<p>(p.80)...<u>Jester is not entitled to qualified immunity for Wooleyhan's only remaining federal law claim against her- unlawful detention. The right to be free from false arrest is a clearly established right, which necessarily includes the right to be free from false accusations in obtaining the authority to arrest...No state actor could reasonably believe that making a false accusation to procure a student's arrest is lawful under the circumstances of this case. Accordingly, Jester is not entitled to qualified immunity</u> (pp. 80-81).</p>	<p>violation. The reasonableness of an official's actions must be assessed in light of the facts available to him at the time of his actions and the law that was clearly established at the time of the alleged acts (p. 614)...While we cannot agree with its finding that there was no violation of the First Amendment, we affirm its judgment on its alternative ground that Principal Braud is entitled to qualified immunity (p. 625).</p>	<p>though mistaken conclusion about the lawfulness of one's conduct does not subject a governmental official to personal liability (p. 207)...there is limited case law on this issue of school violence in this Circuit, which lends further credence to conclude that this area of the law is unsettled. Therefore, the individual defendants are entitled to qualified immunity (p. 208).</p>		
RQ4 Prefer Security	No data	No data	On these facts, a reasonable interpretation of the law would allow a school official to prevent potential disorder or disruption to school safety, particularly in	...given the relaxed standard applicable to searches and seizures on school properties, Bundick's claim fails...The need to obtain either a warrant or Bundick's	There is no doubt the school has a legitimate interest in providing a safe environment for students and staff. It is not unreasonable

Table 1.1M Continued					
			<p>the wake of increased school violence across the country. We review, however, with deference, schools' decisions in connection with the safety of their students even when freedom of expression is involved. At the time when school officials made their determination to emergency expel him, they had facts which might reasonably have led them to forecast a substantial disruption of or material interference with school activities... Michael's suspension and subsequent expulsion were rationally related to the school's interest in maintaining a safe school environment, particularly I light of the apprehensive climate that existed at the time due to highly publicized incidents of school violence</p>	<p>consent was, therefore, vitiated and it was legally permissible to begin a search (p.738).</p>	<p>for the school to conclude that student possession of weapons on school property threatens this interest. In order to protect against this threat and further the school's interest in safety, we believe there is a rational basis for the school to suspend Mr. Butler, even for one year, when he should have known he brought a weapon onto school property. The school's decision was not arbitrary, nor does it shock the conscience. Accordingly, the decision did not violate Mr. Butler's substantive due process rights, if any (p. 1201).</p>

Table 1.1M Continued					
			around the country (pp.203-206).		
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on the Courts	The alleged conduct reveals poor judgment, insults, indignities, or annoyances, but did not create atrocious or intolerable conditions (p. 65)...Further, there is no reputation interest or injury resulting from dissemination of criminal acts (p. 67)... <u>Wooleyhan obviously feels strongly, and his feeling are not irrational. Having been arrested and prosecuted, and acquitted, Wooleyhan, as any similarly situated individual, has a right to seek damages if defendants acted wrongfully</u> (p. 86).	No data	Public school officials have been granted substantial deference as to what speech is appropriate. The daily administration of public education is committed to school officials. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board, rather than with the federal courts (p. 202).	Because federal courts are extremely, and quite properly, hesitant to become involved in the public schools' disciplinary decisions, only rudimentary precautions are commanded of the Constitution... Without question, expulsion is a harsh punishment, but it is not the business of a federal court to set aside decisions of school administrators which the court may view as lacking in a basis in wisdom or compassion (pp. 740-741).	Although we questioned in <i>Tonkovich</i> whether the "shock the conscience" standard applies to all due process violations, we need not decide the issue in this case because we conclude the school's conduct does not violate the due process clause under any of the standards (p. 1201).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	No data

Table 1.1M Continued					
RQ8 Preemptive Prevention of Future Disruption	No data	No data	However, the potential for disruption or disorder to the students of the Northwest School was greater than merely the school's negative reaction to an unpopular political viewpoint...On these facts, a reasonable interpretation of the law would allow a school official to prevent potential disorder or disruption to school safety, particularly in the wake of increased school violence across the country. We review, however, with deference, schools' decisions in connection with the safety of their students even when freedom of expression is involved. At the time when school officials made their determination to emergency expel him, they had facts which might reasonably have led them to	No data	No data

Table 1.1M Continued					
			forecast a substantial disruption of or material interference with school activities (p. 203).		

Table 1.1N. Level I Analysis: Plain Meaning Results for Jurisprudential Intent

	<i>Defabio v. E. Hampton Union (2009, DC)</i>	<i>Tun v. Fort Wayne Cmty. (2004, DC)</i>	<i>T.T. v. Bellevue Sch. Dist. (2009, DC)</i>	<i>S.H. v. Rowland Unified Sch. (2005, CA)</i>	<i>Jones v. Long County Sch. (2012, DC)</i>
RQ1 Threat vs. Individual Rights	Given that there were threats to plaintiff's safety on the day the comment was first attributed to plaintiff and in the following weeks, the court held that it was reasonable for defendants to conclude that plaintiff's presence at school posed a threat to his safety and the safety of others because of the possibility that violence might have erupted in the school due to plaintiff's presence or speech (p. 461)...student expression may be restricted where it would substantially interfere with the work of the school, or would cause material and substantial	...the court must weigh the value of providing Tun with Constantine's statement and the opportunity to cross-examine him against the burden that such a practice would place on the school administration. As this court recently noted, in light of the increasing challenges schools face in maintaining order and discipline, requiring them to permit the confrontation of student witnesses or even to disclose their identities in expulsion hearings is overly burdensome and unrealistic. This is particularly true given that	...prior to T.T.'s emergency expulsion, the school district provided sufficient rudimentary precautions to comport with due process. As a general rule, notice and hearing should precede removal of that student from school. However, a student whose presence poses an ongoing threat of disrupting the academic process may be immediately removed from school, and the necessary notice and rudimentary hearing should follow as soon as practicable (pp. 15-16)..The school	Due to the nature of the violation and seriousness of possession of a weapon, the District Review Panel finds that other means of correction are not feasible or have repeatedly failed to bring about proper conduct. The presence of appellant would cause a continuing danger to the physical safety of the pupil or others (p. 15)...although appellant presents a good school record, zero tolerance for dangerous weapons does not allow for different treatment for certain students who bring dangerous weapons to	In order for a suspension to constitute a deprivation of a property interest in public education, the suspension must constitute a total exclusion from the education process (p. 14).

Table 1.1N Continued					
	<p>interference with schoolwork or discipline (p. 473)...Although students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate, their constitutional rights are not automatically coextensive with the rights of adults in other settings (p. 474). In this context, it is well settled that school officials do not have to wait for actual disruption from the speech before they act; instead, school officials have an affirmative duty to not only ameliorate the harmful effects of disruptions, but to prevent them from happening in the first place...Not only are school officials free to act before the actual disruption occurs, they are not required to predict disruption with absolute certainty to satisfy the <i>Tinker</i> standard (pp. 480-481)... Moreover, forecasting</p>	<p>the purpose behind the administrative expulsion process is to avoid the formalistic trappings, complexity and cost of adversarial litigation...Thus, in balancing all the factors, the defendants' interests in avoiding the administrative burdens of formalized expulsion proceeding and protecting student witnesses greatly outweighs the minimal value derived from providing Tun with Constantine's written statement and the opportunity to cross-examine him (pp. 943-944)...<u>Indeed, no one could possibly conclude that merely allowing one's photo to be taken in the shower equates with something sexual. This is particularly true here because, as the photos reveal, Tun is not so much posing as trying to cover his nudity...</u></p>	<p>district undeniably has a legitimate interest in preventing drug use near school and preventing disruption of the educational process (p. 26).</p>	<p>school (p. 47).</p>	

Table 1.1N Continued					
	<p>disruption is unmistakably difficult to do. Thus, rather than requiring certainty of disruption, <i>Tinker</i> allows school officials to act and prevent the speech where they might reasonably portend disruption form the student expression at issue...Because of the special circumstances of the school environment, the level of disturbance required to justify official intervention is lower inside a public school than it is outside the school (p. 481).</p>	<p><u>Accordingly, this is one of those rare school discipline cases where there is no rational relationship between the punishment and the offense (p. 949)...In short, as there was no evidence to support either Whitticker's charge or Platz's finding that Tun engaged in some form of inappropriate sexual conduct, their acts, shocking to the conscience, and a violation of Tun's substantive due process rights as a matter of law (p. 950).</u></p>			
<p>RQ2 Intent vs. Balance of Intent vs. Safety</p>	No data	No data	No data	<p>Bryan also reputedly said that he believed appellant had no intention of doing anything to Mr. Pollock's car until the event actually occurred and was sorry about what had happened. Bryan further allegedly stated he believed that appellant had no intention of bringing the knife to school. He apologized</p>	No data



Table 1.1N Continued					
				<p>for having to recommend appellant for expulsion and continued to stress that he had no say so in the matter in light of the district's no tolerance policy...the principal arguments made against expulsion were that appellant's possession of a knife at school was unintentional, appellant was not a danger to himself or anyone else, appellant deserved a second chance, and that there were alternatives to expulsion available (pp. 12-14)...But even if the evidence in this regard were lacking, there is no question that appellant possessed a knife on campus (pp. 24-25)... Appellant attempted to mitigate his actions by essentially testifying that he put the binder in his backpack unconsciously when he was in</p>	

Table 1.1N Continued					
				a rush. But there is no requirement that the district review panel, who had the right to believe or disbelieve any witness's testimony, give that explanation credence. Their rejection of appellant's credibility on this point does not constitute reversible error (p. 39).	
RQ3 Immune from Liability	Accordingly, even assuming arguendo that there was a First Amendment violation as to Daniel's freedom of speech (which there was not), the individual school officials are entitled to summary judgment under the doctrine of qualified immunity (pp. 483-484).	<u>Consequently, both Whitticker and Platz either knew, or reasonably should have known that there at least had to be some evidence of the Behavior Code violation before Tun could be expelled or otherwise disciplined, and correspondingly, that to expel him for a violation for which there was no evidence violated a clearly established fundamental right of due process. Thus, neither is entitled to qualified immunity as a matter of law...</u> The defendants' motion for summary judgment is granted as to	No data	No data	No data

Table 1.1N Continued					
		Tun's claims against FWCS, Mohr, and Rhodes, and also as to Tun's claims against Whitticker and Platz to the extent they are being sued in their official capacities (p. 951).			
RQ4 Prefer Security	...while the distribution of his speech at the school in his absence would eliminate any potential harm to Daniel at the school, it would not eliminate the potential harm and disruption to the school that could reasonably result from the response of students to his speech even in his absence (p. 480)...courts must keep in mind that school officials also are entitled to rely upon their expertise and experience in making these often difficult judgments in extraordinary circumstance... The First Amendment does not deprive school administrators of the ability to rely upon their own considerable	Finally, the court must weigh the value of providing Tun with Constantine's statement and the opportunity to cross-examine him against the burden that such a practice would place on the school administration. As this court recently noted, in light of the increasing challenges schools face in maintaining order and discipline, requiring them to permit the confrontation of student witnesses or even to disclose their identities in expulsion hearings is overly burdensome and unrealistic. Thus, in balancing all the factors, the defendants' interests in avoiding the	No data	No data	No data

Table 1.1N Continued					
	experience, expertise, and judgment in recognizing and diffusing the potential for disruption and violence in public schools. Indeed, they are duty-bound to do just that. That duty is particularly acute when threats of physical violence have already been made and actual violence could well erupt if the hostile situation is not promptly and emphatically controlled (p. 481).	administrative burdens of formalized expulsion proceeding and protecting student witnesses greatly outweighs the minimal value derived from providing Tun with Constantine's written statement and the opportunity to cross-examine him (pp. 943-944)			
RQ5 No Imminent Threat	No data	No data	No data	No data	No data
RQ6 Deemed Not Binding on Courts	Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts. If the school's decision satisfies the constitutional standard in <i>Tinker</i> , then it is irrelevant that a litigant or court believes the situation could have been	When it comes to disciplinary matters, this court is to resist the temptation to become a super-school board by substituting its judgment for that of school administrators. The Supreme Court cautions that it is not the role of the federal courts to set aside the decisions of school administrators which the court	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. Public high school students do have substantive and procedural rights while at school. But § 1983 does not extend the right to relitigate in	Perfection is seldom achieved in trial [or administrative] proceedings, and minor or trivial errors (e.g., in procedural matters or evidentiary rulings) are not uncommon. Such errors are usually found to be insubstantial, not warranting reversal on appeal (pp. 21-22)...although	...once school administrators tell a student what they heard or saw, ask why they heard or saw it, and allow a brief response, a student has received all the process that the Fourteenth Amendment demands (p. 17)...the right to attend public school is not fundamental (p. 21)...As such, courts must

Table 1.1N Continued					
	<p>handled better. It is not the role of the federal courts to set aside decision of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 481).</p>	<p>may view as lacking a basis in wisdom or compassion. The Seventh Circuit also has emphasized that federal courts must refrain from second-guessing the disciplinary decisions made by school administrators (p. 938).</p>	<p>federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal-court corrections of errors in the exercise of that discretion... (p. 25).</p>	<p>administrative panel erred in refusing to issue witness subpoenas requested by student, reversal would not be required where student did not make offer of proof concerning what those witnesses would have said... The only harm identified by appellant is that Mr. H. was unable to attack the witnesses' credibility... Thus, we do not see how attacking the credibility of the witnesses would have assisted appellant... The error in restricting Mr. H.'s questioning of them was therefore harmless (pp. 35-37).</p>	<p>bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults (p. 27)... The undisputed facts show that the cafeteria incident did not constitute harassment and even if it did, Peek was not indifferent. As noted previously, conduct that would be deeply offensive, and actionable harassment, in an adult workplace may be part of the ordinarily unpleasantness that is a middle school cafeteria (p. 29).</p>
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	Due to the nature of the violation and seriousness of possession of a weapon, the District Review Panel finds that other means of correction are not feasible or have repeatedly failed to bring about proper conduct. The presence of	No data

Table 1.1N Continued					
				appellant would cause a continuing danger to the physical safety of the pupil or others (p. 15).	
RQ8 Preemptive Prevention of Future Disruption	<p>...student expression may be restricted where it would substantially interfere with the work of the school, or would cause material and substantial interference with schoolwork or discipline (p. 473)...Given those fact, it was reasonable for the school to conclude that Daniel's presence at the school- even if to engage in some type of speech to proclaim his innocence- posed a threat to his personal safety and the safety of other students because of the real possibility that violence could erupt in the school due to his presence and/or speech, and no rational jury could find otherwise (p. 479).</p> <p>In this context, it is well settled that school officials do not have to wait for</p>	No data	No data	No data	No data

Table 1.1N Continued					
	actual disruption from the speech before they act; instead, school officials have an affirmative duty to not only ameliorate the harmful effects of disruptions, but to prevent them from happening in the first place...Not only are school officials free to act before the actual disruption occurs, they are not required to predict disruption with absolute certainty to satisfy the <i>Tinker</i> standard (pp. 480-481)				

**Table 1.1O. Level I Analysis: Plain Meaning Results for Jurisprudential Intent**

	<b><i>J.S. v. Blue Mt. Sch. Dist. (2011, CA)</i></b>	<b><i>Boim v. Fulton County Sch. (2006, DC)</i></b>	<b><i>Commonwealth v. Smith (2008, CA)</i></b>	<b><i>J.S. v. Bethlehem (2002, SSC)</i></b>	<b><i>R.M. v. Washakie (2004, SSC)</i></b>
RQ1 Threat vs. Individual Rights	<u>Because J.S. was suspended from school for speech that indisputably caused no substantial disruption in school and that could not reasonably have led school officials to forecast substantial disruption in school, the school district's action violated</u>	...the court concludes that the content of Rachel's story was sufficiently disturbing to cause school officials to reasonably fear substantial disruption of school activities. Therefore, the disciplinary action taken by defendants was justified under the Supreme	The Supreme Judicial Court has acknowledged that notwithstanding the legitimate goal of school administrators to maintain a safe learning environment, students continue to have a legitimate expectation of privacy in their persons and in	The court concluded that courts have permitted school officials to discipline students for conduct occurring off school premises where the conduct materially and substantially interferes with the educational process. The court pointed to the damaging	The school district asserted that it had a compelling interest in providing for the safety and welfare of its students and that is was that interest that the expulsions protected. The Court agreed... the fundamental right to an opportunity for an education did not guarantee

Table 1.10 Continued					
	<p><u>J.S.'s First Amendment free speech rights. We will accordingly reverse and remand that aspect of the District Court's judgment</u> (p. 920)...The exercise of First Amendment rights in school, however, has to be applied in light of the special characteristics of the school environment, and thus the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings. Since <i>Tinker</i>, courts have struggled to strike a balance between safeguarding students' First Amendment rights and protecting the authority of school administrators to maintain an appropriate learning environment (p. 926)...<u>We recognize that vulgar and offensive speech such as that</u></p>	<p>Court decision in <i>Tinker</i>, and did not violate Rachel's First Amendment rights. Given this conclusion, the Court finds it unnecessary to address the parties' other arguments (p. 10)...<i>Tinker</i> does not require school officials to wait until disruption actually occurs. In fact, they have a duty to prevent the occurrence of disturbances. While predicting disruption is unmistakably difficult, <i>Tinker</i> does not require certainty that disruption will occur, but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption (pp. 10-11)...The court concludes that Rachel's story alone, when read in light of the recent history of school shootings, was sufficient to lead school officials</p>	<p>the items they bring to school... In order to achieve a balance between these two equally legitimate needs and expectations it is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools...Not only did the United States Supreme Court conclude in T.L.O. that obtaining a warrant was impractical in a</p>	<p>effects on Mrs. Fulmer, Mr. Kartsois and the school community and concluded that the school district did not violate J.S.'s First Amendment rights. Moreover, the majority noted that in this day and age where school violence is becoming more commonplace, school officials are justified in taking threats against faculty and students seriously (p. 648)...the United States Supreme Court has recognized that the unbridled free expression of speech is not permissible in every setting... One of these settings is in the unique environment of our nation's schools (p. 650). In various situations, the high courts of both the United States and Pennsylvania have performed the delicate balance and concluded that the constitutional</p>	<p>that a student could not temporarily forfeit educational services through his own conduct (p. 1)...implicit within the constitutional guarantee of a thorough and efficient system of free schools is the need for a safe and secure school environment. A school cannot fulfill its basic purpose of providing an education without such an environment (p. 16). A student's right to an education may be constitutionally denied when outweighed by the school's interest in protecting other students, teachers, and school property, and in preventing the disruption of the educational system (p. 19)... It is reasonably may be argued that a requirement that a student who is expelled for misconduct, no matter how egregious, be provided with alternate</p>



Table 1.10 Continued					
	<p><u>employed in this case-even made in jest- could damage the careers of teachers and administrators and we conclude only that the punitive action taken by the school district violated the First Amendment free speech rights of J.S.</u> (p. 930)... This standard, however, is relaxed in the school environment: Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code (pp. 935-936).</p>	<p>reasonably to forecast substantial disruption of or material interference with school activities- specifically, that Rachel might attempt to shoot her math teacher (p.15).</p>	<p>school setting, it also determined that the level of suspicion required to justify a warrantless search should be modified within the school context. Ordinarily, even a search that may be conducted without a warrant nevertheless would require a basis of probable cause to believe that a crime had been committed (pp. 178-179).</p>	<p>interests of the student, in certain circumstances, must yield to the school officials' need to maintain order and to discipline when necessary to assure a safe school environment that is conducive to learning (p. 651)...However, even if not a "true threat," the school district might not have violated J.S.'s constitutional right to free speech by disciplining him if the speech was otherwise protected, but it in some fashion disrupted school work or invaded the rights of others. As discussed in greater detail below, this is because otherwise protected speech nonetheless may be subject to restriction in a school setting (pp. 652-653).</p>	<p>education by a public school system, would be likely to have a serious detrimental effect on the ability of school officials to deter dangerous behavior within a school by imposing expulsion as a sanction (p. 20). We would note that just as no one doubt that the state had a compelling interest in keeping schools safe, we are confident that no one doubts that these policies are indeed good and worthwhile policies (p. 26).</p>
<p>RQ2 Intent vs. Balance of Intent vs. Safety</p>	<p><u>J.S. did not even intend for the speech to reach the school- in fact, she took specific steps to make the profile private so that only her friends could access it</u></p>	<p>Regardless of whether Rachel intended the story to be read, the fact that she brought the notebook to school and passed it to</p>	<p>No data</p>	<p>No data</p>	<p>No data</p>

Table 1.10 Continued					
	(p. 930).	another student was enough to cause school officials to be legitimately concerned that the story had been or might be read by others (p. 12).			
RQ3 Immune from Liability	No data	No data	No data	No data	No data
RQ4 Prefer Security	No data	No data	No data	In sum, the website created disorder and significantly and adversely impacted the delivery of instruction. Indeed, it was specifically aimed at this particular school district and seemed designed to create precisely this sort of upheaval. Based upon these facts, we are satisfied that the school district has demonstrated that J.S.'s website created an actual and substantial interference with the work of the school to a magnitude that satisfies the requirements of <i>Tinker</i> . Thus, for the reasons stated above, we find that the school district's disciplinary	No data

Table 1.10 Continued					
				action taken against J.S. did not violate his First Amendment right to freedom of speech (pp. 674-675).	
RQ5 No Imminent Threat	Since <i>Tinker</i> , the Supreme Court has carved out a number of narrow categories of speech that a school may restrict even without the threat of substantial disruption...The first exception is set out in <i>Fraser</i> , which we interpreted to permit school officials to regulate lewd, vulgar, indecent, and plainly offensive speech in school...The second exception to <i>Tinker</i> is articulated in <i>Hazelwood School District v. Kuhlmeier</i> , which allows school officials to regulate school-sponsored speech (that is, speech that a reasonable observer would view as the school's own speech) on the basis of any legitimate	No data	No data	No data	No data

Table 1.10 Continued					
	pedagogical concern (p. 927).				
RQ6 Deemed not Binding on Courts	Federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school system (p. 926)...The education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges (p. 926).	Plaintiffs argue that <i>D.F.</i> is distinguishable because the student in that case actually read the story to his classmates. The Court does not find this distinction relevant. Although speech must be communicated in order to constitute a "true threat," communication is not a prerequisite to suppression on <i>Tinker</i> grounds. As previously noted, Rachel took the notebook containing the story to school and passed it to another student, thus creating the risk, if not the likelihood, that it would be read. This was sufficient to qualify the story as student speech on school premises and to authorize school officials to take disciplinary action under <i>Tinker</i> (pp. 13-14).	No data	We caution that it is for school districts to determine what is vulgar, lewd or plainly offensive, at least in the first instance. Great deference should be given to their determination, as courts must not become embroiled in micromanaging school officials' administration of the institution's daily affairs...school board...is in the best position to weigh the strengths and vulnerabilities of the town's 785 students. The First Amendment does not compel the court into this arena (p. 672).	Thus, we are asked to consider whether the provisions of the Wyoming constitution require a school district to provide an education to a student who has been lawfully expelled. We answer the reserved question in the negative (p. 1)...In an ideal world it surely would be preferable to provide an alternative education to students who are expelled; and even in our own imperfect world, it is still a better idea to do so (at least in my opinion). However, we are judges, not legislators; and unless the legislation is determined to be unconstitutional, it is really properly a legislative decision as to what is a good idea. Thus, the only proper inquiry for this court is whether our state constitution

Table 1.10 Continued					
					requires the provision of such educational services. And the answer to this question is quite clearly that the constitution does not require it (p. 26)...We similarly find that it does not violate equal protection to provide an alternate education to disabled students that are expelled while not providing such an education for non-disable student (p. 29).
RQ7 Rejection of Alternative Sanctions	No data	No data	No data	No data	The court held that the district's actions were the least onerous means of accomplishing that compelling interest, and the court did not agree that an alternate education had to be provided to lawfully expelled students (p. 1). In light of these considerations, we determine that a school district is not constitutionally required to provide an alternate education to lawfully expelled students (p. 26).

Table 1.10 Continued					
RQ8 Preemptive Prevention of Future Disruption	<u>The facts in this case do not support the conclusion that a forecast of substantial disruption was reasonable (p. 928)...The facts simply do not support the conclusion that the school district could have reasonably forecasted a substantial disruption of or material interference with the school as a result of J.S.'s profile. Under <i>Tinker</i>, therefore, the school district violated J.S.'s First Amendment free speech rights when it suspended her for creating the profile (p. 931).</u>	In <i>Tinker</i> , the Supreme Court held that school officials may justify the suppression of student speech by showing facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities. <i>Tinker</i> does not require school officials to wait until disruption actually occurs... While predicting disruption is unmistakably difficult, <i>Tinker</i> does not require certainty that disruption will occur, but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption (pp. 10-11)...In light of the recent history of school shootings, school officials were justified in perceiving the story as a portent of	No data	In fact, it has been offered that school officials, have a duty to prevent the occurrence of disturbances. Moreover, due to the importance of the educational environment and the state's interest therein, the level of disturbance required to justify action is relatively lower in a public school than it might be on a street corner. Finally, this ability to forecast a substantial disruption is not limited to prior-restraint case, but applies to punishment after publication (p.662).	No data

Table 1.10 Continued					
		possible future violence (p.11)... In this case, on the other hand, school officials feared that Rachel's story was a possible plan disguised as a dream, and their disciplinary action was at least in part an attempt to prevent actual violence from occurring on the school campus (p. 17).			

As depicted in Table 1.2, the first level of textual analysis reveals that a majority of the court cases provided support rather than failure to support the research questions. Of course support was found more among certain research questions compared to others. For example, research questions 1, 2, 3, 4, and 6 appear to have the largest number of court cases providing support. Thus, the issues made apparent in these 5 research questions appear to be significant in how the courts decide to rule either for or against the neoliberal, zero-tolerance social control efforts in schools. On the other hand, while research questions 5, 7, and 8 did find support among the judicial decisions under scrutiny, there were far fewer cases providing support for these three research questions. Some court decisions revealed passages that provided inconclusive findings, whereby statements made by the jurists provided support followed by other statements that failed to support a particular research question, or vice versa. Thus, in those instances when a research question was sometimes supported and sometimes rejected, the evidence was

treated as a rejection of the research question for the applicable court decisions.

Relatively few cases provided only qualitative evidence rejecting, or failing to support, the research questions. Regardless, as displayed in Table 1.2, all of the research questions in the first level of textual analysis found more support than failed support.

Table 1.2. Summary Table of Plain Meaning Results for each Research Question

	Cases Supporting	Cases Rejecting	Cases Supporting & Rejecting	No Data
Research Question 1	44 (59%)	1 (1%)	20 (27%)	10 (13%)
Research Question 2	16 (21%)	7 (9%)	0 (0%)	52 (69%)
Research Question 3	24 (32%)	3 (4%)	3 (4%)	45 (60%)
Research Question 4	25 (33%)	1 (1%)	1 (1%)	48 (64%)
Research Question 5	4 (5%)	1 (1%)	0 (0%)	70 (93%)
Research Question 6	50 (67%)	2 (3%)	4 (5%)	19 (25%)
Research Question 7	5 (7%)	0 (0%)	0 (0%)	70 (93%)
Research Question 8	11 (15%)	2 (3%)	0 (0%)	62 (83%)

In addition to evaluating jurisprudential intent by carefully examining plain meaning, a second level of textual analysis builds upon the first by identifying underlying themes that emerge from the plain meaning data and reflect language and concepts



embodied in the theoretical framework. The second level of analysis is interpretive, but essential in order to explain and uncover how jurisprudential intent conveys a legal language that signifies principles representative of the various mechanisms identified in the theoretical framework detailing how neoliberal court mechanisms support zero-tolerance social control initiatives in schools. Thus, the manifest content of legal thought is made apparent by first discerning jurisprudential intent from the plain meaning of court decisions and then filtering that intent through the theoretical framework to make explicit the nature of the political economic philosophy encoded within the law. The text segments and/or passages, which serve as manifest content, are listed by court case under the emergent theme they support (see Tables 1.3A through 1.3E). How these themes, which are represented by repetitious manifest content across cases, relate back to the neoliberal theoretical framework will be discussed in detail in chapter 7.

Table 1.3A. Level II Analysis: Emergent Themes from the Jurisprudential Intent

	Theme 1 Data: Interest Balancing
<b><i>Cuesta v. Sch. Bd. (2002, CA)</i></b>	...it requires a balancing of the need for the particular search against the invasion of personal rights (pp. 968-969).
<b><i>Hardie v. Churchill (2009, DC)</i></b>	...the court finds that the process used for Hardie's expulsion proceedings struck the proper balance between administrative efficiency and protecting Hardie's interest in attending school. The benefit of an additional hearing to ensure Hardie's punishment was just was outweighed by the cost imposed on the limited resources of the school board (pp. 19-20).
<b><i>Sypniewski v. Warren Hills (2001, DC)</i></b>	Schools, however, must consider the sensibilities of other students, and the freedom to express unpopular opinions must be balanced against the interest in teaching students the limitations of socially appropriate behavior (pp. 52-59).
<b><i>Colvin v. Lowndes County (2000, DC)</i></b>	School boards of this and other states and of their aim to create a school environment conducive to learning, by eliminating fear of crime and violence, such efforts must be balanced with the constitutional guarantees afforded to the children (p. 506).

Table 1.3A Continued	
<b><i>In re Hinterlong (2003, CA)</i></b>	<u>Having determined that the crime stoppers privilege restricts Hinterlong's cognizable common law claims, we next determine whether the abrogation of those claims is arbitrary and unreasonable when balanced against the legislature's actual purpose...His inability to obtain discovery concerning how the tipster obtained the information provided to Clements severely impedes Hinterlong's prosecution of his common law causes of action against these parties</u> (p. 630).
<b><i>New Jersey v. T.L.O. (1985, SC)</i></b>	...the special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justifies the court in [exempting] school searches from the warrant and probable cause requirements, and in applying a standard determined by balancing the relevant interests (p. 325)... But striking a balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject (p.326)...Where a careful balancing of governmental and private interests suggest that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard (pp. 340-341).
<b><i>Bethel Sch. Dist. v. Fraser (1986, SC)</i></b>	The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior (p. 681).
<b><i>Vernonia Sch. Dist. v. Acton (1995, SC)</i></b>	... balancing the intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests (p. 653).
<b><i>Sims v. Bracken County Sch. (2010, DC)</i></b>	However, students typically have a lesser expectation of privacy than members of the public generally. While students' constitutional rights do not evaporate at the public school's doors, the essence of those rights is balanced against the need for teachers and administrators to have the freedom to maintain order in school...the Supreme court held that the Fourth Amendment applies to searches conducted by school officials, but rejected the adherence to a probable cause requirement (pp. 18-19) ...courts will look to the school official's actions balanced against the special needs dictated in the public school setting where the state is responsible for maintaining discipline, health, and safety (p. 30).
<b><i>Wooleyhan v. Cape Henlopen (2011, DC)</i></b>	In establishing these minimum procedural guidelines, the court balanced the school's need to maintain order free from the burden of elaborate hearing requirements against the general interest of arriving at the truth inherent in the concept of due process and giving a student in jeopardy of serious loss notice of the case against him and opportunity to meet it (pp. 40-41).
<b><i>Porter v. Ascension (2004, CA)</i></b>	Because the search of the younger son was reasonable at inception, and conducted in a reasonable manner when balanced against the school's interest in its students' safety and welfare, the younger son's Fourth Amendment claim failed (p. 608).

Table 1.3A Continued	
<b><i>Bundick v. Bay City Indep. Sch. (2001, DC)</i></b>	However, given the relaxed standard applicable to searches and seizures of school properties, Bundick's claim fails. In striking the balance of students' legitimate expectations of privacy and schools' equally legitimate need to maintain the proper educational environment, the United States Supreme Court eased the restrictions to which searches by public authorities are ordinarily subject; the Court rejected the requirements of a warrant or probable cause in favor of a simple reasonableness under the circumstances standard (p. 738).
<b><i>Tun v. Fort Wayne Cmty. (2004, DC)</i></b>	Thus, in balancing all the factors, the defendants' interests in avoiding the administrative burdens of formalized expulsion proceeding and protecting student witnesses greatly outweighs the minimal value derived from providing Tun with Constantine's written statement and the opportunity to cross-examine him ...the court must weigh the value of providing Tun with Constantine's statement and the opportunity to cross-examine him against the burden that such a practice would place on the school administration (pp. 943-944).
<b><i>J.S. v. Blue Mt. Sch. Dist. (2011, CA)</i></b>	Since <i>Tinker</i> , courts have struggled to strike a balance between safeguarding students' First Amendment rights and protecting the authority of school administrators to maintain an appropriate learning environment (p. 926).
<b><i>Commonwealth v. Smith (2008, CA)</i></b>	The Supreme Judicial Court has acknowledged that notwithstanding the legitimate goal of school administrators to maintain a safe learning environment, students continue to have a legitimate expectation of privacy in their persons and in the items they bring to school... In order to achieve a balance between these two equally legitimate needs and expectations it is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject (pp. 178-179).
<b><i>J.S. v. Bethlehem (2002, SSC)</i></b>	In various situations, the high courts of both the United States and Pennsylvania have performed the delicate balance and concluded that the constitutional interests of the student, in certain circumstances, must yield to the school officials' need to maintain order and to discipline when necessary to assure a safe school environment that is conducive to learning (p. 651)...school board...is in the best position to weigh the strengths and vulnerabilities of the town's 785 students (p. 672).
<b><i>Northwestern Sch. v. Linke (2002, SSC)</i></b>	After weighing the students' privacy interests and the character of the search against the nature and immediacy of the governmental concern at issue, we conclude that the drug-testing program here is constitutional (p. 974).
<b><i>State v. Best (2010, SSC)</i></b>	In weighing the student's expectations of privacy on the one hand and the school's interest in maintaining discipline and order on the other, the court decided that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause (pp. 109-110).
<b><i>Pendleton v. Fassett (2009, DC)</i></b>	Here, the governmental interest was maintaining order...The general governmental interest in safe and disciplined schools in order to promote and ensure a productive learning environment is more weighty here...(p. 21).
<b><i>R.M. v. Washakie (2004, SSC)</i></b>	A student's right to an education may be constitutionally denied when outweighed by the school's interest in protecting other students, teachers, and school property, and in preventing the disruption of the educational system (p. 19).

Table 1.3B. Level II Analysis: Emergent Themes from the Jurisprudential Intent

	Theme 2 Data: Qualified Immunity
<b><i>Stafford v. Redding</i> (2009, SC)</b>	The official who ordered the unconstitutional search is entitled to qualified immunity (p. 368).
<b><i>S.G. v. Sayreville Bd. of Educ.</i> (2003, CA)</b>	In any event, defendants are entitled to qualified immunity (p. 423).
<b><i>Cuesta v. Sch. Bd.</i> (2002, CA)</b>	...the school board cannot be held liable for any constitutional deprivation... (p. 968).
<b><i>Seal v. Morgan</i> (2000, CA)</b>	Because we have concluded that Superintendent Morgan was entitled to summary judgment on the basis of qualified immunity, we need not and do not address the question... of whether he had the authority... (p. 581).
<b><i>Evans v. Bd. of Educ.</i> (2010, DC)</b>	<u>...he failed to address the situation or take any remedial measures, and that he then retaliated against L.E. by suspending her when she was subject to forced sexual conduct. Therefore, Smathers is not entitled to qualified immunity...</u> (pp. 32-33).
<b><i>Cuff v. Valley Cent. Sch. Dist.</i> (2010, DC)</b>	School administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students, without worrying that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance (p. 470).
<b><i>Lee v. Lenape Valley Reg'l</i> (2009, DC)</b>	<u>Whether Mr. deMarrais qualifies for immunity is a triable issue because there exists questions of fact as to whether Mr. deMarrais' failure to comply with board policy rises to the level of a knowing violation of a right...</u> (pp. 27-28).
<b><i>Hardie v. Churchill</i> (2009, DC)</b>	Plaintiff argues that the municipality should be liable for the board's violation of Hardie's due process right due to failure to train or adequately supervise school district personnel...the court dismisses this claim (p. 20).
<b><i>Brett N. v. Cmty Unit Sch. Dist.</i> (2009, DC)</b>	Public officials may have qualified immunity if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known... Here, the individual defendants are entitled to qualified immunity... (p. 13).
<b><i>Barnett v. Tipton County</i> (2009, DC)</b>	Under the TGTLA, all government entities are immune from suit for any injury which stems from the exercise of governmental functions, except as specifically provided by the act (p. 986).
<b><i>Hill v. Sharber</i> (2008, DC)</b>	...there is no need to address the defendants' arguments that the claims against Deputy Booker and Ryan are barred under the qualified immunity doctrine, and that the official capacity claims against all four defendants fail because Hill has not established governmental entity liability under Section 1983 (p. 681).

Table 1.3B Continued	
<b><i>Morgan v. Snider High (2007, DC)</i></b>	Simmons and Bailey are not liable for any purported constitutional violations arising from the vehicle searches (pp. 14-15)...even if the court somehow found a constitutional violation, the case law probably reassured the defendants that they were on solid legal footing, and thus they are entitled to qualified immunity (p. 28).
<b><i>Roy v. Fulton County Sch. (2007, DC)</i></b>	The gist of the plaintiffs' allegations is that school officials breached various express policies designed to protect students' constitutional rights. Assuming that is true, the school district is not liable for its employee's breach of admittedly constitutional express policies (p. 1321).
<b><i>Bogle-Assegai v. Bloomfield (2006, DC)</i></b>	In light of the court's dismissal of plaintiffs' claims for the reasons detailed above, the court need not reach defendants' arguments concerning qualified immunity (p. 244).
<b><i>McKinley v. Lott (2005, DC)</i></b>	However, a municipality may not be held liable under Section 1983 under a theory of respondent superior (pp. 9-10).
<b><i>Posthumus v. Bd. of Educ. (2005, DC)</i></b>	The court finds it unnecessary to address all of defendants' arguments because it concludes that Posthumus' claims fail at the preliminary stage of the qualified immunity analysis...the court finds no valid claim...the court need not reach the issue of qualified immunity (p. 897).
<b><i>Collins v. Prince William County (2004, DC)</i></b>	The school officials had qualified immunity as it was not clearly established that they could not recommend expulsion for a student's unlawful activity occurring off school grounds (p. 1). The school board cannot be held liable for the decision to expel Collins... protected by the qualified immunity doctrine (pp. 34-37).
<b><i>In re Hinterlong (2003, CA)</i></b>	<u>Absent both pleading and proof of immunity, Clements can be held liable under Hinterlong's claims (p. 627)... Clements is also not cloaked with immunity from personal liability where her actions are not incident to or within the scope of her professional duties...(p. 628).</u>
<b><i>C.H. v. Folks (2010, DC)</i></b>	Plaintiff fails, however, to tie the search of his pockets in any manner to any action or inaction of Perez and Gray. Therefore, at this point, plaintiff fails to allege sufficient facts to implicate their supervisory liability for the pocket search (pp. 25-26)... The district retains its governmental immunity (p.28).
<b><i>Beard v. Whitmore Lake (2005, CA)</i></b>	However, the teachers and officer were entitled to qualified immunity because the law at the time the searches were conducted did not clearly establish that the searches were unreasonable under the particular circumstances present in the case (p. 598)... Because the searches in this case did not violate clearly established law, the defendants are entitled to qualified immunity (p. 608).
<b><i>Sims v. Bracken County Sch. (2010, DC)</i></b>	Defendant Ray is entitled to qualified immunity relative to her search of the jacket (p. 23)... Defendant Ray is entitled to qualified immunity for authorizing the search of K.S.' s person (p. 26)... Defendant Ray is also entitled to qualified immunity relative to this seizure (pp. 33-34).

Table 1.3B Continued	
<b><i>Lausin v. Bishko (2010, DC)</i></b>	...a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function... Richmond Heights Board of Education is a political subdivision, and as such, it had immunity (p. 631)...the individual school board defendants, Mr. Bishko, Dr. Wallace, and Dr. Calinger, are entitled to immunity (p. 631).
<b><i>Pendleton v. Fassett (2009, DC)</i></b>	The available case law therefore did not give the instant officials fair warning that their conduct was unconstitutional. Accordingly, Fisher, Welch, Fassett, and Riggs are protected from a civil damages suit for their allegedly unconstitutional conduct by the doctrine of qualified immunity (p. 32).
<b><i>Wooleyhan v. Cape Henlopen (2011, DC)</i></b>	Accordingly, the court concludes that a reasonable official would not know that such conduct violated procedural due process, and Yor, Mrazek, and Maull are entitled to qualified immunity on the procedural due process claim (p.80)... <u>Jester is not entitled to qualified immunity for Wooleyhan's only remaining federal law claim against her- unlawful detention. (pp. 80-81).</u>
<b><i>Porter v. Ascension (2004, CA)</i></b>	Even if we find that the right was clearly established at the time of the alleged violation, however, a defendant will still be entitled to qualified immunity if the defendant's conduct was objectively reasonable in light of clearly established law at the time of the violation (p. 614)... While we cannot agree with its finding that there was no violation of the First Amendment, we affirm its judgment on its alternative ground that Principal Braud is entitled to qualified immunity (p. 625).
<b><i>Demers v. Leominster Sch. (2003, DC)</i></b>	Even if the law is clearly established, an official is entitled to qualified immunity if at the time of the challenged actions, such official's belief that his or her actions were lawful is objectively legally reasonable...A reasonable, though mistaken conclusion about the lawfulness of one's conduct does not subject a governmental official to personal liability (p. 207)...there is limited case law on this issue of school violence in this Circuit, which lends further credence to conclude that this area of the law is unsettled. Therefore, the individual defendants are entitled to qualified immunity (p. 208).
<b><i>Butler v. Rio Rancho Pub. (2003, DC)</i></b>	Since the Butlers failed to state a substantive due process violation, we conclude the school is entitled to qualified immunity on the Butlers' substantive due process claims (p. 1201).
<b><i>Defabio v. E. Hampton Union (2009, DC)</i></b>	Accordingly, even assuming arguendo that there was a First Amendment violation as to Daniel's freedom of speech (which there was not), the individual school officials are entitled to summary judgment under the doctrine of qualified immunity (pp. 483-484).
<b><i>Tun v. Fort Wayne Cnty (2004, DC)</i></b>	<u>Thus, neither is entitled to qualified immunity as a matter of law...</u> The defendants' motion for summary judgment is granted as to Tun's claims against FWCS, Mohr, and Rhodes, and also as to Tun's claims against Whitticker and Platz to the extent they are being sued in their official capacities (p. 951).

Table 1.3C. Level II Analysis: Emergent Themes from the Jurisprudential Intent

	Theme 3 Data: Disempowered Citizenship
<b><i>Posthumus v. Bd. of Educ. (2005, DC)</i></b>	...because the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings, school officials may limit speech in schools in ways that the government could not do outside the school context (p. 900). School disciplinary rules need not be as detailed as a criminal code (p. 903).
<b><i>Anderson v. Milbank Sch. (2000, DC)</i></b>	...the rule was a zero tolerance rule... constitutional rights of public school students are not automatically coextensive with the rights of adults (p. 686).
<b><i>Hazelwood v. Kuhlmeier (1988, SC)</i></b>	A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school (p. 261)... we have nonetheless recognized that the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment (pp. 266-267).
<b><i>Bethel Sch. Dist. v. Fraser (1986, SC)</i></b>	...the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings (p. 682)... maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures... Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code (p. 686).
<b><i>Demers v. Leominster Sch. (2003, DC)</i></b>	While the supreme court has made it clear that public school students do not shed their constitutional rights as the schoolhouse gate, it has also established that a student's First Amendment rights are not coextensive with the rights of adults in other settings (p. 200).
<b><i>Defabio v. E. Hampton Union (2009, DC)</i></b>	...student expression may be restricted where it would substantially interfere with the work of the school, or would cause material and substantial interference with schoolwork or discipline (p. 473)... Although students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate, their constitutional rights are not automatically coextensive with the rights of adults in other settings (p. 474).
<b><i>J.S. v. Blue Mt. Sch. Dist. (2011, CA)</i></b>	The exercise of First Amendment rights in school, however, has to be applied in light of the special characteristics of the school environment, and thus the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings (p. 926)... Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code (pp. 935-936).
<b><i>Morgan v. Snider High (2007, DC)</i></b>	The accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause (p. 15)... In the context of school rules, flexibility or breadth should not necessarily be confused for vagueness... Given the

Table 1.3C Continued	
	peculiar issues facing school administrators, a school's disciplinary rules need not be drafted as narrowly or with the same precision as criminal statutes (p. 21).
<b><i>Hammock v. Keys (2000, DC)</i></b>	Given a school's need to be able to impose disciplinary sanction for a wide range of unanticipated conduct disruptive of the educational process, school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions (pp. 1230-1232).
<b><i>Commonwealth v. Smith (2008, CA)</i></b>	The warrant requirement, in particular is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools...Not only did the United States Supreme Court conclude in T.L.O. that obtaining a warrant was impractical in a school setting, it also determined that the level of suspicion required to justify a warrantless search should be modified within the school context. Ordinarily, even a search that may be conducted without a warrant nevertheless would require a basis of probable cause to believe that a crime had been committed (pp. 178-179).
<b><i>Doran v. Contoocook (2009, DC)</i></b>	Reasonableness is the touchstone in any assessment of the constitutionality of a search or seizure, and while, in most cases, reasonableness demands a warrant and a showing of probable cause, such is not necessarily the case in the public school context... searches and seizures in public schools can be conducted without warrant or probable cause (p. 191). Unemancipated minors lack some of the most fundamental rights of self-determination-including the right to come and go at will... (p. 193).
<b><i>Hill v. Sharber (2008, DC)</i></b>	The Supreme Court has held that the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause...The Sixth Circuit has also noted that, in the case of searches in the school context, individualized suspicion is not necessarily required (pp. 676-677).
<b><i>In re L.A. (2001, SSC)</i></b>	It is evident that the school setting requires some easing of the restrictions to which searchers by public authorities are ordinarily subject...School officials need not obtain a warrant...the substantial interest of teachers and administrators in maintaining order in the schools does not require strict adherence to the requirement that searches be based on probable cause (p. 885).
<b><i>Commonwealth v. Lawrence L. (2003, SSC)</i></b>	...the typical requirements of warrant and probable cause are relaxed when a school official conducts a search of a student. The relaxation of the warrant and probable cause requirements of the Fourth Amendment are only applicable to school officials who are not acting in conjunction with or at the behest of law enforcement agencies...the Supreme Court recognized the particular interests of school officials in maintaining a safe learning environment and taking swift disciplinary action (pp. 880-822).
<b><i>State v. Best (2010, SSC)</i></b>	A school administrator need only satisfy the lessor reasonable grounds standard rather than the probable cause standard to search a student's vehicle parked on school property (p. 102)... In weighing the student's expectations of privacy on the one hand and the school's interest in maintaining discipline and order on the other, the court decided that the public interest is best served by a Fourth



Table 1.3C Continued	
	Amendment standard of reasonableness that stops short of probable cause (pp. 109-110).
<b><i>In re K.K. (2011, CA)</i></b>	We join the majority of courts that have examined this issue in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law (p. 653)...There is nothing in the developing case law that indicates school officials must conduct an independent investigation as to the tip or its reliability (p. 654).
<b><i>New Jersey v. T.L.O. (1985, SC)</i></b>	...greater emphasis should be placed on the special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting...the special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justifies the court in [exempting] school searches from the warrant and probable cause requirements (p. 325).
<b><i>Vernonia Sch. Dist. v. Acton (1995, SC)</i></b>	We have found such “special needs” to exist in the public school context. There, the warrant requirement would unduly interfere with the maintenance of the swift and informal disciplinary procedures that are needed, and strict adherence to the requirement that searches be based on probable cause would undercut the substantial need of teachers and administrators for freedom to maintain order in the schools (p. 653).
<b><i>Sims v. Bracken County Sch. (2010, DC)</i></b>	However, students typically have a lesser expectation of privacy than members of the public generally. (pp. 18-19)...the Supreme court held that the Fourth Amendment applies to searches conducted by school officials, but rejected the adherence to a probable cause requirement (pp. 18-19)... Reasonable suspicion demands a less exacting standard of constitutional scrutiny than does probable cause (p. 22).
<b><i>Lauslin v. Bishko (2010, DC)</i></b>	...it is clear that in a school setting the standard for a Fourth Amendment analysis does not require probable cause (p. 629).
<b><i>Pendleton v. Fassett (2009, DC)</i></b>	Generally, in order to conduct a search, an officer must have probable cause to believe an individual is engaged in illegal activity and that evidence bearing on that offense will be found in the place to be searched. In the school setting, however, the level of suspicion required to justify a search is less than probable cause...the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause (pp. 15-16) ...In a school setting, it is not always necessary that the reasonable suspicion be individualized; that is, school officials may conduct searches of multiple students without a suspicion that a particular student has committed an infraction (p. 18).
<b><i>Bundick v. Bay City Indep. Sch. (2001, DC)</i></b>	In striking the balance of students’ legitimate expectations of privacy and schools’ equally legitimate need to maintain the proper educational environment, the United States Supreme Court eased the restrictions to which searches by public authorities are ordinarily subject; the Court rejected the requirements of a warrant or probable cause in favor of a simple reasonableness

Table 1.3C Continued	
	under the circumstances standard (p. 738).
<b><i>Northwestern Sch. v. Linke (2002, SSC)</i></b>	The United States Supreme Court has taken the view that while public schools are state actors subject to constitutional oversight, the nature of a school's role is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults (p. 979)...We find that students are entitled to less privacy at school than adults would enjoy in comparable situations. In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally (pp. 979-980).

Table 1.3D. Level II Analysis: Emergent Themes from the Jurisprudential Intent

	Theme 4 Data: Empowered Discretion of School Authorities
<b><i>Stafford v. Redding (2009, SC)</i></b>	Standards of conduct are for school administrators to determine without second-guessing by the courts lacking the experience to appreciate what may be needed (p. 356).
<b><i>S.G. v. Sayreville Bd. of Educ. (2003, CA)</i></b>	...the determination or what manner of speech is inappropriate properly rests with the school officials (p. 423).
<b><i>Piekosz-Murphy v. Bd. of Educ. (2012, DC)</i></b>	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion...It seems that the professionals in this sad train of events exercised questionable judgment...But we can't say what the defendant's did violated the due process clauses... (p. 961).
<b><i>Ottaviano v. Kings Park (2010, DC)</i></b>	...the Supreme Court has stated that federal courts are not authorized to construe school regulations (pp. 25-26).
<b><i>Evans v. Bd. of Educ. (2010, DC)</i></b>	Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators... (p. 16).
<b><i>Cuff v. Valley Cent. Sch. Dist. (2010, DC)</i></b>	Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts...It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (pp. 469-470).
<b><i>Brett N. v. Cmty Unit Sch. Dist. (2009, DC)</i></b>	...it is not the role of the court to second-guess the board's policy, however misguided it may be, so long as it is rationally related to the interests sought to be protected (pp. 8-11).
<b><i>Morgan v. Snider High (2007, DC)</i></b>	It is not the role of federal courts to set aside the decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. The Seventh Circuit of Appeals also has stressed that federal courts ought to refrain from second-guessing the disciplinary decisions made by school administrators (p. 13)...The role of the courts is not to second-guess the

Table 1.3D Continued	
	decisions of school administrators (pp. 23-24).
<b><i>Vann v. Stewart</i> (2006, DC)</b>	Assuming, arguendo, the DHA and school board applied the improper standard when considering plaintiff's case, the court cannot conclude that such a failure was so significant or substantial that it could result in unfair or mistaken findings or misconduct or an arbitrary exclusion from school (p. 889)...it is not the role of the courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 890).
<b><i>Posthumus v. Bd. of Educ.</i> (2005, DC)</b>	Fraser teaches that judgments regarding what speech is appropriate in school matters should be left to the schools rather than the courts (p. 901).
<b><i>Anderson v. Milbank Sch.</i> (2000, DC)</b>	Finally, the education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges...This case, although it presents matters of some concern to the court, as already expressed, is an appropriate case for summary judgment (p. 689).
<b><i>Hammock v. Keys</i> (2000, DC)</b>	the court notes that the system of public education... relies necessarily upon the discretion of school administrators and school board members... Vesting a school official with the discretion to determine which situations warrant expulsion is not only necessary in order to maintain discipline and good order, it is desirable (pp. 1232-1233). It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 1224)... Even if the discipline imposed could be construed as harsh or drastic, the United States Supreme Court position on this is clear: § 1983 was not intended to be a vehicle for federal-court corrections of errors by school administrators in the exercise of discretion... (p. 1234).
<b><i>Fuller v. Decatur Pub.</i> (2000, DC)</b>	At the outset, it is important to note that a federal court's role in school disciplinary matters is very limited. School discipline is an area which the courts are reluctant to enter (p. 821)...It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (pp. 821-822).
<b><i>Doe v. Bd. of Educ.</i> (1995, DC)</b>	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 10)...The area of school discipline is a realm in which the courts enter with great hesitation and reluctance. Generally, the decision of whether or not to expel a student for gross disobedience or misconduct is best left to the discretion of the school board (pp. 13-14).
<b><i>Edwards v. O'Fallon Twp.</i> (1999, CA)</b>	...we are consistently reluctant to intrude upon the disciplinary decisions of school districts (p. 1078).
<b><i>E.M. v. Briggs</i> (1996, SSC)</b>	It should be here noted that the management, supervision and determinations of policy are the prerogative and responsibility of the school officials; and that the courts should be reluctant to enter therein...It is the policy of the law not to favor limitations on the powers of boards of education, but rather to give them a free hand to function within the sphere of their responsibilities (p. 757)... Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this

Table 1.3D Continued	
	nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion (p. 757).
<b><i>J.M. v. Webster County Bd. (2000, SSC)</i></b>	However, we do not feel it appropriate to undermine the authority of school officials, by rejecting the factual findings of those closest to the events in this case (p. 507).
<b><i>Hazelwood v. Kuhlmeier (1988, SC)</i></b>	We thus recognized that the determination of what manner of speech in the classroom or in the school assembly is inappropriate properly rest with the school board, rather than with the federal courts (p. 267).
<b><i>New Jersey v. T.L.O. (1985, SC)</i></b>	Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not (p.342).
<b><i>Bethel Sch. Dist. v. Fraser (1986, SC)</i></b>	The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board (p. 683).
<b><i>Binder v. Cold Spring Harbor (2010, DC)</i></b>	The Supreme Court has long held that § 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings... The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members and § 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion (p. 10).
<b><i>Lausin v. Bishko (2010, DC)</i></b>	The Supreme Court has held that the right to attend public school is not a fundamental right for the purposes of substantive due process analysis ...it is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion (pp. 627-628).
<b><i>Demers v. Leominster Sch. (2003, DC)</i></b>	Public school officials have been granted substantial deference as to what speech is appropriate. The daily administration of public education is committed to school officials. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board, rather than with the federal courts (p.202).
<b><i>Bundick v. Bay City Indep. Sch. (2001, DC)</i></b>	Because federal courts are extremely, and quite properly, hesitant to become involved in the public schools' disciplinary decisions, only rudimentary precautions are commanded of the Constitution... Without question, expulsion is a harsh punishment, but it is not the business of a federal court to set aside decisions of school administrators which the court may view as lacking in a basis in wisdom or compassion (pp. 740-741).

Table 1.3D Continued	
<b><i>Defabio v. E. Hampton Union (2009, DC)</i></b>	Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts...It is not the role of the federal courts to set aside decision of school administrators which the court may view as lacking a basis in wisdom or compassion (p. 481).
<b><i>Tun v. Fort Wayne Cmty (2004, DC)</i></b>	When it comes to disciplinary matters, this court is to resist the temptation to become a super-school board by substituting its judgment for that of school administrators. The Supreme Court cautions that it is not the role of the federal courts to set aside the decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. The Seventh Circuit also has emphasized that federal courts must refrain from second-guessing the disciplinary decisions made by school administrators (p. 938).
<b><i>T.T. v. Bellevue Sch. Dist. (2009, DC)</i></b>	It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion...The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal-court corrections of errors in the exercise of that discretion... (p. 25).
<b><i>J.S. v. Blue Mt. Sch. Dist. (2011, CA)</i></b>	Federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school system (p. 926)...The education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges (p. 926).
<b><i>J.S. v. Bethlehem (2002, SSC)</i></b>	Great deference should be given to their determination, as courts must not become embroiled in micromanaging school officials' administration of the institution's daily affairs...school board...is in the best position to weigh the strengths and vulnerabilities of the town's 785 students. The First Amendment does not compel the court into this arena (p. 672).

Table 1.3E. Level II Analysis: Emergent Themes from the Jurisprudential Intent

	Theme 5 Data: Preemptive Exclusion
<b><i>Demers v. Leominster Sch. (2003, DC)</i></b>	On these facts, a reasonable interpretation of the law would allow a school official to prevent potential disorder or disruption to school safety, particularly in the wake of increased school violence across the country...At the time when school officials made their determination to emergency expel him, they had facts which might reasonably have led them to forecast a substantial disruption of or material interference with school activities... Michael's suspension and subsequent expulsion were rationally related to the school's interest in maintaining a safe school environment, particularly in light of the apprehensive climate that existed at the time due to highly publicized incidents of school violence around the country (pp.203-206).
<b><i>Defabio v. E. Hampton Union (2009, DC)</i></b>	In this context, it is well settled that school officials do not have to wait for actual disruption from the speech before they act; instead, school officials have an affirmative duty to not only ameliorate the harmful effects of disruptions, but

Table 1.3E Continued	
	to prevent them from happening in the first place...Not only are school officials free to act before the actual disruption occurs, they are not required to predict disruption with absolute certainty to satisfy the <i>Tinker</i> standard (pp. 480-481)... Moreover, forecasting disruption is unmistakably difficult to do. Thus, rather than requiring certainty of disruption, <i>Tinker</i> allows school officials to act and prevent the speech where they might reasonably portend disruption from the student expression at issue...Because of the special circumstances of the school environment, the level of disturbance required to justify official intervention is lower inside a public school than it is outside the school (p. 481). The First Amendment does not deprive school administrators of the ability to rely upon their own considerable experience, expertise, and judgment in recognizing and diffusing the potential for disruption and violence in public schools. Indeed, they are duty-bound to do just that. That duty is particularly acute when threats of physical violence have already been made and actual violence could well erupt if the hostile situation is not promptly and emphatically controlled (p. 481).
<b><i>Boim v. Fulton County Sch. (2006, DC)</i></b>	<i>Tinker</i> does not require school officials to wait until disruption actually occurs. In fact, they have a duty to prevent the occurrence of disturbances. While predicting disruption is unmistakably difficult, <i>Tinker</i> does not require certainty that disruption will occur, but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption (pp. 10-11)...The court concludes that Rachel's story alone, when read in light of the recent history of school shootings, was sufficient to lead school officials reasonably to forecast substantial disruption of or material interference with school activities-specifically, that Rachel might attempt to shoot her math teacher (p.15).
<b><i>J.S. v. Bethlehem (2002, SSC)</i></b>	In fact, it has been offered that school officials, have a duty to prevent the occurrence of disturbances. Moreover, due to the importance of the educational environment and the state's interest therein, the level of disturbance required to justify action is relatively lower in a public school than it might be on a street corner. Finally, this ability to forecast a substantial disruption is not limited to prior-restraint case...(p.662). The court concluded that courts have permitted school officials to discipline students for conduct occurring off school premises where the conduct materially and substantially interferes with the educational process. The court pointed to the damaging effects on Mrs. Fulmer, Mr. Kartotis and the school community and concluded that the school district did not violate J.S.'s First Amendment rights. Moreover, the majority noted that in this day and age where school violence is becoming more commonplace, school officials are justified in taking threats against faculty and students seriously (p. 648)...the United States Supreme Court has recognized that the unbridled free expression of speech is not permissible in every setting... One of these settings is in the unique environment of our nation's schools (p. 650).
<b><i>Cuff v. Valley Cent. Sch. Dist. (2010, DC)</i></b>	defendants need not prove that school administrators' initially-stated justifications for punishment fully incorporate all the objective facts that could support a likelihood of substantial disruption, and they need not demonstrate that substantial disruption was inevitable... Such a rule is not required by <i>Tinker</i> , and would be disastrous public policy: requiring school officials to wait until disruption actually occurred before investigating would cripple the officials' ability to maintain order (pp. 468-469). School administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students, without worrying that they will have to face years of

Table 1.3E Continued	
	litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance (p. 470).
<b><i>In the Interest of F.B. (1999, SSC)</i></b>	The schools are simply not required to wait for a tragedy to occur within their walls to demonstrate that the need is immediate (p. 673).
<b><i>Anderson v. Milbank Sch. (2000, DC)</i></b>	...a school need not tolerate speech that is inconsistent with its pedagogical mission, even though the government could not suppress that speech outside of the schoolhouse... schools must teach by example the shared values of a civilized social order... These shared values include discipline, courtesy, and respect for authority... civility is a legitimate pedagogical concern... so, too, is compliance with school rules (p. 686).
<b><i>S.G. v. Sayreville Bd. of Educ. (2003, CA)</i></b>	A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school (p. 422).
<b><i>Hazelwood v. Kuhlmeier (1988, SC)</i></b>	A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school (p. 261)... we have nonetheless recognized that the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment (pp. 266-267).
<b><i>Porter v. Ascension (2004, CA)</i></b>	A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school... While certain forms of expressive conduct and speech are sheltered under the First Amendment, constitutional protection is not absolute, especially in the public school setting. Educators have an essential role in regulating school affairs and establishing appropriate standards of conduct (p. 615).
<b><i>T.T. v. Bellevue Sch. Dist. (2009, DC)</i></b>	As a general rule, notice and hearing should precede removal of that student from school. However, a student whose presence poses an ongoing threat of disrupting the academic process may be immediately removed from school, and the necessary notice and rudimentary hearing should follow as soon as practicable (pp. 15-16).

Finally, a thematic investigation was conducted intratextually, within relevant court decisions, and intertextually, across relevant court decisions. Sixty (80%) of the Seventy-five court cases in the sample provided manifest content. The intratextual (see Table 1.4) analysis allows the researcher to look within the 60 court decisions that have yielded manifest content applicable to emergent themes and determine how many of these themes are evident within the legal language used in the court decisions. Table 1.5

reveals that 46.7% ( $n = 28$ ) of the court cases provided evidence supporting at least one emergent theme. Twenty-three percent ( $n = 14$ ) yielded evidence supporting two emergent themes within each case. Twenty-seven percent ( $n = 16$ ) produced evidence supporting three emergent themes within each case. Lastly, only 3.33% ( $n = 2$ ) of court decisions generated manifest content supporting four emergent themes. None of the court decisions provided manifest content across all five themes. Table 1.5 also displays the breakdown of the intratextual patterns for single references, paired references, and three or more references to emergent themes.

Table 1.4. Level III Intratextual Analysis of Emergent Themes Across Cases

	Emergent Themes					
	Interest Balancing	Qualified Immunity	Disempowered Citizenship	Empowered Discretion	Preemptive Expulsion	T
<i>Stafford v. Redding</i>		X		X		2
<i>S.G. v. Sayreville</i>		X		X	X	3
<i>Cuesta v. Sch. Bd.</i>	X	X				2
<i>Seal v. Morgan</i>		X				1
<i>Piekosz-Murphy v. Bd. of Educ.</i>				X		1
<i>Ottaviano v. Kings Park</i>				X		1
<i>Evans v. Bd. of Educ.</i>		X		X		2
<i>Cuff v. Valley Cent. Sch. Dist.</i>		X		X	X	3
<i>Lee v. Lenape Valley Reg'l</i>		X				1



Table 1.4 Continued						
<i>Hardie v. Churchill</i>	X	X				2
<i>Doran v. Contoocook</i>			X			1
<i>Brett N. v. Cnty Unit Sch. Dist.</i>		X		X		2
<i>Barnett v. Tipton County</i>		X				1
<i>Hill v. Sharber</i>		X	X			2
<i>Morgan v. Snider High</i>		X	X	X		3
<i>Roy v. Fulton County Sch.</i>		X				1
<i>Bogle-Assegai v. Bloomfield</i>		X				1
<i>Vann v. Stewart</i>				X		1
<i>McKinley v. Lott</i>		X				1
<i>Posthumus v. Bd. of Educ.</i>		X	X	X		3
<i>Collins v. Prince William County</i>		X				1
<i>Sypniewski v. Warren Hills</i>	X					1
<i>Anderson v. Milbank Sch.</i>			X	X	X	3
<i>Hammock v. Keys</i>			X	X		2
<i>Colvin v. Lowndes County</i>	X					1
<i>Fuller v. Decatur Pub.</i>				X		1
<i>Doe v. Bd. of Educ.</i>				X		1
<i>Edwards v. O'Fallon Twp.</i>				X		1

Table 1.4 Continued						
<i>Northwestern Sch. v. Linke</i>	X		X			2
<i>In re L.A.</i>			X			1
<i>Commonwealth v. Lawrence L.</i>			X			1
<i>State v. Best</i>	X		X			2
<i>In re K.K.</i>			X			1
<i>In the Interest of F.B.</i>					X	1
<i>In re Hinterlong</i>	X	X				2
<i>E.M. v. Briggs</i>				X		1
<i>J.M. v. Webster County Bd.</i>				X		1
<i>Hazelwood v. Kuhlmeier</i>			X	X	X	3
<i>New Jersey v. T.L.O.</i>	X		X	X		3
<i>Bethel Sch. Dist. v. Fraser</i>	X		X	X		3
<i>Vernonia Sch. Dist. v. Acton</i>	X		X			2
<i>Binder v. Cold Spring Harbor</i>				X		1
<i>C.H. v. Folks</i>		X				1
<i>Beard v. Whitmore Lake</i>		X				1
<i>Sims v. Bracken County Sch.</i>	X	X	X			3
<i>Lausin v. Bishko</i>	X		X	X		3
<i>Pendleton v. Fassett</i>	X	X	X			3
<i>Wooleyhan v. Cape Henlopen</i>	X	X				2
<i>Porter v. Ascension</i>	X	X			X	3

Table 1.4 Continued						
<b><i>Demers v. Leominster Sch.</i></b>		X	X	X	X	4
<b><i>Bundick v. Bay City Indep. Sch.</i></b>	X		X	X		3
<b><i>Butler v. Rio Rancho Pub.</i></b>		X				1
<b><i>Defabio v. E. Hampton Union</i></b>		X	X	X	X	4
<b><i>Tun v. Fort Wayne Cmty.</i></b>	X	X		X		3
<b><i>T.T. v. Bellevue Sch. Dist.</i></b>				X	X	2
<b><i>J.S. v. Blue Mt. Sch. Dist.</i></b>	X		X	X		3
<b><i>Boim v. Fulton County Sch.</i></b>					X	1
<b><i>Commonwealth v. Smith</i></b>	X		X			2
<b><i>J.S. v. Bethlehem</i></b>	X			X	X	3
<b><i>R.M. v. Washakie</i></b>	X					1

The intertextual (see Table 1.6) analysis permits the researcher to look across the 60 court cases to determine how many court decisions provided support for the 5 emergent themes individually. Such an analysis enables the researcher to identify the theoretical mechanisms, which are predominantly applied to legitimate neoliberal judicial support for zero tolerance social control efforts in schools. As depicted in Table 1.6, 33.3% ( $n = 20$ ) of court decisions evidenced *interest balancing*, 48.3% ( $n = 29$ ) of the cases evidenced *qualified immunity*, 38.3% ( $n = 23$ ) of the cases evidenced *disempowered citizenship*, 48.3% ( $n = 29$ ) of the cases evidenced *empowered discretion of school authorities*, and 18.3% ( $n = 11$ ) of the cases evidenced *preemptive exclusion*. With

Table 1.5. Patterns in the Level III Intratextual Thematic Analysis

Pattern Types	Number of Cases
Single References	
1 only	3
2 only	10
3 only	4
4 only	9
5 only	2
Total	28
Paired References	
1 and 2	4
1 and 3	4
1 and 4	0
1 and 5	0
2 and 3	1
2 and 4	3
2 and 5	0
3 and 4	1
3 and 5	0
4 and 5	1
Total	14
Three or More	18
Total	60

just below half of the relevant court cases yielding support for *qualified immunity* and *empowered discretion of school authorities*, the researcher can conclude that these are the two primary, neoliberal theoretical mechanisms utilized by courts to rule in support of zero tolerance social control efforts in schools. However, *interest balancing* and *disempowered citizenship*, while employed by courts roughly 35 to 40% of the time, are still theoretical mechanisms that are very pertinent to the process in which court decision making reflects support for neoliberal social controls in schools. While *preemptive*

*exclusion* is the least applied theoretical mechanism, it is still used in approximately 2 out of 10 cases to rationalized neoliberal social controls in schools.

Table 1.6. Level III Intertextual Analysis of Emergent Themes Across Cases

<u>Theme</u>	<u>Number of Instances in which Thematic Data Emerged</u>
Interest Balancing	20
Qualified Immunity	29
Disempowered Citizenship	23
Empowered Discretion	29
Preemptive Exclusion	11
Total	112

In summary, the first level of textual analysis predominately found plain meaning qualitative data in support of the eight research questions. The majority of support was found for research questions 1, 2, 3, 4, and 6. Conversely, very few cases yielded support for research questions 5, 7, and 8. Regardless, the textual support for the research questions outweighed the instances where textual evidence rejected the research questions. The text segments and passages identified as evidence for or against the 8 research questions represents the jurisprudential intent as it relates to these queries. Thus, the plain meaning rationales elicited from the court cases by way of the 8 research questions posed to them, serve as the courts’ jurisprudential intent for why decisions were made as they were in these 75 cases.

The second level of textual analysis identified 5 themes, which emerged from repetitive language, attitudes, and rationales used by the courts in conveying their jurisprudential intent on the matters of zero tolerance policies in schools. The courts' jurisprudential intent conveys a legal language that denotes principles representative of the various mechanisms identified in the theoretical framework detailing how neoliberal court mechanisms support zero-tolerance social control initiatives in schools. Thus, the manifest content of legal thought is made apparent by first discerning jurisprudential intent from the plain meaning of court decisions and then filtering that intent through the theoretical framework to make explicit the nature of the political economic philosophy encoded within the law. The 5 themes include the following: (1) *Interest Balancing*, (2) *Qualified Immunity*, (3) *Disempowered Citizenship*, (4) *Empowered Discretion of School Authorities*, and (5) *Preemptive Exclusion*. How these themes translate back to the neoliberal theoretical framework is described in chapter 7.

The final thematic analysis revealed that 80% ( $n = 60$ ) of the court cases in the sample evidenced manifest content pertinent to the identification of 5 emergent themes from the jurisprudential intent. The remaining 15 court cases did not yield the repetitive legal language necessary to be considered representative of manifest content signifying one or more of the emergent themes. The intratextual analysis found that 28 (46.7%) court cases provided content referencing a single theme, 14 (23.3%) court cases evidenced some pattern of paired reference to two themes, and 18 (30%) court cases referencing 3 or more themes. The intertextual analysis found that just below half of the relevant court cases yielded support for *qualified immunity* (48.3%) and *empowered discretion of school authorities* (48.3%); therefore, the researcher can conclude that these

are the two primary, neoliberal theoretical mechanisms utilized by courts to rule in support of zero tolerance social control efforts in schools. In addition, *interest balancing* and *disempowered citizenship* were employed by the courts roughly 35 to 40% of the time, which means these theoretical mechanisms are quite important to the process in which court decision making reflects support for neoliberal social controls in schools. Lastly, *preemptive exclusion* was the least applied theoretical mechanism; however, it was still used in approximately 20% of the cases to rationalize neoliberal social controls in schools.

## CHAPTER SIX

### QUANTITATIVE RESULTS

Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average usage of metal detectors for social control measures (see Table 2.1). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for all three ANOVAs. Therefore, the Welch's F test was used except for the 2005-2006 wave of data in which the  $F$ -statistic was reported because one of the minority category groups did not have enough variance. The ANOVAs revealed a statistically significant effect: *Welch's*  $F_{03-04}(3, 1480) = 14.67, p < .001, \eta^2 = .03$ ;  $F_{05-06}(3, 2644) = 35.54, p < .001, \eta^2 = .04$ ; *Welch's*  $F_{07-08}(3, 1056) = 19.42, p < .001, \eta^2 = .03$ .

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2003-2004 data revealed that schools with greater than 50% minority students ( $M = 1.94, SD = 0.24$ ) had a significantly lower average usage of metal detectors compared to schools with less than 5% minority students ( $M = 1.99, SD = 0.07$ ), 5 to 20% minority students ( $M = 1.99, SD = 0.08$ ), and 20 to 50% minority students ( $M = 2.00, SD = 0.67$ ). The effect size was weak for this relationship ( $\eta^2 = .03$ ). Similarly, the results for the 2005-2006 data revealed that schools



with greater than 50% minority students ( $M = 1.94$ ,  $SD = 0.24$ ) had a significantly lower average usage of metal detectors compared to schools with less than 5% minority students ( $M = 2.00$ ,  $SD = 0.00$ ), 5 to 20% minority students ( $M = 2.00$ ,  $SD = 0.00$ ), and 20 to 50% minority students ( $M = 2.00$ ,  $SD = 0.06$ ). The effect size was also weak for this relationship ( $\eta^2 = .04$ ). Likewise, the results for the 2007-2008 data revealed that schools with greater than 50% minority students ( $M = 1.93$ ,  $SD = 0.24$ ) had a significantly lower average usage of metal detectors compared to schools with less than 5% minority students ( $M = 1.99$ ,  $SD = 0.08$ ), 5 to 20% minority students ( $M = 2.00$ ,  $SD = 0.04$ ), and 20 to 50% minority students ( $M = 1.99$ ,  $SD = 0.10$ ). This relationship was weak too ( $\eta^2 = .03$ ).

**Table 2.1.** One-Way ANOVAs for Metal Detector Usage Across Minority Categories in Three Waves of Data

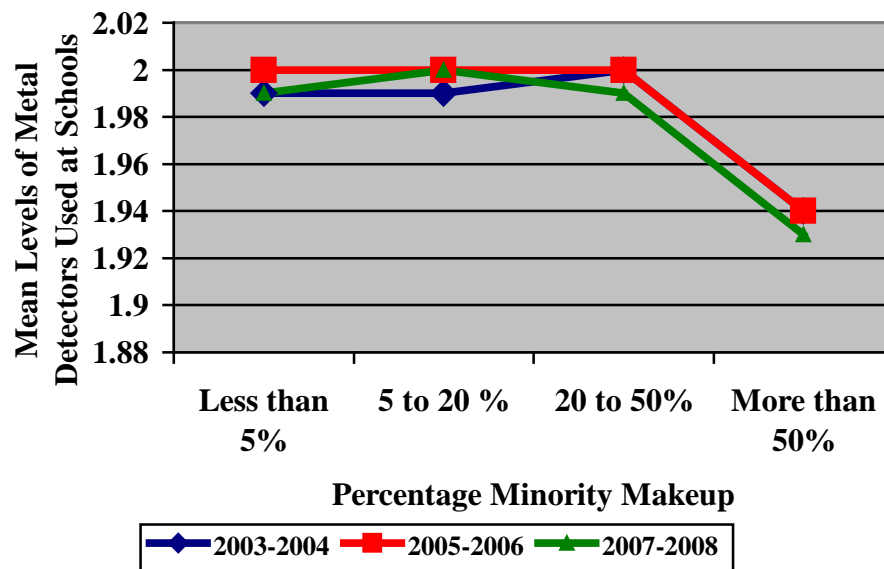
Variable	Percent Minority Makeup Categories								ANOVA	
	<u><math>\geq 5\%</math></u>		<u>5 - 20%</u>		<u>20 - 50%</u>		<u><math>\geq 50\%</math></u>		<u><math>F</math></u>	<u><math>\eta^2</math></u>
	<u><math>M</math></u>	<u><math>SD</math></u>	<u><math>M</math></u>	<u><math>SD</math></u>	<u><math>M</math></u>	<u><math>SD</math></u>	<u><math>M</math></u>	<u><math>SD</math></u>		
Metal Detectors <sub>03-04</sub>	1.99	0.07	1.99	0.08	2.00	0.67	1.94	0.24	14.67***	0.03
Metal Detectors <sub>05-06</sub>	2.00	0.00	2.00	0.00	2.00	0.06	1.94	0.24	35.54***	0.04
Metal Detectors <sub>07-08</sub>	1.99	0.08	2.00	0.04	1.99	0.10	1.93	0.25	19.42***	0.03

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The means for all three waves of data were plotted to visually depict trends of metal detector usage at schools with differing minority makeup (see Figure 1). The line graph suggests very little differentiation in metal detector deployment across the three

waves of data collection. These findings also fail to support hypothesis one, which expected schools with greater than 50% minority makeup would use metal detectors as security mechanisms significantly more than the other categories.

**Figure 1. Plotted Means for Metal Detector Usage Across Percentage Minority Makeup Categories**



Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average usage of access control, via locked or monitored doors, for social control measures (see Table 2.2). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for the ANOVAs conducted on the 2005-2006 and 2007-2008 data waves. Therefore, the Welch's F test was used except for the 2003-2004 wave of data in which the  $F$ -statistic was reported because the Levene's F test was not statistically significant ( $p > .05$ ). Only the ANOVA for 2005-2006 revealed a statistically significant effect: *Welch's*  $F_{05-06}(3, 1340) = 4.12, p < .001, \eta^2 = .004$ . The ANOVAs for

the other two waves of data did not reveal any significant differences in the average usage of access controls in schools across the minority makeup categories.

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2005-2006 data revealed that schools with greater than 50% minority students ( $M = 1.13$ ,  $SD = 0.34$ ) had a significantly lower average deployment of access controls compared to schools with 5 to 20% minority students ( $M = 1.18$ ,  $SD = 0.39$ ) and 20 to 50% minority students ( $M = 1.18$ ,  $SD = 0.39$ ). There was no significant difference between the less than 5% and greater than 50% category. The effect size was weak for this relationship ( $\eta^2 = .004$ ).

**Table 2.2.** One-Way ANOVAs for Access Controls Used in Schools Across Minority Categories in Three Waves of Data

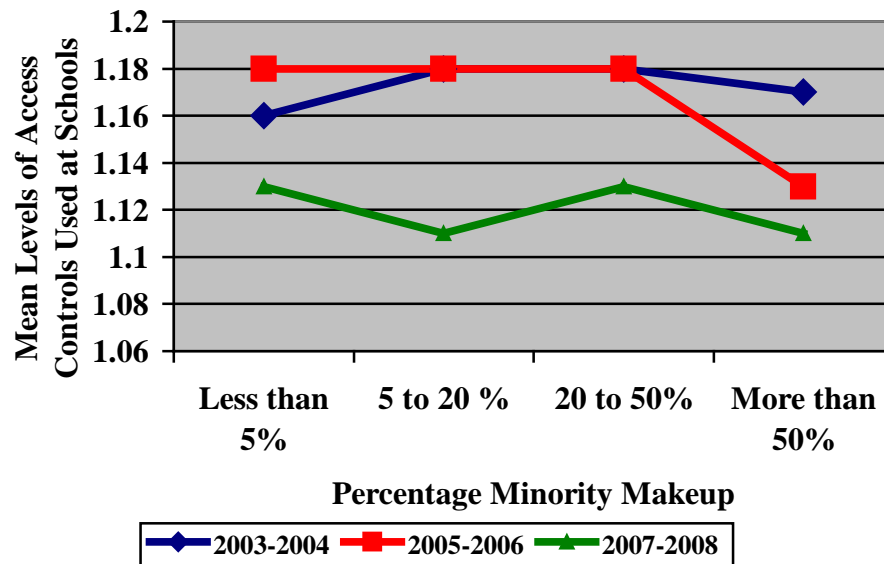
Variable	Percent Minority Makeup Categories								ANOVA	
	<u>&gt; 5 %</u>		<u>5 - 20%</u>		<u>20 – 50%</u>		<u>&gt; 50%</u>		<u>F</u>	$\eta^2$
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Access Control <sub>03-04</sub>	1.16	0.36	1.18	0.38	1.18	0.39	1.17	0.38	0.64	0.01
Access Control <sub>05-06</sub>	1.18	0.39	1.18	0.39	1.18	0.39	1.13	0.34	4.12**	0.004
Access Control <sub>07-08</sub>	1.13	0.34	1.11	0.31	1.13	0.34	1.11	0.31	0.94	0.001

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The means for all three waves of data were plotted to visually depict trends of access controls utilized at schools with differing minority makeup (see Figure 2). The line graph suggests inconsistent and shifting trends in the deployment of access controls

across the three waves of data collection. Although only the 2005-2006 wave produced statistically significant results, these findings also fail to support hypothesis one, which expected schools with greater than 50% minority makeup would use access controls as security mechanisms significantly more than the other categories. Additionally, Figure 2 reveals a declining trend in the use of access controls in schools between the 2005-2006 and 2007-2008 waves of school data.

**Figure 2. Plotted Means for School Access Controls Across Percentage Minority Makeup Categories**



Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average usage of security cameras for social control measures (see Table 2.3). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for the ANOVAs conducted on the 2003-2004 and 2007-2008 data waves. Therefore, the Welch's F test was used except for the 2005-2006 wave of data in which the  $F$ -statistic was reported because the Levene's F test was not statistically significant ( $p$

> .05). Only the ANOVA for 2007-2008 revealed a statistically significant effect: *Welch's*  $F_{07-08}(3, 1190) = 4.10, p = .007, \eta^2 = .005$ . The ANOVAs for the other two waves of data did not reveal any significant differences in the average usage of security cameras in schools across the minority makeup categories.

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2007-2008 data revealed that schools with greater than 50% minority students ( $M = 1.37, SD = 0.34$ ) had a significantly higher average usage of security cameras compared to schools with less than 5% minority students ( $M = 1.30, SD = 0.46$ ) and 5 to 20% minority students ( $M = 1.30, SD = 0.46$ ). There was no significant difference between the 20 to 50% and greater than 50% category. The effect size was weak for this relationship ( $\eta^2 = .005$ ).

The means for all three waves of data were plotted to visually depict trends of security camera usage at schools with differing minority makeup (see Figure 3). The line graph suggests consistent trends in the deployment of security cameras across the three waves of data collection, which suggests schools with the largest percentage of minorities deployed a higher average usage of security cameras. Although only the 2007-2008 wave produced statistically significant results, these findings somewhat support hypothesis one, which expected schools with greater than 50% minority makeup would use security cameras as security mechanisms significantly more than the other categories. Of course this support is limited to the trend line for 2007-2008. However, Figure 3 reveals a

**Table 2.3. One-Way ANOVAs for Security Camera Usage Across Minority Categories in Three Waves of Data**

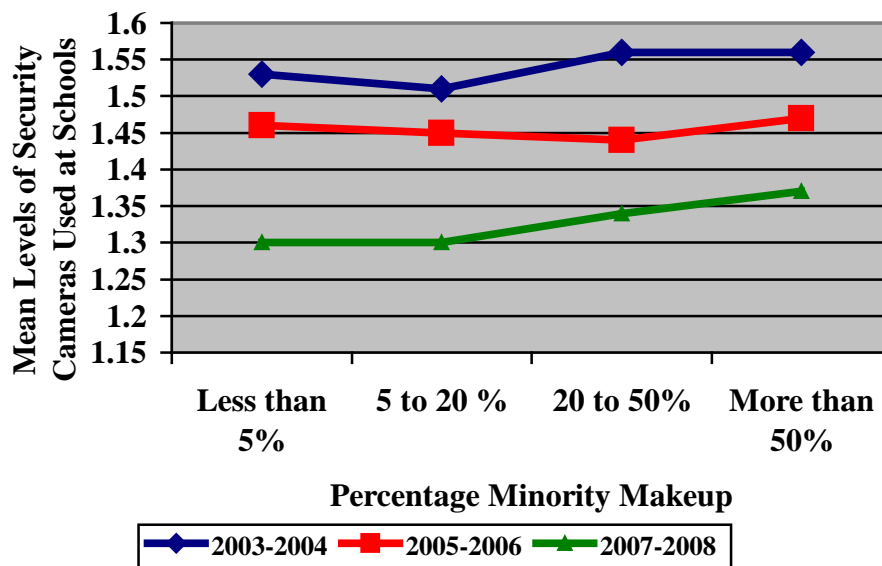
Variable	Percent Minority Makeup Categories								ANOVA	
	<u>≥ 5 %</u>		<u>5 - 20%</u>		<u>20 – 50%</u>		<u>≥ 50%</u>			
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>F</u>	$\eta^2$
Security Cameras <sub>03-04</sub>	1.53	0.50	1.51	0.50	1.56	0.50	1.56	0.50	1.68	0.001
Security Cameras <sub>05-06</sub>	1.46	0.50	1.45	0.50	1.44	0.50	1.47	0.50	0.34	0.0004
Security Cameras <sub>07-08</sub>	1.30	0.46	1.30	0.46	1.34	0.47	1.37	0.48	4.10**	0.005

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

declining trend in the overall use of security cameras in schools from 2003-2004 to 2005-2006 and 2005-2006 to 2007-2008, consecutively.

Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average deployment of sworn law enforcement officers or other security personnel as social control agents during school hours (see Table 2.4). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for all three ANOVAs. Therefore, the Welch's F test was used for all three waves of data. The ANOVAs revealed a statistically significant effect: *Welch's*  $F_{03-04} (3, 783) = 4.70, p = .003, \eta^2 = .01$ ; *Welch's*  $F_{05-06} (3, 653) = 2.62, p < .05, \eta^2 = .006$ ; *Welch's*  $F_{07-08} (3, 1154) = 18.06, p < .001, \eta^2 = .02$ .

**Figure 3. Plotted Means for Security Camera Usage Across Percentage Minority Makeup Categories**



Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2003-2004 data revealed that schools with greater than 50% minority students ( $M = 1.04$ ,  $SD = 0.19$ ) had a significantly lower average usage of security personnel compared to schools with less than 5% minority students ( $M = 1.11$ ,  $SD = 0.32$ ). The effect size was weak for this relationship ( $\eta^2 = .01$ ). Correspondingly, the results for the 2005-2006 data revealed that schools with greater than 50% minority students ( $M = 1.04$ ,  $SD = 0.20$ ) had a significantly lower average usage of security personnel compared to schools with less than 5% minority students ( $M = 1.09$ ,  $SD = 0.28$ ). The effect size was also weak for this relationship ( $\eta^2 = .006$ ). Conversely, the results for the 2007-2008 data revealed that schools with greater than 50% minority students ( $M = 0.52$ ,  $SD = 0.91$ ) had a significantly higher average usage of security personnel compared to schools with less than 5% minority students ( $M = 0.07$ ,

$SD = 1.01$ ), 5 to 20% minority students ( $M = 0.30$ ,  $SD = 1.00$ ), and 20 to 50% minority students ( $M = 0.38$ ,  $SD = 0.98$ ). This relationship was weak too ( $\eta^2 = .02$ ).

**Table 2.4.** One-Way ANOVAs for Security Used During School Hours Across Minority Categories in Three Waves of Data

Variable	Percent Minority Makeup Categories								ANOVA	
	<u><math>\geq 5\%</math></u>		<u>5 - 20%</u>		<u>20 - 50%</u>		<u><math>\geq 50\%</math></u>		<u>F</u>	$\eta^2$
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Security Used <sub>03-04</sub>	1.11	0.32	1.06	0.24	1.06	0.24	1.04	0.19	4.70**	0.01
Security Used <sub>05-06</sub>	1.09	0.28	1.06	0.24	1.03	0.18	1.04	0.20	2.62*	0.006
Security Used <sub>07-08</sub>	0.07	1.01	0.30	1.00	0.38	0.98	0.52	0.91	18.06***	0.02

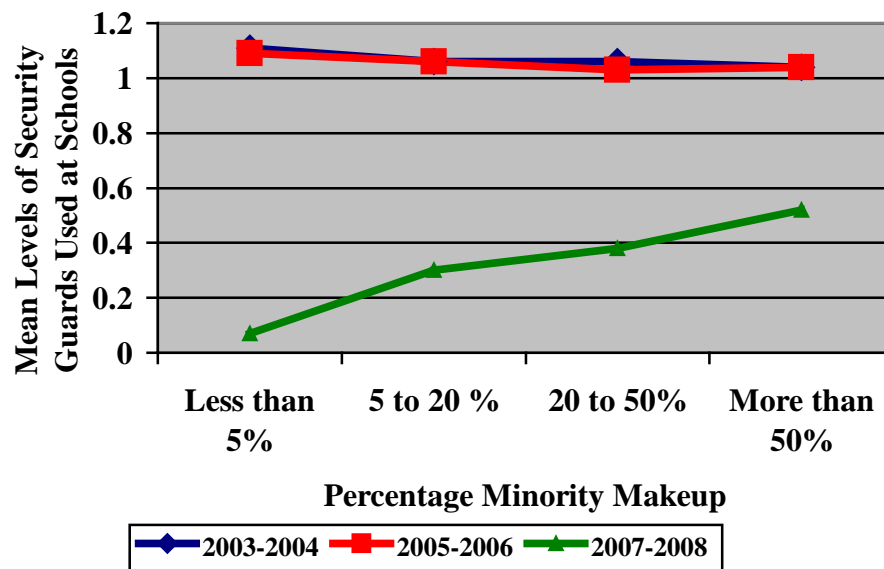
Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The means for all three waves of data were plotted to visually depict trends of security personnel usage at schools with differing minority makeup (see Figure 4). The line graph suggests consistent trends in the deployment of security cameras across the 2003-2004 and 2005-2006 waves of data collection, which suggests schools with the smallest percentage of minorities deployed a higher average usage of security personnel. On the contrary, the 2007-2008 data revealed the opposite trend whereby schools with the largest percentage of minorities deployed a higher average usage of security personnel. These findings are mixed. Only the 2007-2008 trend line supports hypothesis one, while the other two waves fail to support hypothesis one. In addition, Figure 4 reveals a



declining trend in the overall use of security personnel in schools from 2003-2004 and 2005-2006 compared to 2007-2008, which further fails to support hypothesis one.

**Figure 4. Plotted Means for Security Guard Usage During School Hours Across Percentage Minority Makeup Categories**



Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average total disciplinary actions (see Table 2.5). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for all three ANOVAs. Therefore, the Welch's F test was used. The ANOVAs revealed a statistically significant effect: *Welch's*  $F_{03-04}(3, 1484) = 32.77, p < .001, \eta^2 = .03$ ; *Welch's*  $F_{05-06}(3, 1404) = 26.24, p < .001, \eta^2 = .03$ ; *Welch's*  $F_{07-08}(3, 1367) = 23.32, p < .001, \eta^2 = .02$ .

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2003-2004 data revealed that schools with

greater than 50% minority students ( $M = 112.90$ ,  $SD = 213.00$ ) had a significantly higher average of total disciplinary actions compared to schools with less than 5% minority students ( $M = 41.20$ ,  $SD = 89.00$ ), 5 to 20% minority students ( $M = 61.8$ ,  $SD = 129.30$ ), and 20 to 50% minority students ( $M = 96.10$ ,  $SD = 184.6$ ). The effect size was weak for this relationship ( $\eta^2 = .03$ ). Similarly, the results for the 2005-2006 data revealed that schools with greater than 50% minority students ( $M = 108.60$ ,  $SD = 164.90$ ) had a significantly higher average of total disciplinary actions compared to schools with less than 5% minority students ( $M = 46.80$ ,  $SD = 100.60$ ), 5 to 20% minority students ( $M = 60.80$ ,  $SD = 111.80$ ), and 20 to 50% minority students ( $M = 85.00$ ,  $SD = 161.80$ ). The effect size was also weak for this relationship ( $\eta^2 = .03$ ). Likewise, the results for the 2007-2008 data revealed that schools with greater than 50% minority students ( $M = 157.80$ ,  $SD = 468.20$ ) had a significantly higher average of total disciplinary actions compared to schools with less than 5% minority students ( $M = 41.10$ ,  $SD = 74.30$ ), 5 to 20% minority students ( $M = 62.10$ ,  $SD = 122.60$ ), and 20 to 50% minority students ( $M = 113.10$ ,  $SD = 381.30$ ). This relationship was weak too ( $\eta^2 = .02$ ).

The means for all three waves of data were plotted to visually depict trends of total disciplinary actions at schools with differing minority makeup (see Figure 5). The line graph suggests a steady upward trend in total disciplinary actions taken against students across the three waves of data collection. These findings support hypothesis two, which expected schools with greater than 50% minority makeup, compared to the other categories, to have significantly higher averages of total disciplinary actions serving as exclusionary social control mechanisms for marginal groups of students.

Table 2.5. One-Way ANOVAs for Total Disciplinary Actions Across Minority Categories in Three Waves of Data

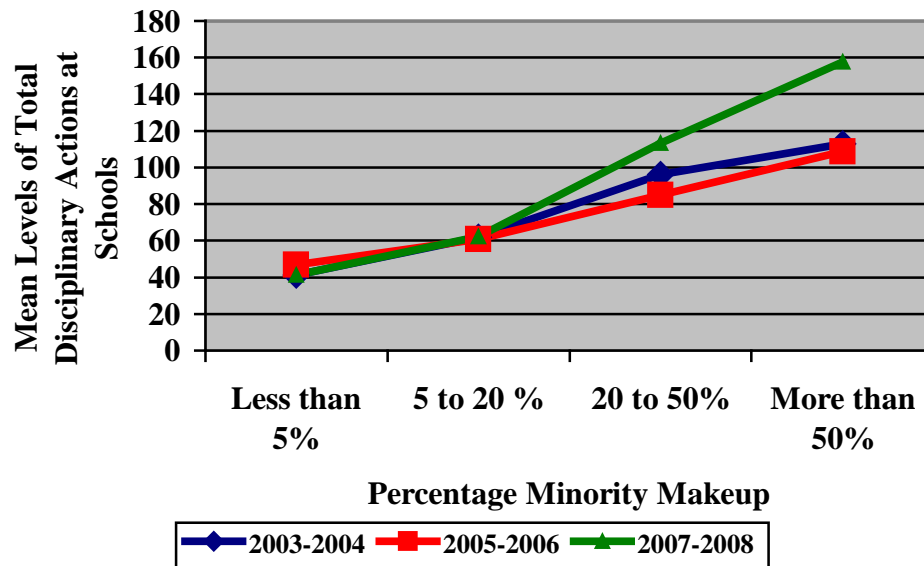
Variable	Percent Minority Makeup Categories								ANOVA	
	<u>&gt; 5 %</u>		<u>5 - 20%</u>		<u>20 – 50%</u>		<u>≥ 50%</u>		<u>F</u>	$\eta^2$
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Total Disciplinary Actions <sub>03-04</sub>	41.2	89.0	61.8	129.3	96.1	184.6	112.9	213.0	32.77***	0.03
Total Disciplinary Actions <sub>05-06</sub>	46.8	100.6	60.8	111.8	85.0	161.8	108.6	164.9	26.24***	0.03
Total Disciplinary Actions <sub>07-08</sub>	41.4	74.3	62.1	122.6	113.1	381.3	157.8	468.2	23.32***	0.02

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

Three one-way ANOVAs were conducted to examine whether the American schools with less than 5%, 5 to 20%, 20-50%, and greater than 50% of minorities differ in their average total removals without continued educational services (see Table 2.6). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for all three ANOVAs. Therefore, the Welch's F test was used. The ANOVAs revealed a statistically significant effect: *Welch's*  $F_{03-04} (3, 1451) = 4.31, p = .005, \eta^2 = .005$ ; *Welch's*  $F_{05-06} (3, 1359) = 11.89, p < .001, \eta^2 = .002$ ; *Welch's*  $F_{07-08} (3, 1373) = 7.36, p < .001, \eta^2 = .005$ .

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed

**Figure 5. Plotted Means for Total Disciplinary Actions Across Percentage Minority Makeup Categories**



significantly. The results for the 2003-2004 data revealed that schools with greater than 50% minority students ( $M = 1.03$ ,  $SD = 4.98$ ) had a significantly higher average of total removals without continued educational services compared to schools with less than 5% minority students ( $M = 0.42$ ,  $SD = 2.06$ ). The effect size was weak for this relationship ( $\eta^2 = .005$ ). In addition, the results for the 2005-2006 data revealed that schools with greater than 50% minority students ( $M = 1.64$ ,  $SD = 7.13$ ) had a significantly higher average of total removals without continued educational services compared to schools with less than 5% minority students ( $M = 0.37$ ,  $SD = 1.36$ ) and 5 to 20% minority students ( $M = 0.89$ ,  $SD = 3.53$ ). The effect size was also weak for this relationship ( $\eta^2 = .002$ ). Moreover, the results for the 2007-2008 data revealed that schools with greater than 50% minority students ( $M = 1.27$ ,  $SD = 6.05$ ) had a significantly higher average of total removals without continued educational services compared to schools with less than

5% minority students ( $M = 0.37$ ,  $SD = 1.47$ ) and 5 to 20% minority students ( $M = 0.62$ ,  $SD = 2.49$ ). This relationship was weak too ( $\eta^2 = .005$ ).

**Table 2.6.** One-Way ANOVAs for Total Removals Without Continued Educational Services Across Minority Categories in Three Waves of Data

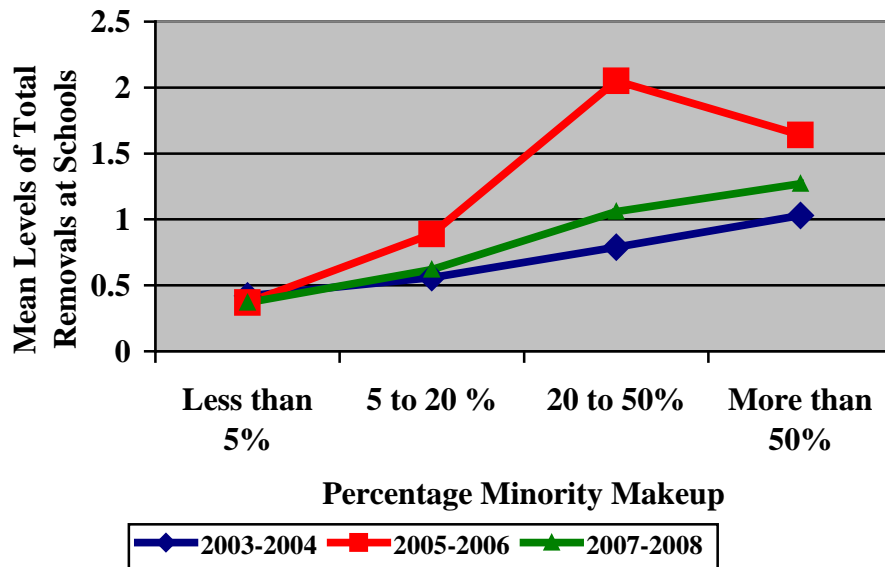
Variable	Percent Minority Makeup Categories								ANOVA	
	<u><math>\geq 5\%</math></u>		<u>5 - 20%</u>		<u>20 - 50%</u>		<u><math>\geq 50\%</math></u>		<u>F</u>	$\eta^2$
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Total Removals 03-04	0.42	2.06	0.56	1.87	0.79	3.20	1.03	4.98	4.31**	0.005
Total Removals 05-06	0.37	1.36	0.89	3.53	2.05	24.83	1.64	7.13	11.89***	0.002
Total Removals 07-08	0.37	1.47	0.62	2.49	1.06	6.56	1.27	6.05	7.36***	0.005

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The means for all three waves of data were plotted to visually depict trends of total removals without continued educational services at schools with differing minority makeup (see Figure 6). The line graph suggests a steady upward trend in total removals taken against students attending schools with the highest minority levels across the three waves of data collection. The 2005-2006 trend line was unexpectedly higher than hypothesized. However, these findings generally support hypothesis three, which expected schools with greater than 50% minority makeup, compared to the other categories, to have significantly higher averages of total removals without continued

educational services acting as exclusionary social control mechanisms for marginal groups of students.

**Figure 6. Plotted Means for Total Removals Without Continued Educational Services Across Percentage Minority Makeup Categories**



There were significant differences between categories for the percentage of minority students at schools in regard to the crime levels where those students lived for the 2003-2004 data,  $\chi^2(9) = 847.19$ ; Cramer's  $V = .32$ ;  $p < .001$ . The Cramer's  $V$  reveals that the relationship has a strong effect size given the degrees of freedom in the matrix.<sup>5</sup> As depicted in Table 2.7, in almost 9 out of 10 cases (88.3%), students who attended schools with greater than 50% minorities were more likely to live in areas with the highest levels of crime. Conversely, in roughly 3 out of 10 cases (30.2%), students who came from schools with less than 5% minorities were more likely to live in areas with the

<sup>5</sup> According to Cohen (1988; as cited in Gravetter & Wallnau, 2008), when a cross-tabulation uses more than three degrees of freedom and is larger than a 2 x 4 matrix, the researcher should interpret any Cramer's  $V$  coefficient at or above .29 as a large effect size.

lowest levels of crime. Indeed, only 3.9% of students at schools with less than 5% minorities lived in high-crime areas. These significant findings support hypothesis four, which holds that students living in areas with the highest crime levels will be more likely to attend schools with a higher percentage of minority students.

**Table 2.7. Chi-Square Results for Percentage of Minority Makeup by Levels of Crime Where Students Live (2003-2004)**

% Minority Makeup	Levels of Crime Where Students Live				Total (%)
	High (%)	Moderate (%)	Low (%)	Varying (%)	
< 5%	7 (3.9)	45 (8.0)	470 (30.2)	31 (7.5)	553 (20.4)
5-20%	2 (1.1)	72 (12.7)	548 (35.2)	82 (20.0)	704 (25.9)
20-50%	12 (6.7)	146 (25.8)	343 (22.0)	156 (38.0)	657 (24.2)
> 50%	159 (88.3)	303 (53.5)	196 (12.6%)	142 (34.5)	800 (29.5)
Total	180 (6.6)	566 (20.9)	1557 (57.4)	411 (15.1)	2714 (100)

Note.  $\chi^2(9) = 847.19$ ; Cramer's  $V = .32$ ;  $p < .001$ . Bonferroni corrections revealed significant differences for all percent minority categories by levels of crime.

Likewise, the categories for the percentage of minority students at schools were significantly associated with the crime levels where students lived for the 2005-2006 data,  $\chi^2(9) = 875.66$ ; Cramer's  $V = .33$ ;  $p < .001$ . The Cramer's  $V$  also suggests a strong effect size for this relationship. As depicted in Table 2.8, in 9 out of 10 cases (90.9%), students who attended schools with greater than 50% minorities were more likely to live in areas with the highest levels of crime. On the other hand, around 3 out of 10 cases (26.8%), students who came from schools with less than 5% minorities were more likely to live in areas with the lowest levels of crime. In fact, only 0.5% of students at schools

with less than 5% minorities lived in high-crime areas. These significant findings also support hypothesis four.

Table 2.8. Chi-Square Results for Percentage of Minority Makeup by Levels of Crime Where Students Live (2005-2006)

% Minority Makeup	Levels of Crime Where Students Live				Total (%)
	High (%)	Moderate (%)	Low (%)	Varying (%)	
< 5%	1 (0.5)	28 (5.5)	417 (26.8)	13 (3.3)	459 (17.3)
5-20%	3 (1.6)	74 (14.5)	565 (36.3)	87 (22.0)	729 (27.5)
20-50%	13 (7.0)	122 (23.9)	371 (23.8)	155 (39.2)	661 (25.0)
> 50%	169 (90.9)	287 (35.9)	203 (13.0)	140 (35.4)	799 (30.2)
Total	186 (7.0)	511 (19.3)	1556 (58.8)	395 (14.9)	2648 (100)

Note.  $\chi^2 (9) = 875.66$ ; Cramer's  $V = .33$ ;  $p < .001$ . Bonferroni corrections revealed significant differences for all percent minority categories by levels of crime.

Significant differences were also found between categories for the percentage of minority students at schools in regard to the crime levels where those students lived for the 2007-2008 data,  $\chi^2 (9) = 855.24$ ; Cramer's  $V = .33$ ;  $p < .001$ . The effect size for this relationship was also large for the 2007-2008 data. As revealed by Table 2.9, students who attended schools with greater than 50% minorities were more likely (88.8%) to live in areas with the highest levels of crime. Alternatively, the majority of students who came from schools with less than 5% minorities were more likely (20.7%) to live in areas with the lowest levels of crime compared to high-crime areas (1.7%). These results support hypothesis four.



**Table 2.9.** Chi-Square Results for Percentage of Minority Makeup by Levels of Crime

Where Students Live (2007-2008)

% Minority Makeup	Levels of Crime Where Students Live				Total (%)
	High (%)	Moderate (%)	Low (%)	Varying (%)	
< 5%	3 (1.7)	32 (5.8)	297 (20.7)	21 (5.3)	353 (13.8)
5-20%	3 (1.7)	56 (10.1)	580 (40.4)	68 (17.3)	707 (27.6)
20-50%	14 (7.9)	122 (22.1)	371 (25.9)	149 (37.8)	656 (25.6)
> 50%	158 (88.8)	343 (62.0)	187 (13.0)	156 (39.6)	844 (33.0)
Total	178 (21.6)	553 (21.6)	1435 (56.1)	394 (15.4)	2560 (100)

Note.  $\chi^2(9) = 855.24$ ; Cramer's  $V = .33$ ;  $p < .001$ . Bonferroni corrections revealed significant differences for all percent minority categories by levels of crime.

Together, the three chi-square analyses produced results consistent with what was projected by hypothesis four. Over time, schools with the highest percentage of minorities were unfailingly more likely to have a majority of students coming from high-crime areas (i.e., 88.3% for 2003-2004, 90.9% for 2005-2006, and 88.8% for 2007-2008). This trend suggests a slightly increasing or steady percentage of students from high-crime areas attending schools with 50% or more minorities across the three waves of data. Similarly, over time, schools with the lowest percentage of minorities were consistently less likely to have a majority of students coming from high-crime areas (i.e., 3.9% for 2003-2004, 0.5% for 2005-2006, and 1.7% for 2007-2008). This trend reveals a decrease in the percentage of students from high-crime areas attending schools with less than 5% minorities across the three waves of data.

Three one-way ANOVAs were conducted to examine whether students who come from areas with high, moderate, low, or varying levels of crime differ in their average total removals without continued educational services (see Table 2.10). The Levene's F test revealed that the homogeneity of variance assumption was not met ( $p < .001$ ) for all three ANOVAs. Therefore, the Welch's F test was used. The ANOVAs revealed a statistically significant effect: *Welch's*  $F_{03-04} (3, 554) = 7.55, p < .001, \eta^2 = .02$ ; *Welch's*  $F_{05-06} (3, 589) = 4.38, p = .005, \eta^2 = .004$ ; *Welch's*  $F_{07-08} (3, 523) = 5.68, p < .001, \eta^2 = .01$ .

Post hoc comparisons, using the Games-Howell post hoc procedure, were conducted to determine which pairs of the four percentage minority category means differed significantly. The results for the 2003-2004 data revealed that students coming from high-crime areas ( $M = 2.13, SD = 8.94$ ) had a significantly higher average of total removals without continued educational services compared to students coming from moderate-crime areas ( $M = 0.88, SD = 3.35$ ) and low-crime areas ( $M = 0.46, SD = 1.85$ ). The effect size was weak for this relationship ( $\eta^2 = .02$ ). Next, the results for the 2005-2006 data revealed that students coming from high-crime areas ( $M = 2.76, SD = 9.56$ ) had a significantly higher average of total removals without continued educational services compared to students coming from moderate-crime areas ( $M = 2.52, SD = 27.57$ ) and low-crime areas ( $M = 0.75, SD = 4.22$ ). The effect size was also weak for this relationship ( $\eta^2 = .004$ ). Similarly, the results for the 2007-2008 data revealed that students coming from high-crime areas ( $M = 2.29, SD = 10.88$ ) had a significantly higher average of total removals without continued educational services compared to students

coming from moderate-crime areas ( $M = 1.10$ ,  $SD = 4.42$ ) and low-crime areas ( $M = 0.53$ ,  $SD = 2.24$ ). This relationship was weak as well ( $\eta^2 = .01$ ).

**Table 2.10.** One-Way ANOVAs for Total Removals Without Continued Educational Services Across Crime Level Categories in Three Waves of Data

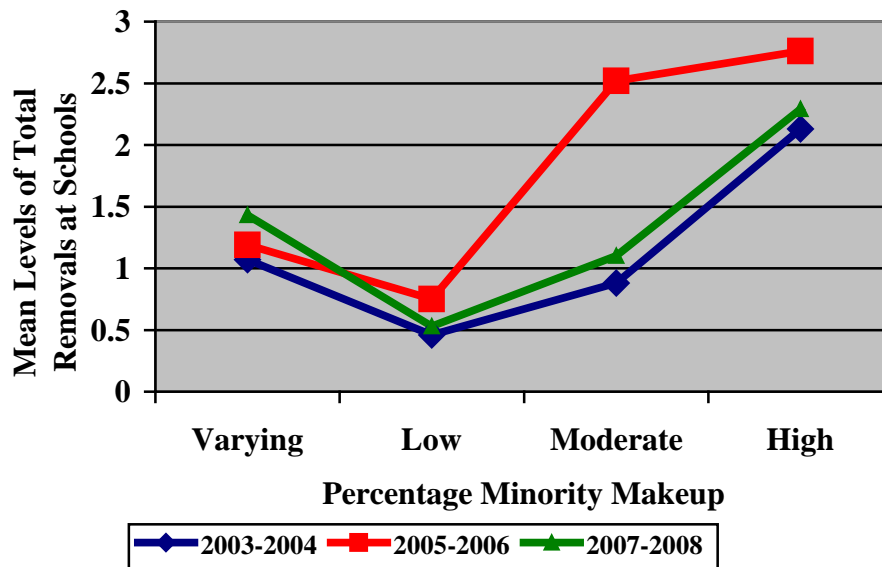
Variable	Crime Levels Where Students Live								ANOVA	
	<u>High</u>		<u>Moderate</u>		<u>Low</u>		<u>Varying</u>			
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>F</u>	$\eta^2$
Total Removals 03-04	2.13	8.94	0.88	3.35	0.46	1.85	1.07	3.86	7.55***	0.02
Total Removals 05-06	2.76	9.56	2.52	27.67	0.75	4.22	1.19	4.16	4.38**	0.004
Total Removals 07-08	2.29	10.88	1.10	4.42	0.53	2.24	1.43	7.94	5.68**	0.01

Note.  $\eta^2$  = effect size; \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The means for all three waves of data were plotted to visually depict trends of total removals without continued educational services for students coming from areas with differing crime levels (see Figure 7). The line graph suggests a slight upward trend in total removals taken against students coming from areas with higher crime areas across the three waves of data collection. The 2005-2006 trend line was unexpectedly higher than hypothesized. However, these findings generally support hypothesis five, which expected students coming from higher-crime areas, compared to the other crime level categories, to have significantly higher averages of total removals without continued

educational services, which serves as exclusionary social control mechanisms for marginal groups of students.

**Figure 7. Plotted Means for Total Removals Without Continued Educational Services Across Crime Level Categories**



To sum, the quantitative results yielded support for hypotheses two, three, four, and five; however, the effect sizes were weak. As such, exclusionary social control mechanisms, including all possible disciplinary actions and removals (i.e., expulsions) without continued educational services provided, are more likely to be used in schools with a higher percentage of minority students and schools with students coming from high-crime areas. These relationships tend to be at steadily consistent or increasing levels over time. However, the 2005-2006 trend line for total removals without continued educational services is uncharacteristically high compared to the other two waves of data. Regardless, the 2005-2005 trend line is in the expected direction for Figures 6 and 10.

The findings for the ANOVA analyses testing hypothesis one were mixed, but collectively, they did not yield overwhelming support for the first hypothesis, which projected higher security measures for schools with larger minority populations. The ANOVA analyses for the average usage of metal detectors actually found that schools with a greater percentage of minority students were less likely to employ this security technology compared to schools with least amount of minority students. These finding do not support hypothesis one. ANOVA analyses for the average utilization of access controls, via locked or monitored doorways, revealed only significant findings for the 2005-2006 data. For this wave of data, access controls were more likely to be used in schools with the lowest percentage of minority students compared to the schools with the highest levels of minority students, which fails to support hypothesis one.

For the ANOVA analyses assessing the use of security cameras, only the 2007-2008 data yielded significant results, which actually supported hypothesis one. For that wave of data, security cameras were more likely to be used in schools with the highest percentage of minority students compared to schools with the lowest percentage of minority students. However, the ANOVA analyses evaluating the deployment of security personnel during school hours yielded conflicting findings. For the 2003-2004 and 2005-2006 waves of data, the results revealed that security personnel was more likely to be used at schools with the lowest percentage of minority students compared to the schools with the highest percentage of minority students. In contrast, the 2007-2008 data found the opposite (albeit at an overall lower rate compared to the previous two waves), where security personnel were used more in schools with the highest percentage of minority students compared to schools with the lowest percentage of minority students. The mixed

findings for security personnel only offer partial support for hypothesis one. The rationales for these conflicting findings and trends related to the results for hypothesis one will be further explained in the chapter 7 discussion.

## CHAPTER SEVEN

### DISCUSSION

In summary, this study is the first of its kind to simultaneously examine, both qualitatively and quantitatively, the explanatory rigor of political economic theories as they relate to the expansion of school-based social control efforts during the neoliberal era of U.S. capitalism. In the school setting, widespread implementation of zero-tolerance policies have empowered school officials with greater discretion in which to punish and remove those students who are perceived to have no market value such as those who are identified as flawed consumers, and who are classified as “other” because of their perceived associations with crime, redundancy, poverty, or expendability (Giroux, 2003; Hall & Karanxha, 2012). Additionally, this study is the first to theoretically incorporate neoliberal economic theory with the relevant components of existing theoretical meta-narratives in order to propose a comprehensive theoretical framework in which to empirically test how zero-tolerance policies have emerged and endured as favored disciplinary practice in American elementary and secondary schools. The new theoretical approach attempts to explain how school criminalization efforts are legitimized by the state, primarily through the authority of the courts.

Specifically, a qualitative textual and discourse analysis of the pertinent case law, in which legal challenges to zero-tolerance policies were litigated for allegedly violating

either the First, Fourth, Eighth, and/or Fourteenth Amendment rights of students was conducted. The applied case law method subjected 75 district court, appellate court, State Supreme Court, and U.S. Supreme Court decisions to two levels of textual analysis and a final overall thematic investigation. The first level of textual analysis carefully investigated the plain meaning of the court decisions by filtering them through the eight contextual/diagnostic research questions to distinguish the jurisprudential intent conveyed by the courts' rulings. The second level of textual analysis complimented the first by identifying how the legal language, embodied in the jurisprudential intent, represented manifest content that could be categorized into five emergent themes relevant to the neoliberal theoretical framework. In other words, the second layer of inquiry unpacked the political economic philosophy that was encoded within the law. Lastly, the thematic investigation examined intratextually and intertextually the patterns in which themes appeared within and across court cases. The qualitative findings reveal a majority of support for the research questions and the second level analysis provided a theoretical link to the framework described in chapter 3.

This study also builds upon the limited quantitative research that currently exists by investigating whether neoliberal social controls, via zero-tolerance policies, are used primarily against marginalized populations and if these practices have increased over time. Prior research has primarily been cross-sectional in design. The current study used nationally representative data collected from the School Survey on Crime and Safety (SSOCS), which provides relevant school disciplinary variables over several years. Five research hypotheses were tested to determine if enhanced school security measures, total disciplinary actions, and removals from school without continued educational services



were disproportionately applied to schools with the highest percentage of minority students and students living in high-crime areas compared to schools with the smallest percentage of minority students and students who live in low-crime areas. The quantitative findings revealed support for four of the five research hypotheses. Specifically, support was found for hypotheses 2, 3, 4, and 5. However, the ANOVAs conducted to test hypothesis one largely produced results, which suggested that enhanced security measures were more likely to be placed in schools with the lowest percentage of minority students compared to schools with the highest percentage of minority students.

The purpose of this chapter is to further discuss, in detail, the qualitative and quantitative findings. Based on these findings, recommendations for changes in school policies and practices will be made, while being mindful of evidence-based best practices that may serve as viable alternatives to the current zero-tolerance policies. Finally, the limitations of this study will be explained and avenues for future research and theory development will be delineated.

### Qualitative Findings

The case law method employed in this study entailed several steps. The first step in this design was to extract jurisprudential intent from the court decisions by probing the plain meaning arguments made apparent by the courts. This step was accomplished by undertaking a careful reading of the court cases, while filtering the jurists' attitudes, rationales, and conclusions through the eight research questions to determine which text segments or passages conveyed the underlying judicial intent in either support of or against these queries. In other words, the researcher searched for language, which would constitute respective responses to these guiding questions to unearth the plain meaning of

the judicial intent underpinning these court decisions. In order to provide some perspective on how the researcher arrived at his conclusions regarding what passages from the court decisions provided evidence supporting or rejecting the research questions, examples and justifications will now be given in hopes of elucidating this process for other researchers.

*Evidence Related to Plain Meaning of Court Cases.* For research question one, the researcher was searching for language that either suggested that the courts found control of potential threats of danger and/or disruption outweighed any intrusion into the individual constitutional rights of students, or vice versa. If passages found control of threats and disruption was valued more than perceived infringement on the rights of students, then the relevant passages represented support for question one. Consider the following passage from *Covington County v. G.W.* (2000):

School officials need not obtain a warrant before searching a student who is under their authority...the warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in schools...While it is important to note that students have a reasonable expectation of privacy in their school lockers, we must also emphasize that high school students fall into a different and generally less suspect class... the realities of the school setting require that teachers and other school personnel have the power to make an immediate, limited search for contraband, weapons, or other prohibited objects or substances...society places a high value on education, which

requires an orderly atmosphere which is free from danger and disruption. (pp. 193-194)

This passage from the *Covington* decision clearly expressed the juridical argument that the students are not fully protected by the Fourth Amendment in school settings as adults would be in other contexts, because the court opined that the need for school officials to maintain safe schools, free of disruption, outweighed a strict adherence to the Fourth Amendment for public school students. Precisely, the *Covington* court ruled that the warrant requirement for searches and seizures was ill-suited for public schools. Many other court decisions echo this sentiment and even argue further by stating that the need for teachers and administrators to maintain order does not require a strict adherence to the requirement of probable cause (see *In re L.A.*, 2001; *Hill v. Sharber*, 2008; *Morgan v. Snider High Sch.*, 2007). Thus, text segments or passages asserting similar arguments or language was deemed evidence in support of research question one. There were 44 court cases, which yielded such support.

However, there were instances where court decisions provided evidence that failed to support research question one. In such cases, the courts decided that there was not a legitimate state interest that outweighed the rights of the student. For example, consider this passage from *D.G. v. Independent Sch. Dist. No. 11* (2000):

It is impossible to have a “no tolerance” policy against “threats” if the threats involve speech. A student cannot be penalized for what they are thinking. If those thoughts are then expressed in speech, the ability of the school to censor or punish the speech will be determined by whether it was (1) a “true” or “genuine” threat, or (2) disruptive of the normal operation of the school. Neither of those

circumstances exist in the case before the court. In sum, the court finds that any commotion caused by the poem did not rise to the level of a substantial disruption required to justify a suspension of the plaintiff. (pp. 15-16)

As one can see, the court in *D.G.* did not decide in the fashion that the majority of others did when weighing the school's interests in maintaining an orderly environment, free of disruption, against the constitutional rights of students. There were 21 court decisions that provided evidence, which failed to support research question one. However, twice as many provided evidence supporting the hypothesis that neoliberal court mechanisms are employed to reinforce zero-tolerance social control efforts in schools.

The second research question sought to identify evidence among the court decisions that would determine whether courts took into account the intentions of the student transgressors or if their intentions were disregarded in light of school safety concerns. If phrases or passages, within court decisions, found that the intentions of the students, who were punished by zero-tolerance policies, were overshadowed and dismissed in favor of strict disciplinary action to maintain school safety, then such passages were deemed evidence in support of research question two. Consider the following passage from *J.M. v. Webster County Bd. of Educ.* (2000):

The coach found the particular expletive chosen by J.M.'s father to be quite objectionable, and feared that the argument might escalate into a physical altercation, so he asked J.M.'s father to go outside and calm down...After his father left the room, J.M. took out the loaded gun and fifty-six additional rounds of ammunition, and surrendered them to the coach, asking the coach to "take care of them," and adding that he thought his father "was going to kill him"...There is

no question that J.M. had a firearm on his person while on school grounds.

However, J.M. argues that he had not intended to be upon school grounds and was transported to the school by his father and against his will. Thus he argues that the lack of a mental element or mens rea of “intent” makes it impossible for him to be guilty of possession...the fact finder determined that J.M.’s actions in having a gun tucked into his pants on school property constituted a violation of the statute...even if the initial taking of the gun were defensible (which we question) J.M. had several opportunities to discard the gun or the bullets. While J.M.’s actions might be excusable to some, they were not to the principal, the board, nor the superintendent. (pp. 500-507)

In the case of J.M., a student, threatened by his father, attempted to prevent his father from accessing his gun safe by hiding the key. However, he forgot to lock up one handgun and a box of ammunition. In a rush, he concealed the weapon and bullets on his person, because his father demanded that they go to the school to get permission to remove J.M. from school so he could get J.M. a job at the lumber yard as punishment for his misbehavior. The only teacher still at school was the football coach. After getting the father to calm down and leave the room, the coach was presented with the gun from J.M. who intended only to keep the weapon away from his father for his own safety. Regardless of J.M.’s well-intended actions, the court ruled in favor of the school’s zero-tolerance disciplinary action, which suspended him for a year. Therefore, regardless of the circumstances and J.M.’s intentions, he still brought a dangerous weapon onto to school grounds, and school safety concerns outweighed the context of his good

intentions. A total of sixteen cases found support for research question two that were similar to the court decision described above.

Of course there were court rulings, which provided evidence where the court acknowledged the intentions of the student, and regardless of the serious nature of the offense, the court ruled in favor of the student because he or she did not knowingly or intentionally violate the school's zero-tolerance policy. Consider the following judgment of the court in *Seal v. Morgan* (2000):

We believe, however, that the board's zero tolerance policy would surely be irrational if it subjects to punishment students who did not knowingly or consciously possess a weapon. (p. 578)

In *Seal*, the court rationalized that it was improper to subject a student to an automatic expulsion if he did not knowingly, or intentionally, possess a dangerous weapon on school grounds. There were only 7 cases which found similar evidence failing to support research question two. Still, more than twice as many cases provided evidence supporting research question two suggesting that the courts employ neoliberal mechanisms to reinforce zero-tolerance social controls in schools.

For research question three, the researcher searched for text segments or passages where the court provided school administrators and/or teachers with immunity from any charges of liability, regardless of whether the court found that the student's individual rights were violated. Such support is found in the following passage from the *Morgan v. Snider High Sch.* (2007) decision:

Simmons and Bailey are not liable for any purported constitutional violations arising from the vehicle searches...even if the court somehow found a

constitutional violation, the case law probably reassured the defendants that they were on solid legal footing, and thus they are entitled to qualified immunity. (pp. 14-28)

School officials were given qualified immunity even when the court ruled that there was a violation of a student's constitutional rights, as in the *Stafford v. Redding* (2006) decision, where school officials were given qualified immunity even though their strip search of the female student for ibuprofen pills was found a violation of her Fourth Amendment rights. Twenty-four court decisions yielded support for research question three.

Conversely, there were court decisions which provided passages that failed to support research question three. For example, consider the passage from *Evans v. Bd. of Educ. Southwestern City Sch. Dist.* (2010):

He failed to address the situation or take any remedial measures, and that he then retaliated against L.E. by suspending her when she was subject to forced sexual conduct. Therefore, Smathers is not entitled to qualified immunity. (pp. 32-33)

The *Evans* court decision did not provide the principal with immunity from lawsuit when it found a violation of the student's rights. However, textual evidence rejecting research question three was quite rare, with only five other cases yielding similar reasoning. Four times as many court decisions found support for research question three.

When passages were identified that revealed the court's preference for security and safety from disruptions favored the discretion of school officials over the individual rights of students, the researcher listed these passages as support for research question four. Consider the court's reasoning in *Hammock ex rel. Hammock v. Keys* (2000):

Indeed, courts staunchly resist the suggestion that school discipline hearings should emulate criminal trials...the court notes that the system of public education...relies necessarily upon the discretion of school administrators and school board members...Vesting a school official with the discretion to determine which situations warrant expulsion is not only necessary in order to maintain discipline and good order, it is desirable. (pp. 1229-1233)

Several other cases presented similar evidence suggesting that the courts were “consistently reluctant to intrude upon the disciplinary discretion of school districts” (*Edwards v. O’Fallon Twp. High Sch. Dist. No 203*, 1999, p. 1078). Overall, twenty-five court decisions found support for research question four.

As with the previously mentioned research questions, there were examples of passages in court decisions where the court’s ruling failed to support research question four. For example, the *Colvin ex rel. Colvin v. Lowndes County* (2000) decision revealed the following passage:

While the court is fully aware that school disciplinary matters are best resolved in the local community and within the institutional framework of the school system, the court is of the opinion that the board employed an erroneous standard in considering Jonathan’s case. (p. 513)

Thus, although the *Colvin* court acknowledged the typical reasoning of the courts in desiring not to second-guess school disciplinary matters or intrude upon the discretion of school administrators, it also acknowledged when improper administrative standards were applied in a student’s disciplinary case. Nevertheless, only two court decisions



provided evidence failing to support research question four, which pales in comparison to the twenty-five cases supporting this research question.

When searching for evidence supporting research question five, the researcher looked for passages where the court provided preference favoring the neoliberal disciplinary practices of schools, while dismissing them as not cruel and unusual punishments, even if the infractions did not present an imminent threat to the school environment. For instance, consider the following passage from *New Jersey v. T.L.O.* (1985):

The Eighth Amendment's prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of school children by public school officials. (p.334)

Interestingly, the court in *T.L.O.* reasoned that school discipline cannot be considered cruel and unusual punishment simply because it is not the result of a criminal conviction. Such logic dismisses the potential harm zero-tolerance practices can have on students who are suspended or expelled for even nonthreatening behaviors. Only four court decisions yielded support for research question five.

There was only one court case where evidence relevant to research question five actually failed to provide support. Consider the following passage from *James P. v. Lemahieu* (2000):

First, there is a legitimate possibility of irreparable harm that could result from not rescinding disciplinary action prior to the end of the litigation. For example, Robert P.'s college applications will be tarnished since the actions taken by the school will be on his record, his grades will suffer if he is not able to make up his

work and he will not be able to compete in athletic events. It is also very possible that his inability to participate...will negatively affect his ability to obtain an athletic scholarship. (p. 1122)

The *Lemahieu* court's logic definitely acknowledged the potentially harmful effects that an automatic suspension can have for a student, especially when the violation is a minor one. Still, the *Lemahieu* decision is outnumbered by the other four decisions providing support for research question five.

In regard to research question six, any text segment or passages revealing that the jurisprudential intent of the court is to dismiss allegations of constitutional violations as not binding on the court, or without merit, because it is not the court's role to make such judgments was considered support. For example, such support can be found in the following passage from *Defabio v. E. Hampton Union Free Sch. Dist.* (2009):

Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts. If the school's decision satisfies the constitutional standard in *Tinker*, then it is irrelevant that a litigant or court believes the situation could have been handled better. It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. (p. 481)

The *Defabio* decision plainly stated that the courts have no role, nor should they, in second-guessing the judgment of school officials in disciplinary matters regardless of whether the student believes he or she has been treated unfairly. In addition, the court's logic in *Defabio* suggested that federal courts have no place in overturning the disciplinary decisions of school officials even if the court disagrees with the reasoning

behind the school's harsh disciplinary actions. A total of fifty court decisions provided evidence supporting research question six.

There were a few court decisions where evidence was found that failed to support research question six. Once such instance was found in the following passage from the ruling in *Hinds County Sch. Dist. Bd. of Trs. v. R.B.* (2007):

The court finds that the school board's decision was arbitrary and capricious and not supported by substantial evidence. The school board relied solely on the report from the appeals committee and the faxed photocopy of an item purporting to be the "knife" found on R.B. The findings of the appeals committee are themselves deficient, as the appeals committee chose to rely on the written reports characterizing the device as a pocket knife without examining the device themselves...Had the school board conducted even a cursory examination of the actual device, it would have realized that the appeals committee's recommendation...did not constitute substantial evidence upon which to discipline R.B. for possession of a weapon. (pp. 501-502)

Although the *Hinds* court did question the discretion wielded by the school board and decided in favor of the student, this case was only one among six, which failed to support research question six. Compared to the fifty cases providing support, these few cases that reject research question six are largely overshadowed by the numerous instances where support was found.

The researcher also searched for language in the individual court cases that revealed if the courts favored suspensions or expulsions even when viable alternative punishments were available. Such passages affirming this preference for harsh discipline

in light of less stigmatizing alternatives would provide support for research question seven. Only four court cases provided evidence in support of research question seven. Consider the evidence provided by the following passage in the *Covington County v. G.W.* (2000) decision:

While it is true that there are many punishments that would seem less harsh or more appropriate in this case, we must recognize that the law commits this entire matter to the discretion of the school board. (p. 192)

The *Cathe A. v. Doddridge County Bd. of Educ.* (1997) decision provided a similar argument with this passage:

The twelve-month expulsion period...may seem to be a severe penalty. But the legislature is entitled to believe that only such a penalty would serve as an effective deterrent to further the important goal of a strict weapons-free environment in our school. (p.529)

Thus, it is clear that the courts rarely, if at all, acknowledged alternative punishments to zero-tolerance practices of exclusion. When the courts did acknowledge potential punishments that were less harsh, and perhaps more restorative or rehabilitative, the courts dismissed them and sided with the disciplinary actions taken by the school officials. There were no instances where evidence could be distinguished as rejecting research question seven. Such a finding reveals that alternative sanctions are seldom considered in court rulings regarding the potential infringement zero-tolerance policies have on the rights of students.

Finally, the researcher also searched for text segments or passages that mentioned the need for school officials to enforce strict disciplinary actions in order to preemptively

prevent possible future disruptions. Evidence suggesting the courts support harsh disciplinary actions in order to preemptively stop substantial school disruptions were listed as support for research question eight. Consider the following passage from *Demers v. Leominster Sch. Dep't.* (2003):

However, the potential for disruption or disorder to the students of the Northwest School was greater than merely the school's negative reaction to an unpopular political viewpoint...On these facts, a reasonable interpretation of the law would allow a school official to prevent potential disorder or disruption to school safety, particularly in the wake of increased school violence across the country. We review, however, with deference, schools' decisions in connection with the safety of their students even when freedom of expression is involved. At the time when school officials made their determination to emergency expel him, they had facts which might reasonably have led them to forecast a substantial disruption of or material interference with school activities. (p. 203)

As evidenced in the *Demers* opinion, the courts tend to favor disciplinary actions that seek to prevent potential disorder or disruption of the school environment even if such actions infringe on students' constitutional rights, such as the First Amendment. Eleven court decisions provided similar evidence supporting research question eight.

Only two court decisions provided evidence failing to support research question eight (see *Tinker v. Des Moines Sch. Dist.*, 1969; *J.S. v. Blue Mt. Sch. Dist.*, 2011).

Consider the court's reasoning in the *J.S. v. Blue Mt. Sch. Dist.* ruling:

The facts in this case do not support the conclusion that a forecast of substantial disruption was reasonable...The facts simply do not support the conclusion that

the school district could have reasonably forecasted a substantial disruption of or material interference with the school as a result of J.S.'s profile. Under *Tinker*, therefore, the school district violated J.S.'s First Amendment free speech rights when it suspended her for creating the profile. (pp. 928-931)

Although the court used the *Tinker* standard in determining that the school erred in suspending J.S. in the *Blue Mt. Sch. Dist.* decision, this evidence is outweighed when compared to the support found in favor of research question eight.

*Evidence Related to Jurisprudential Intent and Neoliberal Theory.* In the second step of the case law method, the researcher identified the use of repetitive legal language conveyed through the jurisprudential intent, which denotes principles characteristic of the mechanisms described in the neoliberal theoretical framework advanced in chapter 3. Five themes emerged from the manifest content that was discerned from the jurisprudential intent collected in the first step of the method. Sixty of the seventy-five court decisions yielded manifest content that could be categorized into one or more of these themes. The researcher will now explain how the concepts expressed through the emergent themes in the case law translate back into the theoretical mechanisms presented in the neoliberal theoretical framework.

*Interest Balancing.* Interest balancing was the first emergent theme identified within the jurisprudential intent of the court decisions. *Interest balancing* refers to striking a balance between the school authorities' interests in maintaining an orderly school environment, free from disruption, and ensuring students' individual constitutional rights are not violated in zero tolerance court decisions. The jurisprudential intent revealed in the first step of the case law method found that the majority of cases

supporting research question one showed that the courts found the school authorities' interests outweighed the interests of individual students claiming constitutional rights violations. For instance, consider the following manifest content present in the passage from the *J.S. v. Bethlehem Area Sch. Dist.* (2002) decision:

In various situations, the high courts of both the United States and Pennsylvania have performed the delicate balance and concluded that the constitutional interests of the student, in certain circumstances, must yield to the school officials' need to maintain order and to discipline when necessary to assure a safe school environment that is conducive to learning...[the] school board...is in the best position to weigh the strengths and vulnerabilities of the town's 785 students. (pp. 651 & 672)

The court, in the *J.S. v. Bethlehem* decision, reinforces the concept of moral panic by suggesting there are dangerous threats to school safety, as well as threats to the maintenance of order and discipline within public schools. In response to these potential threats, which the theoretical framework identifies as being driven by sensationalized media coverage and manipulated by politicians, the courts suggest that the constitutional rights of students are outweighed by the schools' interests in utilizing broader social controls to eliminate perceived threats to school safety (Burns & Crawford, 1999; Hirschfield, 2008; Giroux, 2003; Simon, 2007, p. 230).

Additionally, the court ruled in *Pendleton v. Fassett* (2009) that "the general governmental interest in safe and disciplined schools in order to promote and ensure a productive learning environment is more weighty here," (p. 21) which reflects the theoretical concept in the framework that argues the tightening of school disciplinary

practices is necessary to provide the school environment essential to socialize students for today's neoliberal economy. The *R.M. v. Washakie County Sch. Dist.* (2004) decision reiterates this logic by stating that "A student's right to an education may be constitutionally denied when outweighed by the school's interest in protecting other students, teachers, and school property, and in preventing the disruption of the educational system" (p. 19).

As explained in the theoretical framework, the media-driven moral panic, which resulted from the school shootings in the 1980s and 1990s, provided policy makers with the opportunity to gain the public support necessary to implement zero-tolerance policies that allows school officials to remove and exclude students who threaten the reconfigured educational system designed to produce "compliant bodies" demanded by the deindustrialized neoliberal state (Burns & Crawford, 1999; Hirschfield, 2008; Kupchik & Monahan, 2006). Therefore, zero-tolerance policies serve as the legislative answer to controlling school violence and crime caused by a perceived growing number of "dangerous" youth in American schools, and the courts' *interest-balancing* logic legitimizes this process (Boccanfuso & Kuhfeld, 2011; Hirschfield, 2008; Hirschfield & Celinska, 2011; Stinchcomb et al., 2006). Thus, *interest balancing* is a neoliberal mechanism in which the courts utilize the fear of school violence to rationalize the weakening of constitutional rights for public school students while promoting the state's interest in providing a safe, undisturbed educational environment in which students can effectively be socialized into their appropriate class-defined roles (Hirschfield, 2008). As a result, the political utility of fear mongering from policy makers is coupled with the *interest balancing* dynamics of judicial reasoning to convince, parents, school officials,



and society more generally that schools should and could be safer through the continued enforcement of zero-tolerance policies (Giroux, 2003; Hirschfield, 2008; Lyons & Drew, 2006).

*Qualified Immunity* The second theme to emerge from the jurisprudential intent, which was communicated through the relevant court decisions, is the concept of *qualified immunity*. *Qualified immunity* means that even if the court finds that enforcement of zero-tolerance policies have violated a student's constitutional rights, school administrators and teachers, who are primarily involved in the enforcement of such school disciplinary actions, are immunized from any charges of liability. As a result a court may refuse to rule on a case or grant summary judgment in favor of the school officials, regardless of whether the court finds them to be in violation of the U.S. Constitution or not.

*Qualified immunity* reflects the role that the due process meta-narrative plays in the theoretical framework. Recall that the students' rights movement of the 1960s and 1970s secured due process for students by curbing arbitrary and capricious disciplinary practices by school officials and regulating many of the existing disciplinary practices (Arum, 2003). Two of the landmark Supreme Court decisions during this period are included in the data set for the current qualitative analysis (see *Goss v. Lopez*, 1975; *Tinker v. Des Moines Sch. Dist.*, 1969); however, subsequent Supreme Court decisions weakened the due process rights granted to students in the 1960s and 1970s (e.g., *Bethel Sch. Dist. v. Fraser*, 1986; *Hazelwood Sch. Dist. v. Kuhlmeier*, 1988; *New Jersey v. T.L.O.*, 1985; *Vernonia Sch. Dist. v. Acton*, 1995). Scholars argued that the added due process undermined the traditional moral authority exerted by school administrators because these authorities faced potential litigation for applying harsh disciplinary action

without considering the constitutional rights of students (Arum, 2003; Toby, 1998). Zero-tolerance policies transfer disciplinary authority away from traditional school authorities and into the control of inflexible disciplinary codes, law enforcement, and the justice system (Beger, 2002; Hirschfield & Celinska, 2011; Lyons & Drew, 2006).

Furthermore, the transfer of disciplinary authority to strict zero-tolerance codes and law enforcement entities allows school administrators to circumvent litigious claims from students who believe their constitutional privacy and due process rights have been violated by zero tolerance practices (Arum, 2003; Hirschfield, 2008). Consequently, the manner in which neoliberal social controls are exerted via school-based zero tolerance policies and an increased law enforcement presence at schools has reinforced the formation of a crime control model where students' rights are weakened, due process is minimized, and the movements of students are controlled (Lyons & Drew, 2006; Nolan & Anyon, 2004). The courts aid this process by granting school officials *qualified immunity* from liability when the application of zero-tolerance disciplinary punishments infringe upon the constitutional rights of students. Consider the following manifest content arising from the *Cuff v. Valley Cent. Sch. Dist.* (2012) decision:

School administrators must be permitted to react quickly and decisively to address a threat of physical violence against their students, without worrying that they will have to face years of litigation second-guessing their judgment as to whether the threat posed a real risk of substantial disturbance. (p. 470)

The legal reasoning depicted in this passage from the *Cuff* decision unmistakably conveys the principles explained in the theoretical framework. Zero-tolerance policies permit school officials to shift disciplinary authority to the written policy itself, and the courts

grant them immunity by adhering to the strict enforcement of the policy. Thus, school officials can apply harsh disciplinary actions, which may infringe upon the constitutional rights of the students being accused of wrongdoing, and the courts will use *qualified immunity* as the neoliberal court mechanism to reinforce zero-tolerance social control efforts in schools.

As mentioned above, even when a court finds a violation of students' constitutional rights, it is possible for school administrators to enjoy *qualified immunity* and be granted summary judgment without ever being held liable for their actions. For instance, contemplate the message expressed by the court in the *Demers v. Leominster Sch. Dep't* (2003) decision:

Even if the law is clearly established, an official is entitled to qualified immunity if at the time of the challenged actions, such official's belief that his or her actions were lawful is objectively legally reasonable...A reasonable, though mistaken conclusion about the lawfulness of one's conduct does not subject a governmental official to personal liability...there is limited case law on this issue of school violence in this Circuit, which lends further credence to conclude that this area of the law is unsettled. Therefore, the individual defendants are entitled to qualified immunity. (pp. 207-208)

A similar ruling was ordered in the *Beard v. Whitmore Lake Sch. Dist.* (2005) decision where over twenty students were subjected to nude or partially nude strip searches because money had been reported missing by a student. Although the court found the searches to have violated the students' Fourth Amendment rights because of the absence

of individualized suspicion, the school officials and the law enforcement officer involved still were granted *qualified immunity*. The court's ruling is as follows:

However, the teachers and officer were entitled to qualified immunity because the law at the time the searches were conducted did not clearly establish that the searches were unreasonable under the particular circumstances present in the case...Because the searches in this case did not violate clearly established law, the defendants are entitled to qualified immunity. (pp. 598 & 608)

The rulings in *Beard* and *Demers* suggest that the existing case law regarding strip searches of a large number of students, without individualized suspicion, has largely found that such searches are either constitutional or that the written statutes have not narrowed the procedure in which students can be searched enough so the courts may construe that the school officials should have known better. Hence, *qualified immunity* serves as another neoliberal court mechanism to reinforce the enforcement of zero-tolerance policies in schools.

*Disempowered Citizenship.* The third emergent theme is *disempowered citizenship*. This theme reiterates three things mentioned in the theoretical framework, which school criminalization teaches students. Those three things are: (1) that students have no meaningful influence over their schools, (2) students have little recourse should the government have violated their rights, and (3) students have few rights to begin with (Hirschfield & Celinska, 2011; Kupchik & Monahan, 2006; Lyons & Drew, 2006). The neoliberal agenda, as applied to school criminalization efforts, endorses a “narrow public sphere” and a “docile citizenry” (Giroux, 2003; Hirschfield, 2011, p. 7). Therefore, enforcement of neoliberal social control efforts, via zero-tolerance policies, has

transformed the role of public schools to replicate a model of *disempowered citizenship* that is similar to the neoliberal labor dynamics, where students' rights are weakened and their movements are controlled and scrutinized (Giroux, 2003; Lyons & Drew, 2006).

The manifest content that was discovered in the second step of the case law method revealed twenty-three instances in which *disempowered citizenship* emerged. For example, consider the following passage from the *Northwestern Sch. Corp. v. Linke* (2002) decision:

The United States Supreme Court has taken the view that while public schools are state actors subject to constitutional oversight, the nature of a school's role is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults...We find that students are entitled to less privacy at school than adults would enjoy in comparable situations. In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally. (pp. 979-980)

Such judicial reasoning clearly establishes how the courts acknowledge and agree with neoliberal principles suggesting that students are less worthy of the constitutional protections afforded to adults in similar circumstances, while outside of public schools.

Indeed, the *Doran v. Contoocook Valley Sch. Dist.* (2009) ruling also concluded that

“Unemancipated minors lack some of the most fundamental rights to self-determination—including the right to come and go at will” (p. 193). The legal language in the *Doran* decision also reflects the principles described in the neoliberal theoretical framework by plainly stating that the students' rights are not only weakened but their movements are also in need of control.

Furthermore, several of the court decisions in this investigation revealed judicial reasoning, which argues that “Given the school’s need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code” (*Bethel Sch. Dist. v. Fraser*, 1986, p. 686; *Hammock ex rel. Hammock v. Keys*, 2000, pp. 1230-1232; *J.S. v. Blue Mt. Sch. Dist.*, 2011, pp. 935-936; *Morgan v. Snider High Sch.*, 2007, p. 21; *Posthumus v. Bd. of Educ.*, 2005, p. 903). In addition, many of the rulings also opined that “the constitutional rights of students are not automatically coextensive with the rights of adults in other settings” (*Anderson v. Milbank Sch. Dist.* 25-4, 2000, p. 686; *Bethel Sch. Dist. v. Fraser*, 1986, p. 682; *Defabio v. E. Hampton Union Free Sch. Dist.*, 2009, p. 474; *Demers v. Leominster Sch. Dep’t*, 2003, p. 200; *Hazelwood Sch. Dist. v. Kuhlmeier*, 1988, pp. 266-267; *J.S. v. Blue Mt. Sch. Dist.*, 2011, p. 926; *Posthumus v. Bd. of Educ.*, 2005, p. 900). Another common attitude conveyed by the court decisions is that “the typical requirements of warrant and probable cause are relaxed when a school official conducts a search of a student” (*Bundick v. Bay City Indep. Sch. Dist.*, 2001, p. 738; *Commonwealth v. Lawrence L.*, 2003, pp. 880-882; *Commonwealth v. Smith*, 2008, pp. 178-179; *Doran v. Contoocook Valley Sch. Dist.*, 2009, p. 191; *Hill v. Sharber*, 2008, pp. 676-677; *In re K.K.*, 2012, p. 653; *In re L.A.*, 2001, p. 885; *Lausin v. Bishko*, 2010, p. 629; *New Jersey v. T.L.O.*, 1985, p. 325; *Pendleton v. Fassett*, 2009, pp. 15-16; *Sims v. Bracken County Sch. Dist.*, 2010, pp. 18-19; *State v. Best*, 2008, pp. 109-110; *Vernonia Sch. Dist. v. Acton*, 1995, p. 653). As one can see, the manifest content described above expresses the judicial attitude favoring the *disempowered citizenship* of public school

students, which yields significant theoretical import to the neoliberal theoretical framework.

*Empowered Discretion of School Authorities.* The fourth theme to develop from the manifest content discerned in the jurisprudential intent is *empowered discretion of school authorities*. As mentioned in the theoretical framework, school criminalization efforts, in accordance with the neoliberal agenda, alters the role of teachers so that they may manage and classify students much like employees would be treated in a neoliberal economy (Hirschfield & Celinska, 2011; Kupchik & Monahan, 2006). Recall that the classification of students, via anticipatory labeling, allows teachers and school administrators to project perceived future social and structural realities onto their disaffected and disruptive students (Hirschfield, 2008). Sociologists argue that structural forces, like those relevant to neoliberal restructuring, “condition” and “constrain” individual perceptions and interactions with others (Bourdieu & Passeron, 1977; Hirschfield, 2008, p. 91).

Thus, the neoliberal agenda, especially in light of the infusion of economic accountability standards into public education, may influence school officials’ perceptions of students’ future prospects by linking social structure to the students’ educational and occupational aspirations and classroom effort (Hirschfield, 2008). As such, in order to meet competitive performance standards with other schools, teachers and school administrators are charged with the task of classification and socialization, which forces them to consciously and unconsciously prepare students for their rightful place in the social hierarchy by sorting future dropouts from those students who have the best chance of functioning in the neoliberal workplace environment (Bowditch, 1993;

Ferguson, 2000; Hirschfield, 2008). Moreover, the pressure to achieve neoliberal standards of accountability for underperforming schools further motivates educators to control and remove disaffected and disruptive students, who obstruct the socialization processes that promote the values and norms of a dominant economic class (Kupchik & Monahan, 2006; Shapiro, 1984). In order to achieve these neoliberal goals, teachers and school administrators must be empowered with wide discretionary authority to classify and remove those students who pose a threat to the pedagogical imperatives of the neoliberal agenda that seeks to reproduce the structure of capitalist society through the socialization of students in the values of the market place as preferred by the ruling class elites (Giroux, 2003; Kupchik & Monahan, 2006; Shapiro, 1984).

The courts play a role in acquiescing to and further enhancing the discretionary power of school officials by refusing to question or rule on improper or inappropriate disciplinary actions taken by school authorities, which may infringe upon the constitutional rights of students. There were numerous instances in which the jurisprudential intent revealed manifest content supporting the concept of *empowered discretion of school authorities*. For example, consider the following passage from the *Cuff v. Valley Cent. Sch. Dist.* (2012) decision:

Although plaintiffs seek to second-guess with hindsight the judgment of school administrators, that is not the role of the courts...It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. (pp. 469-470)

By using such judicial logic, the courts legitimize neoliberal social control efforts in schools by emboldening school officials with more discretion in which to classify and



socialize students in accordance with the neoliberal pedagogical agenda. Numerous other court decisions argue that it is not the courts' role to "second-guess" the judgment or "set aside the decisions of school administrators" (e.g., *Brett N. v. Cmty Unit Sch. Dist. NO. 303*, 2009, pp. 8-11; *Doe by & Through Doe v. Bd. of Educ.*, 1995, p. 10; *Fuller v. Decatur Pub. Sch. Bd. of Educ. Sch. Dist. 61*, 2000, pp. 821-822; *Hammock ex rel. Hammock v. Keys*, 2000, p. 1224; *Morgan v. Snider High Sch.*, 2007, pp. 23-24; *Piekosz-Murphy v. Bd. of Educ. of Cmty. High Sch. Dist. No. 230*, 2012, p. 961; *Stafford Unified Sch. Dist. v. Redding*, 2009, p. 356; *Tun v. Fort Wayne Cmty. Sch.*, 2004, p. 938; *Vann v. Stewart*, 2006, p. 890).

The ruling in the *E.M. v. Briggs* (1996) decision further articulates the concept of *empowered discretion of school authorities* as depicted in the theoretical framework.

Consider the following passage:

It should be here noted that the management, supervision and determinations of policy are the prerogative and responsibility of the school officials; and that the courts should be reluctant to enter therein...It is the policy of the law not to favor limitations on the powers of boards of education, but rather to give them a free hand to function within the sphere of their responsibilities...Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion (*E.M. v. Briggs*, 1996, p. 757).

The language used in the *Briggs* decision reinforces the theoretical concept of *empowered discretion* by clearly arguing that school officials deserve wider rather than more limited discretionary powers when it comes to enforcing school disciplinary actions. The courts' reluctance to rule on alleged abuses of discretion by school officials serves to further empower school authorities to enforce zero-tolerance policies in order to classify and socialize students in accordance with the neoliberal agenda. Thus, by granting school authorities with *empowered discretion*, the courts engage in the reinforcement of neoliberal social controls in schools.

*Preemptive Exclusion.* The fifth emergent theme arising from the manifest content extracted by way of the jurisprudential intent of the relevant court decisions is *preemptive exclusion*. As stated in the theoretical framework, zero-tolerance policies attempt to deter the presence of weapons, drugs, and troublesome or disruptive behaviors that might inhibit the teachers' roles in socializing the "compliant bodies" needed for the flexible labor force of the new neoliberal state (Kupchik & Monahan, 2006). Students who exhibit these forms of disruptive behaviors are stigmatized and labeled as "at-risk of failing," "unsalvageable," and "bound for jail," which mirrors the otherizing rhetoric of the original child-saving movement that sought to contain and control problematic youth because their behavior was not in accordance with the mainstream American values and norms (Ferguson, 2000, p. 9; NAACP, 2005; Platt, 2009). Moreover, the tightening of school disciplinary practices attempts to mold students into compliant future employees who conform to the service-oriented needs of the neoliberal economy (Kupchik & Monahan, 2006; Hirschfield, 2008). Those students who disturb this socializing process are perceived to hinder the future prospects of other "promising" students who are

expected to be economically viable laborers and consumers in the neoliberal economy (Hirschfield, 2008; Kupchik & Monahan, 2006). As mentioned in the theoretical framework, the labeling and categorizing of particular groups of students as “unworthy,” “unruly,” and “unsalvageable” (Ferguson, 2000, p. 9; Wacquant, 2001, p. 108) is reminiscent of the child-saving movement of the 19<sup>th</sup> and 20<sup>th</sup> centuries that was harmful to poor, urban youth identified as delinquents and treated as dangerous (Platt, 2009).

By using zero tolerance exclusionary practices, school administrators and educators are able to focus on the best performing students and remove those students who threaten overall school performance, as well as undermine the controlled and disciplined school environment required for the didactic socialization efforts promoted under the neoliberal state to produce students who accommodate the needs of the restructured economy (Bowditch, 1993; Fuentes, 2003; Giroux, 2003; Hirschfield, 2008; Kupchik & Monahan, 2006; Toby, 1998). Therefore, school criminalization policies and practices enforced in the neoliberal state attempt to instill a “passive acquiescence to state and corporate power” among the student populations and their parents (Lyons & Drew, 2006, p. 195). This goal is pursued by isolating and funneling those students, who disrupt this socialization process, out of school and onto a path leading to confinement and perpetual marginalization before they can even enter the labor force (Hall & Karanxha, 2012). Thus, the new American educational apparatus assists in the criminalization of poor students, which aids in the establishment and maintenance of a criminal class that legitimates systems of inequality in modern capitalist societies, while flexible students who adapt or succumb easily to the labor instability, invasive monitoring, and

exploitative working conditions of the neoliberal state are rewarded (Kupchik & Monahan, 2006).

The theoretical framework also identifies the formation of a crime control model in public schools to reinforce a governing through crime initiative, which approaches problems faced by schools as criminal problems rather than social or counseling problems (Kupchik & Monahan, 2006; Simon, 2007). Under this governing through crime logic, disruptive students are recast as criminals and the criminal element threatening the schools must be identified and expelled in order to improve the prospects and performance of promising students, such as those who are flexible and compliant to the needs of the neoliberal economy (Kupchik & Monahan, 2006; Simon, 2007). The courts assist public schools in the process of isolating and funneling out those disruptive students who threaten the neoliberal agenda in education by ruling in favor of preemptive, exclusionary actions taken by school official regardless of alleged constitutional rights violations.

For example, contemplate the following passage from the *Demers* (2003) decision:

On these facts, a reasonable interpretation of the law would allow a school official to prevent potential disorder or disruption to school safety, particularly in the wake of increased school violence across the country...At the time when school officials made their determination to emergency expel him, they had facts which might reasonably have led them to forecast a substantial disruption of or material interference with school activities...Michael's suspension and subsequent expulsion were rationally related to the school's interest in maintaining a safe

school environment, particularly in light of the apprehensive climate that existed at the time due to highly publicized incidents of school violence around the country. (pp. 203-206)

The judicial reasoning employed in this court case reflects the theoretical principles put forth in the framework, which suggests that school officials are charged with the role of excluding students whose behavior may potentially cause disorder or disruption to the schools activities or overall operations.

In a similar opinion, the *Defabio* (2009) court embodied similar principles by ruling in the following manner:

In this context, it is well settled that school officials do not have to wait for actual disruption from the speech before they act; instead, school officials have an affirmative duty to not only ameliorate the harmful effects of disruptions, but to prevent them from happening in the first place...Not only are school officials free to act before the actual disruption occurs, they are not required to predict disruption with absolute certainty to satisfy the *Tinker* standard...Moreover, forecasting disruption is unmistakably difficult to do. Thus, rather than requiring certainty of disruption, *Tinker* allows school officials to act and prevent the speech where they might reasonably portend disruption from the student expression at issue...Because of the special circumstances of the school environment, the level of disturbance required to justify official intervention is lower inside a public school than it is outside the school. The First Amendment does not deprive school administrators of the ability to rely upon their own considerable experience, expertise, and judgment in recognizing and diffusing the

potential for disruption and violence in public schools. Indeed, they are duty-bound to do just that. That duty is particularly acute when threats of physical violence have already been made and actual violence could well erupt if the hostile situation is not promptly and emphatically controlled. (pp. 480-481)

The language utilized by the court in the *Defabio* decision clearly supports the concept of preemptive exclusion. Moreover, the passage from *Defabio* urges that school officials are “duty-bound” to preemptively prevent disruption in public schools. Indeed, other court rulings also found that “school officials have a duty to prevent the occurrence of disturbances” (*J.S. v. Bethlehem Area Sch. Dist.*, 2002, p. 662).

In addition to disruptive behaviors, the courts also take the opinion that school officials “need not tolerate speech that is inconsistent with its pedagogical mission, even though the government could not suppress that speech outside of the schoolhouse” (*Anderson v. Milbank Sch. Dist.* 25-4, 2000, p. 686; *Hazelwood v. Kuhlmeier*, 1988, p. 261; *Porter v. Ascension Parish Sch. Bd.*, 2004, p. 615; *S.G. v. Sayreville Bd. of Educ.*, 2004, p. 422). Thus, the courts’ also express their approval of the suppression of student expression that impedes the pedagogical concerns of schools attempting to instill youth with the neoliberal values of the ruling class, which was mentioned in the theoretical framework. The evidence discussed above reveals that *preemptive exclusion* is a neoliberal social control mechanism in which the courts legitimize suits brought against schools for allegedly violating students’ constitutional rights.

### *Thematic Investigation*

The thematic investigation, which was conducted as the third step of the case law method found that these five themes emerged 112 times across 80% ( $n = 60$ ) of the court

decisions in the sample. The two most prominently employed themes reflective of the principles found in the theoretical framework were *qualified immunity* and *empowered discretion of school authorities*. These two themes were evidenced roughly 50% of the time. Thus, the results of this study suggest that *qualified immunity* and *empowered discretion* are the neoliberal court mechanisms utilized by courts the most in order to reinforce zero-tolerance social control efforts in public schools. As such, future research regarding judicial decision making in zero tolerance court cases should attempt to measure and assess aspects of these two theoretical concepts. Two other themes were evidenced approximately 35-40% of the time, and those are *interest balancing* and *disempowered citizenship*, respectfully. Likewise, with these theoretical concepts being referenced 4 out of 10 times, future research should seek to measure and evaluate these concepts further. Lastly, although only evidenced just below 20% of the time, the theoretical concept of *preemptive exclusion* should also be included in subsequent empirical investigations attempting to measure and identify the presence of neoliberal social controls in social institutions, such as education. The themes identified in this qualitative inquiry are transferable as neoliberal theoretical constructs that can be used in future studies investigating the application of neoliberal social control mechanisms in similar or other contexts.

The overall qualitative findings reflect the neoliberal principle, which embraces the rule of law and articulates that any conflict or opposition to neoliberal policies must be “mediated through the courts” (Harvey, 2005, p. 66). Thus, by finding that the courts predominantly rule in favor of upholding neoliberal social control mechanisms (e.g., zero-tolerance policies), this study has identified a way in which neoliberal contradictions

are legitimized in a representative democracy. As such, the legitimacy crisis, embodied within the U.S. neoliberal democratic system (Habermas, 1975; Harvey, 2005; Shapiro, 1984; Wolfe, 1977), is given validity through the precedent established through the rule of law determined by the court system.

### Quantitative Findings

There were five research hypotheses tested by conducting a series of one-way ANOVAs and chi-square analyses. Of these five hypotheses, the quantitative results found support for hypotheses two, three, four, and five. Specifically, for hypothesis two, the researcher found that schools with 50% or more minority students had a significantly higher average of total number of disciplinary actions compared to schools with less than 5% minority students for all three waves (i.e., 2003-2004, 2005-2006, and 2007-2008) of data. Although the ANOVA results for hypothesis one yielded weak effect sizes, the plotted trend lines, over time, suggested a consistently steady or increasing level of total disciplinary actions taken against students attending school with the highest minority levels.

Similarly, the ANOVA results for hypothesis three revealed that schools with 50% or more minority students had a significantly higher average of total removals without continued educational services compared to schools with less than 5% of minority students across all three waves of data. The effect sizes for the hypothesis three ANOVAs were also weak. When the trend lines were plotted, the pattern suggested a steady upward trend in total removals applied to students attending schools with the highest levels of minority students across the three waves. These findings reveal that the total disciplinary and removals without continued educational services are



disproportionately applied to schools with larger populations of minority students, which is consistent with the research findings mentioned in the empirical literature (Lawrence, 2007; Reyes, 2006; Skiba & Knesting, 2001; Skiba et al., 2002; Sughrue, 2003). However, the 2005-2006 trend line was unexpectedly higher than hypothesized.

There may be a couple of reasons for why there was a spike in the total removals without continued educational services for the 2005-2006 wave of data. First of all, the No Child Left Behind Act did not really go into effect until 2003 (Kim et al, 2010). Therefore, the effects on disciplinary actions resulting from the increased accountability standards placed on underperforming schools may have resulted in more expulsions without continued educational services for the years closely following the 2003 implementation in order to meet those heightened performance standards by removing students who cause disruptions and bring down standardized test scores. Another plausible explanation is that there were two mass school shootings in 2005 (i.e., Red Lake High School in Minnesota and Campbell County High School in Tennessee) and another two mass school shootings in 2006 (i.e., Pine Middle School in Nevada and Weston High School in Wisconsin), which caught media attention (Kyle & Thompson, 2008). Thus, the elevated levels of fear and panic created by media coverage of these tragic events may have had an effect on the increased number of removals the 2005-2006 school years. Indeed, an enhanced vigilant response from school administrators may have resulted in a greater use of harsh disciplinary action in attempts to prevent or deter more incidents of school violence. With these two phenomena working in tandem, it is feasible to expect a spike in the number of removals that those two years.

The chi-square results for hypothesis four revealed that students who attended schools with greater than 50% minorities were more likely to live in areas with the highest levels of crime, while the majority of students who came from schools with less than 5% minorities were more likely to live in areas with the lowest levels of crime. These chi-square results were consistent for all three waves of data and the effect sizes were quite strong. When looking across the chi-square results for the three waves of data, it appears that the schools with the highest percentage of minorities were consistently more likely to have a majority of students residing in high-crime areas, such that the trend revealed a slightly increasing or steady percentage of students from high-crime areas attending schools with a 50% or greater minority student makeup. Likewise, over time, the schools with the lowest percentage of minority students were unvaryingly less likely to have a majority of students coming from high-crime areas. As such, the trend line suggested that there was a decrease in the percentage of students from high-crime areas attending schools with a less than 5% minority student makeup. These findings are similar to other research findings which acknowledge that minorities are more likely to reside in communities characterized by high levels of crime (Giroux, 2003; Hall & Karanxha, 2012; Hirschfield, 2008; Wacquant, 2001, 2009a, 2009b).

The ANOVA results for hypothesis five found there to be a significantly higher average of total removals without continued educational services for students coming from high-crime areas compared to students coming from areas with moderate or low levels of crime for all three waves of data. Although this relationship also yielded weak effect sizes, the trend line, when plotted over time, revealed an expected slight upward trend in total removals taken against students coming from high-crime areas. Similar to

the findings for hypothesis three, the 2005-2006 trend line was higher than expected. As mentioned before, this increase in removals may have been a result of moral panic caused by the four mass school shootings in those years or increased accountability efforts by school administrators to remove disaffected and disruptive students in hopes of improving overall school performance for the newly implemented No Child Left Behind Act.

These findings, combined with the findings from hypothesis three, suggest that students coming from high-crime neighborhoods and attending schools consisting of 50% or more minorities are more likely to receive exclusionary removals without continued educational services compared to students who come from low-crime neighborhoods and attend schools with less than 5% minority students. All of these findings are consistent with the prior empirical research (Christle et al., 2004; Fenning & Rose, 2007; Giroux, 2003; Lawrence, 2007; Reyes, 2006; Skiba & Knesting, 2001; Skiba et al., 2002; Sughrue, 2003).

Overall, the ANOVA analyses conducted for hypothesis one did not yield support. The results suggested that the average usage of metal detectors and access control, by way of locked or monitored doorways, was higher for schools with the least amount of minority students. In regards to the average use of security cameras, only the 2007-2008 data found that schools with the highest percentage of minority students were significantly more likely to use security cameras. The other two waves of data produce null findings. For the first two waves of data, significant results suggested that security personnel was more likely to be used in schools with the lowest percentage of minority students compared to schools with the highest percentage of minority students. The 2007-

2008 data revealed opposite findings, which depicted schools with the highest percentage of minority students being more likely to use security personnel compared to schools with the lowest percentage of minority students. Thus, these findings, collectively, are inconclusive and should be treated as a rejection of the first hypothesis.

The fact that the results found metal detectors, access controls, and security personnel to be more likely implemented in schools with the smallest percentages of minority students is at first puzzling. Especially, since prior research has found that these enhanced security measures were more likely to appear in urban schools with higher percentages of minorities (Devine, 1996; DeVoe, Peter, Noonan, Snyder, & Baum, 2005; Skiba, 2000). However, research has also found that the use of drug sniffing dogs is more common in predominantly white, suburban and rural schools (DeVoe et al., 2005). Furthermore, research has acknowledged the growing number of middle class, suburban and rural schools instituting metal detectors, SROs, and security cameras (Kupchik & Monahan, 2006). The results of this study did reveal that security cameras and security personnel, in 2007 to 2008, were more likely to be placed in schools with the highest percentages of minority students, which does match the findings in previous research (Devine, 1996; DeVoe et al., 2005; Skiba, 2000; Noguera, 2003); however, the lack of a similar finding in the other two waves leads the researcher to reject the notion that this is a distinct trend. Therefore, one must ask why is it that security measures were more likely to be found in schools with the lowest percentages of minorities, when the opposite was expected. There are a few plausible explanations for this outcome.

First of all, currently there is a preoccupation with policing and punishment in contemporary society, especially among suburban homeowners who are eager to install

alarm systems, security cameras, build gated communities, and invest in private security patrols (Garland, 2001; Hirschfield, 2008; Kupchik & Monahan, 2006). Of course more affluent families and communities can better afford these surveillance and security technologies. It is only logical to deduce that parents living in more affluent areas possess the social, political, and economic capital to pressure local and state legislatures to either provide funding, or seek federal funding, that is necessary to build and install security programs and technologies in suburban schools, which are predominantly in low-crime areas. For example, the Safe Schools Act makes it clear that schools must build up community support for school security programs (Simon, 2007). Indeed, even the selection criteria governing funding unmistakably favors repeated financial awards to schools that are able to garner the highest levels of participation from parents and community residents for funded projects and activities focused on school crime and safety (Simon, 2007).

Thus, the implementation of security technologies is not only influenced by racial issues but also class-based dynamics. It can be assumed that parents living in impoverished, crime-stricken communities are less likely to possess the social, political, and economic capital to wield influence over funding for additional surveillance and security technologies in local schools. Those parents living in poor neighborhoods, with such capital, will more likely pursue funding for other resources (e.g., computers, books, lab equipment, etc.) considering that inner-city schools are perhaps the most underfunded for such resources (Hirschfield, 2008). Moreover, surveillance systems and security technologies, like computers, function as “symbols of progress” and prestige because they represent technological solutions to social problems (Kupchik & Monahan, 2006, p.

626). Thus, suburban, white parents, who believe they are sending their children to potentially dangerous schools, gain a sense of pride and control by pushing for surveillance technologies to make their children's schools safer and more prestigious (Kupchik & Monahan, 2006; Simon, 2007).

Another factor affecting the presence of security and surveillance technologies in white, suburban communities is that there is money to be made by private security companies in these locales (Casella, 2003b). The widespread adoption of security technologies in suburban schools may have to do with how these products are marketed to more affluent audiences (Casella, 2003b; Hirschfield, 2008). The media-driven, moral panic surrounding school violence primarily depicts school violence as an urban, minority problem that threatens to spill over into white suburbia (Beale, 2006; Burns & Crawford, 1999; Chiricos et al., 1997; Dorfman & Schiraldi, 1999; Soler, 2001). Thus, the racial and social threat hypotheses may have relevance in how companies, selling security technologies, are marketing their products and services to suburban communities (Casella, 2003b). The racial and social threat hypotheses suggest that white racism and white racialized fear of criminal victimization increases when it is perceived that African American and/or Hispanic populations are expanding and spreading into predominantly white communities (Welch, 2005, 2011). Thus, suburban parents may anticipate this threat, which is often fueled by media coverage (Beale, 2006), and exercise the neoliberal economic principles of self-discipline, consumer freedom, and individual productivity by choosing to endorse the funding of softer, surveillance approaches to school control that promise "greater order, efficiency and predictability in an increasingly complex, scary, and fragmented social world" (Casella, 2003b; Hirschfield, 2008, p. 84; Staples, 2000). In

accordance with the neoliberal educational agenda, Kupchik and Monahan (2006) argued that exposure of both poor and middle class students to penal rituals through increased surveillance and control helps to mold workers that “embody extreme flexible compliance to the vicissitudes of the marketplace” and “submit willingly to scrutiny and manipulation” (p. 627). Thus, the increasing introduction of surveillance and security technologies into all schools may be necessary to fulfill the demands of the neoliberal state.

These quantitative findings reveal support for the political economic dynamics detailed in the theoretical framework. Recall that neoliberal policies and practices are determined to return all responsibility to the individual, while severely reducing access to social welfare provisions, such as public education (Harvey, 2005; Wacquant, 2009a, 2009b). Indeed, it is argued that the neoliberal restructuring of capitalism in the American economy has exerted restrictions on the social programming that would otherwise seek to redistribute resources more equitably (Wacquant, 2009a, 2009b). Of course, the deregulation of the market, the privatization of state enterprises, and the reduction of the welfare state allows for marginal populations, representing the surplus labor force and underclass, to grow in numbers, especially among urban, minority youth (Harvey, 2005; Kotz, 2003, 2008, 2009; Wacquant, 2009a, 2009b). The growing numbers of impoverished, marginal populations creates a democratic threat to the elite who benefit from the current existing class structure. Thus, these marginal populations are deemed in need of coercive social control to subdue any collective action, including popular democratic social and political movements, which these marginal populations may

develop to overturn the neoliberal structure (Harvey, 2005; Wacquant, 2009a, 2009b). After all, in a representative democracy, each person has a vote.

In regards to the neoliberal social controls applied in public school settings, the current study's findings reveal that removals without continued educational services are predominantly utilized in schools where the majority of students are minorities and come from areas with high levels of crime. Expulsion without any continued educational provisions represents the neoliberal state's retraction of social welfare. By denying students alternative educational services, in addition to expulsion, the neoliberal state increases the likelihood that these students will dropout and possibly penetrate the juvenile and/or criminal justice systems (Bullara, 1993; Felice, 1981; Fenning & Rose, 2007; Fuentes, 2003; Giroux, 2003; Gordon et al., 2000; Hall & Karanxha, 2012; Hanson, 2005; Hirschfield, 2008; Pettit & Western, 2004; Sheley, 2000). Thus, by sending students, representing marginal populations, down the school-to-prison pipeline, state actors increase the likelihood that these youth will be disenfranchised, due to confinement, and that they will be denied opportunities to receive an education whereby they might develop the critical thinking skills necessary to question the fairness of existing class structure and organize for social change (Fenning & Rose, 2007; Giroux, 2003; Hanson, 2005; Hirschfield, 2008; Kim et al., 2010; Skiba & Knesting, 2001; Skiba et al., 2003; Stader, 2006). Such outcomes are optimal to the powerful, who benefit from the structure of the neoliberal state, because these exclusionary practices promote a "docile citizenry," while also benefiting the vested capitalist interests in the prison industrial complex (Hirschfield, 2008; Hirschfield & Celinska, 2011, p.7; Lynch, 2007, 2010). These political economic motivations are easily disguised by using rhetoric that



focuses blame on the individual student for disruptive or violent behavior, rather than the structural, racial, and social inequalities made worse by the neoliberal restructuring of the U.S. economy (Harvey, 2005).

### Policy Implications

The previous empirical research has revealed that zero-tolerance policies are not succeeding in providing safer schools (APA Zero Tolerance Task Force, 2008; Boccanfuso & Kuhfeld, 2011; Skiba & Knesting, 2001). In fact, recent research has also revealed that higher rates of suspensions and expulsions are associated with worsening school environments, increasing dropout rates, and poor school-wide academic achievement (APA Zero Tolerance Task Force, 2008; Boccanfuso & Kuhfeld, 2011; Skiba & Rausch, 2006). The current study found that total disciplinary actions and removals without continued educational services are applied significantly more to schools with the highest percentage of minorities compared to schools with the lowest percentages of minorities, and that this trend is steady or increasing over time. This finding builds upon prior research that also found that exclusionary zero-tolerance policies are disproportionately applied to minority students, especially African Americans (Fenning & Rose, 2007; Lawrence, 2007; Reyes, 2006; Skiba & Knesting, 2001; Skiba et al., 2002; Sughrue, 2003).

In addition, this study's qualitative investigation has found that the courts serve the role of legitimizing neoliberal social controls in schools through judicial decisions that rule in favor of the application of zero-tolerance policies by deciding that the schools' interest in maintaining an orderly learning environment, free from disruption, outweighs the constitutional rights of students. Such an environment is desired in order

for the pedagogical message of the larger neoliberal agenda to shape students for the flexible, service-oriented workforce that awaits them. By providing legitimacy to this process, the courts make it possible for zero-tolerance policies to flourish. Thus, the precedent created from the majority of the legal decisions evaluated suggests that the constitutional rights of students are weakened by neoliberal social control efforts (i.e., zero-tolerance policies) and that the courts have empowered school officials with greater discretionary authority to employ, even preemptively, exclusionary disciplinary punishments without fear of liability if such actions actually violate the rights of students.

Given the findings of this study, as well as prior research, it can be argued that school-based zero tolerance policies are not effective in creating safer schools. Instead, zero-tolerance policies act as social control mechanisms of the neoliberal state that seek to target marginalized populations (especially minorities and the poor) for exclusion and subsequent confinement in order to manipulate the future labor force for the needs of the neoliberal economy. With these conclusions in mind, viable alternatives to zero-tolerance policies should be considered for adoption by schools and local and state legislatures.

In contrast to the ineffectiveness of zero-tolerance policies, as exhibited by previous empirical findings, several experimental and quasi-experimental program evaluations have identified numerous non-punitive approaches to school discipline, which have proved to have positive influences on student behavior and academic performance without severely punishing students for disruptive behavior by excluding them from attending school (Boccanfuso & Kuhfeld, 2011; Greene, 2005). These effective, evidence-based programs will now be summarily described.

*Peer-Led Programs.* Peer-led programs enlist student involvement in order to ensure and promote interventions that are in sync with student culture and foster student responsibility for violence prevention initiatives (Greene, 2005). Kenney and Watson's (1998) "student problem solving" approach has shown promise. In this approach, students take part in the development, implementation, and assessment of circumscribed programs or strategies based on their acknowledgment and perception of school problems (Greene, 2005; Kenney & Watson, 1998). For example, students worked with school officials to increase the availability of preferred foods and reduce lunch lines, and reduced fights in the cafeteria (Greene, 2005; Kenney & Watson, 1998). Thus, these programs empower students with a voice to participate in developing ways to prevent violence or disruption in schools.

*Restorative Justice Programs.* Restorative justice is a form of mediated reconciliation, whereby a process of conflict resolution is established by engaging all injured parties in discussion and negotiation (Karp, Sweet, Kirshenbaum, & Bazemore, 2004; Van Ness & Heetderks Strong, 2007; Zehr & Toews, 2004). Restorative justice programs seek to repair the harm done and address the reasons for the offense, while also promoting reconciliatory sanctions that are salubrious for the victim(s), offender(s), and other involved parties (Zehr, 2002). Some effective restorative justice programs include: (1) community conference models, (2) victim offender conferences (VOC), and (34) family group conferences (FGC). Several studies revealed that juveniles who successfully complete a family group conference are less likely to reoffend in a 2 year follow-up when compared to the control group (McGarrell, 2001; McGarrell & Hipple, 2007; McGarrell, Olivares, Crawford, & Kroovand, 2000; Rodriguez, 2005). Indeed, after New Zealand

revolutionized its juvenile justice system in 1989 to use restorative justice mediation programming, especially FGC, as the primary response to juvenile delinquency and crime, there has been a two-thirds decline in juvenile offending (Mulligan, 2009; Zehr, 2002).

Given these findings, restorative justice programs are well-suited for addressing school-based infractions and crimes committed by students (Zehr, 2002). In response to the stigmatizing, exclusionary, and harmful effects of school-based zero-tolerance policies, restorative justice promotes reparative solutions that attempt to prevent the youthful transgressor from feeling “alienated, more damaged, disrespected, disempowered, less safe and less cooperative with society” (Arrigo et al., 2011; Braswell, Fuller, & Lozoff, 2001, p. 142; Sellers & Arrigo, 2009). Restorative justice approaches seek to prevent negative outcomes for juveniles by giving offender(s), victim(s), mediator(s), and the broader community a voice in a dialogue and negotiation that determines reparative resolutions that heal harm and do not retributively exclude (Arrigo et al., 2011; Karp et al., 2004; Sellers & Arrigo, 2009). In accordance with these aims, restorative justice presents the community, and society at large, the opportunity to correct underlying causes of youthful violence and criminality (Arrigo, et al., 2011; Van Ness & Heetdirks Strong, 2007). Thus, the reparative efforts could and should be social, economic, and environmental in nature (Arrigo et al., 2011; Tifft & Sullivan, 2005).

*Psychosocial and Psychoeducational Programs.* These programs provide teaching, counseling, coaching, and training to students in order to enhance their conflict resolution strategies and interpersonal skills (Greene, 2005). One particularly successful program, in this category, is the Promoting Alternative Thinking Strategies (PATHS)

program, which is curriculum-based and promotes self-control, emotional understanding, positive self-esteem, prosocial relationship building, and interpersonal problem solving (Greenberg, Kusche, & Mihalic, 1998; Greene, 2005). Evaluative studies of PATHS found statistically significant improvements in students' prosocial problem-solving strategies and lower levels of aggressive behavior (Greenberg et al., 1998; Greene, 2005). These programs utilize a cognitive-behavioral approach that acknowledges developmental challenges of students and provides positive feedback rather than label such students as disruptive and problematic, while seeking to remove them via zero-tolerance, because of the threat of disorder they potentially present to the school environment (Greene, 2005).

*Character Education and Social-Emotional Learning Programs.* These programs attempt to cultivate student's character by teaching them skills to recognize and manage their emotions, aspire to achieve positive goals, exhibit caring and concern for others, maintain positive relationships, and make responsible decisions (Boccanfuso & Kuhfeld, 2011). The results from rigorous evaluative studies of character education and social-learning programs have found that these programs have a significant positive influence on building social and emotional skills, adjusting problematic behavior, reducing aggressive behavior, and improving academic achievement (Berkowitz & Bier, 2005; Durlak & Weissberg, 2007; Payton et al., 2008). The What Works Clearinghouse, an initiative of the U.S. Department of Education's Institute of Education Sciences, has identified six of these programs that have shown positive effects on adolescent behavior. They include the following: (1) Positive Action, (2) Connect with Kids, (3) Caring School Community, (4) Skills for Adolescence, (5) Too Good for Drugs, and (6) Too

Good for Violence (Boccanfuso & Kuhfeld, 2011). These programs promote prosocial character development, while utilizing an ethic of care that teaches students cooperation rather than competition (Boccanfuso & Kuhfeld, 2011). In addition, these programs reengage teachers in interactive teaching strategies, including mentoring, role-playing exercises, and group discussion that allow teachers to better understand the needs of their students (Boccanfuso & Kuhfeld, 2011).

*Targeted Behavioral Supports for At-Risk Students.* These programs provide targeted, rigorously evaluated behavioral supports for at-risk students exhibiting known risk factors (Boccanfuso & Kuhfeld, 2011). In these programs, there is typically a program leader who instructs students in daily or weekly exercises to develop social skills and help the students learn to listen, manage anger, resolve conflicts, and cope with stress (Boccanfuso & Kuhfeld, 2011). Randomized controlled trial or quasi-experimental program evaluations have shown that these programs significantly improve the behavior of at-risk students (Boccanfuso & Kuhfeld, 2011). For example, experimental evaluations found that students who completed the Reconnecting Youth program had lower rates of alcohol consumption, drug use, aggressive tendencies, and school dropout rates compared to students who did not participate (Eggert, Thompson, Herting, & Nicholas, 1995; Eggert, Thompson, Herting, Nicholas, & Dickers, 1994). Likewise, an experimental evaluation of the Cognitive-Behavioral Training Program for Behaviorally Disordered Adolescents program found that students assigned to the program displayed increased self-control and a decreased level of aggressive behavior compared to the control group (Etscheidt, 1991). These programs look beyond the behavior of disruptive students and acknowledge risk factors that may extend into the students' homes and the surrounding

community (Boccanfuso & Kuhfeld, 2011). Indeed, these programs often involve family members in an effort to better understand the sources of a student's negative or disruptive behavior (Boccanfuso & Kuhfeld, 2011).

*School-Wide Positive Behavioral Interventions and Supports (SWPBIS)*. This prevention program is a multi-tiered approach to school discipline, which includes the following three tiers: (1) defining and teaching behavioral expectations, rewarding positive behavior, providing a continuum of possible consequences for problem behaviors, and collecting data for decision making purposes; (2) providing targeted interventions to at-risk students displaying early signs of behavior problems; and (3) implementing more intensive, individualized interventions for students with serious behavioral problems, which typically involve family or community members (Boccanfuso & Kuhfeld, 2011). Two experimental evaluations of the PeaceBuilders program found that students who completed the program exhibited increased social skills and peaceful behavior and decreased levels of aggressive behavior (Flannery et al., 2003; Vazsonyi, Belliston, Flannery, 2004).

Programs that are geared toward school climate-oriented strategies promote a “communal” orientation and an “ethos of caring” consistent with the traditional roles schools performed prior to neoliberal restructuring (Greene, 2005, p.244). This programming also strives to establish trust and connectedness among students, teachers, parents, and administrators (Barrios et al., 2001; Fein et al., 2002; Greene, 2005; Resnick et al., 1997). Thus, these goals are in stark contrast to the aims of zero-tolerance policies, which tend to foster teacher disengagement and erode students' trust (Brotherton, 1996; Hirschfield & Celinska, 2011; Kupchik, 2010).

While all of these evidence-based programs may require additional staffing and financial resources, their non-punitive and preventative approaches show great promise in correcting the behavioral and emotional problems of disruptive students without excluding them from the educational process all together (Boccanfuso & Kuhfeld, 2011). In addition, the long-term costs that could be saved by preventing more children from entering the school-to-prison-pipeline by replacing zero-tolerance, deterrence-based punishments with some combination of these strategies could be substantially larger than it would cost to implement them. Of course, such changes would require popular public support to pressure policy makers to adopt these initiatives and abandon zero-tolerance policies. Such a task will not be easily fought or easily won, especially given the political, organizational, and structural barriers currently impeding any changes to the existing school criminalization efforts; however, political economic systems can evolve to meet the demands of an informed and engaged citizenry.

#### Limitations and Avenues for Future Research

There are limitations to the present study, which need to be addressed in order to inform future research. First of all, the qualitative inquiry was limited to a textual and discourse analysis that derived jurisprudential intent from the plain meaning decisions expressed in the court cases, and then subjected the extracted jurisprudential intent to a second level of analysis whereby the legal language conveyed was categorized into emergent themes reflective of the applied neoliberal theoretical framework, which made apparent the political economic philosophy encoded in the case law. This qualitative investigation has laid the groundwork on which numerous potential future studies may build. In fact, the legal language identified in the themes can serve as the basis for a



codebook to be developed in which a quantitative content analysis can be conducted for both the current dataset and potentially other case law datasets deemed relevant to test the neoliberal theoretical framework advanced in this study.

In addition, the language of the jurisprudential intent can also be used to generate survey questions that attempt to measure the five neoliberal thematic constructs. The questions developed by use of the language conveyed in the judicial decision making can then be used to create scenarios, or vignettes, in a questionnaire to actually survey judges. For example, a vignette, depicting the disciplining of a student for a zero-tolerance infraction at school, could be manipulated in various factorial designs to ask judges how they would decide in such cases. Follow-up questions could discern why the judge ruled in such a manner. Additionally, follow-up questions could ask if he or she felt the school administrators were entitled to qualified immunity or if he or she believed that the school's interests in maintaining an orderly and disciplined school environment outweighed the individual rights of the student in the scenario. Of course, any questionnaires will need to be piloted to evaluate reliability and validity of measures.

These questionnaires could also be modified and applied to school administrators, parents, students, and the public more generally to better understand if attitudes toward zero-tolerance policies in schools are changing. Moreover, surveys of these various groups may also ask questions regarding the appropriateness of and preference for alternative, non-punitive program instead of zero-tolerance punishments. There is vast opportunity for new research questions and hypotheses to be developed from this line of research.

Next, there were many limitations to the quantitative analyses. First of all, the available SSOCS datasets were restricted in the variables made accessible for analyses. As such, the bivariate quantitative analyses conducted in this study were primarily descriptive and exploratory in nature. There are key restricted variables that the researcher would need to petition for, and even purchase the rights for the use of, in order to engage in more sophisticated modeling. One such variable is the percentage of students on free or reduced lunch. This variable is typically used as a proxy for social class. By obtaining unrestricted access to the three waves of SSOCS data, the researcher could construct indexes to better measure the socioeconomic makeup of the schools.

Another limitation, which has implications for the generalizability of the findings in this case, is that the variable measuring percentage of minority students is not mutually exclusive in how it is measured and it does not allow the researcher to decipher the exact percentages of various races or ethnicities (e.g., African American, Caucasian, Asian, American Indian, Hispanic etc.) making up those overall percentages. In order to understand the breakdown of the racial makeup of the schools surveyed, it may require that the schools, which were given anonymous numerical identifiers, be identified so that census tract data can be utilized to drill down and ascertain data by racial and ethnic groups for those schools. Other census tract data could also be used to gather information about the social class divisions in these schools. Funding from a grant may be necessary to accomplish these tasks.

If the unrestricted datasets can be secured and tied to census tract data, then several multivariate analyses may be conducted. For example, structural equation models (SEM) could be created to determine if school disciplinary policies have differing

impacts on schools with certain social class and racial makeups. Furthermore, SEM models could address what affect these policies have on reducing various types of school infractions and crimes. As for assessing trends over time, the unrestricted data may allow researchers to conduct latent class growth analysis and growth mixture modeling. This more sophisticated modeling may aid researchers in determining longitudinal change in how zero-tolerance policies and practices are used over time.

The findings from the suggested future research may potentially provide a body of empirical evidence to pressure lawmakers for removal of zero-tolerance policies in schools, as well as other social institutions and contexts. Moreover, future quantitative research is required to further test the applicability of the neoliberal theoretical framework advanced in this study. Indeed, subsequent studies may not only build upon the theoretical framework, but also improve it.

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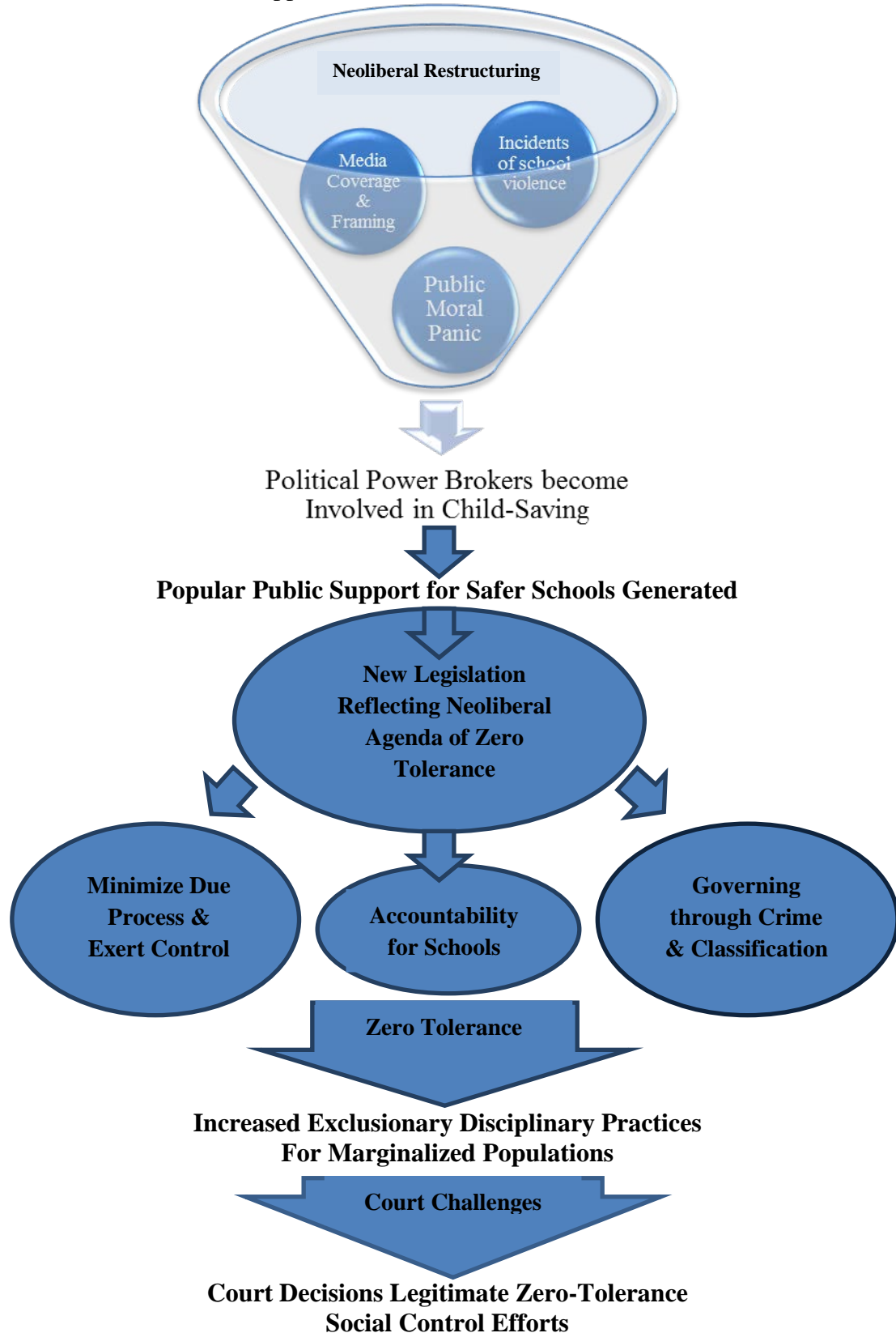


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## APPENDICES

## Appendix A: Theoretical Framework



## Appendix B: Court Case Synopses

### ***Safford Unified Sch. Dist. #1 v. Redding (2009)***

[This case is about the constitutionality of the strip search of a 13-year-old middle school student who was accused of possessing over-the-counter ibuprofen pills. While the search was deemed a violation of her Fourth Amendment rights, school officials received qualified immunity.]

### ***K.M. v. School Board of Lee County Florida (2005)***

[This case is about a troubled student, suspected of having a disability, who made a threat of violence toward a teacher and was suspended and removed to an alternate school as a result. He was denied an IDEA due process hearing because he was not properly diagnosed as disabled; however, parents argue the school deliberately withheld his records to prevent such a diagnosis and the proper hearing he deserved. Court dismisses the parent's claims and upheld the district court's decision.]

### ***S.G. v. Sayreville Bd. of Educ. (2003)***

[In this case, a 5-year-old was suspended after saying "I'm going to shoot you," while playing cops and robbers on the school playground. The court decided in favor of the school's zero tolerance policy because the threat of violence outweighed the student's First Amendment rights. The school officials were granted qualified immunity.]

### ***Cuesta v. Sch. Bd. (2002)***

[In this case, a student, who distributed a pamphlet at school that contained poems, cartoons, and essays depicting racial, sexual, and violent activity, was referred to police, arrested, and strip searched pursuant to arrest. The court found school officials immune from liability and the search constitutional.]

***Ratner v. Loudoun County Pub. Sch. (2001)***

[In this case, a 13-year-old found out that his friend had been suicidal and that she had inadvertently brought a knife to school in her binder. He took the binder from her and put it in his locker. School officials learned of the knife and suspended for violating a zero tolerance policy. The court ruled in favor of the school regardless of Ratner's intentions to help his suicidal friend.]

***Seal v. Morgan (2000)***

[In this case, a high school student was found with a knife in the glove compartment of his car while on campus. He was subsequently expelled for violating the school's zero tolerance policy. He did not know that the knife was in his car. The court ruled that by not taking into account the student's state of mind, or intent, the district court mistakenly affirmed the School Board's motion for summary judgment; however, the court granted immunity to school officials.]

***West v. Derby Unified Sch. Dist. No. 260 (2000)***

[In this case, a seventh grade student was suspended for drawing a confederate flag on a piece of paper during math class. The court upheld to district court's decision, which found that the suspension did not violate his First Amendment rights because the image could have caused substantial disruption in the school.]

***Piekosz-Murphy v. Bd. of Educ. of Cmty. High Sch. Dist. No. 230 (2012)***

[In this case, a 17-year-old student, who was an athlete, attended a party where alcohol was being consumed by minors. He did not participate in the drinking; however, his presence at the party and failure to report the party violated the school code of conduct and he was suspended from participating in any extracurricular and co-curricular

activities. The court dismissed his claim as without merit and upheld the school's disciplinary actions.]

***Ottaviano v. Kings Park Cent. Sch. Dist. (2010)***

[In this case, a high school senior admitted to providing another student with alcohol, which was subsequently taken to a school function. As a result, she was suspended from participating in any extracurricular activities for a year in accordance with the school's zero tolerance policy. The court upheld the school's decision and denied the student's claims.]

***Evans v. Bd. of Educ. Southwestern City Sch. Dist. (2010)***

[In this case, two 12-year-old girls claimed of being sexually harassed and physically assaulted on several occasions by a male student on the bus. One day a teacher saw one of the girls crying in the lunch room. When asked what was wrong, the girl told the teacher that the boy, who had been harassing her, forced her to perform felacio on him while on the bus. Both the girl and the boy were suspended for consensual sexual activities that disrupted school. The court found the school district was not culpable for the emotional distress the girl endured; however, the court found that Principal Smathers was not entitled to summary judgment for some of the plaintiffs claims and his motion for summary judgment was denied.]

***Cuff v. Valley Cent. Sch. Dist. (2010)***

[In this case, a 10-year-old wrote violent themes on his astronaut drawing in class. He was suspended because of the potential threat the drawing posed the school's. The court upheld the school's decision to discipline the student and found no violation of his First Amendment rights.]

***Lee v. Lenape Valley Reg'l Bd. of Educ. (2009)***

[In this case, a 14-year-old, bi-racial boy transferred to Newton High School where he was repeatedly harassed and called derogatory names. One day, E.L. was called a “nigger” by another student, and when the incident escalated the boys began fighting. Both students were suspended. After the incident, school officials called E.L.’s parents to meet with them. The school stated that they did not know what to do for E.L. and that he would need to be home instructed until an out of district placement could be found. The court found in favor of the student plaintiff because of evidence suggesting the school failed to follow their anti-discrimination policies and denied the defendant school officials their motion for summary judgment.]

***Hardie v. Churchill County Sch. Dist. (2009)***

[In this case, a pocket knife was found on the floor of the bus that was taking the high school students on a field trip. Hardie recognized that the knife was probably his and told the bus driver so. As a result, Hardie was expelled. The court upheld the school officials decision.]

***Doran v. Contoocook Valley Sch. Dist. (2009)***

[In this case, students were told to leave their belonging in the classrooms as they were all escorted to the football field and kept there for 90 minutes, so police dogs could sniff their belonging. Students’ parents filed federal and state claims against the school for violating the childrens’ Fourth Amendment rights. The court dismissed the federal claims finding no violation of the Fourth Amendment; however, the court remanded the state claims to state court for resolution.]

***Brett N. v. Cmty Unit Sch. Dist. No. 303 (2009)***



[In this case, a high school student was physically attacked by another student and he fought back in self-defense. The student who fought in self-defense was suspended. The court upheld the suspension citing that maintaining a peaceful and orderly school environment was a legitimate government interest that outweighed the student's right to defend himself.]

***Barnett v. Tipton County Bd. of Educ. (2009)***

[In this case, two high school students created a fake MySpace profile that parodied Assistant Principal LeFlore and made sexually suggestive comments about female students. Barnett was sent to an alternative school and Black received an in-school suspension. The court upheld the school's disciplinary action, because website created a disruption at school that outweighed the First and Fourteenth Amendment rights of the students.]

***Griffin v. Crossett Sch. Dist., Inc. (2008)***

[In this case, a 14-year-old, African American special needs student (Willie) brought a handgun to school and gave it to another student. During the same school year, a 9-year-old Caucasian boy (Jacob), who was also a special needs student brought a gun to school. Both students received a Section 504 Evaluation and Manifestation Determination Conference to decide if their disabilities impaired their ability to understand the impact and consequences of their behavior. While Willie's committee found that his disability did not affect his understanding of his behavior, Jacob's committee found that his disability did impair his ability to understand the impact of his behavior. Thus, Willie was expelled and Jacob only received a 10 day suspension. The court upheld the school's decisions and found that there was no case of discrimination and that the 504 committees

were not biased in their punishment of these students, who the plaintiffs argue are similarly situated.]

***Hill v. Sharber (2008)***

[In this case, the Sheriff's Department conducted a sweep of the parking lots at Franklin High School with drug sniffing dogs. The drug sniffing dog alerted to the possibility that there might be drugs in Ky Hill's (student at FHS) car. Hill was removed from class, informed of the positive alert, given his Miranda rights, and asked if he had drugs in the car. Hill was handcuffed while the car was searched, and the deputies found beer in the car. The Manifestation Meeting found that Hill's behavior was not due to his disability. In accordance with the schools zero tolerance policy, Hill was placed in an alternative school and banned from participating in extracurricular activities. The court upheld the search and the disciplinary actions taken against Hill.]

***Simonian v. Fowler Unified Sch. Dist. (2008)***

[In this case, a high school student was called to his vehicle because a drug sniffing dog showed interest in his car. Jonathan gave consent for his car to be search and a pin-head size piece of marijuana was found. As a result, Jonathan was expelled for the suspicion of possessing marijuana. The court upheld his expulsion and assignment to an alternative school setting.]

***Morgan v. Snider High Sch. (2007)***

[In this case, a high school student drove two classmates to the homecoming dance at Snider High School. While Kevin was approaching the parking lot on the school campus, he noticed that one of the students in the car had a "bowl" and asked Kevin for permission to smoke marijuana in the car. Kevin refused, pulled on to the school's

property, and promptly had the passenger exit his car. At the dance, the Assistant Principal detected the odor of marijuana on the boy who rode with Kevin. The boy informed the school officials that Kevin had driven him to the dance. Kevin's consented to a search of his car and a marijuana seed and "siftings" were found in the back seat. Kevin was suspended from participating in any extracurricular activities for a year. The court upheld the school's disciplinary action.]

***Roy v. Fulton County Sch. Dist. (2007)***

[In this case, a high school student's MP3 player was stolen from his locker. The school officials question J.B., a white male, about the stolen electronics and J.B. told them that he and Mark (a black male) stole the MP3 player from another student's locker and sold it. Mark was questioned about the theft and denied any involvement. Assistant Principal Groves decided to search Mark's locker and found a dead cell phone. Mark later provided a statement that a friend gave him a MP3 player and asked him to sell it; however, he claimed he did not steal it and did not know it was stolen. Mark was suspended as a result. The court found the search to be constitutional and not a violation of the Fourth Amendment; however, the court found Mark's allegations of the violation of his equal protection rights to be sufficient and denied the defendants' motion to dismiss Mark's equal protection claim.]

***Bogle-Assegai v. Bloomfield Bd. of Educ. (2006)***

[In this case, a high school girl pushed another high school boy and put him in a headlock. The boy did not fight back. The girl, as the sole aggressor, was charged with breach of the peace and assault and she was arrested. In addition, she was suspended and

later expelled. The court upheld the school's disciplinary action and found no violation of her due process or equal protection rights.]

***Langley v. Monroe County Sch. Dist. (2006)***

[In this case, a high school girl (Laura) car did not start and she was forced to drive her mother's car to school instead. The Assistant Principal, Chad O'Brian, went to check parking decals in the parking lot and noticed that Laura's car did not have one. He looked inside the car and saw an open beer can. Laura denied having any knowledge of the beer and surmised that it had to belong to her mother since it was her mother's car. She was suspended and later placed in an alternative school. The court ruled that there was enough evidence to present to a jury as to the mental anxiety and stress suffered by Laura as well as her substantive due process claims.]

***Vann v. Stewart (2006)***

[In this case, a student (Austin) was found in possession of a small pocketknife while at school. He was suspended for one calendar year in accordance with the school's zero tolerance policy. The court upheld the school's disciplinary actions and dismissed the student's claims.]

***McKinley v. Lott (2005)***

[In this case, a teacher asked the student resource officer to escort a 16-year-old boy to the principal's office because he smelled heavily of marijuana. When the principal asked the student if he had been smoking marijuana, the student replied yes but was under the impression that the principal was asking if he had ever smoke marijuana before and not on that particular day. The youth was arrested and transported to juvenile hall. Criminal charges were eventually dropped; however, the student was transferred to an alternative

school as a punishment. The court upheld the school's disciplinary actions and dismissed the student's claims.]

***Posthumus v. Bd. of Educ. (2005)***

[In this case, a school official took graham crackers from a student prior to an assembly. The student challenged the official and called him a vulgar name. He was suspended for 10 days. The court upheld the school's disciplinary action, dismissed the student's First Amendment rights claims, and found that he did not have a fundamental right to attend school.]

***Collins v. Prince William County Pub. Schs. (2004)***

[In this case, a high school student (Jeremy) replicated a science experiment where toilet bowl cleaner and aluminum foil were placed inside soda bottles to create bottle bombs. He and his friends detonated these bottle bombs in several locations in the local neighborhoods, including near local schools. The high school expelled Jeremy even though the acts were committed off-campus. The court upheld the school's disciplinary action and dismissed his constitutional protection claims.]

***Sypniewski v. Warren Hills Reg'l Bd. of Educ. (2001)***

[In this case, a high school student wore a Jeff Foxworthy t-shirt which displayed the term "Redneck" and other language that the school officials felt violated the dress code and the policy regarding racial harassment and intimidation. The student was suspended for insubordination because he violated the above mentioned policies. The court upheld the school's disciplinary action under the Tinker substantial disruption standard; however, the court also ruled that the dress code and policy were overbroad and

constitutionally vague and as such, a case for irreparable injury for the student could be made.]

***Anderson v. Milbank Sch. Dist. (2000)***

[In this case, the student's mother worked as a cook for the school and left a note for her in the principal's office instructing her to take the bus home on that day. The student muttered to herself, "Shit." The principal's secretary heard her and reported her foul statement to the principal. The student received in-school suspension and a reduction in her grades for the class work she missed. The court upheld the school's disciplinary action and dismissed the student's First Amendment rights claims.]

***D.G. v. Independent Sch. Dist. No. 11 (2000)***

[In this case, an 11<sup>th</sup> grade student wrote a poem about her teacher expressing her frustration about being in her class. The poem was later found and she was suspended. The court found in favor of the student and held that once the administration gathered all the relevant facts, and the context of the poem was revealed, there was no basis to believe it was a threat. Thus, her poem was protected under the First Amendment and a preliminary injunction was granted.]

***Hammock ex rel. Hammock v. Keys (2000)***

[In this case, Virginia Hammock, a high school senior, was made aware that a drug sniff dog gave interest to her car. After a search of her vehicle, marijuana fragments were found in her vehicle, which was parked on school property. She was immediately suspended and subsequently expelled. The court upheld the school's disciplinary action and dismissed the student's motion for a preliminary injunction.]

***Colvin ex rel. Colvin v. Lowndes County (2000)***

[In this case, a 6<sup>th</sup> grade student (Jonathan), who had learning disabilities and handicaps was found with Swiss Army knife at school. The disciplinary hearing officer suspended him for a day, but the school board overruled the hearing officer's recommendation and approved his expulsion from school. The court found in favor of the student and remanded the case with instructions to the defendant school board to reconsider the appropriate penalty.]

***James P. v. Lemahieu (2000)***

[In this case, a high school student (Robert) was suspended for drinking alcohol at his home before he attended the senior luau. The court found in favor of the student because there was no evidence that Robert possessed the alcohol while at the luau. Robert was granted injunctive relief and the disciplinary action was expunged from his record.]

***Fuller v. Decatur Pub. Sch. Bd. of Educ. Sch. Dist. 61 (2000)***

[In this case, six high school students were expelled for two years because they were involved in a violent fight, which was deemed gang-like activity, in the stands at a high school football game. The court upheld the school's disciplinary action and dismissed the students' claims.]

***Doe by & Through Doe v. Board of Educ. (1995)***

[In this case, a 13-year-old, learning disabled high school student was allegedly found in possession of a pipe and a small amount of marijuana. He was suspended and subsequently expelled. The court upheld the school's disciplinary action and dismissed the student's due process claims.]

***Jordan by Edwards v. O'Fallon Twp. High Sch. Dist. No. 203 Bd. of Educ. (1999)***

[In this case, a high school student suspended from participation in interscholastic athletics as punishment for violating the school's zero-tolerance policy, which prohibited the student from being in an inebriated state at school. The court upheld the school's disciplinary action and found that the student had no constitutionally protected interest in taking part in athletics even though he may have received an athletic scholarship.]

***Northwestern Sch. Corp. v. Linke (2002)***

[In this case, two students in the Northwestern School Corporation argued that the school's random drug testing violated their Fourth Amendment rights. The court upheld the school's testing program and ruled that the immediate governmental concerns at issue for safety outweighed students' privacy rights.]

***In re L.A. (2001)***

[In this case, the Assistant Vice Principal Herrington, at Campus High School, received a tip from the school Crime Stoppers organizer that a 16-year-old boy (L.A.) had marijuana in the headband of his baseball cap. Herrington and a school security guard searched L.A. and found marijuana and Valium on his person. L.A. was referred to law enforcement and he was adjudicated as a juvenile offender and received out-of-home placement for 90 days. The court upheld the adjudications and found no violation of L.A.'s Fourth Amendment rights.]

***Commonwealth v. Lawrence L. (2003)***

[In this case, the Vice Principal at Breed Middle School received a tip that there was going to be a problem among the student who wore blue bandanas after school. He went around talking to these students and one of them smelled like marijuana. He searched the student and found a folded piece of paper containing marijuana. The student was referred



to police, put in custody, and charged with two counts of marijuana possession. The court found the search to not be a violation of the student's Fourth Amendment rights, and the student's motion to suppress the evidence was denied.]

***Covington County v. G.W. (2000)***

[In this case, a teacher sent a note to Assistant Principal Thames, which informed him that a 17-year-old (G.W.) was drinking beer in the school parking lot. Thames and a school security guard went to G.W.'s truck and found empty beer cans in his truck bed. The principal requested G.W. open his vehicle and allow the officer to search his truck. They found more beer in a locked toolbox inside the truck. G.W. was immediately suspended and subsequently expelled. At a chancery court hearing, the chancellor overturned the school's disciplinary action. The school district appealed, and the court upheld the disciplinary action and overturned the chancellor's ruling.]

***Hinds County Sch. Dist. Bd. of Trs. v. R.B. (2007)***

[In this case, Principal Campbell was informed that one of the middle school students at Byram was selling drugs. He approached R.B. and searched his backpack. The search revealed that R.B. had a nail file device. Expulsion was recommended and the chancery court overturned the school district's disciplinary action because it relied solely on a photocopy of the item that was being called a knife by school officials. The appellate court ruled that the decision by the school district was arbitrary and capricious and not supported by substantial evidence.]

***State v. Best (2010)***

[In this case, Assistant Principal Brandt received a report that a was suspected of being under the influence of drugs. This student told Brandt that another 18-year-old student

(Thomas) gave him the pill. Thomas Best denied any involvement, but Brandt's search of Thomas turned up 3 white pills in his pants. Brandt searched his car too and found various drug-like substances and paraphernalia. Thomas was arrested and criminally charged. The court upheld the search by Brandt and dismissed Thomas' Fourth Amendment claims.]

***In re K.K. (2011)***

[In this case, a high school principal received a tip from a police officer that a student (K.K.) might be dealing in heroin. The principal decided to search K.K.'s pants pockets and book bag, which revealed he did have drugs on his person. K.K. was referred to juvenile court and charged with two counts of delinquency. The court upheld the search, which was in accordance with the school's zero tolerance policy and dismissed the student's Fourth Amendment claims.]

***In the Interest of F.B. (1999)***

[In this case, a high school student went through a point of entry search upon entering school and a Swiss Army knife was found on his person. He was arrested and adjudicated as a delinquent in juvenile court. The court upheld the adjudication and dismissed the student's Fourth Amendment claims.]

***In re Hinterlong (2003)***

[In this case, a high school senior (Hinterlong) was asked to allow Vice Principal Clark to search his car because they had received a tip that he had either alcohol or drugs in his vehicle. Hinterlong complied and the search yielded an open water bottle with a very small amount of alcohol in it. Hinterlong claimed that he was set up, but the school proceeded with expulsion. In municipal court, a jury acquitted Hinterlong and Hinterlong

filed suit against the school and to identify the person who gave the false tip to school officials. The appellate court found that the trial court abused its discretion in denying Hinterlong's motion to compel discovery. The appellate court directed the real parties in interest to submit an in camera affidavit of the student informant and to order disclosure of any information that the trial court deemed necessary to a fair determination of the disputed facts.]

***E.M. v. Briggs (1996)***

[In this case, 3 middle school students were found in possession of marijuana while on school. In accordance with the school's zero tolerance policy, they were expelled. The court upheld the school's disciplinary actions and dismissed the students' complaints.]

***Cathe A. v. Doddridge County Bd. of Educ. (1997)***

[In this case, a high school student was found on the school bus with two knives. He was suspended and subsequently expelled. The school offered to provide educational services at the student's home; however, the parents were requested to pay for these continued services. The court upheld the disciplinary action of the school but found that the parents should not be required to pay for an at-home instructional program that was offered in lieu of regular school classes.]

***J.M. v. Webster County Bd. of Educ. (2000)***

[In this case, a 15-year-old, high school student (J.M.) misbehaved in class and was suspended for 2 days. When his father found out about his suspension, he became extremely upset at J.M. and told him that he was taking J.M. out of school and getting him a job at the lumber yard. When they returned home, J.M. accidentally hit the truck door on the family lawnmower. The father picked up an axe and threatened to kill J.M. if

he had done damage to the truck. While his father was in the yard, J.M. secured all of his father's firearms by locking them in the gun cabinet and hiding the keys; however, J.M. discovered that he forgot to lockup a revolver and ammunition left on top of the gun cabinet. Not wanting his father to discover him with the gun, J.M. tucked it in his pants. J.M.'s father took J.M. to the school to get the paperwork so he could get him a job at the lumber yard, but everyone had already left for the day and only the football coach was there. The coach found J.M.'s father to be extremely agitated and asked him to go cool off for a while. When J.M. was alone with the coach he turned the revolver over to him to hide it from his father because he feared for his life. The coach took it from him and eventually turned it over to the principal. The principal suspended J.M. for a year and placed him in an alternative school for bringing the gun on campus. The court upheld the school's disciplinary actions and dismissed the student's case.]

***Goss v. Lopez (1975)***

[In this landmark 1975 case, high school student, who had been suspended for misconduct for up to 10 days without a hearing brought a class action suit against the school officials for violation of their due process rights. The Supreme Court ruled that the students procedural due process rights were violated and the students' protected liberty interests in public education could not be taken away by suspension without the minimal procedural safeguards of notice and an opportunity to be heard, flexibly applied in a given situation.]

***Tinker v. Des Moines Sch. Dist. (1969)***

[In this landmark 1969 case, two high school students and one junior high school student wore black armbands to their school to publicize their objection to the Vietnam War. The

students were suspended as a result because it violated the school dress code policy. The Supreme Court ruled that school officials' actions violated the student's First Amendment rights and reversed the lower court's decision to uphold the school's disciplinary actions.]

***Hazelwood Sch. Dist. v. Kuhlmeier (1988)***

[In this landmark 1988 case, a high school principal censored the publication of the school newspaper because of the subject matter. The students brought action against the school for violating their First Amendment rights. The court found that there was no violation of the student's First Amendment freedoms because public school is not the same as other public places and that school administrators should be able to determine the manner of speech appropriate for the school setting.]

***New Jersey v. T.L.O. (1985)***

[In this landmark 1985 case, a teacher found a 14-year-old freshman smoking cigarettes in the restroom. The assistant vice principal searched the student's purse and found cigarettes and rolling papers, and after a more thorough search found marijuana in the purse. The student was referred to juvenile court where she faced delinquency charges. The state supreme court found the search unreasonable and reversed the lower court's decision. The Supreme Court deemed the search reasonable and not a violation of the Fourth Amendment. As a result the evidence was found to be admissible.]

***Bethel Sch. Dist. v. Fraser (1986)***

[In this landmark 1986 case, a high school student delivered a speech that used a sexually explicit metaphor. The student was suspended as a result. The trial court and appellate court found for the student with the ruling that the punishment violated his First

Amendment rights. The Supreme Court overturned the lower courts' rulings, upheld the school's disciplinary actions, and found no violation of the First Amendment.]

***Vernonia School District 47J v. Acton (1995)***

[In this landmark 1995 case, a seventh grade student and his parents refused to sign the mandatory drug testing forms and the student was denied participation in football. The parents filed suit for the violation of their son's Fourth and Fourteenth Amendment rights. The Supreme Court reversed the appellate court's decision to reverse and remand because the policy violated the student's constitutional rights. The Supreme Court found in favor of the school and ruled that students are not entitled to full Fourth Amendment rights and have a decreased expectation of privacy.]

***Binder v. Cold Spring Harbor Cent. Sch. Dist. (2010)***

[ In this case, Assistant Principal Browne was informed that a student smelled of marijuana. Browne asked the student (Binder) to empty his pockets and security guard searched Binder's backpack even though Binder refused. The search turned up marijuana in his backpack. Binder was suspended and later filed suit against the school for violating his Fourth Amendment rights. The court upheld the school's disciplinary action and dismiss the student's claims.]

***C.H. v. Folks (2010)***

[In this case, a middle school student (C.H.) went into one of the bathroom stalls at school and the school custodian allegedly observed C.H. marking the inside of the stall door. The custodian was in the ceiling looking down on the stall. When C.H. exited the bathroom, the custodian stopped C.H. and put his hands in C.H.'s pockets. C.H. was arrested and charged with a felony, but the prosecutor declined to prosecute the case.

C.H. brought suit against the school officials for sexual harassment and violation of his Fourth Amendment rights. The court dismissed all of C.H.'s claims except one. The court found that the pocket search and surveillance of C.H. in the restroom stall was a violation of his Fourth Amendment rights.]

***Beard v. Whitmore Lake Sch. Dist. (2005)***

[In this case, a high school student in the second-hour gym class reported that her prom money had been stolen during the class. The principal was absent, so the acting principal, school teacher Charmaine Balsillie, was advised of the theft and she called the police. Four school officials searched all of the student's backpacks in the gym and locker rooms. Two male teachers searched the 20 boys individually in the locker room shower by making them lower their pants and underpants and removing their shirts. The boys were not physically touched. Two female teachers searched 5 girls in the bathroom by having them pull up their shirts and pull down their pants while standing in a circle. None of the girls were touched. The money was never discovered. The students filed suit for violation of their Fourth Amendment rights. The court found the search of the students to be unreasonable because of the absence of individualized suspicion; however, the court granted the school officials qualified immunity because the law at the time the searches were conducted did not clearly establish that they were unreasonable under those particular circumstances. The court reversed the lower court decision and granted summary judgment in favor of the school officials.]

***Sims v. Bracken County Sch. Dist. (2010)***

[In this case, Kentucky State Police (KSP) conducted a random narcotics patrol of Bracken County High School with drug-sniffing canines. One of the dogs returned a

positive alert to one student's jacket (Mercadez). The search of her jacket did not reveal any drugs. On a separate occasion, Mercadez was questioned about unsubstantiated reports that she was smoking marijuana on a school field trip. No marijuana was found; however, Mercadez had allow boys into her hotel room, which violated school policy and she received in-school suspension was stripped of her officer role in the Future Business Leaders of America. Later, another drug patrol was conducted and this time the dogs alerted to Mercadez's brother's (K.S.) locker. They found no drugs in his locker, but they did find cigarette rolling papers and he was suspended for 5 days because of that. The school conducted another patrol and this time K.S. was pulled from class and asked if he had drugs in his car, which he denied. The police searched his car and uncovered a chewed straw. They thoroughly searched his car and found nothing, but they construed the straw to be drug paraphernalia. K.S. did admit that marijuana had been smoked in the car by someone else a week prior. The KSP crime lab test found marijuana residue in the car and K.S. was suspended and expulsion proceedings were started. Ms. Sims, the mother of both Mercadez and K.S., filed claims that the discipline her children received violated their constitutional rights. The court found in favor of the school officials and dismissed the students' case.]

***Lausin v. Bishko (2010)***

[In this case, a threatening message was found on the wall of the girl's bathroom at Richmond Heights High School. After reviewing the video tape outside of the bathroom, school officials identified Gina Lausin as the primary suspect. Upon questioning, Gina denied writing the message. Gina's locker was searched and a note containing racial slurs was found. Gina was taken to the police station, mirandized, and asked further question



in an interrogation room. Eventually, after about 20 minutes, she confessed to writing the threat and apologized. Gina was suspended and later expelled. Juvenile charges were also brought against Gina; however, charges were dropped when a handwriting analyst could not conclusively determine if Gina was the person who wrote the threat. Gina filed suit for violation of her Fourth and Fourteenth Amendment rights. The court ruled in favor of the school officials and dismissed the student's claims.]

***Pendleton v. Fassett (2009)***

[In this case, a high school student (Pendleton) at Brown Street was subjected to a point of entry search. Pendleton was asked to lift her shirt and brassiere to expose her breasts and Officer Fisher touched her beneath her breasts. Pendleton also had to lower her pants and the officer ran her fingers through the waistline of her underwear. No contraband was found. The student filed a claim for the violation of her Fourth and Fourteenth Amendment rights. The court found the search to be unreasonable given there was no individualized suspicion; however, the court gave the officials immunity and dismissed the student's claim.]

***Wooleyhan v. Cape Henlopen Sch. Dist. (2011)***

[In this case, an 18-year-old, high school student (Wooleyhan) was talking with his girlfriend when a teacher (Jester) told them to go to class. They did not immediately go, so Jester separated them by placing her arms between them and pushing them apart. The teacher claimed that Wooleyhan elbowed her in the chest and Wooleyhan denied doing this. Wooleyhan was arrested as well as suspended. The hallway security did not capture Wooleyhan elbowing Jester. Wooleyhan was found not guilty of the criminal charges.

Wooleyhan filed suit against Jester and other school officials. The court dismissed Wooleyhan's claims against all school officials except Jester.]

***Porter v. Ascension Parish Sch. Bd. (2004)***

[In this case, a 12-year-old (Andrew) took a drawing pad from his older brother's (Adam) room, which had a drawing in it that Adam drew 2 years before in the privacy of his home. The drawing was of the school in a state of siege with missiles, a gas tanker, and armed persons. While on the bus, Andrew's friend flipped through the drawing pad and found the picture. Andrew's friend showed the bus driver and pad was turned over to Principal Wilson at the middle school. School officials at the high school were notified and Adam was immediately searched. They found a box cutter that he claimed he used at his after-school job at the local grocery store. Adam was expelled and placed in an alternative school. Adam eventually dropped out. Adam and Andrew's mother brought suit against the school board and superintendent for violation of her son's First, Fourth, Eighth and Fourteenth Amendment rights. The court found that Adam's drawing could not be considered a true threat; however, school officials were given qualified immunity and granted the school board summary judgment.]

***Demers v. Leominster Sch. Dep't. (2003)***

[In this case, a 15-year-old student (Demers), in the eighth grade, who had special needs was talking while in his English class. Demers was asked to leave and went to the classroom next door. The substitute math teacher in the other room asked Demers to draw a picture showing how he felt about being kicked out of school. He drew a picture of the school surrounded by explosives with students hanging out of the windows crying. The next day, Demers wrote a note with the phrases "I want to die" and "I hate life." The

principal met with the student's father and suspended him after the meeting. He was suspended for the rest of the school year and placed in an alternative school. The parents filed a suit for violation of their son's First Amendment rights. The court found in favor of the school and dismissed the student's claims.]

***Bundick v. Bay City Indep. Sch. Dist. (2001)***

[In this case, a drug sniffing dog alerted to a high school student's (Bundick) truck. Bundick was summoned to his truck. Upon searching the toolbox of the truck, police found a machete among the tools. Bundick was expelled as a result, and he filed suit for violation of his Fourth Amendment and privacy rights. The court found in favor of the school and dismissed the student's claims.]

***Butler v. Rio Rancho Pub. Schs. Bd. of Educ. (2003).***

[In this case, a high school student (Joshua) borrowed his brother's car and drove to school. Joshua parked in the faculty parking lot without a permit. A security guard noticed the vehicle did not have a permit and upon looking into the car noticed the butt end of a knife sticking up between the passenger seat and the center console. The security guard also found a handgun and ammunition in the car, which all belonged to Joshua's brother. Joshua was suspended for one school year. Joshua's parent filed suit, and the district court found in favor of Joshua. However, the appellate court for the 10<sup>th</sup> Circuit found in favor of the school district and reversed and remanded the case.]

***DeFabio v. E. Hampton Union Free Sch. Dist. (2009)***

[In this case, a Hispanic student at East Hampton High School was killed in an motorcycle accident. The following Monday was a day of mourning. A tenth grade student (Daniel) overheard someone say, "one down 40,000 to go," and he repeated it by

whispering in a friend's ear what he heard. Soon word spread that Daniel made the comment, and several Hispanic students became very upset and started yelling and threatening Daniel. Daniel was sent home, which he thought was for his safety; however, he learned that he was suspended. Daniel wanted an opportunity to tell his fellow students about the misunderstanding but was denied access to the school's PA system or a school assembly. Daniel received threatening phone calls at his home. The superintendent found him guilty of making the comment and suspended him for the remainder of the year. The family filed suit. The New York State Education Commissioner overturned the superintendent's decision and ordered the incident expunged from Daniel's record. Upon appeal, the appellate court upheld the school's disciplinary actions and dismissed Daniel's claims that the school violated his First and Fourteenth Amendment rights.]

***Tun v. Fort Wayne Cmty. Sch. (2004)***

[In this case, a high school boy (Tun) and his other friends were showering at school after wrestling practice. Another student, who was a foreign exchange student, came into the shower and took photographs of them. He developed the film gave Tun the negatives. Tun was caught looking at the negatives while in photography class and the pictures were turned over to the principal. Tun was expelled for allowing another student to photograph him nude. Tun filed suit and the court found that Principal Whitticker and the expulsion hearing examiner, Judith Platz, were liable for violating Tun's substantive due process rights. However, the court dismissed Tun's claims against the school district, the photography teacher, the wrestling coach, Whitticker, and Platz for acting in their official capacities.]

***T.T. v. Bellevue Sch. Dist. (2009)***

[In this case, employees at a dental office near Newport High School witnessed a person with a pipe smoking what they believed to be marijuana on their property. They contacted the school officials and identified the person as 10<sup>th</sup> grader, T.T., after looking at photos in the high school yearbook. T.T. was emergency expelled. T.T.'s mother filed suit; however, the court upheld the school's disciplinary action and dismissed T.T.'s claims.]

***S.H. v. Rowland Unified Sch. Dist. Bd. of Educ. (2005)***

[In this case, the Nogales High School band teacher was informed that his car had been "keyed." A parent informed the teacher that a high school student (S.H.) had committed the vandalism with a knife. The campus police officer conducted a pat down of S.H. and searched his bookbag. The knife was found in S.H.'s bookbag. S.H. was suspended and later expelled. S.H. file suit against the school, but the court found in favor of the school.]

***Jones v. Long County Sch. Dist. (2012)***

[In this case, a middle school student (E.J.) was placed in an alternative STAR program for being insubordinate, disrespectful, and disruptive. E.J. was late to the first day of the program because his mother overslept. The assistant principal was angered by this and ordered E.J. to in-school suspension; however, E.J. did not go and hid in a bathroom instead. When E.J. was discovered he received out-of-school suspension for 3 days for not doing as he was instructed. E.J. had a dispute with two of the teachers in the STAR program for disruption and was suspended for another 5 days. E.J.'s mother tried to re-enroll him after the suspension, but the principal informed her that he would not be re-

enrolled until he completed 10 days in the STAR program. His mother filed suit against the school. The court found in favor of the school and dismissed the student's claims.]

***J.S. v. Blue Mt. Sch. Dist. (2011)***

[In this case, an eighth grade student (J.S.) created an internet profile, at her home, of her principal, which used adult language and sexually explicit content. J.S. was suspended because the school argued that her web profile disrupted the school's operation severely. J.S. and her parents filed suit, and the court ruled in favor of J.S. for the violation of her First Amendment rights because there was no evidence to lead a reasonable person into thinking the profile would cause a substantial disruption. However, the court ruled that the district's policies were not overbroad or void-for-vagueness, and that the district did not violate the parent's Fourteenth Amendment substantive due process rights.]

***Boim v. Fulton County Sch. Dist. (2006)***

[In this case, a ninth grade student (Rachel) was suspended for writing a violent story about shooting her math teacher in her notebook. Rachel's parents filed suit against the school district for violating her First Amendment rights. The court found in favor of the school district and dismissed the student's claims with prejudice.]

***Commonwealth v. Smith (2008)***

[In this case, a high school student was found in an unauthorized area of the school, and he was taken to an office to perform a search. The school administrator found a .380 caliber handgun in his jacket. The student was arrested and criminally charged. The student moved to suppress the weapon because he alleged that his Fourth Amendment rights were violated. The court found the search to be constitutional.]

***J.S. v. Bethlehem Area Sch. Dist. (2002)***

[In this case, an eighth grade student (J.S.) created a website containing derogatory content about his school principal and his math teacher on his home computer and posted it on the internet with a disclaimer. The student revealed the existence of the website to others and the school officials became aware of it. The principal believed the website badly disrupted the school. The school did not attempt to get J.S. any type of psychological evaluation and waited until the school year ended to punish him although he had taken it down after a couple of weeks. J.S. was first suspended and later expelled. J.S. filed suit for violation of his First Amendment rights. The court upheld the school district's disciplinary action, finding that J.S.'s rights were not violated even though he conducted the speech off-campus.]

***RM v. Washakie County Sch. Dist. No. One (2004)***

[In this case, R.M. and B.C. were caught selling marijuana to other students while on school grounds. Both students were expelled. The juvenile court found them guilty of delinquency, but ordered the school district to provide the students with continued educational services while they were expelled because the Wyoming constitution obligated them to provide free education. The appellate court upheld the school district's disciplinary action and found that the school district did not have to provide educational services for students who had been expelled for bad conduct.]