The Fallout from our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward

Mae C. Quinn

University of the District of Columbia David A Clarke School of Law

Follow this and additional works at: https://digitalcommons.law.udc.edu/fac_journal_articles

Part of the Education Law Commons

Recommended Citation


Available at: https://digitalcommons.law.udc.edu/fac_journal_articles/23

This Article is brought to you for free and open access by the Publications at Digital Commons @ UDC Law. It has been accepted for inclusion in Journal Articles by an authorized administrator of Digital Commons @ UDC Law. For more information, please contact lawlibraryhelp@udc.edu.
The Fallout from Our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward

Mae C. Quinn
University of Florida Levin College of Law, mae.quinn@law.ufl.edu

Follow this and additional works at: https://scholarship.law.ufl.edu/facultypub

Part of the Education Law Commons, and the Law and Race Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in UF Law Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.
The Fallout from Our Blackboard Battlegrounds:
A Call for Withdrawal and a New Way Forward

Mae C. Quinn*

“War is not healthy for children and other living things”
—Anti-Vietnam War slogan attributed to Lorraine Schneider, member of the group Another Mother for Peace (1967)

1. INTRODUCTION

In 1973, *Time* magazine described a national school system under siege. In its article “Blackboard Battlegrounds: A Question of Survival,” *Time* reported that troubled urban youth were rejecting education, terrorizing teachers, and turning the country’s schoolyards into battlefields. Claiming that simple survival in the face of such insurgency had become the top priority of school administrators, the article quoted one educator as stating, “‘You can’t teach anything unless you have an atmosphere without violence.’”

Despite concerns about a culture of aggression and hostility within the education setting, the article went on to laud new national experiments in increased school-based security and policing, including an on-call “80-man strike force” that one city employed to thwart potential activities of wayward

---

*Professor of Law and Co-Director of the Civil Justice Clinic, Washington University School of Law. For very helpful comments, thoughts, and encouragement I wish to thank my colleague Cheryl Block and the participants of the Fourth Annual Law Women’s Writing Retreat held in Taos, New Mexico—Luz Herrera, Kim McLaurin, and Leticia Saucedo. I am also grateful for the work of my research assistants John Brubaker and Ben Barnes.


3. *Id.*

4. *Id.*
students.\textsuperscript{5} \textit{Time} conceded that at-risk youth, whom it described as being born to the "jungle of the slums," were largely victims of societal and systemic neglect.\textsuperscript{6} Yet it joined the growing chorus of voices that urged the forcible take-back of schools as a step toward winning the war against urban youth—largely poor students and students of color.\textsuperscript{7} In doing so, \textit{Time} acknowledged such strategies would likely have an impact on the larger community outside of the schoolhouse walls.\textsuperscript{8}

Sadly, over thirty-five years later, the United States has yet to stand down from this combative orientation toward certain children. In fact, campaigns against poor and minority students have only grown more complex and sophisticated in their approaches, and their implications have become increasingly palpable and profound. The campaigns are clearly having an impact on communities outside of the schoolhouse walls.\textsuperscript{9} This Article explores the implications of our continuing—and now multiple—wars on such youth and calls for withdrawal from combat. As this Article will describe, these vulnerable young people continue to find themselves embattled by classroom educational policies and practices that threaten their wellbeing. It further asserts that, as is always the case during wartime, such tactics have placed such children at great risk, endangering their wellbeing and seriously reducing their chances to thrive and, in some cases, survive.\textsuperscript{10}

On one hand, society continues to frame poor and minority youth as troubled and violent populations to be feared, managed, and in many instances, forcibly rooted out.\textsuperscript{11} School-districting policies and funding formulas create structures that separate privileged youth from those who are poor and, often times, minorities.\textsuperscript{12} Beyond contending with these divide-and-conquer strategies, school children from marginalized communities face

\begin{itemize}
\item \textsuperscript{5} Id.
\item \textsuperscript{6} Id.
\item \textsuperscript{7} See Megin Charner-Laird, Editor's Review of See You When We Get There: Teaching for Change in Urban Schools by Gregory Michie, HARV. EDUC. REV. (Fall 2006), available at http://www.hepg.org/her/abstract/18 (stating "the majority of students attending urban schools are people of color" and such schools are the most likely to be impoverished).
\item \textsuperscript{8} Education: Blackboard Battlegrounds, supra note 2.
\item \textsuperscript{9} See infra Part III.
\item \textsuperscript{11} For more on this narrative about Black male teens, see Perry L. Moriearty & William Carson, Cognitive Warfare and Young Black Males in America, 15 J. GENDER RACE & JUST. 281 (2012).
\item \textsuperscript{12} See infra Part II.
\end{itemize}
enhanced policing efforts, discipline proceedings, and push-out practices. Under the guise of promoting “safe schools” and “gun-free” zones, such strategies leave children feeling as if they are under attack. For many, it results in their forcible removal from educational placements and communities. Thus, the children actually become prisoners of the war on youth, which further limits their life chances.

On the other hand, school systems have often encouraged these same children to embrace violence, by luring them into a life of actual armed conflict. They accomplish this through the savvy and strategic efforts of the U.S. military. These tactics include accessing otherwise confidential school records and recruiting children on public school campuses across the country to join the armed forces. Other tactics include using comic books and high-tech video games to draw in such children, which clearly targets some of our most vulnerable young people. Moreover, the federal government has begun helping states divert hundreds of at-risk children to federally funded, residential, military-run “academies,” where they are urged to take up arms, enlist to become soldiers, and fight wars abroad. Here again, in an even more direct way, our new blackboard battlegrounds work to reduce the chances for survival of our most at-risk youth.

As noted, this Article seeks to document the manifest hostilities that poor and minority children face in our nation’s schools. It does so based in part on the professional and personal experiences of the author as a clinical law professor who teaches a Juvenile Rights and Re-Entry Clinic. It

13. See infra Part III.
14. See infra Part III.
15. See infra Part IV.
16. See infra Part IV.A.
17. See infra Part IV.B.
18. See infra Part IV.C.
19. As a law professor who has focused on juvenile representation through clinical teaching, both at Washington University School of Law in St. Louis, Missouri and the University of Tennessee in Knoxville, I have heard countless stories from minority and poor youth who feel like they are under attack in their own schools. Hallway sweeps, drug dog searches, and aggressive police tactics are all a part of the day-to-day experiences of such young people. All of this activity takes place, of course, in some of the nation’s most segregated, resource-deprived, and lowest performing schools, where children and their families must fight for the most basic of educational opportunities. For those of us engaged directly in youth advocacy work, it is hard not to see these practices and problems as a war being waged on such children, imperiling their futures and reducing their possibilities for success. As a scholar who travels the country to give talks at programs like the Journal’s “War on . . . The Fallout of Declaring War on Social Issues” Symposium, I am constantly reminded of another conflict facing our nation’s young people—our War on Terror. Baby faces in military fatigues fill airports in every state. Many of these youth, who are often minorities and/or indigent, have been recruited in the very halls of the schools described above. While just children, they have been lured away from the metaphorical battlefield to the actual front lines, often through

The Journal of Gender, Race & Justice

The continuing campaigns against such youth in the United States and urges decision-makers to seriously rethink the nation’s priorities and recommit the country to the cause of educating children. This Article further serves as a call to action to join conscientious objectors who reject the current state of affairs. It suggests that we must demand and engage in a different kind of “surge,” one that might help to reduce the casualties and provide a true “new way forward” for our most imperiled young people.

II. DIVIDE AND CONQUER: SEGREGATION AND SUBSTANDARD EDUCATIONAL OPPORTUNITIES

This Part briefly explains the history of unequal treatment in this nation’s school systems. It also discusses some examples of the ways in which our decision-makers have failed to remedy this unequal treatment. Part II.A explores how both the federal government and state governments have failed to provide equal educational opportunities for minority students, while Part II.B delves into a similar failure in terms of equal educational opportunities for the poor. Part II.C provides examples of how state governments have punished those who have attempted to bypass these institutional inequalities.

A. Schools and Racial Caste

The legacy of Brown v. Board of Education is well documented as a great disappointment. Over a half century ago, the U.S. Supreme Court

manipulation and false promises of monetary reward, travel, adventure, and the very education to which they are already entitled. In a cruel irony, numbers of teens previously seen as a danger to our schools’ safety are now being encouraged to take up arms. If not killed abroad, many return seriously wounded—physically, mentally, and otherwise. As this Article explores, these strategies, taken together, result in an unacceptable number of casualties within minority and poor communities, further working to decimate the life chances of our most vulnerable youth.


23. See also ROBERT J. COTTROL ET AL., BROWN V. BOARD OF EDUCATION: CASTE, CULTURE, AND THE CONSTITUTION 234 (2003); CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED:
declared that racially segregated schools would no longer be countenanced under the Constitution.\textsuperscript{24} Despite this decision, distinct spheres of education continue in this country with great divides existing between White students and those of color.\textsuperscript{25} Even Derrick Bell, one of the lawyers who oversaw many of the desegregation suits that followed \textit{Brown}, admitted that the case offers little more than "symbolic" significance today.\textsuperscript{26}

\textit{Brown} explained that equal protection precluded Black and White students from being educated separately,\textsuperscript{27} but its fundamental concern was for inequality in educational opportunities.\textsuperscript{28} Not only did the Court find that separate educational facilities were "inherently unequal";\textsuperscript{29} it also found that Black children, in fact, had been sent to historically inferior public schools.\textsuperscript{30} Despite the ruling in \textit{Brown}, this trend continues today. While a variety of complex factors likely contribute to this continuing state of affairs, there can be little doubt that disregard for the opportunities offered to young racial minorities, if not outright animus, plays a significant role in sustaining the status quo. Much like the days following \textit{Brown}, those currently fighting to challenge the segregation stalemate find themselves in a losing battle. Indeed, as federal Judge J. Harvie Wilkinson III noted, \textit{Brown}'s mandate to district court judges "resembled nothing more than an order for the infantry to assault segregation without prospect of air or artillery support. That some of the infantry lacked enthusiasm for the cause only made matters worse. . . ."\textsuperscript{31}

In St. Louis, Missouri, where my Juvenile Rights and Re-Entry Clinic operates, a school desegregation order remained in effect up until 2009 in an effort to ensure that public schools afforded youth of color the ability to
receive an education along with White students. Stemming from the 1970s landmark federal case Liddell v. Board of Education of St. Louis, a series of settlement decrees sought to bring St. Louis into compliance with Brown’s mandate.\textsuperscript{32} By 1983, St. Louis became home to one of the nation’s “most extensive effort[s] to integrate schools of a major metropolitan area.”\textsuperscript{33} There was resistance from the very beginning, not the least of which came from then-Attorney General John Ashcroft, who appealed the case all the way to the U.S. Supreme Court.\textsuperscript{34} Indeed, it was not until presiding Judge William Hungate warned that he might consolidate all regional school districts into one large district, which would threaten the autonomy of suburban White school districts and their tax bases, that individual school districts in the area agreed to enter into a voluntary inter-district desegregation plan.\textsuperscript{35} Suburban White districts would, therefore, accept Black students.\textsuperscript{36} Beyond allowing over 10,000 Black students to transfer to predominantly White suburban schools, the settlement called for the creation of city-based magnet schools that would be racially balanced.\textsuperscript{37} In addition, the settlement ordered remedial, compensatory educational services for the remaining predominantly Black schools.\textsuperscript{38} St. Louis’s Black youth thus had three options available to them under the agreement.\textsuperscript{39} Black students thus benefitted from opportunities not previously provided, including college counseling and preparation.\textsuperscript{40} Some, however, argued the plan resulted in a “brain drain” from urban St. Louis schools as Black youth with motivated parents transferred out of the city, leaving less supported, and arguably less highly achieving, youth behind.\textsuperscript{41}

Before all the results were in, Missouri, which had resisted the plan all along, took steps in the early 1990s toward having it dismantled.\textsuperscript{42} Although

\begin{flushleft}
\textsuperscript{32.} See Liddell v. Bd. of Educ. of St. Louis, 126 F.3d 1049 (8th Cir. 1997); Liddell v. Bd. of Educ. of St. Louis, 667 F.2d 643 (8th Cir. 1981).

\textsuperscript{33.} HEANEY \&UCHITELLE, supra note 30, at 107.

\textsuperscript{34.} Id. at 103–04, 118.

\textsuperscript{35.} Id. at 118–27. As a result of this order, Judge Hungate received several death threats. Id. at 119.

\textsuperscript{36.} Id. at 118–27.

\textsuperscript{37.} Id. at 124.

\textsuperscript{38.} Id. at 122–25.

\textsuperscript{39.} HEANEY \&UCHITELLE, supra note 30, at 122–25.

\textsuperscript{40.} Id. at 140–41.

\textsuperscript{41.} Id. at 145.

\textsuperscript{42.} Id. at 186.
\end{flushleft}
Missouri spent over $8 million to fight the desegregation plans, it claimed the integration efforts were too costly. Ultimately, a new settlement agreement was signed in 1999 that extended many features of the prior desegregation plan. This new agreement contained three main differences: first, the federal court did not continue to actively monitor its terms; second, city schools received much less money under the new arrangement; and third, it was set to expire in ten years regardless of any further gains on integration or educational equality. Segments of the Black community, including then-St. Louis Mayor Freeman Bosley Jr., supported courts stepping out of local school affairs, but some reported having no idea at the time what was being settled or how much was being given up under the 1999 agreement. Having arrived in St. Louis in 2009, the year the agreement was dissolved, I can report that separate and unequal is alive and well in our area schools.

St. Louis, while perhaps a particularly noteworthy example given its pernicious history of racial discrimination, is certainly not an outlier when it comes to continuing divides in educational opportunities. Nationwide lawsuits, which have continued in an effort to address persistent race-based segregation, represent the still-existent divide in educational opportunities. One Louisiana school district has remained embroiled in litigation for nearly five decades, fighting Department of Justice oversight of its racially discriminatory practices. As late as last year, a federal judge in Mississippi had to order a rural school district to cease and desist from segregation.

43. *Id.* at 200.


46. *Id.* at 202.


practices that put Blacks in all-Black classrooms.\textsuperscript{50}

According to some commentators, U.S. public schools are more racially segregated today than they were at the time of \textit{Brown}.\textsuperscript{51} The Supreme Court’s most recent pronouncement was in \textit{Parents Involved in Community Schools (PICS) v. Seattle School District No. 1}. In that case, the Court declared unconstitutional certain voluntary race-conscious student assignment plans that sought to ameliorate this chasm.\textsuperscript{52} This decision has caused many to worry that our ability to deliver on \textit{Brown’s} promise has been further thwarted.\textsuperscript{53}

\textbf{B. Class in Our Classes}

Race is not the only indicator of educational inequality in this country. The poor also receive poor schooling. In 1973, the same year that \textit{Time} published “Blackboard Battlegrounds,” the Supreme Court declared in \textit{San Antonio Independent School District v. Rodriguez} that education was not a fundamental right under the U.S. Constitution.\textsuperscript{54} This decision provided a cover for states to offer wealthy children a better education than their less affluent peers.\textsuperscript{55}

In making this pronouncement, the Court upheld Texas’s school finance system, which was driven by local property taxes and necessarily benefitted

\begin{itemize}
\item \textsuperscript{52} \textit{Parents Involved in Cmty. Sch. (PICS) v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 771 (2007).}
\item \textsuperscript{54} San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).
\item \textsuperscript{55} See id.; see also Erwin Chemerinsky, \textit{Separate and Unequal: American Public Education Today, 52 AM. U. L. REV. 1461, 1472 (2003)} (“Rodriguez assisted in ensuring that school systems would be unequal.”).
\end{itemize}
children in more tax-rich areas. Justice Thurgood Marshall warned in his dissent that over time upholding such a scheme would work to “deprive[] children in their earliest years of the chance to reach their full potential as citizens.” Indeed, we continue to privilege already-privileged youth by providing them with superior access to educational services, while leaving poor children in substandard, low-performing schools.

In the face of growing differences of quality education between poor and wealthy students, President George W. Bush declared in his 2000 nomination acceptance speech that “[t]oo many children are segregated in schools without standards, shuffled from grade to grade. This is discrimination, pure and simple - - the soft bigotry of low expectations.”

The next year, in an effort to raise the bar for marginally performing schools, Congress passed the No Child Left Behind Act (NCLB). NCLB provided special funding for disadvantaged districts in an alleged effort to help them fulfill the President’s educational expectations by 2014, but it did so under a bizarre incentive structure that exacerbated many local-level funding problems.

Both conservatives and progressives have seen the Act as a misguided failure. It held struggling schools to a higher standard and penalized them


58. See OGLETREE, supra note 23, at 261 (“Schools in high-poverty areas routinely show lower levels of educational performance; even well-prepared students with stable family back-grounds are hurt academically by attending such schools.”).


62. See Dan Lips & Evan Feinberg, No Child Left Behind and the Race to the Bottom, HERITAGE FOUND. (June 18, 2007), http://www.heritage.org/research/education-notebook/no-child-left-behind-and-the-race-to-the-bottom; Claudio Sanchez, No Child Left Behind Fails To Close the Achievement Gap, NPR (Jan. 8, 2006), http://www.npr.org/templates/story/story.php?story Id=5134827. In a further allusion to war being waged on youth, one education blog has referred to NCLB’s efforts as “a psychometric blitzkrieg of ‘metastasizing testing’ aimed at dismantling a
more harshly than others when they failed to meet benchmarks. In a further perversion of concern for the underprivileged, the Act has encouraged what President Barack Obama has called a “race to the bottom,” where jurisdictions have lowered the local bar to help troubled schools meet it.

In the wake of NCLB, “educational adequacy” lawsuits have come to replace desegregation cases as the new wave of litigation seeking to address disparity in educational opportunities. Litigants across the country have challenged the kind of disparity that Justice Marshall forecast in Rodriguez, a disparity that is more readily apparent under NCLB’s data collection and assessment mechanisms. This new wave of lawsuits has been largely based on state constitutional provisions, rather than the federal Constitution, alleging inadequate educational services for poor children.

Again, Missouri serves as a striking example. The Missouri Constitution requires the State to “establish and maintain free public schools,” because it acknowledges that the “general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people.” Despite this provision, many have seen the state’s educational funding formula as one of the most unbalanced in the nation. In 2004,
various parties, including more than half of the state’s school districts, sued under the Missouri Constitution to obtain additional state funds and ensure minimal per student expenditures across districts. After five years of litigation, the Missouri Supreme Court ended the lawsuit; it held that the Missouri Constitution does not require the State to engage in any particularized distribution scheme or provide greater funding. Ultimately, this decision upheld the gap in spending between poor students and rich students. The following year, however, in *Turner v. School District of Clayton*, the Missouri Supreme Court suggested that children zoned for poorly performing, unaccredited St. Louis schools should be able to transfer to accredited ones. The implications of that decision, interpreting a portion of Missouri’s Education Code, are still unknown, because the court remanded the case for further proceedings, and various constituencies are working hard to blunt its impact. To date, the battle around equitable distribution of school resources continues in Missouri.

In light of the recent economic downturn across the nation, disparities in educational services appear to be growing more pronounced. For instance, when Pennsylvania released its reduced state education budget last year, its cuts in education spending resulted in “poor districts . . . taking the biggest hit.” Per-pupil annual spending reductions in such districts ranged

---

71. *Id.*
72. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 668–70 (Mo. 2010) (holding under Missouri’s Education Code that students attending unaccredited school districts may transfer to accredited school districts and remanding for further proceedings consistent with the decision).
73. See MO. ANN. STAT. § 167.131 (West 2009) (providing that unaccredited school districts “shall pay the tuition of and provide transportation . . . for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county”).
from $1149 per student up to $2561. School administrators in Pennsylvania reported that such decreases would force tax-poor districts to cut back on even the most basic educational necessities, in addition to gutting after-school tutoring programs and impacting kindergarten education for four-year-olds.

The same holds true in New York. The New York Times recently highlighted how the state’s reduced educational budget for 2011 will prove “catastrophic” for poor areas while “scarcely affect[ing] wealthy districts” that have a more robust local tax base from which to draw funds. It noted that even without these cuts, the poor district of Ilion was only able to offer one foreign language course—Spanish—and four advanced placement courses to its students. Syosset, a wealthier district, offered at least eight foreign languages—including Russian and Mandarin Chinese—and a range of nearly thirty advanced placement college-level classes. Thus, as the Ilion press lamented, the message is clear that the State will not afford poor children the same starting point as the rich. Rather, like other marginalized school children, they—and their families—remain embattled.

C. Crackdown on Conscientious Objectors: Prosecuting Peaceful Parent Protestors

Many parents are understandably reluctant to accept a state of affairs in which poor and minority children receive less access to quality education than their more affluent White counterparts. Parents who have the financial ability may move from one area to another to access better schools and

---

77. Id.
78. Id.
80. Id.
81. Id.
82. Id.
improve opportunities for the success of their children. Those without means, however, are left in a difficult situation—accept the government’s decision to reduce the life chances of their children or conscientiously object to such violence being visited upon their children’s futures. Some families are beginning to take the latter route, refusing to become passive parties in the nation’s continuing war on poor and minority youth.

Our country has long respected those who take a stand against aggression based upon moral concerns of conscience. Yet some parents pursuing such options in the education context are being treated as unlawful resisters and met with criminal prosecution and possible prison sentences. Perhaps the most well-known example is the case of Kelley Williams-Bolar, a Black mother of two daughters living in Akron, Ohio. Williams-Bolar, a college student and teachers’ aide, was charged, tried, and convicted of two counts of felony tampering with official records for simply enrolling her daughters in a suburban school to which they allegedly were not legally zoned.

Williams-Bolar lived in subsidized housing in the high-crime area of West Akron, where her apartment had previously been burglarized, and she decided to register her children for school using the address of her father.

---


88. See, e.g., Gillette v. United States, 401 U.S. 437, 453 (1971); see also Selective Service System, Fast Facts: Conscientious Objection and Alternative Service, http://www.sss.gov/FSSconsof.htm (last updated Apr. 30, 2002) (“Beliefs which qualify a registrant for [conscientious objector] status may be religious in nature, but don’t have to be. Beliefs may be moral or ethical; however, a man’s reasons for not wanting to participate in a war must not be based on politics, expediency, or self-interest.”).


90. Id.; see also Franko, supra note 87.
who lived in the suburb of Copley-Fairlawn.\textsuperscript{91} She asserted that the children lived with both her and her father and tried to have her father become a legal guardian for purposes of residency, but the school district pursued criminal action against her.\textsuperscript{92} It claimed she had defrauded the district of approximately $30,000 in educational costs by unfairly accessing its resources for her children.\textsuperscript{93} Williams-Bolar’s conviction led to a ten-day jail sentence followed by two years of “community control” probation\textsuperscript{94} and a felony record that could have precluded her from seeking teacher certification.\textsuperscript{95} Ultimately, Ohio Governor John Kasich intervened to grant executive clemency relief, reducing the charges to misdemeanors so that she could continue to work in the school system.\textsuperscript{96}

More recently, the State of Connecticut charged Tanya McDowell, a homeless Black woman, with felony theft for using the address of her babysitter to enroll her five-year-old son in the Norwalk school district.\textsuperscript{97} In McDowell’s case, the school district has claimed that she “stole” more than $16,000 worth of education for her kindergartener.\textsuperscript{98} Although McDowell was living in her van and sleeping at a homeless shelter, school officials assert that she should have registered her child using her last permanent address in the poorer performing district of Bridgeport.\textsuperscript{99} If convicted, McDowell faces up to twenty years in prison.\textsuperscript{100}

Commentators have been quick to note that these two prosecutions

\begin{itemize}
\item \textsuperscript{91} Meyer & Biczky, \textit{supra} note 89.
\item \textsuperscript{92} \textit{Id.}
\item \textsuperscript{93} See \textit{id.}; see also Franko, \textit{supra} note 87.
\item \textsuperscript{94} The court ordered Ms. Williams-Bolar to pay twenty dollars per month for the privilege of “community control” supervision, complete eighty hours of community service, maintain full-time employment of forty to sixty hours per week if not attending school, and refrain from consuming any alcohol. \textit{STATE OF OHIO ADULT PAROLE AUTH., KELLY WILLIAMS-BOLAR CLEMENCY REPORT 3} (Sept. 2, 2011), available at \textit{http://www.drc.ohio.gov/Public/WilliamsBolarKellyClemency.pdf}.
\item \textsuperscript{95} Meyer & Biczky, \textit{supra} note 89.
\item \textsuperscript{96} See Williams-Bolar: Conscientious Mom or Felon?, \textit{WALL ST. J. L. BLOG} (Sept. 9, 2011, 12:02 PM), \textit{http://blogs.wsj.com/law/2011/09/09/williams-bolar-conscientious-mom-or-felon/}; see also \textit{STATE OF OHIO ADULT PAROLE AUTH., supra} note 94.
\item \textsuperscript{98} \textit{Id.}
\item \textsuperscript{100} Reitz, \textit{supra} note 97.
\end{itemize}
The Fallout from Our Blackboard Battlegrounds

appear to be selective strikes. In both districts, dozens of other families have engaged in similar behavior without being met with criminal proceedings. The same holds true in other cities across the country. Even so, these mothers of color and their children have become examples. For many, such practices reflect a new race-based strategy against "Parenting While Black." For others, it has generated the kind of distrust and fear one might expect in a police state. One mother from Norwalk, who has organized the Connecticut Parents Union as a response to McDowell's case, said the following: "I'm disappointed and I'm scared... I'm afraid of a system that would rather arrest me for being a good parent than help me raise my child to be a productive citizen." The disparate treatment among poor and minority students, as well as the punishments for those who try to remedy the problem themselves, illustrate just some of the large-scale problems that continue to exist in our schools.

III. PUBLIC SCHOOLS AS OCCUPIED TERRITORIES AND POLICE STATES

This Part addresses the policing practices that occur in schools around the country. It posits that actions in the name of "safety" actually subject many students, especially poor and/or minority students, to endangerment. These practices reduce the chances for poor and/or minority students to succeed and increase the likelihood that these students will be a part of the criminal system as adults.
A. Reading, Writing, and Reconnaissance

Parents are not the only ones frightened. Many poor and minority children—even those enrolled in the schools for which they are districted—face intimidating and demoralizing tactics from the moment they walk through the school-house doors. Even though many saw the stepped-up security efforts *Time* called for in 1973 as extreme and controversial, current standards show that these efforts are now common-place.

In fact, thousands of public school students enter the school-house gates today by passing a security clearance post manned by uniformed personnel, forcing them to endure physical examination by a body scanner and to experience intrusive use of metal detector wands and school bag checks—and this all occurs before homeroom.107 As if these students were clearing a military checkpoint in a conflict zone, school personnel violate students’ personal space and autonomy as a matter of course and routinely ignore their privacy, and a presumption of suspicion abounds.108 The message is clear: such students are the enemy, cannot be trusted, and are in need of surveillance and forcible scrutiny.

A new wave of special security forces within the schools, School Resource Officers (SROs), employs these strategies.109 In part supported by funds from the U.S. Department of Justice, SROs allegedly exist to play an important “multifaceted role” that includes serving as counselor, teacher, and community liaison.110 However, for those of us who have interacted with such officers, we might more aptly describe their role as a double agent. That is, SROs suggest they are school staff serving as a resource to youth, but more often, they serve as a unique arm of the police force, one that has nearly all of the privileges of law enforcement but has not historically been
held to the same legal standards. In these ways, SROs add to the oppressive environment that poor and minority youth experience in public schools, also known as “Education on Lockdown.” Representing youth in a law school clinic in Knoxville, Tennessee, I saw how SROs worked in tandem with armed police officers, which included sharing office space, incident report forms, and information. They routinely monitored halls and engaged in joint investigative and other law enforcement functions together. However, because many courts consider SROs school staff rather than law enforcement, schools often deploy SROs to take actions that the Constitution would not permit police to undertake on the scene without a warrant or probable cause. Thus, SROs might search students, secure statements from them, and then turn it all over to police who stood nearby. A 2009 Memorandum of Understanding by Knoxville’s school district, police forces, and juvenile court demonstrates the unitary vision of police, prosecutors, and SROs in that locality.

St. Louis-area youth have reported that they feel similarly intimidated and demoralized by school staff and security officers who walk school halls with squawking radios, while they bark orders to students and treat them like criminals. In fact, the tell-all account of Lieutenant Colonel Charles E. McCrary Sr. in his self-published book, Urban School Security from Behind the Scenes, supports the oppressive environment these students paint.


112. See Kim Farris-Berg, Students Speak Out, the Milwaukee School Resource Officer Program Is Not Working Well. But Students Know How It Could., CITIZING, 1–8 (2009), http://www.citizing.org/data/pdfs/sso/Students-Speak-Out-in-Milwaukee.pdf (explaining that students believe that they were monitored by security based on their race and that security misinterpreted innocent behaviors based on false assumptions of gang affiliation and the like); see also CATHERINE Y. KIM & I. INDIA GERONIMO, AM. CIVIL LIBERTIES UNION, POLICING IN SCHOOLS: DEVELOPING A GOVERNANCE DOCUMENT FOR SCHOOL RESOURCE OFFICERS IN K-12 SCHOOLS 5–7 (2009).


116. Many of these observations are based on our clinic’s work representing children in St. Louis’s area schools.


McCrary is the former head of school security for the City of St. Louis, and he currently runs the firm "McCrary Security Consultants, Inc.: Home of the B.O.S.S. Force," which claims to specialize in "research and development of Successful Urban School Security Operations." Although it is clear from his book that McCrary is a caring and compassionate individual, his self-reported policing practices within St. Louis's public schools suggest insufficient concern for student privacy or probable cause, even working at the behest of police.

Indeed, schools have all but opened their doors to law enforcement in more direct ways, and not only for purposes of protecting against impending violent activity. Our young clients in Knoxville endured frantic drug sweeps of their lockers, involving barking dogs in the middle of the school day, as well as frightening "lock-downs" while military-like troops of officers were deployed in any effort to keep schools "safe." They are not alone in living through such disturbing episodes. At-risk youth across the country share such reports. For instance, one fifteen-year-old recounted, "I thought there was a terrorist attack or something," after a SWAT team conducted a drug raid at his school and pointed weapons at students who failed to heed orders. Such operations disrupt educational activities in poor schools in ways more privileged youth do not experience, and exposure to such unpredictable and traumatic events undoubtedly leaves a lasting impression on these youth—not entirely different from the damaging effects of living through other wartime activities.

McCrary, supra note 118).


121. See, e.g., McCrary, supra note 118, at xiv (describing an "unannounced locker search" for drugs conducted along with school administrators and police officers); id. at 11–12 (describing how city police used McCrary's school security force to gather evidence about students when they could not, then used such information in conjunction with juvenile prosecutions).

122. See, e.g., Camreta v. Greene, 131 S. Ct. 2020, 2027 (2011) (describing how police interviewed an alleged victim at her elementary school without a warrant or parental consent).

123. See also Education on Lockdown, supra note 108, at 11 ("Visible measures to prevent serious crime in schools include: school security officers, police officers, metal detectors, tasers, canine dogs, drug sweeps, SWAT teams, biometric hand readers, and surveillance cameras.").

124. See id. at 16 (internal quotation marks omitted); see also Aline Reynolds, Rally Held in Support of Student Safety Act, DOWNTOWN EXPRESS, Dec. 22, 2010, http://www.downtownexpress.com/de_400/rallyheld.html (describing a New York City rally against punitive tactics of school security, where high school students chanted: "'Students under attack! What do we do, say no, fight back!'").

Beyond the negative impact of bearing witness to such atrocities, those swept up in school-based offensives suffer further devastating injuries. Gone are the days where minor misbehaviors or schoolyard scuffles are met with reprimand or short-term disciplinary sanctions. Instead, seemingly inconsistent with the goal of leaving no child behind, such deviations now often result in arrest, expulsion, prosecution, and adjudication with official court sanctions. Given the modern merger of education and law enforcement functions, these processes can be remarkably swift, severe, and long lasting in their effects.

Despite the Supreme Court’s decision in *Goss v. Lopez*, which requires a due process hearing before a school can deny a student educational services, schools often dispense with such hearings while the government prosecutes students for alleged school misconduct. When children are escorted out of schoolhouses in handcuffs and delivered to detention centers, they and their families are distracted by the immediate situation. An informal school hearing becomes the least of their concerns. Furthermore, school officials often encourage families to waive hearings without fully explaining their rights, or they send hearing notices that lack information or...
are missed in the chaos that follows an arrest. Even in the absence of these hearings, school officials may still decide to suspend a child for a year, sometimes longer.

Even those who seek to challenge disciplinary actions often find themselves victims of a complex system that has worked to collect evidence against them all while claiming to protect. For instance, many hearing officials rely on evidence that was obtained in violation of a child’s constitutional rights and base decisions on hearsay information of wrongdoing. Such practices leave children and families feeling like the process they are afforded is a sham. They also all but ensure children are pushed out of schools and down the path of the prison pipeline.

Once removed from the school setting and ensnared by the juvenile justice system, children become even more at risk for failure. For instance, many youth who exhibit inappropriate behaviors at school are actually in need of mental health and other assistance, not punitive court punishments. Thus, the psychological and other needs of these students


133. See, e.g., Form Letter from Bos. Pub. Sch., Notification of Disciplinary Hearing Letter: Suspension, Long-Term Suspension, and Disciplinary Transfer/Alternative Program Placement, available at http://www.bostonpublicschools.org/files/3.1%20Notification%20of%20Hearing.pdf (last visited May 22, 2012) (informing parents that if they fail to attend the scheduled school disciplinary hearing, it will be postponed for forty-eight hours and held at that time).

134. See Brent M. Pattison, Questioning School Discipline: Due Process, Confrontation, and School Discipline Hearings, 18 TEMP. POL. & CIV. RTS. L. REV. 49 (2008); see also MICHAEL IMBER & TYLL VAN GEEL, A TEACHER’S GUIDE TO EDUCATION LAW 93 (2005) (warning school officials to provide as much fair process as possible and avoid reliance on hearsay and other “second hand” evidence); David L. Kirp, Proceduralism and Bureaucracy, Due Process in the School Setting, 28 STAN. L. REV. 841 (1976).

135. In addition, it seems hearing officers often have reached disciplinary conclusions before any hearing is held. Many of our clinic clients, their families, and our student attorneys report feeling the same way.


The Fallout from Our Blackboard Battlegrounds

may go unmet, which sets them up for further difficulties as they enter adulthood.\textsuperscript{138} Even when children do not require mental health intervention, removal from the traditional school setting can undermine their ability to succeed and encourage rather than deter further misbehaviors.\textsuperscript{139} Arrest alone increases a child’s chance of dropping out of school entirely.\textsuperscript{140} When such children become court involved, the likelihood of their receiving a diploma decreases even more dramatically.\textsuperscript{141}

Beyond formal practices that exclude children from school, schools have developed more informal and covert mechanisms to push out the least desirable youths. Here again, despite the constitutional mandate of a due process hearing prior to suspension or expulsion, many schools have begun simply transferring students who they perceive as a problem to alternative settings.\textsuperscript{142} Schools often make these unilateral transfers without a hearing and base their decisions upon generalized considerations relating to student behavior or performance.\textsuperscript{143} Claiming that such transfers are for the good of the individual child and larger school community, education officials send a very clear message that such students do not deserve to be educated with their peers.\textsuperscript{144} For instance, “[I]n 2005–06 alone, Texas public schools made 62,981 discretionary referrals to [alternative education programs] compared to 27,093 state-mandated referrals for serious offenses.”\textsuperscript{145} School officials often claim these moves do not constitute discipline or a deprivation of

\begin{enumerate}
\item Id.
\item EDUCATION ON LOCKDOWN, supra note 108, at 16 (“The high rate of recidivism of suspended youths indicates that out-of-school suspension is an ineffective deterrent and, in fact, for some students it acts as a reinforcer.”); Alicia C. Insley, Suspending and Expelling Children from Educational Opportunity: Time To Reevaluate Zero Tolerance Policies, 50 AM. U. L. REV. 1039, 1070 (2001) (collecting studies that “suggest that when children are out of school, they are more likely to engage in physical fights, to possess a weapon, and to use alcohol, tobacco, and drugs”).
\item Sherman et al., supra note 126 (“Research shows that a first-time arrest during high school nearly doubles the chances of a youth dropping out of school. A court appearance nearly quadruples those chances.”).
\item Id.
\item Hornstein, supra note 132, at 7 (describing ways in which systemic features work to undermine meaningful due process hearings).
\item OPPORTUNITIES SUSPENDED, supra note 142 (“[M]any alternative schools are no more than holding pens for children considered to be troublemakers.”).
\end{enumerate}
education. However, some alternative programs are taught out of trailers and other substandard facilities. In addition, many provide learning opportunities that are far inferior to those offered at even the poorest performing traditional schools. Instruction might be offered in the barest of essentials and by way of handouts or computerized programs.

In St. Louis, for instance, the city has contracted with an outside entity to serve as an alternative placement, but it provides only three hours of education per day to students. This permits the contractors to run multiple shifts and shuttle students in and out of the program all day long. With the first session held from only 7:00 a.m. to 10:00 a.m., students are largely left to their own devices for most of the day, but even during class sessions students are left on their own. Through our work at the Juvenile Justice Clinic, we have learned that teachers leave students at computers to teach themselves. These computer programs permit students to take tests over and over, without changing the content or order of multiple-choice questions, until they achieve a passing score. Indeed, our clinic recently brought a lawsuit to challenge unilateral transfers to such alternative placements and continues to encourage reform of such practices.

Not surprisingly, statistics demonstrate that poor and minority children

146. Our clinic encountered this argument in a lawsuit that challenged St. Louis city schools' unilateral transfer practices. See also Patty Blackburn Tillman, Procedural Due Process for Texas Public School Students Receiving Disciplinary Transfers to Alternative Education Programs, 3 TEX. WESLEYAN L. REV. 209 (1996).

147. See Steven Goode, State Orders City To Overhaul, Move Transitional Learning Academy, HARTFORD COURANT, June 2, 2011, available at 2010 WLNR 11391687 (describing the poor quality of Hartford alternative school facilities, including issues relating to cleanliness and safety, which Hannah Benton of Connecticut’s Center for Children’s Advocacy helped bring to light); Jenny Hurwitz, Alternative School in Harvey Teaching Students the Meaning of Respect, TIMES PICAYUNE (New Orleans, La.), Mar. 16, 2009, http://www.nola.com/news/index.ssf/2009/03/harvey_school_teaching_tough_s.html (describing how students on juvenile court probation or parole in Harvey, Louisiana are removed from their homeschool settings and taught in a “trio of plain, beige trailers bordered by a chain-link fence”).

148. FOWLER ET AL., supra note 145, at 31 (explaining that instruction is limited to the basics of English, math, science, and history).


150. See Coaston, supra note 149.

151. Id.

152. Id. Because they are out on the streets in the middle of the day, local police often treat these children as truants.

are overwhelmingly impacted by such push-out strategies.\textsuperscript{154} Across the
country, students of color are overrepresented in school disciplinary
proceedings and related prosecutions.\textsuperscript{155} Black youth are “three times as
likely to be suspended” and “50 percent more likely to drop out of school”
when compared to White youth.\textsuperscript{156} Similarly, “children growing up in homes
near or below the poverty level are more likely to be expelled” than
others.\textsuperscript{157} Beyond reducing their ability to receive a high school diploma,
once referred to the juvenile justice system, they are more likely to be
detained, adjudicated, and remain court-involved.\textsuperscript{158} Again, like children of
war,\textsuperscript{159} poor and minority students in the United States suffer seriously
reduced life chances.\textsuperscript{160}

IV. PUSHING VULNERABLE SCHOOL CHILDREN
OUT AND ONTO THE FRONT LINES

School officials today, like their counterparts quoted in \textit{Time} nearly
forty years ago, spend a great deal of time attempting to root out violence
that is allegedly being introduced into schools by troubled youth. Yet these
same officials affirmatively assist in introducing their students to the
violence of war. The next Part chronicles the many ways in which at-risk
school children are targeted and enticed to take up arms.

\textsuperscript{154} See, e.g., Fowler et al., supra note 145, at 36 (“African American, Hispanic, and special
education students are overrepresented in disciplinary referrals.”).

\textsuperscript{155} See id.

\textsuperscript{156} America’s Cradle to Prison Pipeline, supra note 136, at 38.

\textsuperscript{157} Am. Acad. of Pediatrics, Policy Statement: Out of School Suspension and
Expulsion 112 (2003), available at http://aappolicy.aappublications.org/cgi/reprint/pediatrics;
112/5/1206.pdf.

\textsuperscript{158} Youth Transition Funders Grp., A Blueprint for Juvenile Justice Reform 3
may be more predictive of future adult difficulty than having been confined in a secure juvenile
facility.”); Christina M. Gaudio, A Call to Congress To Give Back the Future: End the “War on
Drugs” and Encourage States To Reconstruct the Juvenile Justice System, 48 Fam. Ct. Rev. 212
(2010); see also Opportunities Suspended, supra note 142, at 11; Fowler et al., supra note 145,
at 27.

\textsuperscript{159} Carlton-Ford & Boop, supra note 10, at 79 (assessing the negative impact of war on the
life chances of vulnerable populations across the world, particularly children).

\textsuperscript{160} Michael Wald & Tia Martinez, William & Flora Hewlett Found., Connected by
25: Improving the Life Chances of the Country’s Most Vulnerable 14–24 Year Olds 7–8
“[m]ale high school dropouts are especially at-risk of very bad outcomes, with a large percentage
incarcerated at some point before they are 25” and non-White males presenting the greatest risk of
social “disconnection”); cf. Mark D. Hayward & Bridget K. Gorman, The Long Arm of Childhood:
A. Army, Navy, Air Force, Marines: Leaving No Child Behind

While public school officials have tried to push out at-risk youth because of their supposed threat to school safety, many of the same children are being aggressively lured into a life of violence by the government. A further twisted irony of the No Child Left Behind Act is that it requires high schools that receive federal aid to supply military recruiters with the names, addresses, and telephone numbers of their students.\(^\text{161}\) Although the Act contains an “opt-out” provision that permits parents to block such information from being shared,\(^\text{162}\) many do not know about this right.\(^\text{163}\) In addition, the Act requires schools to provide military recruiters with the same access to students as employers and colleges.\(^\text{164}\) But access, many argue, has evolved into overreaching and coercion.\(^\text{165}\) As a result, such provisions have permitted armed forces to target some of the nation’s most vulnerable students, even more directly endangering their lives.\(^\text{166}\)

When Congress was debating NCLB’s Recruiter Access provisions, one of the Act’s sponsors, Representative Pete Sessions, made clear that the idea was to connect the military with students believed to have “‘no other opportunities, whether it be college or other directions . . . .’”\(^\text{167}\) Reports of recruiter saturation of poor and minority schools in recent years abound. California high schools with a high concentration of low-income Latino students, as in East Los Angeles, have been choice


\(^{162}\) 20 U.S.C. § 7908(a)(2).


\(^{166}\) Id. (stating that one concerned New York City parent noted, “The recruiters are in your face, in the library, in the lunchroom . . . . They’re contacting the most vulnerable students and recruiting them to go to war.”).

\(^{167}\) See Zgonjanin, supra note 161, at 171 (quoting 147 CONG. REC. H2535 (daily ed. May 22, 2001) (statement of Representative Pete Sessions)). Pete Sessions was the co-sponsor of the Recruiter Access Amendment to NCLB. Id.; see also id. at 193 (“[T]he only relation military recruiting has to the NCLB is that the NCLB provides a good screening device for the military so that it can target students failing to attain desired academic achievement.”).
targets for military recruitment, while more affluent high schools in the area have been passed over. Similarly, in New York City’s predominantly Black and Latino neighborhoods, such as Bushwick where over a quarter of its residents live below the poverty line, high school students have contended with badgering by military recruiters both on and off campus.

Outside of the urban setting, recruiters have hit poor rural schools hard. Nearly half of all recruits come from rural communities, where economic opportunities often are scarce. In the small town of Martinville, Virginia, for instance, military representatives see Magna Vista High School, where half of the students qualify for free lunch, as an “anchor” for their conscription efforts. In fact, school officials provide “recruiters a list of seniors to contact, and encourage upperclassmen to take a vocational test required by the military.” Although many of these same youth scored poorly on this test, the Armed Services Vocational Aptitude Battery (ASVAB), the military has accepted them into their ranks.

In the wake of our post-September 11 War on Terror—declared the same year President George W. Bush signed NCLB into law—the military has increasingly directed its attention toward at-risk and marginalized students. Such practices have drawn sharp criticism. According to Lieutenant Colonel Jimmy L. McConico, the Army began a recruitment push following our invasion of Iraq that “seems controversial at best and grossly unethical at worst.” Desperate for bodies to deploy, the Army


172. Id.

173. Id.; Heavy Military Recruitment at High Schools Irks Some Parents, FOX NEWS (June 23, 2005), http://www.foxnews.com/story/0,2933,160406,00.html (“We are a very poor school system and the military is a really nice option for our students.”) (quoting the spokesperson for inner-city Hartford, Connecticut schools).

174. Tyson, supra note 171.

lowered its recruiting standards in three key ways in 2005: 
“(1) in assessing into its ranks a larger percentage of recruits who have not earned a high school diploma; 
(2) by increasing the number of recruits who are cognitively-challenged; and 
(3), by waiving earlier prohibitions against recruits who possessed criminal records.”

Thus, contrary to closing the education gap in this country, it seems NCLB and its effects have helped to push the neediest students onto our front lines.

Although such children are not old enough to sign a contract,177 purchase cigarettes,178 or vote,179 all branches of the U.S. military permit youth as young as seventeen to sign up for active duty with the consent of a parent or guardian.180 They additionally sponsor Delayed Entry Programs (DEP), in which young people sign agreements to enter the military at some future date.181 According to one website, which individuals affiliated with the U.S. military appear to run, one of the benefits of DEP is that an individual can delay his or her reporting date for up to 365 days to “coincide . . . with personal plans such as high school graduation.”

The Army also informs youth entering the Army’s DEP that if they refer other youth to enlist on a delayed basis, they can increase their own pay grade and rank once they become active-duty members.183 Although the DEP

176. Id. at 7.


178. CTRS. FOR DISEASE CONTROL AND PREVENTION, STATE LAWS ON TOBACCO CONTROL (1995), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/00039528.htm (noting that in all fifty states, youth must be eighteen years or older to purchase tobacco products).


182. See Delayed Entry Program, DELAYED ENTRY PROGRAM, http://www.delayedentry program.com/index.html (last visited May 22, 2012). The web page is subtitled “Information and Resources about the US Military Delayed Entry Program.” Id. Curiously, however, it disclaims, “This site is not run, endorsed nor approved by the United States Federal Government, the Army Delayed Entry Program, Department of Defense, Army, Marines, Air Force, Navy, Coast Guard, National Guard, or any agency thereof.” Id. However, it provides links with information about the DEP for each of the military’s units and offers readers the opportunity to speak “anonymously” with “DEP Experts” who are actual soldiers at www.smartsoldier.com. Id. Smartsoldier.com describes itself as “an online community run by current military personnel and recent veterans from all branches of the United States Armed Services.” See SMART SOLDIER, http://www.smartsoldier.com/ info/goingin.php (last visited May 22, 2012).

183. Future Soldiers Training Program, supra note 181.
The Fallout from Our Blackboard Battlegrounds

reportedly allow teens to change their minds about entering active duty, numerous accounts suggest youth are being misled, harassed, and even threatened with legal action when they attempt to do so.184

Students, parents, teachers, and others offer accounts of poor and minority youth being pressured and misled by recruiters in others ways. For instance, the Army's own School Recruiting Training Handbook provides advice to recruiters working in high schools; it suggests that they should not visit schools during the first days of the school year as "school officials may resent an early 'invasion' by recruiters."185 From there, however, it recommends they engage in aggressive recruiting tactics, such as delivering doughnuts to the staff once a month, volunteering to train the football team during practices, seeking permission to eat in the lunchroom with students to develop relationships, and participating in school activities targeted toward minority students, like Hispanic Heritage Month.186 Female students of color in Brooklyn, New York report that recruiters flirt with them, promise "'a lot of cute guys'" if they enlist,187 and make other "empty promises."188

During my own travels over the last few years to programs like the Symposium that the Journal sponsored, I have seen hundreds of new recruits walking through airports in fatigues, looking overwhelmed and scared. I have talked to numerous boys with unshaven faces and girls with sparkle nail polish who appear to be heading off to summer camp rather than war. Many seem to have received similar lofty promises. On a recent flight, I sat between four teens heading to boot camp, two of whom were wearing high school graduation t-shirts. They shared stories of incentives they had been offered to enlist. Some said they were promised $5000, while others were assured $10,000. However, it seems none had actually received the money. In addition, the only woman in the group shared her hopes that she would be stationed in Hawaii, as her recruiter had suggested to her. On another flight, I sat next to a teenager from a small town in Louisiana who was returning home at the end of boot camp because his wife had given birth. He indicated it would be a short visit prior to being sent overseas. He, too, shared with me


186. Id. at 5.


188. Minno, supra note 169 (citing another student who referred to recruiters as "vultures").
concerns about statements recruiters made to him, and he complained that he had yet to see the $10,000 he had been promised.

Even more outrageous conduct targeting at-risk youth has been documented. In one well-publicized incident, a Colorado honors student posed as a dropout who was addicted to marijuana. Not only did recruiters encourage him to create a fake diploma from a fictional school to meet stated military requirements, but they were caught on tape encouraging him to purchase a detox kit to help cover up the fact that he might test positive for drugs. Another retired recruiter has admitted to having teenagers lie about medical conditions and deny having juvenile court records in order to satisfy enlistment requirements.

These examples of recruiters' willingness to dupe even the most vulnerable of young people into enlisting clearly stems from the pressure recruiters are under to produce bodies. Since the declaration of the War on Terror, many recruiters have been pushed to work thirteen-hour shifts, seven days a week, to try to lure at least two youth a month to join their ranks. Those failing to meet quotas have been verbally abused by commanders, punished with time away from family, and threatened with their own further deployment. This kind of atmosphere, pushing some recruiters so far as to forge signatures to help youth enlist, clearly has taken its toll. A staggering number of military recruiters—seventeen in all—have taken their lives since we declared our War on Terror. According to the former girlfriend of one recruitment officer who served in Iraq and committed suicide in 2008, "'He was morally opposed to putting more young men into that situation, where they could be injured or killed or see the things he'd seen.'" Despite these tragic tales, recruitment of vulnerable youths continues in a variety of ways.


190. Id.


192. See id.

193. Id. at 3.

194. Id. at 3–4.


197. Wise, supra note 195.
B. Comic Books, Video Games, and Other Dangerous Decoys

These efforts to recruit extend beyond direct contact with recruiters under NCLB. Since September 11, 2001, the military has employed other "aggressive" and "innovative" approaches to reach younger and younger audiences.\(^{198}\) In 2002, for instance, it established the Army Marketing Brand Group (AMBG), which released a free online video game called "America's Army," which targets teenagers as young as thirteen with its high-tech, "realistic" features.\(^{199}\) As of 2009, the game has been downloaded from its website more than forty million times and has had an unprecedented impact on recruiting.\(^{200}\)

In order to keep young audiences engaged over time, successive versions of the game have been released.\(^{201}\) Today teens can download such enhanced options as "America's Army: Special Forces (Overmatch)" and "America's Army 3," the latter advertised in the image below.\(^{202}\)

![Figure 1](america's-army-3.png)

The game's website includes numerous disclaimers that neither the United States Army nor the Department of Defense endorse it.\(^{203}\) But it also declares: "EMPOWER YOURSELF" and "DEFEND FREEDOM" while

---


199. Id.

200. Id. (citing a 2008 study from the Massachusetts Institute of Technology, which found that the game was more successful than "all other forms of Army advertising combined").


202. Id.

203. America’s Army, AMERICA’S ARMY, http://www.americasarmy.com/aal/ (last visited May 22, 2012) ("The presence of logos, URLs or other information identifying private companies or other non-federal agencies does not constitute an endorsement by the Department of the Army or the Department of Defense.").
offering links to the stories of “Real Heroes” from the United States Army.\textsuperscript{204} Clicking on this link takes youth to the photographs and web pages for nine current soldiers “who are at the forefront in the defense of freedom.”\textsuperscript{205} The website, which includes numerous official Army logos, also explains that the United States Army assisted in the game’s development:

Nobody knows military simulations like the world’s premier land force, the United States Army. So, when the Army began making the America’s Army game to provide civilians with insights on Soldiering from the barracks to the battlefields, it sent its talented development team to experience Army training just as a new recruit would. The developers crawled through obstacle courses, fired weapons, observed paratrooper instruction, and participated in a variety of training exercises with elite combat units, all so that you could virtually experience Soldiering in the most realistic way possible.\textsuperscript{206}

The military has also launched a campaign to target minority boys and girls through another popular new media, a graphic novel series called \textit{Bravo Zulu}.\textsuperscript{207} In the first issue, \textit{Bravo Zulu: Don’t Give Up the Ship}, the Army spotlights five fictional soldiers, young men and women who appear to represent different ethnicities and races.\textsuperscript{208}

\textsuperscript{204} Id.


The novel dubs the multi-ethnic and multi-racial soldiers the “Crypt Crew”; in the game they are sent into an underground vault during basic training and there, by touching a tomb, catch a glimpse of their futures. In those visions they see that they each contribute to saving the world from “[d]estruction and [d]espair,” with one male youth being told “there is a future where you graduate first in your class.” One of the young women sees that in her military future she becomes a mother and fighter pilot known as “Smokin’ 1.”

In the introduction, the novel’s author Deborah Franco explains, “Bravo Zulu is no pretend world . . . rather, I created it to reflect a phenomenal place in our country where young people are shaped into some of our nation’s best leaders and prepared to serve their country with honor and courage.” The term “Bravo Zulu” is military speak for “job well done.” The Naval Academy distributed copies of the first edition of the graphic novel to seventh and tenth graders who attended its summer camp. The military plans to release later editions that track the future adventures of the

---

209. Id. One wonders if this name—Crypt Crew—is a veiled gang allusion.
210. Id. at 4–7.
211. Id. at 8.
212. Id. at 2.
213. Id. at 3.
214. Maury, supra note 207.
characters.\textsuperscript{215} While the United States military is using such efforts to increase its troop size to address terrorism and human rights abuses overseas, others have argued these very recruitment techniques violate international human rights norms.\textsuperscript{216} The Optional Protocol of the United Nations’s Convention on the Rights of the Child, which the United States ratified in 2002, forbids child soldier recruitment and service.\textsuperscript{217} The Protocol provides that children under the age of eighteen may not serve in the military and should not be recruited when under sixteen-years-old.\textsuperscript{218} It is clear that the United States falls short on both measures. Beyond this, such practices conflict with our own Supreme Court’s jurisprudence. Over the last few years, the Court, in striking down the death penalty and life without parole sentences for those under age eighteen, has recognized the special vulnerabilities of children and their susceptibility to influence.\textsuperscript{219}

C. Thanks to the “Academy”: At-Risk Youth at Greater Risk

Finally, as the safe schools and zero-tolerance movements have expanded, and our engagement in the Middle East has grown, the military has stepped up its efforts to access the most vulnerable young students in a more direct fashion: by establishing and running its own schools. Across the country, states have joined with the federal government to create local chapters of the National Guard’s Youth ChalleNGe Academy (YCA). To allow the National Guard to operate residential boot-camp-like, quasi-military schools for local at-risk youth, Congress established the Youth ChalleNGe Academy concept in 1993 as a pilot program in ten jurisdictions.\textsuperscript{220} The target participants were high school dropouts between

\begin{quote}
\textsuperscript{215} Id.

\textsuperscript{217} Id. at 231–34.

\textsuperscript{218} Id.


\end{quote}
the ages of sixteen and eighteen.221 After completing a twenty-two week residential phase, the “cadets,” as students are called, are required to participate in a one-year, post-residential phase in which they are further mentored.222

Since the program’s inception, the number of states hosting YCAs for the National Guard has risen.223 Only fifteen states had adopted the program in 1995, but over thirty jurisdictions currently run such boot camps,224 with Missouri becoming one of the most recent participants under a state act signed into law on May 28, 2010.225 Because budget constraints required it to close its first facility, this is the second time Missouri has attempted to establish a YCA.226 Now, however, the federal government will pay 75% of the costs associated with the program, and this enhanced financial support attracts states to YCAs.227 States must raise the remainder of the costs through private groups, such as the National Guard Youth Foundation, a non-profit fundraising agency expressly formed to support the National Guard’s YCA efforts.228

YCAs purport to be voluntary programs that youth may choose to attend.229 Because the funds for YCAs do not come out of a school districting budget, however, school districts have an incentive to steer problem students to participate in them. Some states appear to run the YCA programs in conjunction with state juvenile justice systems as an alternative to residential treatment.230 Such programs fail to satisfy educational norms

221. See id. at 5 (explaining that being a high school dropout is one of the eligibility requirements).

222. Id.

223. Id. at 28; see also id. at 1.


227. Id.

228. Id.


because the National Guard lacks certified teachers and other trained school personnel. Indeed, President of the National Guard Youth Foundation Gail Dady admitted, "‘When you think of the National Guard, you don’t think educator, you think warfighter.’" Still, she claimed that no one is better suited to run such a school.

YCAs further claim that young people who enroll are not required to join the military, but the program seeks to model a military lifestyle with young people living in barracks, being assigned to platoons, wearing uniforms, and learning battle skills, such as weaponry target practice. Moreover, the program requires young people who enroll to engage with National Guard officers on a daily basis and to meet with recruiters from all branches of the armed forces.

Official YCA websites suggest there is no pressure on cadets to ultimately enlist. Other sources suggest that YCAs serve as a feeder for the armed services. According to one such report, 15% to 20% of YCA students—approximately 50% of whom are minorities—have gone on to serve in the military. With claims of 100,000 graduates to date nationwide, this represents a total of 15,000 to 20,000 at-risk youth between the ages of sixteen and eighteen sent into active duty. According to the program’s own self-study, approximately 11% of all program participants

---


232. Id.


235. Id. at ES-2 ("[T]he cadets are closely supervised by staff at all times.").

236. See, e.g., FAQ, SC Youth ChalleNGe Academy at the McCrady Training Center, NAT’L GUARD YOUTH CHALLENGE, http://www.ngycp.org/site/state/scco/node/2266#military (last visited May 22, 2012) (providing an FAQ page, which notes that cadets are not required to enlist).


239. Id.; see also Salzer, supra note 231.
under age seventeen had somehow already enlisted.240

V. FATALITIES AND LIFE-THREATENING FALLOUT FROM OUR WAR ON TERROR

As this Article has explained, substandard schooling and educational push-out practices work to negatively impact poor and minority youth. The messages the school systems send not only diminish self-esteem and self-worth, but they lead to such young people being disengaged from the educational process and potentially ensnared by the criminal justice system.241 This widespread phenomenon, also known as the school-to-prison pipeline, works to seriously reduce the life chances of at-risk youth, has been well documented in recent years.242 What has been less well documented is the fallout of our actual War on Terror and its impact on at-risk teenagers. This Article seeks to document how our recruitment of young people for military service has not only further reduced their life chances, but actually taken the lives of some of our nation’s most vulnerable children.

According to U.S. military statistics, as of February 6, 2012, approximately 6351 U.S. soldiers lost their lives in operations in Iraq or Afghanistan.243 Of those who died, over 1700 were twenty-one years of age or younger, representing well over one quarter of all fatalities.244 The Washington Post’s interactive webpage, “Faces of the Fallen,” indicates that

240. MILLENSKY ET AL., supra note 234, at 72.


242. See, e.g., Thalia González, Restoring Justice: Community Organizing To Transform School Discipline Policies, 15 U.C. DAVIS J. JUV. LAW. & POL’Y 1 (2011) (documenting the various studies that have examined the phenomenon of the “school-to-prison pipeline”).


244. Id. (follow hyperlinks to, and add “under 22” totals from, “Operation Iraqi Freedom - Military Deaths - All (Demographics),” “Operation New Dawn - Military Deaths (Demographics),” and “Operation Enduring Freedom - Military Deaths (Demographics)”.

575
approximately 400 individuals in this group were just teenagers.\textsuperscript{245} Indeed, one estimate provides that "[t]roops aged 17–19 have a death risk 4.4 times higher than troops age 50 and higher."\textsuperscript{246}

Relying in part on such statistics, some have suggested we need not worry about our War on Terror exposing minorities to greater danger than others because it appears that the proportion of minorities serving in the Middle East\textsuperscript{247} may be less than the proportion in the general population.\textsuperscript{248} But other researchers indicate that Hispanics have a death risk that is 18\% higher than non-Hispanics in the military.\textsuperscript{249} In addition, some statistics show that when accounting for race and age, African-Americans have been disproportionately placed at risk. As of 2005—even before 9/11—"[i]n the enlisted force, African Americans were overrepresented among active duty accessions (20 percent) relative to the 18-24 year old civilian population (14 percent)."\textsuperscript{250} It is hard to believe that poor teens are not similarly overrepresented.

Beyond this, fatalities are not the only fallout impacting teenage soldiers. First, youthful soldiers have suffered a very high number of non-combat related deaths. For instance, numerous teenage soldiers have died in car accidents or incidents involving non-hostile fire, some of which are still under investigation.\textsuperscript{251} The military has also publicly reported that over 47,545 soldiers have been wounded as of February 6, 2012.\textsuperscript{252} Approximately 12,553 of those wounded represent soldiers twenty-one years

\begin{footnotesize}
\begin{itemize}
\item 249. Buzzell \& Preston, supra note 246, at 562.
\item 251. See, e.g., \textit{Faces of the Fallen}, supra note 245 (reporting that Specialist Jonathan K. Smith, Seaman Apprentice Shayna Ann Schnell, and Specialist Adrian L. Avila, among other teens, died in active service but not in battle).
\item 252. \textit{Military Casualty Information}, supra note 243 (follow the “Casualty Summary by State” hyperlink under “U.S. Military Casualties - OIF \& OEF Combined”).
\end{itemize}
\end{footnotesize}
old or younger, which represents nearly one-fourth of the total.\textsuperscript{253}

Even those of the currently deployed 180,000 troops who have not been wounded have suffered serious physical injuries and trauma.\textsuperscript{254} Many young soldiers have cracked under the severe emotional and psychological pressure.\textsuperscript{255} In many cases, after recruiting these at-risk youth and exposing them to death and violence,\textsuperscript{256} the military has discharged them through expedited processes claiming that they merely suffer from “personality disorders.”\textsuperscript{257} When the military does so, it denies them benefits to which they would be entitled if diagnosed with war-related post-traumatic stress disorder.\textsuperscript{258} Instead, according to one military medical researcher, the military turns its back on such youth, saying “[Y]ou’re rotten and have been rotten since childhood.”\textsuperscript{259}

As troops return from combat, the youngest of them struggle mightily, and in ways different from older veterans. Because many have never worked before and have been denied an adequate education, war having become their classroom, their unemployment rate far exceeds the rest of the population.\textsuperscript{260} Many youthful veterans have become dependent on drugs and

\textsuperscript{253} Id. (follow hyperlinks to, and add “under 22” totals from, “Operation Iraqi Freedom - Wounded in Action - All (Demographics),” “Operation New Dawn - Wounded in Action (Demographics),” and “Operation Enduring Freedom - Wounded in Action (Demographics)”).


\textsuperscript{257} Id.

\textsuperscript{258} Zwerdling, supra note 255; see also Keyes, supra note 254.

\textsuperscript{259} Zwerdling, supra note 255; cf. Stuart Greenbaum, Office of Juvenile Justice & Delinquency Prevention, Kids and Guns: From Playgrounds to Battlegrounds, 3 JUV. JUST., Sept. 1997, at 3 (describing the ways in which the federal government has sought to protect youth from gun violence in schools and beyond).

alcohol to deal with their physical and emotional pain, and high numbers who come from rural areas do not have access to adequate mental health or other services. It is no wonder that these young people are likely at the highest risk of engaging in life-threatening and suicidal behaviors. Indeed, one study reported that veterans aged eighteen to twenty-four were five times more likely to commit suicide than non-veterans the same age. They were also three times more likely to take their lives than veterans between the ages of thirty-five and fifty-four. Thus it is clear that vulnerable students are not only exposed to dangers from the metaphorical war they face in school halls, but have been endangered by their actual recruitment and deployment in our War on Terror.

VI. Conclusion: Calling for a Different Kind of Surge as We Find a New Way Forward

Our country’s multi-front attacks on our most vulnerable children must come to an end if we are to ever improve their life chances. While the preceding account paints an exceedingly grim picture, some recent developments may provide room for some hope and suggest the beginning of a new way forward. For instance, in February of 2011, U.S. Secretary of Education Arne Duncan created an Educational Equity and Excellence Commission, for which he appointed twenty-eight leaders from across the
country. These individuals, many of whom are youth advocates, are being asked to assist in the development of new federal policies to address disparities in educational opportunities across race and class lines nationwide.267

Perhaps more significant, however, are possible changes afoot for NCLB policies.268 In March of 2011, the Obama Administration released its blueprint for entirely overhauling the Act.269 The administration’s recommendations call for a “rigorous and fair accountability system” in schools that will ensure students graduate ready for “careers or college,” not simply pushed out with a meaningless diploma.270 In part the plan seeks to displace the school-to-prison pipeline with a “cradle through college and career continuum in high-poverty communities.”271 For instance, the administration wants to provide extended educational and other programming in community-based schools that better engages families and provides wrap-around services to those in need.272 It also seeks to rethink policing and other punitive practices that drove the zero-tolerance orientation of prior “safe schools” and “gun-free schools.”273

In June of 2011, the U.S. Supreme Court put some limits on school policing. In stark contrast to an otherwise limiting trend under Miranda v.


269. Id.

270. Id.


Arizona, the Court announced greater protections for youth swept up in school-based interrogations. Noting that young people are more easily misled and pressured by government authorities than adults, the Court determined in J.D.B. v. North Carolina that courts must take age into account when determining whether a school child is in custody for Miranda purposes. This decision represents an important way in which the school-to-prison-pipeline has been policed.

Finally, with the death of Osama bin Laden, President Obama announced that by 2014, he will accelerate the pullout from Afghanistan, with a view toward completely undoing the troop “surge” that he initiated in 2009. In doing so, the President pledged to end the war “responsibly” and turn back to the work of “nation-building here at home.” Instead of funding further wartime efforts, the President wants to “invest in America’s greatest resource: our people.” The President’s reduction of the need to recruit our nation’s youth for battle provides further cause for relief.

We must hold the government to these initiatives and promises. What is more, we must demand more. Accountability is key as we address the growing fallout from our wars on poor, minority, and other marginalized youth. While drawing down our troops abroad, we must also fight the aggressive military recruiting practices that take advantage of the economic and other vulnerabilities of our most at-risk children and violate international norms. In finding a new way forward, we must see our nation’s public schools as central to our national security by devoting to them the kind of time, energy, and financing that we have devoted to the War on Terror. If we are willing to spend over $500,000 per troop member to have them engage in our War on Terror, we can certainly spend at least some fraction of that on individual students as we stand down from our war against vulnerable youth. Our next surge should involve an infusion into our schools of tens of thousands of troops of adults who are committed to protecting and building the lives of such children.

276. Id. at 2400.
278. Id.
279. Id.
280. BELASCO, supra note 254, at 23 (estimating the annual per troop cost for operations in Afghanistan at $525,000).
For our young returning veterans, we must ensure that they have the support and services they need to transition from war to our communities. Federally funded targeted programming must take account of special needs, particularly because many poor and minority young people were at risk and without sufficient educational programming before they left for the front lines. Law school clinics and other youth advocacy organizations must add this population to the list of those whom they serve, regardless of our politics about the War on Terror.281

Beyond holding our government accountable, we must hold ourselves accountable, too. We must all contribute to the cause by stepping outside of the Ivory Tower and into the trenches of struggling communities and schools. While writing essays and holding conferences is good, it is not enough. All of us—law students and faculty alike282—should find time to stand with at least one at-risk child as he or she demands a better life and better life chances. As Time declared decades ago, it is, indeed, a question of survival.

281. The ABA, along with the Center for Children and Youth, hosts a program entitled The Roundtable on Meeting the Legal Needs of Military Families and Youth, which is intended to help legal services providers learn about the unique legal needs of these populations. See At-Risk Military Youth, CTR. FOR CHILDREN & YOUTH JUST., http://www.ccyj.org/initiatives/at-risk-military-youth/ (last visited May 22, 2012).

282. Here I offer as models the efforts of many of my faculty colleagues at Washington University School of Law, including Cheryl Block, Sarah Jane Forman, Katherine Goldwasser, Kim Norwood, and Kathryn Pierce, all of whom have taken their work outside of the confines of our law school walls and into community-based programs, schools, juvenile detention centers, and courts, to directly impact youth. For instance, Cheryl Block is a reader with the Ready Readers Program. See READY READERS, http://readyreaders-stlouis.com (last visited May 22, 2012). Katherine Goldwasser and Kim Norwood both supervise law students who teach and mentor in our public schools. See, e.g., Professor Norwood Develops Law Mentoring Program for Youth, WASH. U.L., http://law.wustl.edu/news/pages.aspx?id=6193 (last visited May 22, 2012). My clinical colleague Kathryn Pierce provides direct legal services to at-risk youth, working with them not only to address their legal issues but stay in school. Kenneth J. Cooper, Civil Justice Clinic Achieves Success in Juvenile Justice, Child Welfare Cases, WASH. U.L. MAG., Spring 2011, at 14, available at http://law.wustl.edu/magazine/spring2011/juvenile.pdf. She also mentors young people through Big Brothers/Big Sisters. Sarah Jane Forman, while teaching in our Criminal Justice Clinic, worked with the local ACLU chapter to address local school-to-prison pipeline issues and provide know-your-rights trainings to young people. Our students have also been models in this regard by developing over the last few years several programs intended to mentor, teach, and support young people in St. Louis. See, e.g., Committees: Community Service Committee, WASH. U. IN ST. LOUIS: BLSA, http://law.wustl.edu/organizations/blsa/committees/communityser.html (last visited May 22, 2012). I believe the same or equivalent community engagement should be expected of every law student and faculty member.