Everything You Wanted to Know About School Safety But Were Sued First

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(2867 words)

On June 14, 2013, the nation paused to pray and remember the unspeakably horrific shooting, a massacre that claimed 26 lives, on December 14, 2012, at the Sandy Hook Elementary School, in Newtown Connecticut. The cruel irony, as legions of the country's experts, myself included, continue to engage in differential diagnoses and soul-searching for answers as to who and what went wrong, is that Sandy Hook Elementary School probably could not have done anything more, different or better, to protect its students. Short of constructing a walled-in campus inside of which students would receive provisions and other necessities from the outside.

Knowing that most school violence acts are not caused by "outsiders" but are wielded by well-known—but, arguably, not well-liked—students on campus, the Sandy Hook Elementary staff worked daily to create an open, salubrious and tolerant campus climate of kindness and respect over bullying, for example. The administration imposed lockdown drills that trained everyone to stay low and be quiet in the event of an emergency. A state-of-the-art security system was introduced there in 2012, scant months before the massacre; it required visitors to ring a bell, sign-in and, optionally, to produce a photo ID. Each morning, after 9:30 a.m., the doors were locked. But for all their efforts, Sandy Hook Elementary administrators and teachers are now renowned for being employed at a campus increasingly regarded as the Pearl Harbor of school shootings.

Many school administrators, aware that (1) their school boards are holding their feet to the fire and withholding long- and even short-term contracts until immediate security and safety improvements are seen on their campuses; and (2) attorneys are "poised overhead like carrion, to strip and de-bone us financially" (one administrator's angry words to me), are worried about the potential impacts on their careers if they cannot satisfy their school boards' demands and avert lawsuits. Other school administrators are cynical about what was—as one school's lawyer declared, at a MCLE training I was conducting—the "toppling of a Utopia" (Sandy Hook Elementary), previously thought to be a virtual fortress yet easily entered by one of its ex-students, the now-notorious Adam Lanza. Despite mental impairments, he arrived at the Sandy Hook Elementary campus with weapons previously believed to be commonly *unavailable* and familiar solely to an exclusive and elite cadre of veteran sharpshooters: CIA gunners.

In the aftermath of the Sandy Hook Elementary shootings, the nation's press corps began scouring the country, searching out schools with "perfectly secure" campuses. Media found some hardware-heavy schools with windows fortified by bullet- and shatter-proof glass, and others with high-tech electronically-screened entry ways and auto-locking doors. Still other schools were found to have state-of-the-art cameras, customized wrought-iron fencing and gates, and one-way window panes blocking see-through, two-way viewing. Some school districts, the press corps noted, had been in earnest talks with firms that provided both security equipment for the banking industry and military-style protection for corporate executives. In light of the fact that in the past five years, certain

student-driven fatalities claiming the lives of school principals were found to have been deliberate acts of homicide (shockingly, one school administrator's death was noted by police as "an assassination"), few in the press corps questioned certain school districts' decisions to judge their schools as encampments best protected by companies proudly touting that their expertise in security lay in their "field" experience as armed forces special operatives, formerly on active duty.

1) Do the security accoutrements described above impede outsider access? YES.
2) Do such security enhancements protect students? SOMEWHAT.
3) Does such high-tech security gear guarantee such schools will enjoy permanent safety and security for their students? NO.
4) Do such modern and necessary security measures alter student behavior that drives violence? NO.
5) Do these sophisticated security devices detect states of mind, anti-social attitudes and their correlative behaviors that might potentially threaten the safety of other students? NO.
6) Can school districts and their administrators still be sued in spite of making huge financial investments to improve the safety and security of their campuses and the welfare of their students? YES.
7) Are there other variables that exist in school districts and on campuses that are exposed to litigation-minded plaintiffs' hurt and grieving and wanting "justice"? YES.

Each School Safety Event Turns Up the Heat on School Principals

School violence is a public health problem that must be viewed and addressed in the same way that medical doctors view the etiology of disease and patient care. It is a social curse and it is not going away. Although attempts to deal with deadly threats are often frustrating, the costs of giving up and doing nothing far outweigh efforts to understand the germ, corral the virus, and succeed in sterilizing the bacterium. School shootings forcibly remind school principals to review their safety plans; install formal school safety training calendars for all staff; establish periodic crisis training drills; collaborate regularly with local law enforcement; develop new rules for campus safety management; hire new security resource officers (SROs); and comprehensively evaluate all safety strategies and programs, improving them, and throwing out what does not work. Today's principals know all too well that, despite the national debate on gun control, shooters' mental health issues, and homegrown terrorism, it is they who are the public face of school safety to whom grieving parents and their attorneys turn to for any and all answers in the aftermaths of campus tragedies.

School Principals Must Probe the Roots of Acts of Violence

School principals are quickly learning that when two students have a fight on campus, rather than suspend both of them under the popular and archaic "mutual combatants" policy, it is both prudent and vital to find out if something deeper is at work: Bullying? Gang activity? Racial discrimination? Harassment over one's sexual preference? An attorney asked me to consult on a case where a certain southern United States school's campus was rife with a rumor that two male students were going to fight because one purportedly bragged he had kissed the other. The vice principal was overheard to tell the eventual victim-student that he had to "Learn to man up," that "Kids, here, will eat you alive." Later, somebody else saw him talking to the eventual combatants and telling them, "Don't you fight here!", tacit approval to proceed with the fight but to take it elsewhere.

Caveat to Principals: Certain Acts of Violence May Violate Federal Laws

The result was that the initial aggressor nearly killed the victim-student on a main boulevard that ran parallel to the campus. The vice principal wrote a specious incident report emphasizing the "off campus" nature of the vicious assault. My own investigation and witness-interviewing revealed facts about a school environment hostile to gays and repeated utterances of hate-speech, by certain staff and students, against gay persons. Two weeks prior to the assault on the victim-student, a gay teacher submitted his resignation—very early in the fall semester—meticulously citing hate-speech and -incidents by students. Further, he annotated with dates and times hate speech remarks the vice principal had been repeatedly overheard uttering in the presence of gay students. The school quietly and quickly tried to sweep the assault incident under the rug; the vice principal's incident report wrote it off as a "mutual combatants" event. That all changed after I disclosed my interview notes in my attorney-requested comprehensive report. I wrote the report and framed it within federal civil rights statutes, showing the school maximally derelict in its duty to care and in breach of its obligations to develop and manage an environment that would have afforded tolerance of and protections to its gay students.

Lawyers Say: "Show Us How Your Site Plan Aligns With the States's Safety Plan"

My school's safety plan aligns with my state's plan. Would we be liable for acts of violence on campus? School administration would be responsible. Liability—how little or how much--could possibly be negotiated pre-trial or become a certain point of argumentation and grist for jurors' deliberations at trial. As for litigation, your school's alignment with your state legislators' statute-driven master plan for school safety would be a huge asset and possibly an advantage (A possible benefit: damage awards could be reduced and made smaller than they otherwise might have been) if you are a defendant school district.

A Grant for Your Proposal Means Keep Your Promise

My school was recently denied a renewal of a previously-received, large school safety grant. Quality, intangible results, and decreasing safety standards were cited. Completely forgotten by the grantors was the fact that the first grant given to us, a couple of years prior, was based on our proposal for increasing school safety. If we were to be sued for acts of injury-causing violence or worse, wouldn't our having received a prior school safety grant aid our court defense arguments to prove non-dereliction and non-responsibility? Perhaps not, especially if jurors see no evidence of prior tangible, workable and effective safety programs developed from the grant funds. Using your prior grant-recipient status in court might make you a prisoner of your own accomplishments. While NOT getting your grant renewed is no lapse or violation on your school's part, jurors might see you as having been viewed as unfit for grant-renewal.

In a civil court trial resulting from plaintiffs' complaints of injuries resulting from acts of campus violence, your state's grant-denial decision could inspire jurors to view you negatively—they might view your state's decision as an official finding on the substandard quality and content of your school safety program. At the very least, jurors might simply dismiss your defensive arguments and conclude that you failed to keep your promises (a "proposal" is a promise) to enhance and improve your school's safety despite grant monies being appropriated to you by your state. This is known critically as the "empty promises" defense (a potent alert to jurors mindful of your failure to get the grant renewed), due to many juries knowing about the Feds long-standing "Safe and Drug-Free Schools" school safety and improvement grants, as well as various state-level school safety improvement monies.

Beginner-Teacher Training is a Requirement: A Principal's Liability if Overlooked

I am a principal at a school where one of our newer teachers was arrested and hauled into criminal court for repeated (three) acts of sexual battery against a minor. He is now serving time in the state penitentiary. He has a wife and two primary-school aged children. Despite my showing, in court, his excellent work history and character letters from a range of supporters including a priest and an elected official, we lost the case on grounds of negligent hiring and dereliction of duty, among other reasons. As far as I can determine, the plaintiffs won because their lawyers were in possession of our personnel records in which there was absolutely no evidence of district-required beginner-teacher training. This teacher had a Master's Degree in Education. I still cannot figure out how and why our missing just this one item made us liable for his "lack" of beginner-teacher training.

It is a paradox that in the field of Education, "training" is a word that seems to be misinterpreted and extremely unpopular. School districts apparently like to think they are in the "business" of training 24/7. Personnel departments and their Human Resource experts have their hands full in running background checks, waiting for fingerprints to clear with the FBI, reading new applications for hiring, and clearing credentials. In some school personnel departments, there is perhaps a subconscious resentment about the fact that teacher-training programs are buffeted with much theory and, in many states, would-be teachers must spend an additional year of university coursework, beyond the B.A. or B.S. degree, earning a license to teach in their state. A common view is that when teachers show up at the school district office to apply for work, they are already "over-qualified," due to the sheer amount of time they have spent in school themselves.

However, many years of taking college and university courses has little or nothing to do with beginner-teacher training. There is no evidence or guarantee that teachers can put theory to practice and then put that practice to the test, or are ready to successfully assume a spate of child-centered duties that have as much with keeping children safe and guarding their welfare as they do with teaching them the "three R's." A missing link in the chain tethering an ocean liner to the dock, can cause that multi-tonnage ship to break anchor and dangerously heave and list in the harbor. A missing rung on a painter's or carpenter's ladder can result in personal injuries to them as well as damage to the structures on which they are working. It is vital to realize that beginner-teacher training programs are urgently necessary and ought not to be devalued and disregarded.

That your fired and now-incarcerated ex-teacher somehow was skipped over for beginner-teacher training placed the liability for his subsequent acts of sexual battery on you, your school's top adminstrator. Beginner-teacher training focuses on sensitive and discreet information that college and university teacher-training courses do not. As I recently told a group of earnest and dedicated principals, "Beginner-teacher training is where the rubber meets the road." Consider this training an ultra-powerful link in the chain designed to anchor one's successful teaching career. Without such training, a teacher can possibly remain ignorant or unconcerned—like the teacher in your question—about discreet and highly-sensitive pupil interaction areas. His crossing the boundaries into these areas was a violation that had multiple consequences. These consequences of his sexual-deviant behavior involved his victims, the school district, himself, and his family. The financial damages your school district had to pay is merely one element of that. After he has served his time in the state penitentiary, he will be registered and branded as a sex offender. His predicament ought to serve as a wake-up scream for your school district's personnel department, and as an alert to vigorously and diligently check every teacher's beginner-teacher training status.

School Choice: Cop Out for Natl Gun/School Safety Debate or Improve Campuses

As my school's principal, for sometime, now, I have periodically ordered re-configurations to our landscaping, cameras, new fencing and higher cinder-block walls around our perimeter. And, depending on rumors and/o information furnished by police, I occasionally close and lock certain access gates. All these campus changes were made in the aftermaths of lots of schools that were shot up since the Columbine High School massacre. I have not stopped but I feel tired and now desperate, as a result of the Sandy Hook Elementary school shooting. I say this as I hold (he held up a couple of sheets of paper) my new hand-written plans to relocate restrooms away from entryways and shift major mechanical and electrical systems so they could not be shut down or vandalized from the outside. Kids who shoot up school campuses are domestic terrorists and are already way outside the box in their thinking. Am I being paranoid? I don't think so. Only realistic and not too tired to not want to be fully prepared in a well-protected campus for my students' total safety.

There must be countless other principals like you. I commend you and praise your persistence. Obviously, you have not given up. From a litigation standpoint, it is urgently important to keep that in mind. Showing, in court, that you have made incessant attempts to improve the safety and security of your campus may not block a lawsuit by an angry or injured plaintiff, but it could possibly blunt the lawsuit's effects, including negative publicity, and result in a significant reduction of financial damages. Jurors understand safety measures and conscientious, good-faith efforts to upgrade your physical plant incrementally or as necessary. And you have clearly done that.

Jury Fury

In school safety court cases, victory is often neither a slam-dunk nor a unanimous declaration of non-responsibility. Said another way, often victory in court is *relative*—compared to the worse that *might* have happened. Frequently, a proper showing of evidence can result in a reduction of responsibility and damages. Such a jury-driven decision will make your school board, its attorneys, and your school district's liability and casualty insurance provider smile wide. Conversely, what infuriates juries is "the-sky-fell-on-us-what-could-we-have-done-any-different?" defense attitude. They regard that as a refusal to grow and change, akin to blaming Nature. Traffic lights do not prevent all auto accidents. The blast of train whistles does not stop the occurrence of all calamities at Grand Central Station. And, despite banks' video cameras and armed guards, robberies inside these institutions occur regularly. However, it is the persistence and commitment—such as you are showing—to design, invest in, and upgrade your campus' safety measures and equipment, that can positively impress jurors of your professionalism versus dereliction, and of your dedication rather than reckless disregard.

The national debate about school safety will churn on, but parents will continue to turn to their children's school principals with demands and expectations for better safety and security, no matter what form or format it takes. Peering over their shoulders will be school board members and an army of attorneys.