



**Statement by the
NAACP Legal Defense and Educational Fund, Inc.**

**United States Senate
Committee on the Judiciary**

Hearing on “What Should America Do About Gun Violence?”

**Hart Senate Office Building
Room 216**

January 30, 2013

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is pleased to submit this statement to the Senate Judiciary Committee in connection with the hearing on “What Should America Do About Gun Violence?” We want to thank Chairman Patrick Leahy, Ranking Member Charles Grassley and Members of the Committee for holding the hearing on an issue of such importance to all Americans.

The tragedy at Sandy Hook Elementary School in Newtown, Connecticut has devastated our nation and called into clear focus the question of what can be done to reduce gun violence in our communities. We are encouraged by the national momentum in the wake of the tragedy that appears to support meaningful action, once and for all, to prevent and reduce gun violence. Many of President Obama’s proposals are to be applauded, both in their scope and depth, and in their focus on the root causes of gun violence.

There is no doubt that communities of color would benefit from greater protections from gun violence. African Americans are disproportionately impacted by gun-related homicide. Indeed, “young black men die of gun homicide at a rate eight times that of young white men.”¹ Rampant and sustained gun violence has had a devastating effect on our families and communities. African Americans residing in urban areas are much more likely to die from gun violence than whites. In Chicago last year, 87 percent of the 500 homicides were gun-related; while African Americans are thirty-three percent of Chicago’s population, they comprised 70 percent of the murder victims.² Without question, the issue of gun violence and how to prevent or reduce it is a critical one for the African-American community.

In view of the significant impact of gun violence on African Americans, LDF is supportive of Congressional action to ban assault weapons. We believe that this measure will help to ensure that military-style weapons and high-capacity magazines are off our streets and out of the hands of those who would harm our children. LDF is deeply committed to ensuring a safe school environment for our children. Indeed, for over seventy years, LDF has fought for access to a quality and safe educational environment for African-American children.

We are always mindful, however, that young black men and other people of color are also victims of the racially disproportionate enforcement of our criminal laws. Studies of the federal criminal justice system have long documented these racial disparities.³ The enforcement of weapons-related laws is not immune from this serious problem. “Black arrest rates” for weapons offenses are “in the vicinity of four times the White arrest rates.”⁴ Moreover, the United States Sentencing Commission has “detected notable differences in prosecutorial decisions to seek sentence enhancements for certain federal offenses involving a firearm depending on the race of

¹ David Cole, *Who Pays for the Right to Bear Arms?*, N.Y. Times, Jan. 1, 2013, at A19.

² *Id.*

³ “[B]lack male federal defendants receive longer sentences than whites arrested for the same offenses and with the same prior records. On average black males receive sentences that are approximately 10% longer than comparable white males” Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and Its Sentencing Consequences*, (U. Mich. L. Sch. Program in L. & Econ. Working Paper Series, Working Paper No. 12-002, 2012, at 24).

⁴ Graham C. Ousey & Matthew R. Lee, *Racial Disparity in Formal Social Control: An Investigation of Alternative Explanations of Arrest Rate Inequality*, 45 J. Res. Crime & Delinq. 322, 337 (2008).

the defendant.”⁵ The disproportionate enforcement of weapons offenses is further evidenced in prosecutions of youth.⁶

Because of the pre-existing racial disparities in the federal criminal justice system generally, and prosecution of federal weapons offenses specifically, it is important to us that any federal legislation seeking to ban assault weapons contain some mechanism to ensure that people of color are not disproportionately prosecuted under the new law. A racial impact statement, which would require federal prosecutors to examine the disparate impact of their prosecutions under the new legislation, would serve this goal. Indeed, as you consider the various proposals to ban and/or restrict the use of dangerous weapons, we urge you to take care that racial disparities do not result from the enforcement of any new laws.

“Policing” Schools Is Not The Answer To The Sandy Hook Tragedy

For the remainder of our comments, we focus on the importance of ensuring that proposals for reducing gun violence do not have unintended consequences when it comes to our students and schools. Sadly, the recent tragedy at Sandy Hook illustrates how this issue of gun violence can impact even some of the safest places in our communities – public schools. Unfortunately, this is not the first time our nation and lawmakers have been called to respond to gun violence in communities or at a school. In addition to the images of violence in communities captured on many evening news broadcasts, we have witnessed how gun violence also impacts school communities, in places such as in Heath High School in West Paducah, Kentucky; Columbine High School in Littleton, Colorado; and Virginia Tech University in Blacksburg, Virginia. These incidents have awakened the public’s consciousness on issues of gun violence. Yet, each time, the nation fails to respond to the root causes.

For example, in the wake of the shootings at Columbine High School, state and local lawmakers followed a trend that began even before that tragedy, adopting “zero tolerance” disciplinary policies and significantly expanding the presence of police and security equipment in schools.⁷ Many other school districts followed suit.⁸ These leaders soon learned, however, that the policies they adopted did not make schools or communities any safer. Instead, they offered only an illusion of safety while also leading to a host of unintended consequences that damaged children and entire school communities in the process. As Colorado State Senator Linda Newell

⁵ Brennan Center for Justice, *Racial Disparities in Federal Prosecutions* 10 (2010). One study has found “black and Hispanic offenders convicted of weapons charges” to be “especially unlikely to receive charge reductions from U.S. Attorneys.” Lauren O’Neill Shermer & Brian D. Johnson, *Criminal Prosecution: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts*, 27 *Just. Q.* 394, 424 (2010).

⁶ Even though “white youth report committing higher levels of weapons possessions crime, . . . African-American youth are arrested 2.5 times the rate of whites for weapons offenses.” Eleanor Hinton Hoyt et al., Annie E. Casey Found., *Pathways to Juvenile Justice Reform: Reducing Racial Disparities in Juvenile Detention* 20 (2001).

⁷ Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force* 23-25 (2006), available at <http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

⁸ *Id.* at 29.

of Littleton, Colorado noted, “As a result of our zero tolerance policies, nearly 100,000 students have been referred to law enforcement over the past decade, and who benefits from that?”⁹

We believe that meaningful gun control efforts will better serve the safety of our schools and communities, and we commend Chairman Leahy and Judiciary Committee Members for exploring such efforts. To the extent that this hearing and those in the future explore school safety in the context of gun violence, we must caution the Judiciary Committee against supporting proposals that would place more police in schools. Instead, we urge the Committee to focus on the root causes of gun violence which can prevent these tragic incidents.

As the nation wrestles with the fundamental question of how to keep our children safe, we must learn from the consequences of our prior efforts. But recent media reports and policy proposals suggest that we risk going down the same ill-fated path again. For example, Sheriff Joe Arpaio in Arizona’s Maricopa County has stationed 500 armed, uniformed volunteers outside county schools.¹⁰ The Fontana Unified School District Police in California purchased 14 semiautomatic assault rifles.¹¹ Former U.S. Secretary of Education William Bennett has called for arming school teachers and principals.¹² And the National Rifle Association urges the installation of armed persons in every school while a number of others have called for either armed or unarmed officers in schools (these officers are often referred to as “School Resource Officers”).¹³ All of these alternatives fail to address the root causes of gun violence. They are destined to have negative consequences while continuing to expose our schools and communities to danger.

While both school-based policing and zero tolerance policies were intended to address only the most serious threats to students’ safety and well-being, it is now common for students to face citations, summonses and even arrest by school-based police officers for the types of adolescent misbehavior that should be addressed by educators and parents. For example, in Florida, 16,377 students – 45 students per day – were referred to juvenile courts by school-based law enforcement officers during the 2010-2011 school year.¹⁴ Two-thirds of these students were referred for misdemeanors, such as disrupting a school function, disorderly conduct, and minor schoolyard fights.¹⁵ In Pennsylvania, school-based arrests practically tripled in the post-

⁹ Senate Committee Passes Bipartisan Bill by Senators Newell and Hudak to Ensure Student Safety and Success Today, March 1, 2012, <http://coloradosenate.org/home/features/senate-committee-passes-bipartisan-bill-by-senators-newell-and-hudak-to-ensure-student-safety-and-success-today>.

¹⁰ Nirvi Shah, *Nations, Districts Step Up Safety*, Education Week, Jan. 23, 2013, at 1.

¹¹ Gillian Flaccus, *Fontana, Calif., Schools Get High Powered Rifles*, Assoc. Press, Jan. 24, 2013.

¹² *See Panel Examines How to Pre-empt Violence*, Comment to *Meet the Press*, MSNBC (Dec. 16, 2012), <http://video.msnbc.msn.com/meet-the-press/50215783#50215783> (Stating Former U.S. Secretary of Education William Bennett has called for arming school teachers and principals); *see also* William Bennett *The Case for Gun Rights is Stronger Than You Think*, <http://www.CNN.com/2012/12/19/Opinion/bennett-gun-rights/index.html> (last visited January 30, 2013).

¹³ Wayne LaPierre, Remarks at NRA Press Conference (Dec. 21, 2012) (transcript available at <http://www.nytimes.com/interactive/2012/12/21/us/nra-news-conference-transcript.html>).

¹⁴ Florida Department of Juvenile Justice, *Delinquency in Florida’s Schools: A Seven Year Study* 3 (2011), available at <http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0>.

¹⁵ *Id.* at 8-9; ACLU of Florida, Advancement Project, and Florida State Conference of the NAACP, *Still Haven’t Shut Down the School-to-Prison Pipeline* 6-8 (2011).

Columbine era, between 1999-2007.¹⁶ And in Meridian, Mississippi, the U.S. Department of Justice recently filed a federal civil rights suit against the city, county, state agencies, two youth court judges and the state itself for furthering what has become known as the School-to-Prison Pipeline. According to the suit, these officials “engaged in a pattern or practice of unlawful conduct through which they routinely and systematically arrest and incarcerate children, including for minor school rule infractions, without even the most basic procedural safeguards, and in violation of these children’s constitutional rights.”¹⁷

Racial disparities in the frequency of punishment and severity of punishment have grown since the adoption of zero tolerance policies and the increase of police presence in schools. According to the U.S. Department of Education’s Civil Rights Data Collection (CRDC), “across all districts, African-American students are over 3½ times more likely to be suspended or expelled than their white peers.”¹⁸ And preliminary CRDC data indicates that African-American students account for 42% of the students referred to law enforcement and 35% of those arrested in schools, even though they only comprise 18% of the sample population used for the survey.¹⁹

Relying on police to address school discipline can also lead to substantial academic harms. A growing body of research suggests that excessive and overly harsh school discipline undermines academic achievement and our nation’s efforts to close racial achievement gaps.²⁰ And one study found that a first-time arrest doubles the odds a student will drop out of school; a first court appearance quadruples those odds.²¹

Policing schools harms students who are arrested but can negatively affect the educational opportunities of other students, as well. Police involvement in school discipline and extensive security measures can create an environment of alienation and distrust for all students, far from the type of learning environment all students need to succeed.²²

¹⁶ Advancement Project. *Test, Punish, and Push Out: How “Zero Tolerance” and High-stakes Testing Funnel Youth into the School-to-Prison Pipeline* 18 (2010), available at http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf.

¹⁷ Complaint, *United States v. City of Meridian*, No. 4:12-cv-00168-HTW-LRA (S.D. Miss. filed Oct. 24, 2012), available at http://www.justice.gov/crt/about/spl/documents/meridian_complaint_10-24-12.pdf.

¹⁸ Office for Civil Rights, U.S. Department of Education, *Civil Rights Data Collection Summary 2* (2012).

¹⁹ *Id.*

²⁰ Skiba et al, *supra* note 7 at 44-48; Tony Fabelo et al., *Breaking Schools’ rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement* x, 40-46, (2011); Anne Gregory, Russell J. Skiba & Pedro Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?* 39 *Educational Researcher* 59 (2010).

²¹ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473-477 (2006).

²² Matthew J. Meyer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 *Education and Treatment of Children* 333, 352 (1999) (finding highly-restrictive efforts to control students by involving police in school disciplinary matters cause higher levels of school disorder by diminishing students’ belief in the legitimacy of school staff authority); Randall R. Beger, *The Worst of Both Worlds*, 28 *Crim. Just. Rev.* 336, 340 (2003) (finding that aggressive security measures produce alienation and mistrust among students which, in turn, can disrupt the learning environment and create an adversarial relationship between school officials and students).

The federal government has become increasingly aware of better ways to keep schools and communities safe. In 2011 U.S. Secretary of Education Arne Duncan and Attorney General Eric Holder launched the Supportive School Discipline Initiative – an inter-agency collaboration tasked with developing policy solutions to replace exclusionary discipline practices and eliminating racial disparities in the process.²³ The FBI, the Secret Service, and others have warned that the best way to prevent violence targeted at schools is through improving the communication and connectedness between students and educators.²⁴

Parents, students, educators and policymakers are also working at the local, state, and federal levels on similar initiatives. For example, Colorado lawmakers recently passed legislation that abandons the post-Columbine zero tolerance and law enforcement-driven policies in favor of school-based solutions.²⁵ And juvenile justice, law enforcement and education officials in Clayton County, Georgia were able to reduce their school-based court referral rate by almost 70% while increasing the graduation rate by 24% after ensuring that schools, and not police, were in charge of addressing school disciplinary issues.²⁶

Conclusion

In responding to the Sandy Hook tragedy, we urge the Judiciary Committee to address the root causes of gun violence. Furthermore, we urge the Committee to study the negative consequences of prior responses to school shootings, including harsh discipline policies and enhanced police presence.

Earlier this month, LDF joined Advancement Project, the Alliance for Educational Justice, and the Dignity in Schools Campaign in releasing an issue brief entitled “*Police in Schools Are Not the Answer to the Newtown Shooting*,” available on our website. Many of the findings detailed in our paper are also part of the record from a recent hearing of the Judiciary Committee’s Subcommittee on the Constitution, Civil Rights, and Human Rights entitled “Ending the School-to-Prison Pipeline,” held just two days before the tragedy in Newtown. We strongly recommend that the Committee review the issue brief ahead of any legislative responses to this tragedy.

Thank you again for the opportunity to submit this statement. We stand ready to work with this Committee on positive solutions to promote safe and healthy school environments.

²³ Press Release, Department of Justice Office of Public Affairs, Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices (Jul. 21, 2011), available at <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html>.

²⁴ See Dewey G. Cornell et al. *A Call for More Effective Prevention of Violence* (Dec. 19 2012), available at <http://curry.virginia.edu/articles/sandyhookshooting>; United States Secret Service and United States Department of Education, *The Final Report and Findings of the Safe Schools Initiative: Implications for the Prevention of School Attacks in the United States* (May 2002), available at http://www.secretservice.gov/ntac/ssi_final_report.pdf.

²⁵ H.B. 1345, 68th Gen. Assem. (Colo. 2012) (requiring school districts to develop and enforce discipline codes in a manner designed to reduce referrals to law enforcement and minimize students’ exposure to the juvenile and criminal justice system).

²⁶ *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) 4-5 (statement of Hon. Steven Teske), available at <http://www.judiciary.senate.gov/pdf/12-12-12TeskeTestimony.pdf>.