

An Interrogation and Response to the Predominant Framing of Truancy

Adriane Kayoko Peralta



ABSTRACT

This Article explores the predominate framing of student truancy and uncovers the problems associated with the prevailing framework. California Attorney General Kamala Harris frames the issue as an economic crisis in which truant students and their parents are to blame. This framing of truancy has led to punishment-based solutions that not only exacerbate the school to prison pipeline but also are ineffective in solving truancy. Punishment for truancy disproportionately affects poor students of color. Thus, the framing of truancy needs to shift towards one that acknowledges race and poverty in order to develop productive solutions.

AUTHOR

Adriane Peralta is a J.D. graduate of UCLA School of Law and an Ed.D. graduate of Loyola Marymount University School of Education. While in law school, Adriane was a student of the Critical Race Studies and Public Interest Law and Policy programs, and a Senior Editor for the *UCLA Law Review*. Before law school, Adriane was a special education teacher for the Los Angeles Unified School District and Green Dot Public Schools.

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INTRODUCTION

On September 30, 2013, the *Los Angeles Times* ran this front-page headline, “California Truancy is at ‘Crisis’ Level, Says Attorney General.”¹ That night, all of the local Los Angeles news channels ran the same story.² California Attorney General Kamala Harris issued an alarming report: During the 2012–2013 school year, 29.6 percent of California elementary students (nearly one million students) were truant from school.³ Along with this report, came a predominate framing⁴ that truancy costs the state billions of dollars and truancy leads to lower academic achievement, higher dropout rates, and ultimately, higher incarceration rates.⁵ Additionally, the report created an implicit storyline that parents, families, and students are to blame for their own academic failures by not coming to school.

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1. Teresa Watanabe, *California Truancy is at ‘Crisis’ Level, Says Attorney General*, L.A. TIMES, Sept. 30, 2013, <http://articles.latimes.com/2013/sep/30/local/la-me-truant-kids-20130930>.
 2. See *California Attorney General: One Million Elementary School Students Truant*, CBS L.A., Sept. 30, 2013, <http://losangeles.cbslocal.com/2013/09/30/calif-attorney-general-one-million-elementary-school-students-truant>; *Elementary School Truancy at ‘Crisis’ Level, Says State Attorney General*, KTLA5, Sept. 30, 2013, <http://ktla.com/2013/09/30/california-truancy-at-crisis-level-says-attorney-general/#axzz2kHXhaQq1>; Mariam Hernandez, *Rampant Truancy May Cost California Billions of Dollars*, ABC L.A. (Sept. 30, 2013), <http://abclocal.go.com/kabc/story?section=news/state&cid=9267745>; Conan Nolan, *Elementary School Truancy Rates on the Rise*, NBC NEWS L.A. (Sept. 30, 2013), <http://www.nbclosangeles.com/video/#!/on-air/as-seen-on/Elementary-School-Truancy-Rates-on-the-Rise/225907481>.
 3. KAMALA D. HARRIS, IN SCHOOL + ON TRACK: ATTORNEY GENERAL’S 2013 REPORT ON CALIFORNIA’S ELEMENTARY SCHOOL TRUANCY & ABSENTEEISM CRISIS 4 (2013), available at <http://oag.ca.gov/truancy>. The report provides the following definitions:
 - Truancy*: In California, a student is truant if he/she is absent or tardy by more than 30 minutes *without a valid excuse* on 3 occasions in a school year.
 - Habitual Truancy*: A student is habitually truant if he/she is absent *without a valid excuse* for 5 days during a school year.
 - Chronic Truancy*: A student is chronically truant if he/she is absent *without a valid excuse* for a least 10% of the school year.
 - Excused Absence*: Valid excuses may include illness, doctor or dentist appointments, personal reasons justified by a parent or guardian and other reasons within the discretion of school administrators.*Id.* at 2–3 (emphasis added).
 4. See Matt Bai, *The Framing Wars*, N.Y. TIMES, July 17, 2005, http://www.nytimes.com/2005/07/17/magazine/17DEMOCRATS.html?pagewanted=all&_r=0 (explaining framing as: “[E]veryone agrees that [framing] has to do with choosing the language to define a debate and, more important[ly], with fitting individual issues into the contexts of broader story lines.”). For more on the importance of framing, see GEORGE LAKOFF, DON’T THINK OF AN ELEPHANT!: KNOW YOUR VALUES AND FRAME THE DEBATE—THE ESSENTIAL GUIDE FOR PROGRESSIVES (2004).
 5. HARRIS, *supra* note 3, at 3–4.

School attendance is not only a trending issue in California but also a concern for other states as well. Earlier this year, a Republican lawmaker in Missouri proposed a state bill that would tie state welfare benefits to school attendance.⁶ The bill would “mandate school-age children of welfare recipients attend public school 90 percent of the time . . . ‘in order to receive benefits.’”⁷ Around the same time, Michigan passed a similar welfare-school attendance law.⁸ Tennessee is considering a bill that would require not only satisfactory school attendance but also academic progress.⁹ Failure to meet satisfactory attendance and academic performance measures would cut a recipients welfare benefits by 30 percent—for a single mother of two children, the penalty would cut her benefits of \$185 per month to \$129.50 per month.¹⁰ The surge in state legislation connecting welfare benefits to school attendance reveals that state lawmakers believe that truancy is a problem of the poor and the poor are not deserving of assistance, if they cannot get their children to school.

This Article examines the framing surrounding truancy in California, explains why these storylines are problematic and harmful (in particular, for poor students and students of color), and responds with a more productive framing of truancy. Part I uncovers the explicit and implicit storylines regarding truancy. Part II deconstructs and discusses the problems with the prevailing framing of truancy. Finally, Part III offers a more honest and effective way to frame the truancy conversation so that lawmakers and policymakers can develop better solutions.

6. See John Celock, *Missouri Lawmaker Wants to Tie Welfare Benefits to Public School Attendance*, HUFFINGTON POST (Apr. 4, 2013, 6:51 PM), http://www.huffingtonpost.com/2013/04/04/missouri-welfare-school-attendance-_n_3017421.html.

7. *Id.*

8. See H.B. No. 4388, 2013 Leg., (Mich. 2013), available at <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/pdf/2013-HIB-4388.pdf>; see also *Michigan Welfare Program for Poor Families Tied to Kid's School Attendance*, PROGRESSIVE POPULIST (Sept. 3, 2013, 7:33 P.M.), <http://progressivepopulist.org/2013/09/03/michigan-welfare-program-for-poor-families-tied-to-kids-school-attendance> (“[T]he law would make families of children who miss 10 or more days of school ineligible for the state’s Family Independence Program, which provides an average of \$400 a month to needy families in the state.”).

9. See S.B. 132, 108th Reg. Sess. (Tenn. 2013), available at <http://openstates.org/tn/bills/108/SB132/documents/TND00018127>; see also Diana Reese, *Proposed Tennessee Bill Would Cut Welfare Benefits When Kids Fail at School*, WASH. POST (Apr. 1, 2013, 2:37 P.M.), <http://www.washingtonpost.com/blogs/she-the-people/wp/2013/04/01/proposed-tennessee-bill-would-cut-welfare-benefits-when-kids-fail-at-school>.

10. See Reese, *supra* note 9.

I. THE PREDOMINATE FRAMING OF TRUANCY

Thoroughly understanding the framing associated with truancy is an important task because these frames shape the solutions. As it stands today, most of the solutions to truancy punish parents, students, and/or schools¹¹ and are highly unsuccessful in solving truancy.¹² This Part uncovers the explicit and implicit frames surrounding truancy so we can better understand and develop appropriate solutions.

A. It's a Crisis

In a statement referencing her truancy report, Harris warned, "This crisis is not only crippling our economy, it is a basic threat to public safety."¹³ In addition to the report's claim that nearly one million elementary students in California are truant, the report also contends, "More than 250,000 elementary school students in California are estimated to miss 10% or more of the school year. Almost 83,000 California elementary school students have more than 3 weeks of unexcused absences. 20,000 California elementary school children miss 36 days or more of school in a year."¹⁴ Such a large amount of truant students appears to support Harris's contention that truancy is in fact a serious problem worthy of consideration.

The truancy framing does not stop with just calling it a crisis. The storyline develops into a parade of horrors. In an op-ed pieced penned along with U.S. Secretary of Education Arne Duncan, Harris and Duncan assert:

Students who are truant in elementary school are more likely to be truant in middle and high school, when truancy is closely linked to an increased chance of a child dropping out.

Dropouts costs states billions in incarceration, lost productivity and lost tax revenues. Studies project that increasing graduation rates by just 10 percentage points would lead to as many as 3,000 fewer murders and nearly 175,000 fewer aggravated assaults nationwide.¹⁵

11. For punishing parents, see *infra* notes 32–44. For punishing students, see *infra* notes 64–69. For punishing schools, see *infra* note 46.

12. For the ineffectiveness in punishing parents, see *infra* note 82. For the ineffectiveness in punishing students, see *infra* note 24. For the ineffectiveness in punishing schools, see *infra* note 24.

13. Watanabe, *supra* note 1.

14. HARRIS, *supra* note 3, at 2.

15. Arne Duncan & Kamala D. Harris, *How California Should Deal With Truancy*, L.A. TIMES, Sept. 30, 2013, <http://articles.latimes.com/2013/sep/30/opinion/la-oe-duncan-truancy-schools-20130930>.

Harris and Duncan connect truancy to dropouts, economic drains on society, and violence. This framing is about public safety, and it suggests that protecting society from future violent crime means cracking down on these truant youngsters now, while they are still in elementary school.

B. Truancy Causes Economic Harms

The very first chapter of the Attorney General's truancy report is entitled "The Economic Impact."¹⁶ The report contends that school districts in California lost \$1.4 billion in education funding because student attendance is the basis for calculating funding.¹⁷ The report continues by citing research that shows truant students are more likely to dropout and then points to the costs associated with dropouts entering the juvenile justice system.¹⁸ The Attorney General cites research that shows halving the dropout rate would save the state \$550 million per year by reducing the number of juvenile crimes.¹⁹

The report references the short-term economic harms faced by schools as well as long-term economic harms placed on society due to dropouts. Under the heading "The Harmful Effects of Truancy & Chronic Absence," the report contends:

Over a lifetime, a college graduate will earn \$1 million more than a dropout.

Dropouts reduce California's tax revenue by \$1 billion per year.

High school dropouts are 2.5[] [times] more likely to be on welfare than high school graduates.

Annually, dropouts costs California \$46 billion.²⁰

By reporting the economic strains of dropouts, the Attorney General automatically equates truant students to dropouts. Admittedly, truant students are more likely to become dropouts, but attributing the economic harms of dropouts exclusively to elementary truancy overstates the relationship between the two phenomena. This contention lacks any consideration of the various other factors that lead to students dropping out of school—for example, poverty, homelessness, trauma, abuse, neglect, detention, immigration status, or

16. HARRIS, *supra* note 3, at 23–35.

17. *Id.* at 23.

18. *Id.* at 31–32.

19. *Id.* at 32.

20. HARRIS, *supra* note 3, at 7. This final figure of dropouts costing the state \$46.4 billion a year is a combination of reduced earnings, government spending, less economic growth, and expenditures on crime victims. *Id.* at 32.

a poor school environment. In short, the report oversimplifies the problem by arguing that the state could save billions lost on dropouts, if only we fixed elementary truancy.

C. Truancy Leads to Academic Failure, Dropouts, and Incarceration

The current truancy framing also makes broad connections to academic failure, which leads to dropouts, and ultimately, incarceration. The Attorney General's report states, "Both common sense and research show: children who are habitually absent from elementary school will fall behind their classmates. Students who miss a lot of school in the early years are likely to become disengaged from their studies and struggle academically."²¹ The storyline does not stop there. During the Attorney General's inaugural speech, Harris made it a point to connect truancy with dropping out and even, incarceration:

We know chronic truancy leads to dropping out, which dramatically increases the odds that a young person will become either a perpetrator or a victim of crime. Folks, it is time to get serious about the problem of chronic truancy in California. Last year we had 600,000 truant students in our elementary schools alone, which roughly matches the number of inmates in our state prisons. Is it a coincidence? Of course not.²²

Harris claims that elementary truancy equals subsequent incarceration without qualifying this assertion through research. Instead, Harris makes broad leaps from elementary truancy all the way to adult incarceration. Unfortunately, this framing is not new.

In 1996, former California District Attorney Kim Menninger stated in a publication, *Manual to Combat Truancy*, prepared by the U.S. Departments of Justice and Education, "I've never seen a gang member who wasn't a truant first."²³ By connecting truancy to gang membership, this frame is also highly racialized. When we think of gang membership in California, the image that comes to mind is often a black or Latino face. Although the framing never mentions race, there are other indicators to signal to the audience that truancy is a problem for students of color.

21. *Id.* at 37.

22. Kamala D. Harris, Attorney General, Inaugural Remarks 4, *available at* http://oag.ca.gov/system/files/attachments/press_releases/n2021_final_speech.pdf (last visited Dec. 11, 2013).

23. U.S. DEPT OF EDUC. & U.S. DEPT OF JUSTICE, *MANUAL TO COMBAT TRUANCY* 1 (1996), *available at* <http://www2.ed.gov/pubs/Truancy/index.html>.

In addition to implying race in discussions about gangs, conversations surrounding dropouts are also highly racialized, especially in California. In the Los Angeles Unified School District (LAUSD), the nation's second largest school district and California's largest school district, 88 percent of students are students of color. LAUSD's graduation rate is a measly 56 percent,²⁴ which means the dropout rate for LAUSD is 44 percent. Although the truancy-dropout framing never discusses race, one could assume that the majority of dropouts are students of color considering that LAUSD is 88 percent students of color. Nationwide, we also know that students of color graduate from high school at lower rates than whites. In 2006, only 59 percent of black students and 61 percent of Latino students graduated from high school on time with a regular diploma.²⁵ Thus, the problem of student dropouts is a highly racialized issue, but antitruancy advocates never put the connection to dropouts into racialized terms.

In discussing dropouts, the Attorney General's report lists several alarming findings regarding dropouts under the heading "The Harmful Effects of Truancy & Chronic Absence":

First grade students with 9 or more total absences are 2[] [times] more likely to drop out of high school than their peers who attend school regularly.

Each additional school day missed over 5 = 7% . . . [decrease] in the probability of graduating high school for low-income urban elementary students.

82% of prisoners in America are high school dropouts.

A ten percent increase in graduation rates would reduce murder and assault rates by 20%.

Increasing graduation rates in California by 10% would therefore result in: 50,000 additional graduates annually; 500 murders prevented each year; and 20,000 aggravated assaults prevented each year.²⁶

24. For an informative analysis on truancy ticketing in Los Angeles, see JIM FREEMAN, DANIEL KIM, & ZOE RAWSON, BLACK, BROWN, AND OVER-POLICED IN L.A. SCHOOLS: STRUCTURAL PROPOSALS TO END THE SCHOOL-TO-PRISON PIPELINE IN THE LOS ANGELES UNIFIED SCHOOL DISTRICT AND TO BUILD A NATIONAL MOVEMENT TO STOP THE MASS INCARCERATION OF BLACK AND LATINO COMMUNITIES (2013), *available at* <http://www.thestrategycenter.org/sites/www.thestrategycenter.org/files/Crystal%20McMillan/LCSC-OverPoliced.web.release.10.30.13.pdf>.

25. See CHILDREN'S DEF. FUND, CRADLE TO PRISON PIPELINE FACT SHEET (2009), *available at* <http://www.childrendefense.org/child-research-data-publications/data/cradle-to-prison-pipeline-overview-fact-sheet-2009.pdf>.

26. HARRIS, *supra* note 3, at 7.

Again, much like the way in which the report connected economic harms of dropouts to truancy, here the report makes broad jumps between truancy, dropouts, incarceration, and violence.

D. Blame Students and Parents

Antitruancy advocates not only blame students for missing school, but also for their own underachievement. In their op-ed piece, Duncan and Harris assert:

Not surprisingly, students with high rates of unexcused absences fall behind. And teachers at schools with high truancy rates find themselves forced to teach the same material again and again.

Chronic absenteeism is especially damaging to disadvantaged students, who are already at higher risk of falling behind their peers academically. Missing school widens achievement gaps, and catching up can be difficult. Students who are truant in elementary school are more likely to be truant in middle and high school, when truancy is closely linked to an increased chance of a child dropping out.²⁷

By focusing on students' inability to get to school and subsequent academic struggles, the framing removes all responsibility from schools and their role in the achievement gap. The op-ed does go on to point out the ways in which school districts must intervene when a child is truant.²⁸ But there is no acknowledgement or discussion of the school districts' responsibility to provide a high quality education with equal educational opportunity. Instead, the op-ed implicitly blames students for their own academic failures, not schools.

Although parents are not at the center of the truancy framework, the predominate truancy framework does implicate and blame them in a number of ways. In their op-ed piece, Harris and Duncan contend, "Parents must be held accountable, and law enforcement should support interventions that educate and bolster struggling students and parents."²⁹ By holding parents accountable, Harris and Duncan are placing a large part of the responsibility onto parents.

Not only are parents to blame for student truancy, but there are also other implicit claims made about parents who fail to get their children to school on a consistent basis. The report reasons, "Many families do not prioritize attendance because they may not appreciate the high marginal value of every

27. Duncan & Harris, *supra* note 15.

28. *Id.*

29. *Id.*

school day, the dangers elementary school truancy and absenteeism create for their child's long term success and opportunities, and that school attendance is legally required."³⁰ This statement makes it seem as though parents do not value or prioritize education, and that is why their children are truant. Considering this, the report also encourages the prosecution of parents and enforcement of current truancy laws when students are truant.³¹

In 2011, California enacted SB 1317, an antitrtruancy bill sponsored by then San Francisco District Attorney Kamala Harris³²—the bill added sections to both the existing California Education Code and Penal Code. The bill added Section 48263.6 to the Education Code, which reads, “Any pupil . . . absent from school without a valid excuse for 10 percent or more of the schooldays in one school year . . . is deemed a chronic truant.”³³ In addition, the bill added Section 270.1 to the Penal Code,³⁴ which states:

A parent . . . whose child is a chronic truant as defined in Section 48263.6 of the Education Code, who has failed to reasonably supervise and encourage the pupil's school attendance . . . is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.³⁵

California SB 1317 make parents responsible for student truancy with fines up to \$2,000 and up to a year in jail, when their child is absent from school for more than 10 percent of the school year (approximately eighteen days, depending on the length of the school year).

In May 2011, Orange County Police arrested five parents under the new truancy law.³⁶ Orange County Prosecutor Tracie Renauro said, “You know the saddest part of all this? These kids want to go to school. They're looking to belong and to fit in, they're looking for an education.”³⁷ This quotation makes

30. HARRIS, *supra* note 3, at 12.

31. *Id.* at 15.

32. See Julianne Hing, *New California Truancy Law Goes Into Effect*, COLORLINES (Jan. 4, 2011), http://colorlines.com/archives/2011/01/new_law_could_spell_jail_time_for_california_parents_w_hose_kids_miss_school.html.

33. CAL. EDUC. CODE § 1 § 48263.6 (2011).

34. For an analysis on the constitutionality of California Penal Code § 270.1 and holding parents criminally liable for the actions of their children, see Alison Cardova, *California Penal Code § 270.1: A Constitutionality Impermissible Attempt to Combat Truancy*, 39 HASTINGS CONST. L.Q. 539 (2012).

35. CAL. PENAL CODE § 270.1(a) (2011).

36. See *Truancy Crackdown Lands OC Parents in Jail*, CBS L.A. (May 11, 2011, 7:46 A.M.), <http://losangeles.cbslocal.com/2011/05/11/truancy-crackdown-lands-oc-parents-in-jail>.

37. *Id.*

it sound as if parents are purposefully and maliciously preventing their children from attending school. But the very last sentence of the article reports that “[a]fter being handcuffed, one local parent said she sometimes had to go to work early and just assumed her daughter was going to class.”³⁸

In June 2011, the Long Beach Police Department arrested the mother of a middle-school student when her son missed fifty days of school.³⁹ Long Beach City Attorney Doug Haubert stated, “Police officers and school officials are doing everything they can to keep kids in school and out of trouble, and if parents are unwilling to take responsibility themselves, then we will take action against the parents.”⁴⁰ The media coverage surrounding the arrest depicted the mother as a villain. Several news articles noted that police arrested the mother in 2007 for suspicion of contributing to the delinquency of a minor, when her older son had missed too many days of schools.⁴¹ Sergeant Rob Gallagher said, “Her response was, ‘I tell him to go to school but he does what he wants to do.’”⁴² Reporting such as this sends the message that parents have lost control over their children, and for that reason, law enforcement should punish them.

In April 2013, police arrested six parents in Anaheim for failing to abide by the state truancy law. Orange County Deputy District Attorney Tamika Williams said, “The message is we are here for you to work with you, but we will hold you accountable if you do not comply with the law.”⁴³ According to one news article, authorities alleged that one of the arrested parents was indifferent to her children’s education.⁴⁴ Such reporting makes it seem as though all parents of truant students simply do not care about their children’s education. As a result, lawmakers design truancy laws that punish parents in order to make them care. Unfortunately, these punitive solutions do not work in solving truancy.⁴⁵ Thus, we must change the framing of truancy in order to develop effective solutions.

38. *Id.*

39. See Dennis Romero, *Mom Jailed After Son Skips School for 50 Days in Southern California*, L.A. WEEKLY (June 10, 2011), http://blogs.laweekly.com/informer/2011/06/mom_arrest_skip_school.php.

40. *Id.*

41. *Id.*, see also Yvonne Beltzer, *Mother Facing Jail Time Over Truant Son*, NBC NEWS L.A. (June 10, 2011, 7:39 P.M.), <http://www.nbclosangeles.com/news/local/Mother-Arrested-Because-Son-Keeps-Skipping-School-123645849.html>.

42. Beltzer, *supra* note 41.

43. Eileen Frere, *6 Orange County Parents Arrested for Students’ Repeat Truancy*, ABC L.A. (Apr. 18, 2013, 12:00 A.M.), <http://abclocal.go.com/kabc/story?id=9071466>.

44. *See id.*

45. For discussion of the ineffectiveness of punishing parents, see *infra* note 82.

II. PROBLEMS WITH THE PREVAILING FRAMEWORK

As discussed in the previous Part, there is a prevailing framing of truancy. Unfortunately, these frameworks are problematic because they lead to solutions punishing parents, students, and schools. For example, in response to the Attorney General's report, California schools Superintendent Tom Torlakson said that he would "push to tie school funding to attendance rates as a way of pressuring districts to undertake reforms."⁴⁶ But schools are already losing about \$30 a day per absent student, and that has not motivated any changes by the schools.⁴⁷ Given the ineffectiveness of this solution, it is illogical to further punish the schools, and the students who attend them, by further reducing funding.

It is important that we understand why the prevailing frameworks are problematic so that we can change the surrounding storylines, and ultimately, the solutions to truancy. Thus, this Part deconstructs and exposes the troubling nature of the frames regarding truancy and explains why we must change them.

A. Calm Down, It's Not a Crisis

By framing the truancy problem as a crisis, we can expect the solutions to be drastic and over-encompassing. The response to a crisis is often extreme, especially when the problem is not yet at crisis-level. For example, the War on Drugs has led to the mass incarceration of people of color in this country, while it is debatable as to whether the drug problem was actually that alarming.⁴⁸ Indeed, framing truancy as a crisis has exacerbated the school to prison pipeline.⁴⁹ To begin with, the report exaggerates the truancy problem in its definition of a truant student.

In the Attorney General's report, she defines a truant student as a student "absent or tardy by more than 30 minutes without a valid excuse on 3 occasions in a school year."⁵⁰ Late to school on three or more occasions seems extreme in

46. Times Editorial Board, *AWOL From the Classroom*, L.A. TIMES, Oct. 6, 2013, <http://www.latimes.com/local/la-ed-truancy-20131006,0,795354.story#axzz2kNcCXO62>; see also Teresa Watanabe, *Torlakson Wants to tie Student Attendance, School Funding*, L.A. TIMES, Sept. 30, 2013, <http://articles.latimes.com/2013/sep/30/local/la-me-1001-truant-20131001>.

47. See Times Editorial Board, *supra* note 46.

48. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

49. See discussion *infra* Part II.C.

50. HARRIS, *supra* note 3, at 1.

defining a student as truant. Even the *Los Angeles Times* editorial board questions the validity of the Attorney General's report:

Officials estimate that there are close to 1 million elementary school students in the state who are truant each year, but that makes the problem sound worse than it is because any student who gets to campus late three times in an academic year is deemed to be truant. A more meaningful measure of the problem is chronic absenteeism—these are the students who miss 10% or more school days, or at least 18 days each academic year. But most schools in the state don't even track how many students are chronically absent. The number that Harris used—250,000 elementary students—is extrapolated from a small sample.⁵¹

Clearly, the Attorney General's report that one million students are truant is an overstatement of the problem.

In addition, the Attorney General's definition of truancy ignores the realities of getting to school, and the obstacles that poor families face. For example, poor students often have to rely on public transportation to get to school. Public transportation, especially in Los Angeles, can be slow and unpredictable. Moreover, poor families are more likely to have greater family responsibilities and work demands that make getting to school on time a challenge. Considering these factors, it seems reasonable that almost all students living in urban areas, and especially poor students, will likely be late to school at least three times per school year. The Attorney General uses flawed measurements in claiming truancy is at a crisis level. Being occasionally late to school is not a crisis; it is a consequence of being poor and/or living in an urban area.

B. Economic Harms of Truancy Avoid Acknowledging Fiscal Priorities

By connecting student truancy to economic losses,⁵² the prevailing storyline attempts to exploit the public's economic insecurities so that people will care about the issue.⁵³ But this distracts from an equally, if not more,

51. Times Editorial Board, *supra* note 46.

52. See discussion *supra* Part I.B.

53. This is a form of interest convergence. For discussion on interest convergence theory, see Derrick Bell, *Brown v. Board of Education and the Interest Convergence Dilemma*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 20 (Kimberlé Crenshaw et al. eds., 1995) ("Black rights are recognized and protected when and only so long as policymakers perceive that such advances will further interests that are their primary concern."); RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 18 (2001)

important spending issue regarding the costs associated with arresting and detaining children. In California, the state “is projected to spend more than 20 times as much per youth in a state juvenile facility as per student in a public school.”⁵⁴ Los Angeles has the largest juvenile probation department in the country, with a budget of \$630 million.⁵⁵ The Los Angeles School Police Department, in charge of policing school campuses in LAUSD, is the largest of its kind in the country and has an annual budget of over \$52 million.⁵⁶ Overall, California “invests more in prisons than in higher education.”⁵⁷ In fact, “California is #1 in the country for prison spending per person and #49 in education spending per person.”⁵⁸ Relative to the national averages in spending, California’s public education system is largely underfunded—spending just \$8,482 per pupil, which is about 28 percent below the national average.⁵⁹ Even worse, Governor Brown has proposed expanding prison spending by \$730 million, while cutting teachers, counselors, and programs from schools.⁶⁰ The average school in “California now has just 1 counselor for every 1016 students, the worst ratio in the country.”⁶¹ In fact, “[m]any schools now have more police and security than guidance counselors.”⁶² These facts speak volumes not only about our state’s spending priorities but they also tell a story about what we expect from our children. We are willing to spend a fortune on the incarceration of children and preparing children for prison, but we are not willing to invest in their education and prepare them for college or a career.

In addition, by harping on how much money school districts are losing because of truancy, the frame implicitly excuses the underfunding of education. Why should taxpayers pour more money into a system that loses more than a billion dollars because students are not attending school? This makes it seem as though the status quo is adequate—it is perfectly fine to be the second-to-last state in per pupil spending because our students do not want to go to school.

(“[C]ivil right *gains* for communities of color coincide with the dictates of white self-interest. Little happens out of altruism alone.”).

54. CHILDREN’S DEF. FUND, CRADLE TO PRISON PIPELINE CAMPAIGN CALIFORNIA FACTSHEET (2009), *available at* <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cradle-to-prison-pipeline/cradle-prison-pipeline-california-2009-fact-sheet.pdf>.

55. *See* FREEMAN ET AL., *supra* note 24, at 34.

56. *See id.* at 9.

57. *Id.* at 7.

58. *Id.*

59. *See* HARRIS, *supra* note 3, at 23.

60. *See* FREEMAN ET AL., *supra* note 24, at 7.

61. *Id.*

62. *Id.*

This is what the prevailing frame communicates to the public when the focus is on the economic harms of truancy. As a result, the public will not care more about truancy because public schools are losing money and costing us billions. Instead, the public will care less about investing in public education through increased spending.

C. Truancy Enforcement Exacerbates the School to Prison Pipeline

The storyline that truancy leads to low academic achievement, dropouts, and incarceration⁶³ does not acknowledge how truancy law enforcement actually exacerbates the school to prison pipeline. Instead, the prevailing frame is a fear tactic, which promotes the idea that the public should be afraid of truant students because they will end up becoming criminals. Thus, the framing extends to: Law enforcement must crack down on these future criminals now, while they are young, to stop their criminal inclinations. Unfortunately, this storyline does not explain how law enforcement in fact already criminalizes these children and sends them well on their way down the school to prison pipeline.

In Los Angeles, the Los Angeles Municipal Code (LAMC) 45.04, also known as the Daytime Curfew Law, allows police officers to issue truancy tickets to students for being outdoors or in public places during school hours.⁶⁴ These truancy tickets come with fines, starting at \$250, and mandatory court appearances.⁶⁵ Prior to 2012, when lawmakers amended LAMC 45.04, truancy tickets were the number one cause of police referrals of students into the juvenile justice system from LAUSD.⁶⁶ According to one report:

Police had been sweeping up and ticketing more than 10,000 public school students every year, over 90% youth of color, for being absent or late to school. Most LAUSD Black and Latino working class,

63. See discussion *supra* Part I.C.

64. See L.A. POLICE DEPT, http://www.lapdonline.org/for_your_family/content_basic_view/2013 (“Truancy laws restrict the rights of juveniles to be outdoors or in public places during certain hours of the day. Such laws aim to increase school attendance, enhance a student’s opportunity to receive a quality education, become a more productive member of society, and avoid becoming involved in delinquent behaviors. The Los Angeles Municipal Code (LAMC) 45.04 states: It is unlawful for any minor under the age of 18, who is subject to compulsory education or to compulsory continuation education, alone or in concert with others, be present in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places of amusement and eating places, vacant lots or any place open to the public during the hours of 8:30 a.m. and 1:30 p.m. of the same day on days when said minor’s school is in session.”).

65. See FREEMAN ET AL., *supra* note 24.

66. See *id.* at 4.

low-income families could simply not afford the \$250 tickets, the additional \$1000 in court fees, and the missed days of work to attend the required court hearings. Unpaid fines accumulated over the past decade have resulted in driver's license holds for upwards of 300,000 youth, many of whom are now adults. . . . By systemically enabling and encouraging punitive ticketing at school, this curfew law had been a literal gateway to juvenile court, and in some cases even juvenile detention⁶⁷

Given the large number of Los Angeles students ticketed and entered into the juvenile justice system, it is hard to argue that this was not a systemic school to prison pipeline.⁶⁸ Even though the number of tickets issued to students in LAUSD has declined since lawmakers amended the Daytime Curfew Law, many other school districts and counties throughout the nation still practice large-scale truancy ticketing.⁶⁹ This is in large part due to the prevailing framework that we must be tough on truant students so that they do not become criminals. But this framing fails to reflect how such truancy laws are actually turning students into criminals.

Other juvenile justice systems outside of California have realized that involving the juvenile justice system in truancy matters is ineffective. Lucas County Juvenile Court in Toledo, Ohio stopped putting juveniles on probation for truancy.⁷⁰ Judge James Ray of Toledo states:

We could not document that school attendance was improved on probation. What often happened was that truants on probation would be truant again, and would face a harsher sanction for violating a court order. A lot of research says that it is counterproductive. Overreacting to that kind of behavior may increase delinquency, rather than decrease it.⁷¹

67. *Id.*

68. See also Julianne Hing, *Young, Brown—And Charged With Truancy*, COLORLINES (Sept. 2, 2009, 12:00 P.M.), http://www.colorlines.com/archives/2009/09/young_brownand_charged_with_truancy.html (“Throw into this mix Los Angeles’s daytime curfew laws, which forbid kids from being outdoors or in public places between 8:30 a.m. and 1:30 p.m., and it’s almost impossible for students of color and their families to not get caught up in the legal system.”).

69. See FREEMAN ET AL., *supra* note 24.

70. See CHILDREN’S DEF. FUND, AMERICA’S CRADLE TO PRISON PIPELINE (2007), available at <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-highres.html>.

71. *Id.* at 152.

Yet, California continues to place children in the juvenile system for minor offenses. In 2007, there were 36,036 juvenile arrests for status offenses including truancy, incorrigibility, running away, and curfew violations.⁷²

Even if a student receives a ticket and does not end up entangled in the juvenile justice system, by either paying the fine or having the ticket dismissed in court, over policing still has a psychological effect. An eleventh grade student of color, Michael, reflects on his experience of receiving a ticket for being late to school:

Even for minor things, it seems like police are always involved in our lives at school. When you get treated like this it is demeaning and it's a big part of how we get pushed out of school. A lot of people I know just stop caring about school. They just don't care anymore. And it fits with how police treat us in South L.A. at school and in the neighborhood, the message is: "You are nothing."⁷³

The dominant framing contends that truant students will one day dropout of school, but this is just a surface level conclusion.

The predominant framing fails to take into account the ways in which schools and truancy policies are turning students into criminals. In her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander explains how the War on Drugs was a mechanism to incarcerate mass amounts of people of color.⁷⁴ She writes, "This system is better designed to *create* crime, and a perpetual class of people labeled criminals, rather than to eliminate crime or reduce the number of criminals."⁷⁵ This is exactly what is going on in our schools today—we are creating criminals through punitive truancy policies and over policed schools.

If lawmakers and policymakers want to get at the heart of student truancy, they have to ask: Why are students not coming to school? Part of the answer is in the school environment and over policing. If students do not feel welcomed, safe, and supported in school, then they are not going to want to attend. As Michael so eloquently expressed above, how schools treat students is a big part of staying in school. Student truancy does not lead to dropouts, school environments and the way schools treat students lead to dropouts; and the prevailing frame fails to take this fact into account.

72. See CHILDREN'S DEF. FUND, *supra* note 54. Status offenses are behaviors that if done by an adult, the criminal justice system would not treat as crimes. BLACK'S LAW DICTIONARY 534 (pocket ed. 2011). The criminal justice system considers truancy to be a status offense.

73. FREEMAN ET AL., *supra* note 24, at 17–18.

74. ALEXANDER, *supra* note 48.

75. *Id.* at 224.

D. Schools are Skirting Responsibility for Underperformance

By blaming parents and students for being late and missing school,⁷⁶ the main framework implicitly excuses schools from all responsibility regarding the persistent underachievement of poor students and students of color. In 2007, 60 percent of white, 87 percent of black, and 89 percent of Latino fourth graders in California could not read at grade level.⁷⁷ In addition, 48 percent of white, 85 percent of black, and 85 percent of Latino fourth graders in California could not do math at grade level.⁷⁸ The truth is California schools are failing our students, and they are especially failing our students of color. Truancy alone cannot account for the underperformance of so many students at such a young age. Instead of blaming parents and students for academic underperformance, we should take a closer look at what is going on in the schools.

Even worse, not only does the predominate framing excuse schools of their responsibility to provide a quality education to all students, it also encourages the inequitable status quo and the current state of our failing school system. A few days after the Attorney General published her truancy report, the *Los Angeles Times* editorial board ran this headline, “AWOL From the Classroom: The Best Teachers and a New Curriculum Can’t Help a Student who Isn’t There.”⁷⁹ This headline suggests that we should not even bother to improve public education because students are not coming to school. It implies that schools do not require further effort or spending to improve teacher quality or curriculum because the students are not there to learn. This unspoken endorsement for the underfunding of California schools contributes to the reason why our state is second-to-last in per pupil spending. When the prevailing frame blames students and parents for their own academic failures, there is no need to hold the school system accountable or improve the quality of education.

III. A BETTER WAY TO FRAME TRUANCY

As discussed in the previous Part, there are many problems with the prevailing framework of truancy. Such frames have led lawmakers and policymakers to impose harsh sanctions against parents who fail to send their children to school on a consistent basis. Such punitive measures include

76. See discussion *supra* Part I.D.

77. See CHILDREN’S DEF. FUND, *supra* note 54.

78. See *id.*

79. Times Editorial Board, *supra* note 46.

reducing welfare benefits,⁸⁰ prosecuting parents,⁸¹ and reporting parents to government agencies for neglect. Interestingly, in a report commissioned by the New York Office of Children and Family Services, a study found that punishing parents was not an effective measure for curbing student truancy.⁸²

As discussed earlier, law enforcement also penalize teenagers for not going to school through an extensive citation process enforced by police officers and the youth court system.⁸³ In Los Angeles, law enforcement can fine truant students \$250 or more, with mandatory court appearances, for being late or missing school.⁸⁴ These punitive measures are not only drastic, economically costly, and cause the student to miss more school for court appearances, but they are also highly racialized consequences. A Latino student in LAUSD is “twice as likely to be ticketed and arrested at school than a white student,” and a black student is “almost six times more likely to be ticketed and arrested at school than a white student.”⁸⁵

Given that students of color and poor students are the disproportionate victims of such truancy sanctions,⁸⁶ it is important that the truancy framework incorporate this reality. By not painting the complete picture of who is most impacted, the story is inaccurate. Truancy is a civil rights issue and the framing should reflect such concerns so that lawmakers and policymakers can do a better

80. See discussion *supra* Introduction; *supra* notes 6–9.

81. See Truancy, CAL. DEPT OF EDUC., <http://www.cde.ca.gov/ls/ai/tr>; see also, Hing, *New California Truancy Law Goes Into Effect*, *supra* note 32 (“As of the new year, California parents face prosecution, fines up to \$2,000, and even jail time if they don’t make sure their kids attend school regularly”); Julianne Hing, *California Parents Could Get Jail Time if Kids Miss School*, COLORLINES (Oct. 5, 2010, 1:00 P.M.), http://colorlines.com/archives/2010/10/californias_new_ant-truancy-law_promises_to_hit_black_and_latino_families_more.html.

82. See VERA INSTITUTE FOR JUSTICE, *GETTING TEENAGERS BACK TO SCHOOL: RETHINKING NEW YORK STATE’S RESPONSE TO CHRONIC ABSENCE* (2010), *available at* <http://www.vera.org/sites/default/files/resources/downloads/Ed-neglect-summary-revised-v5-copyedit.pdf>; see also Julianne Hing, *Report: New York’s Truancy Policies That Punish Parents Don’t Work*, COLORLINES (Nov. 30, 2010, 1:02 P.M.), http://colorlines.com/archives/2010/11/report_new_yorks_truancy_policies_that_punish_parents_dont_work.html; Julianne Hing, *Study: Punishing Parents Won’t Solve Chronic Absenteeism*, HUFFINGTON POST (Nov. 27, 2010, 12:54 P.M.), http://www.huffingtonpost.com/2010/11/27/study-punishing-parents-w_n_788757.html.

83. See FREEMAN ET AL., *supra* note 24.

84. See *id.* at 5.

85. *Id.* at 6.

86. See Hing, *Young, Brown—And Charged With Truancy*, *supra* note 68 (“While the anti-truancy tactics are meant to curb crime and keep kids in school, advocates and students alike say the policy is unfairly targeting kids of color and students from low-income families who depend on public transportation and have other family responsibilities that make them late for school.”).

job in developing appropriate solutions that work. This Part offers a new framing of truancy: A framework that acknowledges both race and poverty.⁸⁷

A. We are not Colorblind—Race Matters

The prevailing truancy framework is one that does not acknowledge race—it is a colorblind issue. Although many, conservatives and liberals alike, have embraced colorblind principles in dealing with society’s problems, I contend that this is not the correct approach. Michelle Alexander writes, “Although colorblind approaches to addressing the problems of poor people of color often seem pragmatic in the short run, in the long run they are counterproductive. Colorblindness, though widely touted as the solution, is actually the problem.”⁸⁸ When we ignore the fact that truancy policies disproportionately affect poor students of color, we will not develop solutions with poor students of color in mind. Instead, our solutions will be colorblind, and we will attempt to develop solutions directed at the middle of the spectrum of truant students (in other words, white middle class students). But this approach neglects that poor students of color have unique circumstances that the average (white middle class) student does not face. Poor students of color have home environments that are less stable, their schools are over policed, underfunded, and underperforming, and they often have to rely on public transportation in order to get to school.⁸⁹ A colorblind approach simply will not consider these factors in developing solutions. Thus, we must acknowledge that truancy is a racialized issue.

B. We Must Deal With the Realities of Poverty

If we are going to tackle truancy, then we have to tackle poverty. Poverty is the underlying issue to all of this, and it is not nearly discussed enough in conversations about education. In California, nearly 1.6 million children were

87. Although I have separated race and poverty into two different Subparts, I understand race and poverty to be intertwined and thus, these Subparts overlap to some degree.

88. ALEXANDER, *supra* note 48, at 227.

89. For national statistics on black youth, see CHILDREN’S DEF. FUND, PORTRAIT OF INEQUALITY 2012: BLACK CHILDREN IN AMERICA, *available at* <http://www.childrendefense.org/child-research-data-publications/data/portrait-of-inequality-2012.pdf>. For national statistics on Latino youth, see CHILDREN’S DEF. FUND, PORTRAIT OF INEQUALITY 2012: HISPANIC CHILDREN IN AMERICA, *available at* <http://www.childrendefense.org/child-research-data-publications/data/a-portrait-of-inequality-2012.pdf>. For California statistics on students of color, see CHILDREN’S DEF. FUND, *supra* note 54.

poor in 2007—that is more than one in six children (17.3 percent)—and more than 600,000 children lived in extreme poverty, with a family income less than half of the federal poverty level.⁹⁰ Poverty is also highly connected to race. While 14.8 percent of white children in California live in poverty, 23.6 percent of Latino children and 28.3 percent of black children live in poverty.⁹¹ Poverty is very much connected to student truancy, and it must be included as part of the predominate framing. In an op-ed piece Ellie Herman, a teacher, explains:

I can say anecdotally that every kid I knew who was chronically truant came from a home in chaos. I had a student last year who was absent about half the time because his father had been shot and his mother, who had lost her job, cried every night because she didn't know how she would pay the rent. My student walked the streets day after day looking for a job, even though no one would hire him because he was only 15. His mother begged him to stay in school and graduate, assuring him she would figure something out. Our counselor referred the family to public services, but because my student's mother was undocumented, she was afraid to seek them. And my student continued to be absent about half the time.⁹²

From my six years of teaching experience in South Los Angeles, I wholeheartedly agree with Ms. Herman. Every chronically absent student has a story.

In particular, one student comes to mind. Esmeralda,⁹³ a Latina sophomore, was the best softball player on the high school team that I coached. Nearly every time she came to the plate, she hit a triple or a double. While the other parents routinely came to the games, Esmeralda's parents were never there. One day, Esmeralda came to practice with a new tattoo of a boy's name. I assumed that it was the name of a new boyfriend, but she corrected me and told me it was her father's name. Her father was serving a life sentence in state prison. He had been in prison since Esmeralda was a child. The following year, Esmeralda was absent from school for four consecutive days. When she showed up on Friday, I asked her where she had been. She told me that over the weekend federal agents broke down her front door at 4:00 in the morning; they searched the entire house and arrested her mother and aunt. Esmeralda was terrified and had no idea what was going on. She later found out that her

90. See CHILDREN'S DEF. FUND, *supra* note 54.

91. See *id.*

92. Ellie Herman, *Truancy is Just the Symptom*, L.A. TIMES, Oct. 13, 2013, <http://articles.latimes.com/2013/oct/13/opinion/la-oe-herman-truancy-20131013>.

93. I have changed the student's name to protect her identity.

mother was part of a drug smuggling operation and the police had found large amounts of drugs and money in the home. After her mother's arrest, law enforcement seized their home, and Esmeralda and her older sister, who was only 20 years old, needed a place to stay. The two of them had no money, so they stayed with their mother's friends. From then on, Esmeralda only came to school about once a week, until she finally dropped out. Esmeralda was a very talented student-athlete and any college would have been lucky to have her, but her family's circumstances prevented her from ever having a chance.

Family stability is crucial for a child to regularly attend school. Children without permanent family support face serious barriers. In 2006, there were 89,500 child victims of abuse and neglect in California and approximately 65,000 children (6.6 of every 1000 children) were in the state's foster care system.⁹⁴ Unfortunately, children of color disproportionately represent the foster care system.⁹⁵ While 5.2 of every 1000 white children are in foster care, 6 of every 1000 Latino children are in foster care, 21.8 of every 1000 Native American children are in foster care, and 29.2 of every 1000 black children are in foster care throughout the state.⁹⁶ With such mass amounts of students living in poverty and in foster care, we must direct our efforts towards better supporting these populations.

Understanding the true causes of truancy would force lawmakers and policymakers to address the core issue: poverty. Ms. Herman continues:

We pretend that we can cut services and education funding to the bone—as has happened in California—without consequence. We somehow convince ourselves that despite a minimum wage so low no one can live on it, an economy that simultaneously depends on and criminalizes undocumented workers, and schools that pack 40 or 50 kids into a classroom while slashing counselors, after-school programs and summer school, we can simply demand accountability and get it. But our students aren't likely to just trot back to school when their lives are failing apart.

Yes, kids need to go to school. But truancy is a symptom, not the core problem, and accountability alone can't fix it.⁹⁷

Until we are ready to tackle poverty in this country, we will never see a solution to student truancy.

94. See CHILDREN'S DEF. FUND, *supra* note 54.

95. See *id.*

96. See *id.*

97. Herman, *supra* note 92.

CONCLUSION

If we care about solving student truancy, we must shift the way in which we frame and discuss the issue. The current prevailing framework has led to solutions that punish students and parents, and these solutions do not work. To the Attorney General's credit, her report does call for more supportive services for families struggling with poverty, homelessness, mental illness, and substance abuse.⁹⁸ This message, however, is lost when the framing focuses on economic losses and criminality. The prevailing framework lacks understanding and empathy, and thus, it is no wonder that the solutions are all punishment based.

We need to confront poverty and racism head on, if we are going to solve student truancy. Our solutions must work with parents and students in providing them with the supportive services that they need to get their children to school. In addition, we need to change school environments and provide a quality education to all students so that students will want to attend school. To get to these solutions, we must change the frameworks surrounding truancy. We must be more compassionate for what parents and students living in poverty are going through.

98. See HARRIS, *supra* note 3.