
John D. Marshall, Jr.
Oren R. Griffin

Sheraton Sand Key Resort
Clearwater Beach, Florida
February 22, 2005
PART I

Understanding the Complexity of Campus Policing and Premises Liability
Historical Overview of Campus Security

- Late 19th Century at Yale University
  - Town and gown relations
  - Doctrine of *In Loco Parentis* alive and well

- Early 20th Century Functions
  - Lock ups and fire watch
  - Enforcing student conduct regulations
Historical Overview of Campus Security (continued)

- Campus Security in the 1940’s and 1950’s
  - Military presence on campuses – World War II
  - Campus Administrators gain awareness of campus policing

- The Turbulent 1960’s and 1970’s
  - Doctrine of *In Loco Parentis* dismissed
  - May 4, 1970 – Kent State University tragedy
Historical Overview of Campus Security (continued)

- Modern Campus Policing Era (post-1970)
  - Cooperative relationship between Campus Police and Student Affairs

- 20th Century Ends with Move Toward Full Disclosure
  - 1990 - Crime Awareness and Campus Security Act
Historical Overview of Campus Security (continued)

Future Challenges:

- War on terrorism
- Technology and diversity
Premise Liability Law

What are reasonable and acceptable security expectations for a member of the College or University community (i.e., students, faculty, staff)?

- 100% protection from all crime on campus.
- Nothing more than what the general public deserves.
Premise Liability Law (continued)

- How does the special relationship between the Student and University (public or private) impact campus security?

- Tort liability elements
  - Duty
  - Breach
  - Causation
  - Damages

- Apartment complex in high crime area

- Defendant apartment owner provided limited security (no daytime patrols)

- FedEx delivery person victim of sexual assault while making delivery to apartment complex
Duty

- Ordinary care
- Duty to warn of known dangerous conditions
- Duty to inspect premises and make safe for the protection of those who enter
Duty (continued)

- **Trespasser** – if unknown, no duty owed, but if known or anticipated, may have an ordinary duty of care

- **Licensee** – not a member of University community, guest, people canvassing the area, visitors, sightseers

- **Invitee** – probably member of University community, or a person who enters the premises for a business purpose
Breach

- University may have failed to perform its duty of ordinary care or failed to respond reasonably under the circumstances.

- In Saelzler, the Court found a question of duty and breach. The property owner failed to provide security during daytime hours, however, Defendant’s office manager did get security escort.
Causation

- **Saelzler** Primary Issue

  - Whether Defendant’s action or omission was a substantial factor in causing injuries inflicted during a criminal act by a third-party
Causation (continued)

- Proximate cause – (majority) unable to establish a substantial casual link between Defendant’s omissions and Plaintiff’s injury

- Proximate cause – (minority) causation does not require certainty. Plaintiff need not prove with certainty that the presence of security would have prevented the sexual assault (Lifeguard does not have to save every drowning victim, but community experience has shown that the presence of a lifeguard commonly saves lives)
Auditing Your Campus

- What duty does Campus Security have to the University community?
- Is that duty breached each time a crime happens on campus, or is that duty met by making a reasonable effort?
  - Consultant reports
  - Working with local law enforcement agencies
- Is your campus an easy target?
What Are the Limitations of Campus Security?

- No limitations – absolute safety for everyone

- How to justify doing less

  - The cost of doing less vs. the cost of doing more

- Is it only a matter of resources - $ $ $
Protecting the University Community

- Authorized vs. Unauthorized Patrons
- Working with Student Affairs
- The Model Campus Security Officer
Protecting the University Community (continued)

- OLD SLOGAN: “To Protect and Serve”

OR

- NEW SLOGAN: “To React and Respond”
PART II
Preventing Campus Crime:
What to do When
the Perpetrator is a University Employee or Student
What duty is owed to protect one student from another?

- Student assaults roommate
- Assailant had been suspended for the previous spring because of a series of fights
- Victim sued University saying it breached its duty of care by not requiring the previously suspended student to live alone or off campus
- Court said no breach of duty and reversed a $74,000 judgment
Background checks--Students

- Joint Commission on Accreditation of Healthcare Organizations (Hospital accrediting body) 2004
- HR Standard 1.20
  - “The hospital has a process to ensure that a person’s qualifications are consistent with his or her job responsibilities.”
  - Elements of performance: “The hospital verifies the following according to law, regulation, and hospital policy.”
    - #5 Information on criminal background.
Pre-Employment Background Checks: The First Line of Defense

- Required under Patriot Act and its progeny for certain employees

- Required for certain jobs:
  - Police
  - Daycare workers
  - Nursing home workers
Background Checks: Avoiding Potential Liability

- Invasion of privacy claims

- How much information can you get from a criminal history check for employment purposes?
Background Checks: Avoiding Potential Liability (continued)

- Fair Credit Reporting Act and state legislation
  - Notice, consent, summary of information (if rejected)

- What will you do with the information?
  - Will you fail to hire someone with bad credit?
    - Possible Title VII disparate impact claim
Tort Claims for Negligent Hiring

  - Court found duty to use reasonable care in hiring

  - Apartment complex liable for death of woman at hands of employee because of inadequate background check
Additional Cases

  - Rape victim sued security service claiming it was negligent because it failed to perform a background check on employee who raped the victim
Reference Letters and Recommendations

- It is nice to receive recommendation letters
- Do you provide recommendation letters?
- Most states have a qualified privilege against defamation claims for letters of reference
Caselaw Regarding Reference Letters


- **Davis v. Board of County Comm’r,** 987 P.2d 1172 (N.M. App. 1999)

Caselaw Regarding Reference Letters (continued)


Increasing Criminal Activity of Employees on the Job

- Estimated losses of greater than $1 billion per year as a result of employees defrauding employers

- Approximately seven percent (7%) of workplace fraud perpetrators have a criminal record
Increasing Criminal Activity of Employees on the Job (continued)

- On average, only twenty-five percent (25%) of cases are referred to a law enforcement agency due to fear of bad publicity

- Fraud detected by:
  - Tip from anonymous sources such as co-workers, customers, or vendors
  - Internal auditors
Steps to Reduce Workplace Fraud

- Improve accounting controls

- Well-treated employees are less likely to commit fraud

- Investigate tips and complaints, even if received anonymously

- Conduct background checks
Steps to Reduce Workplace Fraud (continued)

- Perform both internal and external audits
- Educate employees that fraud increases job costs and affects raises
- Prosecute wrongdoers and publicize it!
The Role of Campus Police: “The Tip of the Sword”

- “Teamwork is essential” – work with internal auditors, University attorney, and Student Affairs

- “Maintain Your Home Field Advantage” – be visible by walking your campus during all times of the day; and campus police should be a common fixture
The Role of Campus Police: “The Tip of the Sword” (continued)

- **“Profile with a Protective Positive Purpose”**
  - become familiar with students and employees so that those who are out of place are noticed immediately

- **“Understand and Respect Vulnerabilities”**
  - regularly check lighting and locks, establish a good rapport with maintenance personnel and request assistance with problem areas