

WEAPONS ON CAMPUS

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The tragic shootings at Virginia Tech in 2007 drew national attention to the problem of violence on campus. *See, e.g.,* Mass Shootings at Virginia Tech: Report of the Review Panel (April 16, 2007); Lyndsey Lewis, *Virginia Tech: The Campus Killings Spur States to Act to Protect Students*, *The Chronicle of Higher Education* (July 27, 2007). The tragedy also raised anew questions regarding how, whether, and to what extent weapons should be permitted on our nation's college campuses. *See, e.g.,* *Campus Tragedy Drives Change*, *USA Today*, p. 11D (Dec. 27, 2007). The outline below will briefly summarize some of the relevant issues for colleges and universities to consider in reviewing their policies and procedures related to weapons on campus, and will also provide background information on a potentially relevant and important Supreme Court case on gun control restrictions that will be argued in early 2008.

Some Issues to Consider

As colleges and universities review their policies and procedures related to weapons on campus, here are some issues to consider:

- Overall ways to assess threats, prevent violence, and identify and help troubled students

The question of how to regulate weapons on campus needs to be part of a broader discussion about assessing threats and preventing violence on campus, which should include the following elements:

- Identifying and providing services and support for troubled students, and relaying information to parents or guardians of deeply troubled students²
- Consideration of establishment of emergency-warning systems and networks (including not just students, but also faculty, staff, and others on campus)

¹ The views expressed herein are solely those of the author and do not necessarily reflect the views of Rutgers, The State University of New Jersey.

² For further information on this topic, see the National Association of College and University Attorneys' publication on FERPA [the Family Educational Rights and Privacy Act] and Campus Safety, listed in the resources section at the end of this outline. This issue is also discussed in the reports of the Virginia Tech review panel and the National Association of Attorneys General Task Force on School and Campus Safety, both cited in the resources section.

- Coordination with local law enforcement
- Methods of securing campus boundaries and buildings
- Workplace violence policies

Institutions may also want to develop or review policies and procedures applicable to employees on campus. For example, Rutgers has a Workplace Violence Policy (University Policy Library §60.1.13) that provides the following as an example of workplace violence:

Possessing any firearm, imitation firearm, or any components which can readily be assembled into a firearm or other weapon, as defined by the Laws of New Jersey, without specific written authorization from the Division of Public Safety, irrespective of whether the individual possesses a valid permit to carry the firearm or a valid firearms purchaser identification card. (footnote omitted)

- Consistency with state law

Each institution must be aware of applicable state law, and the extent to which the state law might affect the ability of the institution to regulate or prohibit the possession of weapons on campus (e.g., Utah currently has a state law that allows concealed weapons on campus). The report of the Virginia Tech review panel revealed that “there is confusion on the part of universities as to what their rights are for setting policy regarding guns on campus.” *Mass Shootings at Virginia Tech: Report of the Review Panel*, p. 75 (April 16, 2007). In New Jersey, for example, state law provides as follows:

Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

N.J.S.A. 2C:39-5. *See also, e.g.,* Karin Fischer and Robin Wilson, *Review Panel’s Report Could Reverberate Beyond Virginia Tech and Virginia*, *The Chronicle of Higher Education* (Aug. 31, 2007) (discussing the need for clarity under state law with regard to the ability of colleges and universities to regulate firearms on campus).

- How and when to issue timely warnings under the Clery Act

The Clery Act (20 U.S.C. §1092(f)(3)) requires colleges and universities to notify the campus community of certain reported crimes occurring on or around campus. A recent case underscores the latitude schools have in issuing these notices and in

reporting the possible use of weapons. In *Havlik v. Johnson & Wales University*, 2007 WL 4247871 (1st Cir. 2007), the U.S. Court of Appeals for the First Circuit upheld a university's decision to identify a student by name in a "crime alert" it issued under the Clery Act. Havlik had been involved in a fight with another student at a sidewalk near the University, and a witness alleged that Havlik brandished a knife. Havlik was later found "not responsible" for brandishing a knife by a student conduct board. The court held, however, that the school's crime alert was based on a reasonable belief that it had a duty to report under the Clery Act, and that the school should have "substantial leeway to decide how notices should be phrased and disseminated so as to most effectively prevent future incidents." According to the court, the statute provides "substantial discretion in each campus security office to phrase and disseminate reports in those ways that the particular institution deems best suited to apprise its constituent campus communities of incipient criminal activity."

- Enforcement of other rules not related to guns per se, but which can also arise in many violent situations

Rules regarding drug and alcohol abuse, bullying, and harassment (among others) can and should be consistently and strictly enforced when trying to reduce violence on campus. The mix of weapons and alcohol or drugs has proven to be particularly deadly. *See, e.g., Mass Shootings at Virginia Tech: Report of the Review Panel* (Aug. 2007), Appendix K (Articles on Mixture of Guns and Alcohol on Campus).

- Application of policies to off-campus sites, such as fraternities and sororities

A number of incidents involving weapons (including accidental discharges) have occurred off-campus at fraternity or sorority houses. *See, e.g., Beer, Brotherhood and Guns*, Inside Higher Ed (July 23, 2007). In light of their relationships with and degree of control over Greek houses, colleges and universities may want to examine whether and how weapons restrictions might apply to these facilities (as well as other facilities with a close relationship to the campus, and over which the institution might exert some controls). Many student codes of conduct now apply to behavior that occurs off-campus if that behavior has an impact on the institution and/or the learning environment.

- Safe storage rules

Institutions should look at whether they have rules that apply to the safe and secure storage of weapons and ammunition. The storage of weapons in cars is one issue in particular to consider.

- Criminal background checks on faculty, staff, and students

Some institutions have debated whether and when to require criminal background checks on faculty, staff, and students – especially if such individuals might be permitted to possess or carry weapons on campus. Background checks are not

foolproof, of course, and can be expensive if applied to large populations. Thus, institutions may want to consider targeting the use of such background checks to individuals in especially sensitive or high-risk positions.

- Facilitation of reporting of possible threats

In order to facilitate timely and substantive reporting of potential threats, institutions may want to ensure that individuals who become aware of possible threats on campus can make anonymous reports that will be received by law enforcement. The SPEAK-UP national hotline is one model of this approach (*see* PAX/Real Solutions to Gun Violence, listed in the Resources section at the end of this outline). *See also* National Association of Attorneys General, Task Force on School and Campus Safety, Report and Recommendations (Sep. 2007), at p. 6.

- Accurate entry of data into the federal database, the National Instant Criminal Background Check System (NICS), that is used to approve gun purchases

Only 23 states as of June 2007 provided information about people disqualified from possessing firearms for mental-health reasons. *See* Karin Fischer, *Report on Virginia Tech Shootings Urges Clarification of Privacy Laws*, The Chronicle of Higher Education (June 22, 2007). The Report and Recommendations of the National Association of Attorneys General Task Force on School and Campus Safety (Sep. 2007) includes the following: “States should consider modifying or changing state laws as necessary to insure that all information that is relevant to federal firearms prohibitions can in fact be provided by the state to NICS.” (p. 6)

- Discussions of campus safety at student orientation with students and parents

According to a recent article, “[s]ome schools have intentionally added more discussion of safety concerns to their orientation programs, while others have worked on training their orientation staffs to be able to answer security questions should someone ask.” *Oriented Toward Safety*, Inside Higher Ed (Aug. 7, 2007). Even if students do not ask questions, parents may have concerns about safety and security on campus.

- Whether students can request roommates who don’t have a concealed-carry permit (Utah state law now allows this choice)
- Whether and to what extent campus law enforcement officers should be armed (the subject of a 2007 debate in the Iowa Board of Regents) – *see, e.g.,* Martin Van Der Werf, *Over a Decade, College Police Have Become More Professional*, The Chronicle of Higher Education (May 4, 2007)
- Whether certain specially trained faculty and staff members should be permitted to carry guns on campus (the higher education governing board in Nevada rejected such a proposal in 2007)

- Whether and to what extent to allow students to have weapons of self-defense on campus (e.g., certain stun-guns or mace)
- How to respond to requests related to the carrying of weapons for specific purposes, e.g., research or other educational reasons, religious or ceremonial purposes, etc. – the review of any such requests should keep in mind the needs for consistency of application of school policy and compliance with any applicable federal or state laws
- Whether to permit gun clubs or shooting ranges on campus

Institutions have recently debated whether and under what circumstances to permit gun clubs or shooting ranges on campus. *See, e.g., Karen Birchard, U. of Toronto Closes Gun Range, The Chronicle of Higher Education (Aug. 10, 2007)* (university had a strict no-gun policy on its campus, and decided that firing weapons on campus was not consistent with the institution’s core values). At public institutions that must comply with the First Amendment, such decisions should be driven by content and viewpoint-neutral considerations – i.e., they should not be based on the perceived political views represented by gun clubs. In consultation with risk management, institutions might also want to explore off-campus options which might be available to interested students.

Other issues to consider with such gun clubs might include the following:

- Whether background checks should be required for anyone who handles guns
- The need to keep guns and ammunition in secure, controlled storage areas
- Putting procedures in place so that guns and ammunition are checked in and out

Pending Supreme Court Case: *District of Columbia v. Heller*

The U.S. Supreme Court recently agreed to review a strict firearms law from the District of Columbia to determine whether it violates the Second Amendment’s guarantee of the “right of the people to keep and bear arms.” The case, *District of Columbia v. Heller*, No. 07-290, is the first time the Supreme Court will interpret the Second Amendment since 1939. The District of Columbia has what is considered to be the strictest gun control ordinance in the country. The D.C. ordinance “not only bans ownership of handguns, but also requires other guns that may be legally kept in the home, rifles and shotguns, to be disassembled or kept under a trigger lock.” *See Linda Greenhouse, Justices to Decide on Right to Keep Handgun, The New York Times, nytimes.com (Nov. 21, 2007).*

The question presented that the Court will review is as follows: Whether certain provisions of the D.C. Code “violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?” As Linda Greenhouse noted when the Court agreed to review the case,

[A] Supreme Court decision that finds the district’s ordinance unconstitutional would not necessarily invalidate other, more modest restrictions, like those that permit handgun ownership for those who pass a background check and obtain a license. Since the only claim in the case is that law-abiding people have the right to keep a gun at home, the court will not have occasion to address restrictions on carrying guns.

Id.

Gun-control proponents say that the Second Amendment guarantees the personal right of an individual to possess firearms. Many gun-control supporters counter that the words convey only a civic or “collective” right to own guns as part of service in an organized military organization. The Bush administration said in 2002 that it supports the individual-rights position.

The U.S. Court of Appeals for the D.C. Circuit struck down the district’s ordinance based on its conclusion that the Second Amendment protects an individual right to keep and bear arms. *See Parker v. District of Columbia*, 478 U.S. 370 (D.C. Cir. 2007). The court noted that under such a reading “reasonable regulations” would be permitted on gun ownership, but that a flat ban was not reasonable and therefore unconstitutional. The D.C. Circuit compared regulations that are permissible with the sort of reasonable restrictions that have been recognized as limiting, for instance, the First Amendment:

For instance, it is presumably reasonable to ‘prohibit the carrying of weapons when under the influence of intoxicating drink, or to a church, polling place, or public assembly, or in a manner calculated to inspire terror.

Id. at 399 (citations omitted). Thus, even under the D.C. Circuit’s interpretation of the Second Amendment, reasonable restrictions on the possession and handling of weapons would be permitted along the lines of the content-neutral time, place and manner regulations permitted under First Amendment jurisprudence.

Unlike most other provisions in the Bill of Rights, the Second Amendment does not apply to state or local laws. The D.C. Circuit ruled that the Second Amendment does apply to the District of Columbia, however, because D.C. is a “Federal District” that is “ultimately controlled by Congress.” The Second Amendment would also apply directly to gun-control restrictions promulgated by the federal government.

Other states and localities would not fall into this federal category, however; hence the actions of these governments would not be attributed to the federal government. Thus,

commentators have noted that state laws on gun control – such as laws against carrying a concealed gun – are not immediately affected by the Second Amendment, however it is interpreted. In other words, the Supreme Court’s ruling would not be an immediately applicable precedent to other state and local jurisdictions because the Second Amendment does not apply to the laws developed by those jurisdictions. Nevertheless, a decision by the Supreme Court in this case could send a strong signal and have a significant impact with regard to how gun regulations are perceived in general. The outcome will almost certainly be cited heavily by groups engaged in the ongoing debates about gun control, and could spur additional conversations at the federal and state levels regarding possible new or different types of restrictions on the ownership and handling of weapons.

At the current time, in one way or another, most institutions of higher education have gun restrictions in place. A 2003 survey by an advocacy group, the Alliance for Justice, showed that 82 out of 150 (i.e., well over half) of the biggest universities in the country ban all firearms on campus. All of the rest of the schools surveyed placed some restrictions on firearms. Private universities can generally ban guns on their campuses because of their rights as private landowners, whereas public institutions may need to pay attention to applicable state laws. Issues related to weapons and violence affect all campuses, however, whether large or small or public or private.

Some Relevant Resources

Here are a few relevant resources and organizations that provide further information on this topic and that might be of interest. The mention of these resources and sites below does not constitute an endorsement of these organizations or their points of view.

International Association of Campus Law Enforcement Administrators (IACLEA, www.iaclea.org): This organization advances public safety for educational institutions by providing educational resources, advocacy, and professional development services.

National Association of Attorneys General, Task Force on School and Campus Safety, Report and Recommendations (Sep. 2007): In response to the Virginia Tech incident, this task force report was intended to serve as a springboard for discussion among all stakeholders who seek to ensure a safe learning environment. It includes a helpful list of safety-related resources at the end.

FERPA and Campus Safety, NACUANOTES Vol. 5, No. 4 (Aug. 6, 2007), by Nancy E. Tribbensee and Steven J. McDonald (National Association of College and University Attorneys): This brief note provides questions and answers about the Family Educational Rights and Privacy Act (FERPA) and its application to situations involving threats to campus security. It also includes a helpful list of resources on this topic.

Mass Shootings at Virginia Tech: Report of the Review Panel (April 16, 2007): This report on the Virginia Tech tragedy, presented to Governor Kaine of Virginia, includes findings and recommendations on a variety of topics including information privacy laws and gun purchase and campus policies.

PAX/Real Solutions to Gun Violence (<http://www.paxusa.org/about/index.html>): The goal of this nonprofit organization is to make gun violence a public health and safety concern, similar to campaigns regarding smoking, drunk driving and drugs. One of their core programs is SPEAK-UP, a national hotline (1-866-SPEAK-UP) targeted primarily to high school and college students to report indications of potential gun violence, anonymously, before they happen. The call center then ties into affected school and local law enforcement.

Security on Campus, Inc. (<http://www.securityoncampus.org>): A non-profit organization dedicated to safe campuses for college and university students, co-founded by the parents of murder victim Jeanne Clery for whom the Clery Act is named. The organization is focused in particular on the reporting of campus crime.

Students for Concealed Carry on Campus (<http://www.ConcealedCampus.com>): This national organization consists of college students, faculty member, parents, and citizens who support the right of concealed handgun license holders to carry concealed handguns on college campuses.

UCLA Policy 131: Weapons on Campus (June 7, 2007): This sample university policy incorporates the weapons prohibitions from the California Gun-Free School Zone Act of 1995 in the context of the UCLA campus, and extends the prohibition to include fireworks and other incendiary devices prohibited under the Los Angeles Municipal Code.