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CONCURRENT SESSION THREE

Victimization in University Residence Halls

Faculty:

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VICTIMIZATION IN UNIVERSITY RESIDENCE HALLS: UPDATE ON LIABILITY FOR UNIVERSITIES AND COLLEGES

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**Presented by Stetson University
College of Law at the :**

**15th ANNUAL NATIONAL CONFERENCE ON
LAW & HIGHER EDUCATION
Clearwater Beach, Florida
February 13-16, 1994**



VICTIMIZATION IN UNIVERSITY RESIDENCE HALLS:
UPDATE ON LIABILITY FOR UNIVERSITIES AND COLLEGES¹

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Prepared for the
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I. Potential Theories for University/College Liability

A. Tort

Generally, the concept of liability arising from breach of a duty and fault for an injury or damage to property. Unfortunately, consistency in the determination of fault can seem illusory.

1. Negligence. Did the institution not fulfill a duty toward the injured party and did the breach of that duty cause the injury to the injured party?

a. Duty to Warn

Peterson v. San Francisco Community College District, 685 P.2d 1193 (Cal. 1984). A student was the victim of an assault and an attempted rape on a stairwell near a college parking lot. The court held that the college had breached its duty to warn the student because it had notice of similar incidents on the same stairwell and had not publicized or warned students.

b. Duty to Provide Adequate Security

See Peterson, above and Mullins v. Pine Manor College, 449 N.E. 331 (Mass. 1983). See also, Delaney v. University of Houston, 835 S.W.2d 56 (S.Ct. Tex. 1992); Green v. Dormitory Authority of the State of New York, 173 A.D.2d 1, 577 N.Y.S.2d 675 (1991), University's duty to provide adequate security for students remains even when dormitory is leased from another entity; and Vangeli v. Schneider, 598

¹ This outline focuses on cases reported since the 14th Annual Law and Higher Education Conference, held in February, 1993. The reader is referred to the fine outline from that conference prepared by Professor Barbara A. Lee for a good overview of prior case law relative to the issue of violence in campus residence halls.

N.Y.S.2d 837 (1993), an example of adequate security measures.

c. Duty to Protect

Nero v. Kansas State University, 861 P.2d. 768 (S.Ct. Kan. 1993). A female student was sexually assaulted in a coed residential hall by a male student who resided in the hall. She brought a negligence action against the University asserting that the University breached its duty arising from the special University-student relationship to protect her under an in loco parentis type of argument. The trial court granted a summary judgment motion to the University. The Supreme Court of Kansas determined that while the University-student relationship did not create a special relationship in this case, the University had the duty of a landlord to exercise due care to protect its tenants, that is the residents in residence halls.

2. Misrepresentation. Before the violence occurred, did college/university representatives make statements that the residence hall was a safe living facility? Were these representations true? If the victim relied, to her/his detriment, upon any such misrepresentations of safety, then a college or university has a significant problem.

B. Contract

If you explicitly promise safety, you do so at your peril.

1. Express contract. What does your dormitory lease say? What do your University publications say to prospective and current students about safety issues?
2. Other Documents

C. Criminal

Misprision of felony. E.g. Ohio law, ORC 2921.22, which requires medical personnel, as well as "any person giving aid to a sick or injured person" to report any gunshot or stab wound or any "serious physical harm" that he knows or has cause to believe occurred from physical violence.

While the statute recognizes confidentiality in certain privileged relationships, it raises serious questions for residence hall staff. Several other states have similar statutes.

II. Defenses

A. Tort

1. Lack of duty owed to student
2. If there is a duty, it was not breached, e.g. no failure to warn,
3. Sovereign immunity (public universities/colleges)
Delaney v. University of Houston, 835 S.W. 2d 56 (S.Ct. Tex. 1992).
4. Charitable immunity (private institutions)
5. Negligence of the student
6. Student's assumption of the risk.

- B. Contract - The contractual relationship between the student and university/college does not guarantee safety under the circumstances that precipitated the injury or damage.

III. Potential Victims - Potential Plaintiffs

A. Students

1. Residents of dormitory facility
2. Non-residents who are also your students
3. Students from other colleges/universities

- B. Employees - Faculty, staff and administrators, e.g. custodial staff, dormitory director.

- C. Hybrid - Student workers, e.g. resident assistants (R.A.)

IV. Potential Co-Defendants

- A. Employees, e.g. dormitory directors, public safety officers, administrators.

1. Do you have a contractual or statutory responsibility to defend employees in such litigation?
2. What is the scope of your liability insurance coverage?

- B. Students. The alleged perpetrator of the alleged tortious or criminal action may be named as a co-defendant.
- C. Student workers, e.g. R.A.
- D. Individual members of the university/college governing board.

V. Federal and State Crime Reporting Statutes

- A. Federal Law. The Student Right-to-Know and Campus Security Act (P.L. 101-542, 1990) requires that colleges and universities collect and publish campus crime statistics and make such information available. Moreover, institutions must prepare and publish an annual security report.
 - 1. What policies and procedures does your institution have concerning reporting crimes which occur in residence halls?
 - 2. Who provides security for residence halls? If not the campus police, what relationship exists between the campus police and the security service/entity? What relationship exists with police in the surrounding city, town or county?
 - 3. Who has the responsibility to report crimes which occur in the residence halls?
- B. State Statutes. California, Connecticut, Delaware, Florida, Louisiana, Maine, New York, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin have campus crime reporting laws.

VI. Miscellaneous Difficult Issues

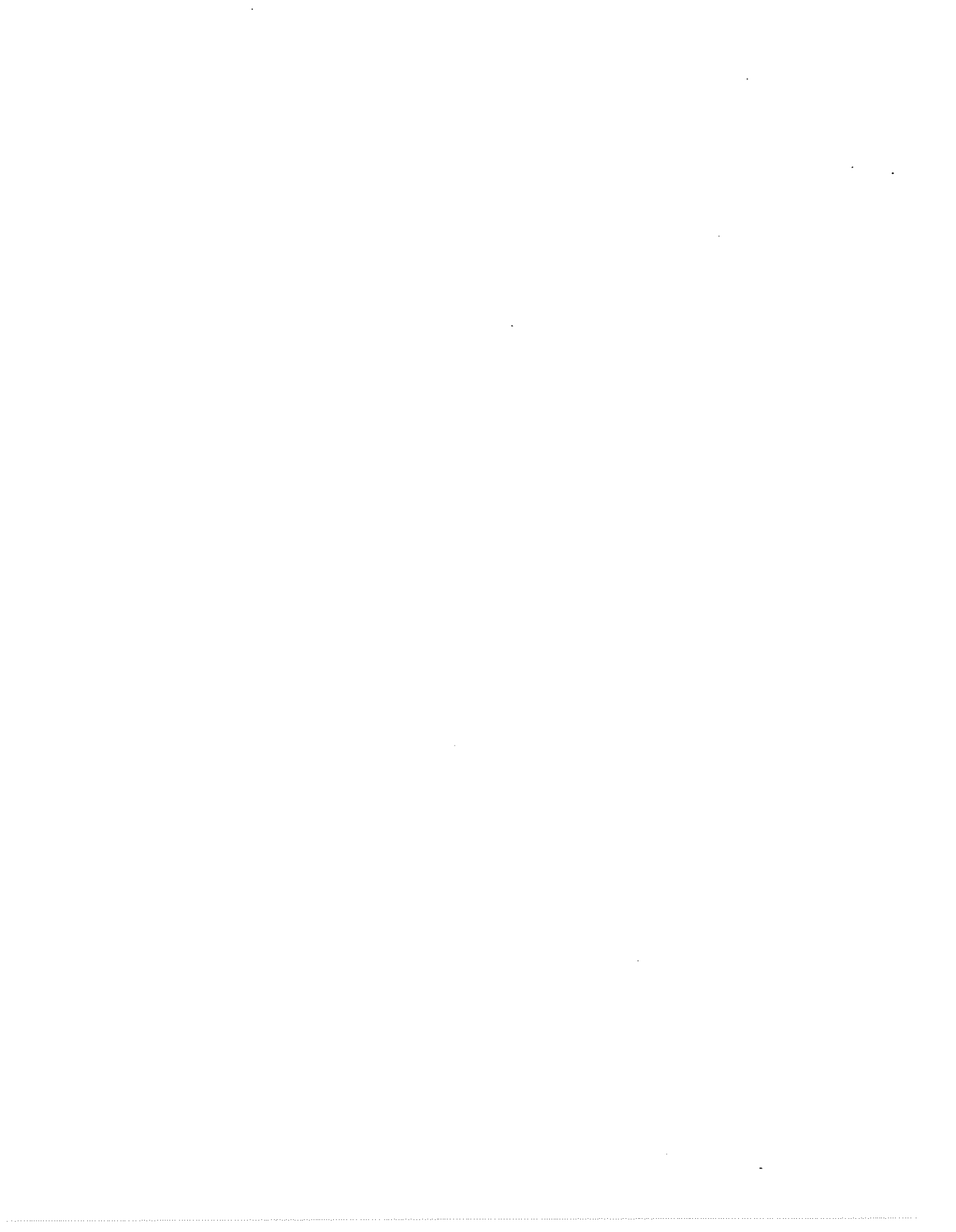
- A. Child Abuse Statutes - Requirement to notify appropriate authorities of abuse or neglect of minor students (e.g., KRS 620.030 requires "any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused" to report it to a "local law enforcement agency." Other examples- California, Colorado, Illinois, Indiana, North Carolina).
- B. Stalking Statutes- e.g. Kentucky, KRS 508.130-.150.

C. Domestic Violence Notice requirement- e.g. Kentucky, KRS 403.785.

VII. Overview of the Legal Relationship between Colleges and Universities and Residents of Residence Halls

Current case law often refers to the Innkeeper and Landlord Tenant relationships as models for analysis of college/university liability in cases involving violence in residence halls. These models are used frequently as justification for the loss of sovereign immunity by public institutions when a student is assaulted in a residence hall. Likewise, the Innkeeper and Landlord Tenant models are used to analyze not only the existence, but also the extent of liability. See Green, cited above in Section I (A) (1) (b) of this outline.

My law clerk, Tommye Collett Mangus, was very helpful in the preparation of this outline.



VICTIMIZATION IN RESIDENCE HALLS: PERSPECTIVES OF LIVE IN STAFF

PRESENTER:

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VICTIMIZATION IN RESIDENCE HALLS: PERSPECTIVES OF LIVE-IN STAFF

Carolyn J. Palmer, Ph.D.
Higher Education and Student Affairs
Bowling Green State University

This study serves as a follow up to Palmer's (1993) national study of victimization in residence halls. In the national study respondents (Directors of Housing or Residence Life) identified 5,526 "officially reported" incidents of violence, vandalism, and verbal harassment that had victimized Resident Assistants (RAs) and racial/ethnic minority, gay/lesbian, Jewish, and women students in residence halls during the previous two years. Further, respondents indicated that these represented approximately 28% of 19,501 such incidents they believe actually occurred during the time period in question, that RAs are (of the five groups studied) most likely to be victimized in residence halls, that many incidents are alcohol-related, that many crimes (for a wide variety of reasons) are not reported to police, that many perpetrators (particularly of vandalism and verbal harassment) remain "unknown," and that many incidents that are reported and have offenders identified do not result in disciplinary sanctions judged as sufficient to serve as deterrents.

The national study suggested that most incidents remain unreported by victims, witnesses, and/or "front-line" staff, in part because they occur "behind the scenes" or "behind closed doors." Consequently, a 1993-94 follow-up study of Resident Assistants (RAs) and Resident Directors (RDs) was based on the premise that live-in staff who work most directly with residence hall students would know most about these "hidden" incidents and about why they are not reported. Clearly, their perspectives regarding the scope and nature of problems of victimization in residence halls and their suggestions regarding what could or should be done to prevent, minimize, or effectively address such problems are essential elements in the overall endeavor to develop strategies to solve these problems.

Approximately 1,150 RAs and 150 RDs at eleven institutions of higher education have recently received survey forms associated with Phase I of this project. (A copy of

materials sent to RAs is appended; equivalent materials were sent to RDs.) Phase I was originally scheduled to be completed during the fall semester of 1993. However, the study was delayed by the Ohio statute cited in the cover letter to RAs (see attached). The Human Subjects Review Board at the researcher's institution was (rightfully) concerned that it appeared that the researcher could not lawfully guarantee confidentiality to protect the human subjects in this study. After considerable consultation involving University administrators, selected legislators, attorneys, and representatives of the Office of the Attorney General for Ohio and the National Institute of Justice, the project proceeded with the stipulation that (in both Phase I and Phase II) human subjects would be informed of the law and its implications for this study. No names will be involved in either phase of the study, and participation is clearly identified as "voluntary."

During Phase II of the study, the researcher and her two graduate assistants (all three of whom have been Resident Directors) will visit each of the eleven institutions and conduct on-campus interviews of small focus groups of RAs and RDs who volunteer to participate in discussions regarding victimization in residence halls. In addition, the researcher will attempt to interview (individually) the Director of Housing or Residence Life, the discipline officer, and a representative of the police department or campus security office at each institution. Specific interview questions will depend largely on the findings from Phase I; however, they will encourage discussion of the reasons that so many students and staff do not report incidents of victimization and focus on staff training, student programs, policies, procedures, judicial sanctions, police relations, victim services, and other factors potentially related to the solutions of the problems identified in Phase I.

Because the implementation of this project was delayed for a semester, only the earliest returns can be included in what is clearly a preliminary report for the Stetson Conference on the Law and Higher Education. The results of the first surveys received will be used in discussing the following:

I. Demographic Characteristics of the Sample (e.g., gender, age, and classification)

II. Hypotheses to be Explored in this Study

- A. Incidents of victimization in residence halls are widespread. It may not be uncommon for RAs to deal with multiple incidents perpetrated against themselves and multiple incidents perpetrated against students on their floors during an "average" academic year.
- B. Live-in staff are more likely than other residents to be victimized by violence, vandalism, and verbal harassment in residence halls.
- C. Most incidents are alcohol-related.
- D. Most incidents are not officially reported to supervisory level-staff, and even fewer incidents are reported to police.
- E. Live-in staff generally have favorable attitudes towards their jobs, their supervisors, and the training programs that have prepared them to deal with various types of incidents.
- F. Live-in staff are generally familiar with their institutional code of conduct, the workings of their institutional discipline system, and various services (e.g., medical, counseling, and legal) available to students (both perpetrators and victims) who have been involved in incidents of victimization.
- G. Many live-in staff are not familiar with pertinent laws, definitions of crimes, their legal rights, or their legal duties.
- H. Many RAs believe common behaviors (e.g., obscene phone calls, "cussing out" the RA, and various acts of vandalism) are not "serious enough" to report.
- I. It is not uncommon for live-in staff to be threatened with harm or fear being harmed if they confront or report certain incidents or individuals.
- J. It is not uncommon for victims to ask live-in staff not to report incidents.
- K. Live-in staff do not have great faith in the timeliness or effectiveness of the disciplinary process or in the adequacy of disciplinary sanctions to serve as deterrents.
- L. Live-in staff may welcome the assistance of police in dealing with incidents of violence, but do not have great faith in the police to handle incidents of vandalism or verbal harassment effectively.

III. Examples of Incidents Described by Live-In Staff

IV. Conclusions and Recommendations

Reference

Palmer, C. (1993). Violent Crimes and Other Forms of Victimization in Residence Halls. Asheville, NC: College Administration Publications, Inc.



January 15, 1994

Dear Resident Assistant:

I recently completed a national study, which showed that incidents of violence, vandalism, and verbal harassment that victimize RAs and students in residence halls are widespread. Some of these involve violent crimes, but many other "less serious" incidents (for example, hate speech, vandalism to personal or institutional property, or threatening anonymous phone calls) still create unwelcoming, intimidating, or hostile environments for many students and staff. The national survey was completed by directors of housing or residence life, who acknowledged that many (perhaps most) incidents of victimization are not reported and that the staff who actually know the most about incidents that occur "behind the scenes" or "behind closed doors" in residence halls are the live-in staff who work most closely with the residents. Consequently, the enclosed survey form seeks your perspectives regarding the problems of victimization in residence halls. The ultimate goal of this study is to use the perspectives of RAs and other live-in staff in developing strategies to prevent, minimize, or effectively address such problems.

Please note that your participation in this study is voluntary. Federal guidelines for the protection of human research subjects (one of which you will be if you complete and return the enclosed survey form) involve the "informed consent" of participants and the "confidentiality" of their responses. Please note that this study has been delayed while implications of an Ohio law have been explored. Paragraph A of Section 2921.22 of the Ohio Revised Code states, "No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities." Because I realize that rape, arson, murder, kidnapping, and other serious crimes sometimes occur in residence halls and because I believed that some RAs might describe felonies when asked about "most serious incidents," I have taken some time to investigate how this law might jeopardize the confidentiality associated with this study. That is, would I, as the researcher receiving this information, have to report it?

It has been determined that I must report felonies (and will voluntarily report all other incidents, including those that are not actually crimes) to the Office of the Attorney General for Ohio. The report will essentially take the following form: "X% of the Y,YYY RAs in this study reported Z type of incident." A few descriptions of selected incidents that may occur on any number of campuses may be used as examples. Names of individuals are not sought in this study, so all participants will be "anonymous." Although supervisors may distribute survey materials to you, please note that your responses will not pass back through their hands. Rather, they should be sent directly to me in the enclosed postage-paid return envelope.

Please accept my sincere gratitude for your participation in this important study. The insights you offer as a live-in staff member will contribute to our understanding of problems that may be encountered by many RAs like yourself throughout the country. Hopefully, by better understanding the problems, we will be in a better position to solve them.

Respectfully,

A handwritten signature in cursive script that reads "Carolyn J. Palmer".

Carolyn J. Palmer, Ph.D.
Assistant Professor

Enclosures: Survey Form and Return Envelope

VICTIMIZATION IN RESIDENCE HALLS: THE PERSPECTIVES OF LIVE-IN STAFF

Section 1: Definitions

Please take a few moments to review the definitions of the following terms as they are used in this survey:

VIOLENCE refers to any physical contact of a violent, angry, negative, uninvited, or unwanted nature with a person. Given this definition, even pushing, shoving, grabbing, or physically restraining someone against his or her will would be considered "violence," even if no physical injury or serious harm results.

VANDALISM refers to damage to or destruction of property. Graffiti in elevators, on walls, etc. would be included. Even though some vandalism (for example, breaking a window) may result from what some might consider to be a violent act, for the purpose of this study, please interpret the term "violence" (defined above) as being perpetrated toward people and "vandalism" as being perpetrated toward property.

VERBAL HARASSMENT involves the use of spoken or written language. It may take many different forms, including (but not limited to) racist, sexist, homophobic, or Anti-Semitic slurs or other comments that are obscene, demeaning, intimidating, threatening, etc. Words of harassment may be spoken in telephone calls, in person, etc. or written in notes, letters, computer messages, etc. What distinguishes "harassment" from "violence" and "vandalism" (as these terms are to be used in this study) is that it remains at the verbal (oral or written) level.

YOU, AS AN RA is used in reference to incidents that have victimized you since you have been an RA at your current institution primarily because you are an RA, you have acted in accordance with the roles and responsibilities of an RA, or you were attempting to fulfill your duties as an RA when an act of violence, vandalism, or verbal harassment was perpetrated against you. If you believe any such act had absolutely nothing to do with the fact that you are an RA, please do not include it in this survey.

ON YOUR FLOOR refers to your specific unit of responsibility as an RA at your current institution. The term "floor" is used because RAs are most commonly assigned to floors. In your particular case, you may be responsible for a section of a floor, a wing, a small house, or some other grouping of resident students, but please consider such a group of students to be "on your floor" for the purposes of this survey.

STUDENTS ON YOUR FLOOR refers to students who lived on any floor on which you served as the RA at your current institution. For example, you may have served as the RA on one floor last year and been reassigned as an RA to a different floor this year. We are interested in all incidents affecting students on all floors, as long as you were the RA for each of these floors at the time the incidents occurred.

AN "OFFICIALLY REPORTED" INCIDENT is one that has been formally communicated (by you, victims, witnesses, and/or anyone else) to your supervisor or other administrators via an "incident report form" or other means of notification used within your residence hall system.

AN "ALCOHOL-RELATED" INCIDENT is an incident involving violation of an alcohol policy or an incident involving a perpetrator and/or a victim who was under the influence of alcohol at the time the incident occurred.

Section 2: Demographic Information

Please provide the following information about yourself:

Your Gender: Male____
 Female____

Your Class: Freshman____
 Sophomore____
 Junior____
 Senior____
 Grad/Prof Student____

Your racial/ethnic identity:
 African American/Black____
 Asian American____
 European American/White____
 Hispanic/Latino American____
 Native American____
 American of Mixed
 Racial/Ethnic Heritage____
 International Student____
 (Other)____

Were you previously an RA at a different institution? Yes____ No____
(If so, please do not include any incidents occurring there
in this survey. Include only incidents that have occurred
since you first became an RA at your current institution.)

In what month and year did you first begin your
duties as an RA at your current institution? Month____ Year____

In what month and year did you first begin your
duties as an RA on your current floor? Month____ Year____

Please provide the following information about your current floor and hall:

How many students currently live on your floor? _____

Is your floor (check one): All Men____ All Women____ Coed____

About how many students currently live in your hall? _____

Is your hall (check one): All Men____ All Women____ Coed____

NOTE: The remaining sections of this survey make extensive use of the terms defined on Page 1. Please return to Page 1 for a review if you become confused regarding how these terms are to be interpreted for the purposes of this study.

Section 3: Summary of Incidents

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved violence toward you, as an RA? _____

How many of these violent incidents were *officially reported*? _____

How many of these violent incidents were reported to police? _____

How many of these violent incidents were alcohol-related? _____

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved vandalism directed toward you as an RA? _____

How many of these vandalism incidents were *officially reported*? _____

How many of these vandalism incidents were reported to police? _____

How many of these vandalism incidents were alcohol-related? _____

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved verbal harassment toward you as an RA? _____

How many of these verbal harassment incidents were *officially reported*? _____

How many of these verbal harassment incidents were reported to police? _____

How many of these verbal harassment incidents were alcohol-related? _____

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved violence toward students on your floor? _____

How many of these violent incidents were *officially reported*? _____

How many of these violent incidents were reported to police? _____

How many of these violent incidents were alcohol-related? _____

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved vandalism directed toward students on your floor? _____

How many of these vandalism incidents were *officially reported*? _____

How many of these vandalism incidents were reported to police? _____

How many of these vandalism incidents were alcohol-related? _____

To the best of your recollection and judgment (*whether or not the incidents were officially reported*) how many incidents at your current institution have involved verbal harassment toward students on your floor? _____

How many of these verbal harassment incidents were *officially reported*? _____

How many of these verbal harassment incidents were reported to police? _____

How many of these verbal harassment incidents were alcohol-related? _____

Section 4: Descriptions of Incidents

Please describe what you would consider to be "the most serious incident" that has victimized you as an RA at your current institution. In addition to describing what actually happened *during* the incident itself, please note (to the best of your knowledge) whether the incident was officially reported to administrators and/or police; whether the incident was alcohol-related; whether you as the victim received appropriate medical, counseling, legal, or other support services; and whether the perpetrator (if identified) was arrested or convicted of any crime, faced disciplinary charges within your university, had a hearing, was issued any disciplinary sanctions, etc.

Please describe what you would consider to be "the most serious incident" that has victimized a student on your floor at your current institution. Please address the topics mentioned above in providing as complete a picture as possible of events that occurred both during and after the incident.

Section 5: RA Perspectives

Please respond to the following statements by circling the number on the scale ranging from 1 = Strongly Disagree to 7 = Strongly Agree that best represents your own opinion:

	Strongly Disagree						Strongly Agree
1. I am glad that I accepted the RA position	1	2	3	4	5	6	7
2. I believe that my performance as an RA has been excellent	1	2	3	4	5	6	7
3. I am familiar with my institution's student code of conduct (regarding rules, regulations, policies, etc.)	1	2	3	4	5	6	7
4. I consistently enforce rules, regulations, and policies	1	2	3	4	5	6	7
5. I feel adequately prepared to address disciplinary incidents	1	2	3	4	5	6	7
6. I have had to address more disciplinary incidents than I had anticipated when I initially applied to be an RA	1	2	3	4	5	6	7
7. I know when <u>not</u> to confront a disciplinary incident without first calling for assistance	1	2	3	4	5	6	7
8. I know when I should immediately call the police	1	2	3	4	5	6	7
9. I know how to report an incident "after-the-fact"	1	2	3	4	5	6	7
10. I am familiar with medical services available to students	1	2	3	4	5	6	7
11. I am familiar with counseling services for students	1	2	3	4	5	6	7
12. I am familiar with legal services available to students	1	2	3	4	5	6	7
13. I can effectively refer students to appropriate medical, counseling, or legal services when needed	1	2	3	4	5	6	7
14. I understand how our discipline system actually works	1	2	3	4	5	6	7
15. The discipline system operates in a <u>timely</u> manner	1	2	3	4	5	6	7
16. The discipline system operates in an <u>effective</u> manner	1	2	3	4	5	6	7
17. I believe that disciplinary sanctions are adequate to deter perpetrators of violence from becoming violent again	1	2	3	4	5	6	7
18. I believe that disciplinary sanctions are adequate to deter perpetrators of vandalism from vandalizing again	1	2	3	4	5	6	7
19. I believe that disciplinary sanctions are adequate to deter perpetrators of verbal harassment from harassing again	1	2	3	4	5	6	7

	Strongly Disagree				Strongly Agree		
20. I believe that campus police (when they are called) handle incidents of violence effectively	1	2	3	4	5	6	7
21. I believe that campus police (when they are called) handle incidents of vandalism effectively	1	2	3	4	5	6	7
22. I believe that campus police (when they are called) handle incidents of verbal harassment effectively	1	2	3	4	5	6	7
23. Violence is a serious problem in my hall	1	2	3	4	5	6	7
24. Vandalism is a serious problem in my hall	1	2	3	4	5	6	7
25. Verbal harassment is a serious problem in my hall	1	2	3	4	5	6	7
26. I believe that most disciplinary incidents in residence halls occur after perpetrators have consumed alcohol	1	2	3	4	5	6	7
27. I have been (or would be) adequately supported by my supervisor after handling a difficult incident	1	2	3	4	5	6	7
28. I have not hesitated (or would not hesitate) to report an incident in which I, as an RA, had been victimized	1	2	3	4	5	6	7
29. If I had it to do all over again, I would still become an RA	1	2	3	4	5	6	7

Please circle the appropriate response to each of the following questions:

Since you became an RA at your current institution ...

- | | | |
|--|------------|----------|
| 30. Have you received any obscene or threatening phone calls? | Yes | No |
| 31. Has anyone threatened (orally or in writing) to harm you? | Yes | No |
| 32. Have you ever chosen to ignore a disciplinary incident because you were afraid that you might be harmed if you confronted or reported it? | Yes | No |
| 33. Have you ever chosen to ignore a disciplinary incident because you were afraid those involved might not like you if you confronted or reported it? | Yes | No |
| 34. Has any <u>victim</u> of violence asked you not to report it?
If yes, did you report it anyway? | Yes
Yes | No
No |
| 35. Has any <u>victim</u> of vandalism asked you not to report it?
If yes, did you report it anyway? | Yes
Yes | No
No |
| 36. Has any <u>victim</u> of verbal harassment asked you not to report it?
If yes, did you report it anyway? | Yes
Yes | No
No |

**THANK YOU VERY MUCH FOR YOUR PARTICIPATION
IN THIS IMPORTANT STUDY.**