

Stetson University

Law and Higher Education Conference

**Liability Issues Related to Campus Security
and Law Enforcement: Providing Reasonable
Security Without Creating Unreasonable
Expectations**

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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



Saelzler v. Advanced Group 400, et al., 23 P.3d 1143 (Cal. 2001).

- 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 causal 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”



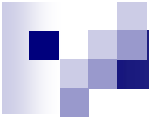
PART II

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?



University of Maryland **Eastern Shore v. Rainey,** 858 A2d 497 (Md. App. 2004)

- >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

- Harrington v. State Bd. of Elementary and Secondary Educ., 714 So. 2d 845 (La. App. 1998)
 - Court found duty to use reasonable care in hiring
- TGM Ashley Lakes, Inc. v. Jennings, 590 S.E.2d 506 (Ga. App. 2003)
 - Apartment complex liable for death of woman at hands of employee because of inadequate background check



Additional Cases

- Elliott v. Williams, 807 N.E. 2d 506 (Ill. App. 2004)
 - 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

- Randi W. v. Muroc Joint Unified Sch. Dist., 929 P.2d 582 (Cal. 1997)
- Davis v. Board of County Comm'r, 987 P.2d 1172 (N.M. App. 1999)
- Passmore v. Lee Alan Bryant Health Care Facility, 765 N.E.2d 625 (Ind. App. 2002)



Caselaw Regarding Reference Letters (continued)

- Richland Sch. Dist., v. Mabton Sch. Dist.,
45 P.3d 580 (Wash. App. 2002)
- Neptuno Treuhand-Und
Verwaltungsgesellschaft Mbh v. Arbor,
692 N.E.2d 812 (Ill. App. 1998)




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