27th Annual National Conference on Law and Higher Education

Sheraton Sand Key Resort
Clearwater Beach, Florida
February 18-22, 2006

Managing Campus Security and the Rule of Law in an Era of Terrorism

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I. **Introduction.**

Long before the events of September 11, 2001, campus security has been a concern of college students and their parents. In a survey of college bound students in 1995 and 1996, students who were interested in public institutions listed safety as the most important factor in their choice of college, while students bound for private institutions listed safety as the third most important factor out of ten possible choices.[1] Nearly ten years later, freshmen attending a public urban university reported similar concerns with safety in the Cooperative Institutional Research Program freshman survey (CIRP).[2]

Generally, third party criminal acts represent the greatest risk to student safety on campus. The Federal Crime Awareness and Campus Security Act of 1990, 20 U.S.C. § 1092(f) (as amended) requires colleges and universities to report annual information about campus crime and to provide timely notice of certain categories of dangerous crimes which occur on or around campus.[3] Along with this heightened concern about campus safety has come a willingness on the part of state courts to recognize a duty on the part of colleges and universities to maintain safe campus premises, even in the face of third party criminal acts.[4]

After the terrorist attacks of September 11th, federal and state laws were passed requiring institutions to take a number of actions to prevent unlawful access and improve security for certain campus facilities. For example, the USA Patriot Act and its companion legislation, the

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1 Stamats Communications, Sevier & Keppler, Results on Two National Surveys on How Students Choose a College

2 The Cooperative Institutional Research Program Survey – Fall 2004 Georgia State University Supplemental Questions Findings Report

3 See also www.securityoncampus.org

4 See Shivers v. University of Cincinnati, No. 02AP-395, 2002 Ohio App. LEXIS 6428 (January 6, 2005-Ohio Ct.Cl).

Public Health Security and Bioterrorism Preparedness and Response Act of 2002[5] created a system to perform background checks on some students and employees of institutions to determine whether they would be restricted from working with certain select agents or toxins. The Patriot Act also expanded the ability of law enforcement officials to use electronic surveillance technologies to ferret out terrorists.

It seems likely that these increased efforts to prevent terrorism, and the apparent willingness to allow government to take a more intrusive role in overseeing the public's activities could create a demand for colleges and universities to use similar techniques to assure the safety and security of their students, faculty, and other members of the university community.

This paper will examine the tension between the demands for campus security, the heightened governmental involvement in the war on terrorism, and the traditional openness of college and university campuses. As debate continues over the extension of certain provisions of the Patriot Act that allow easier government surveillance, there have been recent revelations about federal government interception of telephone communications without a warrant and increased surveillance against environmental, animal cruelty, and poverty relief groups.[6] Given the normal and traditional sensitivity on college campuses to efforts to restrict privacy and civil liberties, college and university administrators will be facing a difficult task in providing the increased security demanded by parents and students, when such security poses risks to privacy and individual liberty.

II. Homeland Security and the Patriotic Act – a brief discussion.

Just over a month after the tragic terrorist attacks of September 11, 2001, the President

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5 Pub.L.No. 107-56, 115 Stat. 272 (2001); Pub.L.No. 107-188, 116 Stat. 594 (2002).

6 Lichtlau, Eric, F.B.I. Watched Activist Groups, New Files Show, New York Times, Dec. 20, 2005.

signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, also referred to as the USA Patriot Act. The Patriot Act represents America's effort to give law enforcement and intelligence agencies the necessary tools to prevent and combat future terrorist attacks. More specifically, the Patriot Act expands the surveillance and intelligence gathering powers of federal law enforcement agencies in an attempt to prevent future terrorists from gaining access to biological agents and toxins, and vital components of our nation's infrastructure that include banking systems, computer networks, etc.[7]

One of the more immediate impacts on campus security was the defining of biological agents and toxins which were considered capable of being used as weapons and prohibiting any "restricted person" from possessing or receiving such agents and toxins. The definition of restricted person under the Act included persons who had been convicted of a felony, any individual who had been committed to a mental institution, a person who had been dishonorably discharged from the armed services, or legal aliens in the United States who were not lawful permanent residents if they were nationals of Cuba, Iran, North Korea, Iraq, Libya, Sudan, or Syria.[8] Less than a year later, additional legislation was passed, expanding the reach of the Patriot Act with regard to biological agents and toxins. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002[9], required institutions to increase the physical security for biological agents and toxins that they might possess, and also provided for registration of individuals who work with these select agents. As part of the registration process,

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7 Keith, James Lewis, The War on Terrorism Affects the Academy: Principle Post-September 11, 2001 Federal Anti-terrorism Statutes, Regulations and Policies That Apply to Colleges and Universities, 30 Journal of College and University Law, 239, et. seq.

8 USA Patriot Act Section 817(2), 115 Stat at 386.

9 116 Stat at 63746 (42 U.S.C. A. Section 262A).

a security risk assessment must be done on each individual working with select agents. This is really just background check that is conducted by the Attorney General of the United States. Thus, for the first time, federal law has required background checks for certain employees and students of colleges and universities.

III. A Select Review Liability Theories: Invasion of Privacy, Negligent Hiring, and Premises Liability.

A. Invasion of Privacy

While federal and state law enforcement agencies are expanding their efforts to combat terrorism, college and university administrators are seeking to improve on-campus monitoring techniques to enhance campus security. As campus police and those administrators responsible for maintaining security apply methods such as video surveillance, close circuit television, and other technological monitoring strategies, they must be aware of certain legal challenges that might result from use of these surveillance methods. For purposes of this paper, our discussion regarding the invasion of privacy will focus on the use of surveillance cameras as a crime prevention and security method.

The use of surveillance cameras can be subject to a constitutional challenge under the Fourth Amendment of the United States Constitution where a plaintiff alleges that the use of such cameras constitutes an illegal search or invasion of privacy. The Fourth Amendment of the U.S. Constitution provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[10] However, the Fourth Amendment prohibition against video surveillance that

[10] The United States Constitution prohibits not only unreasonable physical searches but also unreasonable technological searches. See Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S.Ct. 507 (1967)(attaching listening and recording device to the outside of public telephone booth which intercepted telephone calls held to be unreasonable search prohibited by the Fourth Amendment); Cowles v. State of Alaska, 23 P. 3d 1168, 1170

constitutes an unreasonable search does not mean that the use of video surveillance or other forms of technological monitoring automatically violates an individual's Fourth Amendment rights. First, there must be a determination that a person has a reasonable expectation of privacy. Absent a reasonable expectation of privacy, there can be no Fourth Amendment violation, regardless of the nature of the search.

The general test used to determine whether a reasonable expectation of privacy exists requires a plaintiff to show (1) that she had a subjective expectation of privacy, and if so, (2) that the expectation is one that society is prepared to recognize as reasonable. California v. Ciraolo, 476 U.S. 207, 211, 90 L.Ed. 2d 210, 106 S. Ct. 1809 (1986); Smith v. Maryland, 442 U.S. 735, 740, 61 L.Ed. 2d 220, 99 S.Ct. 2577 (1979). In Thompson v. Johnson County Community College, 930 F.Supp. 501 (Kan. 1996) security officers employed at the community college filed a lawsuit in response to a decision by a supervisor to install video only recorders in a locker room that also served as a storage room. The Court held that security officers had no expectation of privacy in the locker/storage room because the room was not enclosed and their activities could have been viewed by anyone walking through the storage area.[11] Relying on the decision in United States v. Taketa, 923 F.2d 665, 667, (9th Cir. 1991), the Court noted that video

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(Alaska 1991). However, the framers of the Fourth Amendment obviously had in mind physical objects such as books, papers, letters, and other kinds of documents which they felt should not be seized by police officers except on the basis of limited search warrants issued by magistrates. As early as 1928, the U.S. Supreme Court discussed that the Constitution should be kept abreast of modern times and that wire tapping produced the same evil result the framers had in mind when they adopted the Fourth Amendment. Olmstead v. United States, 277 U.S. 438 (1928); see, Edward S. Corwin and Jack W. Peltason, Understanding the Constitution, revised edition, The Dryen Press, Inc., New York.

[11] This is not to suggest that employees cannot have a reasonable expectation of privacy in areas such as restrooms, locker rooms, or closed offices. See, O'Conner v. Ortega, 480 U.S. 709, 718 (1987)(finding that an employee had a reasonable expectation of privacy in his desk and file cabinets.)

surveillance "in public places . . . does not violate the fourth amendment; police may record what they normally may view with the naked eye."

The plaintiffs in Thompson could not satisfy part one of the test, nor could they have met part two of the test either. The second part requires the court to balance the individual's expectation of privacy against the need for supervision, control, and the efficient operation of the workplace. Thompson, 930 F.Supp at 508. Put another way, part two of the test is a value judgment "whether, if the particular form of surveillance practiced by the police is permitted to go unregulated by constitutional restraints, the amount of privacy and freedom remaining to citizens would be diminished to a compass inconsistent with the aims of a free and open society." Cowles, 23 P.3d at 1171. Therefore, surveillance cameras used on college campuses for security purposes are not likely to violate the Fourth Amendment if (1) the cameras are focused on public areas that would be in plain view and not in areas exclusively understood to be private such as restroom or changing areas; and (2) colleges and universities take prudent steps to notify students, faculty and staff in advance about the cameras and their field of view.[12]

1. What about the use of surveillance cameras if my employees are unionized?

In a unionized workplace, the use of surveillance cameras to monitor employees is a mandatory subject of bargaining: (1) management is required to bargain over the installation of new surveillance cameras whether hidden or exposed and known to the employees; (2) management may not be obligated to bargain over existing cameras that are in plain view, to

[12] It is important to note that the first major electronic surveillance law was Title III of the Omnibus Crime Control and Safe Streets Act passed in 1968. However, the 1968 Act did not address video surveillance. The Electronic Communication Privacy Act of 1986 allowed law enforcement to use video surveillance. Other technological monitoring advances that may be used as security measures include the closed circuit television (CCTV) systems and webcams. The downside to these new technologies is that the law has not kept pace with the technology, which may create serious questions regarding the use of these devices as security measures on campus.

which the Union has expressed no objection, but management will be likely required to bargain over existing hidden cameras at the union's request even if the Union has known about them and failed to request bargaining; and (3) cameras that monitor equipment are not likely subject to bargaining, because they do not "monitor" employees. Notably, the NLRB and courts have expressly refused to dictate the content of the bargaining and the management is only required to bargain to impasse – management is not required to come to any agreement about installation of cameras.

In Colgate Palmolive Co., 323 N.L.R.B. 515 (1997), the NLRB held that "the installation of surveillance cameras is both germane to the working environment,[13] and outside the scope of managerial decisions lying at the core of entrepreneurial control;"[14] as such, the installation of cameras is a mandatory subject of bargaining under the test established by the Supreme Court in Ford Motor Co. v. N.L.R.B., 441 U.S. 488 (1979). Therefore, the NLRB held that the employer had a duty to bargain about the cameras, but explicitly recognized that this duty did not dictate the content of any agreement between the employer and union, nor did it address the employer's establishment of a practice after bargaining to impasse. Id. at 516.

The Seventh Circuit Court of Appeals applied the NLRB's approach to hidden surveillance cameras in National Steel Corp. v. N.L.R.B., 324 F.3d 928 (7th Cir. 2003). National Steel utilized hidden cameras to investigate specific cases of suspected theft. The court agreed with the NLRB's decision that employers must first notify and bargain with the union before installing cameras and rejected the employer's arguments that requiring an employer to notify

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[13] The NLRB found that cameras are analogous to physical examinations, drug and alcohol testing, and polygraph testing, and that their use could affect the continued employment of monitored employees.

[14] The NLRB found that the installation of cameras is not entrepreneurial in character, and does not affect the basic direction of the enterprise. Id. At 515.

employees of the presence of hidden cameras would compromise the very secrecy that is necessary if the cameras are to be effective and that bargaining is so cumbersome that it would not be able to install cameras as quickly as needed. Id. at 932. Although the court rejected these arguments, it did so on the grounds that the Board's order "only requires National Steel to negotiate with the unions over the company's installation and use of hidden surveillance cameras and does not dictate how the legitimate interest of the parties are to be accommodated in the process." Id. at 933. Therefore, management may be required to bargain regarding the decision, but is not necessarily required to yield to demands that would make its efforts useless.

Notably, like the NLRB in Colgate Palmolive, the court in National Steel rejected the employer's argument that the union waived its right to bargain over the issue of hidden cameras because it knew about the company's past use of such cameras and failed to make a timely request for bargaining. Id. at 933. Despite the fact that the union had even filed grievances on behalf of employees discharged based on evidence obtained from the hidden cameras, the court stated that a "party to collective bargaining ... waives its right to bargain over an issue only by clearly and unmistakably expressing its intent to do so." Id. Therefore, past practice is not a valid defense to existing hidden surveillance cameras without prior bargaining. Therefore, in the union context the use of surveillance cameras will be a mandatory subject of bargaining.

B. Negligent Retention

As background checks become more common in efforts to prevent terrorist attacks, hiring individuals with a criminal background to work on a college campus could result in liability for the institution. To establish a claim of negligent supervision or retention, a plaintiff must allege that the employer knew or should have known of the employee's propensity to engage in the conduct that caused the plaintiff's injury. Farrell v. Time Serv., Inc., 178 F. Supp. 2d 1295, 1300

(N.D. Ga. 2001). A plaintiff should be able to prove an employee's misconduct by evidence substantially related to the injury causing conduct. Harper, 515 S.E.2d at 625; Fortune v. Principal Financial Group, 219 Ga. App. 367, 371 372(1)(465 S.E.2d 698)(1995).[15] Furthermore, the tortious conduct must be committed within the scope of employment to allow recovery under a negligent hiring or retention theory. Dester v. Dester, 240 Ga. App. 711, 523 S.E.2d 635 (1999).

In determining whether an employer "knew or should have known" of an employee's propensity to engage in the type of conduct that harmed the plaintiff, courts consider the existence of a formal grievance procedure. Pospicil v. The Buying Office, Inc., 71 F. Supp. 2d 1346, 1360 (N.D. Ga. 1999). To successfully establish this claim requires proof that the employer knew or should have known of the employee's propensity to engage in conduct that caused the plaintiff harm. Harper v. City of East Point, 237 Ga. App. 375, 515 S.E.2d 623 (1999). Put another way, the standard of care in a negligent hiring/retention action is whether the employer knew or should have known that the employee was not suited for the particular employment. Kemp V. Rouse Atlanta, Inc., 207 Ga. App. 876,878, 429 S.E.2d 264, 267 (1993); Brooks v. H.J. Russell & Company, 66 F.Supp.2d 1349 (N.D. Ga. 1999)(a cause of action for negligence may be stated if the employer, in the exercise of due care, should have known of an employee's reputation for misconduct and it was foreseeable that the employee would engage in such misconduct.) The negligent retention claim may be particularly difficult for colleges and universities to avoid and requires administrators to be proactive when one's conduct poses a

[15] It should be noted that an employer may know or have reason to know, of an employee's reputation for misconduct in the absence of a complaint. Brooks v. H.J. Russell & Company, 66 F. Supp. 2d 1349, 1355 (N.D. Ga. 1999).

threat to the larger university community.[16]

C. Premises Liability

It is the duty of the owner or operator of premises to exercise reasonable care for the safety of its invitees. Clearly, students on campus are invitees of the college or university. The reasonable care that is owed is to protect the student from unreasonable harm about which the university knew or should have known and to minimize the predictable risks to the student.[17] With the increased availability of sophisticated surveillance techniques in this age of terrorism, one could argue that an institution may have a greater duty to discover the criminal before he or she can do harm on campus. However, as the case below illustrates, the college or university cannot lose sight of the simple precautions that it can and should take to provide additional security for the campus.

In Shivers v. University of Cincinnati, a student was raped in a residence hall bathroom that did not have locks on the shower doors. She sued for negligence. The court held that students reasonably relied on the University to keep them safe, and the University breached that obligation when it failed to take the inexpensive step to add a latch to the door to the shower where an individual was most vulnerable. The Court noted that for there to be duty to protect against third party wrongdoers, there must be a special relationship between the parties, and the

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[16] Negligence claims may be brought by parties only remotely related to the employers. In Doe v. XYC Corp., N.J. Super. Ct. App. Div., No. A-2909-04T2, (Dec. 27, 2005), the court held that an employer had a duty to make sure that its employees did not operate as a risk to others. Although this case involved an employee's use of a workplace computer to distribute child pornography, the case gives some insight as to how an employer with access to its employee's activities may be held liable when an employee engages in acts that violate public policy and the employer does nothing to prevent the misconduct.

[17] See Shivers v. University of Cincinnati, No. 02AP-395, 2002 Ohio App. LEXIS 6428 (January 6, 2005-Ohio Ct.Cl).

criminal act must be foreseeable. The court held that the plaintiff met both burdens.[18]

It is difficult for a University to predict the level of security that may be required on campus, because courts often will find for the institution under facts not too dissimilar to the case discussed above. For example in Agnes Scott College, Inc. v. Clark, 616 S.E.2d 468 (Ga. App. 2005), a student was kidnapped from a college parking lot and taken off campus and raped. Because there was no evidence of similar violent crimes on campus, there was no liability for the college because ". . .without foreseeability that a criminal act will occur, no duty on the part of the proprietor to exercise ordinary care to prevent that act arise. . . ." In order for the crime at issue to be foreseeable, it must be substantially similar to previous criminal activities occurring on or near the premises such that a reasonable person would take ordinary precautions to protect invitees from the risk posed by the criminal activity. Id. At 470. There had been car break-ins in this parking lot, so it would not have been an extreme leap of logic for the court to have said that such property crimes could have required the college to provide video surveillance of the parking lots or to increase patrols in the area, but the Georgia Appeals Court did not choose to impose such a burden.

Likewise, in the case of Kleisch v. Cleveland State University, No. 2003-08452, 2005 Ohio Misc. LEXIS 103 (Ohio. Cl. Feb. 22, 2005), a commuter student entered a large lecture room where her final exam was to be given two hours before the exam. She was beaten and raped about an hour later. She sued saying there was a duty to provide adequate security in classrooms. The Ohio Court of Claims held that the rape in a classroom on a weekday morning when an exam was scheduled was not foreseeable. In quoting its Court of Appeals in another case, the court said: ". . . foresight, not hindsight is the standard of diligence . . . it is nearly

[18] Id.

always easy after an [incident] has happened, to see how it could have been avoided. But negligence is not a matter to be judged after the occurrence."[19]

Of course, the plaintiff in the Kleisch case could have argued that if the institution was required by federal law to secure its biological agents and toxins, would it be too great of a burden on an institution to keep its classrooms and building locked prior to classes being in session. Hopefully, courts will not embrace such arguments because students, faculty, and administrators all benefit from an open, accessible campus rather than one akin to a locked fortress.

IV. Innovative Methods used to Avoid Liability

A. Background Check

Prior to the passage of the Patriot Act and related legislation, only a limited number of university employees were required to have background checks, and usually those were individuals working in police departments or child-care facilities. However, in the last two decades, a few courts have found against institutions of higher education or other providers of housing for failing to perform criminal history reviews on employees who had access to students or residents of a housing complex.

For example, in the case of Harrington v. Louisiana State Board of Elementary & Secondary Education,[20] a community college hired an instructor in culinary arts who had an extensive arrest and conviction record and had served time in prison. He later raped one of his students, and the student sued the institution claiming that it was negligent for failing to investigate the instructor's background prior to hiring him. The Louisiana Court of Appeals held that there was a duty on the part of the community college to use reasonable care when hiring

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19 Kleisch, 2005 Ohio Misc. LEXIS 103*8

20 714 s.2D 845 (La. App. 1998)

someone in a position as an instructor, saying that "[a] professor is in a position where character, moral turpitude, and a clean record should be essential. The risk of being raped or harmed by a professor in a position of authority can be associated with a duty to use reasonable care when hiring."[21]

In 2003 and 2004 there were two similar cases in Georgia and Illinois involving operators of apartment complexes whose employees with criminal backgrounds caused serious harm to tenants. In the 2003 case, TGM Ashley Lakes, Inc. v. Jennings,[22] an apartment complex hired a convicted felon as a maintenance worker and gave him full access to all apartments with master keys. The leasing manager had recommended this person for the position even though he had felony convictions for rape, armed robbery, robbery by force, larceny, credit card theft, and at least three residential burglaries. The apartment complex never did any type of check of his prior criminal convictions. Subsequently, he murdered a woman in her own apartment. The deceased's family brought an action against the apartment complex and the management claiming negligent hiring and retention. A jury returned a $13,000,000.00 verdict along with punitive damages that were later reduced to $250,000.00. The Georgia Court of Appeals found that the apartment complex and management company had a duty to determine whether a potential employee had been convicted of a crime and upheld the verdict. In the Illinois case, a security company retained by an apartment complex hired a security guard with a criminal background. A resident of the complex allowed the guard to come into her apartment because she recognized him as the security guard for the complex. After she let him into her apartment, he raped her. She sued the apartment complex and the security company for negligence. The Illinois Appellate Court held that the hiring of the convicted felon without performing a background check could be the legal

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21 Id. at 851

22 590 S.E.2d 807 (Ga. App. 2003)

or proximate cause of the injuries to the plaintiff.[23]

The two apartment complex cases make a strong argument for colleges and universities to perform background checks on at least the individuals who are working in student housing. Further, in light of the Harrington case, and the access that faculty have to students and the trust that comes with that access, a strong argument could be made that all faculty members should be required to undergo background checks. Such a proposition is certainly controversial because of the potential for an invasion of privacy. However, a number of states have considered or moved to require background checks for faculty members and other employees.[24] In 2003 Pennsylvania State University discovered that one of its faculty members was a convicted murderer, having killed three fishermen when he was seventeen years of age. He was never asked when he was hired if he had been convicted of a felony. The Pennsylvania legislature discussed requiring background checks for all members of the faculty. The American Association of University Professors (AAUP) has taken the position that background searches for faculty hiring in general would be an invasion of an applicant's privacy and opposes them.[25]

Although background checks are often being required in order to prevent dangerous individuals from having positions on college campuses, the standard criminal background check available to most institutions is not nearly as effective as the "security risk assessment" required under the Patriot Act and its progeny for individuals who are dealing with select agents. In many states, employment checks of criminal histories will only provide convictions in that particular state. Obviously, in a mobile society, this is of dubious value.

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[23] Elliott v. Titan Securities Services, Inc., No. 1-01-4226, Ill. APP. LEXIS 197 (March 3, 2004)

[24] See, James Madison University Policy 1321 – Criminal History, http://www.jmu.edu/JMUpolicy/1321.shtml

[25] Smallwood, Scott, No Surprises, Please, The Chronicle of Higher Education, July 30, 2004

Furthermore, there is a real question about the accuracy of background checks in general. A faculty member at the University of Maryland conducted a study of companies that perform background checks. He provided a list of 120 individuals who had been convicted in Virginia and gave the list to the FBI asking for a criminal history search. The FBI only found records for 87 of them. Unfortunately, the private security company that he asked to perform the same task did even worse, and found criminal histories for only 56 of the 120 people on the list.[26]

In spite of the limitations and shortcomings of background checks, the demand for them continues to expand and now will often be directed toward students at our institutions. A number of school systems now require that any individual working in the school system, even as a student-teacher, must submit to a background check. The Joint Commission on Accreditation of Health Care Organizations now requires that students who work in the same capacity as a staff member at a health care facility be given background checks if required by law, regulation, or organizational policy.[27] In other words, students now must be treated the same way that a hospital would treat its employees if it does background checks on those employees. After the murders of two University of North Carolina-Wilmington students, a university system-wide task force recommended background checks for certain student applicants for admission to the institution, since the murders were committed by individuals with criminal backgrounds that were unknown to the school at the time of their enrollment.[28]

If an institution does conduct background checks, what will be its guiding principle in making decisions as to whether to allow an individual who may have a criminal history to

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26 Id.

27 Standard HR 1.20 at EP5,http://www.jcaho.org/accredited+organizations/behavioral+healthcare/standards/faqs/manage+hum

28 www.securityoncampus.org, *Campus Watch*, Winter/Spring 2005.

continue as a student, staff member or faculty member? There are often no clear guidelines for an institution in making such decisions. Nevertheless, with background checks being done more frequently as a result of our fears of terrorism, it is likely that there will be a greater demand from the public that higher educational institutions do background checks of many, if not all, of its employees and maybe even of its students.

V. Conclusion

The terrorist attacks of 2001 changed the focus of the country regarding security related issues. The fear of terrorist attacks has encouraged governments at the state and federal levels to use more intrusive measures in an effort to prevent such attacks. While there has been recent concern about the possible infringement of civil liberties created by these measures, colleges and universities are facing demands from parents and students to use some of these same measures to provide better campus security.

College campuses are faced with deciding how or whether to increase the use of background checks and surveillance technologies to provide effective security. With the public's acceptance of these arguably intrusive techniques in the war against terrorism, it is becoming increasingly difficult to forego implementing these strategies and maintain the open and inviting campus environment. It seems likely that the courts and perhaps legislative bodies may create an obligation (or "duty" in the negligence sense) on the part of colleges and universities to use the latest techniques to keep the outside criminal element from working on or entering our campuses. The failure to use these tools may lead to liability for institutions whose students suffer injury at the hands of the criminal.