

ARTICLES

THE CLERY ACT: HOW EFFECTIVE IS IT? PERCEPTIONS FROM THE FIELD — THE CURRENT STATE OF THE RESEARCH AND RECOMMENDATIONS FOR IMPROVEMENT

Dennis E. Gregory*
Steven M. Janosik**

I. INTRODUCTION

April 5, 1986 was one of those days that changes everything, or at least, that is how many in higher education have come to feel.¹ This was the day that Jeanne Clery was “tortured, raped, sodomized and murdered”² at Lehigh University in Pennsylvania.³ This event, and Jeanne Clery’s parents’ response to it, has made lasting impressions on campus safety.⁴ The Clerys’ response to this tragedy resulted in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act or

* © 2002, Dennis E. Gregory. All rights reserved. Assistant Professor in Educational Leadership and Counseling at Old Dominion University, Norfolk, Virginia. A.A., Ferrum College, 1969; B.S., James Madison University, 1971; M.Ed., University of Virginia, 1976; Ed.D., University of Virginia, 1987.

** © 2002, Steven M. Janosik. All rights reserved. Associate Professor in Educational Leadership and Policy Studies at Virginia Polytechnic Institute and State University, Blacksburg, Virginia. B.S., Virginia Polytechnic Institute and State University, 1973; M.Ed., University of Georgia, 1975; Ed.D., Virginia Polytechnic Institute and State University, 1987.

1. See Howard Clery & Connie Clery, *What Jeanne Didn't Know* <<http://www.campussafety.org/aboutsoc/didntknow/html>> (accessed Apr. 28, 2002) (describing the murder of Jeanne Clery).

2. *Id.*

3. *Id.*; Lehigh U., *Home* <<http://www3.lehigh.edu/default.asp>> (accessed Aug. 12, 2002).

4. See Clery & Clery, *supra* n. 1 (describing the aftermath of Jeanne Clery’s death).

Act).⁵ Whether one agrees with the necessity or effectiveness of this legislation, or whether it has positively impacted campus safety or not, everyone can agree that the Clery Act has increased awareness of crime on American college campuses.⁶ The mere fact that a special edition of this law review is being devoted to campus safety illustrates the impact that the Clery Act has had on higher education. The Act certainly has raised the awareness about campus crime and campus-safety issues, and the commentary about it in the higher-education, legal, and popular press has been extensive.⁷

But how effective is the Clery Act in achieving its avowed purposes? Certainly raising awareness is one of these purposes, and that purpose largely has been achieved, at least within the higher-education community.⁸ But how effective has it been in specifically raising awareness among prospective college students and their parents? How many students and/or parents base their college choices at least in part on the crime statistics published by the institution? Have the Act and its requirements — such as crime reports, educational programs, timely warnings, and open crime logs — changed student and employee behavior regarding safety on campus? Are institutional officials hiding campus crime as the press and campus-safety advocacy groups allege? Are college and university officials and the U.S. Department of Education (DOE) clear about what the Act requires of them?

This Article examines these and related issues. It describes selected commentary about campus safety and the Clery Act in particular. This Article will comment on crime in American society, within public schools, and on the postsecondary campuses of the United States. It will describe the results of recent studies about the Act and the institutional response to it. Finally, this Article will recommend ways in which campus-safety programs in general and the Clery Act in particular may be improved to make

5. 20 U.S.C. § 1092(f) (2000).

6. See Higher Educ. Ctr. for Alcohol & Other Drug Prevention, *Catalyst, Understanding the Jeanne Clery Disclosure Act* <<http://www.edu.org/hec/pubs/catalyst17.html>> (accessed May 2, 2002) (describing the possible use of information collected based on the Clery Act).

7. For examples of such commentary, consult *infra* notes 21, 40, 53.

8. For examples of such commentary, consult *infra* notes 21, 40, 53.

postsecondary campuses safer for those who live, work, and study on these campuses.

The next section of this Article will describe some of the commentary about campus crime and the Clery Act that has appeared in the popular and professional press. It also will provide a sample of the many articles related to the issue of campus safety and the Clery Act that have appeared in professional journals, law reviews, and other scholarly publications. For an ongoing review of newspaper and other articles related to campus safety, the Authors refer the reader to the Web site for Security on Campus, Inc.⁹ Whether one agrees with the editorial perspective of the Web site or not, the Authors agree that it is well managed and serves as an appropriate repository for much information on the topic.

II. COMMENTARY ABOUT CLERY

A. Education and Other Media

The Chronicle of Higher Education is a weekly trade paper published to provide a broad set of topics that are of interest to faculty and administrators on America's college campuses.¹⁰ Its commentary on issues of campus safety has been ongoing and has included news articles, op ed pieces, and letters to the editor.¹¹ Many *Chronicle* pieces illustrate the difficulty that colleges and universities have had in complying with the Act and highlight the mistrust that exists between advocacy groups and higher education.¹² Among the many articles that have appeared tracing safety legislation, providing reports on crime statistics reported by campuses, and discussing compliance with the Act, is a recent, unattributed article that alleged a public-relations director tried to minimize the impact of a campus death due to alcohol intoxica-

9. Security on Campus, Inc., *Campus Crime Prevention & Victim Resources* <<http://www.campussafety.org>> (accessed May 3, 2002).

10. Chron. Higher Educ., *About the Chronicle, Online and in Print* <<http://chronicle.com/help/aboutweb.htm>> (accessed May 4, 2002) (describing *The Chronicle's* services on the Internet and in print).

11. Chron. Higher Educ., *Crime on College Campuses* <<http://chronicle.com/stats/crime/>> (accessed May 4, 2002) (listing statistics and various articles on campus crime).

12. E.g. Julie L. Nicklin, *Shift in Crime-Reporting Law Fails to End Debate over Accuracy of Statistics*, 46 Chron. Higher Educ. A50 (June 9, 2000) (available at <<http://chronicle.com/free/v46/i40/40a05001.htm>>).

tion.¹³ Quoted in the article is Howard Clery, of Security on Campus, Inc., who said that “[i]t shows that [the university] is more interested in [its] public image than the safety and welfare of [its] students.”¹⁴

A February 16, 2001 article by Florence Olsen described a Department of Justice study showing that approximately “[three] percent of female college students were the victims of rape or attempted rape during the 1996–97 academic year.”¹⁵ Other articles that described crime statistics on campus included one that described an increase in drug and alcohol arrests,¹⁶ and a May 1998 article that indicated institutions might not be aware of the need to track hate crimes.¹⁷

Another stream of articles addressed the confusion felt by campus officials about how they should report the annual crime statistics. In an article that appeared shortly after the passage of the 1998 Higher Education Amendments,¹⁸ Fred Woodhams indicated that campus administrators were unclear about the impact of changes in the Clery Act and feared that these changes would add record-keeping burdens and lower actual crime prevention.¹⁹ A May 1999 article by Julie Nicklin focused on the necessity to comport crime statistics reports to FBI statistics and not individual state laws.²⁰ In another May 1999 article, Stephen Burd described concern about the fact that crimes reported to counselors were not being included in campus-crime statistical reports.²¹ In the article, counselors reported being concerned that campus police do not seek information for only statistical purposes, but also

13. *Campus PR Director's Messages Suggest He Tried to "Spin" News of Student's Death*, 47 Chron. Higher Educ. A48 (Mar. 30, 2001).

14. *Id.*

15. Florence Olsen, *3% of Female Students Are Victims of Rape or Attempted Rape*, 47 Chron. Higher Educ. A49 (Feb. 16, 2001).

16. Julie L. Nicklin, *Drug and Alcohol Arrests Increased in 1999*, 47 Chron. Higher Educ. A35 (Feb. 2, 2001).

17. Kit Lively, *Most Colleges Appear Unaware of Requirement That They Track Hate Crimes*, 44 Chron. Higher Educ. A57 (May 8, 1998).

18. *Higher Education Amendments of 1998*, Pub. L. No. 105-244, 112 Stat. 1253, 1581–1837 (1998).

19. Fred Woodhams, *Colleges Complain of Paperwork and Confusion over New Rules on Crime Reports*, 45 Chron. Higher Educ. A37 (Jan. 15, 1999).

20. Julie L. Nicklin, *Colleges Differ Widely on How They Tally Incidents under Crime Reporting Law*, 45 Chron. Higher Educ. A41 (May 28, 1999).

21. Stephen Burd, *Incidents That Are Not Reported to Police Remain a Thorny Issue in Crime Reports*, 45 Chron. Higher Educ. A42 (May 28, 1999).

seek privileged information.²² In July 2000, another article described a \$25,000 fine issued to Mount St. Clare College by the DOE for failing to comply with reporting requirements.²³ The ambiguity of the Act and its regulations were cited as being problematic for Mount St. Clare College and other institutions trying to comply.²⁴

Finally, an article written by Terry Hartle, Senior Vice President of the American Council on Education (ACE), appeared in the January 12, 2001 issue of *The Chronicle of Higher Education*.²⁵ In this article, Hartle called for a simpler law and regulations than now exist for the Clery Act; he suggested that “rather than focus on essential information, the crime regulations mandate that colleges report everything that anyone might conceivably like to know — be it an arrest for underage drinking away from the campus or a violent crime on the campus.”²⁶ Before suggesting several ways to improve the Act, Hartle opined, “[T]he law does little to improve safety on campuses or to influence student behavior.”²⁷ Among his suggested improvements were (1) focusing on violent crime rather than all crime, (2) limiting who is responsible for collecting and reporting crime, (3) clarifying the right to privacy of alleged crime victims, (4) providing increased and better informed support for institutions by the DOE, and (5) ensuring adequate training for federal auditors and clarification to campus officials before potentially punitive audits take place.²⁸

Reaction to Hartle’s article was swift and furious. The February 9, 2001 *Chronicle* contained letters to the editor from Howard and Connie Clery representing Security on Campus, Inc.,²⁹ and William M. Lawbaugh, representing the Society of Professional Journalists.³⁰ Both took Hartle to task for the positions taken by

22. *Id.*

23. Barbara J. Kiviat, *Education Department Fines College on Crime Law*, 46 *Chron. Higher Educ.* A33 (July 14, 2000).

24. *Id.*

25. Terry Hartle, *Toward a Better Law on Campus Crime*, 47 *Chron. Higher Educ.* B10 (Jan. 12, 2001).

26. *Id.*

27. *Id.*

28. *Id.*

29. Howard Clery & Connie Clery, *Reporting Crimes on Campuses*, 47 *Chron. Higher Educ.* B16 (Feb. 9, 2001).

30. William M. Lawbaugh, *Reporting Crimes on Campuses*, 47 *Chron. Higher Educ.*

ACE, but neither responded specifically to the proposed improvements.³¹

A March 2, 2000 article in *Black Issues in Higher Education* took issue with a survey published by APBnews.com that ranked historically black colleges as five of the top-seven-most-dangerous campuses in the U.S.³² Terry Hartle, Senior Vice President of ACE, was cited as saying, "This is not much more than racial profiling, as far as we can tell."³³ Hartle continued, "It's just one more ranking that provides information of suspect validity and usefulness to the general public."³⁴ Also in the article, Myra Kodner of Security on Campus, Inc., is quoted as saying that the survey "'could be a useful tool' for parents and students choosing what college to attend."³⁵ However, she stressed that "it should not be your only one You can always make numbers say what you want them to say."³⁶

An example of how the popular press has treated campus crime is an article in the February 5, 2001 issue of the *Washington Post*.³⁷ The author discussed the murders of two Dartmouth professors, which actually occurred off campus, and the murders of two students at Gallaudet University in Washington, D.C.³⁸ She presented information regarding the prevalence of stalking as a crime on campus and quoted S. Daniel Carter from Security on Campus, Inc., but balanced that with a report from the chief of campus police at the University of Maryland and a description of the report from the DOE that indicated the low rate of crime on campus.³⁹

In August 2001, the *Indianapolis Star* commented on campus crime in general and specifically a complaint lodged with the DOE expressing concern about crime statistics from St. Mary's Col-

B16 (Feb. 9, 2001).

31. Clery & Clery, *supra* n. 29; Lawbaugh, *supra* n. 30.

32. Scott W. Wright, *Campus Crime Survey Angers HBCU Officials*, *Black Issues in Higher Educ.* 14-15 (Mar. 2, 2000).

33. *Id.* at 14.

34. *Id.* at 15.

35. *Id.* at 16.

36. *Id.*

37. Amy Argetsinger, *Loss of Innocence on U.S. Campuses; Sense of Safety Often False, Experts Say*, *Wash. Post* A10 (Feb. 5, 2001).

38. *Id.*; Gallaudet U., *Home* <<http://www.gallaudet.edu/>> (accessed Aug. 10, 2002).

39. Argetsinger, *supra* n. 37.

lege.⁴⁰ St Mary's is a small women's college close in proximity to Notre Dame.⁴¹ The reporter described the inaccuracy of the crime statistics reported by many campuses across the country.⁴² He also noted that the DOE has "cited schools for violations 367 times since 1993."⁴³ The article indicated that "[c]ritics say the Campus Security Act has changed four times in 10 years, creating a complex burden for schools," and quoted an ACE spokesperson as saying, "It's not (colleges') intention to hold back information The way the law is set up now, it's almost always going to create inaccurate data."⁴⁴ The same article described the opinion of the Student Press Law Center (SPLC), an advocacy-and-support group for campus media, through remarks of Mark Goodman, its Executive Director.⁴⁵ Goodman noted that "[m]any schools misreport and underreport. Probably most schools misreport in one way or another The information just isn't systematically collected."⁴⁶

The SPLC issues its own "News Flashes," many of which deal with campus crime.⁴⁷ In a February 1, 2001 "News Flash," SPLC reported that the results of "a nonscientific survey of college journalists at the National College Media Convention" in 2000 indicated that "almost half of the 216 respondents, said they had not received a copy of their school's annual crime statistics report."⁴⁸ The "News Flash" went on to report that "38.1 percent, or almost one-third of those surveyed, indicated it was somewhat difficult or difficult to access their school's crime incident logs."⁴⁹ This source appears suspect for several reasons. First, because 38.1% is more than one-third rather than "almost one-third," transcription of survey statistics may well be corrupted. Also, the "News Flash"

40. Tim Logan, *Colleges Lax in Reporting of Crimes; Law Requires That Incidents Be Published, but Several Factors Often Result in Inaccuracies*, Indianapolis Star 01B (Aug. 26, 2001).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *E.g.* Student Press L. Ctr., *News Flashes* <<http://www.splc.org/newsflash.asp>> (last updated Sept. 6, 2002).

48. Student Press L. Ctr., *News Flashes, Survey Reveals College Journalists' Lack of Access to Campus Crime Info* <http://www.splc.org/newsflash_archives.asp?id=208&year=2001> (Feb. 1, 2001).

49. *Id.*

does not indicate whether there were multiple respondents from the same institution. Finally, those attending a convention such as the one at which the survey was taken, might not be a representative sample of campus journalists.

In addition to its "News Flashes," the SPLC also has published a manual that is intended to assist student journalists in gaining information from campus officials regarding crime on campus.⁵⁰ This booklet detailed methods by which journalists should approach campus officials, described how "The Buckley Amendment"⁵¹ should not be accepted as an excuse to prevent release of crime information, provided several states' freedom-of-information acts, and provided a thorough analysis of problems that will be faced by student journalists from the SPLC perspective.⁵²

At this writing, the most recent article in *The Chronicle of Higher Education* described efforts by the DOE to post the 2000 crime data on its Web site.⁵³ The article described criticism about how the DOE sought to collect information for the posting of 1999 data, saying that "college officials charged that the department had given them confusing instructions on how to report data" and that the Web site on which they were to report was unworkable and continued to "crash."⁵⁴ Apparently, the collection of data for the most recent year (2000) caused fewer problems because the data collection for the 6,269 institutions that were to report was completed by October 23, 2001 as opposed to December 13, 2000, which was when the 1999 data collection was complete.⁵⁵ A report on crime trends on campus, which will be described below,⁵⁶ was released after the collection of 1999 statistics.⁵⁷ While crime statistics were summarized, a similar report that included the 2000 statistics was not issued by the DOE.⁵⁸ This brief summary of

50. Student Press L. Ctr., *Covering Campus Crime: A Handbook for Journalists* (3d ed., Student Press L. Ctr., Inc. 2000).

51. See 20 U.S.C. § 1232g (requiring student permission before educational records are released).

52. Student Press L. Ctr., *supra* n. 50, at 1-44.

53. Julie L. Nicklin, *Education Department Posts Crime Data for American Campuses*, 48 Chron. Higher Educ. A22 (Dec. 7, 2001).

54. *Id.*

55. *Id.*

56. *Infra* nn. 182-223 and accompanying text.

57. *Id.*

58. *Id.*

commentary about the Clery Act in education and other media suggests that the Clery Act has not created a uniform, easily understood process of reporting campus crime, and that disagreement over the Act's implementation still exists.

B. Education and Related Journals

The safety of institution campuses is of significant interest to the faculty, staff, and administrations of postsecondary campuses in the United States. As a result, conference presentations and papers on the topic started appearing shortly after the inception of the Act in 1990 and the imposition of campus-crime reports in 1992.⁵⁹ Below, the Authors describe the comments from several professional journals that deal with the Clery Act and with campus crime as a phenomenon.⁶⁰

A 1997 article by Earnestine Bennett-Johnson suggested that an increasing influx of inner-city students into American colleges and universities may lead to a corresponding increase in campus crime.⁶¹ According to Bennett-Johnson,

As more and more students decide to attend a college or university, and are able to do so because of available financial assistance, students from the inner cities, with differing values will increase in numbers. The rapes, theft, assault, vandalism and murder crimes of the nation, are beginning to spill over onto the college and university campus.⁶²

She went on to suggest that “[t]he extinction of these antisocial behaviors is necessary on the college and university campus, to allow for a more conducive learning environment.”⁶³ Additionally, Bennett-Johnson provided a brief history of crime in America and described some of the psychological approaches to reduce “maladaptive behavior.”⁶⁴

A 1999 article by John P. Downey and Frances K. Stage explored the issue of hate crime on American college campuses.⁶⁵

59. *Infra* nn. 60–112.

60. *Infra* nn. 60–112.

61. Earnestine Bennett-Johnson, *The Emergence of American Crime and Violence on the College and University Campus*, 31 *College Student J.* 129 (1997).

62. *Id.*

63. *Id.* at 130.

64. *Id.* at 130–135.

65. John P. Downey & Frances K. Stage, *Hate Crimes and Violence on College and*

The authors explained the difference between hate speech, which is constitutionally protected, and hate behavior, which is not protected; they also described the distinguishing categories into which offenders tend to fall.⁶⁶ They then described the significant scope of the problem of hate crime on American college campuses and discussed the constitutional issues and case law that surrounded the problem.⁶⁷ Downy and Stage posited that the issues of dealing with hate behaviors through campus judicial proceedings and penalty enhancement for these behaviors are tools that campus administrators may use to deal with hate behaviors.⁶⁸ However, they recommended that “[a]ny strategy confronting such emotion-laden issues must move beyond a strictly legalistic and reactive approach toward creating a climate where such incidents become rare.”⁶⁹ They also provided four policy recommendations and four recommendations about how to respond to individual hate behaviors.⁷⁰ The policy recommendations are to:

1. provide clear and explicit codes, policies, and procedures for dealing with hate behaviors “(explicit, planned action)”;
2. provide a quick response to behaviors as they occur “(explicit, responsive action)”;
3. promote an environment that engenders civil discourse “(implicit, planned action)”;
4. focus on open discussion, “free speech and individual rights issues (implicit, responsive action).”⁷¹

Their suggested responses to individual incidents are to:

1. following an incident, promote educational programs that focus upon issues of gender, race, etc. as well as First and Fourteenth Amendment issues and include discussion of

University Campuses, 40 J. College Student Dev. 3 (Jan.–Feb. 1999).

66. *Id.* at 4–5. These categories include thrill seekers, reactive offenders, and “organized hate group perpetrator[s].” *Id.* at 4.

67. *Id.* at 5–7.

68. *Id.* at 7.

69. *Id.*

70. *Id.* at 8.

71. *Id.*

- sanctions applied to perpetrators of hate behaviors “(explicit, planned action)”;
2. reach out to students where they live, study, and socialize to discuss the specific incident and include students directly in judicial actions and responses where appropriate “(explicit, responsive action)”;
 3. encourage broad participation in events and activities of diverse campus communities “(implicit, planned action)”;
 - and
 4. censure offensive ideas, but do not censor ideas “(implicit, responsive action).”⁷²

American School and University published an article that reported on the confusion that resulted from the 1998 amendments to the Clery Act, particularly from the change that required reporting crimes that occur near the campus.⁷³ The opening line of the article asked, “Where does a college campus end and the rest of the world begin?”⁷⁴ In the article, Michael Webster, director of campus safety at Western Maryland College, noted that “[w]herever you draw a line, sooner or later there’s going to be an extreme example of a crime that occurs on the other side of the line.”⁷⁵ According to the article, this change that required campuses to report crimes that occurred on property contiguous to the campus was of significant concern to campus law-enforcement officials.⁷⁶ “At many colleges and universities, especially in an urban setting, there is not a clear delineation between the campus and the surrounding neighborhood.”⁷⁷ As a result, according to Webster, it is difficult to determine accurately what is reasonably “contiguous” and what crimes must be reported.⁷⁸ Campus police may not have off-campus jurisdiction and must seek data regarding off-campus crimes from local law-enforcement officials.⁷⁹ While

72. *Id.*

73. Mike Kennedy, *Safety by the Numbers*, 73 *Am. School & U.* 34b, 34b–34f (Oct. 2000).

74. *Id.* at 34b.

75. *Id.* at 34d.

76. *Id.* at 34b–34d.

77. *Id.* at 34f.

78. *Id.* at 34d.

79. *Id.* at 34f.

the law requires only a “good faith attempt” to get this data,⁸⁰ “[i]n some cases . . . schools are including statistics from the entire city to make sure they include the incidents the law requires.”⁸¹ This is true because some city law-enforcement agencies do not collect these data in zones or by specific addresses.⁸² The article reported that most campus law-enforcement personnel support the intent of the law, but believe that some of its requirements are confusing and that enforcement of the law’s fines for noncompliance are overly punitive, in light of this confusion.⁸³

The Clery Act was criticized harshly in an article published in the July–August 2001 issue of *About Campus*.⁸⁴ This article implied that compliance with the Clery Act, a high-quality student–educator relationship, and development of students by student–personnel administrators were mutually exclusive.⁸⁵ The article concluded that

[i]ncreasing the amount of information provided to the public is a laudable goal, but the 1998 legislative changes to the [Clery Act] . . . affect student–university relations detrimentally and force higher education institutions to recognize the intrusion of the criminal justice system into education.⁸⁶

While the authors may argue with the effectiveness and necessity of some sections of the Clery Act, only the most ill-informed would believe that the criminal justice system is only now intruding itself onto the campus. It is also difficult to determine how many of the portions of the 1998 amendments, once improved and clarified, will “affect student–university relations detrimentally.”⁸⁷

The article continued with several hypotheticals that provided examples of how the authors believed the Clery Act negatively impacted the campus climate for student development.⁸⁸ The article first described a situation in which a residence-hall

80. 34 C.F.R. § 668.46 (2002).

81. Kennedy, *supra* n. 73, at 34f.

82. *Id.*

83. *Id.* at 34d–34f.

84. Ellen Harshman, Steven Puro & Lori A. Wolff, *The Clery Act: Freedom of Information at What Cost to Students?* 6 *About Campus* 13, 13–18 (July–Aug. 2001).

85. *See id.* at 18 (noting the Clery Act’s “chilling effect” on interactions between students and faculty).

86. *Id.* at 14–15.

87. *Id.* at 15.

88. *Id.*

staff member confronted a student whom she found in violation of university alcohol policies and state law.⁸⁹ According to the authors, “[t]he issue here is whether Lisa becomes one of the campus crime statistics or whether she is helped to resolve one of the most common developmental issues college students face: the responsible use of alcohol.”⁹⁰ Within the context of this scenario, the authors addressed the issue of parental notification of alcohol violations, suggesting that “[o]ften with parental notification, the student doesn’t learn as much as he would learn if he were fighting the battle himself.”⁹¹ The authors also indicated that, under the Clery Act, “the school becomes allied with law enforcement, where the emphasis is on the punishment of offenses rather than the student’s education.”⁹²

These comments offer a simplistic view of the ability of campus judicial officials and campus law-enforcement officials to work together to address both the developmental needs of the student and to indicate to the student that his or her attendance at a college or university does not excuse him or her from the realities of breaking the law. They also tend to ignore the reality of the enormous investment by parents, both monetarily and psychically, in their student’s education.⁹³ This simplistic approach further plays into the hands of those who posit that campus officials are hiding crime on campus and also provides support for those who imply that some college and university officials arrogantly

89. *Id.*

90. *Id.*

91. *Id.* at 16.

92. *Id.* at 15–16. We see no problem with being allied with law enforcement. In fact, such an alliance, particularly with campus law enforcement, is critical to the appropriate functioning of a campus.

93. Parental notification impacts only students under age twenty-one, but does so whether the student is independent of his or her parents or is dependent. 20 U.S.C. § 1092(f); 34 C.F.R. at § 668. The law only *allows* institutions to notify parents, and does not *require* such notification. 20 U.S.C. § 1092(f). Thus, it is institutional officials, not Congress or Security on Campus, Inc., who determine whether parental notification is appropriate and under what circumstances such notification should take place. *Id.* Due to increased alcohol abuse on campus, and lack of societal acceptance of such abuse, a number of institutions, such as James Madison University and Old Dominion University, have implemented “three strike” policies, which result in a student being removed from the campus for a third alcohol violation. See James Madison U., *Student Handbook* <<http://www.jmu.edu/judicial/handbook.html>> (accessed Nov. 7, 2002); Old Dominion U., *Student Handbook* <http://web.odu.edu/webroot/orgs/STU/stuserv.nsf/pages/student_handbook> (accessed Nov. 7, 2002) (describing the universities’ “three strike” policies).

assume that those who go to college should be shielded from the laws that affect many persons of similar age who cannot afford to do so. The article went on to make several assumptions about the impact of the Clery Act on campus and the relationships among faculty, staff, and students for which the authors provide no support.⁹⁴

Perhaps campus law-enforcement officials are the group most directly affected by the Clery Act. The International Association of Campus Law Enforcement Administrators (IACLEA) is the professional association that represents this group.⁹⁵ IACLEA leaders have been involved with work to improve the Clery Act and to make the regulations more understandable and effective.⁹⁶ In addition, IACLEA has published numerous articles on topics about the Clery Act and related issues in the *Campus Law Enforcement Journal*. For example, articles have addressed ways that campus police and student-affairs personnel may work together to decrease campus crime, and ways to improve the Clery Act.⁹⁷ IACLEA also has been quite supportive of the research on campus law-enforcement administrators and the Act, which will be described later in this section.⁹⁸

Nona L. Wood and Robert A. Wood, in their 2001 article, described the nature of stalking.⁹⁹ They also indicated the need for student-affairs professionals and campus law-enforcement professionals to work together to eliminate this crime, and described how this cooperative effort may provide necessary support for student victims.¹⁰⁰ Nona Wood is a leader in the Association for Student Judicial Affairs (ASJA) and works with law enforcement officials regularly.¹⁰¹

94. Harshman et al., *supra* n. 84, at 15–18.

95. Intl. Assn. Campus L. Enforcement Adminstrs., *About IACLEA* <<http://www.iaclea.org/about/index.htm>> (accessed May 9, 2002).

96. *Id.*

97. *Infra* n. 99.

98. *Infra* nn. 248–333 and accompanying text.

99. Nona L. Wood & Robert A. Wood, *The Campus Law Enforcement Officer and Student Affairs — A Partnership to Address Stalking Behaviors on Campus*, 31 *Campus L. Enforcement J.* 19, 19–20 (Jan.–Feb. 2001).

100. *Id.* at 31. This viewpoint is clearly at odds with the perspective of Harshman et al., *supra* n. 84.

101. Wood & Wood, *supra* n. 99, at 33; E-mail from Nona L. Woods, Assoc. Dir. of Student Rights & Respons., N.D. State U., to Dennis E. Gregory, Assist. Prof. in Educ. Leadership & Counseling, Old Dominion U., *Work with Law Enforcement Officials* (Nov. 5, 2002) (copy on file with *Stetson Law Review*).

In his 2001 article, Dennis E. Gregory provided a history of campus crime, indicating that crime is not new to the postsecondary setting.¹⁰² In fact, campus crime had its beginnings in twelfth-century Europe, at the inception of the university itself.¹⁰³ Similarly, American higher education has virtually never been free from crime.¹⁰⁴ Gregory quoted Frederick Rudolph, who indicated that student rebellions and violence occurred on many nineteenth-century American campuses.¹⁰⁵ Gregory also described the perspective of several writers who indicated that campus crime and the fear of crime on campus, whether a reality or mere perception, have resulted in consumer-based legislation such as the Clery Act.¹⁰⁶ These factors also have been at least partially responsible for a change in the way courts view the need for institutions to share responsibility for foreseeable criminal acts committed against students.¹⁰⁷

Gregory went on, while describing the Clery Act, to indicate the following:

Since its inception, the Clery Act and its implementing regulations (34 CFR 668) have drawn questions or criticism from campus administrative constituencies, including campus police and student affairs administrators. This criticism has resulted not from the intent of the legislation, which is to assist in making institutional campuses safer places to work and study, but from a perceived lack of clarity, changing interpretations of what crimes need be reported and by whom. It has also come from the conflict between the legal interpretations related to privacy of student judicial records as guaranteed by (FERPA

102. Dennis E. Gregory, *Crime on Campus: Compliance, Liability and Safety*, 31 *Campus L. Enforcement J.* 27, 28 (July–Aug. 2001).

103. *Id.* (citing Charles Homer Haskins, *The Rise of Universities* 22 (Henry Holt & Co. 1923)).

104. *Id.*

105. *Id.* (citing Frederick Rudolph, *The American College and University: A History* (U. Ga. Press 1962)); see Michael Clay Smith, *The Ancestry of Campus Violence*, in *Responding to Violence on Campus* 5, 5–15 (Jossey-Bass, Inc. 1989) (containing an extensive review of crime on American campuses).

106. *Id.* at 27–28. Gregory cited one study that indicated that “46% of all college students surveyed, and 54% of women students, worry about becoming victims of violent crime.” *Id.* at 27.

107. *Id.* at 28 (citing Robert D. Bickel & Peter F. Lake, *The Rights and Responsibilities of the Modern University: Who Assumes the Risk of College Life?* 175–179 (Carolina Academic Press 1999)).

20 U.S.C. 1232g) and the need to report criminal activity which may also result in student conduct adjudication on campus.¹⁰⁸

Next, Gregory reviewed the relationship between FERPA¹⁰⁹ and the Clery Act, recommended how student-affairs officers and institutions should respond to issues of campus crime, and suggested best practices that should be used on campuses.¹¹⁰ He closed by providing six implications of the current state of the Clery Act and its enforcement by the DOE.¹¹¹

1. Confusion about the Act and implementing its regulations remains.
2. Research to determine the effectiveness of the Clery Act and other campus safety measures is needed.
3. A cooperative, rather than antagonistic, approach to improving campus safety needs to occur among media, safety advocacy groups, and campus constituencies.
4. All constituencies who are concerned about campus safety should create forums in which to meet to discuss mutual concerns.
5. Increased and creative efforts to change the safety-related behavior of students and others should take place and should be mutually supported by all interested constituencies.
6. Model and promising campus safety programs should be identified, publicized and rewarded.¹¹²

C. Legal Journals and Law Reviews

Even before the passage of the Clery Act in 1990, many within the higher-education legal community recognized that crime on campus was a serious issue with which institutions would be forced to deal.¹¹³ Below, the Authors have described sev-

108. *Id.*

109. 20 U.S.C. § 1232g, the Family Education Rights and Privacy Act, seeks to guarantee the privacy of student judicial records. See *infra* nn. 159–181 and accompanying text for a more detailed discussion on FERPA.

110. Gregory, *supra* n. 102, at 28–31.

111. *Id.* at 31–32.

112. *Id.* at 32.

113. *Id.* at 28.

eral notes, comments, and articles about campus safety.¹¹⁴ These articles have taken a wide variety of approaches to dealing with the issue of campus crime and the Clery Act.

An early comment on the issue of campus crime came in the 1989 *Journal of College and University Law*.¹¹⁵ Here, Kelly W. Bhirdo described surveys that indicated a significant growth and increase in the seriousness of campus crime during the 1980s,¹¹⁶ provided a review of the student–institutional relationship with regard to crime and a description of how the courts have responded regarding institutional liability,¹¹⁷ described state legislation intended to address the issue of campus crime,¹¹⁸ and indicated ways in which campuses should respond to better protect their students.¹¹⁹

Bhirdo described the results of three studies, each of which suggested an increase in crime on campus, and which provided some of the first efforts to determine the extent of the problem of campus crime, and particularly violent crime.¹²⁰ These surveys appeared to indicate that crime on campus, in many categories, had grown to equal that of society at large.¹²¹ The author noted, however, that the nature of the studies and the voluntarily level of participation made an accurate view difficult to ascertain.¹²²

The comment described the legal theories under which courts consider institutional liability for violent crime committed on students by third parties.¹²³ It provided a brief overview of the law, from the theory of *in loco parentis* before 1960, and included cases that have been decided based upon the landlord–business invitee theory, the landlord–tenant theory, and the special-relationship theory.¹²⁴ The author then described the Pennsylvania legislation

114. *Infra* nn. 115–179 and accompanying text (discussing articles on campus safety).

115. Kelly W. Bhirdo, Student Author, *The Liability and Responsibility of Institutions of Higher Education for the On-Campus Victimization of Students*, 16 J.C. & U.L. 119 (1989).

116. *Id.* at 120–121.

117. *Id.* at 121–123.

118. *Id.* at 130–132.

119. *Id.* at 132–134.

120. *Id.* at 120–121.

121. *Id.* at 121.

122. *Id.*

123. *Id.* at 121–123.

124. *Id.* at 123–130. A much more extensive review of these legal theories is provided by Bickel and Lake, *supra* note 107, at 170–185.

supported by the Clery family after the death of their daughter and the prospective passage of similar legislation in other states and by Congress.¹²⁵ The note closed with a description of efforts by some institutions to reduce campus crime by changing alcohol policies, increasing security measures in and around campus facilities, and increasing crime-awareness programs.¹²⁶ The author also recommended two books that suggested other ways to reduce crime.¹²⁷ Bhirdo also, from these two books, suggested the following:

[C]ollege administrators must not attempt to cover-up the problem. Forseeability of the criminal activity has become the all-important issue in determining liability. If the crime was in fact foreseeable and the college put forth its best effort to avoid the occurrence, it stands a much better chance of defending its case than if it simply pleads ignorance, or denies forseeability.¹²⁸

A second 1989 article, this one from the *Dickinson Law Review*, provided specific commentary on the Pennsylvania law that preceded the Clery Act.¹²⁹ The article began by discussing the murder of Jeanne Clery and other violent crimes on campus to demonstrate the fact that, “[i]n recent years, numerous colleges have reported murders, and the incidence of violent crime, in general, has dramatically increased on university campuses across the country.”¹³⁰ The article went on to briefly describe the structure of the Pennsylvania legislation and the requirements that it imposes on institutions.¹³¹

After describing the Pennsylvania statute, the author opined, “The recent judicial approach to college liability for personal injuries to students indicates a limited return to *in loco parentis*.”¹³²

125. Bhirdo, *supra* n. 115, at 130–132.

126. *Id.* at 132–134.

127. *Id.* at 133 (citing James A. Rapp et al., *School Crime and Violence: Victims' Rights* (Nat'l. Sch. Safety Ctr. 1986); Michael Clay Smith, *Coping with Crime on Campus* (Macmillan 1988)).

128. *Id.*

129. Margaret E. Reford, Student Author, *Pennsylvania's College and University Security Information Act: The Effect of Campus Security Legislation on University Liability for Campus Crime*, 94 Dick. L. Rev. 179, 181–185 (1989).

130. *Id.* at 179 (footnotes omitted).

131. *Id.* at 181–185.

132. *Id.* at 188. Bickel and Lake have refuted this perspective, which was popular at

She described several theories under which she believes courts will find institutional liability for violent crime committed against students, related specifically to the Pennsylvania statute.¹³³ Among these theories are the following:

1. negligence per se, which would apply as a result of the intentional collection of false crime data and the reporting of that data to campus constituencies;
2. negligent misrepresentation, which would occur from an injury resulting from incorrect crime statistics upon which the injured party relied; and
3. breach of duty to protect students from foreseeable criminal activity on campus, which arises when an institution fails to take proper steps to prevent foreseeable crime, based upon past crime statistics.¹³⁴

Finally, the author suggested several shortcomings in the Pennsylvania statute that were subsequently problematic with the Clery Act as well.¹³⁵ She indicated, however, that the prospective value of the law outweighed its shortcomings.¹³⁶

In another article from a legal journal, published in 1993 and extensively documented, Michael C. Griffaton served as an advocate for

increased reporting requirements that will bolster student awareness of campus crime. The release of crime statistics and campus security policies may serve as a sword for student-victims or their families to attack institutions which fail to respond adequately to campus crime. But these statistics may also shield colleges and universities from liability for crimes committed against their students.¹³⁷

Griffaton began by providing an overview of the history of campus crime and recounted the previously reported increase in

the time that the referenced article was written. Bickel & Lake, *supra* n. 107, at 17–33.

133. Reford, *supra* n. 129, at 191–194.

134. *Id.*

135. *Id.* at 195–197.

136. *Id.* at 197.

137. Michael C. Griffaton, Student Author, *Forewarned Is Forearmed: The Crime Awareness and Campus Security Act of 1990 and the Future of Institutional Liability for Student Victimization*, 43 Case W. Res. L. Rev. 525, 528 (1993).

campus crime during the 1980s.¹³⁸ He then described the legal theories of institutional liability, beginning with a historical look at *in loco parentis*.¹³⁹ The author later posited three duties that he believes are incumbent upon institutions seeking to avoid liability.¹⁴⁰ These included the “duty to be forthcoming about risks . . . the duty to warn” and the “duty to provide adequate [security].”¹⁴¹

The author then described the general categories that have been used by the states that have passed campus-crime legislation.¹⁴² These included data-collection procedures, notice and information-dissemination requirements, and security policies and procedures.¹⁴³ He concluded this section by criticizing the variation that exists within the laws of the thirteen states that have passed such legislation and advocates for a more thorough and consistent approach.¹⁴⁴

In the next section of his article, Griffaton described the contents of the Clery Act as it existed at the time of his writing.¹⁴⁵ Though generally supportive of the Act, and praising its “uniformity and consistency in reporting,” he indicated that “it has failed to correct several weaknesses contained in the state reporting laws.”¹⁴⁶ These weaknesses include the failure to deal with “off-campus student victimization, the necessity for additional criteria by which to evaluate campus crime statistics, and the potential misinterpretation of crime statistics by students, their families, and the college administration.”¹⁴⁷

For instance, the author recommended that the law require institutions to report all cases of off-campus victimization, such as “an amendment requiring disclosure of off-campus crime statistics, including both crimes against students and against the general community, would more accurately depict overall student safety.”¹⁴⁸ He did not, however, describe how campus officials would collect these data — and particularly how they would de-

138. *Id.* at 525–527.

139. *Id.* at 537–539.

140. *Id.* at 539.

141. *Id.* at 540.

142. *Id.* at 545–554.

143. *Id.*

144. *Id.* at 554–560.

145. *Id.* at 560–562.

146. *Id.* at 561–562.

147. *Id.* at 570–571.

148. *Id.* at 571.

termine which off-campus crimes were committed against students as opposed to others — other than to suggest that reporting would be student initiated.¹⁴⁹

He also suggested that misinterpretation and misuses of crime statistics are problematic, particularly as students and parents wrongly interpret statistics and compare campus statistics with each other.¹⁵⁰ Griffaton reported that

[t]he use of campus crime statistics, like the use of statistical evidence in discrimination, environmental, and tort litigation, is replete with opportunities for misconstruction, misinterpretation, and misrepresentation. College administrators have little incentive to “improve” the safety of their campuses by intentionally distorting campus crime statistics. The potential litigation from discovery of this fact, the resultant liability for student victimization, and the ensuing negative publicity will cause more damage to a college’s reputation and recruitment efforts than a candid reporting. An unintended distortion of campus safety may transpire, however, as students and their families misperceive and misinterpret an institution’s campus crime statistics.¹⁵¹

The author continued to describe what he claims is the “insufficiency of raw numbers”¹⁵² and the need to explain what those data mean, because the Clery Act offers “little guidance as to what constitutes a foreseeable level of campus crime.”¹⁵³ He also suggested a need to report campus crime to local law-enforcement authorities, the Secretary of Education’s need “to recognize institutions with exemplary security procedures and policies,” and the implementation of a private right of action against institutions who fail to comply with the Act.¹⁵⁴

Another legal journal article that may interest readers is titled *The Model Campus Police Jurisdiction Act: Toward Broader*

149. See *id.* at 574 (noting that while “voluntary student reporting of off-campus victimization is preferable,” it is also “unreliable and sporadic”). As we have seen from recent efforts to collect data from local law-enforcement agencies on crimes committed in areas contiguous to campus, this would be a monumental and probably impossible goal.

150. *Id.* at 576.

151. *Id.* (footnotes omitted).

152. *Id.* at 577.

153. *Id.* at 579.

154. *Id.* at 583–589. While such recognition is described as appropriate in the implementing regulations, we are unaware whether any such recognition has taken place.

*Jurisdiction for University Police.*¹⁵⁵ This article discussed the problem of campus police agencies, which have no authority outside of the campus grounds, and proposed legislation that would solve this problem.¹⁵⁶ This issue of campus police agencies is related to the topic at hand because the Clery Act requires the reporting of crime that occurs on property contiguous to the campus and emphasizes the need for campus and local law-enforcement agencies to work together.¹⁵⁷ It also briefly raised the issues of the relative level of professionalism of campus law-enforcement agencies, the status of campus police agencies with sworn and/or unsworn officers, and the nature of armed versus unarmed campus police agencies.¹⁵⁸

The final two legal journal articles to be reviewed deal with the relationship between the FERPA and campus crime.¹⁵⁹ The common focus of both articles is that postsecondary educational institutions use FERPA to hide campus crime, and that FERPA should be amended to remove student disciplinary records from disclosure protection.¹⁶⁰

In the first article, Maureen P. Rada began as follows:

Crime on college campuses is a growing and pervasive problem for many institutions of higher education. In light of this alarming trend, many universities have organized student disciplinary boards in an effort to deal with student offenders within the university community, and without police involvement.¹⁶¹

155. Jeffery S. Jacobson, *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 Colum. J.L. & Soc. Probs. 39 (1995).

156. *Id.* at 39–45.

157. 34 C.F.R. at § 668.46.

158. Jacobson, *supra* n. 155, at 47.

159. Maureen P. Rada, Student Author, *The Buckley Conspiracy: How Congress Authorized the Cover-Up of Campus Crime and How It Can Be Undone*, 59 Ohio St. L.J. 1799 (1998); Benjamin F. Sidbury, *The Disclosure of Campus Crime: How Colleges and Universities Continue to Hide behind the 1998 Amendment to FERPA and How Congress Can Eliminate the Loophole*, 26 J.C. & U.L. 755 (2000).

160. Rada, *supra* n. 159, at 1799; Sidbury, *supra* n. 159, at 756–757.

161. Rada, *supra* n. 159, at 1799. This paragraph insinuates that student disciplinary boards are a new phenomenon and have been organized to deal with this recent trend. This is an allegation for which there is no basis. The paragraph also assumes that the disciplinary board's investigation of cases that also may be criminal in nature, does not include campus and/or local police involvement, and that such cases may not also be pursued through the courts.

Rada also contended that FERPA does not explicitly include disciplinary records as being protected educational records and that colleges “opportunistically” use this fact to protect these records from disclosure.¹⁶² She cited two state cases in Georgia and Ohio that support her point,¹⁶³ but failed to cite several other state cases that disagree.¹⁶⁴ Further, her article was published before the United States District Court for the Southern District of Ohio considered the Ohio case.¹⁶⁵ The author suggested that the reasons why universities seek to conceal campus crime through use of their judicial systems, and by using FERPA, are as follows:

[S]chools benefit more from concealing information than they do from releasing it. There are at least three reasons for this. First, shrouding information on campus crime in disciplinary boards effectively makes those crimes disappear for purposes of the Campus Security Act Second, by burying information within university disciplinary boards, schools are able to deny awareness of crime on campus. By denying the existence of crime, schools may be able to insulate themselves from tort liability. Third, by avoiding disclosure of potentially protected information, schools avoid the risk of violating the mandates of Buckley and, thereby, losing millions of dollars in federal aid.¹⁶⁶

162. *Id.* at 1808.

163. *Id.* at 1809 (citing *Red & Black Publg. Co. v. Bd. of Regents*, 427 S.E.2d 257 (Ga. 1993); *Miami Student v. Miami U.*, 680 N.E.2d 956 (Ohio 1997)).

164. See e.g. *Shreveport Prof. Chapter of the Socy. of Prof. Journalists v. La. St. U.*, No. 393,332 (La. Dist. 1st Mar. 4, 1994) (finding that students’ educational records were confidential under FERPA); *Student B. Assn. Bd. of Gavs. v. Byrd*, 239 S.E.2d 415, 419 (N.C. 1977) (finding that faculty were not required to conduct open meetings); *DTH Publg. Corp. v. U. of N.C.*, 496 S.E.2d 8, 12 (N.C. App. 1998) (finding that closed meetings were allowed under FERPA); *Selkirk v. U. of Okla.*, No. CJ 49-1514 BH (Okla. Dist. Ct. Cleveland County Nov. 7, 1994) (finding that a student’s educational records “may not be disclosed” under FERPA “without prior written consent of the student or students about whom the records relate”); *Burlington Free Press v. U. of Vt.*, 779 A.2d 60, 65 (Vt. 2001) (noting that student records may be requested from educational institutions under FERPA).

165. *U.S. v. Miami U.*, 91 F. Supp. 2d 1132, 1132 (E.D. Ohio 2000) (finding that the universities were enjoined from distributing student records protected under FERPA).

166. Rada, *supra* n. 159, at 1814–1815. While the third reason the author proposed makes sense if one assumes that she has previously erred in her interpretation that disciplinary records are not protected by FERPA, the first two fail to meet the test of logic and reality. For instance, a sexual-assault allegation, whether adjudicated through a campus judicial board and/or through the courts must be reported within the crime statistics. Thus, this crime does not “disappear” from reporting requirements. Second, the Authors contend that because student judicial records are accessible through court order, and foreseeability of crime is important in tort actions against institutions, hiding campus crime would increase rather than decrease the potential liability of institutions.

The last article to be reviewed in this section is from 2000.¹⁶⁷ As noted earlier, this article dealt with FERPA and its alleged impact on hiding campus crime.¹⁶⁸ The author began by describing the 1998 amendment to FERPA that allows, but does not require, institutions to release the results of judicial actions in cases in which the accused is adjudicated for violations of campus regulations, which also may be crimes of violence and nonforcible sex offenses.¹⁶⁹ He went on to argue the following:

Congress should amend FERPA to expressly mandate, rather than permit, universities to disclose student disciplinary records upon request by a third party . . . [and] Congress should expand the scope of releasable disciplinary records to include all criminal offenses.¹⁷⁰

This author, like his predecessor above, went on to describe the two cases in which courts have ruled that FERPA does not cover disciplinary records but failed to include those that ruled differently.¹⁷¹ Sidbury then discussed the interplay between the Clery Act and FERPA and took aim at what he believes to be the shortcomings of the 1998 amendments to FERPA.¹⁷² For instance, Sidbury stated:

the current state of FERPA still possesses many lingering problems. First, the language of the amendment regarding disclosure is overly vague. Although the amendment clearly provides that nothing in the statute shall prohibit an institution from disclosing the final results of certain disciplinary proceed-

167. Sidbury, *supra* n. 159, at 755–781.

168. *Id.* at 756–757.

169. *Id.* at 756 (citing 20 U.S.C. § 1232g(b)(6)(B)).

170. *Id.* at 757. The author makes a typical mistake when he assumes that the adjudication of campus rule violations and the adjudication of criminal cases are the same. Student disciplinary boards and other adjudicatory mechanisms do not decide whether a student is guilty of a criminal offense. They simply determine whether the student has, or has not, violated a university policy. This is a civil rather than a criminal proceeding, and the rules of evidence, standards of proof, and due-process requirements are quite different. In private institutions, contract law rather than constitutional law governs such proceedings. For an in-depth review of issues related to the adjudication of student disciplinary violations, see *The Administration of Campus Discipline: Student, Organizational and Community Issues* (Brent G. Paterson & William L. Kibler eds., College Administration Publications 1998).

171. Sidbury, *supra* n. 159, at 760–763 (citing *Red & Black Publg.*, 427 S.E.2d at 259; *Miami Student*, 680 N.E.2d at 958).

172. *Id.* at 763–768.

ings, important questions remain whether institutions *must* disclose these records and whether institutions *should* disclose these records.¹⁷³

Sidbury continued to indicate that there are five reasons for mandatory disclosure of all student disciplinary hearings:¹⁷⁴

First, the current law unnecessarily affords students greater privacy rights than those afforded to all other citizens.^[175] Second, several provisions of the amendment are unconstitutional because they deny the public their constitutional right to attend criminal proceedings and to access judicial records.^[176] Third, the distinction between public and private institutions in the application of FERPA creates drastic inconsistencies.^[177] Fourth, because many institutions are conducting student disciplinary proceedings for criminal offenses as an alternative to the court system, the issue of institutional competence must be examined because it affects the ultimate outcome of whether the records may be disclosed.^[178] Finally, the crimes that may

173. *Id.* at 766 (emphasis added, footnote omitted). Such permissive language in a statute generally is assumed to mean that such reporting would not be required. The question of whether an institution *should* release such information, given the permissive language of the Act and the opportunity that Congress had to make it a requirement, leads us to believe that such a decision should be made by educational policy makers at institutions, as Congress clearly intended. 144 Cong. Rec. H2860 (daily ed., May 6, 1998). While there are certainly very good reasons why such release may be educationally sound, the argument can be made that they should not be released. Among these reasons are that such release may negatively impact victims, may decrease the willingness of victims to bring cases about which their names may become attached, and is limited to only specific types of cases.

174. Sidbury, *supra* n. 159, at 768.

175. *Id.* In his explanation of this point, the author argues that it is unfair for a non-student to have to face criminal proceedings while a student has a private hearing before a conduct group. *Id.* at 768–769. What he apparently fails to understand is that a college student faces the student-conduct hearing *and* the possibility of criminal prosecution. See Sidbury, *supra* n. 159, at 768–772 (describing circumstances in which incarceration may be appropriate).

176. *Id.* at 768. This issue was raised and dealt with in *DTH Publishing Corporation v. University of North Carolina at Chapel Hill*, 496 S.E.2d 8, 9–16 (N.C. App. 1998). Here, the court ruled that student-conduct-hearing boards were not courts and that they dealt with institutional policies and not criminal matters. *Id.* at 16.

177. Sidbury, *supra* n. 159, at 768. One can support this contention only if one examines the two cases cited in the article, *Red & Black Publishing Company*, 427 S.E.2d at 259, and *Miami Student*, 680 N.E.2d at 958, and fails to examine the other cases referenced above.

178. Sidbury, *supra* n. 159, at 768. As noted above, student-conduct hearings do not adjudicate criminal violations but merely deal with violations of institutional policy. *Supra* n. 176. While there are certainly cases in which the actions that are dealt with in conduct

be disclosed should not be limited to violent crimes and non-forcible sex offenses.^[179]

Obviously, issues of campus safety, the Clery Act, FERPA, and related matters are of great interest to both the higher-education and legal community in general, the media, campus watchdog groups, and institutional faculty students and administrators.¹⁸⁰ As illustrated here, there is little agreement.¹⁸¹ Clearly, this is not a topic that will disappear from a variety of publications any time in the near future.

III. THE STATUS OF CAMPUS CRIME TODAY

In January 2001, the DOE provided, for the first time, a report to Congress that described the nature and extent of campus crime.¹⁸² The data in the report covered the calendar years 1997, 1998, and 1999.¹⁸³ Due to changes in required data, which came from 1998 amendments,¹⁸⁴ some categories of data were available only for calendar year 1999.¹⁸⁵ The report included a cautionary note that indicated, "The statistics represent *alleged* criminal offenses *reported* to campus security authorities or local police agencies. *Therefore, the data collected do not necessarily reflect prosecutions or convictions of crime.*"¹⁸⁶ It went on to describe several factors that "affect the volume and type of crime" that should

hearings also may be criminal violations, confusion of the two proceedings is problematic. In fact, in some cases, such as an alleged acquaintance rape and other alleged violations where evidence is weak, and which local prosecutors choose not to prove, it is only the adjudication of an alleged violation of the institutional policy that provides any relief to victims.

179. Sidbury, *supra* n. 159, at 768. The language of FERPA and its implementing regulations make it clear that information can be released in cases in which the institution has a good-faith belief that the violation of institutional policy may comply with the federal standards for crimes of violence and nonforcible sex offenses. Broadening this to all violations of local, state, and federal law would cause wild inconsistency.

180. *Supra* nn. 10–178 and accompanying text (describing commentary on the Clery Act).

181. *Supra* nn. 10–178 and accompanying text.

182. U.S. Dept. Educ., Off. Postsecondary Educ., *The Incidence of Crime on the Campuses of U.S. Postsecondary Education Institutions: A Report to Congress* (Jan. 18, 2001) (available in pdf at <<http://www.ed.gov/offices/OPE/PPI/ReportToCongress.pdf>>).

183. *Id.* at 4.

184. 20 U.S.C. § 1232g(b)(6)(B).

185. U.S. Dept. Educ., Off. Postsecondary Educ., *supra* n. 182, at 4.

186. *Id.* at 2 (emphasis in original).

be considered when making comparisons of crime reports from individual campuses.¹⁸⁷

The first category of crime data provided in the report dealt with criminal homicide.¹⁸⁸ While the three years of data are a small sample, the report did indicate a fifty-four percent decrease in homicides during 1998 through 1999, from twenty-four to eleven.¹⁸⁹ Perhaps the most important portion of the report dealing with homicide is the following paragraph:

This calculation shows that the overall rate for criminal homicide at postsecondary education institutions was 0.07 per 100,000 of enrollment in 1999. By comparison, in 1999 the criminal homicide rate in the United States was 5.7 per 100,000 persons overall and 14.1 per 100,000 for persons ages 17 to 29, making students on the campuses of postsecondary institutions significantly safer than the nation as a whole.¹⁹⁰

The second category of data provided in the report dealt with sex offenses.¹⁹¹ The report reflected a six-percent increase in sex offenses between 1998 and 1999, but indicated that “the increase could reflect improvement in the rate of reporting, rather than an increase in the incidence of sex offenses.”¹⁹² Offenses included in the category include both forcible and nonforcible sex offenses.¹⁹³ In summarizing this section, the report indicated that

[o]n a per student basis, the national rate of sex offenses was 14.8 per 100,000 students in 1999. This rate is substantially below the overall rate for sex offenses nationally where the rate for rapes alone [in] 1999 exceeded 32.7 per 100,000 persons.¹⁹⁴

Thus, as with the rate of homicides, American campuses are significantly safer than society as a whole.

The third category of crimes provided in the report was robbery.¹⁹⁵ Here, the report showed a seven-percent increase during

187. *Id.* at 3.

188. *Id.* at 5.

189. *Id.*

190. *Id.* at 5 (footnotes omitted).

191. *Id.*

192. *Id.* at 5–6.

193. *Id.* at 6.

194. *Id.* at 7 (emphasis omitted).

195. *Id.*

1998 through 1999 and indicated that this rise was in opposition to the national downward trend in society.¹⁹⁶ While true, “[o]n a per student basis, the national rate of robbery was 12.0 per 100,000 enrolled students in 1999. This rate is substantially below the overall national rate for robbery of 150.2 per 100,000 persons despite the national downward trend.”¹⁹⁷

The fourth category of crime provided in the report was aggravated assault.¹⁹⁸ The report indicated a decrease in campus aggravated assaults of two percent during 1998 through 1999 in comparison to a 6.2% decrease nationally.¹⁹⁹ As with the previous categories of crime, the on-campus rate was significantly lower than that of the nation at large.²⁰⁰ On campus, the rate was 22.6 per 100,000 while the national rate was 336.1 per 100,000.²⁰¹

The next category of crime was burglary.²⁰² The report indicated that burglary is the most-often-reported crime for which the data were collected by campuses for the report, including 26,035 reported cases in 1999.²⁰³ As with previously reported crimes, however, the campus rate of 156 per 100,000 compares with 770 per 100,000 nationally, and thus campuses are significantly safer than the nation as a whole.²⁰⁴

Motor vehicle theft was the next reported crime category.²⁰⁵ This is the second-most-frequently-reported crime on American campuses with 6,201 reported thefts in 1999, an increase of 2.5% since 1998.²⁰⁶ No comparison of rates between campuses and society was reported for this crime.²⁰⁷

Perhaps the most disturbing section of the report included the data regarding hate crimes on campus.²⁰⁸ No similar report was provided for society at large.²⁰⁹ Here, 2,067 hate crimes were

196. *Id.*

197. *Id.* (footnote and emphasis omitted).

198. *Id.* at 8.

199. *Id.*

200. *Id.*

201. *Id.* (emphasis omitted).

202. *Id.*

203. *Id.*

204. *Id.* at 9.

205. *Id.*

206. *Id.* at 9.

207. *Id.*

208. *See id.* at 10 (describing types of hate crimes and related statistics).

209. *Id.*

reported in 1999 on American campuses.²¹⁰ This was an increase from 1,374 in 1998.²¹¹ These crimes included murder, manslaughter, forcible sex offenses including rape, both simple and aggravated assault, and arson.²¹²

For the first time in 1999, campuses were required to report crimes for residence halls, noncampus locations (which included institutionally owned or controlled off-campus property and property owned or controlled by student organizations) and public property contiguous to the campus.²¹³ Slightly over thirty-four percent (34.2%) of all on-campus crimes occurred in residence halls according to the report.²¹⁴ Almost eight percent (7.9%) of the off-campus crimes occurred on noncampus locations, and 72.7% of the off-campus crimes occurred on public property.²¹⁵ In total, nineteen percent of the total crimes reported occurred at any on-campus location, seventy-three percent occurred on public property, and eight percent occurred at noncampus locations.²¹⁶ Thus, campuses appear to be significantly safer than the communities surrounding them.

The final category of crime provided in the report was related to on-campus arrests and disciplinary actions for liquor-law and drug-abuse violations as well as weapons possessions.²¹⁷ The report indicated an increase of two percent in arrests for these crimes from 37,067 in 1998 to 37,732 in 1999.²¹⁸ For the first time in 1999 campuses were required to report disciplinary actions and judicial referrals for these offenses.²¹⁹ Here, 128,682 were reported.²²⁰ It is interesting to note that these statistics do not include drunkenness, underage drinking, or driving under the influence.²²¹

The report concluded with the statement, "The campus crime statistics collected by the U.S. Department of Education suggest

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.* at 11.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 12.

219. *Id.*

220. *Id.*

221. *Id.*

that our nation's college campuses are safe."²²² This certainly appears to be true, especially in comparison with the United States general population.²²³

While a new report to Congress may not be forthcoming in 2002, the crime statistics for 2000 are now available. The statistics are located on the U.S. Department of Education Web site.²²⁴ According to an article in *The Chronicle of Higher Education*, there was a 45.5% increase in murders on campus from eleven to sixteen.²²⁵ The report from the DOE indicated twenty murders, but the *Chronicle* reported that this was caused by reporting errors.²²⁶ The 2000 figure is four less than the number that occurred in 1998.²²⁷ The article went on to report small increases in non-forcible sex offenses, robbery, aggravated assault, burglary, and arson.²²⁸ There was a 14.3% decrease in negligent manslaughter (a difference of only one crime) and a small decrease in motor vehicle theft.²²⁹ In 2000 just as in 1999, there was a large increase in hate crimes.²³⁰ This is particularly worrisome. There were also small increases in the numbers of drug- and alcohol-violation arrests and referrals to campus judicial bodies and a small decrease in the number of weapons-violation arrests and referrals.²³¹ Because of small numbers in many of these categories, and a relatively small rate of change either up or down, over the last three years, these data do not appear to indicate a major change in crime patterns. Clearly, if campuses were relatively safe in 1999, then they have not become significantly less safe in 2000.

According to an Associated Press article, during the 1980s and early 1990s, there was a significant increase in juvenile crime.²³² States responded by increasing the harshness of penal-

222. *Id.* at 13.

223. *Id.* at 5-11.

224. U.S. Dept. Educ., Off. Postsecondary Educ., *Campus Crime and Security*, <<http://www.ope.ed.gov/security>> (accessed Apr. 30, 2002).

225. Julie L. Nicklin, *Drug and Alcohol Arrests Increased on Campuses in 2000*, 48 *Chron. Higher Educ.* A32 (Feb. 1, 2002).

226. *Id.*; U.S. Dept. Educ., Off. Postsecondary Educ., *supra* n. 182, at 5.

227. Nicklin, *supra* n. 225; U.S. Dept. Educ., Off. Postsecondary Educ., *supra* n. 182, at 5.

228. Nicklin, *supra* n. 225.

229. *Id.*

230. *Id.*

231. *Id.*

232. *More Prevention Efforts Will Reduce Youth Crime*, *Virginian-Pilot* (Norfolk, Va.) B10 (Dec. 18, 2001).

ties against juveniles and building more prisons to hold what was expected to be a long-term increase in youth and young-adult offenders.²³³ According to the article, this increase never materialized and many prisons completed are well below capacity.²³⁴ In fact, “the number of rapes, robberies and aggravated assaults by juveniles has dropped more than thirty-six percent.”²³⁵ In 1990, at the time of the passage of the Clery Act, Congress was responding to the increase in crime on campus that had occurred during the 1980s.²³⁶ The juveniles of the early-to-mid-1990s are now students in American postsecondary institutions. What does this suggest for the future of crime on American campuses, which are, according to the report provided above, already safer than American society in general?

In a recent op ed article in the *San Diego Union-Tribune* newspaper, Lori Dorfman, director of the Berkley Media Studies Group, and Vincent Schiraldi, president of the Justice Policy Institute,²³⁷ co-authors of *Off Balance: Youth, Race and Crime in the News*,²³⁸ reported information from their recent study regarding the impact of the media on the perceptions of youth violence by Americans.²³⁹ According to the article, the authors examined more than 100 scientific studies of “news content of crime and youth.”²⁴⁰ The studies indicated that

[t]he overwhelming evidence from research is that news coverage of crime, especially violent crime, is out of proportion to its occurrence, distorts the proportion of crime committed by youth, and overrepresents minority perpetrators while underrepresenting minority victims. Rare acts of violence are pushed to the foreground.²⁴¹

233. *Id.*

234. *Id.*

235. *Id.*

236. Clery & Clery, *supra* n. 1.

237. Lori Dorfman & Vincent Schiraldi, *Off Balance: News Media Coverage of Youth Crime*, *San Diego Union-Trib.* B-9 (Apr. 3, 2001).

238. Lori Dorfman & Vincent Schiraldi, J. Policy Inst., *Off Balance: Youth, Race & Crime in the News* <<http://www.buildingblocksforyouth.org/media/media.html>> (accessed May 16, 2002).

239. Dorfman & Schiraldi, *supra* n. 237.

240. *Id.*

241. *Id.*

The authors went on to say, “Despite the headlines, school-associated violent deaths have dropped by 72 percent since 1992. Youth homicides declined by 68 percent between 1993 and 1999 and are at their lowest rate since 1966.”²⁴²

Additionally, the authors indicated that

[t]here were a total of 16 school-associated violent deaths the entire school year last year [1999-2000] in America. By comparison, 16 children are killed by gunfire every two days in America, and 16 children die at the hands of their parents or guardians every three days in America.²⁴³

While these data related specifically to school violence, and the authors are concerned about media reports of school violence,²⁴⁴ their concerns would seem to be similar to those expressed about violence on college and university campuses. Even if this is not the case, these current high school students soon will be college students. The statistics showing decreases in violent crime in society in general and youth in particular, as noted above, include students currently in our colleges.²⁴⁵ It would appear that such crime would continue to decline. Because campuses are already safer than society at large, this seems a positive possibility. The question that then must be raised is, Are media reports of campus violence as “off balance” as those of youth and school violence? Also, are the impressions that parents and students receive from the media raising inappropriate concerns that are “out of proportion to its occurrence”?²⁴⁶

The authors of the article and study seem to agree that the media is raising disproportionate concerns. Dorfman and Schiraldi stated that,

[a]ccording to an ABC news poll, 76 percent of Americans report that they form their opinions about crime from what they see or read in the news. Since three-fourths of the public know about crime only through the news, these distortions are a perfect recipe for a misinformed public.²⁴⁷

242. *Id.*

243. *Id.*

244. *Id.*

245. U.S. Dept. Educ., Off. Postsecondary Educ., *supra* n. 182, at 5–12.

246. Dorfman & Schiraldi, *supra* n. 237.

247. *Id.*

What does all of the material in this section mean? First, if one believes the DOE report, one must believe that American postsecondary campuses are relatively safe, and certainly safer than society at large. Relatively safe is not good enough. Administrators, campus law enforcement, faculty, students, and others must continue to work to improve campus safety. The fractious debate about who is at fault, who is covering up, and who is working to make campuses safer does not appear productive. Second, it may mean that crime on campus, particularly violent crime, and particularly crime committed by students, will decrease as it has decreased in public schools from which postsecondary students will come. Third, it means that the American public must be more vigilant about what it believes about campus crime that it learns through the media. This places an increased burden on postsecondary institutions and their constituencies, including safety watchdog groups, to more effectively work to make campuses safer.

Is the Clery Act the best way to do that? Is the Act effective as it is now designed and implemented? Are the crime reports an effective way to inform students and parents about campus crime? Could money and time now spent on such reports be more effectively spent on developing informational programs, rewarding and publicizing highly successful programs and other campus-based efforts? What works and what does not?

The commentary described above is broad and addresses many aspects of the problem. It rightly shows areas in which improvement is needed but also provides erroneous and sometimes harmful perspectives on the problems. One thing that the commentary above does not do, however, is show how effective the efforts of the Clery Act have been. The next section will describe the research to date on that topic.

IV. RESEARCH ON THE EFFECTIVENESS OF THE CLERY ACT

The Authors are mindful that the purpose of the Clery Act is largely two-fold. First and foremost, proponents of the Act want to change institutional behavior.²⁴⁸ By requiring institutions to report specific crime statistics, open their criminal-activity logs, and

248. Clery & Clery, *supra* n. 1.

share information about their crime-prevention programs with prospective students and their parents, current students, and employees, college and university administrators have to be more forthcoming about incidents of crime on campus. Although some institutions reported crime on their campuses before the passage of this Act, the law forced all Title I institutions to do so.²⁴⁹ Second, proponents of the Act hoped to reduce individual risk.²⁵⁰ By notifying students, faculty, staff, and visitors of criminal activity occurring on campus, institutions can make individuals aware of the potential risks so they can make active choices about their personal behavior.

As the Authors have pointed out through a review of the literature on this topic, institutional behavior has been changed dramatically.²⁵¹ The reader has been made aware that much of the discourse about the Act continues to address how much should be reported, who should report, and whether institutions are actually complying with the regulations. Only a few authors and researchers have examined the extent to which this regulation has increased student awareness or improved student decision-making thereby reducing the likelihood that students will become victims of crime.²⁵² Three studies merit attention.

A. Research on Students

In the first study, Steven M. Janosik examined the effect of the Clery Act on student behavior by surveying 1,465 students at three public colleges and universities.²⁵³ Administrators at each institution were asked to draw a random sample of 500 students for inclusion in the study.²⁵⁴ A community college, a comprehensive college, and a research university participated in the study.²⁵⁵ These participating institutions were in either suburban or rural

249. 20 U.S.C. § 1092(f).

250. See Clery & Clery, *supra* n. 1 (noting that Security on Campus, Inc. has the credo “crime awareness can prevent campus victimization”).

251. *Supra* nn. 10–246 and accompanying text (describing commentary on the Clery Act).

252. *Infra* nn. 253–294 and accompanying text (describing research on students).

253. Steven M. Janosik, *The Impact of the Campus Crime Awareness Act of 1998 on Student Decision-Making*, 38 NASPA J. 348, 350 (2001).

254. *Id.*

255. *Id.*

areas and all complied with the Crime Awareness and Campus Security Act.²⁵⁶

The response rate to the twenty-item questionnaire (alpha coefficient = .73) was 55.8% (N=795) and consisted of 442 (55.6%) women and 353 (44.4%) men.²⁵⁷ Thirty-five percent of the community-college students, fifty-three percent of the comprehensive-college students, and seventy-eight percent of the research-university students contacted returned their questionnaires.²⁵⁸ Response rates for the community-college, comprehensive-college, and research-university students were statistically different from the sample (Chi-square = 69.15, $df = 2$, $p = .001$).²⁵⁹ While community-college students were underrepresented as respondents, the research-university students were overrepresented as respondents.²⁶⁰

The results revealed that over seventy-one percent of respondents stated that they were unaware of the Clery Act.²⁶¹ Women (twenty-nine percent) were significantly more likely to know about the Clery Act than were men (twenty-three percent) (Chi-square = 4.10, $df = 1$, $p = .043$).²⁶² More than seventy-five percent of the respondents reported that they did not receive a summary of the institution's crime report as part of their admissions materials or they could not remember whether they had.²⁶³ Eighty-eight percent of the respondents indicated they did not receive or could not remember whether they received the institution's federally-mandated annual crime-statistic report.²⁶⁴ Of those who read the report, men (thirteen percent) were significantly more likely to report reading the report than their female counterparts (seven percent) (Chi-square = 10.19, $df = 1$, $p = .006$).²⁶⁵ Ninety-four percent of female respondents indicated that the crime-report summary had not influenced their enrollment decision.²⁶⁶ Ninety-nine

256. *Id.*

257. *Id.* at 350-351.

258. *Id.* at 351.

259. *Id.*

260. *Id.*

261. *Id.* at 352.

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

percent of the men reported no influence.²⁶⁷ The difference was significant at the .001 level (Chi-square = 12.53, $df = 1$, $p = .001$).²⁶⁸

In addition to formal reports published by the institutions, there are other programs and publications that are more likely to be used by students.²⁶⁹ These include flyers posted by campus-safety groups, reports on crime by campus newspapers, and prevention programs. Janosik found that fifty-five percent of women and forty-eight percent of men had read campus-safety “flyers, newspaper articles, and other less formal reports.”²⁷⁰ A much greater number of women than men reported reading or using informal reports (Chi-square = 7.39, $df = 2$, $p = .025$).²⁷¹ Fourteen percent of respondents stated that they attended a campus-crime-prevention or awareness program.²⁷² Women were also significantly more likely to attend this type of event than men (Chi-square = 6.47, $df = 2$, $p = .039$).²⁷³ More importantly, as a result of the reports, flyers, news articles, programming, and other information connected with the Act, Janosik found that forty percent of female respondents indicated that they changed the way they went about protecting their personal property.²⁷⁴ Only twenty-one percent of men reported changing their behavior, which was a statistically significant difference (Chi-square = 31.21, $df = 1$, $p = .001$).²⁷⁵ Forty-four percent of women indicated that they changed the way that they protected themselves from physical harm.²⁷⁶ Only fifteen percent of men reported changing the way they protected themselves because of this crime-prevention information (Chi-square = 75.78, $df = 1$, $p = .001$).²⁷⁷ Fewer men than women indicated that they changed the way they moved around the campus as a result of the information provided by their institutions.²⁷⁸ The difference here also was statistically significant. While thirty

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.* at 352, 356.

271. *Id.* at 356.

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

percent of women reported they had changed their behavior, only three percent of men reported a change (Chi-square = 93.76, $df = 1$, $p = .001$).²⁷⁹

In a second study much larger in scope, Steven M. Janosik and Donald D. Gehring distributed 9,150 questionnaires to students at 305 colleges and universities in the United States.²⁸⁰ The questionnaire was adapted from research published by Janosik.²⁸¹ Of the 9,150 student questionnaires that were sent, 3,866 (forty-two percent) were returned in useable condition.²⁸² Respondents included 2,286 women (fifty-nine percent) and 1,575 men (forty-one percent).²⁸³ The reliability coefficient using the Cronbach Alpha model for this set of responses was .72.²⁸⁴

The authors found very similar results, including that almost three-fourths (seventy-three percent) of the students were unaware of the Act.²⁸⁵ Further, seventy-six percent of students could not recall receiving a crime-statistics summary in their admissions materials, and seventy-eight percent of the students could not remember receiving a copy of the annual security report.²⁸⁶ Only twenty-two percent indicated that they read the report.²⁸⁷

The vast majority of students (ninety-two percent) were not influenced by the summary data mandated by the law in selecting the college or university they attend.²⁸⁸ Overall, students appeared more often to use other types of campus-crime-related information to inform themselves about crime on campus.²⁸⁹ A total of sixty percent of the respondents stated that they “read other campus crime related reports, news articles, or flyers” produced by their institutions, but only twenty-seven percent attended crime-prevention or awareness programs mandated by the Act.²⁹⁰

279. *Id.*

280. Steven M. Janosik & Donald D. Gehring, *The Impact of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act on College Student Behavior*, 10 Educ. Policy Inst. Va. Tech. Policy Paper 1, 2–3 (Fall 2001).

281. *Id.* at 3 (noting the adaptation of the questionnaire used by Janosik, *supra* n. 253).

282. *Id.*

283. *Id.*

284. *Id.* at 4.

285. *Id.* at 5.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.* at 5–6.

This “other information” changed the way students protected themselves (forty-one percent) and their property (thirty-seven percent), but had less impact on how they moved around the campus (twenty-five percent).²⁹¹

Although student awareness of the Act or having read the Security Report mandated by it remains low, men were significantly more likely to be aware of the Act (Chi-square = 4.92, $df = 1$, $p = 0.27$) and to read an institution’s annual report (Chi-square = 7.49, $df = 1$, $p = .006$).²⁹² Women, on the other hand, were significantly more likely than their male counterparts to have read other campus material such as flyers or newspaper articles relating to crime and safety (Chi-square = 14.41, $df = 1$, $p = .001$) or to have attended a crime-prevention or crime-awareness program (Chi-square = 44.79, $df = 1$, $p = .001$).²⁹³ As a result of engaging in these activities, when compared to male respondents, women were significantly more likely to change the way they protected their personal property (Chi-square = 31.21, $df = 1$, $p = .001$), change the way they protected themselves from harm (Chi-square = 75.76, $df = 1$, $p = .001$), and change how they moved around campus (Chi-square = 195.46, $df = 1$, $p = .001$).²⁹⁴

B. Perceptions of Law-Enforcement Officers

In the third study conducted by the authors, 944 institutional members of the International Association of Campus Law Enforcement Administrators (IACLEA) within the United States were asked to respond to a questionnaire designed especially for campus law-enforcement officials.²⁹⁵ This population was selected because IACLEA serves as the professional association for the campus law enforcement profession and represents many of the institutions that are affected by the Clery Act. Just over one-third of those IACLEA members ($N = 371$, thirty-nine percent) contacted returned questionnaires.²⁹⁶ The reliability for the thirty-seven-item questionnaire was .78 when the Cronbach Alpha

291. *Id.* at 6.

292. *Id.*

293. *Id.* at 5–6.

294. *Id.* at 6.

295. Steven M. Janosik & Dennis E. Gregory, *The Clery Act and Changes in Campus Law Enforcement Practices*, ___ *NASPA J.* ___ (forthcoming 2003) (ms. at 3, on file with the Authors).

296. *Id.* at 5.

model was used.²⁹⁷ The data showed that all of the respondents reported being aware of the Clery Act and were involved in developing or assisting with the development of the annual report that the Act requires.²⁹⁸ More than forty-three percent of respondents indicated that the Act stimulated the improvement of campus law-enforcement procedures and policies.²⁹⁹ A similar margin of respondents “stated that the Act was effective or very effective in improving the quality of campus safety programs.”³⁰⁰ Thirty-seven percent credited the Act with being “effective or very effective in increasing the number of campus safety programs.”³⁰¹ Since the passage of the Clery Act, seventy percent of respondents reported that crime rates have remained relatively stable.³⁰² Fifteen percent reported that crime rates have decreased, and fifteen percent reported that crime rates have increased.³⁰³

Ten percent credited the Act itself with reducing crime on campus.³⁰⁴ When campus law-enforcement officers were asked whether the information contained in the mandated annual reports helped to change student behavior, ninety percent believed that it had not.³⁰⁵ On the other hand, when asked if other campus-crime-related information, programs, and services had changed the way students went about protecting their property, thirty-six percent of respondents thought it had.³⁰⁶ Thirty percent of law-enforcement officers believed that this type of information changed the manner in which students moved around their campuses.³⁰⁷

297. *Id.* The Cronbach Alpha coefficient measures the consistency of responses or the reliability of an instrument. A reliability coefficient of .70 is sufficient for the purposes of the research conducted. See Donald Ary, Lucy Cheser Jacobs & Asghar Razavieh, *Introduction to Research in Education* 190–212 (Holt, Rinehart & Winston, Inc. 1972) (describing validity and reliability and their role in educational research).

298. Janosik & Gregory, *supra* n. 295, at 5.

299. *Id.*

300. *Id.* at 5–6.

301. *Id.* at 6.

302. *Id.* at 7.

303. *Id.*

304. *Id.*

305. *Id.* at 8.

306. *Id.*

307. *Id.*

C. Discussion of Findings

Despite a ten-year effort to increase the usefulness of the annual crime report and to distribute it more widely, only about one quarter (twenty-five percent) of student respondents are aware of the Act and reported reading the federally mandated annual crime report.³⁰⁸ Only about ten percent of students reported using crime statistics as part of choosing their college.³⁰⁹ It is clear that students remain unaware of the Act and do not use the information contained in the summary or annual report. A majority of campus law-enforcement officials also believe that the campus crime reports are not an effective tool for changing student awareness of crime on campus because so few students read the reports.³¹⁰

Fred Woodhams and others also have found student awareness, and the use of the data found in these required crime reports, to be low or inaccurate.³¹¹ This lack of awareness and low use rate, coupled with the confusing nature of the law's reporting requirements, has led Hartle, Senior Vice President of ACE, to conclude that the law itself does little to influence student behavior.³¹² Student and campus-law-enforcement officer responses tend to support this conclusion.³¹³ When evaluating the effectiveness of the Clery Act, there are other factors to consider, however.

The Clery Act's primary focus is to have colleges and universities report crime statistics in a consistent manner on an annual basis.³¹⁴ But the statute also encourages institutions to summarize their crime-prevention programs and strategies for increasing awareness in their campus-security reports.³¹⁵ These programs and strategies appear to result in higher rates of awareness and behavioral change, particularly for female students.³¹⁶ The percentage of women and men reading other campus-crime aware-

308. Steven M. Janosik & Donald D. Gehring, *The Impact of the Clery Campus Crime Disclosure Act on Student Behavior*, ___ J. College Student Dev. ___ (forthcoming 2003) (ms. at 7, on file with the Authors).

309. *Id.*

310. Janosik & Gregory, *supra* n. 295, at 11.

311. *Supra* nn. 19-21 and accompanying text.

312. Hartle, *supra* n. 25.

313. Janosik & Gregory, *supra* n. 295, at 5-18.

314. *Id.* at 17.

315. 20 U.S.C. § 1092(f); Janosik & Gregory, *supra* n. 295, at 17.

316. Janosik & Gregory, *supra* n. 295, at 17.

ness or crime-prevention reports, flyers, or newspaper articles was dramatically higher than the percentage of students who read the crime-report summary or annual report.³¹⁷ Female students were significantly more likely to read this campus-crime-related material than their corresponding male counterparts.³¹⁸

The written materials and programs provided by campus officials designed to remind students about current crime-prevention activities or to inform students about crime-awareness issues, resulted in changed behavior among women.³¹⁹ In the student studies, “women who attended these programs or read this type of material were significantly more likely to change how they protected their personal property (44%), protected themselves from harm (52%), and changed how they moved around the campus (33%).”³²⁰ While campus law-enforcement officers’ perceptions are less positive, a minority do believe that the programs and information campaigns are more effective than the crime reports in helping students make better choices and change their behavior.³²¹

The Act also appears to have had a positive impact on campus law-enforcement practices.³²² More than forty-three percent of the senior law-enforcement-officer respondents reported that the Act stimulated the improvement of law-enforcement policies and procedures.³²³ Fifty-seven percent of the respondents indicated that the Act had been effective or very effective in improving the quality of their respective crime-reporting procedures.³²⁴ It was interesting to note that a much lower percentage of senior law-enforcement officers (thirty-seven percent) thought that the Act had been effective in increasing the number of campus-safety or crime-awareness programs conducted in any given year.³²⁵ Several respondents commented in an open-ended response that they had been conducting many of these programs before 1990.³²⁶ According

317. *Id.* at 5.

318. *Id.*

319. *Id.* at 6.

320. *Id.* at 6, 18.

321. *See id.* at 8 (describing the Clery Act’s impact on law enforcement).

322. *Id.* at 5.

323. *Id.* at 9.

324. *Id.* at 5.

325. *Id.* at 6.

326. *Id.* at 10.

to campus law-enforcement officials, these facts notwithstanding, the Act and its provisions do not appear to be connected with any noticeable decrease in campus crime.³²⁷

Given the findings in the three studies, the achievements and effectiveness of the Clery Act are mixed. It is clear that the Act has had a positive effect on some campus law-enforcement practices.³²⁸ Many law-enforcement officers credited the Act with improving the quality of some programs and services and some students are paying attention to the awareness and educational campaigns.³²⁹ This group does not believe, however, that the Act changes student behavior or reduces crime.³³⁰

Today, according to Hartle, Nicklin, and Woodhams, most of the discourse regarding the Clery Act continues to revolve around which categories of criminal activity, which school properties and geographically close areas, and which academic and co-curricular programs are or should be covered by this federal statute.³³¹ The findings of this research suggest that the energy and emphasis devoted to the reporting requirements of the Act are ineffective and misplaced. Students are unaware of the Act and do not read the annual reports.³³² The behavior changes they report related to reducing their risk of becoming victims of crime are not attributable to information contained in these reports.³³³ If the Act's purpose is to educate, change behavior, and protect college students, policy makers and college administrators would be better served by focusing their attention on the development of those services and programs that seem to make a difference. More specific recommendations follow on how the Clery Act might be improved and how the goal of making our college campuses safer might be attained.

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. Hartle, *supra* n. 25; Nicklin, *supra* n. 20; Woodhams, *supra* n. 19.

332. Janosik & Gehring, *supra* n. 280, at 5.

333. *Id.* at 17.

V. IMPROVING THE CLERY ACT AND MAKING
CAMPUSES SAFER

In their book *Millennials Rising: The Next Great Generation*, Neil Howe and William Strauss described the generation of college students that was born beginning in 1982 and began to enter college in 2000.³³⁴ They were particularly upbeat about this new generation of students and indicated that this generation will be a positive force, not only on higher education, but also upon the world around them.³³⁵ One characteristic described by Howe and Strauss about the “millennials” is that they are “rule followers”:³³⁶

Today’s kids are disproving the experts who once predicted a tidal wave of juvenile crime during the late 1990s. Over the last five years, the rates of homicide, violent crime, abortions, and pregnancy among teens have all plummeted at the fastest rates ever recorded. A teen is now less likely to be a victim of a serious violent crime than at any time since Lyndon Johnson was president. Even including the Columbine massacre, there were only half as many violent deaths at schools nationwide in 1998–99 (twenty-five) as there were in the early 1990s (over fifty per year).³³⁷

If these facts are correct, and if these students continue to maintain their level of good behavior as they enter and continue in college, and if we assume that at least a certain percentage of the crime that occurs on campus is committed by students, it seems a logical assumption that campus crime will continue to decrease as the “millennials” proceed through college for the next generation.³³⁸ In fact, campus drug, alcohol, and weapons violations and arrests, should decrease, as should property crimes, assaults and acquaintance rapes committed by students.³³⁹ This would be wonderful news for all persons concerned about campus safety and should eventually increase the relative safety of campuses in comparison with society in general, beyond what already exists. Certainly some amount of campus crime is committed by

334. Neil Howe & William Strauss, *Millennials Rising: The Next Great Generation* 4 (Vintage Books 2000).

335. *Id.*

336. *Id.* at 8.

337. *Id.*

338. *See id.* at 206 (describing the drop in the rates of murders committed by youths).

339. *Id.*

outsiders,³⁴⁰ and campus law-enforcement agencies, student-affairs administrators, students, and others must maintain their vigilance to assure that campuses remain safe and become safer.

Whether campus crime will decrease, or remain relatively stable, the studies described above indicate that both the students themselves and campus law-enforcement administrators believe that students are not particularly aware of the crime around them and do not seem to have changed their behaviors to make themselves safer.³⁴¹ Campus-safety programs and specific campus-safety information appear to be more effective than campus-crime reports in raising awareness about crime among students.³⁴² No research has yet been completed that shows whether students and parents are affected by campus crime reports when making college choices. Anecdotal information seems to indicate that it does have a small impact and certainly indicates that the crime reports have increased awareness of the issue of campus crime to some extent.³⁴³

If campuses are relatively safe and should become safer over the next generation, if students are not particularly aware of campus-crime reports, and if students are not changing their behavior despite over a decade of the existence of the Clery Act, what should Congress and others interested in making campuses safer do? Should the Clery Act be scrapped or face only major changes? Some would argue that campus crime will not decrease and that continued, and perhaps increasingly detailed, crime reports are necessary.³⁴⁴ The Authors have several recommendations for improving the Clery Act and campus-safety policies, programs and procedures. We also identify several problems that must be overcome to improve campus safety.

A. Assumptions

As the Authors considered what to recommend for improvements to campus safety, we began with several assumptions. These include the following:

340. Griffaton, *supra* n. 137, at 530.

341. *Supra* nn. 257–333 and accompanying text.

342. Janosik & Gehring, *supra* n. 280, at 5–6.

343. *Id.* at 4–5.

344. *E.g.* Chron. Higher Educ., *supra* n. 11.

1. *Everyone wants America's colleges and universities to be safe places for students, employees, and visitors to study, work, and visit.*

At some points, there has been criticism by media and watchdog groups of efforts, or lack thereof, made by campus officials to comply with the Clery Act.³⁴⁵ Some of that criticism is certainly warranted,³⁴⁶ but there also has been unnecessary vilification of those whose perspectives on how to achieve campus safety have differed from that of these groups.³⁴⁷ The same might also be said for some institutions and higher-education-advocacy groups who have failed to place the proper perspective on efforts to improve campus safety by those seeking to do so from outside of the academy.³⁴⁸

It would seem to be to the long-term disadvantage, both from a liability and public-relations perspective, for campuses to intentionally hide crime.³⁴⁹ While there may be some cases in which this is occurring,³⁵⁰ the Authors believe that this is a limited number of cases. If the beginning assumption is that we are seeking the same objective — safe campuses — then progress will be quicker.

2. *The Clery Act is not going away.*

The Clery Act is part of a wave of consumer-protection legislation passed by Congress, and few congresspersons want to be viewed as soft on crime.³⁵¹ The Clery Act also must be viewed in light of September 11th and concerns about terrorism.³⁵² There seems little interest in dismantling the Act.

345. Argetsinger, *supra* n. 37; Nicklin, *supra* n. 225.

346. See Sidbury, *supra* n. 159, at 766–768 (discussing the problems with the 1998 Amendment).

347. E.g. Clery & Clery, *supra* n. 29; Hartle, *supra* n. 25; Bret Jessee, *Student Conduct Records Confidential*, 67 Daily Beacon (Knoxville, Tenn.) 16, 1 (Sept. 15, 1994); Lawbaugh, *supra* n. 30; Letter from Howard Clery & Connie Clery, Security on Campus, Inc., to Sec. Richard W. Riley, U.S. Dept. Educ., *Campus Crime and the Buckley Amendment 1–2* (Oct. 14, 1994) (on file with the Authors).

348. Hartle, *supra* n. 25.

349. See Bickel & Lake, *supra* n. 107, at 139–146 (describing how the university's failure to warn could lead to liability); Stanley O. Ikenberry, *Federal Rules of Unclear*, USA Today 14A (Oct. 9, 2000).

350. Nicklin, *supra* n. 225.

351. See 20 U.S.C. § 1092(f) (outlining the requirements in the Act).

352. See Alec MacGillis, *Colleges Learning Security Matters*, Balt. Sun 1A (Jan. 7, 2002) (noting that secondary institutions have taken special security measures post-September

3. Campuses are relatively safe in comparison to American society in general.

According to the statistics released by the DOE in January 2001, American campuses are safer than society in several different categories of both property crime and crime against persons.³⁵³ Although there are some small number or percentage increases in some crime categories for the year 2000, American campuses remain safer than the society around them.³⁵⁴ While improvement is certainly possible and necessary, students and others on American campuses are safer than when they leave the campus.³⁵⁵ In addition to the mandates provided by the Clery Act, many campus officials have instituted emergency phone systems, escort systems, crime-watch programs, cooperative relationships between campus- and municipal-police agencies, building-entrance monitoring and security systems, and many other technological and programmatic efforts to increase campus safety.³⁵⁶ Campus law-enforcement agencies are becoming more sophisticated and better trained.³⁵⁷

4. Institutional liability for crime committed against students by third parties is increasing.

According to Bickel and Lake, even if campus officials wished to hide campus crime, doing so would increase their liability to civil lawsuits for negligence, if it were deemed foreseeable that hiding such crime was the cause of injury to an invitee under one of several legal theories.³⁵⁸ In addition, campuses currently face fines from the DOE of up to \$25,000 if they are found to have violated the Clery Act.³⁵⁹

11th).

353. U.S. Dept. Educ., Off. Postsecondary Educ., *supra* n. 182, at 5–13.

354. Nicklin, *supra* n. 225.

355. *Supra* nn. 222–223 and accompanying text.

356. *E.g.* MacGillis, *supra* n. 352.

357. Jacobson, *supra* n. 155, at 47.

358. Bickel & Lake, *supra* n. 107, at 139–146 (discussing how a college's failure to warn students about dangerous students could lead to liability).

359. 34 C.F.R. at § 668.84.

5. *There is good news that may result in further decreases in campus crime.*

As indicated above, there is evidence that students beginning college in 2000 may be less violent and less likely to commit crime.³⁶⁰ If this is true, then crime will go down. Perhaps we will be able to see the beginning of those decreases in the 2001 crime statistics.

B. Problems That Must Be Overcome

If we make the basic assumptions described above and everyone works toward making campuses safer, it seems more likely that the effort will be successful. Before that can occur, however, there are several problems and obstacles that must be overcome.

1. *The Clery Act, while well-intentioned and successful in achieving some of its goals, is not the panacea for campus-safety concerns.*

Research described above, as well as an article by Hartle and anecdotal information received from IACLEA members through open-ended questions in the research by Gregory and Janosik, indicates that the Clery Act and its implementing regulations are confusing, ever-changing, and problematic.³⁶¹ The research also indicates that students often are not aware of the Clery Act crime data and have not changed their behavior as a result of the Act or educational efforts by campuses.³⁶² Educational efforts, both programs and incidental-crime information, do appear to be more effective than the crime reports at changing behavior.³⁶³ Anecdotal information also appears to indicate that many campuses are spending large amounts of money to comply with the Clery Act,³⁶⁴ with the results noted above.³⁶⁵

360. Howe & Strauss, *supra* n. 334; Janosik & Gehring, *supra* n. 280.

361. Janosik & Gregory, *supra* n. 295; Janosik & Gehring, *supra* n. 280; Hartle, *supra* n. 25, at B10.

362. Janosik & Gregory, *supra* n. 295.

363. Janosik & Gehring, *supra* n. 280, at 5–6.

364. Janosik & Gregory, *supra* n. 295.

365. *Supra* nn. 361–364 and accompanying text.

2. *Persons and groups have staked out positions on the issue.*

When both sides of a particular issue have staked out positions, as appears to be the case here, and assume that the persons or groups that disagree with them are wrong and ill-intentioned,³⁶⁶ it is difficult to seek the middle ground and develop solutions with which everyone can agree. This is particularly the case when there are few, if any, opportunities for a face-to-face meeting in a nonthreatening environment to reach a compromise. We must assume a common goal of campus safety and some validity to each side of the issue. Compromise and improvement must also be goals for success to take place.

3. *The federal government has not committed to support efforts to improve campus safety.*

Congress passed the Clery Act³⁶⁷ and has amended it and FERPA³⁶⁸ on several occasions to improve the Act and make it more effective. While this is true, there is much left to be done. The Clery Act is one of many unfunded mandates imposed by the federal government.³⁶⁹ A recent article in *The Chronicle of Higher Education* indicated that thirty-six states will have deficits in the coming year, and efforts to aid public colleges might have a negative impact on private colleges within those states as well.³⁷⁰ This means that states facing budget shortfalls may limit the amounts available for campus-safety programs, support for police salaries, and other campus-safety priorities. At the same time, compliance with the Clery Act and other mandated legislation may increase in cost. No federal funds have been allocated to assist institutions with the cost of collecting and providing the campus-crime statistics or for improving the safety of campus facilities.³⁷¹

366. *E.g.* Clery & Clery, *supra* n. 29; Jesse, *supra* n. 347, at 1–2; Lawbaugh, *supra* n. 30; Clery & Clery, *supra* n. 347, at 1–2.

367. 20 U.S.C. § 1092(f).

368. *Id.* § 1232g.

369. *See* Paterson & Kibler, *supra* n. 170, at 257 (criticizing the federal government's lack of funding in carrying out its programs).

370. Sara Hebel, Peter Schmidt & Jeffrey Selingo, *States Face Year of Famine after a Decade of Plenty*, 48 *Chron. Higher Educ.* A20 (Jan. 11, 2002).

371. *See* 20 U.S.C. § 1092(f) (failing to call for an allocation of funds to support the implementation of the law).

In addition, the DOE has no central office, such as the Family Policy Compliance Office, that enforces the Act and provides support for institutions with concerns about FERPA or provides technical support for the Clery Act. Enforcement falls into the hands of the DOE regional offices, with mixed levels of training and expertise in the law.³⁷²

C. Recommendations for Improvement

If success is to be achieved, increasing the safety of American postsecondary institution campuses must be at the center of an interdisciplinary effort. To that end, the Authors have the following recommendations:

1. *Campus safety must begin on the campus.*

As indicated in the article by Gregory, all campus constituencies from the president to students and from faculty to housekeeping staff have a role and must contribute and work together if compliance with the Clery Act is to be achieved and campuses are to become safer.³⁷³

2. *External and internal campus constituencies must work together to achieve the ultimate goal of campus safety.*

Despite past evidence to the contrary, national constituencies such as campus-safety-advocacy groups, media, professional organizations, higher-education-umbrella-support organizations, and the DOE must work together to reach the goal of increasing campus safety.³⁷⁴ One effort to accomplish this goal would be the calling of an ongoing series of “summits” to discuss concerns, establish common ground, and seek mutual solutions. These “summits” should occur rather than each group choosing hard positions, defending their “turf,” and attacking those with whom they disagree about the means rather than the end of making campuses safer.

372. See U.S. Dept. Educ., *Secretary's Regional Representatives* <<http://www.ed.gov/offices/011A/Regions>> (accessed Aug. 21, 2002) (describing the U.S. Department of Education's ten regional offices).

373. Gregory, *supra* n. 102, at 31.

374. *Id.* at 31–32.

3. *Funding is necessary.*

Funding for this series of “summits” should be provided by some nonprofit agency or granting authority that has no stake in the way in which the outcome is achieved. The granting agency should have an interest only in achieving the goal of campus safety and should also be open to provide funding for other safety-related initiatives.

If the federal government is going to require activities such as data gathering, crime reports, and other activities within the Clery Act, financial support for these activities should be included.

4. *Create an Office of Clery Act compliance.*

The DOE should create an Office of Clery Act Compliance, modeled on the Family Policy Compliance Office (FPCO) that is responsible for compliance with FERPA.³⁷⁵ Despite some criticism by the media, the FPCO has become a model for all such agencies, and contains well-trained and dedicated staff that has a thorough understanding of both the statute and the regulations.³⁷⁶ The FPCO has become the source of executive-branch knowledge about FERPA and the staff has provided advice and direction to many institutions and has helped them to comply more fully with FERPA.³⁷⁷ No such expertise or focus now exists within the DOE with regard to the Clery Act, and this may be at least part of the cause of the confusion and compliance failures that have resulted in recent years. This appears to be one initiative that can be supported by groups on both sides of the issues. This concept has been proposed and supported by Security on Campus, Inc., and those institutions that have been the subject of DOE compliance investigations have complained about the lack of expertise among investigators from regional DOE offices.³⁷⁸

375. See Lynn M. Daggett, *Bucking up Buckley II: Using Civil Rights Claims to Enforce the Federal Records Statute*, 21 Seattle U. L. Rev. 29, 40 (1997) (describing the role of the FPCO).

376. U.S. Dept. Educ., Family Policy Compliance Off., *About Us* <<http://www.ed.gov/offices/OM/fpcol>> (accessed Aug. 21, 2002).

377. *Id.* (describing the FPCO's mission).

378. *Id.*

5. Declare a moratorium on new regulations and new amendments to FERPA for a minimum of three years.

As noted earlier, one complaint that has come from campus officials is that the Clery Act has been amended so many times since its passage in 1990 and that new regulations have accompanied each change in the statute.³⁷⁹ As a result, campus law-enforcement officials, campus legal counsel, student-affairs staff, and others continue to be confused about what is required by the Act and the regulations.³⁸⁰ Research by Janosik and Gregory found that a small number of campus law-enforcement officials are not aware of the requirement to provide written notice of the location of Web-based crime reports, do not open campus-crime logs to the public, and do not make information about crimes under investigation open to the public even when release of that information would not impact their investigation of the crime.³⁸¹ While these numbers are small, they indicate confusion and lack of knowledge, even among those agencies that are members of IACLEA.

Thus, such a moratorium would allow time for a broad educational effort on the part of the DOE, IACLEA, and other interested parties that would assure that all campus law-enforcement agencies, no matter how sophisticated or unsophisticated, would be aware of, and understand, the statute and the regulations. This would also give time for at least one “summit” to be convened so that any new amendments to the Act or changes to the regulations could be proposed in a comprehensive manner and mutually supportive environment.

6. Declare a moratorium on punitive enforcement of the Clery Act for a minimum of three years.

For the same reasons, the Authors believe that the enforcement of fines and other financial penalties for violations of the Clery Act is inappropriate at this time, with the exception of cases in which it is determined that the institution or its agents intentionally falsified the campus-crime report or otherwise maliciously violated the Act. Also, without an office that has the spe-

379. Nicklin, *supra* n. 12.

380. *E.g.* Woodhams, *supra* n. 19.

381. Janosik & Gregory, *supra* n. 295.

cific expertise, and dedicated staff, it is difficult for campus officials to acquire authoritative and well-documented compliance advice. In the interim, we recommend that any situations that occur, and are found not to fall into one of the two categories above, be handled by a letter from the appropriate official within the DOE requiring the institution to be brought into compliance, and requirements that the institution hire a consultant to provide them with compliance advice and face a DOE audit the following year.

7. *Campus-safety and Clery Act research should increase.*

In preparing their own research and in researching for this Article, the Authors found that very few studies have been completed on campus-safety-related topics. What research has been conducted has focused upon compliance with the Clery Act rather than determining its effectiveness.³⁸² Further research is needed in this area. To that end, the Authors recommend the development of a Center for the Study of Campus Safety. This Center would have a five-fold purpose: to (A) serve as a source for the financial support for research on campus-safety issues, (B) serve as a site from which Center fellows could complete such research, (C) serve as a repository and collection point for campus-safety research, both existing and to be developed, (D) serve as a site at which the “summits” described above³⁸³ would be convened, and (E) serve as a mechanism through which to recognize and reward exemplary campus-safety programs. The Board of Directors for the Center should consist of a broad spectrum of constituencies with an interest in campus safety and should be funded by a nonprofit or funding agency as described in recommendation number three.

8. *Gain congressional and DOE support for campus-safety efforts.*

Once efforts have begun to create a comprehensive effort to improve the Clery Act and to provide other campus-safety improvements, Congress should be informed of these efforts and a Sense of Congress resolution should be sought in support of these

382. *E.g.* Janosik & Gehring, *supra* n. 280.

383. *Supra* recommendation number two.

efforts. Once a comprehensive proposal has been developed, then it should be presented to Congress and introduced as an interdisciplinary approach to improving the safety of American campuses. In the short term, the DOE should recognize, publicize and reward those campuses that are doing an exemplary job of law enforcement, appropriate reporting, quality safety education and other things to improve campus safety.

VI. CONCLUSION

Campus safety is important to everyone involved with higher education in the United States. No one who lives at, works at, studies at, or visits an American campus wants to become a victim of crime. Parents and prospective students should be aware of the level of crime, particularly serious crime, on the campuses that they are considering attending. Campus officials should enforce the law and should not hide crime in student judicial systems or through any other mechanism. To do so is shortsighted and counterproductive. Local prosecutors should be encouraged to support campus-safety efforts by vigorously pursuing cases that are brought to their attention by campus officials, even if the cases are difficult to prosecute, so that campus judicial systems are not left as the only recourse for victims of campus crime. Campus officials should comply with the Clery Act to the best of their ability and seek advice when questions arise. Research should continue on this important topic and financial support for research and campus-safety efforts should be sought. Relatively safe is not good enough for American campuses. Efforts must continue.