



COVERING CAMPUS CRIME

THIRD EDITION

A H A N D B O O K F O R J O U R N A L I S T S

Student Press Law Center

**Funded by the Sigma Delta Chi Foundation,
the educational arm of the Society of Professional Journalists**

Covering Campus Crime, Third Edition
A Handbook for Journalists

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COVERING
CAMPUS
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FOREWORD

This publication represents the fifth incarnation of our published effort to help campus journalists do a better job reporting on campus crime. In 1990, we published our first booklet called *Access to Campus Crime Reports*, and in 1992 produced a second edition of that publication. In 1996, the name changed to *Covering Campus Crime* and the booklet doubled in size. The second edition was published in 1999. The fact that we needed to produce this third edition only a year later gives some indication of how rapidly this area of the law has developed and how much is yet to be settled.

Special thanks go to those who made this book possible. *Covering Campus Crime, A Handbook for Journalists*, was funded by the Sigma Delta Chi Foundation, the educational arm of the Society of Professional Journalists. That funding was largely the result of support from SPJ Campus Courts Task Force founder Carolyn Carlson. Carolyn and others on the Task Force have made the issue of public access to campus crime information a priority among professional journalists and journalism educators. They deserve our thanks for their effort.

Several members of the Student Press Law Center staff contributed much to this project. Staff Attorney Mike Hiestand organized and wrote significant portions of this booklet. Law interns Tammi Goldstein and Paul Kanter drafted sections of the book as well. SPLC interns Sarah Baxter, Marit Bank, Peter Schlossman, David Ransom and Jim Stallard and SPLC Publications Coordinator Sara Rose contributed information that was

used in this publication as well.

A special thank you goes to the designer of this publication, Norman Mallard, who donated his time to its creation.

We also want to recognize the contributions of those who offered their comments and insight on this important topic that were included in the pages that follow. Mike Donoghue, Daniel Carter and Mac McKerral were of special help to us.

And finally, we offer our appreciation to the student and non-student journalists who have dedicated so much energy on behalf of their readers to assure that more crime information is accessible to the public. Traci Bauer of Southwest Missouri State University, Jana Studelska of Bemidji State University in Minnesota, several editors of *The Red & Black* at the University of Georgia, Michelle Millhollon of Louisiana State University at Shreveport and Jennifer Markiewicz of Miami University of Ohio were among the leaders in this effort. They forged paths that many journalists and crime victims have followed and continue to make use of to this day.

We hope this book is of help to you, whether you are a journalist for a student or non-student news medium or just a concerned citizen. If you have questions, please contact us at the Student Press Law Center.

Mark Goodman
Executive Director
Student Press Law Center
October 2000

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COVERING
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INTRODUCTION TO CAMPUS CRIME REPORTING

CRIME AND THE PRESS

On September 25, 1690, Benjamin Harris published the first (and because authorities immediately banned it, the only) issue of *Publik Occurrences, Both Foreign and Domestik*, which some have called the first American newspaper. Fittingly, that newspaper contained what might also be considered the first American newspaper crime story: an account of Native American war chiefs, then allies of the British against the French, who “brought home several *Prisoners*, whom they used in a manner too barbarous for any English to approve.” In the more than 300 years since Harris’s story, the American press has played a vital role in providing the public with information about crime and the manner in which the criminal justice system and law enforcement officials have responded — or failed to respond. But the job has seldom been an easy one.

Crime reporting and crime reporters often get a bad rap. Reports about crime, which frequently involve personal tragedy, are generally perceived as “bad news.” The messengers of that news are sometimes blamed for the tidings they bear.

A crime reporter’s job is made even more difficult by the fact that many who control the information would like to hide or shape news about crime. Countless justifications are given or implied: maintaining the integrity of an ongoing investigation, protecting the privacy or reputation of a victim or the accused, covering up inferior police work, hiding official corruption or negligence or enhancing a community’s image as a safe place. No matter the reason, however, the consequences of secrecy can be devastating. Potential crime victims cannot protect themselves from dangers they do not know exist.

THE SPECIAL PROBLEMS OF CAMPUS CRIME

College Life Today: It’s Not Your Parents’ Campus

The goal of campus crime reporters is really no different from that of their community counterparts: providing the public with the information it needs to make informed decisions about personal safety and the conduct of law enforcement and school officials.

College campuses were for many years viewed as

idyllic environments, somehow magically separated from the crime problems that increasingly plagued the communities in which they were located. But evidence makes clear that the notion of the campus as a crime-free oasis is a myth; not only does crime affect colleges, in some respects America’s universities have become fertile ground for criminal behavior as crime rates in neighboring communities have decreased.

The statistics can be alarming. For example, half of all victims of violent crime in 1994 were under age 25.¹ Experts estimate that one in five women will be sexually assaulted while in college² and that one in six of all students will be victimized by some crime during their college life.³

According to the FBI’s Uniform Crime Reporting (UCR) data, there were more than 2,500 violent crimes reported on college campuses in 1998.⁴ Most agree that these incidents are seriously underreported. Participation in the UCR program is voluntary and only slightly more than 10 percent of all colleges submit statistics. Further, many states submitted incomplete reports. The numbers also do not reflect crimes committed against students off campus. In fact, a study conducted by the Core Institute at Southern Illinois University in 1997 found that 5 percent of America’s college students — or approximately 750,000 individuals — reported being subjected to physical violence on or around their campus during the preceding year.⁵ The same study found that 4 percent, or almost 600,000 students, reported that they had experienced unwanted sexual intercourse.

Moreover, violent crimes, which include murder and assault, represent only a small portion of the total crimes committed on campus. Most campus incidents are property crimes such as theft. According to the UCR, there were 96,221 property crimes on college campuses in 1998.⁶ And these numbers only reflect the incidents that are included in official reports.

Some Schools Attempt to Hide Crime

While the above statistics may be surprising to those unfamiliar with the college crime scene, they do not tell the whole story. According to a 1992 survey of campus police and security personnel by the Campus Safety and Security Institute (CSSI), 32 percent of institutions admitted they were not providing accurate information about campus crime to the public.⁷ A 1996 study by professors at the University of Cincinnati similarly found a “consistent pattern of noncompliance” with federal campus crime reporting laws.⁸ These findings support a 1994 Southwest Missouri State University survey showing that 53 percent of college student newspaper

editors believed that crime statistics provided by their schools contained inaccuracies.⁹ That survey also showed that 70 percent of student newspapers requesting campus crime information were not given direct access to campus police crime incident reports.¹⁰

Although the reasons vary as to why so many institutions are under-reporting crime, the author of the CSSI report concluded that a primary reason was money.¹¹ Campus officials believed that public knowledge of accurate crime information would invariably lead to difficulty in recruitment of students and solicitation of contributions.¹²

Fortunately, an increasing number of schools seem to be getting the message that crime awareness and crime prevention go hand in hand. Clearly, students who know about the dangers that exist on campus are less likely to be crime victims. Rather than viewing the campus media as an adversary, campus law enforcement agencies at these schools see a student newspaper or radio station as an ally in making sure a warning or other information is distributed to the campus community as quickly and accurately as possible.¹³

Unfortunately, some schools continue to do everything they can to keep crime information secret, making the campus crime reporter's job especially difficult. The Student Press Law Center continues to receive about a hundred telephone calls a year from student journalists who need help obtaining access to campus crime information. Our experience has shown

that far too many colleges and universities remain "closed systems," where school officials do whatever they feel is necessary to protect the institution's image or resources, often in spite of the law or the welfare of the campus community. For reporters at these schools, covering campus crime may prove a constant battle.¹⁴

It is, however, a battle that can be won. We hope this booklet will help. It should provide you with the information you need — both legal and practical — to successfully confront the roadblocks that might arise.

As you will see, the information to which you are legally entitled often differs depending on whether you attend a public or private school. Additionally, you should note that different types of information might be available depending on whether you seek it under federal or state law.

There are three general categories of campus crime information, each of which this booklet addresses in turn. The first category is **campus police records**. This includes daily police blotters, which federal law now requires every school in the country that receives federal funds (whether public or private) to release, as well as incident reports and other more detailed records about specific crimes that should be open at most public and some private schools. Next are **campus crime statistics**. Federal law also requires schools receiving federal funds to publish an annual report listing the number of certain kinds of crimes that occur on campus. Some state laws require similar reporting. The final category is **campus**

The Real Toll of Campus Crime: The Jeanne Clery Story

This booklet focuses on the law: statutes, court opinions and agency regulations. But the real story of campus crime has little to do with law books, police stations or newsrooms. The real story begins with the people whose lives are changed forever as a result of campus crime.

In the early morning of April 5, 1986, Jeanne Clery, a 19 year old freshman at Lehigh University, was suddenly awakened in her dorm room. She was then sexually assaulted and

brutally murdered by a fellow student she did not know. Her attacker cut her throat with a broken beer bottle, kicked her, sodomized her, bit her cheeks and breasts and then strangled her until she died.

Following the murder of their only daughter, Howard and Connie Clery discovered that there had been a number of reports of violent crime on Lehigh's campus of which the student body was generally unaware. Students who had not known about this history of campus violence had left security doors propped open and unlocked, which was how Jeanne's murderer had gained access to her room.

In 1987, in Jeanne's memory, the Clery family founded the nonprofit group Security on Campus Inc. to assist other victims and to end the cover-up of crime on our nation's college campuses. Since its founding, the group has supported the passage of dozens of state and federal laws, including those that require the reporting of campus crime statistics and the opening of campus police and security logs now officially known as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act." The organization's Web site, <http://campussafety.org>, which is

court information. Almost every school maintains a campus judicial system. Many of these bodies routinely hear cases involving allegations of criminal behavior that are never dealt with in a public court of law. Recent changes in federal law make clear that schools can release certain information from these proceedings either voluntarily or as required by state law.

This booklet describes what legal right of access to each of these categories of information a journalist has and gives some practical suggestions about how to pursue information about campus crime. For a quick look at what kind of information might be available and how you can get it, see the **Road Map for Campus Crime Reporters** diagram on pages 22-23. The following sections will explain the law on which that diagram is based.

ACCESS TO CAMPUS POLICE RECORDS

OVERVIEW

Perhaps no information is more important to the journalist covering campus crime than the records of those law enforcement officials with jurisdiction over the school. In some cases, this may be the local city or county

police force, but in many instances an on-campus police or security department fills this role. The records of these agencies are the “meat and potatoes” of most crime reporting. Unlike statistics, they can provide details about current criminal incidents that enable journalists to warn the community of immediate dangers. They also can provide a broader picture of a criminal incident, including the names of witnesses and locations that give a reporter the opportunity to do her own investigating to confirm the facts the police have collected. Most good crime stories rely on some information provided in a police record.

Student journalists have had significant success in recent years in getting access to campus police records. Beginning with a 1986 case filed by the student newspaper at the University of Florida at Gainesville¹⁵ and continuing with lawsuits filed by student editors at Southwest Missouri State University in Springfield¹⁶ and Southern Arkansas University at Magnolia,¹⁷ courts have frequently ruled that the records of campus police and security agencies at public schools are covered by their state open records laws.¹⁸

There are four means by which journalists may have a legal right of access to police reports: (1) a **state open records law**, (2) a **federal open police logs law**, (3) a **state open police logs law** and (4) the **federal Clery Act**. Each of these avenues will be explained in turn.

maintained by the organization’s vice president, S. Daniel Carter, is an exceptional resource for those seeking information about the issue of crime on campus.

In its effort to stop the cover-up of campus crime, Security on Campus has enlisted the help of other victims and their families. Among them:

The parents of Robin Reilly, a student at Saddleback Community College in Mission Viejo, Calif., who was murdered by an unknown assailant in one of the school’s parking lots following an after-school musical performance at which she had volunteered to usher. Genelle and Jack

Reilly, were later instrumental in successfully enacting California’s campus crime reporting law.

The parents of Tom Baer, a student at the University of Tennessee in Knoxville, who was stabbed to death while trying to prevent an armed man from entering his fraternity house. Just prior to the attack, the same man had been stopped, questioned and released by campus police after he had pulled a knife on another student. Tom died with his head in one of his fraternity brother’s arms.

The family of Katy Hawelka, a student at Clarkson University in

Potsdam, N.Y., who was beaten beyond recognition, raped, strangled and left to die outside the school’s sports arena. Never regaining consciousness, she lived for two and a half days before doctors declared her case hopeless and her parents disconnected her life support system.

Security on Campus’ files are filled with many other such stories, most of which have one thing in common: the victims were unaware of campus crime dangers that existed.

The stories of these families remind crime reporters why the job they do is so important.

IMPROVING YOUR COVERAGE OF CAMPUS POLICE

Before exercising your legal rights, it is worth examining the quality of your effort to cover the activities of your campus police. Have you attempted to establish a friendly and professional working relationship with campus law enforcement officers? Has your coverage of their work been as consistent and accurate as it should be?

Those reporters whose job it is to cover the police know that relying on state and federal statutes to get the information they need should typically be a last resort. Establishing a strong police beat with a level of mutual respect between the officers and the journalist will result in a more productive exchange of information than a dozen lawsuits or freedom of information request letters. As these reporters will tell you, the most valuable information is often not on paper. Here is what the experts have to say.

Tips from the Front Line: A Veteran Police Reporter Shares Some Tricks of the Trade

by Mike Donoghue

The Burlington (Vt.) Free Press

The police beat at most professional newspapers is normally considered the most stressful assignment. It probably is no different at a college or university. You are dealing with people — police, college officials, classmates, victims, etc. — who are under stress. You, too, are under stress to produce a story, often with a short deadline.

Just like in the “outside world,” school officials love to talk about a major grant won by the college or a winning season for a university team. Students and college leaders also will tell you how good and how hard they are working for students. When it comes to bad news, however, everybody runs for cover. It is often your job to overcome the stone wall that is erected.

People have a right to know about crime and how safe a campus is for students, faculty, staff and visitors. Informed people make informed decisions about their personal safety habits. Knowledge is the basis for making those informed decisions. The presence of the media at a crime scene or major incident plays an important and necessary role in meeting its responsibility to educate the public. It is also the responsibility of the media to tell the public about the performance of authorities and how they reacted to a situation.

The following are a few basic tips for dealing with law enforcement and campus officials:

Explain deadlines to campus law enforcement

personnel. They need to know why you need the information now, in two hours or two days. Deadlines are different for daily and weekly campus newspapers and for the college radio or television station.

All comments made to you as a reporter should be considered “on the record.” If somebody tries to use “off the record,” “between you and me,” or “for deep background,” make sure you are in agreement as to what these phrases mean. People have different definitions.

For example, if a security guard tells you, “Off the record, there was a major theft of computers from the lab,” it might mean: “Don’t use this until I tell you.” It might also mean, “Chase this story — it’s true, but I’m not authorized to tell you.” Alternatively, the tipster might let you use it but not want you to make any reference to an anonymous campus police officer as being the source. Some police/security departments are so small that leaks can easily be traced.

If you are at a public institution, know your state’s freedom of information laws backwards and forwards.

Some groups like the Society of Professional Journalists and state press associations have wallet-sized copies of the law. If you are a private institution, appeal to their instincts to do the right thing by voluntarily disclosing campus crime information.

Always be polite in seeking information. Use a written request under a state open records law only as a last resort. If you are too formal, the custodian of the record might make you jump through every hoop required by the law.

Make copies of any documents that might be available, especially in sensitive cases. You might not think something is important when you read it, but when you write your story it might become a key point.

Check the numbers. Some colleges and universities provide the full police log. Many private institutions, however, provide only a breakdown of what they think is important. Some major incidents are deleted because college administrators believe they put the school in a negative light. If you get a police log, try to check the case numbers assigned to each complaint. Complaints or cases are normally assigned numbers in numerical order. If one is missing from the log or list you are given, don’t be afraid to ask about it. Don’t easily accept an excuse that the record is not available or is locked up. Records can usually be “found” when necessary.

Get out of the newspaper office or radio/TV station and go down to the campus police station. Don’t expect campus police to make news judgments for you. Some campus police telephone lines are tape-recorded. Somebody who might want to give you a tip is less likely

to if the line is recorded. You will often learn the most simply by hanging around the police office. (And don't be afraid to bring an extra soda or coffee to share when you stop by!)

Ask the right questions. If you contact the campus police office every day and ask, "Is anything happening?" it is too easy for them to simply say, "No." Instead, ask an open-ended question like: "What's the most important thing (or three most important) things the department has done in the last 24 hours?"

Quote people by name. Don't attribute everything to, "Police said." Names make news. You like to see your byline, don't you? Well, cops like to see their names in print, also.

In a tragedy, never ask a victim's family, "How do you feel?" Learn something positive about the victim before you approach family or friends. The family will respect you more if you are able to say up front that you knew the victim was "a history major and a real leader for the field hockey team."

Look to other sources, including public records. One private college president once said that two on-campus rapes were confidential and could not be discussed. Yet, down the street at the courthouse the case was spelled out in public court records, including the names of the victims and witnesses.

Try to develop a relationship with the local police before you have to do it in the heat of battle. That way you are likely to get information the college is not inclined to release. The local police department will usually either be handling the case, assisting the college police, or at least have the information, composite photograph or other material that will be helpful to you. Neighboring departments might also have the information. Don't be afraid to play to their sense of justice. "The paper wants to make sure the person responsible is caught. We'll run the composite or any information." Unfortunately, some colleges and universities have a "circle the wagon" mentality. They don't realize that when they try to hide things, journalists by nature tend to dig deeper, wondering what else is hidden.

Don't be afraid to turn to the local media to help you dig out the story. If you are stonewalled by the college or university, the school may be less likely to offer a "no comment" to the local daily newspaper when one of their reporters calls about a rape, major theft or serious assault on campus. The local reporter might also be able to help you with possible sources to check. In return, you can be a valuable campus resource for the local newspaper or electronic outlet. It's a two-way street.

If you are denied access to records, don't be afraid to write about it. You can also share the story of the denial with the local news media, which may also have an interest in the story. It might be interesting to see if local reporters are denied the same information.

Don't compromise your position as an ethical, independent observer. Even if the police lie to you, don't think it is acceptable to lie to them.

Join up. Consider having your media outlet support one or more of the following: Student Press Law Center, Society of Professional Journalists or the Reporters Committee for Freedom of the Press. They can provide needed resources and help if you run into roadblocks.

Mike Donoghue is an award-winning journalist with The Burlington (Vt.) Free Press. He has worked as a reporter for over 30 years, much of it as a police/court reporter. He is also an adjunct professor in the journalism department at St. Michael's College and has been a co-adviser to its award-winning student newspaper, The Defender. Donoghue is asked to speak frequently on police-press relations and public access issues. He is the Vermont chair for Project Sunshine, a 50-state effort by the Society of Professional Journalists to ensure public access to records. He can be reached at (802) 660-1845 or at (800) 427-3124 ext.185.

Other Reporters Weigh In

"There's no better way to get information out of police than to cultivate sources and to always work on fostering better relations. (I don't mean pander to them, just be professional and polite). You can pick battles and pull rank by going higher and higher up the chain of command, but do it sparingly. Far better is working on solid relationships with people like the shift commanders and foot soldiers. It can mean doing the occasional feature on police dispatching or a story on school drug-awareness class as well, since it keeps them from yelling back at you that you never cover 'positive' law enforcement-related stories."

— Liz Anderson, New Hampshire political reporter
The (Lawrence, Mass.) Eagle-Tribune

"Remember that cops are human beings, too. If they do not trust you, and many do not trust the media, then they will not give you the information.... Talk with them. Get to know them. Give them an opportunity to see that you are human, too.... A great way to get in good with campus cops is to do a feature on them. They are a fixture on campus. What makes them tick? Ride-alongs are great. Hang out with a shift. It is a good story and a

great way to give yourself some credibility.”

— Matthew Waite, general assignment reporter
St. Petersburg (Fla.) Times

“Make friends with the EMS (emergency medical service) guys. They know about the nasty stabbings, quadruple shootings and people who mysteriously wound up with broken arms and bruises after being arrested for loitering. Also, in most places, someone accused of a crime has to make a court appearance within 24 hours. Your local magistrate’s docket can clue you in to a lot of stuff that the cops forget to mention.”

— Geoff Dougherty, CAR editor
The Miami Herald

“Always carry a pack of cigarettes to share — even if you don’t smoke. Or a pack of gum. You’d be surprised at how many times this has opened up a source at a crime or fire scene.”

— Adam Gorlick, reporter
Associated Press, Connecticut Capital Bureau

“Be where the cops are as much as you can and talk to them like they’re people, not like they’re cops. I really am extremely interested in what they do and I think that comes through when I deal with them.... The other thing I’ve learned is that if you get the facts right, you eventually earn respect. If you don’t, nothing else will help you.”

— Melissa Moore, police reporter
The (Baton Rouge, La.) Advocate

USING STATE OPEN RECORDS LAWS

Each of the 50 states and the District of Columbia has an open records or “sunshine” law that guarantees the public access to certain government records. These laws can be the most valuable ally you have in your effort to uncover campus crime. In short, most open records laws require that records generated by a public body or agency be open to the public unless they are otherwise exempted by law. Even where a specific exemption does exist, most laws still leave disclosure up to the individual government official. In other words, an official usually can disclose exempt records, but is not required to do so.

The laws vary from state to state regarding the type of law enforcement records that must be disclosed. Some laws are much better in granting access than others. A comprehensive survey of each state’s law is beyond the scope of this booklet. The best we can do is to give you

the citation for the law in your state (see Appendix) and urge you to get a copy of it from a library, courthouse, your state press association or an online resource. The Reporters Committee for Freedom of the Press publishes an excellent resource on using individual state open records and meetings laws called *Tapping Officials’ Secrets*. Each individual state booklet, which are available for free on the Committee’s Web site, contains a survey of that state’s law as well as practice tips and analysis of relevant court decisions and attorney general opinions. (See Appendix for contact information.) Other resources to help you use state freedom of information laws are now available on the Internet. (See Appendix.)

The following three-step process will help you determine how you can use your state open records law to get access to campus police reports.

STEP 1: Are Your Campus Police Covered?

In using a state open records law, the first question you must answer is whether the law applies to your campus police or security department. In other words, can it be considered a “public body?” To answer this, you will need to know what kind of law enforcement or public safety agency you are dealing with. Public safety and police agencies on college campuses vary widely across the country. The type of campus law enforcement organization a student journalist will encounter in pursuit of crime reports can be influenced by several factors, such as whether the college or university is public or private, urban or rural, has a large or small student population, and whether the student body is made up primarily of campus residents or commuter students.

To determine whether your state open records law gives you the right to examine campus police reports, use this guide:

(1) If you are at a **public college or university and the campus police are employees of the school**, the answer is almost always clear. Your campus police or security force should be considered a “public body” subject to your state’s open records law. As such, you should have the same access to that department’s campus crime reports as you would have to the records of your city police or any other public law enforcement agency.¹⁹ This is so even if your security officers do not carry guns or cannot make arrests. Skip to “STEP 2: Determining What Records May be Available,” page 10.

(2) If you attend a **public college or university where security services are contracted through a private company**, chances are very good that any campus crime records compiled by that security company are open, as required by the state open records law. (See discussion of

“Contract Security Units,” below.)

(3) If you are at a **private college or university where the campus police have “law enforcement authority”** their records should also be open. The authority to act as a real law enforcement agency should make a campus security department subject to the state open records law. (See discussion of “Law Enforcement Authority,” below.)

(4) If you are at a **private college or university with a campus security department that does not have law enforcement authority**, you might still be able to claim that the department is subject to the open records law depending on the language of your state statute and the role the public safety force serves. But you may have to use more creative methods of obtaining the crime information and accept that state law may not require your school to provide some of the information you need. Also, remember that a state’s open records law is just one tool for gaining access to campus crime information. As you will read later in this section, virtually every school must now provide some crime log information under federal law.

CONTRACT SECURITY UNITS

Some public colleges and universities contract with private companies for security on campus rather than or in addition to employing their own police officers. In such cases government employees may not be technically involved in the day-to-day activities of campus law enforcement, including making crime reports. The question often arises as to whether such bodies are “public” and their reports public records. A strong argument can be made that a school cannot avoid its responsibility to disclose campus crime information by delegating its duty to a third party.

Although some state statutes are silent on this issue, many others have included provisions in their freedom of information laws indicating that the records of a private company, produced on behalf of a government agency, are open to the public. These states can be divided into three categories.

First, several states, including Alaska,²⁰ Hawaii,²¹ Iowa²² and Wisconsin,²³ explicitly provide in their open records law that some records of private organizations under contract with the government are public records. In addition, Tennessee specifically includes “contract employees” among those covered by its open police logs law.²⁴

A second group of states requires disclosure of the records of private security forces under contract with public colleges and universities because they are supported by public funds. States that use this criterion

include Arizona,²⁵ Michigan²⁶ and Virginia.²⁷

Finally, some states classify the records of private organizations that serve governmental functions as public records subject to freedom of information laws. These states include Arkansas,²⁸ Florida,²⁹ Ohio³⁰ and New York.³¹

Students at public college campuses that contract with private security companies should check their state’s open records laws to determine if the crime reports produced are public records under the law.

“LAW ENFORCEMENT AUTHORITY” AT A PRIVATE SCHOOL

State freedom of information laws should cover the police departments of private colleges and universities if they operate as a body with law enforcement authority. According to Douglas Tuttle, former director of public safety at the University of Delaware and now a policy scientist with the Institute for Public Administration, a private college police department serves as a law enforcement unit if either (1) state, city or county legislation or ordinance grants law enforcement authority to the campus police or (2) local law enforcement agencies deputize the campus police officers.

Some states and local legislative bodies have enacted statutes that expressly grant law enforcement authority to the campus police departments of private colleges and universities. For example, the campus police departments of the University of Pennsylvania, Marietta College and Rice University operate as law enforcement units under the statutes of Pennsylvania, Ohio and Texas. Oklahoma law explicitly confers law enforcement authority on some private school police forces and deems them “public agencies” for purposes of enforcing state laws.³²

In states lacking a statutory grant of law enforcement authority, private university police departments may qualify as law enforcement units if local police deputize the officers or if the campus police otherwise exercise police powers traditionally reserved to government law enforcement agencies, such as carrying guns and making arrests. For example, the campus police forces at the University of Miami and Yale University operate as law enforcement units because the Coral Gables, Fla., and New Haven, Conn., police departments deputize their officers.

To find out the enforcement authority of security personnel at your school, including their working relationship with state and local police agencies, you need only ask. Federal law requires all schools receiving federal funds to prepare and distribute a statement with this information to every student.³³

Students at private colleges and universities whose police departments operate as law enforcement units either by statute or deputization should have access to crime reports to the extent provided by their state freedom of information laws.

STEP 2: Determining What Records May be Available

COMMON TYPES OF POLICE RECORDS

While different police and security offices will have different names for the various crime records that they keep, there are five general types of records that journalists will find helpful:

(1) **The daily police blotter or incident report log.**

This is a daily summary of every incident the office responded to or was called about. The police dispatcher often compiles it. It will usually give a brief description of the incident as well as the time and the place where it occurred. Because of the limited information it contains, a blotter is useful mainly as a starting point for asking additional questions.

(2) **Incident reports.** These are the more detailed reports that are created by the officer or officers who actually responded to the incident. They will usually give the names and addresses of the individuals involved in the incident, if known, and will provide a longer narrative of what happened. This is often the most valuable document for finding the details of the incidents you want to cover.

(3) **Investigation Reports.** In addition to the initial response of law enforcement officials, some crimes — particularly those where a suspect is not immediately apprehended — require additional police work. Documents and evidence generated by such work all become part of an investigatory record file. Because such records may contain active leads or other information whose release might jeopardize an ongoing police investigation, many state laws have specific provisions that exempt such records from mandatory disclosure. While the reasons for an “ongoing investigatory records” exemption make sense, experience has shown such exemptions to be among those most frequently abused by law enforcement officials. If you believe that to be the case in your situation, challenge such conduct.

(4) **Arrest or Booking Log.** This is a record of all individuals who are charged with crimes. Only police offices that have arrest powers will have this kind of log, but if they do, it can be an important source of information for stories about individuals accused of breaking the law. This log will typically give the name, address and age of someone accused of a crime as well as

the charge against him.

(5) **Miscellaneous Crime Records.** In addition to the above, law enforcement officials sometimes maintain a number of other records that may, from time to time, prove useful. Among them:

- **Accident Reports:** Reports of motor vehicle accidents or other “emergencies” to which the police responded are open under most state open records laws. Note, however, that specific medical information about an individual is frequently exempt.

- **Parking Ticket Records:** A recent Maryland court decision required the University of Maryland at College Park to release parking violation records for scholarship athletes to the student newspaper after it was revealed that a basketball player had thousands of dollars in unpaid fines for repeatedly parking in handicapped spaces.³⁴ In Maryland, as in many other states, parking violations are misdemeanor criminal offenses.

- **911 Tapes/Transcripts:** While it is doubtful that such records will be maintained by a campus police force, tapes (or transcripts of tapes) of telephone calls made to a central emergency office are usually maintained by and available through local law enforcement agencies.

- **Criminal Histories:** The availability and type of information about an individual’s criminal history varies considerably by state. Under some state laws, all such information is open to the public. In others, no information is open. Where it is available, a central state office generally maintains it.

- **Safety Policies/Security Budget Reports:** Federal law requires all schools receiving federal funds to provide information about certain campus security policies and programs, including a statement indicating the “enforcement authority” of a school’s security personnel, crime reporting procedures, policies concerning access to campus facilities and crime prevention programs.³⁵ In addition, information about a public school’s campus police force budget would be available under virtually every state’s open records law.

EXEMPT INFORMATION

Remember that although it never hurts to ask for information, you may not always have a legal right to obtain it. Even though a record is held by a public body and is, therefore, a public record by definition, every state open records law contains a list of exemptions. As discussed above, for example, most states allow police to deny access to their records if public disclosure would jeopardize an ongoing investigation. Most states also allow police to black out the names of confidential police informants or the parts of a record that might jeopardize

the work of undercover police agents. Additionally, police might not be required to release the names of the victims of certain crimes, particularly sexual assaults. Their ability to deny you information in these situations will depend on the specific provisions of your state open records law. There is, for example, no universal requirement that the names of victims or complainants be withheld. You should consult your state open records act to determine what reports, by law, must be made available to you. It is important to remember that the law presumes all records held by a public body are available for public inspection. The burden is on the record keeper or custodian of the record to justify why the law allows the information to be withheld. Remember, too, that just because public officials may not be required to release certain information about a crime does not mean that a journalist cannot publish that information if she can obtain it from other sources.

Also, most laws provide that if a record contains both exempt and non-exempt material, the custodian is required to redact (remove or black out) the exempted material and release the rest. This is important to remember especially with police records where officials have been known to improperly deny access to an entire report when its release could be accomplished by blacking out a single piece of information.

If the law in your state makes clear you do not have a legal right of access to something and your campus public safety office is aware of that, it is pointless to

continue to maintain that you do. But that does not mean you should not try to persuade your school that there are many good reasons for giving you the information anyway.

STEP 3: Requesting the Records

Once you have determined that your school's campus police is a "public body" and have decided what information you need and believe you are entitled to under the law, it is time to make your request.

MAKING AN ORAL REQUEST

The first thing you should do is simply ask, professionally and politely, for the records you want. Most state laws say that all you have to do is go to the person responsible for keeping the records you seek and ask for them. In most cases they are required to comply with your request at all times during their normal business hours.

When you call or arrive at the office where the records you want are kept, you should identify yourself and your affiliation with the news medium you represent and ask to speak to the individual responsible for handling press inquiries. If no such person is designated, ask to speak to the person who assembles the police blotter or oversees the incident reports.

Requesting police records need not and should not be adversarial. Treat the official with respect. Address him or her appropriately as "Chief Smith," "Officer

Don't Accept "The Buckley Amendment" as an Excuse!

What was once one of the biggest obstacles to effective campus crime reporting has long been eliminated. Since 1992, the Family Educational Rights and Privacy Act of 1974 (FERPA),³⁶ commonly known as the Buckley Amendment, has explicitly not applied to campus police or security department records.

FERPA was enacted in 1974 in part to curb the indiscriminate release of student records by school officials. Under the law, schools that release a student's "education records" without

his or her permission can have their federal funding cut off.

The application of FERPA has prompted much controversy, focusing on the question of what exactly is an "education record?" Despite court rulings to the contrary, many schools, at one time with the support of the U.S. Department of Education, claimed that the definition of "education records" included campus police and security department reports. As a result, they denied such information to the student media and public.

The amendment to FERPA enacted in 1992 states that "education records" do not include "records

maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement."³⁷ Subsequent regulations make clear that the term "law enforcement unit," is to be interpreted broadly and includes even campus security offices without official police authority.³⁸

While the change to the Buckley Amendment did not require schools to release campus police records, it meant that when other state and federal laws do demand disclosure, a school cannot use FERPA as an excuse not to comply.

Jones” or Ms. Doe. Smile. As discussed earlier, the job of a crime reporter is generally made much easier — and the information made available to you much more quickly — when there exists a climate of mutual respect, or at least tolerance, between you and the police.

MAKING A WRITTEN REQUEST

If your oral request was denied or ignored or if history tells you that there is little hope that officials will comply with a verbal inquiry, it is time to start “The Paper Trail” by putting your request in writing.

To assist you in this, we have reproduced a sample freedom of information law request letter, containing the basic information you should include in your request, in the Appendix. In addition, an automatic freedom of information request letter generator is available on the Student Press Law Center’s Web site.

If your oral request was to someone other than the head of the campus public safety office, direct your first written request to the chief. Put it in the form of a letter and mail it certified mail, return receipt requested or hand deliver it. Most laws only require that you “reasonably describe” the records you are seeking. Nevertheless, you should make your request as specific as possible and do what you can to provide officials with the information they need to find the information you are looking for. Be sure to cite the relevant open records law.

State that if your request is denied, you want to know why. Most state laws require that officials provide a written explanation, with citations to the specific legal exemption(s) on which their decision is based. Other states, such as Texas, require any state agency denying an open records request to immediately ask for a state attorney general’s opinion on the matter. If your state is one of these, include that in your letter. If your state law requires the agency to respond to your request in a certain period of time, make sure you include that as well. Also, ask that you be given any reasonably segregable portion of the record if parts of it may be exempt from disclosure.

Explain that you are willing to pay a reasonable fee for the copying costs of the records if you are asking for copies, and state the maximum amount you will pay without first being notified. If you are asking for a fee waiver, include that, too.

Make clear that you intend to pursue whatever legal remedy is necessary to obtain the information if your request is denied. Also note any penalty provisions under the law for failure to release public records. Such penalties could include fines and awards of attorney’s fees.

What To Do If You Are Denied Access

If the campus police refuse to give you the records you request, be prepared to respond. If the police agency is subject to the state open records law, inform the custodian of the records that you do not understand the denial because you know the records are public under state law.

If the record keeper continues to say no, ask that she cite the specific legal exemption on which she bases the denial. Make clear that you are not just looking for an explanation; you want a legal justification. You might want to “remind” her of the penalties for noncompliance (fines, attorney’s fees and jail time are all possibilities in different states) and suggest that she contact the school’s legal counsel before giving you a final and official “no.”

This is the point where you hope record keepers begin to realize you may know more about what you are entitled to than they do. They may not know why they are denying access. Their only reason might be that it does not seem as if they should have to give the information to you, a student. They may think they are following the law, or they may never have had to deal with such a request before. Remember, be firm but courteous. Give them room to back down without losing face.

If you still do not get what you want, get the name of the custodian of records and inform him that you will be filing a formal appeal with his immediate supervisor and, if necessary, the college or university president and any other relevant school or government officials. You might also let them know that you will have to include in your news story that the campus police refused to give you access to public records about crime.

THE APPEAL LETTER

Your letter of appeal should include the same information as your initial written request, but also should briefly describe how you were denied access in your initial request to the public safety office. Include the names and titles of all those who denied you access and the date their denial occurred.

If any of those who denied your request up to this point did cite a specific justification for the denial, state why you believe that explanation is insufficient under the law. This may be a good time to consult with a local media law attorney, the Student Press Law Center or some other resource that specializes in freedom of information law for help in formulating your response.

When the Law Does Not Apply

Even if the police force on your campus is not required to release specific crime records because the

open records law does not apply to it, do not despair. Indeed, in light of the growing concern about safety on campuses as well as the potential liability faced by schools who shirk the responsibility they have to protect their students (see “Turning Up the Heat” page 31), administrators might be convinced of the importance of cooperating with the news media to promote student safety. Further, as the next chapter will explain, almost every school in the country is now required to provide at least *some* information about their campus crime situation. Once you have at least some information, you often have the leverage necessary to convince school officials to be even more forthcoming. As attempts to cover up the reality of campus crime have been exposed, more and more school administrators have learned the hard way that being open with information about campus crime is the best strategy.

USING OPEN POLICE LOG LAWS

What Is an Open Police Log Law?

The federal government and seven individual states — California, Kentucky, Massachusetts, Pennsylvania, Tennessee, Virginia and West Virginia — require public access to the daily logs of college and university police departments. A daily log chronologically describes all reports of campus crime, usually including the time, date, location and general description of the incident. While traditional state open record laws should already require disclosure of this information at public schools, most of the laws referred to above require private schools to do so as well.

Also, while not technically an open log law, Georgia law makes it easier for students to track crime on campus. Under Georgia Code Annotated section 35-3-36, state and local law enforcement agencies must indicate on their crime reports if the crime victim was a student and the name of the school that the student attended. Such a provision should allow student reporters to more quickly sort through police reports searching for incidents that might be relevant to the campus community.

The Federal Campus Police Logs Law (The Clery Act)

One of the most significant changes in the law relating to campus crime reporting of the last decade occurred in October 1998 when Congress passed and President Clinton signed a bill reauthorizing the Higher Education Act. That major piece of legislation included changes to the existing Campus Security Act, the law enacted in 1990 that required all schools receiving federal funds to report crime statistics. (See discussion in the next

section.) Among the changes was the first national requirement that colleges and universities keep and maintain campus police or security department crime logs.

As described above, many private schools that are not covered by state open records laws had no legal obligation to maintain an open police log. According to reports from campus journalists, many of them (and a good number of public ones as well) refused to do so. And many of those that did provide logs did so sporadically, leaving out selected incidents and refusing to provide meaningful details. The new law, officially renamed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act,³⁹ and commonly known as the Clery Act, took effect on Oct. 1, 1998. It requires schools provide three different types of records: (1) a daily campus crime log, (2) an annual statistical report (see page 17) and (3) “timely reports” regarding crimes that present an ongoing threat to the campus community (see page 17).

On November 1, 1999, the U.S. Department of Education issued final regulations for enforcement of the Clery Act.⁴⁰ Those regulations went into effect on July 1, 2000.

Who must comply with the law?

All post-secondary institutions, public and private, receiving federal financial assistance that maintain a police or security department of any kind.

What does the act require?

The college or university must “make, keep and maintain a daily log, written in a form that can be easily understood, recording all crimes reported” to the police or security department and make that log “open to public inspection.”⁴¹ The law does not allow police or security officials to simply read the log to a requesting reporter or student. The log must be physically available for “public inspection.”

Do officials have to provide a photocopy of the log?

The Clery Act does not address this question. In the interest of promoting accurate reporting, one would hope that most schools would offer to do so. In fact, most *public* schools are required to provide a photocopy of public records, which would include the daily police log, pursuant to state law.

When must the log be made available?

The log must be open to public inspection during the police or security department’s normal business hours. A business day is defined as Monday through Friday, excluding days when the institution is closed.⁴² Schools are responsible for ensuring that the offices be properly staffed and able to handle requests during these times.

George Mason University Police Department

Daily Police Incident Record

0700 Hours to 0700 Hours the Following Day

| Date | Time | Location | IN or PENDING | Incident to include: Case #, Nature #, Nature of Case, Brief Description |
|--------|------|--------------------|---------------|--|
| 080296 | 0645 | HQ | | B-SHIFT ON DUTY. |
| | 0715 | HQ | | A-SHIFT OFF DUTY. |
| | 1400 | CAR | PEND | 96-0719 - ASSAULT. SUBJECT GRABBED FEMALE EMPLOYEE BY THE ARM AND THEN LET GO. SUSPECT DESCRIBED AS W/M, 50-60 YOA W/ A BALD SPOT. SUSPECT HAS BEEN SEEN IN AREA AND IS BELIEVED TO BE LIVING ON CAMPUS. INVESTIGATION CONTINUES. |
| | 1445 | HQ | | C-SHIFT ON DUTY. |
| | 1515 | HQ | | A-SHIFT OFF DUTY. |
| | 1525 | FORECK AND PATRIOT | IN | FR84-065 HIT AND RUN. AN UNKNOWN VEHICLE FAILED TO STOP COMPLETELY AND PULLED IN FRONT OF A CUE BUS. THERE WAS NO CONTACT BETWEEN VEHICLES BUT WHEN THE CUE BUS STOPPED QUICKLY TO AVOID THE UNKNOWN VEHICLE, A PASSENGER WAS THROWN FROM HIS SEAT. HE WAS TRANSPORTED TO ACCESS FOR TREATMENT. CHARGES PENDING. |
| | 2245 | HQ | | A SHIFT ON DUTY. |
| | 2315 | HQ | | C SHIFT OFF DUTY. |
| 080396 | 0645 | HQ | | B SHIFT ON DUTY. |
| | 0715 | HQ | | A SHIFT OFF DUTY. |

A typical daily police blotter maintained by a university police department. Such blotters, or logs, can be used as the starting point for obtaining more specific information and records about criminal activity.

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When must information be added to the log?

Crimes must be added to the log within two business days of the initial report being made to the campus police or security department. Officials are also required to add new information about a previously recorded incident to the log within two business days.⁴³

How long must campus officials keep old logs?

Logs for the most recent 60-day period must be open to public inspection during normal business hours. Information older than 60 days must be made available within two days of a request being made.⁴⁴

What crimes must be included in the log?

All crimes reported to the campus police or security department must be included in the daily log. Unlike in the statistical report, there is no set list of crimes.

Where must crimes occur to be included in the log?

Any crime that occurs “on campus, on a noncampus building or property, on public property or within the patrol jurisdiction of the campus police or the campus security department” and is reported to them must be included in the log.⁴⁵ (See pages 19-20 for a definition of these terms.) This is potentially a larger reporting area than that required for the statistical report. For example, if campus police respond to a call from an off-campus location (for example, a call from students living in a private apartment complex), they would be responsible for reporting any criminal activity they find in the

COVERING
CAMPUS
CRIME

school’s crime log because the crime would have occurred within their patrol jurisdiction.

What must the log entries contain?

The (1) nature, (2) date, (3) time and (4) general location of each crime and (5) the disposition of the complaint, if known.⁴⁶ A school can include additional information if it chooses (and may be obligated to do so under a state open records law as discussed above).

It is important to remember that the law requires that the information be provided in a “form that can be easily understood.” Unreasonably vague descriptions or undecipherable technical jargon or codes are unacceptable. For example, if your school describes an incident as “intentionally causing physical harm or apprehension of harm” (an actual description used by at least one college) or lists a crime’s location as simply “campus,” such conduct should be challenged and reported both to the Department of Education and to the Student Press Law Center.

Is there anything exempt from disclosure under the law?

A school will not have to release information in the log if (1) disclosure of that information is prohibited by law or (2) disclosure would jeopardize the confidentiality of the victim.⁴⁷ Information can also be withheld if (3) there is clear and convincing evidence that the release of the information would: (i) jeopardize an ongoing criminal investigation or (ii) the safety of an individual, (iii) cause a suspect to flee or evade detection, or (iv) result in the destruction of evidence.⁴⁸ The Department has indicated that these exemptions should be interpreted narrowly and that an institution may only withhold the specific information required to avoid the above risks. Moreover, once the risk has passed, the institution must disclose all information.⁴⁹

Is it necessary that a crime be prosecuted before it is reported?

No. Any complaint of activity that would constitute a crime and that is reported to a campus police or security department must be included in the crime log whether it is prosecuted by local law enforcement officials, the campus judiciary or no one at all.⁵⁰

What are the penalties for non-disclosure?

The U.S. Department of Education can impose financial penalties of up to \$25,000 per violation. In extraordinary cases, the Department is authorized to withhold all federal funds from a noncompliant school. ***Does the new federal law mean that public schools that have traditionally provided more detailed campus crime information under their state open records laws can now provide less information than before?***

Absolutely not. Department officials have

characterized the Clery Act as a “floor” that establishes the minimum campus crime reporting requirements; schools must continue to observe both federal and state laws.⁵¹ In most cases, this will require that campus police or security departments at public schools simply include additional information on their log (for example, names of those accused or arrested, complainants’ names, actual addresses, more detailed information about the incident, name of responding officer, etc.), as required by state law. Maintaining a separate state and federal crime log is neither required nor suggested. For more information on the specific requirements of your state open records law, see the online version of *Tapping Officials’ Secrets*, published by the Reporters Committee for Freedom of the Press.⁵²

For help with filing a state freedom of information request, you can use the SPLC’s automated FOI letter generator, available on our Web site.⁵³

What should I do if a school is not complying with the crime log provision of the Clery Act?

File a written complaint with the director of the Regional Office of the Department of Education that serves the state in which your school is located.⁵⁴ Provide a brief summary of your situation and any evidence of the school’s non-compliance.

State Campus Police Logs Laws: A State-by-State Analysis

CALIFORNIA

(Cal. Ed. Code sections 67380 and 94380)

Who must comply with the law?

Section 67380 applies to community colleges that have received legislative funding for the purpose, California State University, Hastings College of the Law, the University of California and all post-secondary institutions that receive public funds for student financial aid.

Section 94380 applies to private post-secondary institutions with more than 1,000 students and private vocational educational institutions.

What kind of information is available under the law?

Under section 67380, logs must detail occurrences and arrests for campus crimes of violence, hate violence, theft, destruction of property and illegal drug or alcohol use. Under section 94380, logs must detail occurrences and arrests for campus crimes of violence, theft, destruction of property and illegal drug or alcohol use.

How is the information obtained?

Under section 67380, students, employees, applicants for admission and the media may request the logs from their custodian who must disclose the information within

two business days.

What are the penalties for nondisclosure?

Under section 67380, a person who is refused information may sue in a civil action for damages of up to \$1,000. Section 94380 provides no penalty for nondisclosure.

KENTUCKY

(Ky. Rev. Stat., Chapter 164.9481)

Who must comply with the law?

The law applies to all public four-year institutions and to community colleges or technical colleges that grant postsecondary education credentials. Additionally, the law applies to any private college or university licensed by the Kentucky Council on Postsecondary Education.

What kind of information is available under the law?

Schools must keep and maintain a daily log of campus crimes (a list of crime categories that must be reported, which includes most personal and property crimes, is included in the law), in a form that can be easily understood, that includes at least the following: (1) the category of crime, (2) a description of the incident, (3) the date and time of the crime, (4) the general location of the crime and (5) the disposition of the complaint if known, including referral to institutional disciplinary proceedings, other law enforcement agencies or prosecutors. The law also requires that schools actively notify the campus community of any crime that presents a safety or security threat. The law explicitly suggests that such notification include alerting campus publications.

How is the information obtained?

The logs must be “readily accessible” and open for public inspection at all times. In addition, the information must be made available on campus computer networks. New crimes must be included in the logs within 24 hours after being reported to campus security officials.

What are the penalties for nondisclosure?

Violation of the law can result in a fine of up to \$1,500 and jail time of up to 30 days.

MASSACHUSETTS

(Mass. Ann. Laws, chapter 41, section 98F)

Who must comply with the law?

The law, in conjunction with the state open records law, applies to all public and private schools whose law enforcement officers have been deputized by the state.

What kind of information is available under the law?

The logs must list all responses to complaints received by the police, crimes reported, the names and addresses of persons arrested and any charges against

those persons, unless the crime involves a handicapped person.

How is the information obtained?

The logs are available to the public without charge during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

Nondisclosure can result in a fine of \$20 per month until the police disclose the logs as well as the award of attorney's fees and court costs. (Mass. Ann. Laws, chapter 66, section 15.)

PENNSYLVANIA

(24 Penn. Stat. Ann. section 2502-3)

Who must comply with the law?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The logs must include a chronological listing of all crimes reported to the campus police, the names and addresses of anyone arrested and a description of charges filed and their disposition.

How is the information obtained?

The information is available to the public without cost during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

The Attorney General can compel compliance in a civil action where the public official can be liable for a penalty of up to \$10,000 for willful violation of the law. (24 Penn. Stat. Ann. section 2502-5.)

TENNESSEE

(Tenn. Code Ann. section 49-7-2206)

Who must comply with the law?

The law applies to institutions of higher education that maintain either police or security departments composed of state, private or contract employees.

What kind of information is available under the law?

The log must include the date, time, general description and the names of all persons arrested for crimes against persons or property. The logs need not include the names of persons who reported the crime, victims, witnesses or suspects. In February 2000, the law was amended to also require that school officials notify "appropriate law enforcement officer[s]" where they believe a student is committing or has committed a class A misdemeanor (the most serious) or any felony.⁵⁵

How is the information obtained?

The log is open for inspection without charge to the public during regular business hours.

What are the penalties for nondisclosure?

Failure to comply with the law is a Class C misdemeanor, which can result in a \$50 fine and up to 30 days in jail. Tenn. Code Ann. section 49-7-2204; Tenn. Code Ann. section 40-35-111.

VIRGINIA

(Va. Code Ann. section 23-232.2)

Who must comply with the law?

The law applies to private campus police departments. (The state open records law should cover public schools.)

What kind of information is available under the law?

The log must include the date, time, general location, any injuries suffered or property damaged or stolen and the names and addresses of anyone arrested for felonies or misdemeanors involving assault, battery or moral turpitude. Information may be withheld if necessary to facilitate an ongoing criminal investigation.

How is the information obtained?

Any citizen, student or parent may obtain the information during the regular business hours of the custodian of the log.

What are the penalties for nondisclosure?

The law does not include a specific penalty provision. Those denied access can seek a court order to compel disclosure.

WEST VIRGINIA

(W. Va. Code section 18B-4-5a)

Who must comply with the law?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The log must include the nature, date, general description and time of all murders, rapes, robberies, aggravated assaults, burglaries, car thefts and arrests for liquor, drug or weapons law violations committed on campus. The identity of the victim need not be revealed.

How is the information obtained?

The public must have access to the information within 10 days of the log entry unless nondisclosure is required in order to facilitate an ongoing investigation. The information may not be withheld after an arrest. Students at a public school should seek access under the regular state open records law, which requires disclosure within five working days.

What are the penalties for nondisclosure?

According to the West Virginia Attorney General's office, a member of the public who is denied access may file a writ of mandamus to compel disclosure. The court may award attorney's fees.

USING THE “TIMELY REPORTS” REQUIREMENT UNDER THE CLERY ACT

There is a very important — and underutilized — provision of the federal Clery Act that should provide a significant key to unlocking information about campus crime, particularly for students at a private school. In addition to a daily police log and an annual statistical report on campus crime, the Clery Act requires that all schools that receive federal funding also make “timely reports to the campus community on crimes considered to be a threat to other students and employees that have been reported to the campus security office or the local police department.”⁵⁶

What schools must comply with the timely reports requirement?

All post-secondary institutions, public and private, receiving federal financial assistance.

What crimes are subject to the timely warning provision?

Only those crimes required to be included in a school’s annual statistical report (including hate crimes) that present a threat to students and employees will trigger the school’s obligation to issue a timely warning.⁵⁷

What school officials are responsible for making a timely report?

All campus security personnel and any “official of an institution who has significant responsibility for student and campus activities” (see discussion in the statistical report section, below) are responsible for issuing timely warnings.⁵⁸ Significantly, a school is also responsible for warning the campus community about qualifying crimes that are reported to local police agencies (for example, an unsolved sexual assault or a robbery that occurs near campus).⁵⁹ Such a requirement presumes that campus police will make a reasonable, good faith effort to obtain relevant information from nearby state or local law enforcement agencies. Professional and pastoral counselors are exempt from mandatory reporting.⁶⁰

How much time does a school have to issue a timely report?

The law does not define “timely.” However, because the purpose of the requirement is to enable the campus community to protect itself, it can strongly be argued that any significant amount of time that passes between when a crime that could present an ongoing threat occurs and when the public is notified violates the law’s intent. Plainly, it would seem that a lapse of more than 24 hours would be unreasonable.

How must the report be distributed to the campus community and what must it contain?

Unfortunately, neither the law nor the regulations

provide much detail. However, they do state that a timely report must “be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.”⁶¹ It is clear, therefore, that schools have an obligation to quickly and actively notify individuals in the campus community (as opposed to passively making the report available on request) of a threat. Further, the report must contain enough information about the crime to allow students and employees to protect themselves. At a minimum that would reasonably seem to include specific information about what happened, when and where it occurred and a description of any suspect(s), if available. It can certainly be argued that alerting the campus news media would be a fundamental part of any reasonable notification process.

What should I do if my school ignores the timely reports requirement?

The timely reports requirement is potentially one of the most important provisions in the Clery Act, but few schools seem to have paid much attention to it. It is essential that you remind your school officials of their legal obligations. If they continue to ignore the law, you should file a written complaint with the director of the Regional Office of the Department of Education that serves the state in which your school is located.⁶² Schools that fail to provide accurate, timely reports can be fined up to \$25,000 per violation and risk losing their federal funding.

Probably because it is buried within a much bigger law, very few schools have been “pushed” by the campus news media or others to comply with the “timely reports” requirement. That should change. There is enormous potential in this provision if it is used.

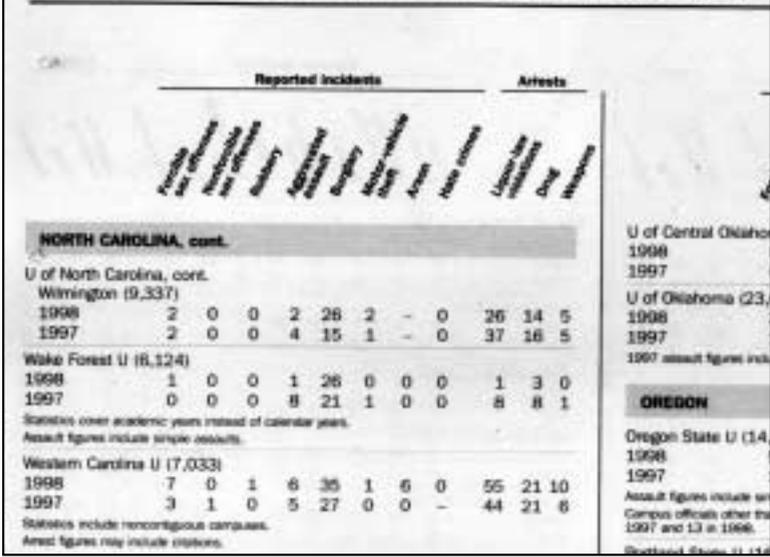
ACCESS TO CAMPUS CRIME STATISTICS

USING THE CLERY ACT

Where information about particular crimes is not needed, almost all students can look to federal law for help in obtaining at least a snapshot of their school’s campus crime problem.

By now, most college journalists have at least heard of the Campus Security Act,⁶³ now officially known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, (see Appendix) commonly called the Clery Act. A federal law first enacted in 1990, its stated purpose is to make available more information about criminal activity on America’s college campuses.

STUDENTS • FACT FILE: CRIME DATA FROM 481 COLLEGES A



A small sample of the Clery Act statistics published annually by The Chronicle of Higher Education.

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COVERING
CAMPUS
CRIME

The law seeks to achieve this goal in part by requiring colleges and universities to compile, publish and distribute an annual report that would provide information on the number of serious crimes that occur on their campuses. (In 1998, open campus police logs—discussed in the previous section—became part of the law as well.) Campus crime awareness, the law’s supporters argue, is the first step toward combating what Congressional findings indicated was a serious and growing problem: an increase in campus crime accompanied by a decrease in the accurate reporting of that crime by school officials.⁶⁴

Unfortunately, the effectiveness of the law has been hampered both by genuine confusion about what the law requires and the continued efforts of some school officials to keep their crime information secret.⁶⁵ In an attempt to clarify some of the law’s provisions and provide for greater compliance, the U.S. Department of Education issued formal regulations in April 1994⁶⁶ and June 1995⁶⁷ and sent out a “Dear Colleague” letter in May 1996. After the Department of Education faced mounting criticism for lax enforcement of the law,⁶⁸ Congress passed a resolution calling for the Department to take more aggressive steps to ensure that schools are accurately reporting campus crime.⁶⁹

By 1998, these concerns had multiplied to the point that Congress amended the Campus Security Act to expand and strengthen its provisions and enforcement.⁷⁰ The newly renamed Clery Act took effect on Oct. 1, 1998. On November 1, 1999, the Department of

Education issued final regulations for enforcement of the Clery Act.⁷¹ Those regulations went into effect on July 1, 2000.

The conference committee report that accompanied those changes went so far as to “strongly encourage” the Department of Education to enforce the provisions of the law and “to penalize those schools that do not comply with the reporting requirements.”⁷²

What schools must comply with the statistical reporting requirements?

All post-secondary institutions, public and private, receiving federal financial assistance (for example, institutional research grants, federal work-study assistance or other grants for students and National Direct Student Loans) are covered. Virtually every post-secondary institution receives some form of federal assistance.

What does this section of the Clery Act require?

Colleges and universities are required to publish and distribute an annual security report containing: (1) campus security policies and procedures, (2) the law enforcement authority status of security personnel, including their working relationship with state and local police agencies, (3) a description of drug and alcohol abuse, crime prevention and sexual assault education programs available to the campus community, (4) a listing of any policies that encourage accurate and prompt reporting of crime to the appropriate police agencies, (5) campus policies regarding law enforcement relating to drug and alcohol use and (6) actual campus crime statistics.

Anything else?

Not at the time this publication went to press. However, as noted above, campus crime reporting has been an exceptionally active area of law over the last several years, and that does not look to change anytime soon. Currently, for example, there is legislation before Congress that would, among other things, amend the Clery Act to require that schools (1) make information available about registered sex offenders on campus, (2) publish a policy regarding the notification of “parents guardians, and local police agencies” about students reported missing and (3) publish various types of information regarding campus fire safety.⁷³ Check for new developments on a regular basis. Resources such as the Student Press Law Center’s magazine, the *Report*, and Web site (www.splc.org) and the Security on Campus Web site⁷⁴ can be especially useful.

What types of crimes must be included in the statistical report?

Statistics must be maintained for the following

crimes and violations: (1) criminal homicide, which must be separated to distinguish between (a) murder/nonnegligent homicide and (b) negligent manslaughter, (2) sex offenses (separated to distinguish between forcible and nonforcible acts), (3) robbery, (4) aggravated assault, (5) burglary, (6) motor vehicle theft and (7) arson. Where an arrest or disciplinary referral is made, a school must also report statistics concerning: (8) liquor law violations, (9) drug law violations and (10) illegal weapons possession.⁷⁵

As part of a hate crimes provision in the law, statistics must also be maintained for crimes in categories (1)-(7), above, or any other crime involving bodily injury, in which the victim was intentionally selected because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity or disability.

Additionally, crimes must be broken down based on whether they occurred: (1) on campus, (2) in a student “dormitor[y] or other residential facilit[y],” (3) in or on a noncampus building or property or (4) on public property. (See definitions of different reporting areas below.)

Finally, where an incident involves more than one crime (for example, a victim is murdered after he is robbed), the “Hierarchy Rule” requires that the most serious crime be included in the statistical report.⁷⁶

Who must report crimes?

The act requires that campus security personnel and any “official of an institution who has significant responsibility for student and campus activities” (which, according to the regulations, would specifically include, for example, residence hall directors, coaches, faculty advisers to student groups, the director of the student center, etc.) report acts of campus crime for inclusion in the annual report.⁷⁷ Schools must also make a good faith effort to obtain information from local police for both on-campus and off-campus public property crime. (See further discussion, below).

Is it necessary that a crime be prosecuted before it is reported?

Any action that would constitute a crime in categories (1)-(7) above must be included in the report whether it is prosecuted by local law enforcement officials, campus judiciary or no one at all. In cases involving liquor or drug violations or weapons possession, the information must be included in the annual report where either an arrest is made or the accused is referred for campus disciplinary proceedings.⁷⁸

Should criminal incidents reported by students to a school counselor be included in the school’s crime statistic report?

The 1999 regulations change existing Department of Education policy⁷⁹ and exempt “pastoral or professional counselors” from having to report statistical information about crimes that are reported to them although, at their discretion, they may refer students to a voluntary, confidential reporting program if their school has one.⁸⁰ To qualify as a mental health or pastoral counselor exempt from having to report crimes, a person must be providing counseling as part of his or her official duties at the school and be functioning within the scope of his or her professional license or certification. The exemption does not include non-professional or informal counselors.⁸¹ The counselor exemption was made part of the federal regulations over the objection of several groups, including the Student Press Law Center. The SPLC unsuccessfully argued that simply noting the number of crimes reported to a counselor would not violate anyone’s privacy and would result in more accurate reporting, particularly with respect to sexual assault crimes, which experts say are often not reported to law enforcement authorities. If you have evidence of significant under-reporting at your school because of the counselor exemption, please contact the SPLC.

Where must crime occur for it to fall under the mandatory reporting requirement?

This has been one of the more controversial issues raised by the law. Many student news media organizations and campus safety advocacy groups criticized schools for distorting the true picture of campus crime when they failed to report student-related crime that occurred just off-campus, such as in a fraternity house or on a city street between two campus buildings. School administrators, on the other hand, said that requiring such “limitless” reporting was both unfair and difficult to administer and that they were simply following the law as written.

Because of this conflict, the 1998 amendments and 1999 regulations expand and clarify the reporting area. Reporting is now required for incidents that occur “on campus, in or on noncampus buildings or property, and on public property.”⁸²

The term “campus” means “any building or property owned or controlled by” an institution “within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls.” It also includes “property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a

food or other retail vendor).”⁸³

“Non-campus building or property” means “any building or property owned or controlled by a student organization recognized by the institution” and “any building or property (other than a branch campus) owned or controlled by an institution ... that is used in direct support of, or in relation to, the institution’s educational purposes, is used by students and is not

within the same reasonably contiguous geographic area of the institution.”⁸⁴

“Public property” is defined as “all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or

FBI Definitions of Crime Categories

The following definitions are summarized from the FBI’s Uniform Crime Reporting System (UCR), which schools are to use in complying with the crime reporting provisions of the federal Clery Act as well as in applying FERPA in the release of disciplinary records. Note that only those crimes marked with an asterisk(*) must be included in a school’s statistical report.

***Arson:** The willful or malicious burning of property with or without the intent to defraud. Includes attempts.

***Aggravated assault:** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assaults are excluded.

Other assault offenses: *Simple assault* is an unlawful physical attack by one person upon another where neither the defender displays a weapon, nor the victim suffers severe bodily injury. *Intimidation* is to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without

displaying a weapon or subjecting the victim to actual physical attack.

***Burglary:** The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Destruction/Damage/Vandalism of Property: To willfully or maliciously destroy, damage, deface or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

***Drug abuse violations:** State and/or local offenses related to the unlawful possession, sale, use, growing and manufacturing of narcotic drugs (definition includes specific drug categories).

Kidnapping/abduction: The unlawful seizure, transportation or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parents(s) or legal guardian. Includes hostage taking.

***Liquor-law violations:** State and/or local liquor law violations except drunkenness and driving under the influence. Federal violations are excluded.

***Murder/nonnegligent manslaughter:** The willful (nonnegligent) killing of one human

being by another.

***Manslaughter by negligence:**

The killing of another person through gross negligence. Traffic fatalities are excluded.

***Motor-vehicle theft:** The theft, or attempted theft, of a motor vehicle. Includes automobiles, trucks, motorcycles and mopeds.

***Robbery:** The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear. Includes carjacking where a motor vehicle is taken by force or threat of force.

***Sex offenses, forcible:** Any sexual act directed against another person, forcibly or against that person’s will. Includes forcible rape, forcible sodomy, sexual assault with an object and forcible fondling.

***Sex offenses, nonforcible:** Unlawful, nonforcible sexual intercourse. Includes incest and statutory rape.

***Weapons-law violations:** All violations of regulations or statutes controlling the carrying, using, possessing, furnishing, and manufacturing of deadly weapons or silencers. Attempts are included.

in a manner related to the institution's educational purposes."⁸⁵

Based on these definitions, school-related premises such as research facilities, teaching facilities, athletic facilities used by a school (including a city-owned auditorium or stadium leased for school games), fraternity and sorority houses and other off-campus student housing that may not be owned by the university but are operated pursuant to a contract with the school or otherwise "controlled" by it should all fall within the location categories for which crime statistics must be provided. Crimes that occur on privately owned property that is frequented primarily by students, but which is nevertheless not in any way "controlled" by the school (such as a favorite off-campus bar or an apartment complex) do not have to be included in the annual report.

How is off-campus crime information collected?

Because schools are required to report some crimes that occur off campus, they must make a "reasonable, good faith effort" to obtain crime report information from a local or state police agency.⁸⁶

May a school limit its reporting according to a map it has published that labels areas as "on campus," "non-campus," and "public" property?

Yes. The 1999 regulations allow a school to use a map to establish its reporting area.⁸⁷ However, the map must be provided to the campus community and it must be an accurate depiction of the geographic area. Because such a map might shield a school from later claims that it failed to report crimes not listed on its map, it is essential that campus news media organizations request a copy of their school's map on a regular basis to ensure that it accurately reflects the campus area. If you find that your school's map improperly excludes certain areas from their reporting obligations, the Department has indicated that you should immediately contact its Office of Student Financial Assistance in the regional office for the state in which your school is located and seek a review.⁸⁸

What period of time does an "annual report" cover?

The 1999 regulations indicate that the statistical information contained in each report should be based on the calendar year (Jan. 1 - Dec. 31) in which the crime was reported to campus officials.⁸⁹ (Previously, schools were required to report crimes according to when they actually occurred.) In addition, annual reports are required to contain statistics for the three most recent calendar years.

When must the report be made available?

Beginning with the 2000-01 school year, institutions must make their reports available by Oct. 1 of each year.⁹⁰

How can I get a copy of my school's report?

The law requires that schools "prepare, publish and distribute" their security report to all current students and employees. It also requires that schools alert student applicants that the report is available and provide a copy on request. The reports can either be mailed (either through regular or campus mail), e-mailed or hand-delivered in the form of part of a publication that is distributed to the campus community. The 1999 regulations also allow schools to meet the distribution requirement by posting the report on the Internet (or a school's Intranet) provided the school properly notifies the campus community of its availability online and offers to provide a paper copy of the report on request.⁹¹

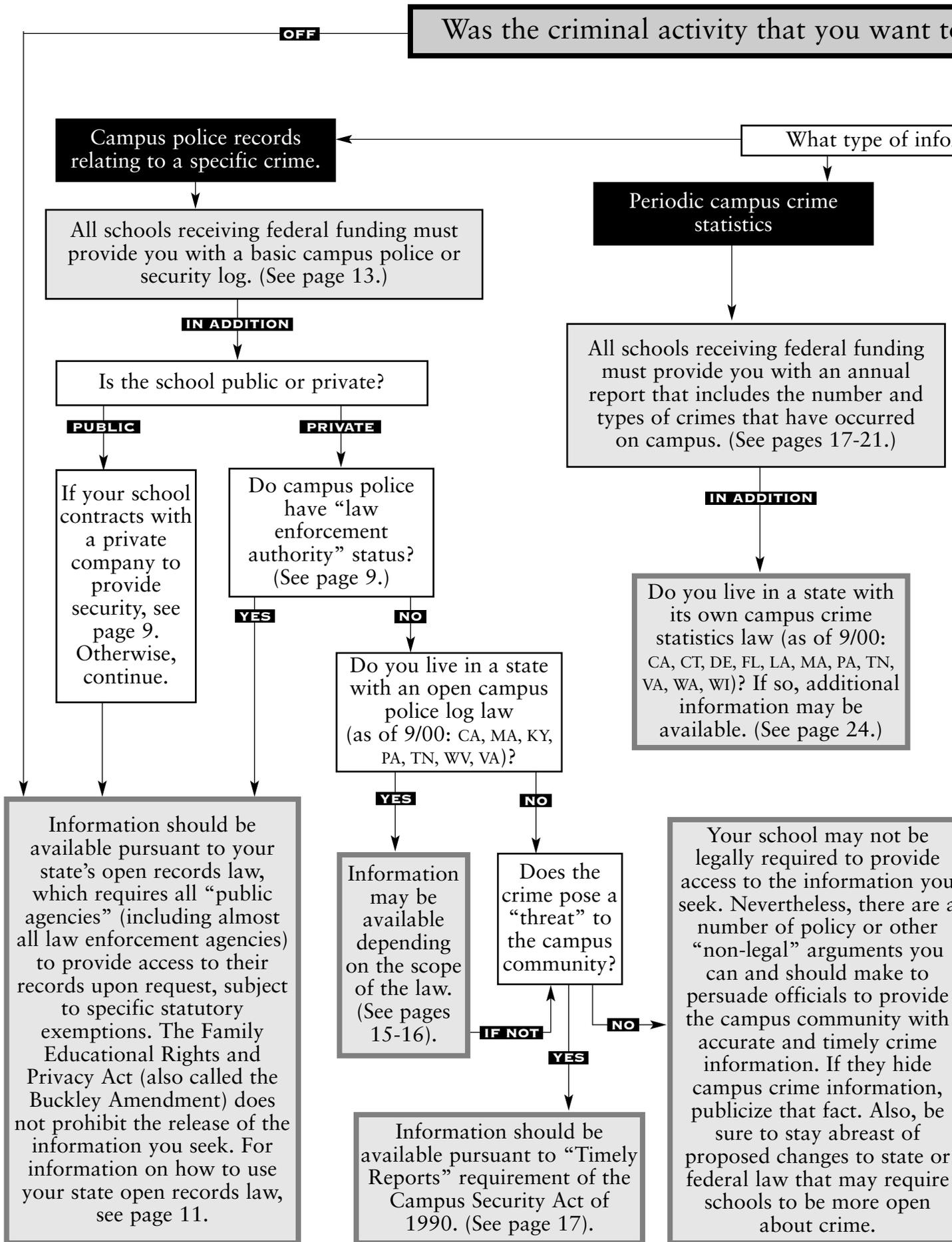
The actual reports compiled by schools take many forms, from a no-frills brochure to a full-color, tabloid-sized publication complete with poster-size maps and safety tips. Other schools have included the required information in existing campus publications or mailings, such as student newspapers, school catalogues, student handbooks or tuition bills. If you do not receive a copy you should contact your school's campus security office and request one. Additionally, *The Chronicle of Higher Education* and the Department of Education compile a comprehensive listing of crime statistics gathered from the reports of schools across the country.⁹²

What are the penalties for non-compliance?

An institution that does not comply with the Clery Act (and that would include providing inaccurate information) risks being fined up to \$25,000 for each violation and could lose its federal funding. In June 2000, the Department of Education imposed its first such fine. Mount St. Clare College in Iowa was fined \$25,000. As of October 2000, the college was appealing that fine.⁹³

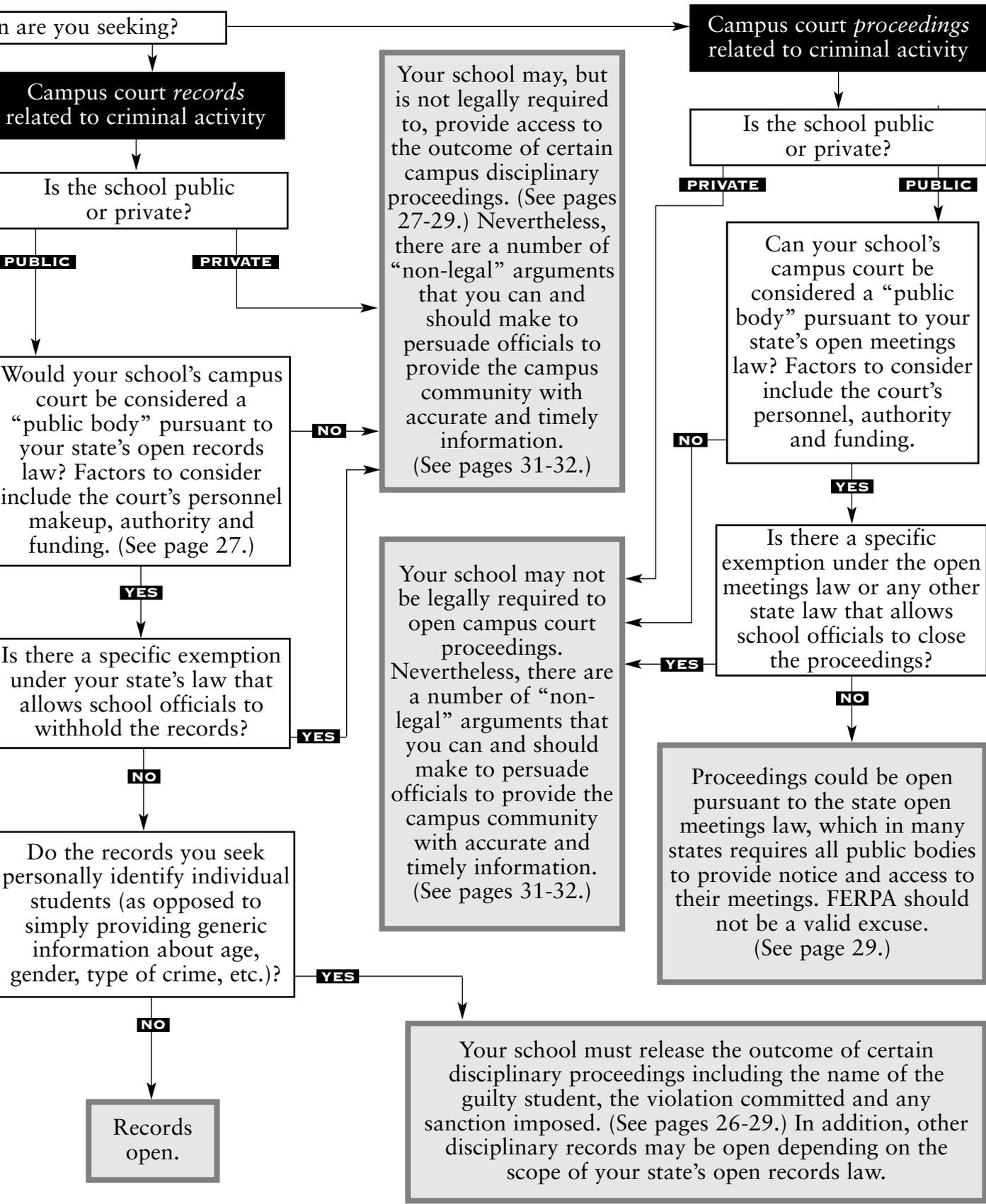
What can I do if my school is not following the required procedure or is providing inaccurate statistics?

If, despite your requests, school officials fail to meet their reporting obligations, you should file a written complaint with the director of the Regional Office of the Department of Education that serves the state in which your school is located.⁹⁴ Provide a summary of your situation and any evidence of the school's non-compliance. Follow your letter with a telephone call confirming that it was received and asking if there is any further information required. Carefully document all contact with the Department and ask that it notify you of its findings. Contact the Student Press Law Center and your members of Congress if you have any problems with the Department of Education's response to your complaints.



IS CRIME REPORTERS

er reported to on or off-campus officials?



USING STATE CAMPUS CRIME STATISTICS LAWS

In addition to the federal Campus Security Act, some states have enacted their own laws requiring schools to compile and release statistical information regarding campus crime. As of the September 2000, 11 states (California, Connecticut, Delaware, Florida, Louisiana, Massachusetts, Pennsylvania, Tennessee, Virginia, Washington and Wisconsin) had such legislation. (See the Appendix for citations.)

The advantage to some of these laws is that they require schools to report more information (for example, more or different categories of crimes must be reported, crimes from a broader geographic area must be included, more or different types of information must be included in reports) than required by the federal law.

An unusually broad state statute is Delaware's crime statistics law. Unlike the federal law, which requires a public or private university to report only certain designated crimes that occur on campus, Delaware requires universities to report the number and type of *every* offense that is reported to them. A university's willful noncompliance with the statute can result in it being fined up to \$10,000.

The Tennessee statute exemplifies a novel trend in state crime statistics laws. In that state, all public or private universities must report all crimes occurring on campus to the Tennessee Bureau of Investigation (TBI). In addition to the statistics submitted by each school, the TBI must also gather data submitted by state, county and municipal law enforcement agencies. Such data should indicate whether a crime victim is a student of a school located in the county in which the crime occurred and the name of the school attended. The TBI must then compile all of the statistics, divided by college, into an annual report.⁹⁵ This type of information should be of special value to student journalists attempting to get a complete picture of the campus-area crime scene.

Reporters in California should note that their state requires almost all public and private colleges and universities to maintain records of, among other crimes, all hate crimes that are reported to it or for which the campus police make an arrest. In addition, the school must maintain records of all non-criminal acts of hate violence that are reported to the campus police.

When using a state statute, journalists are advised to pay careful attention to the type of institution covered by the law. Unlike the federal law, some of the state laws are limited to public schools. For example, although Louisiana requires schools to report more types of crimes than the federal law does, the statute only applies to

public colleges and universities. And some laws, such as California's, are limited to schools of a certain size.⁹⁶ However, most states with crime statistics laws explicitly cover both public and private schools.

Obtaining the various reports should not be difficult for student journalists. Although a few states, like Delaware and Louisiana, clearly define the crime statistics reports as public records, most do not. However, every state requires that the report be given, upon request, to any currently enrolled student, student applicant or employee. A student reporter is no exception. Furthermore, a few states require that institutions send their report to all enrolled students every year.

If the school refuses to comply with the state law, there is the possibility of suing it in court and obtaining damages. For example, in California a student reporter whose school refuses to provide the required report can be awarded up to \$1,000. In other states, like Delaware, the attorney general may be authorized to sue on behalf of the state to force the college to comply with the law. Unfortunately, other states have put little "bite" in their laws. Students in these states would probably be limited to a court order compelling a school to release the information.

SPECIAL STORY IDEAS FOR USING CRIME STATISTICS

Although the law provides the means to obtain these numbers, it is ultimately your job to make sense of them for the reader. Of course, you will probably want to do a story on the numbers themselves, especially if there has been a significant increase or decrease in them over the past year or several years. But this traditional approach does not have to be the only way you can use the statistics.

For example, how about a story comparing the number of crimes at your school with the number of crimes at other schools to a comparable student population? What seems to account for the difference? Is it just that one school is in a more crime-ridden area or does one school have different methods for reducing crime or reporting statistics? These are only two of the many factors that could explain the differences in campuses and the statistics they report. Avoid making comparisons between schools based on raw statistics alone.

Another potential story is to look at what types of programs your school has initiated to help reduce crime. Look at the trend in the statistics, does the program seem to work? With this analysis in hand you are much more likely to get candid answers from your campus police

about the effectiveness of their programs than if you simply asked them how their programs are doing without this information.

Finally, sometimes the accuracy of the report will be the real story. As discussed elsewhere, there have been a number of claims that some schools intentionally or unintentionally provide misleading figures. How are the statistics compiled at your school? What areas of the campus community are included in the report and what areas are not? Does such reporting provide an accurate picture of campus crime at your school? Do the numbers match up with information you may have obtained from other sources, police log entries, for example? What might be done to improve the reporting process?

While school officials may only be required to issue one report per year on the dangers of campus crime, you owe your readers much more.

ACCESS TO CAMPUS COURTS

OVERVIEW

After Congress enacted the Campus Security Act in 1990 and clarified that the Buckley Amendment could not be used by schools to deny access to campus police reports in 1992, many access advocates thought that the legal battle for campus crime information had been all but won. But as the new laws went into effect and school officials realized that they were now legally obligated to provide more crime information than they had before, a new battlefield arose: the campus disciplinary process.

For some years, schools had allowed campus disciplinary bodies to determine the punishment for students accused of violating school rules such as academic dishonesty and curfew violations. But as the number of criminal incidents on campus increased, these campus courts began considering more cases relating to criminal behavior as well. And these deliberations were typically conducted behind closed doors.

The secrecy of campus courts became a matter of concern for the campus media as the perception grew that some schools were using the disciplinary process as a means for thwarting public access to crime information. As one study of campus police and security departments concluded, the “primary method used [by schools] to keep crimes from becoming reportable was to use the campus judicial/student court system.”⁹⁷ Student journalists and others began to believe that some school officials were actively discouraging students from filing

police reports and instead were directing them into the campus disciplinary process where the matter would be handled without any public awareness of the criminal incident at issue.

The Red & Black student newspaper at the University of Georgia in Athens became the first media organization to sue for access to campus court information. In 1991, it went to court to get access to the proceedings and records relating to allegations of hazing against a campus fraternity. Hazing is a crime in Georgia, as it is in many other states. Eventually, the newspaper was not only awarded access to the information in that case, but also in a case involving charges of arson and gay-bashing against an individual student.⁹⁸

In an effort to assist the campus media and promote more openness in campus judicial proceedings, the Society of Professional Journalists created a Campus Courts Task Force in 1993. The coalition of national journalism and education organizations that make up the Task Force has joined in voicing their concern that crime is being hidden on many campuses through these secret courts. In contrast, the national Association for Student Judicial Affairs and many college officials have expressed their concerns about damage that could be done to participants if proceedings are opened to the public. The result is a topic of heated debate.

WHAT ARE CAMPUS COURTS?

The development of a formal campus court system began during the 1960s, according to the Association for Student Judicial Affairs,⁹⁹ a national, nonprofit organization dedicated to issues related to student discipline. The civil rights movement and protests against the war in Vietnam led to student protests over campus conduct regulations and disciplinary sanctions. After the landmark 1961 case *Dixon v. Alabama Board of Education*,¹⁰⁰ which required public colleges and universities to afford due process rights to students before taking disciplinary action, colleges and universities began a transition from individual adjudication of conduct violations to the campus disciplinary systems used at most colleges today, according to the ASJA.

A central tenet of the campus disciplinary process, according to the ASJA, is that it be educational. The association recommends that campus judicial systems include students as contributing participants in the decision-making process. Most campus courts are composed of panels of either students, students and faculty or trained hearing officers. According to the ASJA, public schools must apply appropriate standards of

substantive and procedural due process in disciplinary proceedings. In addition, the association says courts have consistently held that private institutions, which are not required to follow due process in a formal sense, must demonstrate fundamental fairness and compliance with their own written regulations and procedures.

However, the ASJA stresses that campus courts are not charged with prosecuting crimes, but rather with addressing violations of the student code of conduct. The association says behavior that violates both the law and campus codes should be appropriately reported and addressed through both venues. However, in reality many serious criminal incidents that occur on campus are dealt with exclusively in campus disciplinary proceedings. The most extreme punishment a campus court can levy against a student is expulsion from the institution, but probation is the most common.

THE CURRENT CONTROVERSY

Campus Judicial Affairs Officers' Point of View

College judicial affairs officials present several arguments why they believe campus judiciary proceedings must remain closed to the public.¹⁰¹ The goal of campus disciplinary proceedings, they say, is to educate students who have violated college codes of conduct about the inappropriateness of their behavior, not simply to punish. They believe that students can better learn to correct their behavior in an environment free from public scrutiny. Moreover, as educational institutions, campus courts do not substitute for, but rather act concurrently with, proceedings in courts of law. These legal proceedings provide the public with sufficient information on campus crime. Further, campus disciplinary proceedings are non-adversarial with no rights of discovery, cross-examination or subpoena. Because campus judicial officials must rely on the voluntary participation of witnesses who may be unwilling to come forward or provide candid testimony if the proceedings are public, they say campus courts must remain closed. Finally, supporters of closed campus courts say, students who wish to maintain their anonymity or who may have insufficient evidence to proceed in a criminal court depend on closed campus disciplinary proceedings as their only recourse when they have been victims of campus crime.

The Media's Perspective

On the other hand, the news media, as representatives of the public, offer several reasons why the proceedings of campus disciplinary courts that involve criminal behavior should be open.¹⁰² Most importantly, they say, open proceedings will foster greater awareness of crime among the campus community and

thus safer college campuses. If students are aware that crimes are occurring on their campus, they will take precautions to avoid becoming victims of crime. Further, critics of the present system say, the accuser and the accused cannot be assured the fair and equal treatment that result from public scrutiny if a trial is held behind closed doors. In addition, open courts facilitate student trust of campus judiciary systems and their officials. Students who understand campus courts and how they function are more likely to have confidence in their results than those who are excluded from the process. Unfortunately, these critics say, in many of the instances where the public has gotten a peek behind the doors of a campus court, the picture presented has encouraged anything but trust.¹⁰³ Charges of favoritism for student athletes or other "select" defendants, inept administrators and the cover-up of serious criminal activity abound. True or not, they say, the climate of secrecy that surrounds campus courts certainly helps fan further rumors and undermine the public trust. Finally, they say, it seems illogical and inequitable that the criminal actions and subsequent discipline of a student who commits a crime on campus will remain secret when that same information would be public if the crime were committed even a few yards off college property or by a non-student. Despite the claim of campus court officials, critics say that there are many examples of cases involving non-academic criminal conduct being heard only in a campus court and never being referred to outside law enforcement officials. Nowhere else in America, proponents of more open campus courts say, does such a "Star Chamber" system of secret justice remain in existence — and for good reason.

OBTAINING CAMPUS COURT INFORMATION

Student journalists seeking access to campus court records and proceedings may have to leap through two separate hurdles. First, the journalist must have some means of obtaining access to the records or proceedings. This hurdle can be overcome by persuasion or, if that fails, state law. Second, even if state law seemingly requires disclosure of campus court records or admission to proceedings, school officials may still attempt to use federal law, specifically the Buckley Amendment, as an excuse for blocking public access.

Using Persuasion

Before asserting your legal "right" to attend campus court hearings and obtain related records, it is always better to try to persuade the court officers or records custodian that keeping the public informed about campus

judicial proceedings far outweighs any perceived benefits from secrecy. Be sure to emphasize that two principle functions of campus courts, to punish fairly and to deter others from violating the code of conduct in the future, are both well served by making the hearings open to the public.

Using State Law

If you are unable to obtain access by persuasion, you will have to rely on your state's open meetings and open records laws. Ideally, you should know the law before you try to gain access so you can refer the campus court officers to the relevant sections. Look at the language of the statute to see what types of public bodies it covers and be prepared to argue why the campus court fits one of them. For example, the Supreme Court of Georgia held that because the University of Georgia Board of Regents was a "public agency" under the state open meetings and open records laws, and because it delegated its power to discipline students to the campus court, the court itself was a public agency that must comply with the state's freedom of information laws.¹⁰⁴ A similar result was more recently reached by the Ohio Supreme Court,¹⁰⁵ although a subsequent ruling by an Ohio federal district court has clouded the effect of that case for the time being.¹⁰⁶ An appellate court in North Carolina ruled that a campus judicial body at the University of North Carolina at Chapel Hill was a "public body" under the state's open meetings law, its disciplinary *proceedings* need not be open to the public because of an exemption in that law.¹⁰⁷ The case did not involve access to disciplinary records.

Since Georgia, Ohio and North Carolina are the only states where an appellate court has decided the question of whether a campus disciplinary board is a public body, students outside of those states will have to argue to campus officials that campus courts should be considered a "public agency" under their state open records law. Obviously, the argument must be tailored to the exact language of the applicable statute. Trial courts in Louisiana and Oklahoma have refused to open campus court records or proceedings, but these cases did not result in a published court opinions.¹⁰⁸ As discussed above, a federal district court case in Ohio was ongoing as this publication went to press.

While every statute defines "public agency" somewhat differently, two general statements can be made. First, and most importantly, no court has ever held that a campus court at a public school does not fall under the definition of a public body in the state open records law. Second, many state statutes are written broadly

enough so as to enable you to argue that a campus court at a public school should be considered a public agency. With that in mind, it should be noted that some laws are more susceptible to such interpretation than others.

For example, some statutes define "public agencies" to include any board of a state institution that is supported by public funds.¹⁰⁹ Under this definition, the student can argue that a campus court is a public agency because it receives its funding from the school, which in turn receives its funds from the state. Other statutes explicitly include in the definition of "public agency" any *committee* of an institution of higher education or university board of regents.¹¹⁰ A committee should, at the very least, include those associations empowered to perform a function for another. Since the campus court is created precisely to exercise a function delegated by the state to the university (discipline for violating the law or campus rules), it is in effect a committee of the board of regents.

A few states have statutes that define "public agency" so broadly so as to seemingly cover every government entity not specifically excluded by the statute. For example, New Jersey's open meetings law defines a public agency to include "any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person...."¹¹¹ Somewhere in that definition probably lies a campus disciplinary hearing.

OUTCOMES OF SOME DISCIPLINARY PROCEEDINGS EXEMPTED FROM FERPA

Once you are able to show a right of access to campus court records, many journalists have had an additional hurdle to overcome. Under the federal Family Educational Rights and Privacy Act (FERPA),¹¹² also known as the Buckley Amendment, a school can lose its federal funding if it has a "policy or practice of permitting the release of [students'] educational records ... without the written consent" of the student involved.¹¹³ Though simple on its face, the Buckley Amendment has been the source of much controversy and legal dispute, most of it centering on what exactly is meant by the term "education record." (See also the discussion on page 11.)

The statute, which has been amended several times, defines "education record" as any record that (1) contains information directly related to a student and (2) is maintained by an educational agency or institution.¹¹⁴

Among other things, the statute specifically excludes from this definition law enforcement records held by the campus police.¹¹⁵ Access proponents argued that the records of campus courts that hear cases involving allegations of criminal behavior should be considered “law enforcement unit records” and thus exempt from FERPA’s limitations. Access opponents strongly disagreed.

In the fall of 1998, Congress took a step toward settling the matter. Along with the amendments to the Clery Act (which included opening police logs), Congress altered FERPA to explicitly say that certain disciplinary records are not covered by the law.

Specifically, the new law says, “Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence ... or nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution’s rules or policies with respect to such crime or offense.”¹¹⁶ In other words, the outcomes of disciplinary proceedings involving crimes of violence or nonforcible sex offenses are not covered by FERPA when the accused is found guilty in that proceeding.

Does FERPA require schools to release the outcome of disciplinary proceedings?

Unfortunately, no. Although the 1998 law does not require schools to release the outcome of disciplinary proceedings, it takes away their most frequent excuse for refusing to release that information: FERPA. No school, public or private, can use FERPA as its excuse for refusing to provide these disciplinary records.

But because federal law does not require the release of disciplinary records, the ability to actually obtain them will require one of two things: (1) willingness by a school to release the records simply because they can or (2) some other legal obligation that requires their release. Most public schools will be required to provide access to these records under their existing state open records laws. Indeed, within days of the law’s passage, Patrick Nolan, a staff member of *The Standard*, Southwest Missouri State University’s student newspaper, requested access to the outcomes of campus disciplinary proceedings at his school pursuant to the state’s open records law. The case soon went to court, and a Missouri Circuit Court judge, citing the federal law, affirmed the school’s obligation to release the information. The court’s order, reprinted in the Appendix, is the first such ruling in the country following the 1998 changes to FERPA.¹¹⁷

Although this decision only addresses the application

of Missouri’s open records law, it should provide useful ammunition to journalists in other states seeking similar access. In fact, even prior to the 1998 amendments and the Missouri decision, at least two other courts had specifically held that campus disciplinary records, unless they deal with academic offenses such as plagiarism, must be open to the public under state law. In the first case, a student reporter attempted to obtain records of a campus disciplinary proceeding involving a fraternity at the University of Georgia. The Georgia Supreme Court upheld that request.¹¹⁸ Four years later, the Ohio Supreme Court reached a similar conclusion in a case brought by the student newspaper at Miami University.¹¹⁹

What kind of disciplinary records does the 1998 law say schools can release?

The law says a college or university can release the final results of a disciplinary proceeding when (1) the student is an “alleged perpetrator” of a “crime of violence” or a “nonforcible sex offense,” and (2) the student has committed a violation of the institution’s rules or policies with respect to the allegation.¹²⁰ An “alleged perpetrator” is a student who is alleged to have committed acts that would, if proven, constitute a crime of violence or a nonforcible sex offense (see list below).¹²¹ The allegations can be made “at any time during the disciplinary proceeding, beginning from the time that an initial complaint or a charge is filed, until the final result is reached” and the allegations can be made by a victim, another witness or the school itself. “The institution does not need to refer the matter to the police or await any criminal proceedings in order to consider a student an alleged perpetrator of a crime of violence or nonforcible sex offense.” The determination need not mean that the student has committed a crime (a matter that can only ultimately be determined by a court of law), but rather that an allegation was made that the student engaged in the type of behavior that rises to the level described in the definitions of the crimes provided below.¹²²

What constitutes a “crime of violence” or a “nonforcible sex offense?”

The Department of Education issued regulations in July 2000 describing how exactly these terms should be defined. A “crime of violence” means one of the following offenses: (1) arson, (2) assault offenses, (3) burglary, (4) manslaughter by negligence, (5) murder and nonnegligent manslaughter, (6) destruction/damage/vandalism of property, (7) kidnapping/abduction, (8) robbery and (9) forcible sex offenses. “Nonforcible sex offenses means (10) statutory rape and (11) incest.¹²³ Each of these terms is defined according to the FBI’s Uniform Crime Reporting

Handbook. (See page 20 for these definitions.)

At what point in the disciplinary process can these records be released?

They can be released when there is a “final result.” Final result means “a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution.”¹²⁴ This allows a school to disclose the results of a proceeding *before* all internal reviews and appeals have been exhausted. “Institutions will not be able to claim that FERPA allows them to release results of disciplinary proceedings only after all internal reviews and appeals have been exhausted.”¹²⁵

What constitutes “the final results” of a disciplinary proceeding that can be released?

According to FERPA, schools can release four things: (1) the name of the student about whom the allegation is made, (2) the violation committed, (3) any sanction imposed by the institution on the student and (4) the name of any other students, such as victims or witnesses, but only when they have provided their written consent. “Violation Committed” refers to the institutional rules or code sections that were violated *as well as* any essential findings supporting the institution’s conclusion that the violation was committed. “Sanction Imposed” means (1) a description of the disciplinary action taken by the institution, (2) the date of its imposition and (3) its duration.¹²⁶

Is it possible to obtain the outcome of disciplinary outcomes from the past?

According the Department of Education’s regulations, release is only allowed for proceedings in which the final results were reached on or after October 7, 1998, the date the legislation was signed into law.¹²⁷ However, there is nothing in the law itself to support this interpretation. Once the change to FERPA was made, schools should be able to release the outcome of any disciplinary proceedings that meet the requirements described above no matter when they occurred.

As the preceding discussion makes clear, the 1998 changes to FERPA provide a dramatic opportunity for journalists who are reporting on campus crime. Equally important, even for those disciplinary records not explicitly excluded from the scope of FERPA (for example, the outcomes of proceedings involving criminal behavior that does not constitute a crime of violence or nonforcible sex offense), FERPA does not necessarily override any obligations for disclosure created by a state freedom of information law.¹²⁸ State legislatures ultimately have the authority to determine whether the records of state agencies should be released.

It is also important to remember that FERPA expressly applies only to information that is “directly related” to a student.¹²⁹ It does not apply to records that contain only general “non-identifying” information, such as the age and sex of the accused, the offense and the general location of the conduct. Nor does it apply to any information relating to college faculty, staff or other non-students.

Even for those disciplinary records the release of which FERPA does affect, a strong argument can be made that under a state open records law, a public college or university has an affirmative obligation to remove personally identifiable information from the record (by blacking it out) and turn over the remaining information upon request.¹³⁰

Please keep the Student Press Law Center informed if you are having problems getting access to campus disciplinary records. And also let us know of your successes when you obtain these records. You can contact us via our Web site: www.splc.org.

Campus Court Proceedings: FERPA No Excuse

The U.S. Department of Education, which is the only administrative agency with authority to enforce the Buckley Amendment against schools, has formally declared that the law cannot be used to prevent public access to campus disciplinary *hearings*, even if the *records* of such hearings are off-limits. “FERPA does not prevent an institution from opening disciplinary proceedings to the public.”¹³¹ Some schools say that if education records are discussed in a disciplinary proceeding, then Buckley requires the closure of the proceeding to avoid the release of the records. However, if that were true, any school that allowed any students to attend disciplinary proceedings, whether as witness or judge, would be violating the law by their presence.

In practice what the Department of Education’s statement means for student journalists is that, if your state open meetings law requires campus disciplinary hearings to be open, you cannot be excluded from them because of FERPA. (See the Appendix for the citation to your state’s law.) Administrators and student officers who refuse to allow the public admittance to such meetings may now be violating state law and may, depending on the statute involved, be liable for fines and attorney’s fees.

The Future of FERPA

Although access advocates applauded the changes Congress made to the Buckley Amendment in 1998, many felt they did not go far enough. They argue that FERPA should not apply to disciplinary records that

relate to any criminal behavior, including non-violent crimes like embezzlement and vandalism, and that schools should be affirmatively required to open disciplinary records and proceedings involving crime to the public. Further legislative changes to the Buckley Amendment could be the result of these concerns. The Student Press Law Center's Web site is a good resource for keeping track of developments on this front.

HOW TO BETTER COVER CAMPUS COURTS

As the debate over access to campus disciplinary proceedings has grown, campus judicial affairs administrators have complained that some members of the media have suggested every campus court has as its mission the cover-up of corruption, the protection of the guilty and the abuse of innocent victims. They have voiced concern that the strong ethical principles and the commitment to students most members of their profession espouse have been lost in the uproar.

In the mind of any good journalist, secrecy breeds suspicion. But most would admit that some members of the campus media have neglected their responsibility to cover the campus disciplinary system and the officials who run it in a meaningful way. Looking at this little-understood part of campus life as more than just a source of scandal can result in excellent journalism that provides the community with information it can use.

A growing number of student newspapers are creating a campus courts beat and are attempting to establish a cooperative working relationship with their judicial affairs officials. Reporters are asking about the judicial affairs philosophy of their campus, the procedural details of campus disciplinary proceedings and the written code of student conduct the violation of which can result in punishment. The Association for Student Judicial Affairs (see Appendix for contact information) is a good source for background information on the topic. As with campus police and security departments, student journalists who have worked to develop a good rapport with judicial affairs officers will more readily be granted access to information when an incident occurs than those who are strangers.

REPORTING ON CAMPUS CRIME AND CAMPUS COURTS: A "HOW TO" GUIDE

by Gordon "Mac" McKerral
Campus Courts Task Force
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The ideas suggested below should serve as a starting point for your work. Once you are into it, let your journalistic good sense be your guide. I offer only two cautions: First, this outline is for a reporting project geared toward educating readers at your school about how campus crime reports and the campus courts system work and the public access issue. Leave opinion writing until after you report thoroughly, accurately and fairly. Make sure all sides of all issues are represented. Let readers and editorial writers draw their own conclusions. Second, when handling sensitive areas and/or charges leveled between parties, get documentation, verify and corroborate with more than one source. And always try to get sources to speak on the record.

And remember: Keeping organized and systematic reports of crime on your campus is the only way you can accurately identify discrepancies between annual crime reports released by your college or university and reports you acquire throughout the year. Document efforts to get crime reports when they are refused. Be consistent in efforts to acquire information.

The First Step: Educate Yourself

Before you even think about interviewing, find out as much as you can about the topics you will write about. A good place to start is with the university documents that address campus crime and courts/hearings/records of any kind. Some examples: faculty handbooks, university catalogs/bulletins, faculty adviser handbooks, student handbooks and mission statements. When you reference these and other policy documents in your stories, cite them and quote them directly.

Next, get a copy of your state's open meetings/open records statute and read it so you can identify how it treats university business. If you can't figure it out, contact your state Attorney General's Office, the state press association, the Student Press Law Center or the SPJ Freedom of Information Chair. See if someone can't give you some help.

Now, look for articles written on the issue. Get into the library on a computer and/or periodical guide and look for stories written about campus crime, campus judicial hearings, campus courts, crime statistics and

reporting them to the Department of Education, the Buckley Amendment, the Higher Education Act, the Student Right to Know Act, etc. These are valuable for two reasons: They will help you identify issues and develop good questions for sources, and they will provide you the names of sources for more information.

If you have access to the Internet, online legal information services or similar bulletin boards/lists, get on one and get out the word that you are looking for information and/or good sources for your stories. Be careful here, and always verify sources that cooperate via computer transmission.

How Many Stories? Who Should I Interview?

Once you have a handle on the issue, outline your series. Build around a main story. Keep story lengths manageable, hence readable and easier to organize. Issues include, but are not necessarily limited to, how your school's system works, what authority the system has, who serves on hearing boards/courts, etc. What about academic privacy? How do students feel about serving on and/or being subject to campus court decisions? How do faculty members feel about serving on these courts? What about parents? Do they know how the system works? Victims' rights groups come into play, particularly when more serious crimes such as assault, sexual assault and battery are involved. How and what does the university report on crime?

What about civil law enforcement and prosecutors? How do they feel about crimes being handled/judged by students and/or campus personnel? This list is just a starter. Your school, its policies and recent action by campus courts at your college or university will help clearly define stories. And the stories you choose to write will help to determine ...

The Sources You Need

Most of these will be clear, but just as a guideline remember what a variety of sources provides: perspective and balance. I try to get my students to identify sources (as related to perspective) this way: local (at your school, from your readership area), state, regional and national. In some cases, a source from each of these categories may be needed to help paint the big picture.

For example, a local attorney or governmental attorney, a spokesperson for the state bar association or the state attorney's office and a national legal organization representative. That same genealogy would apply to a campus student affairs officer and/or a regional or state student affairs officer organization. It would also apply to campus police and state and national law enforcement organizations.

Other source selections will be dictated by your effort to balance viewpoints and opposing views. There are many sides to the story of public access and crime. Represent them all fairly.

Always conclude an interview with "thanks," and "I may need to get back with you," and "Do you know anyone else that I might need to talk to about this?" And a look at what is happening at other schools in your state or region is appropriate for developing perspective.

Resources

Anyone on the Campus Courts Task Force or Security on Campus can help. But remember, the Task Force and its allies have a mission and a viewpoint. You need to look at all angles. The group most interested in maintaining closure of the campus court system is the Association for Students Judicial Affairs (ASJA), but there are others. And the ASJA says it supports the open and accurate reporting of campus crime by universities and colleges.

And Finally

Think graphics. This project needs infographics/photos/art/illustrations. Put a team together and do it right. Now ... go to it.

McKerral is a former chair of the Society of Professional Journalists Campus Courts Task Force and a board member for the national SPJ. He is managing editor at The News Herald in Panama City, Fla., and was for 10 years a journalism professor and adviser to the student newspaper at Troy State University in Troy, Ala.

TURNING UP THE HEAT

One of the most effective means of persuading school officials to make more crime information accessible is to help them realize that the consequences of cover up are far worse than those of openness. Every campus journalist needs to understand the politics of access.

PUBLIC PRESSURE

Make the issue of access to campus crime information a regular news item in your publication. Editorialize about why your school's policy denying access to police logs or disciplinary records needs to be reconsidered. For example, does your community know that panels of student or faculty judges are hearing cases that may include sexual assault or theft behind closed doors?

Many newspapers are hesitant to make themselves a focus of the news, but you have to remember that it is

your readers who are ultimately being denied information and they who will suffer because of it. Get them involved in the battle.

Enlist the support of the student government or other sympathetic campus groups including the faculty senate and women's and minority student organizations whose members may have been the victims of crime on campus.

Contact the local news media and professional press organizations such as the Society of Professional Journalists to make them aware of your situation and enlist their support. Find out if they have had similar problems getting information from campus officials. They might be interested in the records you seek and be willing to join in your effort. Given the timeliness of the issue of campus crime, they might also run stories about your efforts.

Contact local, state or national legislators who might vote on funding for your school and tell them your plight. Frequently politicians rely on student campaign workers and look for student votes. They might be able to apply some effective pressure on school administrators. Many of these political leaders will have children in college and may react with the concern of parents to the situations you describe.

Urge students who are victims of crime on campus to make it known. Ask them to report any incidents to the local police (and not to presume that campus security will do that for them) and to come forward to your newspaper to relate their stories. Explain that the campus community should know where and how crimes are being committed so that they can take steps to protect themselves. Run a house ad in each issue that includes the city police's phone number and your office number and tell readers to call when they are victims of crime.

Finally, contact the Student Press Law Center if you need answers to questions about the law and to keep us posted about your situation. The more information the SPLC has about the extent of the problem student publications are having in gaining access to campus crime information, the better able we will be to help you fight to get it.

SCHOOL LIABILITY FOR FAILURE TO WARN

In what may prove the most convincing argument yet, schools that refuse to provide access to accurate and timely campus crime information may soon find themselves feeling it in one place it really seems to hurt — the pocketbook. Student journalists attempting to persuade campus police authorities to disclose

information regarding campus crimes can bolster their efforts by informing school officials of their potential legal liability should they refuse. Courts nationwide have held schools civilly liable for crimes committed against their students when the school has failed to warn the student body of the dangers of crimes committed on campus. The California case of *Peterson v. San Francisco Community College District*¹³² is illustrative.

In *Peterson* a man hiding in foliage assaulted a female student on a stairway in the college's parking lot. The college knew of previous similar incidents in the same area.¹³³ In holding that the college had a duty to exercise reasonable care to protect its students,¹³⁴ the court emphasized that a college "is not immune for failure to warn its students of known dangers posed by criminals on campus."¹³⁵ In making this determination, the court relied on several criteria, chiefly foreseeability and control.¹³⁶ The previous similar attacks served to notify school officials that "any woman who might use the stairs or the parking lot would be a potential target."¹³⁷ The attack was therefore foreseeable. Further, since the incident occurred on campus, the college clearly controlled the premises where the student was assaulted.

As in the *Peterson* case, courts in other states have relied on foreseeability and control as the determinative factors in holding schools liable for criminal activities on their campuses.¹³⁸ In a more recent case, for example, the Kansas Supreme Court ruled that Kansas State University had "a legal duty to use reasonable care" to protect a student from criminal conduct that might occur in a dormitory common area.¹³⁹ That duty, the court ruled, included the duty to warn students of foreseeable dangers. In this case, a female student was sexually assaulted in her dorm by another resident, who, it turned out, was a KSU football player who had been accused of raping another student three weeks earlier.

Clearly, schools that know about campus crimes and hide them from their students must be prepared to suffer potential legal liability for their actions. The threat of this risk serves as a powerful weapon in the student media's battle to protect their student readers.

GOING TO COURT

Filing a lawsuit to get the campus crime information you want will always be a last resort. It is a slow and sometimes expensive process to get a court ruling. But if the law suggests you have a legal right of access to the information you are looking for and none of your other efforts to secure that right have succeeded, taking your school to court may be the only alternative. The Student Press Law Center can provide assistance in finding a

lawyer to represent you for little or no charge when you get to that point.

Some student journalists have sought out other local news media to join their lawsuit. This can add weight and credibility to a claim and can increase the resources available.

As an alternative to private litigation, some attorneys have also suggested asking the local district attorney to prosecute the campus security or college administration for obstruction of justice if there is evidence they have not been passing on information about serious crime to the local police or prosecutor. Apparently no school has ever been prosecuted on this basis, but a serious cover-up might prompt a local prosecutor to act.

AVOIDING COMMON LEGAL PITFALLS IN CAMPUS CRIME REPORTING

While establishing a strong campus crime beat may be the most important job carried out by a student media organization, it can also be among the most problem-filled, particularly in the areas of libel and invasion of privacy. Unlike a sports story, where reporting a score incorrectly might agitate a few readers, falsely reporting that an individual has been arrested for a crime can pose serious legal problems. While a detailed discussion of these topics is beyond the scope of this publication, the following should alert you to some of the potential trouble spots.

LIBEL

Libel is the publication (or broadcast) of a false statement of fact that harms an individual's reputation. Obviously, reporting that someone has been accused of or is any way involved in criminal activity will almost always damage a person's reputation and — if the report is false — is one of the surest ways to end up as a defendant in a libel lawsuit.

To that end, newsrooms should adopt strict editorial policies regarding crime reporting that are designed to catch problems before publication or broadcast. Truth is an absolute defense to a libel charge. Thus reporters should be appropriately cautioned about the need to take scrupulous notes, obtain copies of all documents and consult all relevant sources. Editors should be made aware of the special need to verify reported facts and to watch for imprecise or misleading copy, headlines or

photograph captions. Legal terminology can sometimes be confusing. Such terms should not be used or changed, however, until their meaning is understood. Legal reference materials, such as *Black's Law Dictionary*, available in most libraries, or a discussion with a practicing attorney or law professor may prove helpful. The crime beat is probably not the place for a brand new reporter to get a feel for the job. There is little room for error. You must get the story right.

Whenever possible, cite a public record (a police log, filed court records, etc.) as the source for your information. Many states recognize a "public records privilege," which will insulate a media organization from liability as long as the information was fairly characterized and accurately reported from certain records, even if it later turns out that facts contained in the public record were false. For example, if a police arrest sheet says that "John Doe, 22, of 1212 Main Street," was arrested last night for "assault" and you accurately report that information in your newspaper and attribute it to the police record, many states will protect you from liability even if it later turns out that John Smith — and not John Doe — was the person arrested. However, even if this privilege is recognized in your state, it may not apply to all public records. Thus do not ignore your responsibility to independently verify relevant facts that could damage the reputation of those you are writing about.

INVASION OF PRIVACY

Invasion of privacy is related to libel law, with some important differences. Invasion of privacy law is generally concerned with a person's right to be left alone. The most common types of invasion of privacy problems of which campus crime reporters should be aware include:

Publishing information that may be considered "private." Publishing the very intimate, private and embarrassing details of a person's life without his or her consent can subject one to an invasion of privacy lawsuit. Unlike a libel claim, the fact that a statement is true is no defense. Examples might include publishing information about a person's medical condition, sex life or financial status. Information about a person that is already known outside a person's small circle of friends or family or information that could easily and lawfully be discovered will generally not support this type of privacy claim. Most importantly for crime reporters, material that can be lawfully obtained from public records will rarely be considered private.¹⁴⁰ Generally speaking, if something would be considered "newsworthy," it will not be

considered “private.” In almost all cases, when the police arrest or criminally charge someone with a crime, or someone accuses another of criminal behavior, that information will be considered newsworthy, no matter how embarrassing it might be.

Intruding on an individual’s “private space.” The news media has no special license to intrude in someone’s private space without consent. The press has no special right to trespass, to plant electronic “bugs” or secret cameras or to fraudulently misrepresent who they are to gain access to a private place to which they would otherwise not have access. The press also has no special right to enter a closed crime scene without the consent of authorities, although any restrictions on access must be reasonable. On the other hand, the press cannot be denied access to public space. And any information you gather while in a public area is generally fair game for publication.

Publishing names. One question that frequently arises in the context of invasion of privacy is that of the publication of names in stories about criminal incidents on campus. Once you are sure your information is accurate, the decision to publish a person’s name (the accused’s, the victim’s, a witness, etc.), even if that person is a minor, is yours. While many news organizations do not publish some names as a matter of editorial policy, the First Amendment protects your right to do so in this context. Because the decision to publish (or not publish) some names, such as sexual assault victims, is extremely controversial, it is worth anticipating the issues and developing a written policy prior to having to make an

sudden decision on the matter.

For a more thorough discussion, see the Student Press Law Center’s book, *Law of the Student Press*, Second Edition.

CONCLUSION

If you are interested in seeing police logs from your campus security department, accurate statistics about criminal incidents occurring on campus or disciplinary records that describe the outcome of accusations of criminal behavior, you are not alone. Campus journalists from Maine to Hawaii have the same interest and are beginning to increase their effort to get this information out in the open. Some courageous student editors and reporters have opened the doors to much information about campus crime. But there is much work still to be done.

Jennifer Markiewicz, the former editor of the student newspaper at Miami University in Ohio knows the price we pay for allowing crime to go un- or under-reported.

“Potential students evaluating the safety of a campus are cheated,” she said. “They are instilled with a false sense of security.”

The illusion of security can have disastrous results. We hope this book helps you help your campus community avoid paying that price.

FOOTNOTES

- ¹ U.S. Dept. of Justice, *Criminal Victimization 1994* (NCJ-158022) (1996).
- ² See, e.g., Nichols, "Violence on Campus: The Intruded Sanctuary," *FBI Law Enforcement Bulletin* (June 1995), at 2
- ³ Smith & Fossey, *Crime on Campus* 15 (American Council on Education, Oryx Press, 1995)
- ⁴ *Crime in the United States 1998* (FBI Uniform Crime Reports, Oct. 1999).
- ⁵ Cheryl A. Presley, et al., *Alcohol and Drugs on American College Campuses: Issues of Violence and Harassment* (Carbondale, Ill., Core Institute, Southern Illinois University, 1997), pp. 3,4.
- ⁶ *Crime in the United States 1998*, supra note 4.
- ⁷ Whitman, *Survey of College and University Law Enforcement Personnel to Determine Compliance with Campus Crime Disclosure Laws, (Campus Safety and Security Institute 1992)* [hereinafter Whitman]. The CSSI is a non-profit organization that studies crime on campus. The group conducted a survey of 336 four-year colleges and universities to measure compliance with the Campus Security Act. Not surprisingly, private schools were more likely to be inaccurate than public schools. Of 164 public colleges surveyed, 14 percent reported inaccurate statistics. In contrast, of 172 private schools surveyed, 49 percent reported inaccurate statistics.
- ⁸ Fisher, B. & Lu, C., "The Extent and Patterns of Compliance with the Crime Awareness and Campus Security Act of 1990 Among Post-Secondary Institutions: A National Study," August 1996. The study is available on the Security on Campus Web site: <http://campussafety.org>.
- ⁹ Dickson, Holmes & Minden, *Buckley Amendment, Censorship Still Problems for College Newspapers* (College Media Review Spring/Summer 1996). Additionally, over one-fifth of the surveyed editors said they thought the statistics were "not very accurate or were inaccurate."
- ¹⁰ *Id*
- ¹¹ Whitman, supra note 7, at 5.
- ¹² *Id*.
- ¹³ Some schools even go a step further. At the University of Maryland at College Park, the campus police department publishes its police logs and campus crime alerts on its Web site, <http://www.umpd.umd.edu>, which is accessible to anyone with Internet access. John King, director of public and environmental safety at Tufts University, said his department uses the university phone network to send crime alerts to all campus voicemail boxes. The messages go to the front of the queue so that crime alerts are the first messages users hear when they check their voicemail.
- ¹⁴ See, e.g., "Testing for Compliance," Fall 1999 *Student Press Law Center Report*, page 4. (Available online at <http://www.splc.org/report/f99report/f99special1.html>)
- ¹⁵ *Campus Communications v. Criser*, 13 Med. L. Rptr. 1398 (Fla. Cir. Ct. 1986).
- ¹⁶ *Bauer v. Kincaid*, 759 F. Supp. 575 (W.D. Mo. 1991).
- ¹⁷ *Jones v. Southern Arkansas University*, No. CIV-90-88 (Columbia County Cir. Ct., May 10, 1991).
- ¹⁸ An unusual 1996 ruling by the Pennsylvania Supreme Court held that the incident reports of a community college security department were not covered by that state's open records law. *Community College of Philadelphia v. Brown*, 674 A.2d 670 (Pa. 1996). This ruling is the only one of its kind in the country.
- ¹⁹ Pennsylvania and Delaware are the only states that have said public college or university records are not covered by their open records laws. In Pennsylvania, the state supreme court ruled that the records of a community college were not covered by the law. *Community College of Philadelphia v. Brown*, 674 A.2d 670 (Pa. 1996). However, Pennsylvania has an open campus police logs law that does provide for public access to some campus crime records. In Delaware, state law explicitly exempts most criminal records, Del. Code Ann. title 29, section 10002(d)(4), and all records of the University of Delaware and Delaware State College except for documents "relating to the expenditure of public funds." Del. Code Ann. title 29, section 10002(g). However, Delaware has a comprehensive state campus crime statistics law.
- ²⁰ Alaska Stat. section 09.25.220(3) ("Public records" include those "developed or received . . . by a private contractor for a public agency.")
- ²¹ Haw. Rev. Stat. section 92F-3 (Public records include those belonging to any unit of government which is "owned, operated, or managed by or on behalf of this State or any county...") Hawaii's Attorney General has specifically ruled that the daily activity reports maintained by the University of Hawaii at Hilo's Auxiliary Services (in this case, a private company under contract with UHH to provide security guard services on the campus) are "government records," subject to public inspection. OIP Op. Ltr. No. 94-3 (March 23, 1994).
- ²² Iowa Code section 22.2 ("A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.")
- ²³ Wis. Stat. Ann. section 19.36 (3) (Public records include "any record produced or collected under a contract entered into by a [public] authority.")
- ²⁴ Tenn. Code Ann. section 49-7-2206.
- ²⁵ Ariz. Rev. Stat. Ann. section 39-121.01(A)(2) ("Public body" includes any organization "supported in whole or in part by funds from the state...or expending funds provided by the state.")
- ²⁶ Mich. Stat. Ann. section 4.1801(2) ("Public body" includes any body "which is primarily funded by or through state or local authority.") *But see State Defender Union Employees v. Legal Aid & Defender Ass'n*, 584 N.W.2d 359 (Mich. Ct. App. 1988)(holding that in order to be considered a "public body" subject to the Michigan FOIA, the entity must receive a government grant or subsidy; money exchanged for services is not a grant or subsidy.)
- ²⁷ Va. Code Ann. section 2.1-341 ("Public body" includes any organization "supported wholly or principally by public funds.")
- ²⁸ Ark. Stat. Ann. section 25-19-103 ("Public records" include "record[s] of the performance . . . of official functions which are or should be carried out by a public official or employee, a governmental agency or any other agency wholly or partially supported by public funds.)
- ²⁹ Fla. Stat. Ann. section 119.011(2) ("Agency" includes any "public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency."); *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So.2d 1230 (1977)(records of volunteer fire department were public because department acted on behalf of public agency).
- ³⁰ Ohio Rev. code section 149.43(A)(1) defines "public office" to include "any state agency ... or any other ... entity established by the laws of this state for the exercise of any function of government." *Toledo Blade Co. v. University of Toledo Foundation*, 602 N.E.2d 1159 (1992)(records of foundation whose work was intimately linked to public university were subject to disclosure).
- ³¹ N.Y. Pub. Off. Law section 86 ("Agency" includes any "governmental entity performing a governmental or proprietary function for the state."); *Westchester Rockland Newspapers v. Kimball*, 408 N.E.2d 904 (1980)(records of village volunteer fire department are public records because department performs essential public service).
- ³² Okla. Stat. Ann. Tit. 74, Section 360.17(D).
- ³³ Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. section 1092(f)(1)(C)(i).
- ³⁴ *Kirwan v. Diamondback*, 721 A.2d 196 (Md. 1998).
- ³⁵ Campus Security Act, 20 U.S.C. section 1092(f).
- ³⁶ 20 U.S.C. section 1232g.

- ³⁷ 20 U.S.C. section 1232g(a)(4)(B)(ii).
- ³⁸ Family Educational Rights and Privacy Act, Final Rule, 34 C.F.R. section 99.8(a)(1) (1995).
- ³⁹ 20 USC section 1092(f)
- ⁴⁰ 64 Fed. Reg. 59,060 - 59,073 (Nov. 1, 1999)(to be codified at 34 CFR section 668.46).
- ⁴¹ 20 USC section 1092(f)(4)(B)(i).
- ⁴² 64 Fed. Reg. 59069 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(a)).
- ⁴³ 20 USC section 1092(f)(4)(B)(ii).
- ⁴⁴ 64 Fed. Reg. 59071 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(f)(5)).
- ⁴⁵ 64 Fed. Reg. 59071 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(f)(1)).
- ⁴⁶ 20 USC section 1092(f)(4)(A)(i)-(ii).
- ⁴⁷ 20 USC section 1092(f)(4)(B)(i)
- ⁴⁸ 20 USC section 1092(f)(4)(B)(iii)
- ⁴⁹ Id.; 64 Fed. Reg. 59065 (Nov. 1, 1999).
- ⁵⁰ 34 CFR 668.46 (c)(7) which provides that schools must rely upon the FBI's UCR handbook when determining what constitutes a reportable crime. Chapter 1 of that handbook makes clear that the inclusion of a crime is not dependent on prosecution or a finding of guilt.
- ⁵¹ Discussion during Dept. of Education Negotiated Rulemaking Session, April 8, 1999.
- ⁵² <http://www.rcfp.org/tapping/index.cgi>
- ⁵³ http://www.splc.org/ltr_sample.html
- ⁵⁴ A list of offices is available at in the Appendix and at: <<http://ed.gov/offices/OIIA/Regions/>>. Please also notify the Student Press Law Center so that we can keep tabs on compliance with the Act.
- ⁵⁵ Pub. Acts 2000, chapter 542 (101st Gen. Assembly)(to be codified at Tenn. Code Ann. section 49-7-22__.)
- ⁵⁶ 20 U.S.C. section 1092(f)(3).
- ⁵⁷ Id. See page 19 for the list of qualifying crimes.
- ⁵⁸ 64 Fed. Reg. 59063 (Nov. 1, 1999).
- ⁵⁹ 20 USC section 1092(f)(3); 64 Fed. Reg. 59071 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(e)(1)(ii)) .
- ⁶⁰ 64 Fed. Reg. 59071 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(e)(2)).
- ⁶¹ 20 USC section 1092(f)(3).
- ⁶² See footnote 55.
- ⁶³ 20 U.S.C. section 1092(f).
- ⁶⁴ See Crime Awareness and Campus Security Act of 1990, Pub. L. No. 101-542, section 202, 104 Stat. 2384 (1990), finding that while "crime, particularly violent crime, on some college campuses has steadily risen in recent years...out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime statistics...[while] other institutions report data indirectly, through local police agencies or States, in a manner that does not permit campus statistics to be separated."
- ⁶⁵ See, e.g., "UC keeps sex crimes in shadows," *Sacramento Bee* (Special Report), Sept. 24, 2000 (part one of two-part series).
- ⁶⁶ 59 Fed. Reg. 22,314 (April 29, 1994)(34 C.F.R. section 668).
- ⁶⁷ 60 Fed. Reg. 34,427 (June 30, 1995)(34 C.F.R. section 668).
- ⁶⁸ See, e.g., *Campus Crime: Difficulties Meeting Federal Reporting Requirements*, GAO/HEHS-97-52 (March 1997). Information on obtaining General Accounting Office reports is available at: <http://www.gao.gov>.
- ⁶⁹ H.R. Res. 470, 104th Cong., 2d Sess. (1996).
- ⁷⁰ Pub. L. No. 105-244, section 486(e)(1998).
- ⁷¹ 64 Fed. Reg. 59,060 - 59,073 (Nov. 1, 1999)(to be codified at 34 CFR section 668.46).
- ⁷² H.R. Conf. Rep. No. 750, 105th Cong., 2d Sess. at 363-364 (1998).
- ⁷³ H.R. 4504, 106th Cong., 2d Sess. (2000).
- ⁷⁴ <http://campussafety.org>
- ⁷⁵ Complete regulatory definitions for these crimes can be found on the Security on Campus Web site: <http://www.campussafety.org>.
- ⁷⁶ 34 CFR section 668.46(c)(7). The list of crimes listed in the text at footnote 75 are ranked in descending order of importance. The rule contains an exception that requires that all crimes committed during an arson be reported
- ⁷⁷ 64 Fed. Reg. 59063 (Nov. 1, 1999).
- ⁷⁸ See 34 CFR section 668.46(c)(7), which provides that schools must rely upon the FBI's UCR handbook when determining what constitutes a reportable crime. Chapter 1 of that handbook makes clear that the inclusion of a crime is not dependent on prosecution or a finding of guilt.
- ⁷⁹ See Dept. of Education letter to Moorehead State University (Sept. 13, 1996) stating that "officials of the institution involved in student counseling are not excluded from the institution's statistical reporting obligations (counselors are excluded only from the timely warning requirements of 34 CFR 668.47(e))."
- ⁸⁰ 64 Fed. Reg. 59069-70 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(c)(6)).
- ⁸¹ 64 Fed. Reg. 59064 (Nov. 1, 1999).
- ⁸² 20 USC section 1092(f)(1)(F); 64 Fed. Reg. 59069 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(a)).
- ⁸³ 20 USC section 1092(f)(6)(A)(i).
- ⁸⁴ 20 USC section 1092(f)(6)(A)(ii).
- ⁸⁵ 20 USC section 1092(f)(6)(A)(iii).
- ⁸⁶ 64 Fed. Reg. 59070-71 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(c)(9)).
- ⁸⁷ 64 Fed. Reg. 59070-71 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(c)(8)).
- ⁸⁸ 64 Fed. Reg. 59065 (Nov. 1, 1999). The addresses and telephone numbers for the regional case team managers are available on the Education Department's Web site at: <http://ed.gov/offices/OIIA/Regions/>.
- ⁸⁹ 64 Fed. Reg. 59070 (Nov. 1, 1999) (to be codified at 34 CFR section 668.46(c)(2)).
- ⁹⁰ 64 Fed. Reg. 59067 (Nov. 1, 1999) (to be codified at 34 CFR section 668.41(e)).
- ⁹¹ 64 Fed. Reg. 59067 (Nov. 1, 1999) (to be codified at 34 CFR section 668.41(e)(iii)).
- ⁹² See, e.g., *Chronicle of Higher Education* (May 28, 1999). The Department of Education began posting statistics on its Web site in the fall of 2000 at: <http://ope.ed.gov/security/OPEHome.asp>
- ⁹³ "Campus crime underreported," *USA Today*, Oct. 4, 2000.
- ⁹⁴ A list of offices is available at: <<http://ed.gov/offices/OIIA/Regions/>>.
- ⁹⁵ Tenn. Code Ann. section 49-7-2205.
- ⁹⁶ In California, for example, schools with a population of less than 1,000 students are exempt from the state reporting law.
- ⁹⁷ Whitman, supra note 7, at 3.
- ⁹⁸ *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 263 (Ga. 1993), and *Doe v. Red & Black Publishing Co.*, No. SU-93-CV-0847-S (May 6, 1993 Ga. Superior Ct. of Athens-Clark County), *aff'd*, 437 S.E.2d 274 (Ga. 1993).
- ⁹⁹ Association for Student Judicial Affairs, *The State of Student Judicial Affairs* (1998).
- ¹⁰⁰ 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).

- ¹⁰¹ See Gregory, "Misguided Campaigns for the Release of Students' Disciplinary Records," *Chronicle of Higher Education* (April 27, 1994). Dennis Gregory was the 1993-1994 president of the Association for Student Judicial Affairs.
- ¹⁰² See Carlson, "Some Often Asked Questions on Secret Campus Courts," *Access to Campus Courts: A Guide for Student Newspapers* handout for SPJ National Convention (September 1994). Carolyn Carlson is a member and was the first chair of the Society of Professional Journalists Campus Courts Task Force.
- ¹⁰³ See e.g., "With Colleges Holding Court, Discretion Vies With Fairness," *New York Times*, May 5, 1996, at 1A (part 1 of 2-part series); "Handling Crime on Campus," *Dayton Daily News*, Feb. 28, 1999, at 1A; "Quality of Campus Justice Varies Widely," *Los Angeles Times*, May 10, 2000, at 3A; A. Kors & H. Silverglate, *The Shadow University: The Betrayal of Liberty on America's Campuses* (1998). See also, *Schaer v. Brandeis University*, 2000 Mass. LEXIS 576 (Mass. Sept. 25, 2000) and discussion of case at "Brandeis Lawsuit Puts Campus Courts in the Dock," *The Chronicle of Higher Education*, June 21, 2000, at A33.
- ¹⁰⁴ *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 263 (Ga. 1993), and *Doe v. Red & Black Publishing Co.*, No. SU-93-CV-0847-S (May 6, 1993 Ga. Superior Ct. of Athens-Clark County), *aff'd*, 437 S.E.2d 274 (Ga. 1993).
- ¹⁰⁵ *Miami Student v. Miami University*, 680 N.E.2d 956 (Ohio 1997).
- ¹⁰⁶ Based on the Ohio Supreme Court's 1997 decision in *The Miami Student* case, the *Chronicle of Higher Education*, a weekly newspaper in Washington, D.C., sought access to student disciplinary records for the calendar years 1995 and 1996 from Miami University and Ohio State University under the Ohio open records law. The *Chronicle* obtained records covering a two-month period. Faced with the *Chronicle's* request, the schools notified the U.S. Department of Education, which filed a lawsuit against the schools seeking to prevent them from releasing further records. The *Chronicle* subsequently intervened in the case. On March 20, 2000, a federal district court issued a permanent injunction prohibiting the schools from "releasing student disciplinary records or any 'personally identifiable information' contained therein...." *U.S. v. Miami University*, 91 F. Supp. 2d 1132 (S.D. Ohio 2000). The court ruled that the records sought were "education records" protected by FERPA. As this publication went to press, the *Chronicle* had filed an appeal with the U.S. Court of Appeals Sixth Circuit.
- ¹⁰⁷ *Daily Tar Heel Publishing Corp. v. University of North Carolina at Chapel Hill*, 496 S.E.2d 8 (N.C. Ct. App. 1998).
- ¹⁰⁸ *Shreveport Professional Chapter of Society of Professional Journalists v. Louisiana State University*, No. 393,332 (First Judicial District, Caddo Parish, La. March 4, 1994); *Selkirk v. University of Oklahoma*, No. CJ 94-1514 BH (Dist. Ct. Cleveland County Nov. 7, 1994).
- ¹⁰⁹ See, e.g., Ark. Code Ann. section 25-19-106(a); Kan. Stat. Ann. section 75-4318(a); Miss. Code Ann. section 25-41-3(a); Mo. Rev. Stat. section 610.010(4)(a); Nev. Rev. Stat. section 241.015(3); S.C. Code Ann. section 30-4-20(a); Utah Code Ann. section 52-4-2(3); Del. Code Ann. title 29, section 10002(a).
- ¹¹⁰ See, e.g., Alaska Stat. section 44.62.310(h); Colo. Rev. Stat. section 24-6-402(1); Idaho Code section 67-2341(4); Me. Rev. Stat. Ann. title 1, section 402(2); N.H. Rev. Stat. Ann. section 91-A:1-a; Okla. Stat. title 51, section 24A.3(2).
- ¹¹¹ N.J. Rev. Stat. section 10:4-8(a). See also Iowa Code section 21.2(1)(c) (defining a "governmental body" as a "multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies" which were themselves created by state statute or executive order).
- ¹¹² 20 U.S.C. section 1232g.
- ¹¹³ 20 U.S.C. section 1232g(b)(1). Some states have enacted their own versions of the Buckley Amendment that may present an additional hurdle. See, e.g., *Florida State University v. Hattton*, 672 So.2d 576 (Fla. App. 1st Dist. 1996).
- ¹¹⁴ 20 U.S.C. section 1232g(a)(4)(A).
- ¹¹⁵ 20 U.S.C. section 1232g(a)(4)(B).
- ¹¹⁶ 20 U.S.C. section 1232g(b)(6)(B).
- ¹¹⁷ *Board of Governors of Southwest Missouri State University v. Nolan*, No. 198CC4344 (Greene Cty. Cir. Ct. Jan. 26, 1999), which is reprinted in the Appendix.
- ¹¹⁸ *Red & Black Publishing Co.*, 427 S.E.2d at 261. See also *Doe v. Red & Black Publishing Co.*, 437 S.E.2d 474 (Ga. 1993) (affirming without opinion a trial court finding that campus judicial hearing records involving a student are open under state law).
- ¹¹⁹ *Miami Student v. Miami University*, 680 N.E.2d 956 (Ohio 1997).
- ¹²⁰ 65 Fed. Reg. 41853, 41860 (July 6, 2000) (to be codified at 34 CFR section 99.31(a)(14)).
- ¹²¹ 65 Fed. Reg. 41853-41854 (July 6, 2000) (to be codified at 34 CFR section 99.39).
- ¹²² 65 Fed. Reg. 41861 (July 6, 2000).
- ¹²³ 65 Fed. Reg. 41853-41854 (July 6, 2000) (to be codified at 34 CFR section 99.39).
- ¹²⁴ 65 Fed. Reg. 41854 (July 6, 2000) (to be codified at 34 CFR section 99.39).
- ¹²⁵ 65 Fed. Reg. 41861 (July 6, 2000).
- ¹²⁶ 65 Fed. Reg. 41854 (July 6, 2000) (to be codified at 34 CFR section 99.39).
- ¹²⁷ 65 Fed. Reg. 41853 (July 6, 2000) (to be codified at 34 CFR section 99.31(a)(14)(iii)).
- ¹²⁸ See *Student Bar Association v. Byrd*, 239 S.E.2d 415, 419 (N.C. 1977) ("The Buckley Amendment does not forbid such disclosure of information concerning a student....," it "simply cuts off federal funds...." The court concluded that when a state freedom of information law provides a right of access to government information, FERPA creates no conflict with that law.) But see, *U.S. v. Miami Univ.*, 91 F. Supp. 2d 1132 (S.D. Ohio 2000).
- ¹²⁹ 20 U.S.C. section 1232g(a)(4)(A)(i).
- ¹³⁰ See, e.g., M.D. State Gov't Code Ann. section 10-614(b)(3)(iii) (stating that if a records custodian denies public access to any record, it shall permit inspection of any part of the record that is subject to inspection and is *reasonably severable*) (emphasis added).
- ¹³¹ 60 Fed. Reg. 3464, 3465 (1995).
- ¹³² 685 P.2d 1193 (Cal. 1984).
- ¹³³ *Id.* at 1195.
- ¹³⁴ *Id.* at 1201. The *Peterson* court relied on the student's status as a business invitee in making this determination. *Id.* at 1197. Other jurisdictions have also held the school-student relationship to be that of landowner-invitee and have imposed all the duties of this relationship on the school. See *Johnson v. State*, 894 P.2d 1366 (Wash. 1995); *Nero v. Kansas State University*, 861 P.2d 768 (Kan. 1993); *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991); *Jesik v. Maricopa Community College*, 611 P.2d 547 (Ariz. 1980); *Isaacson v. Husson College*, 297 A.2d 98 (Me. 1972); *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983).
- ¹³⁵ *Id.* at 1194-95.
- ¹³⁶ *Id.* at 1201.
- ¹³⁷ *Id.*
- ¹³⁸ See *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983) (college liable for on-campus rape of student where school officials had foreseen risk of crime); *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991) (university liable for injuries suffered as the result of fraternity hazing because incident was foreseeable and fraternity was under university's control); *Brown v. North Carolina Wesleyan College*, 309 S.E.2d 701 (N.C. 1983) (school not liable for abduction, rape and murder of student where no "repeated course of criminal activity" existed to render crime foreseeable).
- ¹³⁹ *Nero v. Kansas State University*, 861 P.2d 768, 782 (Kan. 1993).
- ¹⁴⁰ See *Cox Broadcasting Co. v. Cohn*, 420 U.S. 469 (1975).

APPENDIX

ALL STATUTES CURRENT AS OF SEPTEMBER 2000

State Open Records Law Citations

| | |
|----------------|--|
| Alabama | Ala. Code section 36-12-40 to 36-12-41 |
| Alaska | Alaska Stat. sections 09.25.110 to 09.25.220 |
| Arizona | Ariz. Rev. Stat. Ann. sections 39-121 to 39-122 |
| Arkansas | Ark. Stat. Ann. sections 25-19-101 to 25-19-107 |
| California | Cal. Gov't Code sections 6250 to 6277 |
| Colorado | Colo. Rev. Stat. sections 24-72-201 to 24-72-309 |
| Connecticut | Conn. Gen. Stat. Ann. sections 1-200 to 1-217 |
| Delaware | Del. Code Ann. tit. 29, sections 10001 to 10005 |
| D.C. | D.C. Code Ann. sections 1-1521 to 1-1529 |
| Florida | Fla. Stat. Ann. sections 119.01 to 119.15 |
| Georgia | Ga. Code Ann. sections 50-18-70 to 50-18-77 |
| Hawaii | Haw. Rev. Stat. sections 92-1 to 92-2; 92-21 to 92-71; 92F-1 to 92F-42 |
| Idaho | Idaho Code sections 9-337 to 9-350 |
| Illinois | 5 Ill. Comp. Stat. 140/1 to 140/11 |
| Indiana | Ind. Code sections 5-14-3-1 to 5-14-3-10 |
| Iowa | Iowa Code sections 22.1 to 22.14 |
| Kansas | Kan. Stat. Ann. sections 45-215 to 45-225 |
| Kentucky | Ky. Rev. Stat. Ann. sections 61.870 to 61.884 |
| Louisiana | La. Rev. Stat. Ann. sections 44:1 to 44:41 |
| Maine | Me. Rev. Stat. Ann. tit. 1, sections 401 to 410 |
| Maryland | Md. State Gov't Code Ann sections 10-611 to 10-628 |
| Massachusetts | Mass. Gen. Laws Ann. ch. 4, section 7, cl. 26; ch. 66, sections 10 to 18 |
| Michigan | Mich. Stat. Ann. Sections 4.1801(1) to 4.1801(16) |
| Minnesota | Minn. Stat. Ann. sections 13.01 to 13.99 |
| Mississippi | Miss. Code. Ann. sections 25-61-1 to 25-61-17 |
| Missouri | Mo. Rev. Stat. sections 610.010 to 610.200 |
| Montana | Mont. Code. Ann. sections 2-6-101 to 2-6-111; 2-6-201 to 2-6-214; 22-1-1103, and Article II, section 9 of the Montana Constitution |
| Nebraska | Neb. Rev. Stat. sections 84-712 to 84-712.09 |
| Nevada | Nev. Rev. Stat. Ann. section 239.005-239.330 |
| New Hampshire | N.H. Rev. Stat. Ann. section 91-A:1 to 91-A:8 |
| New Jersey | N.J. Stat. Ann. section 47:1-1 to 47:1A.4 |
| New Mexico | N.M. Stat. Ann. section 14-2-1 to 14-2-12 |
| New York | N.Y. Pub. Off. Law section 84 to 90; 91 to 99 |
| North Carolina | N.C. Gen. Stat. section 132-1 to 132-10 |
| North Dakota | N.D. Cent. Code section 44-04-18 to 44-04-18.17, and Article XI, section 6 of the North Dakota Constitution |
| Ohio | Ohio Rev. Code Ann. section 149.43 to 149.44 |

State Open Records Law (continued)

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|----------------|--|
| Oklahoma | Okla. Stat. Ann. tit. 51, section 24A.1 to 24A.24 |
| Oregon | Or. Rev. Stat. section 192.410 to 192.530 |
| Pennsylvania | Pa. Stat. Ann. tit. 65, section 66.1 to 66.4 |
| Rhode Island | R.I. Gen. Laws section 38-2-1 to 38-2-14 |
| South Carolina | S.C. Code Ann. section 30-4-10 to 30-4-165 |
| South Dakota | S.D. Codified Laws Ann. section 1-27-1 to 1-27-31 |
| Tennessee | Tenn. Code Ann. section 10-7-503 to 10-7-512; 10-8-101 to 10-8-103 |
| Texas | Tex. Gov't Code Ann. 552.001 to 552.353 |
| Utah | Utah Code Ann. section 63-2-101 to 63-2-909 |
| Vermont | Vt. Stat. Ann. tit. 1 section 315 to 320 |
| Virginia | Va. Code Ann. section 2.1-340 to 2.1-346.1 |
| Washington | Wash. Rev. Code Ann. section 42.17.010 to 42.17.350 |
| West Virginia | W.Va. Code section 29B-1-1 to 29B-1-7 |
| Wisconsin | Wis. Stat. Ann. section 19.31 to 19.39 |
| Wyoming | Wyo. Stat. section 16-4-201 to 16-4-205 |

State Open Meetings Law Citations

| | |
|---------------|---|
| Alabama | Ala. Code section 13A-14-2 |
| Alaska | Alaska Statute sections 44.62.310 to 44.62.312 |
| Arizona | Ariz. Rev. Stat. Ann sections 38-431 to 38-431.09 |
| Arkansas | Ark. Stat. Ann. sections 25-19-106 |
| California | Cal. Gov't Code sections 9027 to 9031 (assembly & senate), 11123 to 11132 (state agencies), 54950 to 54962 (local agencies) |
| Colorado | Colo. Rev. Stat. sections 24-6-401, 24-6-402 |
| Connecticut | Conn. Gen. Stat. sections 1-225 to 1-241 |
| Delaware | Del. Code Ann. Tit. 29, sections 10001 to 10005 |
| D.C. | D.C. Code Ann. section 1-1504 |
| Florida | Fla. Stat. Ann. section 286.011 |
| Georgia | Ga. Code Ann. sections 50-14-1 to 50-14-5 |
| Hawaii | Haw. Rev. Stat. sections 92-1 to 92-13 |
| Idaho | Idaho Code sections 67-2340 to 67-2347 |
| Illinois | 5 Ill. Comp. Stat. Ann. 120/1 to 120/6 |
| Indiana | Ind. Code Ann. sections 5-14-1.5-1 to 15-14-1.5-8 |
| Iowa | Iowa Code Ann. section 21.1 to 21.11 |
| Kansas | Kan. Stat. Ann. sections 75-4317 to 75-4320 |
| Kentucky | Ky. Rev. Stat. sections 61.805 to 61.850 |
| Louisiana | La. Rev. Stat. Ann. sections 42:4.1 to 42:11 |
| Maine | Me. Rev. Stat. Ann. Tit. 1 sections 401 to 410 |
| Maryland | Md. State Gov't Code Ann. sections 10-502 to 10-511 |
| Massachusetts | Mass. Gen. Laws Ann. Ch. 30A, sections 11A, 11A 1/2 (state); Ch. 34, sections 9F, 9G (county), Ch. 39, sections 23A, 23B (municipal) |

State Open Meetings Law (continued)

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|----------------|---|
| Michigan | Mich. Comp. Laws Ann. sections 15.261 to 15.275 |
| Minnesota | Minn. Stat. Ann. section 471.705 |
| Mississippi | Miss. Code Ann. sections 25-41-1 to 25-41-17 |
| Missouri | Mo. Ann. Stat. sections 610.010 to 610.022 |
| Montana | Mont. Const. Art. II section 9; Mont. Code. Ann. sections 2-3-201 to 2-3-221 |
| Nebraska | Neb. Rev. Stat. section 84-1408 to 84-1414 |
| Nevada | Nev. Rev. Stat. sections 241.010 to 241.040 |
| New Hampshire | N.H. Rev. Stat. Ann. sections 91-A:1 to 91-A:8 |
| New Jersey | N.J. Stat. Ann. sections 10:4-6 to 10:4-21 |
| New Mexico | N.M. Stat. Ann. sections 10-15-1 to 10-15-4 |
| New York | N.Y. Pub. Off. Law sections 100 to 111 |
| North Carolina | N.C. Gen. Stat. section 143-318.9 to 143-318.18 |
| North Dakota | N.D. Const. Art. XI, section 5; N.D. Cent. Code sections 44-04-19 to 44-04-21 |
| Ohio | Ohio Rev. Code Ann. section 121.22 |
| Oklahoma | Okla. Stat. Ann. Tit. 25, sections 303 to 314 |
| Oregon | Or. Rev. Stat. sections 192.610 to 192.690 |
| Pennsylvania | 65 Pa.C.S.A. sections 701 to 716 |
| Rhode Island | R.I. Gen. Laws sections 42-46-1 to 42-46-14 |
| South Carolina | S.C. Code Ann. sections 30-4-60 to 30-4-110 |
| South Dakota | S.D. Codified Laws Ann. sections 1-25-1 to 1-25-4 |
| Tennessee | Tenn. Code Ann. sections 8-44-101 to 8-44-201 |
| Texas | Tex. Gov't Code Ann. sections 551.001 to 551.146 |
| Utah | Utah Code Ann. sections 52-4-1 to 52-4-10 |
| Vermont | Vt. Stat. Ann. tit.1 sections 311 to 314 |
| Virginia | Va. Code Ann. section 2.1-343 to 2.1-346.1 |
| Washington | Wash. Rev. Code Ann. sections 42.30.010 to 42.30.920 |
| West Virginia | W.Va. Code sections 6-9A-1 to 6-9A-12 |
| Wisconsin | Wis. Stat. Ann. sections 19.81 to 19.98 |
| Wyoming | Wyo. Stat. Ann. sections 16-4-401 to 16-4-407 |

State Open Police Log Laws

| | |
|---------------|--|
| California | Cal. Ed. Code sections 67380 and 94380 |
| Kentucky | Ky. Rev. Stat., Chapter 164.9481 |
| Massachusetts | Mass. Ann. Laws, ch. 41, section 98F |
| Pennsylvania | 24 Penn. Stat. Ann. section 2502-3 |
| Tennessee | Tenn. Code Ann. section 49-7-2206 |
| West Virginia | W. Va. Code section 18B-4-5a |
| Virginia | Va. Code Ann. section 23-232.2 |

See also:

| | |
|---------|-------------------------------|
| Georgia | Ga. Code Ann. section 35-3-36 |
|---------|-------------------------------|

State Campus Crime Statistics Laws

| | |
|---------------|---|
| California | Cal. Education Code sections 67380-67381 |
| Connecticut | Conn. Gen. Stat. Ann. sections 10a-55 to -55c |
| Delaware | Del. Code Ann. tit. 14, section 9001-07 |
| Florida | Fla. Stat. Ann. sections 240.2683, 240.3815 |
| Louisiana | La. Rev. Stat. Ann. section 17:3351(c) |
| Massachusetts | Mass. Ann. Laws, ch. 6 section 168C |
| Pennsylvania | Pa. Stat. Ann. tit. 24, sections 2502-1 to -5 |
| Tennessee | Tenn. Code Ann. sections 49-7-2201 to 49-7-2206 |
| Virginia | Va. Code Ann. section 23-9.1:1 |
| Washington | Wash. Rev. Code Ann. section 28B.10.569 |
| Wisconsin | Wis. Stat. Ann. section 36.11 (22) |

Sample State Open Records Law Request Letter

This letter may be used as a model to obtain public records using your state open records law. The highlighted portions should be changed to conform to the relevant provisions of your state's law and the specifics of your situation.

October 29, 2000

Mr. Norman Mallard
Chief of Campus Security
State College
876 Donor Hall
Your City, Anystate 11223

Dear Mr. Mallard:

Pursuant to the state open records law, **Anystate Rev. Stat. sections. 40.5 to 43.1**, I write to request access to and a copy of **the incident report and any other documents prepared or collected by your department relating to the assault that occurred outside Memorial Library on the evening of April 5, 1996.** If your office does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$5. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within **ten (10) business days**.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that willful violation of the open records law can result in a **fine of up to \$500 and the award of court costs and attorney fees.**

Thank you for your assistance.

Sincerely,



Ally Hiestand
Editor
Campus Voice
State College
3452 Union Hall
Your City, Anystate 11223

(505) 555-1234

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act 20 U.S.Code Section 1092(f)

[History: First enacted in 1990 as Title II of Public Law 101-542; amended 1992 & 1998; can be cited as Section 485(f) of the Higher Education Act or 20 U.S.C. 1092(f); originally known as the "Campus Security Act" the 1998 amendments renamed this subsection of the Higher Education Act the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act"]

Disclosure of campus security policy and campus crime statistics.

(1) Each eligible institution participating in any program under this title shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including —

(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under USC 1011i.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this title shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this title that maintains a police or

Clery Act (continued)

security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including-

- (i) the nature, date, time, and general location of each crime; and
- (ii) the disposition of the complaint, if known.

(B) (i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within 2 business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than 2 business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this title shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall -

(A) review such statistics and report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6) (A) In this subsection:

(i) The term 'campus' means-

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term 'noncampus building or property' means-

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term 'public property' means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8) (A) Each institution of higher education participating in any program under this title shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding -

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

Clery Act (continued)

- (i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.
 - (ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.
 - (iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
 - (iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that -
 - (I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
 - (II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.
 - (v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.
 - (vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.
 - (vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.
- (C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur-

- (A) on campus;
- (B) in or on a noncampus building or property;
- (C) on public property; and
- (D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to 20 USC 1094(c)(3)(B) that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under 20 USC 1094(c)(3)(B).

- (14) (A) Nothing in this subsection may be construed to-
- (i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or
 - (ii) establish any standard of care.
- (B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) This subsection may be cited as the 'Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act'.

Campus Crime Reporting Resources

Student Press Law Center

The only organization in the country devoted exclusively to protecting and educating the student media about their freedom of expression and freedom of information rights. The nonprofit SPLC provides free legal help to over 1,500 student journalists and their advisers each year.

1815 N. Fort Myer Drive, Suite 900
Arlington, VA 22209-1817
(703) 807-1904
Web site: <http://www.splc.org>

Society of Professional Journalists

The largest professional association of journalists in America. SPJ sponsors student chapters at colleges and universities throughout the country.

3903 N. Meridian St.
Indianapolis, IN 46208
(317) 927-8000
Web site: <http://spj.org>

Freedom of Information Committee

Ian Marquand, chair
(406) 542-4400

Campus Courts Task Force

SPJ-led coalition of professional press and academic organizations formed in 1993 to challenge restrictions on access to campus judicial proceedings.
Dr. W.M. Lawbaugh, chair
(301) 447-5367
e-mail: lawbaugh@MSMary.edu

Reporters Committee for Freedom of the Press

Assists reporters and editors for commercial media and produces publications on press law issues.

1815 N. Fort Myer Drive, Suite 900
Arlington, VA 22209-1817
(703) 807-2100
Web site: <http://www.rcfp.org>

Security on Campus

Nonprofit group working to curb campus violence, promote campus crime awareness and assist crime victims and their families.

601 S. Henderson Rd., Suite 205
King of Prussia, PA 19406-3207
(610) 768-9330 or (888) 251-7959
Web site: <http://campussafety.org>

Association for Student Judicial Affairs

International professional association of student judicial affairs officials.

P.O. Box 2237
College Station, TX 77841-2237
(979) 845-5262
Web site: <http://asja.tamu.edu>

Campus Crime Reporting Resources (continued)

U.S. Department of Education

For FERPA (Buckley Amendment) Questions:

LeRoy S. Rooker
Director, Family Policy Compliance Office
Dept. of Education
400 Maryland Ave., SW
Washington, D.C. 20202-4605
(202) 260-3887

For Campus Security Act Questions:

Customer Support Branch, Office of Post-Secondary Education
(800) 433-7327
Fax: (202) 260-4199

For Official Comment:

Office of Public Affairs
(202) 401-1576

For Other Questions:

(800) 872-5327

To report violations of the Clery Act, use contact information on page 47.

Other Resources Available Online

Cops and Courts Reporters Directory

National listing of police and court reporters.

Web site: <http://www.reporters.net/ccr>

Cops and Courts Reporters Listserve

Fairly low-traffic discussion list for crime and court reporters (mainly commercial media, but welcome college crime reporters or other “lurkers”). To subscribe send a message to: majordomo@reporters.net. In the message section, write “subscribe ccr-l” without the quotations.

National Freedom of Information Coalition

A coalition of state freedom of information groups.

Web site: <http://www.nfoic.org>

Associated Collegiate Press Discussion List

A members-only discussion group for college student journalists. To subscribe, contact the ACP.

Web site: <http://www.studentmedia.org>.

College Media Advisers Discussion List

A lively discussion of a variety of issues by professional media advisers to college student publications. Information about signing on to the list is available at:

<http://www.collegemedia.org/discussion.html>

Student Journalist Discussion List (Stumedia)

One of the oldest discussion groups for student journalists. Moderate to high traffic. Freedom of information issues and campus crime reporting are regular topics.

Web site: <http://www.journalism.sfsu.edu/www/internet/mail/studmedia.htm>

APBnews.com

A comprehensive online resource for crime information. Includes news and surveys on campus crime

Web site: <http://www.apbnews.com>

Findlaw.com

An online law library where one can get access to the text of state and federal laws and legislation.

Web site: <http://www.findlaw.com>

U.S. Department of Education Office of Postsecondary Education

Regional Offices (As of August 2000.)

A current listing is available online at: <http://ed.gov/offices/OIIA/Regions/>

REGION I — (617) 223-9317

J.W. McCormack Post Office & Courthouse, Room 540

Boston, MA 02109-4557

STATES: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island

REGION II — (212) 264-7005

75 Park Place, Room 1206

New York, NY 10007-2146

STATES: New York, New Jersey, Puerto Rico, Virgin Islands

REGION III — (215) 656-6010

3535 Market Street, Room 16350

Philadelphia, PA 19104-3398

STATES: Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia

REGION IV — (404) 562-6225

P.O. Box 1777

Atlanta, GA 30301

STATES: Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, Florida, South Carolina

REGION V — (312) 886-8222

111 N. Canal Street, Suite 1094

Chicago, IL 60606-7204

STATES: Minnesota, Wisconsin, Michigan, Ohio, Indiana, Illinois

REGION VI — (214) 880-3011

1200 Main Tower, Suite 2125

Dallas, TX 75201-6817

STATES: New Mexico, Oklahoma, Texas, Arkansas, Louisiana

REGION VII — (816) 880-4000

10220 N. Executive Hills Blvd., Suite 720

Kansas City, MO 64153-1367

STATES: Missouri, Kansas, Nebraska, Iowa

REGION VIII — (303) 844-3544

1244 Speer Blvd., Suite 310

Denver, CO 80204-3582

STATES: Colorado, Utah, Wyoming, South Dakota, North Dakota, Montana

REGION IX — (415) 556-4120

50 United Nations Plaza, Room 205

San Francisco, CA 94102-4987

STATES: Arizona, Nevada, California, Hawaii, The Pacific Islands

REGION X — (206) 220-7800

915 Second Avenue, Room 3362

Seattle, WA 98174-1099

STATES: Idaho, Oregon, Washington, Alaska

**Decision in *Southwest Missouri State University v. Nolan*, No. 198CC-4344
(Greene Cty. Cir. Ct., January 26, 1999)**

In this ruling, a Missouri court affirmed the university's obligation to disclose its records concerning the outcomes of campus disciplinary proceedings. This was the first court ruling in the country to reflect the 1998 changes to federal law that allowed for the release of certain campus court records. As would be the case for most public colleges and universities in America, the court held that SMSU had to comply with its state open records law, which required release of the records. For additional background on the case and information on how to obtain your school's campus court records, see the full discussion on pages 28.

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

BOARD OF GOVERNORS OF)
SOUTHWEST MISSOURI STATE UNIVERSITY,)
)
Plaintiff,)
)
v.) **Case No. 198CC4344**
)
PATRICK M. NOLAN,)
)
Defendant.)

ORDER OF JUDGMENT

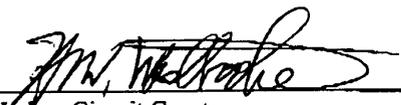
The Court being duly advised in the premises, it is therefore
ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff Board of Governors of Southwest Missouri State University is the governing body of Southwest Missouri State University, a public institution of higher education, and subject to the Missouri Open Meetings and Records Act, § 610.010, *et seq.*, (the "Sunshine Law"); and
2. Final results (defined as the name of the student charged, the violation committed, and any sanction imposed by the University on that student) of any disciplinary proceeding under the *Code of Student Rights and Responsibilities* against a student who is an alleged perpetrator of a crime of violence (as that term is defined in Section 16 of Title 18 of the *United States Code*), or a nonforcible sex offense, if the Plaintiff determines as a result of that disciplinary proceeding that a student committed a violation of the University's rules or policies with respect to such crime or offense, as authorized by 20 U.S.C. § 1232g(b)(6)(B) and (C), shall be disclosed henceforth upon appropriate request and pursuant to the Sunshine Law, including payment of appropriate fees and costs until further order of this Court to the contrary; and
3. Costs shall be assessed against Plaintiff, and Plaintiff shall be required to pay Defendant a reasonable attorney's fee in the amount of Five Thousand Eight Hundred Three and 74/100 Dollars (\$5,803.74).

IT IS SO ORDERED, ADJUDGED AND DECREED.

COVERING
CAMPUS
CRIME

1-26-99
Date


Judge, Circuit Court