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INTRODUCTION

On April 16, 2007, the day of the “Massacre at Virginia Tech,” thirty-two innocent college students and faculty lost their lives to a crazed gunman armed with two semi-automatic pistols and a couple hundred rounds of ammunition. Yet, rather than mourn the tragedy, the first reaction of the gun lobby was to call for more guns on the college campuses of our nation. Before a single funeral was held for any of the victims of the Virginia Tech tragedy, and before anyone even knew the identities of the victims or the perpetrator, the gun lobby began pushing for college campuses to be turned into armed camps.¹

Was this a reasonable reaction to the horrific tragedy at Virginia Tech—to think society should eliminate gun-free campuses? Do the students of the nation want classrooms to be filled with guns? Will students feel safer knowing that the student sitting next to them could be “packing?” Would the parents of those students want to select schools for their children where the teachers, staff members, and even the students, were armed? Would putting guns into classrooms contribute to robust academic debate and foster a climate of learning? Does it make sense to give guns to binge-drinking college kids, or let college sports fans bring guns to stadiums? What about suicidal students or those in need of psychological counseling? How will more guns help them? Is “more guns on campus” the only answer our society can come up with in response to horrific gun violence on a college campus?

* Brian J. Siebel is a Senior Attorney at the Brady Center to Prevent Gun Violence. In addition to this article, he is the co-author, with Allen K. Rostron, of *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools* (Brady Center 2007); and author of *Forced Entry: The National Rifle Association's Campaign to Force Businesses to Accept Guns at Work* (Brady Center 2005).

¹ See Brady Center to Prevent Gun Violence, *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools* 33 n.1 (2007), available at <http://www.bradycampaign.org/xshare/pdf/reports/no-gun-left-behind.pdf>.

As it turns out, the Virginia Tech shooter had been “adjudicated as a mental defective” by a judge prior to purchasing the two handguns he used in his rampage.² This ruling placed him into one of the prohibited classes of persons that Congress found too dangerous to possess firearms in the Gun Control Act of 1968.³ Unfortunately, those mental health records were never included in the National Instant Criminal Background Check System (“NICS”) that the Brady Law established to check gun buyers’ backgrounds when purchasing guns at gun stores.⁴

Had the records of his mental health adjudication been entered in NICS,⁵ the Brady background check would have barred him from purchasing the guns he used at the massacre from a Roanoke, Virginia gun store and a Blacksburg, Virginia pawn shop.⁶ Thus, the obvious lesson of Virginia Tech is for society to do a better job of checking gun buyers’ backgrounds before every gun is sold.

Instead of accepting the straightforward solution of universal, thorough, background checks, the gun lobby clamors for legislation that would prohibit colleges and universities from maintaining rules or regulations that bar students from carrying handguns on campus.⁷ These statutes would preempt “gun-free” policies on campus and allow students with Carrying Concealed Weapons (“CCW”) licenses to be armed. What the gun lobby fails to mention is that thousands of people with CCW licenses have committed atrocious acts of gun violence.⁸ Moreover, a quick look behind this outrageous proposal reveals it to be a ruse. The gun lobby’s real aim is to prohibit colleges and universities from keeping *any* policies or rules that restrict gun

² See *id.* at 34 n.3.

³ See 18 U.S.C. § 922(g).

⁴ See 18 U.S.C. § 922(s); FBI, National Instant Criminal Background Check System (NICS) Information, <http://www.fbi.gov/hq/cjisd/nics/index.htm> (last visited Nov. 4, 2007).

⁵ Michael Luo, *U.S. Rules Made Killer Ineligible to Purchase Gun*, N.Y. TIMES, April 21, 2007, at A1, available at 2007 WLNR 7539443.

⁶ Sari Horwitz & Brigid Schulte, *Weapons Purchases Aroused No Suspicion*, WASH. POST, April 18, 2007, at A13, available at 2007 WLNR 7267036.

⁷ See, e.g., 2006 Virginia H.B. 1572, Jan. 20, 2006. See also *supra* note 1.

⁸ See Brady Center to Prevent Gun Violence, *Guns & Business Don't Mix*, at Appendix C, available at <http://www.bradycenter.org/xshare/pdf/reports/gunsnbusiness.pdf> (listing dozens of criminal offenses committed by CCW licensees in Florida alone); see also Richard Serrano, *Texas' Concealed Handgun Law*, L.A. TIMES, Oct. 3, 2000, at 1, available at 2000 WLNR 8354785 (finding that more than 400 criminals—including rapists and armed robbers—had been issued CCW permits in Texas, with 3,000 more arrested for criminal behavior or found to be mentally unstable).

access or use by students, regardless of whether the student is old enough to obtain a CCW license.⁹

Once academic institutions are stripped of the right to set individual campus gun policies for students and faculty, almost no other barriers would remain to keep schools from becoming “gun-filled” zones.¹⁰ Federal law prohibits persons under twenty-one from *buying* handguns, but it does not prohibit children as young as eighteen from *possessing* them.¹¹ Moreover, AK-47s and other assault rifles, with high-capacity detachable magazines that can deliver far more firepower than those possessed by the Virginia Tech shooter,¹² are completely legal for even children younger than eighteen to purchase and own.¹³

One can only imagine the nightmarish scenarios that become possible if the gun lobby were successful in forcing guns onto college campuses. Will students bring their AK-47 assault rifles with them to show off while guzzling beer at college keggers? Given that ninety percent of attempted suicides with guns are successful,¹⁴ how much more frequently will temporarily-depressed youths commit suicide if guns are available? Will gun thieves decide that college dorm rooms provide easier marks than private homes?

The school-age years are among the most volatile times in every person’s life. College students face severe social and academic pressure. Why would anyone want to introduce guns into the mix?

Despite the horrific massacre at Virginia Tech, college and university campuses are much safer than the communities that surround them.¹⁵ A United States Justice Department study found that from 1995 to 2002, college students, age eighteen to twenty-four, experienced violence at almost twenty percent lower average annual rates

⁹ See Brady Center, *supra* note 1, at 1-4 (discussing gun lobby support for Utah’s legislation that does not restrict guns on campus to CCW licensees).

¹⁰ See *infra* note 19.

¹¹ 18 U.S.C. § 922(x)(2) (2004).

¹² 18 U.S.C. § 922(b)(1) (1968).

¹³ Licensed dealers are prohibited from selling a rifle to persons under the age of 18. *Id.* However, Federal law provides no age limitations with respect to the sale of a long gun, including an assault rifle, by an unlicensed person.

¹⁴ Matthew Miller, Steven J. Lippman, Deborah Azrael & David Hemenway, *Household Firearm Ownership and Rates of Suicide Across the 50 States*, 62 J. TRAUMA: INJURY, INFECTION & CRITICAL CARE 1029, 1032 (2007).

¹⁵ See Matt Assad, *Hitting the Lottery More Likely than Campus Murder*, ALLENTOWN MORNING CALL, Apr. 22, 2007, available at 2007 WLNR 7591415.

than non-students in the same age group.¹⁶ Moreover, *ninety-three percent* of the violence against students occurred off campus.¹⁷ Even when considering only violent crimes against students who live on campus, eighty-five percent of those occur at locations off campus.¹⁸

The discrepancy in violence rates on and off college campuses is no doubt due, in part, to the fact that nearly every academic institution has adopted a policy of either tightly controlling possession and use of student firearms or banning firearms altogether.¹⁹ The overwhelming preference among Americans—ninety-four percent according to one survey—is to forbid people from bringing guns onto college campuses.²⁰

If the gun lobby is successful in getting state legislatures to upset these longstanding policies and prohibit colleges from barring or controlling gun possession and use by their students, it is not difficult to imagine the increased dangers and risks that will follow. They would,

¹⁶ Katrina Baum & Patsy Klaus, Bureau of Justice Statistics, U.S. Dep't of Justice, *Violent Victimization of College Students, 1995-2002*, NCJ 206836, at 1 (2005).

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ A national survey of college campus gun policies on 150 of the largest U.S. colleges and universities reveals that none of them has the type of policy now adopted in Utah that permits almost unlimited possession and use of firearms by students on campus. All restrict firearm possession by students in some significant manner, including: (1) banning guns outright (eighty-two schools); (2) requiring storage of firearms in a university-sanctioned storage facility (twenty-five schools); (3) restricting possession to authorized use only—ROTC rifle team or a specific educational activity (twenty-seven schools); (4) registration with the university (five schools, two of which also require storage of the firearm); and (5) prior authorization to bring a rifle onto campus (twenty-two schools). Alliance for Justice, *National Survey of College Campus Gun Possession Policies* (2003), available at http://web.archive.org/web/20031107072148/http://www.allianceforjustice.org/student/student_resources/college_survey.html.

In addition, at least twenty-four states have passed laws prohibiting or tightly restricting guns on college campuses, expressly allowing colleges and universities in the state to set policies governing possession of guns on college campuses, or prohibiting the carrying of concealed weapons altogether. The states include: Arkansas, California, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Wisconsin, and Wyoming. See Daniel C. Vock & Pauline Vu, *Va. Tech Tragedy Revives Gun Controversy*, STATELINE.ORG, Apr. 17, 2007, <http://www.stateline.org/live/details/story?contentId=199281>.

²⁰ David Hemenway, Deborah Azrael & Matthew Miller, *National Attitudes Concerning Gun Carrying in the United States*, 7 *INJ. PREVENTION* 282, 283 (2001). See also Tom W. Smith, National Opinion Research Center, *2001 National Gun Policy Survey of the National Opinion Research Center: Research Findings 4* (2001), available at <http://www.mindchanging.com/politics/guncontrolsurvey.pdf> (“79% feel that ‘public places, such as stores, movie theaters, and restaurants’ should ‘prohibit people from carrying concealed weapons on their premises.’”).

at a minimum, include: (1) diminished safety for students, faculty, staff, and visitors; (2) greater potential for student-on-student and student-on-faculty violence, as well as more lethal results when said violence occurs; (3) an increased risk of suicide attempts ending in fatalities; (4) an exponential increase in opportunities for gun theft and subsequent harm to people on and off campuses; and (5) potentially huge legal, financial, and public relations costs should gun violence occur as a result of the new, unwise policies.

Colleges have a legal duty to provide safe environments for their students, employees, and visitors.²¹ Courts have established that colleges can be held liable if they do not take adequate measures to maintain safe environments.²² Colleges should have the authority to decide how to fulfill their legal duty to provide a safe environment without being undercut by the gun lobby's campaign to take away individual campus administrations' discretion over this crucial safety issue. This duty will be undermined if the gun lobby's campaign is successful. Moreover, introducing guns on campus raises a host of public and student-relations problems.

I. GUNS INCREASE THE RISK OF VIOLENCE ON CAMPUS

Arming college students is a dangerous idea. As everyone that has lived through adolescence and young adulthood knows, the college-age years—eighteen to twenty-four—are among the most volatile periods in a person's life.²³ The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has consistently found that criminal gun possession is highest for youths eighteen to twenty-four, with nineteen to twenty-one year olds providing an even higher peak within this

²¹ See, e.g., *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602 (W.D. Va. 2002) (holding that college had an affirmative duty to a student who committed suicide); *Nova Se. Univ., Inc. v. Gross*, 758 So. 2d 86 (Fla. 2000) (finding duty owed to a graduate student placed in a mandatory internship); *Furek v. Univ. of Del.*, 594 A.2d 506 (Del. 2001) (finding that the university owed a duty to a fraternity pledge).

²² See *supra* note 21.

²³ See, e.g., Brent W. Roberts, Avshalom Caspi & Terrie E. Moffitt, *The Kids Are Alright: Growth and Stability in Personality Development from Adolescence to Adulthood*, 81 J. OF PERSONALITY & SOC. PSYCHOL. 670 (2001); Joyce M. Gayles, *Is It Just Adolescent Behavior? How to Know if Your Teen is in Trouble and What to Do About It* 1 (2004), available at http://www.mindoh.com/docs/JoyceGayles_AdolescentBehavior.pdf ("The emotional turbulence of adolescence is in itself a source of trouble for teens. Simply as a function of the massive biological, psychological and social changes going on at this stage, your child is experiencing a range of new emotions, needs, and motivations.").

range.²⁴ This age bracket also happens to be the peak age group in which people commit violent gun crimes, including homicides.²⁵

No one should forget that the Virginia Tech shooter was a twenty-three-year-old student, thought by the Commonwealth of Virginia to be a lawful firearms purchaser.²⁶ Having missed the fact that he had been adjudicated mentally defective in December 2005, Virginia would have issued a CCW license to the shooter, had he applied.²⁷ How many other individuals who have carried out school shootings were legally entitled to purchase or possess firearms at the time of the shootings? There is little data concerning the actual number, though a review of school shootings indicates many of the shooters were qualified for CCW licenses.²⁸ Therefore, the policy solution advocated by the gun lobby—to arm all students—may well make it easier for those bent on carrying out destruction to bring guns onto campus.

There are a host of reasons why gun violence is likely to increase, perhaps dramatically, if students are able to keep and carry guns on college campuses. Part I of this article will focus on four: (A) the prevalence of drugs and alcohol, (B) suicide risks and mental health issues, (C) the likelihood of gun thefts, and (D) an increased risk of accidental shootings.

A. *Drugs and Alcohol*

The prevalence of alcohol and drugs on college campuses is a prime reason to keep guns out. Binge drinking is highest among eighteen to twenty-four year olds.²⁹ Illegal drug use also peaks during

²⁴ See Bureau of Alcohol, Tobacco & Firearms, U.S. Dep't of the Treasury, *Crime Gun Trace Reports (2000) National Report*, at 6-7 (2002), available at <http://www.atf.gov/firearms/ycgii/2000/>; Bureau of Alcohol, Tobacco & Firearms, U.S. Dep't of the Treasury, *Crime Gun Trace Reports (1999) National Report*, at 6-7 (2000), available at <http://www.atf.gov/firearms/ycgii/1999/index.htm>.

²⁵ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, tbl. 4.7.2005, available at <http://www.albany.edu/sourcebook/pdf/t472005.pdf>.

²⁶ Ian Urbina, *Virginia Ends a Loophole in Gun Laws*, N.Y. TIMES, May 1, 2007, at A14, available at 2007 WLNR 8188849.

²⁷ Va. Code Ann. § 18.2-308(D)(10) (2007).

²⁸ See Brady Center, *supra* note 1, at Appendix B (listing circumstances of numerous school shootings).

²⁹ See, e.g., U.S. Dep't of Health and Human Servs., *2001 National Household Survey on Drug Abuse*, ch. 3 (alcohol use) (2001), available at <http://www.oas.samhsa.gov/nhsda/2k1nhsda/vol1/Chapter3.htm>.

these volatile years.³⁰ Both activities are common among college students. For example, according to a new study by the National Center on Addiction and Substance Abuse at Columbia University, “[n]early half of America’s 5.4 million full-time college students abuse drugs or drink alcohol on binges at least once a month.”³¹ For college gun owners, the rate of binge drinking is even higher—two-thirds of college students who own guns also binge drink.³²

Of course, both drug and alcohol use greatly increases the risk of injury to both the user and those around him.³³ Alcohol, for example, “is involved in two thirds of college student suicides, in 90% of campus rapes, and in 95% of the violent crime on campus.”³⁴ Almost 700,000 students between the ages of eighteen and twenty-four are assaulted each year by another student who has been drinking.³⁵ If guns were involved, those assaults would much more likely be fatal.³⁶ Guns, alcohol, and drugs have proven to be an extremely dangerous

³⁰ U.S. Dep’t of Health and Human Servs., *Sub State Estimates of Substance Use*, tbls. 1, 4 (2001), available at <http://www.oas.samhsa.gov/subStateTABS/AgeTabs.htm>.

³¹ Donna Leinwand, *College Drug Use, Binge Drinking Rise*, USA TODAY, Mar. 15, 2007, at 3A, available at 2007 WLNR 4862324; The Nat’l Ctr. on Addiction & Substance Abuse at Columbia Univ., *Wasting the Best and the Brightest: Substance Abuse at America’s Colleges and Universities* 4 (2007), available at <http://www.casacolumbia.org/absolutenm/articlefiles/380-College%20II%20Final-R2.pdf>.

³² Matthew Miller, David Hemenway & Henry Wechsler, *Guns and Gun Threats at College*, 51 J. AM. C. HEALTH 57, 63 (2002).

³³ See The Higher Educ. Ctr. for Alcohol & Other Drug Abuse & Violence Prevention, *Interpersonal Violence and Alcohol and Other Drug Use* 2 (2002), available at http://www.higheredcenter.org/pubs/factsheets/fact_sheet4.html. (“Students are more likely to become aggressive when their blood alcohol level rises rapidly (for example, following heavy drinking), lessening capacity for conflict resolution and decreasing inhibitions. In addition, many students use intoxication as an excuse for inappropriate and violent behavior.”).

³⁴ Matthew Miller, David Hemenway & Henry Wechsler, *Guns at College*, 48 J. AM. C. HEALTH 7, 10 (1999) (citing THE NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., *RETHINKING RITES OF PASSAGE: SUBSTANCE ABUSE ON AMERICA’S CAMPUSES* (1994)).

³⁵ Ralph Hingson, Timothy Heeren, Michael Winter & Henry Wechsler, *Magnitude of Alcohol-Related Mortality and Morbidity Among U.S. College Students Ages 18-24*, 26 ANN. REV. PUB. HEALTH 259, 267 (2005).

³⁶ E.g., Franklin Zimring, *Firearms, Violence, and the Potential Impact of Firearms Control*, 32 J.L. MED. & ETHICS 34, 35 (2004) (noting a Chicago study that found that attacks carried out with guns were five times more fatal than the next most lethal instrument, as well as the fact that street robberies taking place in commercial districts and involving guns had a fatality rate three times that of robberies carried out with knives and ten times that of robberies involving other personal force).

mix.³⁷ Drinking alcohol can make even a police officer “unfit for duty.”³⁸ What does it make a gun-carrying college student?

There is also a strong connection between gun ownership by college students and an increased likelihood to engage in dangerous activities. Two studies of college students found that those who owned guns were more likely than the average student to: (1) engage in binge drinking, (2) need an alcoholic drink first thing in the morning, (3) use cocaine or crack, (4) be arrested for a DUI, (4) vandalize property, and (5) get in trouble with police.³⁹

Moreover, students that engaged in multiple dangerous activities on this list were even more likely to own firearms.⁴⁰ Gun ownership was also significantly greater among college students who had either been injured in alcohol-related fights or in car accidents, as opposed to students who had not been injured.⁴¹ The researchers concluded that “college gun owners are more likely than those who do not own guns to engage in activities that put themselves and others at risk for severe or life-threatening injuries.”⁴² In addition, substance abuse, school problems, and perpetration of violence have been significantly associated with gun-carrying adolescents.⁴³

Colleges and universities have many programs in place to address drug and alcohol abuse, but it is unlikely that campus drug and alcohol problems will be eliminated any time soon.⁴⁴ Therefore, it is even

³⁷ See Entertainment Industries Council, *Spotlight on Depiction of Health and Social Issues* (2001) (Chapter 2, *Guns, Drugs and Alcohol: A Dangerous Cocktail*), available at http://www.eic.org/resources/publications/z_sadb/sab2-1.pdf.

³⁸ Michael Wilson, *Policy for Police Force: Guns and Drunkenness Don't Mix*, N.Y. TIMES, Jan. 30, 2006, at B4, available at 2006 WLNR 1621152 (quoting New York Police Department Patrol Guide, which states: “Members of the service SHOULD NOT be in possession of their firearms if there is any possibility that they may become unfit for duty due to the consumption of intoxicants.”).

³⁹ Miller, Hemenway & Wechsler, *supra* note 34, at 8-10; Miller, Hemenway & Wechsler, *supra* note 32, at 59. In addition, gun owners as a whole have been found more likely to engage in binge drinking and other risky activity. DAVID HEMENWAY, PRIVATE GUNS, PUBLIC HEALTH 97 (2004).

⁴⁰ Miller, Hemenway & Wechsler, *supra* note 34, at 10.

⁴¹ *Id.*

⁴² *Id.*; Miller, Hemenway & Wechsler, *supra* note 32, at 63.

⁴³ Cheryl M. Kodjo, Peggy Auinger & Sheryl A. Ryan, *Demographic, Intrinsic, and Extrinsic Factors Associated With Weapon Carrying at School*, 157 ARCHIVES PEDIATRICS & ADOLESCENT MED. 96, 101 (2003).

⁴⁴ The United States Department of Education has established a Higher Education Center for Alcohol and Other Drug Prevention. Its website identifies what campuses are doing. Higher Education Center, What Campuses Are Doing, available at http://www.higheredcenter.org/social_norms/campuses/.

more critical that schools be able to ban or tightly control firearms possession and use by students. A binge-drinking, drug-using student is dangerous enough; let's not give one a gun.

B. Suicide and Mental Health Issues

Mental health issues and the risks of suicides among college students is another prime reason to prohibit or limit access to guns by college students. Researchers have found that youths ages eighteen to twenty-five experience the highest rate of mental health problems.⁴⁵ According to the American College Health Association's National College Health Assessment, between nine and eleven percent of college students seriously considered suicide in the last school year.⁴⁶ Even more alarming, every year about 1,100 college students commit suicide, and another 24,000 attempt to do so.⁴⁷

Introducing firearms into this psychological cauldron could dramatically increase the danger to students. If a gun is used in a suicide attempt, more than ninety percent of the time the attempt will succeed.⁴⁸ By comparison, suicide attempts made by overdosing on drugs are fatal only three percent of the time.⁴⁹ Thus, while suicides involving firearms account for only five percent of the suicide attempts in America, they accounted for more than half of the 32,439 fatalities.⁵⁰ Needless to say, increasing firearms availability for college students could lead to a significant increase in the number of fatalities among the 24,000 suicide attempts survived by students each year. After all,

⁴⁵ U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2002 NATIONAL SURVEY ON DRUG USE AND HEALTH: NATIONAL FINDINGS, chap. 9 (2003), available at <http://www.oas.samhsa.gov/NHSDA/2k2NSDUH/Results/2k2results.htm#chap9> (finding that rates of "serious mental illness" in the nation were highest for persons aged eighteen to twenty-five).

⁴⁶ American College Health Association, National College Health Assessment, Data Highlights, http://www.acha-ncha.org/data_highlights.html (last visited Oct. 9, 2007) (providing data from Spring 2000 through Spring 2006).

⁴⁷ Miriam Cintron, *College Campuses Grapple with Escalating Suicide Rates*, <http://www.nearwestgazette.com/Archive/1006/newsstory1006k.htm> (last visited Oct. 9, 2007). See also Peter Lake & Nancy Tribensee, *The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury*, 32 STETSON L. REV. 125 (2002); American Association of Suicidology, *Youth Suicide Fact Sheet* (Dec. 28, 2006), available at <http://www.suicidology.org/associations/1045/files/Youth2004.pdf> (stating that there were 3,971 youth suicides in 2001, and that for every youth suicide, roughly 100-200 attempts were made).

⁴⁸ Miller, Lippman, Azrael & Hemenway, *supra* note 14, at 1032.

⁴⁹ *Id.*

⁵⁰ *Id.* at 1029.

the presence of a gun in the home increases the risk of suicide five-fold.⁵¹ Why should it be different in the dormitory?

Colleges and universities have devoted considerable resources to address mental health problems and suicide risks on campus.⁵² One thing colleges have not done, however, is attempt to expel all the students that pose extreme mental health or suicide risks. This article in no way takes the position that they should. A college may face legal problems if it discriminates against certain students because they seem to be prone to depression or violence.⁵³ Moreover, many scholars believe it is not possible to reliably identify who will go on a rampage,⁵⁴ thus suggesting there is no way for a college or university to distinguish in advance between gun-toters who pose extraordinary risks, and gun-toters who may not. According to Dr. James Alan Fox, Dean of the College of Criminal Justice at Northeastern University and one of America's leading criminologists: "It's not a matter of identifying problem cases and dealing with them. It's a matter of changing the way things are done. . . . You can't just grease the squeaky wheel. You've got to grease the whole machine."⁵⁵

Accordingly, the only safe and non-discriminatory way to reduce the risks of gun violence on college campuses is to keep the campuses gun-free.

C. Gun Theft

Increasing gun ownership among college students, especially those who live in campus dorms, is likely to provide a prime, tempting target for gun thieves. Between 1993 and 2002, nearly 1.7 million firearms were reported stolen to police.⁵⁶ The United States Justice

⁵¹ Arthur L. Kellerman et al., *Suicide in the Home in Relation to Gun Ownership*, 327 N. ENG. J. MED. 467 (1992).

⁵² See, e.g., Substance Abuse and Mental Health Services Administration, Campus Suicide Prevention Grants FY 2006, http://www.samhsa.gov/Grants/2006/SM_06_004.aspx (last visited Sept. 13, 2007); see also Lake & Tribensee, *supra* note 47, at 153-57.

⁵³ See, e.g., Stephen Joel Trachtenberg, Op-Ed., *Our Worst Nightmare*, WASH. POST, Apr. 19, 2007, at A27, available at 2007 WLNR 7558740 (discussing lawsuit against George Washington University); Daniel de Vise, *GWU Settles Lawsuit Brought by Student Barred for Depression*, WASH. POST, Nov. 1, 2006, at B5.

⁵⁴ Helen Frank Bensimon, *Violence in the Workplace*, 48 TRAINING & DEV. 26, 30 (1994).

⁵⁵ *Id.*

⁵⁶ See Americans for Gun Safety, *Stolen Firearms: Arming the Enemy* 1 (Dec. 2002). See also Philip J. Cook, Stephanie Molliconi & Thomas B. Cole, *Regulating Gun Markets*, 86 J. CRIM. L. & CRIMINOLOGY 59, 81-82 (1995); Michael Rand, *Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft*, U.S. Dep't of Justice, Bureau of Justice Statis-

Department has found that ten percent of prison inmates incarcerated on gun charges obtained their firearm through theft.⁵⁷ Stolen guns have already been the source firearms used in school shootings in Jonesboro, Arkansas,⁵⁸ Springfield, Oregon,⁵⁹ and elsewhere.⁶⁰

Most guns that are stolen are taken from homes or parked cars.⁶¹ These targets seem extremely secure compared to college dorm rooms. Dorm rooms are small, limiting the number of places where guns could be hidden or locked up.⁶² These rooms often experience considerable numbers of visitors, some of whom might decide to pinch a firearm if they see one, given a firearm's resale value on the illegal market.⁶³ It is also unlikely that college gun owners will be able to keep secret that they have a gun or guns, and many may openly flaunt this fact. Of course, this will also make it easier for gun thieves to learn where the guns are located.

Once a gun is stolen, it is much more likely to be used in subsequent crime.⁶⁴ Thus, if the sensible policies currently in place at nearly every college and university nationwide are replaced by widespread student ownership of firearms, not only will the danger to students on and off campus increase, but so will the danger to surrounding communities.

The best deterrent to firearms theft on college campuses is obviously not to permit students to possess firearms at all. Without guns

tics, Apr. 1994, at 3; Marianne W. Zawitz, *Guns Used in Crime*, U.S. Dep't of Justice, Bureau of Justice Statistics, July 1995, at 3.

⁵⁷ See Americans for Gun Safety, *supra* note 56, at 14.

⁵⁸ See Peter Katel, *Ark. Boys Stole Family Guns*, USA TODAY, Mar. 26, 1998, at 1A, available at 1998 WLNR 3297257.

⁵⁹ See Timothy Egan, *Oregon Freshman Goes to Court As Number of Deaths Rises to 4*, N.Y. TIMES, May 23, 1998, at A1.

⁶⁰ See Brady Center, *supra* note 1, at Appendix B (listing school shootings over the last ten years, many of which involved stolen guns).

⁶¹ Americans for Gun Safety, *supra* note 56, at 6 (according to the Bureau of Justice Statistics, 81.2% of firearms thefts are from the home or car, with the rest being stolen from gun stores, places of business, the owner's person, common carriers, or other sources).

⁶² For an example, see MIT Housing Home Page, <http://web.mit.edu/nh/> (last visited Oct. 5, 2007) (average size of a single-occupancy first year MIT dorm room is 142 square feet; average double-occupancy room is 238 square feet).

⁶³ Pamela Nisivaco, *Thieves Target Dorm Room Valuables* (Mar. 29, 2007) <http://media.www.dailyillini.com/media/storage/paper736/news/2007/03/29/News/Thieves.Target.Dorm.Room.Valuables-2811314.shtml>.

⁶⁴ Americans for Gun Safety, *supra* note 56, at 14; see also James T. Dixon, *On Lemon Squeezers and Locking Devices Consumer Product Safety and Firearms, A Modest Proposal*, 47 CASE W. RES. L. REV. 979, 990-91 & nn.87-93 (1997) (discussing role of stolen firearms in crime).

there can be no gun thefts. Colleges that require students to lock up their firearms in a facility managed by campus security or local police also dramatically reduce the risks of gun theft.⁶⁵

D. *Accidental Shootings*

In addition to the risk factors above, allowing more guns on college campuses and in classrooms is likely to increase the risk of students being shot accidentally.⁶⁶ Guns in the home are four times as likely to be used in unintentional shootings as in self-defense.⁶⁷ Additionally, a 1991 report by the General Accounting Office that surveyed unintentional firearm fatalities found that twenty-three percent of those deaths occurred because the person firing the gun was unaware that the gun was loaded.⁶⁸

The report explains several ways in which this happens. For example, a careless gun owner might empty a firearm but not notice that a round remains in the chamber. Or, one might typically leave a weapon unloaded and so assume that it is always unloaded. Or, one might pull the trigger several times without discharge (dry-firing), and so assume the chamber is empty even though it is not.⁶⁹

These mistakes are not limited to children. Even trained gun users have made them.⁷⁰ If there are no guns on campus, these types of accidents cannot occur.

II. PERMITTING GUNS VIOLATES THE DUTY TO PROVIDE A SAFE CAMPUS ENVIRONMENT

Colleges need discretion to set policies that affect the safety of students, faculty, and staff. Indeed, colleges can be held liable for fail-

⁶⁵ Firearm theft rates are also dramatically lower in states that have safe storage laws. Americans for Gun Safety, *supra* note 56, at 12.

⁶⁶ Recently, two students were accidentally shot inside Chicago Vocational Career Academy when one of the students was showing off a handgun and it went off. Karen Hawkins, *Teen Charged in Chicago School Shooting* (Apr. 11, 2007) http://www.boston.com/news/education/k_12/articles/2007/04/11/2_chicago_students_injured_by_gun/.

⁶⁷ Arthur L. Kellermann et al., *Injuries and Deaths Due to Firearms in the Home*, 45 J. TRAUMA: INJURY, INFECTION & CRITICAL CARE 263 (1998).

⁶⁸ *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented*, GAO/PEMD-91-9 (Mar. 1991), available at <http://www.gunsandcrime.org/gao-rpt.html>.

⁶⁹ *Id.*

⁷⁰ See, e.g., WKYC, *Girl, 5, Accidentally Shot by Police Officer*, http://www.wkyc.com/news/news_article.aspx?storyid=65716&provider=top (last visited Sept. 30, 2007) (police officer accidentally shot his daughter while cleaning his gun).

ing to take adequate security measures or otherwise failing to maintain a sufficiently safe environment.⁷¹ Courts have recognized that schools owe students, employees, and visitors a duty of reasonable care in providing for their well-being.⁷² For example, universities that own and operate student housing have duties under tort law, just like other landlords, which require them to provide safe premises for residents and visitors.⁷³ Likewise, colleges have a duty to exercise reasonable care as to the protection of students, teachers, and others on all other sorts of premises on campus, from academic buildings to athletic facilities.⁷⁴ They can also be held liable for negligence in connection with overseeing recreational, social, and other student life programs.⁷⁵

Many decisions have confirmed the potential liability of colleges for criminal assaults on school grounds. For example, the Supreme Court of Arizona held that the Maricopa County Community College District could be held liable when two students argued while registering for classes, and one of them said that he was going home to get a gun and coming back to campus to kill the other.⁷⁶ The threatened student asked a college security guard for help twice, and the guard assured him that he would be protected.⁷⁷ An hour after the initial threat, the threatening student returned with a briefcase, pulled out a gun, and killed the other student.⁷⁸

Other states have also decided similarly in similar cases nationwide. The Supreme Court of California held that a community college could be held liable to a student attacked in the stairway of a campus

⁷¹ Jim Ferguson and Trisha Monroe, *The Clery Act and Prior Crimes Evidence: Proving Foreseeability in Campus Crime Cases*, <http://www.securityoncampus.org/lawyers/clerymonroe.html> (last visited Sept. 30, 2007).

⁷² Robert D. Bickel & Peter F. Lake, *The Emergence of New Paradigms in Student-University Relations: From "In Loco Parentis" to Bystander to Facilitator*, 23 J.C. & U.L. 755, 761 (1997).

⁷³ Bickel & Lake, *supra* note 72, at 755-56.

⁷⁴ *Id.* at 761-62.

⁷⁵ *Id.* at 755-56, 780-83.

⁷⁶ *Jesik v. Maricopa County Cmty. Coll. Dist.*, 611 P.2d 547, 551 (Ariz. 1980) (holding that the "statutory duty of adequate supervision coupled with notice imposed a specific duty to exercise reasonable care to protect the decedent").

⁷⁷ *Id.* at 548.

⁷⁸ *Id.*

parking facility.⁷⁹ The Supreme Court of Delaware held that the University of Delaware could be held liable for injuries sustained during a fraternity hazing incident in which oven cleaner was poured over a student's head.⁸⁰ The First District of the Florida Court of Appeals held that Florida A&M could be held liable for the rape of a student in a dormitory.⁸¹ The Kansas Supreme Court held that Kansas State University could be held liable for a sexual assault in a dormitory.⁸² Massachusetts's highest court held that Pine Manor College could be held liable for the abduction of a student from college housing and a sexual assault in the school's dining facility.⁸³ New York's highest court held that the state university system could be held liable for an abduction and rape in a dormitory at SUNY—Stony Brook.⁸⁴ The Supreme Court of Texas held that the University of Houston could be held liable for assaults committed by a criminal intruder in a residence hall.⁸⁵ The Supreme Court of Washington held that Washington State University could be held liable for the abduction and rape of a student near her dormitory on campus.⁸⁶

⁷⁹ *Peterson v. San Francisco Cmty. Coll. Dist.*, 685 P.2d 1193, 1194-95 (Cal. 1984) (holding that the district has a duty to exercise due care to protect students from reasonably foreseeable assaults on campus).

⁸⁰ *Furek v. Univ. of Del.*, 594 A.2d 506, 520 (Del. 1991) (holding that the university had a duty to use reasonable care to protect resident students against dangerous acts of third parties where it had assumed direct responsibility for safety of students through rendering of services, such as instituting a university policy against hazing).

⁸¹ *Cutler v. Bd. of Regents of Fla.*, 459 So. 2d 413, 416 (Fla. Ct. App. 1984) (holding that if the plaintiff could establish through an amended complaint that the university failed in its duty to warn of a known dangerous situation, then the university could be held liable for her assault and rape).

⁸² *Nero v. Kan. State Univ.*, 861 P.2d 768, 780 (Kan. 1993) (holding that the university had a legal duty to use reasonable care under the circumstances to protect the occupants of a coed housing unit from foreseeable criminal conduct in a common area).

⁸³ *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 336 (Mass. 1983) (holding that the university is liable where it voluntarily undertakes to protect students from the criminal acts of third parties, and either the failure to exercise due care causes harm or the harm is suffered due to student reliance on the undertaking).

⁸⁴ *Miller v. State*, 467 N.E.2d 493, 508-09 (N.Y. 1984) (holding that a student injured in a criminal assault in state-operated college dormitory could recover damages against the state in its capacity as landlord upon a showing that there was a reasonably foreseeable likelihood of criminal intrusion into the building, that the university negligently failed to keep the outer doors locked, and that the failure was a proximate cause of the injury).

⁸⁵ *Delaney v. Univ. of Houston*, 835 S.W.2d 56 (Tex. 1992).

⁸⁶ *Johnson v. State*, 894 P.2d 1366 (Wash. 1995) (holding that the university owed the student a duty of reasonable care to protect her from foreseeable criminal acts due to her status as an invitee, because she was an on-campus student resident who was attempting to gain access to her university dormitory at the time she was attacked).

All of these decisions recognizing the potential liability of colleges for foreseeable criminal attacks are “not the exceptional situation” and their rulings have been “widely accepted and applied.”⁸⁷ Moreover, as assaults and other crimes at colleges “are now front page news,” courts are becoming ever more willing to impose liability on schools “to encourage a greater concern for student safety and a safe learning environment.”⁸⁸

With legal doctrines making academic institutions responsible for the safety of students, schools’ liability exposure has grown substantially. For example, colleges and universities “have experienced a significant increase in criminal and civil incidents which involve, in whole or part, assault or battery (or other violence) upon students by other students or by third parties.”⁸⁹ A statistical study by United Educators Insurance Risk Retention Group showed that premises liability and assault/criminal claims accounted for sixty-four percent of all general liability excess claims brought against colleges and universities.⁹⁰

Under these circumstances, depriving colleges the discretion to set policies concerning firearms leaves them exposed to potential liability, but without the means to establish sensible policies to reduce risks. Sheldon Steinbach, vice president and general counsel of the American Council on Education, has explained that compared to other sorts of landlords or other businesses, schools face unique risks and have special responsibilities when it comes to setting policy on firearms.⁹¹ For instance, special concerns arise regarding guns because of the fact that many college students reside in dormitories, fraternity/sorority houses, or other communal living accommodations.⁹² Even if a student who owns a gun knows about gun safety, explains Steinbach, there is a serious risk that other students in the dormitory will not be likewise prepared.⁹³ Moreover, colleges already have huge problems with intoxicated students making poor choices, and “adding guns to the mix in dormitories would invite trouble.”⁹⁴

⁸⁷ Bickel & Lake, *supra* note 72, at 772.

⁸⁸ *Id.* at 780.

⁸⁹ *Id.* at 756.

⁹⁰ Jeffrey I. Chasen, *Tort Liability Alert: Lessons from Losses* (18th Annual Nat’l Conf. on Law & Higher Educ. 1997).

⁹¹ Scott Jaschik, Gun Rights vs. College Rights, Inside Higher Ed (Sept. 11, 2006) <http://www.uh.edu/ednews/2006/insidehe/200609/20060911guns.html>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Suicide is a problem of particular concern in collegiate environments. Suicide rates among young people are high and continue to increase dramatically.⁹⁵ Courts have recognized that liability for suicides can be imposed "where the defendant is found to have actually caused the suicide, or where the defendant is found to have had a *duty to prevent* the suicide from occurring."⁹⁶

For example, the Arkansas Supreme Court held that university officials could be held liable for a student's suicide committed with a firearm, where it was alleged that the college enabled the student, a football player suffering from a shoulder injury, to have access to large doses of a pain-killing drug with addictive and depressive effects.⁹⁷ Likewise, a Federal court in Virginia held that a college could be held liable for a student who committed suicide by hanging himself in his on-campus dormitory room, where college officials required the student to sign a statement saying he would not hurt himself, knew that the student had emotional problems, and knew that he had told friends he was going to commit suicide.⁹⁸ A school could face liability for a suicide in a host of other situations, such as if a student committed suicide after being wrongly punished under a disciplinary or honor code,⁹⁹ after being subjected to hazing,¹⁰⁰ or while in the custody of campus police or in a university hospital or other health care facility.¹⁰¹ Gun availability is a significant risk factor for youth suicide,¹⁰² and therefore potential liability for suicides provides additional reason for schools to be given the discretion to prohibit possession of guns.

III. GUNS POSE PUBLIC AND STUDENT-RELATIONS PROBLEMS

Rather than making anyone feel safer, allowing students to possess and use firearms on college campuses will likely breed fear and paranoia among fellow students, since no one will know whether the other person can simply retrieve or pull out a gun if a dispute arises.

⁹⁵ Lake & Tribbensee, *supra* note 47, at 126.

⁹⁶ *McLaughlin v. Sullivan*, 461 A.2d 123, 124 (N.H. 1983).

⁹⁷ *Wallace v. Broyles*, 961 S.W.2d 712, 719 (Ark. 1998).

⁹⁸ *Schieszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 614-15 (W.D. Va. 2002).

⁹⁹ *Armijo v. Wagon Mound Pub. Schs.*, 159 F.3d 1253, 1264-65 (10th Cir. 1998).

¹⁰⁰ *Furek v. Univ. of Del.*, 594 A.2d 506, 525-26 (Del. 1991).

¹⁰¹ Lake & Tribbensee, *supra* note 47, at 134-35.

¹⁰² Matt Miller & David Hemenway, *Gun Prevalence and the Risk of Suicide: A Review*, 2 HARV. HEALTH POL'Y REV. 29, 29-30 (2001).

Such fear and paranoia is antithetical to creating the kind of climate where free and open academic debate and learning thrive.

In one national study of gun-owners and non-gun-owners, seventy-one percent of those surveyed said they would feel less safe if more people in their community acquired guns.¹⁰³ Among non-gun-owners, the numbers were even higher, with eighty-five percent indicating that the increased presence of guns in their neighborhood would lessen their feeling of safety.¹⁰⁴ Even among gun owners, roughly half did not want more people to acquire guns.¹⁰⁵ Although this study focused on the increased presence of guns in homes,¹⁰⁶ it offers a powerful message to legislators that may be considering requiring colleges and schools to allow guns. How could it possibly be a good idea to increase fear and anxiety levels among college students?

Will parents be more or less likely to spend tens of thousands of dollars to send their child to a college or university that permits widespread gun possession and use among its students? It is hard to believe that introducing guns among binge-drinking, drug-using, suicide-contemplating, hormone-raging college students would help a parent sleep more easily at night. This article is not suggesting that risky behaviors are exhibited by a majority of college students. However, this risky behavior is exhibited frequently enough that it would be unconscionable to introduce guns into these settings.¹⁰⁷ Accordingly, it is not surprising that public surveys have found overwhelming opposition to possession or carrying of guns on college campuses.¹⁰⁸

It is without question that if a violent incident caused by an armed student or teacher were to occur, student and faculty morale would be shattered. In the aftermath of shootings, institutions have often needed to provide counseling for many months.¹⁰⁹ For the survivors, the school sanctuary no longer feels safe, but threatening. Morale was certainly shattered at Virginia Tech after the massacre on

¹⁰³ David Hemenway, Sara J. Solnick & Deborah R. Azrael, *Firearms and Community Feelings of Safety*, 86 J. CRIM. L. & CRIMINOLOGY 121, 124 (Fall 1995).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See Mary K. Dinger, *Health-Risk Behaviors of High School and College Females*, 71 J. PHYSICAL EDUC., RECREATION & DANCE 19 (Sept. 2000), and Will H. Courtenay, *College Men's Health: An Overview and a Call to Action*, 46 J. AM. C. HEALTH 279 (May 1998).

¹⁰⁸ Assad, *supra* note 15.

¹⁰⁹ *Where to Find Support*, WASH. POST, April 17, 2007, at A9.

April 16, 2007.¹¹⁰ However, while the school may not have prevented the shootings, the massacre was not brought on by a school policy that permitted gun carrying on campus.¹¹¹ Who would want to attend a school where shootings have taken place because guns were allowed?

Accordingly, it is critical to the health of an educational institution and its community to tightly limit or ban access to firearms by students and faculty.

CONCLUSION

Now is the time to take action to protect the rights of students, faculty, staff, parents and educational institutions to keep guns off campus. Unfortunately, those legal rights are under attack by the gun lobby. The gun lobby is not known for issuing idle threats, and it has certainly made clear that it intends to push hard for arming students and teachers.¹¹² Indeed, barely a week after the massacre at Virginia Tech, a bill was introduced in South Carolina that would permit anyone with a CCW license to carry a concealed weapon "on the premises or property owned, operated, or controlled by a public school, elementary school, secondary school, college, university, technical college, or other post-secondary institution."¹¹³ The bill would repeal existing South Carolina law that expressly prohibits CCW licensees from carrying guns into schools.¹¹⁴ Similar bills have also been introduced in other states.¹¹⁵

However, if educational institutions and the communities that support such institutions band together in opposition to these laws, changes in gun ownership policies can likely be stopped. Faced with the gun lobby's threat to pass legislation prohibiting employers from barring guns on company property, the business community has organized strong opposition in nearly every state where legislation has

¹¹⁰ Jessica Heslam, *Campus Massacre: Grief-stricken Masses Gather at Virginia Tech*, BOSTON HERALD, April 18, 2007, at 05.

¹¹¹ Jonathan Schuppe & Brian T. Murray, *Rampage Stirs Gun Debate but Change Not Likely*, NEWARK STAR-LEDGER, April 18, 2007, at 10.

¹¹² Brady Center, *supra* note 1.

¹¹³ H. 3964, 117th Gen. Assem. 1st Reg. Sess. (S.C. 2007); S.B. 286, 74th Gen. Assem., Reg. Sess. (Nev. 2007).

¹¹⁴ S.C. Code Ann. § 23-31-215 (2006).

¹¹⁵ The best way to monitor this is to continue checking this Brady Campaign webpage: <http://www.bradiycampaign.org/action/schools/>. It contains a national map and a list of bills introduced on a state-by-state basis.

been proposed.¹¹⁶ The result has been a series of resounding defeats for the gun lobby.¹¹⁷ There is no reason why academic institutions and the people that support them should not be similarly successful.

Institutions that educate and protect America's youth should not have their legal rights trampled by organizations promoting an extremist agenda. We need to make society safer by reducing easy access to guns by criminals, the mentally ill, the unstable, or the suicidal, and not by making our schools more dangerous by allowing guns to be more accessible on college campuses.

¹¹⁶ David E. Thigpen, *Fired Up Over a Gun Law*, TIME, November 29, 2004, at 18.

¹¹⁷ The best way to monitor that fight is to continue checking this Brady Campaign webpage: <http://www.bradycampaign.org/action/workplace>.